



Submission to the Education, Employment and Small Business Committee – Workers' Compensation and Rehabilitation and Other Legislation Bill 2020

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USQ School of Law and Justice

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Submission by Dr Lynda Crowley-Cyr

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Dr Crowley-Cyr has been a member of the Global Law Enforcement and Public Health Committee since 2008 and of the International Academy of Law and Mental Health since 2000. She has been a Presiding member of Queensland Mental Health Review Tribunal (2000-03) and President of the Mental Illness Fellowship of North Queensland in 2010. She completed her PhD, entitled *Severe Mental Illness and Homelessness in Australia* in 2008 and she published in the area of mental health law. Some of these publications include: L Crowley-Cyr and A Piosevana, 'Legal and Ethical Issues' in *Abnormal Psychology*. John Wiley and Sons, Australia (2018), 684 -720; L. Crowley-Cyr, 'Promoting mental wellbeing in law students: breaking-down stigma and building bridges with peers and support services' (2014) 14(1) *QUT Law Review* 129; L Crowley-Cyr, *Homelessness, Mental Illness and the State: And Endless Crisis of Suffering and Exclusion*, VDM (2010); L Crowley-Cyr, 'Contractualism, Exclusion and "Madness" in Australia's Outsourced Wastelands' (2005) 5 *Macquarie Law Journal* 81-102.

More recently, she has developed an interest in workplace laws, harassment and bullying. She has presented her research at International Law Enforcement and Public Health Conferences in Prague in 2018 and Scotland in 2019 on the topic of mental health and wellbeing of Australia's Federal Police and workers compensation claims. In November 2018, she wrote a submission to Senate Standing Committee and Education and Employment - Inquiry Into Mental Health of First Responders with Mr James Hevers, a member of the law enforcement community in Australia since 2011.

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This submission represents solely the individual views of the author, and should not be taken to represent the views of any persons, employers, or organisations that she is affiliated with.

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Part 1 Background Introduction

I am grateful for the opportunity to provide a submission to the Committee on Education, Employment and Small Business as part of its inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 ('Bill'). I fully support the introduction of presumptive workers compensation laws in Queensland to assist first responders in speeding up their access to compensation for work related mental health conditions also known as 'psychological injury'.

This reform is overdue. For years, the Government has known of the high rates of mental health conditions and suicide experienced by first responders in Queensland. The link between an over burdensome compensation process that requires our front-line workers to identify the workplace trauma that caused their injury; the risk that this can exacerbate their mental conditions or injury; and that these factors are 'barriers' to the lodgement of claims has also been known and documented.¹

The rationale behind introducing presumptive provisions is that by removing the need for workers in high stress environments to prove their mental injury is work-related, enables workers' compensation insurers to process claims more efficiently (faster). This can reduce the financial burden of paying for mental health services by first responders. Some cannot afford these costs and must rely on workers compensation benefits to do so. Apart from the Mental Health Plan funded through Medicare, the Queensland Government's promise of greater assistance with mental health care pre-claim costs remains policy.

With high numbers of mental injuries experienced by first responders, logically, by removing the statutory proof of work-related injury requirement or 'barrier' to lodging claims, this should lead to more claims. Any step to remove impediments to first responders accessing the workers compensation benefits they require is laudable.

¹ Queensland Audit Office, *Managing the Mental Health of Queensland Police Employees* (Report No 2, October 2017) 3-4; Education and Employment References Committee, Parliament of Australia, *The People Behind 000: Mental Health of Our First Responders* (Final Report, February 2019) 3-4; Lynda Crowley-Cyr and James Hevers, Submission No 130 to Senate Standing Committee on Education and Employment, *The Role of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Health Conditions Experienced by First Responders, Emergency Service Workers and Volunteers* (November 2018) 5-8; Australian National Audit Office, *Managing Mental Health in the Australian Federal Police: Australian Federal Police* (Report No 31, 2018) 16-24. Also, as mentioned in the Bill's Explanatory Notes, Phoenix Australia, Centre of Posttraumatic Mental Health Report (2018); Beyond Blue, *Answering the Call National Survey, National Mental Health and Wellbeing Study of Police and Emergency Services* (November 2018).

However, I suggest two key modifications to the Bill that may make it more effective in meeting the Government's worthy intentions. These include extending:

- Limitation of presumptive coverage for PTSD
- Limitation of diagnosis by psychiatrists

I expand on each of these in part 2 below, and refer to the Canadian experience and data that lend support to my perspectives on these select issues. I refer to three minor suggestions for amendments at the end of part 2.

Part 2 Responses to the Bill:

1. Limitation of Presumptive Coverage for PTSD.

- i. It is unclear why the Bill limits presumptive coverage (the 'alternative (faster and less traumatising) pathway' to workers compensation) for PTSD only, drawing a distinction between PTSD and other psychological injuries.
- ii. Limiting the benefits of presumption laws to PTSD seems unnecessarily restrictive. PTSD trauma as defined by the DSM-V must be associated with death, serious injury or sexual violence. The limitation misses so many psychological injuries caused by traumatic events that are not associated with death, serious injury or sexual violence. PTSD is only one potential risk to the mental health and wellbeing of first responders.
- iii. Stress, anxiety and depression (symptoms of PTSD) can arise from other workplace stressors and risk resulting in burnout, for example. Burnout is a 'syndrome' that shares similar symptoms to PTSD but does not yet appear in the DSM-V. In May 2019, the World Health Organisation described burnout as an 'occupational phenomenon' resulting from 'chronic workplace stress that has not been successfully managed'. Burnout is endemic in medical professions, law enforcement and fire and rescue services. Research studies by the Black Dog Institute² have found that associated symptoms can include emotional exhaustion or fragility, cynicism, sleep disturbance, brain fog, anger and even depression, anxiety/stress. These symptoms, if sufficiently severe, can affect good judgement and decision-making, which in certain conditions can put the health and safety of first responders, their colleagues, family, and the public they serve at risk. The financial impact of burnout can be significant in terms of lost productivity and stress or sickness-related absenteeism costing Australia an estimated \$14.81 billion a year.³

² 'Burnout diagnosis one step closer with new clinical checklist and predictor of which personalities are most at risk' <https://www.blackdoginstitute.org.au/news/burnout-diagnosis-one-step-closer-with-new-clinical-checklist-and-predictor-of-which-personalities-are-most-at-risk/>

³ Medibank Private 'The Cost of Workplace Stress in Australia' August 2008, p7 <https://www.medibank.com.au/client/documents/pdfs/the-cost-of-workplace-stress.pdf>

- iv. First responders as front line services have repeatedly been found by national and international surveys, studies and reports, to carry high levels of stress that can increase the chances of mental health conditions developing and suicide risks if undetected and untreated.
- v. The ordinary compensation claim pathway, while available for other psychological injuries, is precisely what has been criticised for potentially re-traumatising some first responders seeking workers compensation. The limitation to PTSD means the presumption laws are missing the opportunity to progress towards a compensation system that aims to avoid re-traumatising all first-responder claimants who are in need of WorkCover benefits. The limitation is a barrier to any intended encouragement of first responders to lodge claims when they feel they may need to.
- vi. The limitation to PTSD is outdated. As stated in the Explanatory Notes, in three of Canada's jurisdictions, the presumptive provisions introduced more recently (and arguably based on improved knowledge and understanding) apply to first responders with psychological injuries beyond PTSD.⁴ Canada has shown that broader definitions that include psychological injuries beyond PTSD have not resulted in a floodgate of claims in those jurisdictions.⁵ British Columbia, the latest to introduce presumption provisions to its workers compensation legislation in 2018, is one of the jurisdictions that have opted for a broader definition than PTSD for its front-line workers.

Recommendation 1

- **It is suggested that section 36EC (2) be amended to include the more encompassing term 'all psychological injuries'.**

2. Limitation of Diagnosis by Psychiatrists

- i. To support a claim for compensation, the new Bill requires a psychiatrist makes the diagnosis of PTSD. This limitation is further enforced in section 135 A (2) where the insurer is required to arrange and pay for a diagnosis by a psychiatrist, including travel costs to attend if the claimant has not already done so. The insurer must also cover the travel costs of claimants who must travel to attend the insurers appointed psychiatrist for the purposes of diagnosis.

⁴ In British Columbia, the presumption applies to 'mental disorders'; in Saskatchewan it applies to psychological injury including PTSD; and Prince Edward Island applies the presumption to trauma and stressors related disorders including PTSD.

⁵ The Workplace Safety and Insurance Board of Ontario Canada indicates there has been a repeated decrease of workers with permanent injuries since the implementation of a PTSD presumption, along with an average of 59.5 days off for workers claiming compensation. However, this does not separate psychological and physical injuries. See <http://www.wsib.on.ca/WSIBPortal/faces/WSIBArticlePage?fgUID=83550210063500046>

- ii. It is unclear why the Bill contains this limitation when there is a nationwide shortage of psychiatrists in Australian health.⁶ Health Workforce Australia predicts that by 2025, Australia will face a shortage of around 450 psychiatrists.⁷ As at 1 July 2019, psychiatrists are one of the eight Specialist classifications identified as workforce shortage in Australia, most notably in rural areas.⁸
- iii. Further, domestic travel in Australia is severely limited due to the COVID-19 pandemic. There are no vaccines or treatments currently available and predictions of future travel are uncertain. Telehealth in psychiatry is one option as it is currently in use for the first time by some psychiatrists. However, it also raises a range of issues like appropriately setting up the digital space; preparing the person for evaluation; adapting therapeutic techniques for videoconferencing; managing clinical risks; capturing and recording clinical details and so on.⁹ Most psychiatrists do not have training on how to manage these issues. I submit that this option requires rigorous research before it can be considered for trauma related compensation claim purposes – which brings us back to face-to-face diagnosis.
- iv. The lack of available and accessible specialist psychiatrists risks increasing time delays in obtaining diagnoses. This will likely increase time delays in processing claims and therefore reduce any 'speeding-up' of the claims process.
- v. The Bill's Explanatory Notes recognises the need for 'an experienced clinician' to provide 'a robust diagnosis...in accordance with the DSM-5'. There is a preference for such clinicians to be 'trained in psychopathology and experienced in mental health assessments' as recommended by the Black Dog Institute (p.3). Registered psychologists also fit this criterion.
- vi. The National Institute of Mental Health recognises both psychiatrists and psychologists as able to diagnose PTSD.¹⁰

⁶ Royal Australian and New Zealand College of Psychiatrists Media Release cited in *HealthStaff Recruitment* as at 27 September 2020 on their website:

<https://www.healthstaffrecruitment.com.au/news/nationwide-shortage-of-psychiatrists-in-australian-health/#:~:text=The%20Royal%20Australian%20and%20New%20Zealand%20College%20of,mental%20health%20crisis%20in%20rural%20and%20remote%20Australia.>

⁷ 'What does the escalating Psychiatry shortage mean for the future of Australia?

[https://www.medrecruit.com/blog/psychiatry-shortage-australia/.](https://www.medrecruit.com/blog/psychiatry-shortage-australia/)

⁸ Districts of Workforce Shortage (DWS) for Specialists

<https://www.health.gov.au/sites/default/files/health-workforce-distribution-priority-areas-factsheet.pdf#:~:text=From%201%20July%202019%2C%20a%20new%20health%20workforce,practitioners%20in%20communities%20of%20greatest%20need%20across%20Australia.>

⁹ Royal Australian and New Zealand College of Psychiatrists, 'Telehealth in psychiatry' 6 May 2020, <https://www.ranzcp.org/practice-education/telehealth-in-psychiatry>.

¹⁰ 'Post-Traumatic Stress Disorder' <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder->

- vii. In other jurisdictions like Canada, presumption laws also set out explicit criteria in their statutes for who can diagnose for presumption purposes, with seven jurisdictions requiring diagnosis by either, a specialist registered psychologist or psychiatrist, and two jurisdictions by a specialist registered psychologist or physician.
- viii. The benefits of expanding the limitation to include other specialist health care professionals include fewer delays in the claims process creating stronger incentive for first responders in need of help to come forward and make a claim for the benefits they need to receive appropriate treatment.

Recommendation 2

- **It is suggested that section 36ED(1) of the Bill is amended to state that 'a presumption of injury specifically relies on diagnosis by a registered psychiatrist or psychologist' (and perhaps general physicians) trained in diagnosing trauma related injuries in adults.**

3. 3 Additional minor suggested amendments

- S 36EC (1)(b) An example of what is intended to be the meaning of 'extreme' exposure as against 'repeated' exposure would improve the clarity of this provision.
- This Bill's provisions are unclear as to how long a claim can be made after ceasing employment as a first responder. In Canada, Ontario's presumptive laws include a set period after the claimant is no longer employed as a first responder, that is: '*no later than 24 months after the day he or she ceases to be employed as a first responder*'. Adding a similar provision into the Bill would add clarity.
- S144C prescribes the use of DSM 5 diagnostic criteria, which means the 'Diagnostic and Statistical Manual of Mental Disorders', 5th edition, published by the American Psychiatric Association in 2013. I suggest that to avoid the need for amendments to the legislation with DSM updates, the provision instead refers to '*the latest version of the Diagnostic and Statistical Manual of Mental Disorders*'.

Conclusion

In Australia, the catastrophic bushfires, floods and COVID-19 pandemic since our 2019 summer are likely to intensify the rate and level of psychological injuries experienced by first responders. Perhaps more than ever, the public has become

[ptsd/index.shtml#:~:text=A%20doctor%20who%20has%20experience,At%20least%20one%20avoidance%20symptom.](#)

aware that our front-line workers risk their lives to save ours. As the public's front-line protection against many of the worst public health and safety threats, it is imperative that they get the mental health and wellbeing support that they need, as and when they need it. In recent years, the Queensland Government has been active in workplace reforms building public confidence that it takes public health and safety seriously. This is laudable.

This Bill is another important step in workplace reform and requires support by the people of Queensland. It is an opportunity for improvement, provided the presumption law is not too restrictive. My suggestions include expanding the presumptive coverage for all work-related diagnosed psychological injuries and expanding the role of diagnosis to include psychologists or other appropriately trained health care professionals.

Specifically, my recommendations are:

Recommendation 1

That s36EC(2) is amended to include the more encompassing term 'all psychological injuries'.

Recommendation 2

That s36ED(1) is amended to state that 'a presumption of injury specifically relies on diagnosis by a registered psychiatrist or psychologist' (and perhaps general physicians) trained in diagnosing trauma related injuries in adults.

These suggestions aim to assist the Government to meet its policy objectives and overcome barriers to first responders making claims. My suggestions would make the presumption laws fairer and more progressive than those currently in the Bill.

I hoped that this submission is of assistance and I would like to thank the Committee on Education, Employment and Small Business for the opportunity to provide a submission as part of its inquiry into the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020 (Bill). I invite you to contact me should you require further expansion on this written submission.