

August 2019



Unions Tasmania Submission

TO ACIL ALLEN CONSULTING

Review of Presumptive Provisions for Private Sector Workers in relation to PTSD

Jessica Munday
Secretary
Unions Tasmania

212 Liverpool Street
Hobart, Tasmania 7000
(03) 6216 7600

ABOUT UNIONS TASMANIA

1. Unions Tasmania has a long and proud history of advocating for working people in Tasmania. Initially established as the Trades and Labor Council of Hobart in 1883, and now operating as Unions Tasmania, there is no other Tasmanian peak body dedicated to giving a voice to working people. For over 135 years, Unions Tasmania has been advocating for the improvement of wages, conditions, safety and living standards for working Tasmanians and their families.
2. Unions Tasmania is comprised of 24 affiliate unions with approximately 50,000 members. We represent members across all industries, in the private and public sector.
3. Unions Tasmania is also the local branch of the Australian Council of Trade Unions (ACTU).

EXTENDING PRESUMPTIVE PTSD TO ALL WORKERS IN TASMANIA

4. Unions Tasmania is pleased to make this submission to the *Review of Presumptive Provisions for Private Sector Workers in Relation to PTSD* (the Review). Unions Tasmania submits that there is no basis in equity to limit the presumptive provisions of the Act to workers who only work in the public sector. Workers in many occupations and industries outside of the public sector are also regularly exposed to violence or trauma, either directly or vicariously, and they too should benefit from the operation of the presumption.
5. We are passionate advocates for improvements in Tasmania's workplace safety and compensation laws. We believe there is a compelling benefit for all workers having access to presumptive PTSD laws. It was Unions Tasmania affiliates who spearheaded the debate and successful public campaign for presumptive Post-Traumatic Stress Disorder (PTSD) for first responders. We recognised that first responders in particular needed the presumption in law because of their increased level of exposure to and experience of traumatic events. We also recognised that many of our members outside of first responder occupations had a demonstrated need given the trauma of their jobs.
6. This forced the Tasmanian State Government to act and in September 2018, they announced that the *Workers Rehabilitation and Compensation Act 1988* (the Act) would be amended to reverse the onus for public sector workers to prove that they developed PTSD in connection with their employment.

7. Unions Tasmania notes the previous work of Stephen Carey and Jacqueline Triffitt (the Carey/Triffitt Review) on behalf of the WorkCover Tasmania Board that did not recommend the inclusion of presumptive PTSD provisions in the Act. We were pleased to see the Tasmanian Government proceed with the presumptive provisions for public sector workers despite this recommendation.
8. We will not seek to repeat the content of the Carey/Triffitt Review here except to say that Unions Tasmania considers the reviewers erred in not concluding the necessity for a presumptive provision for PTSD despite their work noting the numerous benefits such a provision would have for workers. We disagreed with the conclusions in that review and the conduct of the review process which we considered significantly lacked genuine consultation with worker stakeholders and the public.

THE BENEFIT OF EXTENDING THE PRESUMPTION TO TASMANIAN WORKERS

9. When announcing the amendments in Parliament, then Minister for Building and Construction, Guy Barnett, listed a number of benefits arising from legislating presumptive PTSD. These included:
 - a. The Carey/Triffitt Review's compelling content in relation to the significant benefits and social value that will result from the presumption;
 - b. It will remove a source of stress and aid in return to meaningful work;
 - c. It will assist in the workers compensation claim process which can be daunting, challenging or stressful;
 - d. It will assist in removing any barriers people may be experiencing in making an actual claim;
 - e. It will help reduce the stigma associated with mental health;
 - f. Presumptive legislation is a clear statement by Government that they take the mental health and well being of all Tasmanians seriously.¹
10. Unions Tasmania submits that the benefits outlined by the Minister are a sound basis for legislating for the presumptive provision for all workers. These benefits should apply equally to the private sector. There is no evidence that workers in the private sector suffer any less stigma, stress or challenges when navigating the workers compensation system with PTSD than those in the public sector.

¹ Guy Barnett, Minister for Building and Construction, 25 September 2018, Ministerial Statement – PTSD, http://www.premier.tas.gov.au/releases/ministerial_statement_-_ptsd

11. The Carey/Triffitt Review contained some useful analysis of the Tasmanian workers compensation claims experience for PTSD claims which supports the extension of the provisions to the private sector. During a 10-year period between 2008 and 2018, a total of 15.9% (or 31 out of 195 claims) were attributed to first responders (firefighters, paramedics and police) and 47% of total PTSD claims were made by Tasmanian public service workers.
12. More than half of all PTSD claims were made by workers in the private sector and the overwhelming majority were in occupational groups outside of the first responder occupations. Noting the size of the claims data available, Unions Tasmania believes the statistics demonstrate the need for the presumptive provision in the private sector as well.

TRAUMA AND EXPOSURE TO VIOLENCE CAN HAPPEN IN ANY JOB

13. Unions Tasmania and our affiliates submit that many occupational groups outside of the public sector are exposed to dangerous situations, violence or trauma on a regular basis because of their work. Sales assistants, bartenders, baristas and waitresses regularly experience customer aggression, both verbal and physical. Security guards, especially those working at nightclubs or hotels where high volumes of alcohol are consumed, deal with intoxicated and violent patrons nightly. In fact, any worker who works in a retail store, bank or restaurant – or any workplace that handles lots of cash – are at risk of armed hold up.
14. Our health unions submit that aged care workers dealing with dementia patients or those working in the disability sector are also regularly exposed to violence. Increasingly, the difficult behaviours of children are putting our teachers at risk of physical assault in the non-government and independent education sector as well as in the public system.
15. The maritime industry is inherently dangerous with many hazards and risks. While seafarers working on ships at sea are not covered by the Act, stevedores are covered by Tasmania's workers compensation laws. Stevedores are responsible for the loading, unloading and movement of cargo from ships to other vessels and out of port. The machinery, work environment and size of cargo containers pose great risks not only to the operator but to those in the same work area.
16. The highly publicised safety failure that took Anthony Attard's life in 2014 highlights the danger to stevedores who work with heavy cargo. Anthony was run over by a trailer used to carry shipping containers and crushed to death at the Port of Melbourne. It was a catastrophic safety failure that led to Anthony's death in the most horrific of circumstances, traumatising all of those around who tried to save

his life, according to the safety regulator. Tasmanian stevedores face this sort of danger daily.

PUBLIC AND PRIVATE SECTOR EMPLOYEES WORKING SIDE BY SIDE SHOULD HAVE THE SAME ACCESS TO THE PRESUMPTION

17. In legislating presumptive PTSD for public sector workers, the Government has created the perverse situation where workers who are exposed to the same incident and are later diagnosed as having PTSD as a result of that exposure are afforded different pathways to workers compensation if they work in the private or public sectors. There are a number of occasions where workers in the private sector work alongside workers in the public sector. Tasmania's current laws provide different processes for compensation depending on the employer. Unions Tasmania submits this is inherently unfair and needs rectification.
18. One example of public and private sector workers working side by side is the Children's Advice and Referral Service. This service takes reports from the community about children who may be experiencing neglect, abuse or violence. Some of the staff who answer these calls are Tasmanian public servants. They sit beside other staff who are employed by a non-government organisation. They take the same types of calls and are exposed to the same sorts of trauma. Yet, as the law currently stands, if a public service employee were to claim workers compensation for PTSD, they would be afforded the presumption of causation by work, and the non-government employee would not.
19. A number of private security guards operate in Tasmania's public hospitals and courts. They are often first on the scene of altercations between patients or persons in attendance at those sites, yet they would not have access to the presumptive PTSD provisions because they are not employed by the Tasmanian State Service. If a security guard was party to a violent assault or incident from a patient while working alongside a nurse in a public hospital, the nurse would be entitled to the presumptive PTSD provisions and the security guard would not. We submit that this injustice is best rectified by extending the presumptive PTSD provisions to all Tasmanian workers.

THE CANADIAN EXPERIENCE

20. Unions Tasmania recognises that the presumptive PTSD provisions for public sector workers were nation leading in Australia and commends the Tasmanian Government for responding to the needs of workers by implementing these laws. There are also other examples of the operation of presumptive PTSD laws in Canada that we can look to. Unions Tasmania views the area of presumptive PTSD

as an evolving area of law and believes it is only a matter of time before other jurisdictions also implement presumptive PTSD laws in some form.

21. Six Canadian provinces – Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan – have passed legislation that recognises the link between work and PTSD. In some provinces, only certain groups of workers are afforded the PTSD presumption. Workers afforded the presumption differ depending upon the province but include firefighters, police, emergency medical technicians, paramedics, emergency services dispatchers, correctional officers and youth service workers. Manitoba and Saskatchewan apply the PTSD presumption to all workers.
22. In January 2016, the province of Manitoba changed their workers compensation laws² to reflect that a worker exposed to certain traumatic events and diagnosed with PTSD would presume work was the cause. Like Tasmania's laws, the stated intention of legislating the presumption was to reduce stigma around mental illness and make it simpler to establish the connection between the worker's PTSD and their employment.
23. Also, in 2016, Saskatchewan legislated³ so that if a worker suffers a psychological injury because of traumatic events that took place at work, work will be presumed to be the cause. This goes further than the Manitoba legislation as the presumption is not limited to PTSD but all psychological injuries.
24. Unions Tasmania submits that there would be a clear benefit to workers of adopting laws similar to those in the Manitoba and Saskatchewan provinces.

CASE STUDY – PARKING OFFICER

25. A number of workers in the private sector have shared their stories of trauma at work. The remainder of our submission will detail their experiences.
26. Robert is a 47-year-old local government employee. He is an Australian Services Union (ASU) member who was physically assaulted while undertaking duties as a Parking Officer.
27. As a result of this attack, Robert was unable to attend work for a period and is no longer able to work in any customer facing roles. Robert has had to negotiate with his employer to find an alternate role or risk losing his employment now that he can no longer engage with the public due to his injuries. He now works in another

² *Workers Compensation Act, 2000* section 4(5.9)

³ *Workers Compensation Act, 2013 (Canada)*, Part IV, Division 1, Section 28

Department as a gardener. He has taken a significant pay cut. Robert has yet to be formally diagnosed with PTSD.

28. The ASU report that threatening behaviour and physical assaults against Tasmanian Council employees who work in Compliance roles like Robert did are commonplace, resulting in both physical and mental injuries to workers.

CASE STUDY – SECURITY OFFICER

29. The following experiences has been conveyed by a United Voice member who works in the security industry. This member has worked in that industry since 2003 for a total of 16 years. They wish to remain anonymous, so we have not included identifying details. The member is quoted below.
30. "I have been subjected to numerous traumatic situations from many different sites. Security officers can be faced with trauma and stress at any time. While working as a contracted security officer at a Tasmanian hospital a "Code Black" was called. [A Code Black alarm is called when immediate assistance is needed to deal with a threat of aggression, or actual violence, towards a staff member or patient]. I rushed to the Emergency Department to be faced with a male that I was later informed was high on "speed". He was armed with a knife. I stood between the offender and patients in order to get all patients to safety. The offender kept rushing me constantly trying to slice me with his knife. He then cut his own wrists and throat. I took him to the ground then carried him into resuscitation for medical treatment. No debriefing was ever offered."
31. "I was working at another hospital as a security guard, but this time directly employed by the Tasmanian State Service, not a private contractor. We dealt with many violent instances. I have seen security officers accidentally cause the death of a violent visitor, as well as two itinerants fighting with each other that ended in the death of one of them. In a separate incident, I had my ribs broken. We were offered counselling and employee assistance teams would often come onsite to touch base with staff."
32. This member highlights the different levels of support provided when employed by the private sector or the public sector after traumatic incidents. They point to the support being better when employed in the public service.

CASE STUDY – RETAIL WORKER

33. Sharna is a 30-year-old woman who works in the retail industry. She is a member of the Shop Distributive Allied Employees Association (SDA).

34. In October 2017, Sharna was held up at knife point while serving a customer on a register. Since the incident, she has not been able to return to the workplace.
35. Sharna has been moved to a different business within the company on two occasions. She now suffers from depression and sees a psychologist regularly. This has caused problems in her home life. She has trouble sleeping and feels anxious when she's out in public.
36. Sharna is hopeful that she can return to her original workplace but has not received any shifts from the company since January 2019 due to her inability to work on the registers. Her union is attempting to her assist her to be redeployed to suitable alternative duties within the business.

CASE STUDY – TRAIN DRIVER

37. The Rail Tram and Bus Union (RTBU) represents train drivers in Tasmania. They view level crossings as the single greatest risk for drivers and their mental health.
38. Tasmania has approximately 236 level crossings plus many private internal farm licensed crossings. Each year there are between 70 and 80 reported failures to stop or give way to trains. A number of 'near hits' make up this figure with an average of one or two collisions. The cumulative psychological impact of not just fatalities but 'near hits' is significant.
39. In September 2010, a young boy was killed in Spreyton after passing over a private access crossing. He was struck by the leading vehicle on the eastbound train. He died instantly. The driver of that train was left alone for some time with the child and their parent until assistance arrived. It was devastating for everyone involved.
40. After a long period of time, the driver returned to their driving role. They passed that level crossing several times a day. Seven years later, the driver was involved in a near hit while driving. Unfortunately, they have not been able to return to their train driving role.