

LEGISLATIVE COUNCIL

Question On Notice

Thursday, 1 December 2022

See tabled paper.

1177. Hon Martin Aldridge to the Minister for Emergency Services

I refer to Legislative Council question without notice 1302 in relation to presumptive Post Traumatic Stress Illness (PTSI) protections for emergency services personnel and I ask:

- (a) for each of the following years 2019-20, 2020-21 and 2021-22, how many claims for Post Traumatic Stress Illness have been made by:
 - (i) DFES career personnel; and
 - (ii) DFES volunteers;
- (b) for each of the following years 2019-20, 2020-21 and 2021-22, how many claims for Post Traumatic Stress Illness have been substantiated and approved by:
 - (i) DFES career personnel; and
 - (ii) DFES volunteers;
- (c) what has been the total value of PTSI claims for each of the following years 2019-20, 2020-21 and 2021-22;
- (d) who is DFES seeking advice from in relation to implementing PTSI presumption in Western Australia;
- (e) please table any advice received by DFES to date;
- (f) please table the most recent briefing note provided to the Minister for Emergency Services by the Department of Fire and Emergency Services (DFES) in relation to PTSI presumption; and
- (g) how is DFES assessing the implementation of PTSI presumption in Western Australia?

Answer

(a)

year	(i) career personnel	(ii) volunteers
2019-20	14	0
2020-21	8	0
2021-22	17	0

(b)

year	(i) career personnel	(ii) volunteers
2019-20	11 Accepted (79%)	Not applicable
2020-21	8 Accepted (100%)	Not applicable
2021-22	17 Accepted (100%)	Not applicable

(c)

year	cost
2019-20	\$1,424,682.51
2020-21	\$1,179,090.94
2021-22	\$1,365,747.50

(d) – (e) DFES has been in consultation with multiple stakeholders regarding a whole of government initiative to assess the need for legislative change relating to a rebuttal presumption for PTSI.

(f) See tabled paper no. #

(g) Given that since 2016, ICWA has approved 97.2% of all DFES PTSI claims, DFES does not consider it necessary to implement a PTSI presumption.

A handwritten signature in black ink, appearing to read 'Stephen Dawson', is written over a horizontal line.

Hon Stephen Dawson MLC
**MINISTER FOR EMERGENCY SERVICES; INNOVATION
AND THE DIGITAL ECONOMY; MEDICAL RESEARCH; VOLUNTEERING**

BRIEFING NOTE FOR THE MINISTER FOR EMERGENCY SERVICES

PORTFOLIO: DEPARTMENT OF FIRE AND EMERGENCY SERVICES (DFES)
ISSUE: MANDATORY EVACUATION LAWS

BACKGROUND:

- Mr Gary Seaward wrote to the Minister on 16 August 2021 seeking consideration to develop legislation similar to the state of Queensland by adopting a streamlined and more supportive avenue for first responders with Post Traumatic Stress Disorder (PTSD) to access compensation.
- Mr Seaward is a prison officer diagnosed with PTSD and is currently engaged in the worker's compensation process.
- Mr Seaward refers to the amendments to Queensland workers compensation laws passed in May 2021 which include new presumptive streamlined pathway for first responders and eligible employees diagnosed with PTSD. These laws reverse the onus of proof by deeming that a first responder's or eligible employee's PTSD is work-related unless there is evidence to the contrary.
- Mr Seaward has suggested that establishing a legislative regime to include rebuttal presumption for PTSD such as Queensland would reduce the additional stress, anxiety and mental health challenges on employees of the worker's compensation process in assessing PTSD claims.

CURRENT SITUATION:

- The Department of Fire and Emergency Services (DFES) can only provide a response relevant to DFES first responders being career firefighters.
- DFES works very closely with the injured employee, Insurance Commission of WA (ICWA) and health professionals to provide the required evidence to support the PTSD claim under the *Workers' Compensation and Injury Management Act 1981* (WCIM Act).
- Under section 49C of the WCIM Act, a rebuttable presumption exists for career firefighters in relation to certain cancers. There is no rebuttable presumption for PTSD.
- PTSD workers' compensation claims are processed quickly under existing arrangements and early intervention treatment may be funded whilst a claim is under consideration.
- The average processing time for PTSD claims, including pended claims, from lodgement to initial decision, is 9 days. Pended claims are approved or declined within 68 days. The majority of pended claims are for comorbid injuries which include PTSD and another illness or injury.
- Injured employees are allocated their own injury management consultant to provide support throughout the claims and rehabilitation process to:
 - reduce additional stress
 - allow quick access to medical treatment
 - provide support and
 - deliver successful rehabilitation outcomes.
- DFES also offers support services through the Employee Assistance Program and the Wellness branch.
- Since 2016, the Insurance Commission of Western Australia (ICWA) has approved 97.2% of all DFES PTSD claims.
- ICWA report no formal complaints have been received regarding DFES PTSD claims.
- In 2017, DFES proposed amendments to WCIM Act to prescribe a rebuttable presumption for PTSD as being caused by employment within the existing presumptive scheme for career firefighters

- Research and consultation for this proposal revealed the following:
 - Generally, PTSD claims among career firefighters are approved quickly and early intervention treatment is initiated whilst a claim is still under consideration.
 - Actual claims experienced by firefighters would appear to indicate there is no need for special presumptive laws as firefighters are not encountering barriers in establishing their condition is work-related under existing arrangements.
 - A presumption does not remove the evidentiary burden completely as an insurer may seek a medical review and dispute the finding of PTSD or bring evidence to counter the connection to employment in the small number of claims that are not accepted currently.
 - By singling out PTSD as a presumptive occupational disease, it may have the effect of incentivising a diagnosis of PTSD which may predetermine treatment and care when the person may be experiencing another mental health condition. This may lead to increase misdiagnoses and incorrect treatment.
 - The existing legislative regime did not appear to be discouraging reporting of PTSD by firefighters.
- At the time, the State Solicitor's Office and WorkCover WA expressed strong opposition to the introduction of presumptive legislation for PTSD for DFES career firefighters.
- The Minister at the time did not consider it appropriate for DFES to initiate the legislative amendments based on the above findings, which indicated that the presumptive legislation for PTSD may not achieve the desired outcomes. Additionally, DFES' arrangements at the time was found to be effective and efficient in managing PTSD claims.
- Although DFES' current arrangements for processing PTSD claims are effective and efficient, DFES is supportive of a whole of government initiative to assess the need for a legislative change in relation to a rebuttal presumption for PTSD for first responders and eligible employees.

RECOMMENDATION/ACTION

- The Minister notes the above information and approves the draft letter to Mr Gary Seaward.

APPROVED/NOT APPROVED



HON REECE WHITBY MLA
MINISTER FOR EMERGENCY SERVICES

DARREN KLEMM AFSM
COMMISSIONER

September 2021

Date: 20 / 9 / 2021