

PRESUMPTIVE LEGISLATION FOR WORKERS' COMPENSATION CLAIMS
– *IMPROVING THE WORKERS' COMPENSATION EXPERIENCE AND
MENTAL HEALTH OUTCOMES FOR ELIGIBLE WORKERS DIAGNOSED
WITH A PSYCHOLOGICAL INJURY CAUSED BY EXPOSURE TO WORK-
RELATED TRAUMA*

*WORKERS' COMPENSATION AND REHABILITATION AND OTHER
LEGISLATION AMENDMENT BILL 2020*

SUBMISSION OF TOGETHER QUEENSLAND, INDUSTRIAL UNION OF EMPLOYEES
25 SEPTEMBER 2020

SUMMARY

Together Queensland, Industrial Union of Employees (**Together**) is the leading industrial union representing the interests of Queensland public servants.

Together welcomes this opportunity to provide this submission to the Education, Employment and Small Business Committee, addressing the *Workers' Compensation and Rehabilitation and Other Legislation Bill 2020* ('the Bill'), on behalf of our members who play an important role in protecting and serving the Queensland community.

The introduction of presumptive workers' compensation legislation for eligible workers diagnosed with trauma-related psychological injuries will go far to positively impact on the workers' compensation claims process for eligible workers. In the following submission, Together seeks to make a number of recommendations for the consideration of the Committee and the Government as to how to further reduce the administrative and emotional burden on eligible workers who make an application for compensation for trauma-related claims, so that eligible workers who work to protect and serve our community have access to early intervention mental health treatment and supports.

This submission is informed through our work and the lived experience of many of our members.

The key recommendations we identify in our submission are:

- That the definition of 'eligible worker' replace 'eligible employee' to state the presumption of injury will apply to include all workers who are exposed to trauma by either a single traumatic event or the cumulative effect of repeated trauma as a direct result of the nature of their work.
- That the Schedules provided at *Clause 9* of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020* be inserted into the amendment of *Workers' Compensation and Rehabilitation Act 2003*.
- That the application of presumptive legislation to be extended to cover the broader cohort of trauma and stressor-related disorders as defined in the DSM-5, and not be restricted to a confirmed post-traumatic stress disorder only.
- That the 12-month review of the presumptive legislation consider if there is a more appropriate diagnostic methodology of trauma-related psychological injuries and post-traumatic stress disorders.
- That WorkCover exhaust all avenues and sources of information available to them when taking the presumptive approach to the trauma-related psychological injury before requiring the injured worker to submit to an examination in accordance with section 135A of the Act.
- That specific amendments be made to section 36EB(4) to state only demonstrable and reasonable evidence may be relied upon to reject the presumption of injury.
- That guidance material is published for employers which speaks to the circumstances and evidence required if an employer seeks to rebut the presumption of injury.

PRESUMPTIVE LEGISLATION FOR WORKERS' COMPENSATION CLAIMS

1. Together is very supportive of these amendments to the *Workers' Compensation and Rehabilitation Act 2003* ('the Act') and the *Workers' Compensation and Rehabilitation Regulation 2014* ('Regulation') and the need for this support for workers who, as a consequence of their employment, experience trauma-related psychological injuries.
2. The Queensland Government should be commended on taking steps to improve the workers' compensation experience and mental health outcomes of these workers, including with the establishment of the Stakeholder Reference Group to develop an '*Action Plan for improving the experiences of first responders with psychological injuries*'¹.
3. Together participated in the Stakeholder Reference Group and provided comment on the development of an Administrative Policy until the State Government considered the policy proposal for presumptive legislation. We participated with the goal of improving the workers' compensation experience for workers affected by trauma-related psychological injuries, where it was identified that a significant barrier for first responders in accessing the scheme was the claims determination phase, in particular the legislative test for injury.
4. It is recognised the workers' compensation process can be stressful or daunting for some workers and the requirement to repeatedly advise of the traumatic incident/s that gave rise to the injury as part of the claims process is itself repeated exposure to risk of harm from those event/s.
5. We sought an expedited claims determination process with a focus on minimising the burden on employees with a trauma-related psychological injury. An Administrative Policy was subsequently drafted and was to provide a framework for WorkCover Queensland ('WorkCover') to determine claims using a presumptive approach for Queensland public sector workers who have been diagnosed with a trauma-related psychological injury. For public sector workers who have been exposed to traumatic event/s and have been diagnosed with a trauma-related psychological injury, WorkCover will presume the injury to be caused by the worker's employment under section 32 of the Act unless there is evidence to the contrary. The framework would provide expedited claims determination and early access to support for eligible workers diagnosed with a psychological injury caused by exposure to work-related trauma.
6. An Administrative Policy with an interim claims process was subsequently drafted and submitted to the Government in late June 2020 with the following terms:
 - a. Covers workers (or volunteers) who are first responders limited to police officers, firefighters, ambulance officers or paramedics, child safety officers and corrections officers (note: this includes private sector workers who perform identical roles);

¹ Office of Industrial Relations, '*Improving the workers' compensation experience and mental health outcomes for first responders*', *Stakeholder Reference Group – Background and current initiatives to support first responders*. Office of Industrial Relations, Queensland Government, Queensland.

- b. Covers public sector workers in first responder public sector agencies that may experience repeated or extreme exposure to aversive details of traumatic event(s) as their duties require them to either:
 - i. Attend the scene of a traumatic event as part of a post event response (e.g. scenes of crime officers); or
 - ii. Experience the traumatic event as it occurs/ed to others (e.g. communication room officers or police officers repeatedly exposed to details of child abuse). This will provide parity for other public sector workers who perform roles in first responder agencies where they are exposed to traumatic events.
 - c. Covers exposure to trauma as being either a single traumatic event or the cumulative effect of repeated trauma.
 - d. Covers all trauma-related psychological injuries (i.e. is not limited to post-traumatic stress disorder z(PTSD) alone).
 - e. Does not require consideration of reasonable management action unless it is raised as part of the medical evidence or a concern by the employer – in which case the clam will be considered under WorkCover’s usual claims investigation process.
7. In July 2020, as drafting of amendments to the legislation commenced under very tight timeframes, Together provided comment on the list of occupations proposed as we felt that these were very limited:
 - a. We stated we were concerned that as drafted other health professionals who are directly involved in the same traumatic events in Emergency Departments will be excluded by virtue of job title.
 - b. Together suggested that ‘other health professionals’ be added – particularly, Together represents Social Workers in Emergency Departments who work with victims of rape and sexual assault, trauma victims, child sexual assault victims and others and provide the social and emotional support as well as support to the victim’s family. Social Workers also deal with the trauma where a person is deceased and support the family as health professionals specifically attached to the Emergency Department and Intensive Care Unit.
 - c. Similarly, and particularly in the Torres and Cape, Cairns and Townsville Hospital and Health Services, there are Aboriginal and Torres Strait Islander Health Workers who take on this role and specifically do the patient support and family liaison around trauma and death. The social and emotional wellbeing teams they are called in the TCHHS. These health professionals form part of the emergency response.
8. In August 2020, we were advised of the following by the Office of Industrial Relations:

Presumptive coverage at this point in time is proposed to be limited to certain occupations and workers of particular employers. These workers were chosen based on claims data and national reviews which suggest there is a strong causal connection between employment and PTSD for these workers. With that said, and in recognition that many other workers develop PTSD in the course of their employment, the proposal provides the ability for the coverage to be prescribed by regulation. This allows coverage

to be amended as further evidence comes to light which suggests a higher prevalence within a cohort of workers and a strong causal connection between employment and the development of PTSD.

It is important to note that presumptive laws do not amend or provide new benefits under the Act. All claims for Queensland workers who develop PTSD as a result of their duties are compensable in the scheme. The proposal merely seeks to provide an alternative pathway for claims determination for certain workers.

9. On 12 August 2020, the Honourable Grace Grace, Minister for Education and Minister for Industrial Relations introduced the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020* ('the Bill') into Parliament.
10. The Bill introduces presumptive workers' compensation laws for first responders and other eligible employees diagnosed with PTSD. Presumptive workers' compensation laws do not provide new, or change any existing, entitlements but instead will provide easier, more timely access to necessary support and compensation for first responders by reversing the onus of proof and deeming their PTSD injury to be work-related. This Bill is an important further step for supporting the needs first responders, particularly those with cumulative exposure to trauma, and complements early intervention initiatives introduced by the Queensland Government last year.

SCOPE OF COVERAGE — 'ELIGIBLE WORKERS'

11. As noted within the Explanatory Notes, the Bill introduces presumptive workers' compensation for first responders and others who work in roles alongside first responders, who are exposed to traumatic incidents due to the nature of their roles. The presumption of injury will apply to defined first responders and other eligible employees which are prescribed in the *Workers' Compensation and Rehabilitation Regulation 2014* (the 'Regulation') who meet the requirements of:

- **responding to time critical, often life-threatening incidents (first responder)** i.e. police officer/recruits; an ambulance officer and paramedics; child safety officers; corrective services officers; a youth justice staff members; firefighters and fire service officers; members of the State Emergency Service and rural fire brigades and volunteer firefighters and fire wardens; and doctors or nurses employed in emergency and trauma care, acute care, critical care, or high-dependency care. The Bill also applies to corresponding occupations in the private sector, for example, nurses and doctors working in the various areas described in a private hospital or paramedics in the not-for-profit sector.
- **repeated or extreme exposure to graphic details of traumatic incidents (eligible employees)** as they attend the scene of traumatic incidents (e.g. a person whose employment involves collecting human remains) or experience the traumatic incident as they happen (e.g. fire communications officers responding to and providing information in response to emergencies, or corrective services officers observing disturbing footage via CCTV) or investigate, review or assess traumatic incidents that have happened to other persons (e.g. workers who are exposed to graphic details as part of investigating complaints of child sexual abuse).

The occupations, professions and employing government departments are prescribed under the *Workers' Compensation and Rehabilitation Regulation 2014*, providing flexibility if further roles with a prevalence with PTSD are identified in future.

12. *Clause 9* of the Bill inserts into Regulation,

Schedule 6A First Responders section 144A	Schedule 6B Eligible employees section 144B
<p>1 an ambulance officer under the <i>Ambulance Service Act 1991</i> who is classified by the Queensland Ambulance Service as a paramedic of any type</p> <p>2 an authorised officer under the <i>Child Protection Act 1999</i></p> <p>3 a corrective services officer under the <i>Corrective Services Act 2006</i></p> <p>4 a fire service officer under the <i>Fire and Emergency Services Act 1990</i></p> <p>5 a member of the State Emergency Service or an emergency service unit under the <i>Fire and Emergency Services Act 1990</i></p> <p>6 a member of a rural fire brigade registered under the <i>Fire and Emergency Services Act 1990</i>, section 79</p> <p>7 a volunteer firefighter or volunteer fire warden employed by the authority responsible for the management of the State's fire services</p> <p>8 a police officer or police recruit under the <i>Police Service Administration Act 1990</i></p> <p>9 a youth justice staff member within the meaning of the <i>Youth Justice Act 1992</i>, section 59B</p> <p>10 a doctor or nurse employed in any of the following areas—</p> <ul style="list-style-type: none"> • emergency and trauma care • acute care • critical care • high-dependency care <p>11 an occupation or profession performed in the private sector that corresponds to an occupation or profession mentioned in item 1, 3 or 4</p>	<p>1 the department in which the <i>Ambulance Service Act 1991</i> is administered</p> <p>2 the department in which the <i>Child Protection Act 1999</i> is administered</p> <p>3 the department in which the <i>Corrective Services Act 2006</i> is administered</p> <p>4 the department in which the <i>Fire and Emergency Services Act 1990</i> is administered</p> <p>5 the department in which the <i>Police Service Administration Act 1990</i> is administered</p> <p>6 the department in which the <i>Youth Justice Act 1992</i> is administered</p>

13. Together has identified to the Stakeholder Reference Group our concerns that the meaning of first responder and eligible employee are overly prescriptive and do not account for the trauma experienced by Queensland workers as a direct result of their work.
14. Through our involvement in the Stakeholder Reference Group, Together has sought on behalf of our members to have the definition of 'eligible worker' to whom the presumption of injury will apply to include all workers who are exposed to trauma by either a single traumatic event or the cumulative effect of repeated trauma as a direct result of the nature of their work, as opposed to the restriction on application to eligible employees in very few employing government agencies.
15. We acknowledge the traditional view of frontline first responders and recognise their critical roles however there are many other public service employees who experience critical events as part of their work and frontline services routinely.
16. Many roles not traditionally viewed as first responders by the community require our members to knowingly participate in duties where exposure to risk is assessed as high. The conduct of offenders in Custodial Corrections is often not altered by incarceration, attending to a shift in a jail is not knowing what will occur on that shift, attending a home where children are notified as at critical risk is inherently fraught and unpredictable. These roles are just a couple of indications of exposure to risk that can be in an event or over a period of time, and many workers do not speak out about that risk or seek psychological assistance which again places those workers at further risk.
17. Together feels strongly that the presumption of injury should not be unnecessarily limited by occupational group or employing government agency as doing so fails to recognise and acknowledge the trauma experienced by other workers in the course of their employment. Together members are deeply committed to providing services to Queensland. In times of disaster and declared emergency events like bushfires, cyclones and floods, Together's members assist in critical incident and community recovery efforts as part of the Government's post event response. This work requires them to attend the scene of traumatic event/s, experience the traumatic event as it occur/ed to others and to assist vulnerable individuals and families directly following a declared disaster event. Our members who are employed by the Department of Communities, Disability Services and Seniors regularly respond to matters of abuse, neglect and exploitation in relation to a person with disability or an elder member of our community. Together's members who are health professionals and social workers provide pertinent clinical and emotional care and support to victims of sexual violence, trauma and child sexual assault, as well as support to the victim's family and community. Aboriginal and Torres Strait Islander Health Workers work with patients, their families and communities around trauma and death and are regularly engaged with the social and emotional wellbeing teams who, along with their fellow cohort of health professionals, form part of emergency response to trauma.
18. These are just some of the many examples of the cohort of workers in Queensland who are employed in agencies that are not those listed in Schedule 6B and who, due to the nature of their duties, are often exposed to traumatic and distressing incidents. For the protection of these workers and in light of the government's commitment to their long-term mental health, rehabilitation and return to work outcomes, Together seeks for the limitation of employing

government agency to be removed and for the introduction of presumptive workers' compensation laws for eligible workers across the public sector who experience repeated or extreme exposure to aversive details of traumatic event/s.

Recommendation One: That the definition of 'eligible worker' replace 'eligible employee' to state the presumption of injury will apply to include all workers who are exposed to trauma by either a single traumatic event or the cumulative effect of repeated trauma as a direct result of the nature of their work.

PROTECTING WORKERS – SECURING A PRESUMPTIVE APPROACH TO TRAUMA-RELATED PSYCHOLOGICAL INJURY.

19. The currently drafted Schedules 6A and 6B provided at *Clause 9* of the Bill represent a cohort of workers where there is evidence of a causal connection between employment and trauma-related psychological injuries and posttraumatic stress disorders. Together is concerned that by including these occupations, professions and employing government agencies in the Regulations, rather than the Act, it might be open to reduce the scope of the presumptive legislation in future. As provisions in Acts are less likely to be challenged, disregarded or repealed later, it is Together's view that the Government's commitment towards the mental health outcomes for eligible workers would be better protected should these provisions be contained in the Act.
20. At present, the only presumptive legislation in Queensland's workers' compensation scheme relates to firefighters with certain occupational cancers following the passing of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015* as part of the Queensland Government's election commitments for *Restoring the Rights of Queenslanders Injured at Work*.
21. The amendments to the *Workers' Compensation and Rehabilitation Act 2003* passed by the Palaszczuk Government introduced presumptive legislation into the Act and detailed the 12 specified diseases deemed to be work-related by way of the prescriptive Schedule provided at Schedule 4A, Column 1 of the Act.
22. For the purposes of consistency and co-location of Queensland's presumptive legislation and so that to secure the Government's presumptive approach to trauma-related psychological injuries, Together seeks for the Schedules provided at *Clause 9* of the Bill to be inserted into the *Workers' Compensation and Rehabilitation Act 2003* rather than in the subordinate legislation.
23. In recognition that there are many workers who develop trauma-related psychological injuries in the course of their employment due to work-related trauma, the Government would retain the ability for coverage to be extended by regulation, should further evidence come to light which suggests a higher prevalence within a cohort of workers and a strong causal connection between the employment and the development of PTSD.

Recommendation Two: That the Schedules provided at *Clause 9* of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020* be inserted into the amendment of *Workers' Compensation and Rehabilitation Act 2003*.

DIAGNOSIS OF POST-TRAUMATIC STRESS DISORDERS

24. Queensland's statutory workers' compensation scheme is a no-fault scheme where injured workers are not required to establish negligence by their employer or other party for the injury. It is a scheme that supports workers for all work-related injuries, whether the injury is a traumatic injury resulting from a significant event or develops over time from multiple events or is a latent onset disease resulting from exposure to chemicals or hazardous dust at work. By virtue of their employment and because of the nature of their duties providing frontline services to Queenslanders, this often means that eligible workers are exposed to traumatic, life-threatening events.
25. To be eligible for the presumption of injury, eligible workers must be diagnosed with PTSD by a psychiatrist registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the speciality of psychiatry, in accordance with the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as published from time to time, using the diagnostic criteria provided under DSM-5 for post-traumatic stress disorder.
26. It was identified by the Stakeholder Reference Group that PTSD is just one of a series of trauma and stressor-related disorders brought on by exposure to trauma in the course of the worker's employment.
27. Together is of the view that the application of presumptive legislation should be extended to cover the trauma and stressor-related disorders defined in the DSM-5, rather than restricting the presumption to confirmed PTSD injuries only.
28. Doing so will ensure early intervention, treatment and support is able to be provided to an injured worker as soon as possible following the exposure to the traumatic event/s and diagnosis of the trauma-related psychological injury. The presumption of injury applying to any trauma and stressor-related disorder as defined in the DSM-5 will minimise the risk of further harm to the worker that would likely be experienced if the worker is required to repeatedly advise of the traumatic incident/s to meet the legislative test for injury.

Recommendation Three: To ensure early intervention, treatment and support is able to be provided to an injured worker as soon as possible following the exposure to the traumatic event/s, Together seeks for the application of presumptive legislation to be extended to cover the broader cohort of trauma and stressor-related disorders as defined in the DSM-5.

29. The Bill requires a PTSD diagnosis from a psychiatrist in order for the presumption of injury to apply. Where an eligible worker does not have a psychiatrist's diagnosis to support their claim, WorkCover is to arrange for the claimant to be examined by a psychiatrist to obtain a diagnosis at the expense of the insurer. In the absence of evidence that the claimant has been diagnosed by a psychiatrist as having the post-traumatic stress disorder, the injured worker is denied the benefit of presumptive legislation and will instead have their claim decided in accordance with the existing provisions for determining an injury contained in sections 32-26 of the Act. The onus will remain on the injured worker to prove their injury was work-related.
30. Together has serious concerns about capacity and accessibility which we feel may present as a barrier to the presumption of injury, particularly for our rural and remote members. A diagnosis

of post-traumatic stress disorder takes time and expertise and is not able to be made until at least one month after the exposure to trauma. We acknowledge the recommendation of the Black Dog Institute's *Expert Guidelines: Diagnosis and Treatment of Post-Traumatic Stress Disorder in Emergency Services Workers* which recommends, where possible, health professionals trained in psychopathology and experienced in mental health assessments should conduct a mental health assessment of any first responder suspected of suffering PTSD however, for many hundreds of workers, access to a psychiatrist or specialist health practitioner trained in psychopathology is difficult by distance or other access issues. The *Better Access Initiative* through Medicare increases community access to mental health professionals and team-based mental health care provided by general practitioners, psychiatrists, psychologists (clinical and registered) and eligible social workers and occupational therapists. These health practitioners have a significant role in the success of these types of psychological injuries gaining a diagnosis. We believe a clinical psychologist or other suitably qualified health practitioner should be able to provide the diagnosis necessary for the presumption of injury to apply.

31. The Stakeholder Reference Group also identified the concern that the DSM-5 provides too narrow of a definition to reach the PTSD diagnosis. It was noted that the comparable legislation of other jurisdictions within Australia (Tasmania and the Northern Territory) are silent on the matter of who should undertake the PTSD diagnosis and to what diagnostic criteria or standard should apply. Together seeks for the 12-month review of the presumptive legislation to specially consider whether there is a more appropriate clinical diagnostic criteria of the trauma-related psychological injury.

Recommendation Four: That the 12-month review of the presumptive legislation consider if there is a more appropriate diagnostic methodology of trauma-related psychological injuries and post-traumatic stress disorders.

32. For these eligible workers where there is a strong evidence base of the prevalence between their occupation/s and trauma-related psychological injuries, the requirement to have a psychiatrist-diagnosed PTSD injury is likely to continue to present as a barrier for these injured workers who experience trauma as a result of their employment.
33. Should a first responder lodge their application for compensation prior to receipt of the PTSD diagnosis, it is likely that they would either be required to attend an examination with an unfamiliar practitioner arranged by WorkCover for the purposes of obtaining the diagnosis or that they have their claim decided in accordance with sections 32-36 of the Act where they retain the burden and onus of proof to evidence their injury. Both of these options require that the injured worker to repeatedly advise of the traumatic incident/s that gave rise to the injury as part of the claims process, exposing them to further risk of harm from those event/s. Asking these workers to recall the details of traumatic events, even within a therapeutic environment for the purpose of diagnosis, is unlikely to contribute to a positive workers' compensation experience or to improved mental health outcomes for injured workers. This would seem to conflict with the intent behind these legislative amendments to provide an alternate and expediated pathway to workers' compensation by reversing the onus of proof to ensure that eligible workers do not have to prove to the insurer that their trauma-related psychological injury is work-related.

34. To reduce the burden on injured workers who provide medical evidence of a trauma-related psychological injury, WorkCover is able to limit the need for an eligible worker to recount the traumatic experiences which caused their injury if there are other information sources available. For example, WorkCover may seek the case as reported by the eligible worker to their treating doctor. Alternatively, WorkCover could notify the employer and request information to confirm occupational history of exposure to the traumatic incident(s) and any information about the cause of the condition.
35. If the employer reasonably believes the claim is not work-related, or if they have evidence that the trauma-related psychological injury did not arise out of, or in the course of, the worker's employment (i.e. the occurrence of the traumatic incident/s did not occur as stated) and so oppose the application of presumptive legislation, WorkCover is able to conduct the usual claims investigation process to determine if the claim is one for acceptance under the Act.
36. Together submits that the requirement for an injured worker to submit to an examination with an unfamiliar psychiatrist in order to obtain the necessary diagnosis so that to receive the benefit of the presumptive legislation should only be considered after the other sources of information have been exhausted. We acknowledge the commitment made by all parties, including the employing public sector agencies, to expediate claims determination of eligible workers who have been diagnosed with a trauma-related psychological injury in the circumstances where the work-related connection is clear and the claim is more likely than not to be accepted. This commitment is best achieved when employers and the relevant insurer work together to meet their obligations where there is medical and/or factual information that supports that the injury has been caused by a traumatic event, or a series of traumatic events. In the absence of a specific challenge by the employer as to why the presumptive legislation should be rebutted, it is reasonably open to the insurer to presume the injury and accept the application for compensation without requiring the injured worker to re-tell their story to a stranger.
37. Limiting the need for the worker to recount their traumatic experiences when there are other sources of information reasonably available from either the worker's doctor or their employer will improve the workers' compensation experience and mental health outcomes for eligible workers diagnosed with a psychological injury caused by exposure to work-related trauma.

Recommendation Five: That WorkCover exhaust all avenues and sources of information available to them when taking the presumptive approach to the trauma-related psychological injury before requiring the injured worker to submit to an examination in accordance with section 135A of the Act.

REBUTTAL OF THE PRESUMPTION

38. In taking the provisions as currently drafted, Together believes further work is required to strengthen the presumption of injury articulated in section 36EB of the Act. We are seeking specific amendments be made to section 36EB(4) to state only demonstrable and reasonable evidence may be relied upon to reject the presumption of injury.
39. The Bill specifically excludes the current reasonable management action exclusion for psychiatric or psychological injuries from being used to refute the presumption as, given the

diagnostic criteria for a trauma-related psychological injury, it is highly unlikely that such a trauma-related psychological injury could arise from reasonable management action.

40. Together notes the recommendations made by the Phoenix review to improve the workers' compensation experience and mental health outcomes for eligible workers with psychological injuries. These key recommendations include the Office of Industrial Relations, in conjunction with insurers and emergency service employers, rehabilitation providers and emergency service unions, to develop protocols that promote cooperation between stakeholders and provide details about providing assistance to emergency service workers with a psychological injury claim in order for workers to access effective mental health treatment. Specifically, Recommendation 21 recommends that these protocols include how the parties will proactively work in a coordinated manner with a worker, significant supporters (including peers) and among themselves (e.g. case conferences and other communication channels and forums) to ensure that this happens in a manner that best suits an individual worker.
41. Together believes it is necessary for guidance material to be developed by the Office of Industrial Relations (OIR) so that the employing government departments will be able to take a presumptive approach to any claims lodged by their workers. Clear guidance from OIR will ensure the employer is familiar with the reversed onus of proof and that they will not seek to rebut the presumption unless there is demonstrable and reasonable evidence which supports an assertion that the occurrence of the traumatic incident/s did not occur as stated.
42. The participation in the WorkCover process is something that our members have repeatedly indicated is a barrier in their seeking assistance through the workers' compensation scheme due to difficulties in identifying the cause of their mental health condition, the stigma associated with having a mental health condition and lodging a workers' compensation claim and the difficult and stressful process to decide a claim. As highlighted in the Beyond Blue report, many workers with trauma-related psychological injuries perceive workers' compensation to be an adversarial system.
43. Unfortunately, it is the lived experience of Together's members that employers seek to refute a WorkCover claim for a psychological injury, including trauma-related psychological injuries, in such a way that our members consistently advise is detrimental to their recovery and return to work goals.
44. For Together's members who are employed as Emergency Dispatchers with one government agency and whose duties have required them to be on the phone call whilst a fatality occurs, the employer has challenged the WorkCover claim by stating this is the nature of the job and is therefore an injury excluded by section 32(5). For Together's members employed as public sector Health Practitioners who were required to attend the scene of the 2015 Ravenshoe café explosion as part of the post event response or Social Workers who responded to the 2015 Kuranda bus and train collision and who were exposed to the aversive details of traumatic events as it occurred to others, in these instances the employer sought for WorkCover to decline the claim on the exclusion of reasonable management action. These employers acknowledged that these are all difficult and high stress roles however were all of the view that the injuries sustained arose from reasonable management action and so were excluded as compensable injuries.

45. A presumptive approach to workers' compensation considers that the nature of an eligible workers' role is, of itself, sufficient to establish a causal connection to employment.
46. For employing government agencies familiar with the work and who too are often exposed to traumatic incidents due to the nature of their roles, it is recognised that there is a strong causal connection between employment and trauma-related psychological injuries. Clear guidance material must be developed so that employers are familiar with the burden of proof they are required to establish, and support with objective evidence, that the presumption of injury does not apply as:
- The person's trauma-related psychological injury did not arise out of, or in the course of, their employment as a first responder or an eligible occupation; or
 - The person's employment as a first responder or in an eligible occupation was not a significant contributing factor to their trauma-related psychological injury.

Recommendation Six: That specific amendments be made to section 36EB(4) to state only demonstrable and reasonable evidence may be relied upon to reject the presumption of injury.

Recommendation Seven: That guidance material is published for employers which speaks to the circumstances and evidence required if an employer seeks to rebut the presumption of injury.

MEMBER EXPERIENCES

47. Even with the benefit of the presumption of injury, it is acknowledged that the conduct of the employer and of the insurer will go a long way to assist the worker in their recovery from a trauma-related psychological injury. The ability to provide early intervention and support is contingent on the injured worker accessing the scheme. Regrettably, many of our members have advised of the further stress the demands and impacts of the workers' compensation process and requests for sensitive information about work-related and stressful events have had on themselves and their family which they feel impede the recovery of a person already suffering from a serious mental health condition.
48. A Together member employed as a 'first responder' as defined in *Clause 9* of the Bill, and who has a confirmed diagnosis of a trauma-related psychological injury, volunteered his story of dealing with PTSD and the WorkCover process (published in its entirety and with permission, as volunteered by our member):

My story of dealing with PTSD and my Employer

In early October 2019 I went to see my doctor as I knew I was suffering mentally from work; what it was I wasn't sure at the time.

I told my Doctor the symptoms that I was suffering from, I was embarrassed to even to discuss it, I have never told anyone at work not even my wife knew the true extent of my symptoms.

Part of my symptoms that gradually got worse was significant increase in alcohol consumption, progressively short temper, memory loss, couldn't hold a conversation for long, loss of focusing on things, lack of sleep, but mainly my biggest issue was nightmares that gradually got worse over the last 3 years. They related to traumatic incidents that I have encountered over the last 30 years as a correctional officer and as supervisor, I have been personally involved in numerous deaths in custody where upon I have been called to perform

CPR for up to an hour or longer on prisoners that had passed away, I have witnessed or being involved in more than 500 self-harm and suicidal incidents as well as being physical assaulted to which required major surgery and 7 months off work.

I relived the most traumatic incidents which went back to my very first one like it was yesterday, I relived these incidents nearly on a daily basis. In the end the reliving of these traumatic incidents, the mental anguish which it constantly caused, was so depressing, I then started having ideations of killing myself as these memories wouldn't stop going through my head.

All these symptoms were putting a significant strain on me mentally, physically as well as the strain that it was putting on my marriage and family.

After I told my doctors my symptoms, he referred me to go and see a Psychiatrist. I was diagnosed by my treating psychiatrist with PTSD, anxiety and major depressive disorder. My WorkCover was approved with 7 days of my application, my employer at the time tried to stop it, by not supporting or denying that it occurred but rather that it had nothing to do with PTSD. WorkCover still approved my claim at the time.

In late December 2019 my treating Psychiatrist referred me to the Toowong private hospital to see if I qualify to do PTSD course. I went to the Toowong Hospital in February 2020, I was interviewed by the treating Psychiatrist, Psychologist and a Counsellor, these interviews went for a total of 4 hours. It was concluded by the treating team that I had regressive PTSD and that would write to WorkCover that I qualify for the course.

In early February 2020 I received a letter from Review & Appeals Unit from the Worker's Compensation Regulator, informing me that the Department of Corrective Services was appealing my work cover claim, but I would be at least 3 months before it would occur.

In early April I received a letter from WorkCover that I had to attend an IME, this in part was to see if it was required for me to go to the Toowong Private Hospital to do a PTSD course. In the beginning of May 2020, I receive notification from the Review and Appeal unit asking me for my submissions for the review of my work cover claim.

I submitted my submission to the Regulator in the second week of May 2020.

I received the departments submission at the same time. In the department submission, it never supported my claim of PTSD, it never denied it either but their submission was that my WorkCover claim had nothing with to do PTSD rather that it was related to other operation issues at work, the department also was holding back evidence that would have supported my claim at the time. I received back the review decision by the Regulator in the third week on May, informing that the decision was being sent back to WorkCover to review the case again.

At the end of May I went back to my treating Psychiatrist to do a review of my diagnosis of my PTSD and other symptoms. I again had to submit to WorkCover my submission of why my WorkCover should be reinstated. In my submission I supplied the evidence to WorkCover which the department failed to provide in their submission to the Regulator in the review application they made. I also supplied a statutory declaration from the Workplace and health

safety officer which stated my management team knew of my psychological issues as when she contacted the General Manager in April 2019 about me, the General Manager informed that her that he knew of my personal issues I was having, he knew this as I personally approached him after the last suicide attempt I had to deal with in the beginning of April 2019.

On the morning of the 30th of July, I received a phone call from WorkCover, I was informed that my WorkCover review has been successful and that that my WorkCover was reinstated and at the time that have approved for me to do the PTSD course at Toowong Private Hospital.

In the afternoon of the 30th of July, I also received a phone call from the Workplace health and safety officer that the Department are now referring to a IME and that I must attend on the 13th of August. I attended the IME on the 13th of August, I had to retell my whole story once again.

I now have told my history of events seven times in the last 10 months which is mentally exhausting and every time it has had a significant effect on me every time I have retell it. I broke down on this particular interview as I was grilled about all the incidents that occurred that put me off work. I have been informally informed by the psychiatrist conducting the IME, that he will be referring for me to be medically retired from my substantive position.

The sad part of this stressful exercise for me is I had to fight all the way to have my illness recognised my own Department, in no way would did they ever recognise the mental illness that I have incurred from nearly 32 years in such a dangerous environment.

But not only with that that they were not even happy with my reinstatement on my WorkCover, they know want to terminate me by medical retiring me just after my reinstatement on WorkCover it will a sad way to my 32 years in corrections, it was definitely not the way I wanted to go out.

I am hoping when this bill gets introduced and passed in parliament, it will alleviate for people in the future the trauma and the stress that this department has personally put me through over the last 10 months.

49. Together has not actively sought for members to supply their stories about their recent participation in the WorkCover process, in recognition that this would likely result in needing to revisit the trauma experienced. We recount for context their experiences to support these concerns and recommendations.

- a. For one 'eligible worker' with a confirmed PTSD diagnosis:

In my role, I regularly receive calls of a challenging nature but on this day, it was particularly traumatic and has had a lasting impact on my wellbeing, even to this day. We had an influx of violent events which eventuated in a fatality whilst I was on the call. I heard the fatal shot from the gun during the successful suicide. I was asked to tell WorkCover about this incident again and again, even though the call was recorded, and an incident notification was completed at the time.

- b. For an 'eligible worker' with a diagnosed trauma-related psychological injury who was asked to recount their story on several occasions:

I was asked to recount events about listening to callers who were trapped in sinking vehicles or the time I took a call from a truck driver who had rolled his truck that was carrying corrosive chemicals, begging me to call his boss and let him know what had happened as he didn't think he would make it home. I didn't nominate these subsequent events as factors in my application for compensation, but I was asked by my WorkCover Claims Representative about the type of work that I do and the type of calls I receive. I now can't get these events out of my head.

- c. For an 'eligible worker' about the WorkCover process:

I attended a psychiatrist appointment arranged by WorkCover which I was advised was necessary to decide my claim even though my treating doctor had already provided the medical information about my diagnosis. I then received a phone call to advise that WorkCover had requested I see a different psychiatrist because the original psychiatrist they arranged did not supply them with satisfactory feedback in relation to the assessment and treatment of my mental health. I agreed with this request as I can't face the idea of returning to work right now but I have financial commitments to meet. The afternoon before the appointment I was scheduled to attend the following morning with the new psychiatrist, I received another phone call from WorkCover to advise that my claim had been rejected. They didn't even wait until I attended the new appointment they had required me to attend.

- d. From a 'first responder' regarding the WorkCover process:

The built-up exposure to trauma because of this work whilst trying to help vulnerable young people and their families has contributed to the onset of my injury. On an almost daily basis I read critical incident reports about children experiencing behaviours of self-harm that include placing cords around their necks, having glass grabbed from their hands by youth workers, jumping out cars or standing in front of oncoming traffic, property damage assaults and being restrained by youth workers. Continual exposure to these reports for the same children causes me distress and worry for their safety. I couldn't face my employer telling me why I am not entitled to compensation for this continual stress. My friend submitted a WorkCover claim for similar circumstances and was devastated by the requests for her to give evidence of why work caused her to be depressed. The work we do every day should be enough!

50. The exposure to these sorts of traumatic and life-threatening incidents are a day-to-day lived experience for Together's members. Regrettably, for these members who had furnished evidence of the medical diagnosis and the causal connection between employment and the trauma-related psychological injury, their participation in the workers' compensation process required them to repeatedly recount the traumatic event/s experienced at work.

51. In recognising the sensitive nature of these sorts of trauma-related injuries, our members have expressed enthusiasm for the introduction of presumptive legislation for trauma-related psychological injuries and for WorkCover's consideration of claims with the least burden on the injured worker as possible.
52. The worker-centric approach taken by adopting presumptive legislation is likely to better assist eligible workers in accessing early intervention and support for psychological injuries experienced due to the nature of the duties and their exposure to traumatic, life-threatening incidents.
53. Together is hopeful that the introduction of presumption legislation will minimise the sense of stigma that can accompany the experience of a mental health condition and will instead provide a sense of hope around recovery and rehabilitation.