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LawTalk Blog



## Workers compensation for psychiatric injuries

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### The case of The State of South Australia (Department for Education) v Van Hattem (No 2)

The recent decision of the Full Court of the Supreme Court in the case of *The State of South Australia (Department for Education) v Van Hattem (No 2)* has provided a timely opportunity to review the challenges faced by workers claiming compensation entitlements under the *Return to Work Act (the Act)* for psychiatric (mental health) injuries.

In this time of unprecedented upheaval and uncertainty, due to the Coronavirus pandemic, we expect to see an increase in the number of workers enquiring worker's compensation eligibility due to issues caused by psychological distress.

The decision in *Van Hattem* is consistent with our understanding of the legal test involved for psychiatric injuries, and the basis of the advice provided by Andersons Solicitors. More importantly, the insurer's argument (in this case the Department of Education) that an *even higher* threshold should apply to psychiatric injury claims has been defeated.

### Background information on the case of *The State of South Australia (Department for Education) v Van Hattem (No 2)*

Ms Van Hattem is employed as a teacher by the Department. She has suffered from significant mental health conditions for a number of years requiring ongoing treatment and medication. However, she continued in her employment whilst managing her condition.

In 2017 Ms Van Hattem's psychological condition deteriorated to the point she required admission for specialist treatment at the Margaret Tobin Centre. She claimed compensation under the *Act* for the treatment and her incapacity for work as a result of the injury. She alleged that the significant cause of her injury were circumstances of her employment, in her case '*violent and angry children*'.

## What is defined as an 'injury' in workers compensation?

An '*injury*' is defined under the *Act* to include an aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury, so it appears there was no real issue that Ms Van Hattem had sustained a separate injury. However, in the case of a psychiatric injury (including an aggravation, acceleration, exacerbation, deterioration or recurrence), employment must be **the** significant contributing cause.

As is to be expected for a long-standing condition, there were various factors and causes that contributed to Ms Van Hattem's psychiatric diagnosis. The Department's case focused on the contribution from identified relationship issues and medication changes including the cessation of anti-psychotic medication. Ms Van Hattem presented supportive medical evidence indicating that her symptoms were precipitated by stress at work, whilst acknowledging other contributing factors may have had some effect.

The primary Judge at the South Australian Employment Tribunal (**SAET**) agreed with Ms Van Hattem after hearing the evidence from both sides at Trial. The Judge found that her employment was the *more significant contributory cause* (of her injury) *than any other*. The Judge found the other causes contributory but not significant.

The Department appealed firstly to the Full Bench of the SAET and argued that the Judge had wrongly applied the test concerning significant cause. The Department's appeal failed as the SAET Full Bench found the Judge had only identified one significant cause so there was no need to articulate the test.

The Department then appealed this decision to the Supreme Court and permission was granted to the Full Court of the Supreme Court. This time the Department's argument suggested that the test required that employment be the only significant contributing cause, with '**the** significant contributing cause' utilising the definitive article.

Again, their appeal failed. However, the significance of the judgment is that it outlines the correct approach to the statutory significant contributing cause test.

Justice Parker set out that an aggregation of causes may be necessary, as there may well be multiple employment-related causes and multiple non-employment causes to a psychiatric injury. However, adopting a straight-forward approach, Parker J stated that the object of the statutory test is to determine whether employment (encompassing one or multiple aggregated employment causes) is more significant - more important or influential - than the combined effect of all the other significant contributing causes identified.

Chief Justice Kourakis agreed with Parker J but went one step further in his evaluation of the test. He articulated that the test requires '*the identification of that one of those causes which is, relative to the others, "the significant cause"*' i.e. the most significant of the contributing causes.

## Calculating the 'weight' of causes

The approaches of both judges are complimentary, but it appears one particular conflict arises in their respective evaluations. In determining causes, medical experts are directed to express the '*weight*' of the causes in percentage terms.

To use a simplistic example, an expert may assign 40% of the injury to an employment cause, 30% to family issues and another 30% to pre-existing conditions. All three would be considered significant causes. On Parker J's approach, the aggregate of the non-employment causes (30%+30%=60%) would defeat the worker's claim. Kourakis CJ's evaluation would accept the claim as employment is the most significant of the causes.

## The inherent uncertainty and unfairness of workers compensation cases for psychiatric injuries

Despite success at every step of the proceedings, the extensive litigation involved in Ms Van Hattem's case clearly shows the inherent uncertainty workers face in negotiating the current scheme. An injury where employment has been found to be the only significant cause has resulted in an appeal be pursued to the highest Court in this State.

It is important to highlight an inherent unfairness of the *Act* here applies specifically to psychiatric injuries. For a physical injury, employment need only be a significant cause, and other causes may be much more substantially significant than the employment cause without defeating its significance. To add to this, the compensation available to workers for an accepted claim for a psychiatric injury is markedly less than for a physical injury, as there is no entitlement to lump sum compensation for permanent impairment upon sustaining the injury.

If you have made, or are considering, a claim for worker's compensation as a result of a psychiatric injury you should [contact](#) Andersons Solicitors' [Workers Compensation](#) team.

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