

**Maurice
Blackburn**
Lawyers
Since 1919

Welcome to the Autumn edition of Maurice Blackburn's Health Practitioners newsletter. This quarterly newsletter is intended to keep you up-to-date with some of the recent cases and legal developments, as well as promote discussion around recent issues of relevance to your field.

THE ROLE OF GENERAL PRACTITIONERS IN SUICIDE AND DEPENDENCY CLAIMS

INTRODUCTION

Despite growing community awareness of mental health issues, suicide rates in Australia are going up. Australian Bureau of Statistics figures show that in 2012 there were 2,535 deaths that resulted from intentional self-harm¹, up more than 11 per cent from the previous year.

Given the amount of time Australians dedicate to their occupation², it is reasonable to conclude that workplace issues can have a considerable bearing on an individual's psychological health.

However, as a study published by the Creative Ministries Network in March 2010 identified³; there is a lack of data about the extent of work related suicide, which may in part reflect that the emphasis in the sphere of occupation injury continues to be on physical injuries.

An earlier study by the same authors reviewed the Victorian Coronial database in the 11-year period between 1989 and 2000, and identified 109 cases where work factors were considered to be contributing factors to suicide. However, the authors believed there to be a significant under-reporting of the number of cases, because of the lack of detail that was required by the coroner regarding work factors⁴.



THE ROLE OF THE GENERAL PRACTITIONER

Many workers are reluctant to disclose the extent of their psychological condition even to close friends and family and do not necessarily elaborate on any connection to their employment without prompting.

In many cases clients have not been referred to a psychologist or psychiatrist and, particularly in the case of psychological injuries arising from chronic physical conditions, the general practitioner may be the only medical professional involved with their care and indeed the only person with knowledge of the history.

As such it is of great importance that general practitioners who are treating patients with psychological injuries:

1. identify and record any symptoms at an early stage
2. discuss all relevant factors contributing to the symptoms, including any employment issues
3. enquire about not only any physical injuries sustained in the workplace but also any psychological consequences
4. ensure the relationship between the psychological condition and the individual's employment is clearly recorded in the clinical notes; and
5. if appropriate, obtain approval from the insurer to seek specialist psychiatric treatment.

DEPENDENCY BENEFITS

Where a worker dies in circumstances that have arisen out of or in the course of their employment, family members who are considered to be "dependants" may be entitled to claim compensation.

A "dependant" is defined broadly in the Accident Compensation Act as a person who is "wholly, mainly or partly dependent on the deceased for financial support", which means it can extend beyond immediate family members to potentially cover defactos and step children.

¹ <http://www.abs.gov.au/ausstats/abs@.nsl/Lookup/by%20Subject/3303.0~2012~Main%20Features~Suicides~10004>
² The OECD "How's Life?" Report published in November 2013 found that Australians are in the bottom 20% as far as work/life balance. (<http://www.oecd.org/statistics/howlife.htm>)
³ "Work and Suicide", March 2010 (<http://cmn.unitingcare.org.au/publications/>)
⁴ "Work Factors and Suicide", September 2002 (<http://cmn.unitingcare.org.au/publications/>)

The benefits potentially available to dependants include:

- reimbursement of the reasonable costs associated with providing medical treatment to the deceased
- burial or cremation costs
- family counselling
- weekly pensions, and
- a lump sum payment of up to \$555,350¹.

These entitlements may be available in circumstances where the worker has died as a result of suicide, but only where it can be established that employment is a “significant contributing factor”.

ESTABLISHING THE LINK WITH EMPLOYMENT

By their nature, these claims are incredibly difficult to prove. In the absence of a suicide note or some clear indication of the deceased’s state of mind at the time of death, it is necessary to look to other sources to establish that the employment contribution was indeed significant.

The medical records kept by the deceased’s treating doctors will be critical in this regard.

In our experience, work related psychological injuries can develop as a result of multiple factors including:

- workplace conflict, discrimination, bullying or harassment
- stress associated with the conditions of employment e.g. excessive workload, poor training or resourcing
- disciplinary action and performance management
- significant changes or insecurity in the workplace e.g. restructure/redundancy
- exposure to violence or trauma in the workplace
- work related physical injury or the return to work process.

Workplace issues are often complex and may be linked with other factors including family issues, relationships, financial stresses, substance abuse and mental illness, which may or may not be directly linked to the employment circumstances.

Certainly the case law has held² that for claims to be accepted the workplace circumstances need not be the only significant contributing factor to an injury, but merely “a significant contributing factor”; and may in fact be one of many.

CONCLUSION

Bearing in mind that suicide will often occur in circumstances that are sudden and unexpected, the provision of clinical notes that fully and clearly record any link between psychological injuries and employment will help facilitate the early resolution of dependency claims, and potentially avoid the delay and costs associated with litigation.



NEW HELP LEGAL CLINIC FOR ALFRED PATIENTS

Alfred hospital patients are now being offered free legal advice under a new pilot program run by Monash University and Maurice Blackburn.

The initiative began when the Michael Kirby Centre for Public Health and Human Rights at Monash University approached the firm to provide a form of legal triage at the hospital for patients who present with legal and health problems.

A solicitor is available on site two days a week to deal with legal issues including power of attorney, questions around wills, superannuation, traffic law, criminal and injury matters.

“Legal issues can cause health problems and health problems can create legal difficulties, so the aim of the service is to ensure that any legal problems that impact on health are identified and dealt with before they escalate,” said Greg Tucker, Maurice Blackburn CEO.

The Trial is supported by the Legal Services Board of Victoria and Justice Connect and is based on similar clinics in the US and UK. For further details see a profile in the Medical Journal of Australia.

¹ As at 1 July 2013

² Meddis v Victorian WorkCover Authority (County Court, judgment 24 April 1996), Popovski v Ericsson Australia Pty Ltd [1998] VSC 61.

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