



## **Those looking after us need looking after too**

The NSW Court of Appeal decision of *Sills v State of New South Wales* [2019] NSWCA 4 is an encouraging result for injured workers in NSW, overturning a previous decision of the District Court.

The Appellant, Ms Melanie Sills, was a police officer working at Tuggerah Lakes Local Area Command. She alleged that during the course of her employment from 2003 to 2012 she was exposed to numerous traumatic incidents that resulted in psychological and psychiatric injury. She alleged that the State of New South Wales breached its duty of care by failing to follow the very system it had in place for detecting and addressing psychological injury.

Despite being aware that Ms Sills was suffering from Post-Traumatic Stress Disorder the State allowed her to return to duties that were likely to expose her to further traumatic incidents. The State did not follow the recommendations of the Police Medical Officer and Police Psychologist. The State did not provide appropriate psychological counselling to teach Ms Sills to deal with past and future traumatic events. The State did not provide any personal support to monitor her welfare as recommended. Ms Sills' return to work did indeed expose her to further traumatic events within a short period of time.

Justice Sackville of the Court of Appeal acknowledged that psychiatric personal injury claims arising due to an alleged breach of duty by an employer can be difficult to establish. He stated "*The difficulties are exacerbated when claimants, such as police officers, have responsibilities that necessarily expose them to the risk of psychological injury.*" However he found that in this case, the State did breach its duty as it was acutely aware of Ms Sills' psychological injury and did not follow the relevant system in place or implement recommendations of medical staff.

Ms Sills was awarded common law damages exceeding \$1 million. This figure comprised damages for past and future loss of earnings and superannuation and was calculated by reference to undisputed medical evidence which stated she was "*unemployable*" and "*totally incapacitated for work*" due to her injuries. It is reassuring to know that the Courts will apply the law to ensure that people who are exposed to dangerous and traumatic incidents in the workplace are adequately compensated in the event they sustain injury.