

Steps to a positive

workplace culture

MKA: Risk Mitigation

1ST QUARTER 2007

Happy 2007 and welcome to the year of the pig! According to Chinese Astrology, the year of the pig holds excellent prospects for business and living well! So this is what we wish for all of our customers and associates.

The September to December Quarter was spent rolling out the Change Implementation Program for Executive Development in private and public sector organisations. The program has been well received by participants and customer organisations. This program is designed to help organisations create a strategic human resources risk management plan, and to improve effective implementation of organisational change.



MKA Risk Mitigation continues to publish the national newsletter for

the College of Organisational Psychologists. The most recent edition focused on occupational stress in Australian workplaces and it can be found at www.groups.psychology.org.au/cop/resources. The next edition will be focusing on leadership research for Australian workplaces. Martha Knox Haly, Principal of MKA Risk Mitigation will be presenting a paper on prevention of occupational stress and bullying at the LOCAL GOVERNMENT OCCUPATIONAL HEALTH & SAFETY CONFERENCE 2007 CONFERENCE on Friday, 23 February 2007 at Dockside, Sydney.

In this newsletter we will focus on two cases, *State of NSW v Marilyn Mannal (2005)* and *The State of NSW v Marilyn Mannal and Seedsman v The State of NSW*. The former case is an interesting illustration of how an absence of firm, active leadership can perpetrate a dysfunctional work environment. *Seedsman v NSW* deals with foreseeability of psychological risk, and the judgement implies that no special psychiatric or medical knowledge is required to foresee the possibility of injury by way of mental disturbance in this case.

MKA: Making Knowledge Accessible

Court Cases

State of NSW v Marilyn Mannal (2005) NSW CA 367

In the case of the *State of NSW v Marilyn Mannal (2005) NSW CA 367* Judge McLaughlin in 2004 had found that the ***State of NSW Department of Housing in Wagga***, was derelict in its duty of care and awarded over \$330,000.

Ms Mannal claimed she was subjected to victimisation, harassment, humiliation and abuse in the workplace causing her to suffer psychiatric injury.

It was stated that the risk of injury was or should have been recognised by the employer, with steps taken to prevent or ameliorate the situation that triggered it.

Ms Mannal was appointed to the position of Team Leader in the Wagga Wagga Department of Housing. Her appointment was to a position formerly held by Mr David Royle, who had expected to retain his position after restructuring. He was surprised and disappointed to be replaced. He appealed to the Government and Related Employees Appeal Tribunal, but the appeal was rejected and he was transferred to a lesser administrative position.

Ms Mannal embarked on her new post with enthusiasm, following management's directive to attack the workplace culture that had contributed to the restructuring.

From perhaps misdirected loyalty to its original team leader however, the team became even more dysfunctional, opposing and frequently actively harassing Ms Mannal. They displayed extreme resistance to change to the point of rudeness and refusal to accept direction from her. The Supervisor, Mr Singh, whilst fully aware of the deteriorating situation failed to intervene on Ms Mannal's behalf. His management style was criticised as being more concerned with being everybody's friend instead of professionally addressing the situation.

After 19 months as Team Leader and numerous representations to Management for help in the situation, Ms Mannal sought

Medical assistance for stress disorder. She never returned to full time work.

The Judge’s findings concluded that there was significant disruptive disharmony and disloyalty within the team. It was known to the Supervisor. In this light it was determined that the risks to mental health were foreseeable, that the supervisor had access to formal and informal mechanisms that could and should have been used.

The Appeals trial judge, in dismissing the governments appeal stated “ What remains is a clear conviction that the Supervisor , Mr Singh’ s, negligence materially contributed to the mental breakdown and the damage that ensued. This is sufficient to ground tortious liability.”

Seedsman v The State of NSW

The issue of determination of the likelihood of a particular work situation being a risk, was challenged and clarified in the case of **Seedsman v The State of NSW**

In the NSW Court of Appeals the claim by the State of NSW against the judgement in favour of Police Officer Beth Seedsman, for Post Traumatic Shock was dismissed with the judge re-affirming the duty of the employer to provide a safe system of work and protect an employee from reasonably foreseeable risk.

Snr Constable Seedsman was a Police Officer with the NSW Police force, when she contracted a psychological illness as a result of intensive exposure to crimes committed against children, over a period of several years. Working with the Child Abuse Unit she was

often confronted with the horrors of crimes perpetrated against children; systematic abuse, physical and sexual assault, even murder.

After the birth of her son Seedsman developed ‘hypervigilance’, constant apprehension that some abuse would be inflicted on her child. She continued to experience nightmares, insomnia, uncontrollable, unexplained tearfulness and remained in a state of high anxiety.

It was argued that there are certain work related stresses particular to specific industries and occupations and that such stresses are known and understood.

Whilst taking into account the fact that any police work is likely to be stressful,

however, His Honour found that the State of NSW had a duty of care to prevent the risk of psychiatric disorders in police involved in the investigation of child abuse and that the risk was foreseeable.

In further clarifying what is foreseeable he cited Miles CJ in Gillespie v The Commonwealth of Australia (1991) “. it is not necessary to consider foreseeability with respect to the existence of a duty of care, because the relationship of employer and employee itself gives rise to that duty of care.”

His honour further clarified “that a risk of injury which is remote, in the sense that it is extremely unlikely to occur may nevertheless constitute a foreseeable risk.

A risk which is not far-fetched or fanciful is real and therefore foreseeable.”

There is no doubt as to the applicability of these authorities to a case of psychological injury resulting from workplace stress.

The decision and dismissed appeal in Seedsman, made clear that a claim for psychological injury resulting from workplace stress is judicable and that principles apply as in relation to liability for work -related injuries generally. The final statement of the judge, strongly made the point that “ No special medical or psychiatric knowledge is required to foresee the possibility of injury by way of mental disturbance in this case.”

Future Topics

- **Creating positive, performing, professional workplace cultures**
- **Inspired Performance Management**
- **A Drug Free Workplace**
- **Adventurous workplaces without risk**
- **Positive Mental Health at Work**
- **Safety Culture Plus**
- **Real Team Building**
- **Social Sustainability as a competitive Advantage**



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