



# Vicarious Trauma in the Judicial Workplace: State Liability for Judicial Psychiatric Injury in Australia

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## PRESENTATION

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1. Judges and Traumatic Stress

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2. Liability for Vicarious Trauma and  
*Kozarov v Victoria*

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3. State Liability for Judicial Psychiatric  
Injury from Trauma Exposure

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4. Conclusion

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# I. JUDGES AND TRAUMATIC STRESS

 Nature of Judicial Work and Stressors

 Schrever Studies (2019, 2022, 2023)

 UNSW Study (2022)

 National Judicial Well-Being Study

 What do we know about Judicial Trauma in Australia?

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## 2. LIABILITY AND *KOZAROV v VICTORIA*

- Duty of care of employers in negligence and employment negligence cases pre *Kozarov*
- *Kozarov v Victoria* (HCA)
- Duty of care owed to employee from outset of employment when:
  - Exposure to trauma inherent due to ‘dangerous’ nature of work
  - Where risk of trauma to all employees known to employer
  - Where evidence employer has explicit knowledge of trauma exposure risk (eg VT Policy)



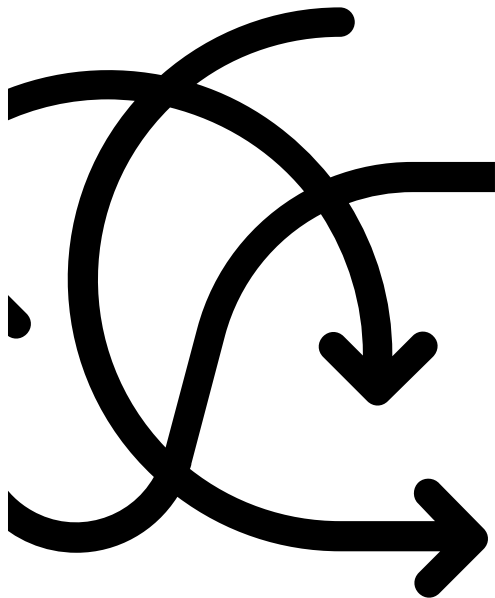
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### 3. STATE LIABILITY FOR PSYCHIATRIC INJURY FROM TRAUMA EXPOSURE

- Factors in Favour
  - Foreseeability of judicial psychiatric injury
  - Judicial officers are ‘analogous’ to employees ( a ‘labour law lens’)
  - Judicial officers are analogous to police officers
  - General principles of duty in negligence support (eg ‘control’, coherence with WHS)



### 3. STATE LIABILITY FOR PSYCHIATRIC INJURY FROM TRAUMA EXPOSURE



- Factors against:
  - Diffused responsibility for judicial work environment and ‘proper’ defendants
  - Special status, judicial independence and judicial immunity
  - Civil Liability legislation and psychiatric injuries
  - Restrictions on public authority liability

# CONCLUSION

Strong evidence judicial officers exposed to trauma/VT which causes psychiatric injury

*Kozarov* recognises negligence actions for injury from court related trauma

More difficult for judicial officers-> strong arguments in favour of liability however many barriers

Need for greater clarification of workers' compensation and institutional change

Judges' Work, Place and Psychological Health Study  
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## Vicarious trauma in the judicial workplace: state liability for judicial psychiatric injury in Australia

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There is developing, yet strong, evidence that judicial officers are seriously affected by exposure to traumatic material. The risk and prevalence of psychiatric injury to judges is now increasingly recognised. In the light of growing recognition by the High Court of Australia of the likelihood of psychiatric harm arising in people whose work exposes them to traumatic material in *Kozarov v Victoria* ('*Kozarov*'), we investigate through legal analysis the possibility that judicial officers may be entitled to compensation for such harm. This might seem straightforward after the High Court decided in *Kozarov* that the State was liable in negligence for trauma-related psychiatric injury to an employee lawyer caused in the court-related work environment. We argue in this article that, while there are strong arguments which support liability in negligence for judicial officers as non-employees, nevertheless such claims will be complex and will face a range of hurdles and barriers including those arising from judicial independence and judicial immunity.

**Keywords:** judges; judicial officers; magistrates; negligence; psychiatric injury; PTSD; vicarious trauma; workplace stress.

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