

Submission to Productivity Commission Mental Health Inquiry

Thank you for the opportunity to make a brief submission as a carer of a person who developed a mental illness in the workplace.

I have no medical qualifications or medical experience/knowledge. My qualifications are B.Eng (Hons), with two post grad qualifications in Transport/Traffic and Management.

I write this account of my partner's mental health problems that were sustained in the workplace, were badly managed by her supervisors and managers and which were made even worse by the Tasmanian Justice system for the workplace – the Workers Compensation and Rehabilitation Act ('Act') which I believe is discriminatory towards people with a mental health injury.

I can see from a skim read of comments to the Inquiry on line that there are many similar sufferers in the workplace like my partner and I feel very confident that the recommendations you will come up with will help address these problems.

My comments are really centred on our recent personal experiences with medical services, the workplace and the Justice system for treatment of workplace mental health injuries. We are laypeople with no more experience or knowledge than these recent experiences that have so affected our lives.

Issue 10. Health and Medical Services

My partner developed anxiety, physical illness of dizziness/nausea and finally depression after a prolonged period of harassment by her manager in her workplace, a School. She is an elite level teacher and now is unlikely to return to work which means both a severe loss of income and life satisfaction for her and a loss to the workplace of an elite teacher in the education system.

She reported the harassment to the senior management of the workplace but had enormous difficulty in getting those in charge to believe her and to take action to prevent the harassment. This led to a long period of management not listening and not acting in her interests. But it was one of those cases where the abuser, in order to defend their own behaviour, made slanderous allegations against my partner's teaching capabilities and management chose to prefer this slander to my partner's account of the harassment.

The employer eventually commissioned an external investigation which found in my partner's favour and that abusive manager was removed from the workplace.

All this led to my partner having to take prolonged paid sick leave from her workplace which eventually ran out. The employer didn't explain very well how the Tasmanian Workers Compensation and Rehabilitation Act has to be carefully followed when making a claim for Workers Compensation. My partner then started the arduous journey of claiming under the workers compensation system by finding a GP to visit and get help from.

We had difficulty finding a suitable GP that my partner could be comfortable with. The first GP she visited was a young female part time doctor who was hasty, irritable and frankly really inexperienced. She obviously had things on her mind other than dealing with my partner. She actually got angry about something my partner said. She failed to explain to us that we needed a Workers Compensation medical certificate rather than a GP medical certificate. The distinction between the two was unknown to us. This counted against my partner later on when the employer's insurance company decided to dispute my partner's Workers Compensation claim.

We then saw another GP, a more experienced male. He was calm, listened, gave my partner plenty of consultation time and advised us much better on Workers Compensation. He has been great.

We noticed a stark contrast between one GP and the next in quality of service. Also, along this journey my partner did have the brief assistance of an Occupational Therapist who visited at home. After getting used to the health professional and the trauma of again explaining the background to the harassment, reporting history, development of the illness, my partner got considerable assistance from talking to the therapist at home on three occasions. I wished that this service had continued. It gave me as carer some relief and it was good to hear a new view/perspective on things. Anyway, that service soon stopped when the employer's insurer stopped paying medical bills, salary and the therapist.

Summing up here, we found difficulty in getting a suitable GP, support services like the Occ Therapist, and in understanding the Workers Compensation procedural system. I personally found some good information on line, but I feel probably better information for mentally injured workers and their carers could be of assistance.

13. Mental Health in the Workplace

Following on from 10 above, my partner suffered the harassment in the workplace for several months before reporting it to a senior manager, who vacillated for a long time, finally deciding to have an independent investigator interview the victim, the abuser and witnesses. It took 3 months from the time of reporting by my partner to commence this external independent review. It then took a further 3 months for the investigator to finalise the report for the employer and to this day my partner hasn't seen the results nor been briefed on the whole report findings.

This very slow reaction to the harassment caused my partner to gradually get ill until finally 8 months after the harassment was reported she fell so mentally ill that she could not get up out of bed and go to work.

By this stage, she was very sick, we finally were understanding more about the Workers Compensation form filling processes, and we tried our best to fill it in. However, it is very hard for a mentally sick person to concentrate on such tasks. Just trying to fill in dates, witness names, who she reported her 'injury' to all are difficult to focus on.

Also, a mental health problem doesn't have a precise date of injury. It is a gradual process. So, all of that meant we delayed sending in her workers compensation form and in the end the insurance company disputed her claim at a Section 81A Hearing which we attended and tried to make our case. Of course, that is impossible under the Tasmanian Workers Compensation and Rehabilitation Act to 'win'.

All the insurer has to do is show reasonable cause that there is an 'arguable dispute' on a number of items such as date of injury or delay in reporting the injury.

We honestly did our best to comply with the requirements of the Act but as I say the lack of cognitive function for my partner meant that I couldn't fill in key dates. I didn't want to keep pressuring her and felt I had to give higher priority to her health rather than make her more ill by successfully filling in the form.

Key here is the real lack of assistance from the employer. No explanation of how the Act works, the key requirements of filling in the forms, the need for the correct Workers Compensation medical certificates, the importance of accurate dates on the medical certificate by the GP, the need for reporting the injury to the employer and so on. All of these things can be used against the mentally ill employee in the dispute of an injury by an employer.

Summing up here, the employer handled my partner's harassment case very poorly and it should have been obvious at an early stage that she was in trouble with her health. The early signs of missing days off work, getting teary and upset in meetings with managers plus the fact that she'd reported harassment to the employer should have put them on red alert that an employee could be potentially in trouble. Nothing like this sort of empathetic action happened and this is lack of training, education, awareness of mental health issues in that workplace. Secondly, the administration of the Workers Compensation and Rehabilitation Act requirements for my partner within her workplace, ie by the Human Resources area of the organisation was poor, unhelpful and designed to fail my partner, which it did.

16. Mental Health Issues in the Justice System

Please see below in different font the letter I wrote recently to the Minister for Justice, Hon Elise Archer, of the Tasmanian Government who administers this State Workers Compensation and Rehabilitation Act.

Sorry it repeats some of the details above but it tries to outline the deficiencies in the Justice system for Tasmania that we experienced. The discrimination in the workplace, then in the Justice system, were big factors in my partner's continuing ill health. It caused a feeling of resentment, of anger, at the whole system – Justice system and workplace being against her and a feeling of injustice for her that she is still dealing with now.

Dear Minister,

Could I please raise with you an issue that I feel almost sure is being raised also by others.

It is the discrimination that is obvious in the Workers Compensation and Rehabilitation Act for Tasmania (' Act').

My partner recently become ill with a mental injury following persistent bullying/harassment by her manager. I won't go into the details, it's very long and detailed. In short, she was harassed, made a complaint to her senior management at the school where she teaches, an external investigation of her complaint was made which led to the removal of the abusive manager. So far so good, however, the school took so long and my partner had to fight so hard to be listened to and believed, that she developed anxiety, and eventually depression which she suffers still 12 months later.

And I'll say here neither I (with 35 years in the workforce mostly as a senior manager) nor my partner (with 30 years in the workforce) either of us has ever made a claim before nor had workers under our management who made claims. So, we had no knowledge of the Act and have had to learn all about it at great speed.

When you do delve into the Act you find an antiquated system where the injured worker must notify their employer either orally or in writing the date of injury under quite tight timelines. And this I would say works reasonably well for someone with a straightforward physical injury like if you fall down and break an arm. The date of injury and type of injury is simple, the form one has to fill out is straightforward.

However, if you have been abused by a manager and have developed a mental injury gradually over time, there is no precise 'date of injury'. The sickness is a continuum. Then it is sometimes very hard for a mentally ill person with cognitive dysfunction to fill in these forms. They literally cannot focus on tasks like working out dates. They can find it almost impossible to work out the 'date of injury' and to complete other fields in the form. Also, the process of thinking yet again about the abuse they have suffered makes it extremely stressful to face filling in this long form so their illness gets worse.

Now the problem with this is the way Act only requires the employer's insurance company to show a 'reasonable arguable case' for a dispute. So, all the insurance company has to do is to claim that the date of injury is in dispute, or the mentally sick employee has delayed too long notifying the employer, even

though the employer knows darn well that the employee has been injured by the employer's own incompetent manager. But all the insurer has to do at the first stage of the processes under the Act which is a Section 81A Hearing, is to show there is a dispute. According to two free legal advices that we took, the employee is almost certain to lose at this Section 81A Hearing. The "bar" is so low that even an undergrad student lawyer could win a Section 81A Hearing for the insurer.

Sorry for the long-winded background here. I am sure you know all about the processes. And there are follow up processes that the mentally injured person can take by going to conciliation or a full Hearing where the worker can prove their case. Or a civil action for breach of contract could be an option. But, this is where further discrimination occurs, the mentally ill worker faces more stress and ill health in following these additional remedies.

So, in summary, the mentally ill employee is firstly discriminated against in terms of the requirement under the Act for not relevant 'date of injury' fields i.e. the injury is a continuum not a precise date, and that filling in forms with dates etc. means revisiting yet again the details of the trauma they suffered which makes them more ill. Secondly, when they go through the stress of a Section 81A Hearing and of course lose, it is another setback, another case of not being believed by the employer and a further deflation of self-confidence. Then thirdly, if they have the willpower to go on with further action under the Act for conciliation or a Hearing there will be likely large legal expenses and medical expenses for expert assessments. All of that makes it very unlikely that a mentally injured person can take on the insurance companies. In the meantime, of course, the Section 81A Hearing that the employee lost means that all salary and ongoing medical bills will not be met by the employer nor is there a plan to help the injured worker get back to the workplace.

As a citizen of the world I've seen a lot of awful unjust things. The sorts of recent Royal Commissions into abuse of children, the current Royal

Commission into the care of the elderly, the Royal Commission into Banking and Financial Sectors, all of these are terrible and they have a common theme of senior management of organisations 'asleep at the wheel', not listening to or believing victims and leaving those victims powerless against those in management positions.

There are similarities for someone like my partner. The employer not managing the workplace properly in the first place, then when a problem occurs not quickly/effectively investigating and taking action. Then when the victim naturally enough becomes sick with depression through the abuse and then not being listened to or believed, the system (the Act) then makes it almost impossible to find justice.

I am not a lawyer or an expert in any of this. I do have an honours degree in Engineering and two post grad qualifications in Engineering and Management. I can think, and I can empathise with people with a mental illness who deserve better provisions under the Act than they get.

I just think it is obvious that the Act has not kept up with what we now know about mental illness. That around 30% of the population will suffer a mental illness at any time means it is a real illness that affects employees in the workplace.

I ask you to review what I say above and consider taking action to bring this archaic Act up to date, please.

thankyou for reading this

Mark Broadley

Tasmania