



Legal

HOW SAFE IS THE HEALTH CARE WORKPLACE FOR STAFF AND CONSUMERS?

Workplace violence is a work safety issue and a major concern. Despite many 'zero tolerance' policies on workplace violence the unacceptable incidence of this behaviour continues to escalate.

The health care industry has been identified as one of the most violent of all workplaces (Perrone 1999) and nurses are said to be four times more likely to experience violence at work than any other member of the workforce (Hegney et al 2006; Gertz et al 2005). A fact that will surprise few nurses or midwives!

Violence experienced in health care settings ranges from heinous crimes such as murder and sexual assault to theft, bullying, verbal abuse and intimidation. It can be perpetrated by patients, family members, staff and intruders. Regardless of the form of violence, the impact it has on the victim poses a serious risk to their physical and psychological health and safety.

Fortunately, violent acts causing death in the work place are rare, but they do occur as illustrated by the following snapshot of cases:

- 1992: a psychiatrist at Hillcrest Hospital, South Australia was murdered by a patient well known to her (Inquest into the death of Nandadevi Chandraratnam 1997).
- 1994: two male intruders entered the Walgett Hospital in north eastern New South Wales and kidnapped, sexually assaulted and murdered a registered nurse working alone in the aged care ward. An elderly patient who attempted to come to her aid was also assaulted (Kiejda and Butrej 2009).
- 2001: a male mental health patient killed another patient at the Kempsey District hospital in New South Wales, bashing her to death with a coffee table.
- 2002: a senior psychiatrist was gunned down in her office building in Adelaide South Australia by an ex patient.
- 2011: two nurses were stabbed, one fatally at the Bloomfield Hospital in Orange, New

South Wales by a 'low risk' mental health patient.

Although perpetrators of such violence will be subject to the criminal law process, this does not address the underlying workplace safety issues. Inadequate policy and poor security are often issues of concern, particularly in health care 'hotspots' such as emergency departments, mental health units and aged care facilities which have been identified as areas with a high incidence of violence (Hegney et al 2006). In these 'system stressed' areas staff remain vulnerable, the risk of

assault is high as patients, family members and visitors respond to their frustrations in unacceptable ways. Whilst we know that the number of assaults on staff is increasing at an alarmingly rate, we can only speculate on the true extent due to significant underreporting (Chapman and Styles 2006). Employers have both a common law and a statutory duty to address risks within their organisation and to take reasonable steps to prevent staff, consumers of its services and visitors from suffering foreseeable harm. Indeed, many employers have taken significant steps to improve workplace safety during the last two decades through improving security measures and developing a culture that will not accept violent behaviour. However, a failure to take appropriate steps in risk assessment and risk management of workplace violence may see the employer liable for their employees harm and subject to a range of penalties and sanctions for failure to comply with legislative requirements on safety (*Australian Services Union of NSW v Mercy Centre, Lavington Ltd 2005*).

Statutory governance on workplace safety has been long established through Occupational Health and Safety (OHS) legislation in all jurisdictions across Australia. These Acts provide a broad rather than a prescriptive safety framework on workplace safety for employers to follow. Even though there is some room for discretion in how to achieve compliance within the legislation, it is clear that a failure to take sufficient steps to fulfil

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these requirements could leave the employer open to penalty. For example, inadequate workplace safety measures found one health service fined \$150,000 following the death of one patient who was viciously attacked by another. Of particular significance in this case were Justice Starr's remarks on the employer's failure to enforce existing policy: *'the existence of a system on paper alone is clearly not sufficient to comply with the obligations imposed under the*

OH&S Act. The employer is required to ensure that its 'paper systems' are implemented and maintained in its daily operations' (Kiejda and Butrej 2009). Despite these comments being directed at management, employees must also ensure that they understand and comply with their employer's workplace safety policies. Failing to do so could be detrimental to any claim of entitlement for compensation should they suffer an injury as a result.

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