



SC:MWH
Ref:
21 May 2025

Dear Secretariat

Re: Questions on Notice and Response to Transcript

I refer to a question put by The Hon. Stephen Lawrence MLC, and taken on notice at the *Standing Committee on Law and Justice inquiry Proposed changes to the liability and entitlements for psychological injury in New South Wales* at which I appeared on 16 May. I further seek to correct a comment made by myself during the hearing.

The question was:

In terms of the definition of 'relevant event' [8E] and this requirement that a person actually witness an event. I'm specifically interested in Mr. Whaites, Mr. Hayes, and you, Mr. Ayoub, your thoughts about how that particular part, the proposed section 8E could be amended, and I'm particularly concerned about this idea that people witness death and they might witness death on a regular basis, but it doesn't fall within those terms in 8E. So, is there a way to broaden that definition that includes people who, according to a certain percentage of them, are probably invariably going to suffer illnesses as a consequence of certain work?

In response it may be argued by those who proposed these amendments, that "*relevant event*" is sufficiently wide noting it includes "*vicarious trauma*" which is defined in s 8H. However, the definitions of those terms fail to include the kind of trauma and psychological distress which is contemplated by the question; the exposure to trauma to which healthcare workers are exposed day after day, month after month, year after year, which is insidious and can lead to serious psychological distress. Such trauma can be caused by persistent paucity of resources (not enough staff on shift, poor skill mix on shift, not enough equipment at hand, over utilisation of unfunded bed space, as examples), leading to decreased quality of care, episodes of missed care or recognition of a deteriorating patient, with nurses and midwives finishing their shift knowing it should have been different. These are injuries we say are caused by employer action/inaction combined with a failure to implement preventative measures necessary.

Excluded by the definitions is the healthcare worker who is treating children battling cancer, a nurses treating a neonates on life support in an overcrowded Neonatal ICU, nurses and midwives offering support to a relative whose partner is slowly dying before their eyes on a palliative care ward, or the worker left to speak to the parents of a young child who has finally succumb to their rare genetic disorder. It is these healthcare workers, and their daily exposure to death and human suffering that these amendments do not adequately support. These are injuries which may occur even where there are preventative measures are in place.



A broadening of the definition of relevant event and/or vicarious trauma is one way of acknowledging and supporting these workers when they are exposed to trauma in this way. A widening of the definition to achieve that “*any event which leads to the development of, aggravation, acceleration, exacerbation or deterioration of a psychological injury*” within the meaning of section 8A is one way of covering those workers, noting that 8A also needs to be amended as per recommendation 7 in the submission made by Unions NSW.

The Association further recommends that amendments to section 8E occur so as to achieve that:

“a series of events which include one or more relevant events, shall be considered to be a relevant event for the purposes of the legislation”.

This would recognise the fact that events which trigger psychological injury do not often occur in isolation. Triggers may build up over time, or indeed a lifetime, involving a wide array of incidents. Whilst section 8G as drafted does reference “*a series of relevant events*”, this would only cover situations where each and every event in the series is a relevant event for the purposes of the legislation.

The definition of “*relevant event*” and “*vicarious trauma*” if passed in its current form will disentitle many from compensation for genuine psychological injury caused by their work environment.

On the transcript: During the hearing a question was put regarding gender. In my response I stated that 85% of psychological injuries occurred to women. This figure ought to have been 83%, it relates to the odds of women claiming psychological injuries compared to men¹.

Nationally, Safe Work Australia reports² that 57.8% of serious claims for mental health conditions were among women. NSW Government is the largest employer in the Southern Hemisphere. For both health and Education, two of the largest portfolios, women represent the majority of the workforce. For nurses, midwives and carers, the second highest cause of psychological injury is work pressure (workloads and work overload) at 28%. Removing workloads as a compensable cause for psychological injury, and raising the WPI to 30%, will have a detrimental impact on the rights of women at work.

Yours sincerely

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¹ https://www.monash.edu/_data/assets/pdf_file/0018/3103029/designforcare-psychological-injury-in-the-nsw-healthcare-and-social-assistance-industry-report-web-spread.pdf

² https://data.safeworkaustralia.gov.au/sites/default/files/2024-02/Psychological-health-in-the-workplace_Snapshot_February2024.pdf