

# legal

# check-up

adviceline  
injury  
lawyers

Get the latest on legal and health issues

Spring Edition 2015



## Message from the Editor

Welcome to the Spring Edition! The Legal Check-Up quarterly publication is our way of keeping in contact with the health practitioners who assist our clients and updating you on the latest health and legal issues.

Throughout Victoria, we are frequently assisting clients with psychiatric conditions as a result of bullying at work, excessive workloads, unsupportive work environments or as a consequence of a debilitating physical injury.

Just as we encourage our clients to seek professional help and contact us if they need reassurance, the incidence of stress related conditions in the legal profession means we too must be mindful of stress and encourage our profession to practice self-care.

Our job is a hard one, and we must balance the day out with a stress antidote – mine is running and cuddling my daughter. We encourage you to find your antidote when you go home today.

Bree Knoester, Partner

## Stressed Professions

**Being mindful about mental health is becoming increasingly important, particularly for professionals working in health or law. Most people agree that working as a health professional or lawyer is often stressful, regardless of which branch of the profession you work in**

A recent study revealed the risk of psychological harm to medical graduates, with 75% suffering burnout eight months into an internship and 73% of interns met the criteria for psychiatric morbidity on at least one occasion<sup>1</sup>.

In 2011, a study of 125 professional associations and professional services firms found that lawyers were the most likely to experience symptoms of depression<sup>2</sup>.

Constant and stressful demands of the health and legal profession may include:

- High workloads
- Patient or client expectations
- Dealing with people's problems on a daily basis
- Commercial pressures
- Workplace culture
- Dealing with traumatic incidents or material
- Feelings of isolation.

We have seen a growing number of clients suffering from psychological injuries and illnesses. This can be caused by stressors in the workplace or instances of bullying, sexual harassment/discrimination or may be a secondary consequence of a physical injury. Hearing these compelling, and often distressing, stories and providing advice can take its toll on personal injury lawyers.

Similarly, medical professionals often have to make quick judgments under pressure, work long hours, have difficulties with work-life balance and have to deal with traumatic situations, all of which can lead to a deterioration in mental health. Both professions face the issue of stigmatisation and fears of damaging their careers which may prevent medical professionals or lawyers seeking help when they need it most.

Mental Health Week highlighted the importance of understanding the causes of psychological distress, and in particular the high prevalence rates among health professionals and lawyers. Deeper awareness of mental health issues in these professions means that strategies promoting health and wellbeing can be developed and prevent those working in these industries from becoming unwell.

- Ursula Donovan, Senior Associate

# Compensation for Psychiatric Injuries

## Case Study 1

A roadworker suffered a psychiatric injury after being subjected to bullying and unreasonable treatment from a supervisor.

This led to him developing a severe depressive condition which included repetitive grinding of his teeth and the prescription of heavy medication. His claim for pain and suffering damages against his former employer was resolved for \$90,000.



LIAT BLACHER, SPECIAL COUNSEL

## Case Study 2

A teacher has settled her claim for anxiety and depression after her employer failed to respond to numerous complaints about abusive and aggressive students creating an unsafe work environment.

Her claim was resolved for \$300,000 for pain and suffering and economic loss damages, plus retention of benefits of over \$400,000 that she had already received.



URSULA DONOVAN, SENIOR ASSOCIATE

## Case Study 3

After being required to intervene in a physical altercation between a group of students and intruders, a teacher developed Post Traumatic Stress Disorder and was unable to return to work.

Evidence was adduced suggesting that the school had failed to respond to previous incidents where intruders had attended the premises, and the claim was resolved for \$225,000 plus retention of previous benefits.



LAUREN FREEMAN, SENIOR ASSOCIATE

## Case Study 4

We assisted a family following a tragic car accident in which an exploding gas tank injured three siblings and killed their brother.

The mother and stepfather of the four children, as well as the neighbour who came to the children's rescue, witnessed the aftermath of the accident. All three were psychiatrically injured. Their claims settled for \$211,000, \$200,000 and \$532,000 respectively.



MICHAEL LOMBARD, PARTNER



In 2014 the *Mental Health Act 2014 (Vic)* brought about changes to the legal framework for assessing and treating people with mental illness.

The aim of the Act is to place people with a mental illness at the centre of decision making and to establish safeguards and oversights to protect the rights, dignity and autonomy of people with mental illness.

New terminology was adopted by the Act. What used to be known as reviews and recommendations, and involuntary treatment orders are now assessment orders, temporary treatment orders and treatment orders.

### Assessment Orders

An assessment order can be made by a registered medical practitioner and enables a person to be assessed by a psychiatrist to determine whether they require a treatment order. Section 29 of the Act sets out the criteria that must be met to make an assessment order.

The assessment can take place in an inpatient setting or in a community setting, but should only take place in an inpatient setting where the medical practitioner has determined that it cannot take place in the community. Contact details for local public mental health services in the community can be obtained at <http://bit.ly/LPMHSContact>.

A practitioner making an Assessment Order must complete a MHA 101 – Assessment Order form (<http://bit.ly/MHA101AO>). Where reasonable to do so, they must then inform the patient they have made the Assessment Order and provide them with a copy of the order and the Assessment Order - Statement of rights (<http://bit.ly/AOSOR>).

If an inpatient assessment order is made, the practitioner should arrange for the person to be taken to the relevant designated public hospital mental health service.

### Treatment Orders

An authorised psychiatrist must complete the assessment of a person subject to an assessment order within 24 hours. The psychiatrist will then make a determination as to whether the person meets the criteria for a temporary treatment order.

If the person is still on a temporary treatment order after 28 days, they must be reviewed by the Mental Health Tribunal for assessment for a treatment order.

### Advance Statements

The Act provides for patients to make an advance statement which sets out a person's treatment preferences in case they become unwell and need compulsory mental health treatment. A general practitioner may be involved in witnessing advance statements. Further information about advance statements can be accessed at <http://bit.ly/GPAdvanceStatements>.

Alice O'Connell, Senior Associate

## Important Improvement for TAC Claims

The Andrews government has followed through with its pre-election promise to reverse draconian changes, made by the last government, to the assistance available to people who have suffered psychiatric injuries from road accidents.

In October 2013, laws were passed which restricted the right to sue where someone had suffered a psychiatric injury. To prove the person had a "serious injury" (and therefore, the right to sue), the injured person had to have a recognised psychiatric injury for three years, and have not responded to treatment over the whole period. Additionally, the injured had to prove they had severe impairment in their social and vocational functioning.

This was too onerous for most people whose difficulties fluctuated over time and at certain events during the year, such as the anniversary of the death of a family member.

Upon the election of the new government, the courts didn't hear any serious injury applications, awaiting the reform of the legislation. Unfortunately the TAC had to make decisions which hopefully they will re-visit upon the legislation being passed around March 2016.

Emergency workers who attend horrific accidents will also be assisted by the legislation which allows a case to be brought where they have suffered a "serious injury" caused by the driving of a vehicle which could be classed as a suicide. These welcome reforms will make the TAC scheme a fairer and better one for people injured on the roads.

Michael Lombard, Partner

# Mindfulness

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It may sound like just another buzzword of the moment – up there with green smoothies, and Bikram yoga – but mindfulness is increasingly being recognised as an effective way to reduce stress, handle difficult situations, increase self-awareness, improve your health and some say, live longer. Based on Buddhist meditation, mindfulness is just that – being aware moment to moment.

How often do you multi-task? Watch the news, whilst checking your emails, with a work document nearby? How often do we just do one thing at a time? It is pretty rare in the world we live in. Our multi-tasking behaviours put undue stress on our brain by requiring us to split our attention.

Research conducted at Stanford University found that multitasking is less productive than doing a single thing at a time. The researchers also found that people who are regularly bombarded with several streams of electronic information cannot pay attention, recall information, or switch from one job to another as well as those who complete one task at a time.

In 2015, a systematic review and meta-analysis of reviews of randomised controlled trials revealed the use of mindfulness programs improved a number of mental and physical disorders and brought about positive structural changes in the brain – with some researchers suggesting it can prevent or delay the onset of cognitive impairment.

In September 2015, our Special Counsel and Senior Associates participated in a mindfulness seminar with Dr Craig Hassed. Dr Hassed is an internationally recognised expert in mindfulness who has been instrumental in promoting mindfulness as a simple and accessible technique for enhancing wellness, preventing and managing illness, and improving performance within health, educational and corporate settings. He is the founding president of the Australian Teachers of Meditation Association and a senior lecturer in the Department of General Practice at Monash University Medical School.

As we move towards the often chaotic part of the year, we encourage our staff and our medical professionals to take a moment each day to just focus on one thing and be mindful. It may just be reading our newsletter!

## LOCATIONS

### Epping

Shop 110B, Pacific Epping  
Epping VIC 3076

### Melbourne

Ground Floor, 555 Bourke Street  
Melbourne VIC 3000

### Melton

83-85 Unitt Street  
Melton VIC 3337

### Moe

Level 1, 18-20 Kirk Street  
Moe VIC 3825

### Springvale

369C Springvale Road  
Springvale VIC 3171

## CONTACT US

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## Welcome to the team, Naomi Riggs!

Naomi is a Senior Associate at Adviceline Injury Lawyers and is an expert in personal injury and employment law.

Working in this area for nearly 10 years, Naomi is a passionate advocate for the rights of employees. She is an experienced litigator with a solid reputation for standing up for the rights of injured workers.

Naomi is currently completing her Masters of Law: Employment and Workplace Relations at Monash University.

She is currently on maternity leave with her second baby, and will return to the Springvale office in January 2016.