

# **UNITED FIREFIGHTERS' UNION OF AUSTRALIA VICTORIAN BRANCH SUBMISSION**

## **VICTORIAN WORKERS' COMPENSATION SYSTEM: INDEPENDENT REVIEW INTO THE AGENT MODEL AND THE MANAGEMENT OF COMPLEX CLAIMS**

### **INTRODUCTION**

The United Firefighters Union of Australia Victorian Branch (UFU) represents the interests of some 3200 firefighters and several hundred corporate employees employed in Victoria and is well qualified to comment on the agent model in the management of complex claims and how to improve the system as we have received and represented many complaints from our members about the conduct and decisions of WorkSafe agents.

The UFU represents professional career firefighters and fire agency corporate, administration and technical employees across Fire Rescue Victoria (FRV).

FRV is a new organisation that was launched by the Victorian Government on 1 July 2020 bringing together all Metropolitan Fire and Emergency Services Board (MFB) and career Country Fire Authority (CFA) firefighters. FRV serves metropolitan Melbourne and major regional centres - 24 hours a day, 7 days a week. FRV operates 85 stations across the state.

The WorkSafe agent for FRV is Gallagher Bassett. Prior to 1 July the WorkSafe agent for former CFA firefighters was CGU and Gallagher Bassett for MFB.

UFU submissions and examples of the experiences of UFU members in relation to the agent model and the management of complex claims follow.

### **SUBMISSIONS**

1. The UFU notes that all recommendations of the Victorian Ombudsman's 2016 and 2019 reports have been largely accepted by the Government. This should mean quicker and better access to entitlements for FRV's injured workers. However, the experience of UFU members is that the Ombudsman's 2016 recommendations have not been implemented and/or if implemented have not resulted in any real improvement in the conduct of agents or the support provided to people injured at work.

The UFU submits that any legislative changes required to action the recommendations should be enacted without delay. At the same time, workers need to be informed about any changes regarding their rights and entitlements in an easy to access and easy to read format.

The fact is that the Ombudsman's investigation has shone a harsh light on the way WorkSafe agents are managing claims for people injured at work. While it may work for the majority of claims it doesn't work for people who have significant physical or Post-Traumatic Stress Disorder (PTSD) claims which includes our members. At some point they would probably be best dealt with by removing complex claims from agents to WorkSafe to manage complex claims directly or at the least improve oversight of what agents are doing with these claims.

2. The UFU notes the Ombudsman's 2016 investigation was focussed on agents' management of "complex claims". The UFU submits that the definition of "complex claims" being claims that progress beyond 130 weeks is extremely narrow. It doesn't touch the reason why claim is complex, namely because the worker is significantly and seriously injured. In the majority of cases these claims are a combination of physical and psychological injury.

Given that most injuries result in workers returning to work within 52 weeks, "complex claims" are really those that extend beyond 52 weeks. This definition would allow greater intervention to occur at the 52 weeks mark (when statistically we know that recovery rates drop significantly) and allows sufficient time for members to retrain if necessary and/or explore various return to work options well before they are abruptly cut off at the 130 weeks mark. This is particularly relevant for UFU members who can't return to operational firefighting when it has been their career for all or the majority of their working life.

The UFU also submits that there is scope for PTSD claims to be defined as a "complex claim." Again, this is particularly relevant for UFU members (and indeed all emergency service workers) as the rates of recovery are concerning. PTSD claims for UFU members present the increased difficulty for members being able to return to operational firefighting and the ultimate trauma that led to their illness.

While FRV don't usually terminate the employment of an injured worker at 52 weeks, the UFU submits there are good reasons to extend the 52 weeks employer obligation to provide a worker with suitable or pre-injury employment for the life of the claim. The 52 weeks can be expended quickly if there are delays in approvals for treatment. As well, there seems to be incentives for agents to terminate claims at 130 weeks, a better approach would be to provide incentive for employers to keep people on.

3. The UFU notes that having a timeframe added for requests for "medical and like services" decision making is long overdue. The UFU submits a common complaint for our injured members is that formally there is a time frame of 28 days for reviews by the agent, but, in our experience, this is rarely adhered to by claims agents. Injured workers get frustrated and feel they are spending all their time chasing the agent rather than getting better and back to work.

In addition, out of frustration with the delays and uncertainty, injured workers are often forced to simply proceed to get the treatment, item or service they need at their own expense without the certainty of knowing that the agent will ultimately approve the request. They then need to seek reimbursement adding further frustration.

The UFU also submits that there needs to be clear and strict time frames for the WorkSafe agent regarding surgery and weekly payment approvals. Ultimately delays in processes lead to members being on Workcover longer than they should be and this delay in treatment has an adverse impact on their recovery and health outcomes.

4. The UFU notes that requests for "re-instatement of entitlements" have a timeframe added for decision making. The UFU submits that this is welcome and long overdue. This process (including matters that are referred to the ACCS) is currently often taking more than 3 months for our injured members. We acknowledge that IME appointments can be difficult to get but we would expect that, as soon as the agent receives the request for re-instatement, an Independent Medical Examination (IME) appointment is made within 10 days and /or the advice of the treating doctor is accepted negating the need for an IME at all.

A lot of claims that hit the 130 weeks mark go to conciliation. For all injuries including re-aggravation claims, early intervention and speeding up approvals processes would improve so they don't have to wait 2 years for surgery would lead to better health outcomes.

5. The UFU notes that a new step is to be added to the dispute process whereby an injured worker can request that WorkSafe review the agent's decision. The UFU submits that it is not enough for a decision to be arguable – the agent needs to act as a model litigant and their decision needs to be sustainable in a Court. This should mean that a lot of the unjustified termination decisions and rejections will now be reviewed well before they need to go through a conciliation process. Again, if any review process is undertaken it needs to be timely and not difficult to request.

The UFU also submits that as the WorkSafe review proposed in the Ombudsman report only happens at the request of the injured worker they need to ensure that injured workers are made aware of the process by the agents and assisted in making that request by provision of an information/request form. Many members are not represented legally but should still be able to access their rights and entitlements without the need for solicitors.

6. The UFU notes the need to clarify circumstances and provide guidance on IME in the Ombudsman 2019 report. The UFU submits that there needs to be fewer IMEs. Employees should not be required to attend multiple IMEs. Alternatives to providing information should be considered before opting for an IME. IMEs for this profession should have expertise about the work and risks that our members who are firefighters undertake on a daily basis.

The UFU also submits that agents need to be pushed to review whether there are any alternatives to regular IMEs, such as, requesting updated clinical notes or a report from the treating doctor or specialist instead of constantly requesting "independent opinions". It appears that agents arrange IMEs with a view to finding a basis to reject or terminate a claim. There are many instances where two or more IMEs will be arranged within a few weeks if the IME opinion does not suit the agent. Claims managers should also be required to review the claim file to see if they already have the information that they are trying to obtain through an additional IME.

The UFU submits clearly, greater emphasis needs to be placed on the treating doctor opinions particularly in regards to the need and nature of surgery requests. This would be a big improvement for our injured members. The role of the GP is often disregarded by the agent which is poor practice management as the GP would be across the claim and have the skills to cover both physical and psychological aspects of the claim. A good GP will refer to a specialist as required.

7. The UFU notes the comments on in the Ombudsman's 2016 investigation regarding cherry-picking evidence to support decisions. The UFU submits that doctor shopping and cherry-picking evidence from multiple IMEs needs to stop. We have had an injured member who has seen around 15-16 IMEs. The only IME not ignored in this case was [REDACTED], who our member had put in an official complaint to WorkSafe for his alleged aggressive, bullying behaviour at interview. Unfortunately, the IMEs in general treat our members as criminals rather than as sick or injured workers. Their manner is disgraceful and causes mistrust and leads onto a worsening of many members' condition.

The UFU submits that people with PTSD are under the care of treating psychologists and psychiatrists, who are far better placed to give an opinion than an IME. The agents' refusal to accept their opinions make for an antagonistic process.

The UFU also submits this emphasis on IMEs is contrasted with that of the Medical Panel and/or Court who place most emphasis on the opinion of the treating doctors and, in particular, the treating surgeon. However, Gallagher Bassett (and previously CGU for CFA claims) too often prefer the opinion of an IME who has consulted the member for a very short time. Often these decisions are overturned but again this leads to treatment delay and adverse health outcomes.

8. The UFU notes the expanded requirements around the agents' use of surveillance in the Ombudsman's 2019 report. The UFU submits that surveillance should become a thing of the past. We are aware of surveillance used by Gallagher Bassett on former MFB members' claims on a few occasions only so the recommendation is likely to impact less on FRV. Nonetheless, the practice is widely known and it will help to restore some trust for this practice to be stamped out.

9. The UFU submits that "circumstance investigations" are used by Gallagher Bassett for assessing our injured former MFB members' claims. We are not sure what Gallagher Bassett are getting out of arranging these but, believe they could obtain the relevant information from MFB/FRV without the need to put people through interviews to provide statements. As we have advised our members not to participate it is hard to see that they would yield results anyway.

In particular, when the IME has confirmed that there is a mental health condition the agent should not be undertaking a circumstance investigation. The material that is exchanged is legally suspect and, in most cases, causes a worsening of the worker's condition.

The above begs the question, why are agents spending thousands of dollars on a process that will significantly contribute to the worker's mental health condition? We are aware that the investigators do not have mental health training and they often aggravate and perpetuate the mental health condition. Unfortunately, many members have PTSD and this is continually aggravated by the circumstance investigation process.

10. The UFU submits that our members claims are inherently different to many others in the scheme and need to be treated as such. Our members are stoic and suffer pain for a lot longer than they should before doing something about it.

Return to work is more difficult because members are returning to trauma. For some injured workers, their injuries might mean that they can never return to their old job. MFB's claims don't usually go down that road however we have had some members who can never return to their job so occupational rehabilitation can help them to explore different jobs but it must be genuine and not involve mickey-mouse or box-ticking programs.

When people hit 130 weeks and the capacity test report says "you're a career firefighter but you have a capacity and can work in a supermarket, so off you go", the experience is awful. People should be treated with dignity and assisted with suitable employment if they cannot return to their old job. Importantly, it must be the treating doctor/psychologist who determines that an injured worker can't return to work.

11. The UFU notes clearly agents are concerned about costs which influences their decisions in relation to termination of benefits at 130 weeks. The UFU submits that the financial incentives agents receive for claim termination obviously need to be removed as it presents a conflict of their own financial interests verses the health outcomes of injured workers.

The UFU also submits that at a minimum the termination of entitlements at 130 weeks by the agents should be overseen by Worksafe to ensure that the decision is sustainable. Clearly, members who have been on payments for 130 weeks (even if they don't satisfy the no current work capacity test to remain on payments) are still injured and/or unwell and any termination of their payments at this point effectively renders them falling off the system with very little options to support themselves financially.

## **CONCLUSION**

As stated above, the Victorian Ombudsman's report has shone a harsh light on the WorkSafe agents including Gallagher Bassett and CGU and how injured emergency services employees have been let down by the scheme. The examples of the experiences of UFU members below exposes the awful experience of some injured workers with WorkSafe agents.

## EXAMPLES OF EXPERIENCES OF UFU MEMBERS WITH WORKSAFE AGENTS

### 1. Michael - Former MFB now FRV employee/firefighter WorkSafe Agent Gallagher Bassett

Injury February 2013, slipped while exiting the fire appliance and fell, landing awkwardly and turning my ankle badly. Transported to Austin hospital, x-rayed and told bad sprain but swelling made it difficult to diagnose. Had two weeks off work, then went back to work and commenced physio weekly and a rehab programme until December 2013.

After 18 months still in significant pain. Brigade Medical Officer (BMO) referred to a surgeon. Sent for scans Nov.2014, these revealed significant damage requiring re-constructive surgery.

First surgery took place at the Epworth Hospital February 2015. Continued with rehab. post-surgery and started physio treatment mid-March 2015 continuing twice weekly until late August 2015. Still in pain, the BMO referred to a clinic where received two Cortisone injections in August 2015 but without relief. BMO referred to the Brigade physio August 2015 and I had further treatment, but without relief.

Referred to another doctor in October 2015. Had a Duralane injection (synthetic cartilage) November 2015. Incredibly painful but when the injection pain subsided the ankle referred to its previous pain levels. Continued to have physio treatment.

BMO referred back to surgeon. Had more scans in August 2016. Decided to see if time and continued treatment would give relief.

BMO sent for further scans July 2017. Referred back to surgeon and had further scans November 2017. Scans revealed further damage. Clean up surgery was scheduled for February 2018. Surgery revealed more damage than the scans and a fusion of the Tibia/Talar dome joint was proposed but significant recovery was required. Continued with twice weekly physio from March 2018 through to the end of May 2018. Referred back to surgeon August 2018. Surgery preparation put on place and surgery (ankle fusion) was done October 2018.

Started physio November 2018 and continued twice weekly until Sept.2019. Still in pain the BMO referred me to another pre-eminent ankle specialist November 2019 for another opinion. Sent me for further scans which revealed further damage but recommended go back to original surgeon as believed had done all that was possible to this point.

Referred back to original surgeon January 2020. Recommended a Cortisone injection, had 29 January 2020. No relief from the injection.

Referred to clinic referred above again, proposed a course of Euflexxa, 3 injections over a month. This commenced immediately and again unfortunately no relief.

Surgeon referred for further scans May 2020 which revealed area of inflammation and further surgery was proposed to fuse these areas (fibula and sub-talar joints) into the original fusion.

After the original injury (February 2013), I returned to full time duties as a firefighter (a career loved) but after the first surgery (February 2015) was not passed fit for operations and re-commenced shift work on light duties. Hoping the injury would improve enough to be

cleared for operations but light duties continued for a few months but when it appeared the injury rehab. was not working. Subsequently, transferred to day role where working ever since. Returned to full time hours after the second surgery (February 2018) but after the third surgery and a significant recovery I returned to work on reduced hours (two half days a week) and haven't been able to get these increased because it takes me 24 hours to recover from each half day. Hoping the required further surgery will allow me to return to full time duties in the future.

I have found over the years GB to be very difficult to deal with. I have had approximately 12-15 case managers over the time and these are extremely elusive when need to contact them and know the BMO has equal trouble trying to get hold of anyone to get answers for anything needed. Have given up trying to get reimbursed for any costs have incurred as get run around from one person to the next and achieve nothing. Each time a surgery request is submitted the delay for answer stretches out for months and this has a direct cost in the further damage to my ankle and my pain. An example is with this last surgery request, a letter was sent at the start of May from the surgeon requesting the surgery. Received a letter early May stating a decision would be made within 10 days. Received a letter late July stating the surgery request had not been approved. Had been ringing and emailing since mid-May to find out the outcome and had received no correspondence re the decision until the late July letter. Gallagher Bassett said the decision was based on advice from IME ██████ seen in January 2020. During the consultation ██████ looked at old scans and asked the history of the injury. He didn't actually look at or examine my ankle. And, this was the expert advice Gallagher Bassett based their decision on! These delays seem to be their working model as have been through the same delays every time a request is submitted for treatment.

Informed earlier this year that the 130 weeks for payments was due to end on June 2020. Then informed the Government had extended the payment period by six months to December 2020. A conciliation for weekly payments was submitted April 2020 and the conciliation was held in June 2020. The result was a Conciliation Outcome Certificate was issued by conciliation officer. I informed conciliation officer of my frustrations with the delays in decisions on requested. A request for conciliation for the rejected surgery was also submitted. Conciliation was due to take place on August 2020. After talking to the conciliation officer an adjournment put in place so legal advice could be sort.

Was hoping the required surgery would have happened in June 2020 as requested and allowed time to recover and be able to commence full time duties before the weekly payments are cancelled. This hasn't happened so now in a position where will not be cleared for full time work. Still in significant chronic pain with no relief. Cannot get the treatment required to end this nightmare and because elective surgery has been cancelled due to the COVID 19 crisis, cannot even have it done as a public patient.

Overall, the stress and dissatisfaction with Gallagher Bassett has increased exponentially as the years have gone on. Their delaying tactics have contributed certainly to the negative affect this injury has had on my health and wellbeing both physically and mentally, work life and career and lifestyle and family. I am very fearful for myself and my family's future and lay blame directly at the feet of Gallagher Bassett.

## **2. Steve - Former MFB now FRV employee/firefighter** WorkSafe Agent Gallagher Bassett

This is not a "complex claim" within definition of 130 weeks but included here because makes the point well that WorkSafe agents and IMEs are making decisions on claims when

they are completely unaware of the actual operating work environment firefighters must and routinely work in.

Professional firefighter for 35 years and currently holds the position of Commander. Following tests November 2017 by a Neurologist, informed have Parkinson's disease.

In December 2017 submitted a WorkCover form re Parkinson's Disease contracted in line of duty from exposure to toxins and chemicals.

In January 2018 Gallagher Bassett rejected claim based on report from IME, [REDACTED], and a circumstance report from DP Thomas & Associates. Decision made prior to circumstance interview which didn't occur until February 2018 several days after Gallagher Bassett had already made a decision!

Aware a number of colleagues have left the MFB due to developing Parkinson's Disease so undertook a comprehensive local and global research study on the prevalence of Parkinson's in firefighters which formed my "Parkinson's research report". My research confirmed that Parkinson's disease in firefighters is a result of being exposed to/and in contact with a range of chemicals, toxins and contaminants. The most current (cited) literature and evidence available both locally and globally, Walter & Eliza Hall Institute of Medical Research (WEHI Melbourne) states that "*Environmental factors also contribute to neurodegenerative disorders. For example, there is evidence linking Parkinson's disease with long-term exposure to pesticides, toxins and chemicals*" (Walter & Eliza Hall Institute of Medical Research, 2017)

Unsatisfied with the Gallagher Bassett's outcome of claim for reasons including no knowledge no attempt to acquire knowledge of the many chemical hazards that firefighters are exposed to over the course of their firefighting career.

This is dereliction at its most basic level. Would expect agents to make decisions regarding claims based on (and supported by) the best available evidence available, taking into account all relevant considerations when making their decisions. Provided evidence of a number of circumstances where precedence has been/being set to recognise Parkinson's disease in firefighters as a "*Line of Duty Disability*" which has been established in "Presumptive Legislation" and/or included in disability payments for firefighters that have developed Parkinson's disease.

[REDACTED] was unaware of Parliament of Victoria Inquiry into the CFA Training College at Fiskville (Final Report) stated; this (final report) validates the testimony of everyone who gave evidence of contamination, exposure and ill health. To the question: "*Could unsafe practices at Fiskville have caused my illness?*" – the answer is, in all likelihood, **Yes**. (inquiry chairperson's final report foreword XII, 2016) and many other aspects.

### **3. Tom - Former CFA now FRV employee/firefighter** WorkSafe Agent CGU

Four case managers. One never returned calls, emails, and was just all round rude. Another incompetent, should not be allowed to work for a WorkCover insurer at all.

In 2014 on night shift responded to 3<sup>rd</sup> house fire of the shift. Working off a ladder turned to open hose branch, jet reaction caused the ladder to slide sideways forced to reach and grab something to stop fall. This caused L5-S1 disk to severely prolapse as well as my L4-L5 disk.

GP referred to orthopaedic surgeon who confirmed would require surgery.

Claim was accepted but CGU didn't approve surgery, insisting on an independent medical review.

Took GP to write to CGU to explain their delay not only unwarranted but was contributing to further the damage to my back.

In 2015, I was contacted by phone and convinced to allow CGU to close my claim with assurance that it would be easy to reopen it if I needed to in the future.

In June 2020, back injury was back with a vengeance, new MRI's showed reaggravation of same injury. CFA requested CGU reopen claim to again begin treatment of injury. Chased CGU almost daily to try and have claim reopened with little to no feedback being given, just a consistent "we are working through it". CGU requested medical documents from all treating doctors whether relevant or not. Had to utilise the UFU's lawyers to assist claim. Finally, on day 26 at 9.00am received an email after yet more emails chasing claim stating it was no longer CGU's issue that I had been transferred to Gallagher Bassett.

CGU in my opinion is the WORST insurance company to deal with, they have contributed significantly to my injury and to the degradation of my mental health.

**21 SEPTEMBER 2020**