

## RECENT DECISIONS

# Former police officer misses out on work injury damages because of failure to identify an alternative safe system of work

*State of New South Wales v Briggs* [2016] NSWCA 344 (9 December 2016)

[Link to decision](#)

## Summary

A former general duties police officer claimed work injury damages for psychological injury arising from witnessing traumatic events during his service with the NSW Police Force. His primary allegation was that his employer was negligent in failing to 'constantly monitor' his psychological health. The claim was unsuccessful because the officer did not identify a reasonable alternative system of work that his employer could have implemented to avoid or minimise the risk of injury.

The Court of Appeal stated that with regard to psychological injury, a plaintiff must have evidence identifying a particular system of work that should have been in place and evidence to show that if such a system were in place, the plaintiff would not have sustained a psychological injury.

Given the number of former police officers pursuing work injury damages claims, the ramifications of this case are significant. The decision supports the assertion that the methods already used by the NSW Police

Force to monitor the psychological health of general duties officers are reasonable in the circumstances.

## Background

Mr Briggs, a former general duties police officer, sustained a psychological injury during the course of his employment with the NSW Police Force, and subsequently made a claim for work injury damages.

The main issue to be determined was whether the psychological health of general duties police officers should be *constantly* monitored by the NSW Police Force.

The trial judge held that the State of New South Wales breached its duty of care to Mr Briggs because of his exposure to 'traumatic and gruesome' events in the course of his general duties and, more specifically, should have recognised his developing psychological problems after Mr Briggs told his supervisor he was 'struggling'.

State of NSW appealed the decision, alleging errors in the findings of the content and scope of its duty of care.

## Court of Appeal Decision

In a unanimous judgment, the Court of Appeal found that the trial judge had incorrectly decided that there was a breach of duty of care, because Mr Briggs failed to identify 'some different, specified system of work which, if it had been implemented and maintained, across the NSW

Police Force as a whole, would have been a reasonable response to the foreseeable risk of psychological injury'.

Mr Justice Leeming noted that Mr Briggs' particulars of negligence against the State of New South Wales were in substance omissions (i.e. what the employer did not do). There was 'no formulation of any general [proactive] instruction which should have been given within the NSW Police Force in order to address the foreseeable risk of mental illness'. The allegations also did not articulate how the assessment or monitoring of Mr Briggs' psychological health should have been effectively carried out.

It was noted by the Court that Mr Briggs' supervisors were aware of his wife's difficult pregnancy and his long commute to and from work, factors which may have been interpreted as the reason for his complaint of 'struggling' at work. A complaint of 'struggling' of itself was insufficient to put the supervisors on notice that he was unwell because of his duties at work.

The Court stated that the trial judge was in error in finding that Mr Briggs would have availed himself of the opportunity to undertake psychological counselling had it been suggested to him by the NSW Police Force. The Court rejected the submission that the employer should have specifically directed him to attend counselling, despite Mr Briggs being aware of counselling services provided by the NSW Police Force which he could attend of his own volition without having to be ordered to attend.

The Court confirmed that unless it can be shown that a defendant acted unreasonably in failing to take a course of action that would have eliminated the risk of harm, negligence is not established.

The judgment entered for Mr Briggs was set aside, and in lieu therefore, judgment was entered for the State of New South Wales.

## For more information, please contact:

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