

**INQUIRY INTO PROPOSED CHANGES TO LIABILITY AND
ENTITLEMENTS FOR PSYCHOLOGICAL INJURY IN NEW
SOUTH WALES**

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From: Craig Tanner
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To: Law
Subject: Proposed changes to legislation affecting workers who suffer psychological injuries
Attachments: Case Examples - Tanner.docx

Walker Law Group have provided me with examples of psychological injuries which will cease to be compensable if the proposed changes in the Exposure Draft are enacted.

I submit them for the attention of the Committee.

Kind regards,
Craig Tanner
Barrister

Case Example 1

This case example concerns a worker who sustained a psychological injury in the course of their employment in an office-based environment. In the course of that employment, the worker was subjected to bullying, harassment and discrimination on the basis of their sexual orientation. The behaviour included the circulation of a homophobic post within a workplace forum that was viewed by over 3,000 people. Following the circulation of the post, the worker became the subject of aggressive, offensive and violent behaviors perpetrated by other employees. The worker received no support or assistance from management at the employer. As a consequence of these events, the worker suffered acute and significant distress and experienced a total destruction of their capacity for work. A workers compensation claim was lodged, and liability was accepted. The worker came under the care of their GP, psychologist and psychiatrist and was prescribed anti-depressant medications. The worker continued to struggle psychologically as a result of the events at work to the extent that an attempt was made by the worker to take their own life. The worker was found by a friend in a critical condition, having been alone at the time of the attempt. The worker was transported to hospital and was admitted to the ICU. Thereafter, the worker remained in hospital for over two months. As a result of the long lie, the worker suffered permanent physical injuries in addition to the psychological condition. The work environment in this instance was one where a climate of bullying, harassment, intimidation and discrimination was allowed to flourish. This *person* suffered enormously as a result of the actions of his colleagues and peers which went without any intervention from the employer and they required the medical and wage support afforded by the statutory workers compensation scheme as a result. The critical nature of this person's psychological injury is clear and yet, this person was assessed at only 19% WPI. As a solicitor that practices exclusively in NSW personal injury law, it concerns me greatly that a worker with an injury as serious as this, that arises in circumstances that are so plainly abhorrent, may be forced to submit their case to a tribunal before valuable and necessary compensation rights could even be accessed, and as the case may be in this instance, ultimately be prevented from claiming more significant compensation rights as their injury is considered 'not serious enough' to warrant lump sum compensation or entitlement to consider bringing a damages claim on the basis that the injury was caused by the negligence of the employer.

Case Example 2

This case example concerns a younger worker who sustained a psychological injury in the course of their employment as a detention services officer. In the course of that employment, the worker was exposed to extremely traumatic incidents such as detainees self-harming and attempting to commit suicide. In one particularly harrowing instance, the worker witnessed a detainee successfully take their own life. Despite the profound trauma of this event, the employer failed to offer any psychological support. The detainee's death weighed on the worker greatly, and they continued to have nightmares of the detainee's dead body and the detainee asking for help. Moreover, the employee was subject to abuse, bullying and harassment, where they were belittled by their supervisor and stalked by a co-worker on CCTV footage. Senior management were completely unsupportive of the worker, and resorted to calling the worker a 'snitch and dog' for reporting the inappropriate behaviour of the supervisor. As each of these incidents eventuated, the worker experienced a rapid deterioration of their self-esteem and enjoyment of life, resulting in ongoing psychological disabilities. The amalgamation of the workplace bullying, traumatic events, and unsupportive management exacerbated the workers' psychological condition, and they experienced a complete perversion of their sense of normalcy and how they interact with the world. There was no wrongdoing on the part of the worker, who was rather exposed to the risk of psychological injury by simply acting in the course of their duties. This worker needed the statutory compensation scheme to support them in trying to regain some semblance of normalcy. Despite the seriousness of the worker's condition, they were only found to have 17% WPI. This assessment did, however, enable the worker to pursue their right to compensation for economic loss sustained as a result of the employer's negligence. If the permanent impairment threshold rises to 31% for work injury damages claims as proposed, workers who have endured similar tragedies will be deprived of important statutory benefits and other lump sum compensation. It is greatly concerning that under the proposed changes, workers who have experienced such hardship at the hands of their employer could be excluded from similar compensation rights. Limiting access to compensation for cases like this is a perversion of justice. It grants employers impunity from the consequences of egregious workplace negligence and leaves vulnerable workers to carry the burden of psychological trauma alone.

Case Example 3

This case example concerns a worker who sustained a psychological injury in the course of their employment in a corporate environment that involved regular work in an office environment and at various other locations across Sydney. The worker could be described as commercially successful and thriving in their career. In the course of performing those duties, the worker was violently sexually assaulted. The worker reported this to the employer and the authorities and after a short period off work, attempted to continue in their employment. The employer was unsupportive of the worker and as a result of this and the trauma of the incident, the worker experienced a deterioration of their psychological condition. A workers compensation claim was lodged, and liability was accepted. The decline in the worker's psychological condition manifested in neglected personal hygiene (skipping meals, lack of bathing), weight gain, social isolation, a fear of travelling to unfamiliar areas, strained relationships, poor concentration and memory and a total destruction of working capacity. This worker required the support of the statutory scheme to access valuable medical care and wage support. The worker's home was the subject of a mortgage and without the wage support afforded by the statutory scheme, the worker would have been vulnerable to losing their home and economic destruction. Further, the worker was clearly vulnerable and required comprehensive medical support from a trusted and experienced treatment team. This was possible thanks to the statutory compensation supports currently afforded. It is concerning to think that a worker such as this may have to relive the harrowing events of their assault in yet another forum – beyond reporting it to the police and their employer – before they may be afforded critical wage and medical support. The potential for re-traumatization and the taxing nature of litigation will almost certainly exacerbate the psychological condition of workers such as this individual. Despite the seriousness of the worker's condition, they were only assessed at 19% WPI. Similarly to other case examples provided, it seems a great injustice that an injury such as this would be considered inadequate to warrant lump sum compensation or entitlement to consider bringing a damages claim on the basis that the injury was caused by the negligence of the employer.

Case Example 4

This scenario involves a worker who was employed to provide care for children living with serious disability in the environment of a respite facility. This was a role which they had held for over 20 years and spanned over their numerous transitions through life. Tragically, on two separate occasions over the course of their employment, two children passed away in their sleep whilst our client was providing care for them. Despite these extremely tragic circumstances, our client was able to obtain support from the workers compensation insurer and return to work.

The COVID-19 pandemic affected our clients' work drastically, to the extent that they were required to provide this vital care to vulnerable disabled children without the assistance of adequately trained, or an acceptable and safe ratio of staff members. Despite raising numerous complaints with higher management at the employer, no action was taken and the worker was required to continue to provide a high level of care to vulnerable children whilst also training and supervising inexperienced and underqualified staff members.

As a consequence of the lack of support offered by their employer, the worker began to experience flashbacks to the deaths of previous children and they became increasingly anxious that there would be another death. These psychological symptoms resulted in a total incapacity for employment. It was agreed between the parties that our client was suffering from a 20% WPI in respect of their psychological injury.

The proceedings in which we instructed required the service of a statement and extensive medical evidence. The treating medical evidence showed that our client was suffering to an extent that was beyond the scope of what was canvassed in the independent medic-legal reports. Such examples included inpatient psychiatric stays and multiple suicide attempts.

At the completion of the matter, the worker expressed that their life was forever and totally impacted because of their psychiatric injury, and that no amount of monetary compensation could alleviate their suicidal ideation.

Despite this haunting statement, they were also optimistic about the future as they were able to exit an extremely oppressive system with an amount of compensation that would permit them to take positive steps for their future. The client's partner expressed their gratitude for the support that they had received and expressed that without this, they would likely not have a partner, and their children would not have a parent anymore.

As a young practitioner working exclusively in NSW personal injury compensation, I think about this case almost every day and I carry forward the words spoken to me by the worker and their family in many aspects of my work.

I am thankful that their case was resolved before amendments such as those proposed were passed. If the legislation does not provide adequate provisions for injured people, especially those who selflessly provide care and support for some of society's most vulnerable people, then it is manifestly inadequate.

Case Example 5

This case example concerns a worker who sustained a psychological injury in the course of their employment as a class room teacher with the Department of Education. In the course of employment, this worker was subjected to abuse, verbal and physical threats and intimidatory conduct by a student and the student's parent, causing them to sustain a psychological injury. The student and the parent had a history of being verbally and physically threatening and abusive to staff and this history was known to the Department of Education. No intervention was taken nor were any safety measures in place to protect the worker from this known risk. The worker experienced a deterioration of their psychological condition to the extent that they were unable to work in any capacity. A workers compensation claim was lodged, and liability was accepted. The worker experienced symptoms including a deterioration in self-care and personal hygiene, social withdrawal, strained relationships with loved ones due to their poor psychological outlook, difficulty concentrating and an incapacity for work. The worker was able to access valuable wages and medical support which aided in their recovery to the extent that they were eventually able to use the support of the scheme to retrain and re-enter the workforce in a different field. This case is a good example of the progress that can be made by an injured worker that is afforded the benefit of early intervention and adequate support. It is the unfortunate reality that many of our hard working state government teachers are subjected to such abuse in the workplace. The proposed amendments to the legislation in respect of psychological injury claims would no doubt have devastating consequences for workers such as this that are on the front line and would likely discourage good teachers from pursuing this line of employment due to the inadequacy of support available in the event of psychological injury. This worker was ultimately assessed at 19% WPI. Under the proposed amendments, this worker would be disentitled to many of the current benefits afforded to injured workers and would have likely experienced significant financial hardship and barriers in respect of their psychological recovery and re-entry into gainful employment.