

Change • Challenge • Opportunity

Injury & Disability Schemes Seminar



12 - 14 November 2017 • Sofitel • Brisbane





Exploring a role for Restorative Justice in Workers' Compensation

Pene Dedes (WorkSafe Victoria)
Stan Winford, Mary Polis (Centre
for Innovative Justice, RMIT)

WorkSafe Victoria Strategy 2030

Long term strategy – 2030 transformation

- Deeper prevention-led culture
- Primary focus on needs of people
- Responding to justice needs by acknowledging personal experience
- Preventing further mental harm from a compensation system



Strategy 2030



Prevention-led



Focused on the needs of workers and employers



**Simplifying WorkSafe's
business**



**Offering tailored products,
services and support**



**Leading the way and adapting
quickly**



**Sharing goals & outcomes with
the community**



Analytics and data



Restorative Justice Project

- **Task:** to explore opportunities to apply restorative justice processes and principles
 - in both the **enforcement** and **disputed claims** processes
 - with the aim of meeting the needs of injured workers and their families,
 - repairing or healing harm already caused to them, and
 - avoiding potential harm that might arise as a result of the enforcement or claims processes
- 3 phase project
- Final report by April 2018



Restorative Justice

- Restorative justice is a model of justice that focuses on the **harm** caused by a crime or other wrong rather than on the violation of a law committed against the state, or the elements of a legal duty owed to another party.
- It seeks to **repair the harm** caused, and **restore right relations**, by collectively including those with a stake in the wrongdoing in its resolution.
- Restorative justice
 - Principles
 - Processes
 - Applications
 - Limitations



Existing Evidence Base

- **Compensation status effect** (Kilgour, Grant, Elbers, Lippel)
- Importance of **non-pecuniary interests** (Akkermans, Greene)
- **Perceived injustice** (Sullivan et al) associated with:
 - Higher degrees of persistent pain and disability, more severe depressive symptoms
 - Greater use of health care services
 - Compromised relationships with rehabilitation providers
 - Intention to litigate



Early Insights

- Injured workers have:
 - **Primary goals:** recovery, return to work, financial security
 - **Justice needs:** voice, validation, information, accountability, relationships, prevention and resolution
 - **Expectations** of the claims process: access to entitlements, support, respect and dignity, information, choice, fairness, voice



Early Insights

- No-fault systems not designed to meet full range of justice needs – concepts of fault, blame, injustice are displaced, but persist
- Process expected to be supportive, but experienced as adversarial
- Failure to meet justice needs and expectations has consequences for achieving primary goals, risks secondary harm, and can drive problematic behaviours during the claims process
- Consequences for the scheme as well: increased costs, and compromised ability to achieve statutory objectives



Opportunities

- What role might restorative justice play alongside WorkSafe's disputed claims processes?
- Benefits:
 - meeting needs not always otherwise met through formal/no-fault legal processes, in particular accountability, validation, prevention
 - removing barriers to recovery and return to work, allowing for more effective engagement in legal processes, less disputation
 - supporting employer insight into human impacts of unsafe work practices
 - promoting collective commitment to workplace safety
- Complementary processes, voluntary, optional service



Key Issues

- **Opportunities**
 - Identifying particular case types / framework for suitability
 - Examining effective interventions in other systems that address claimants' justice needs
 - Scope for introducing range of restorative practices
- **Challenges**
 - Clarifying the purpose of restorative justice encounters
 - Timing of restorative justice encounters
 - Protecting parties' legal rights and interests
 - Participation by employers



Close

- Research team interested in existing practices in other systems that align with restorative justice objectives
- Questions from audience



Contact

- Pene Dedes, WorkSafe Victoria:
pene_dedes@worksafe.vic.gov.au
- Stan Winford, Centre for Innovative
Justice: stan.winford@rmit.edu.au