

Review of the 2018 Review of the Model Work Health & Safety Laws

AUGUST 2019

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Foreword

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes: registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing and midwifery.

The NSWNMA has approximately 65,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). NSWNMA strives to be innovative in our advocacy to promote a world class, well-funded, integrated health system by being a professional advocate for the health system and our members. We are committed to improving standards of patient care and the quality of services of all health and aged care services whilst protecting and advancing the interests of nurses and midwives and their professions.

The NSWNMA continues to support the objective of nationally consistent WHS laws provided this lifts safety standards to the highest level for all workers and is not used to diminish protections.

The NSWNMA supports the submission made by the ACTU and welcomes the opportunity to comment on the Recommendations of the 2018 Review of the Model Work Health and Safety Laws (**the Review**) in relation to our membership – nurses and midwives in NSW. The NSWNMA supports all 34 recommendations made by the Review, on the basis that they are reasonable, proportionate and sensible responses to identified problems and challenges in the operation of Australia's WHS regime. The NSWNMA calls on the Workplace Relations Ministers to accept all 34 of the Review recommendations, to instruct Safe Work Australia to amend the Model Laws accordingly, and to work with States and Territories to implement the reforms promptly in each harmonised jurisdiction.

This response is authorised by the Elected Officers of the New South Wales Nurses and Midwives' Association. Please direct any questions or correspondence about this submission to NSWNMA WHS Professional Officer Veronica Black at vblack@nswnma.asn.au.

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Yours sincerely



BRETT HOLMES

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MAKE REGULATIONS DEALING WITH PSYCHOLOGICAL HEALTH (RECOMMENDATION NO.2)

Effects on Workers of Psychosocial Hazards

Nurses and midwives have very high levels of exposure to psychosocial hazards. Insufficient staffing levels and skill mix in hospitals, aged care, disability and the community, in both public and private sectors, are resulting in increasing quantitative demands (work load), emotional demands and increased work pace. Poorly managed rostering is seeing many nurses working extensive overtime and double shifts, compounding the effects of rotating shift work.

There is a significant culture of bullying within the industry. NSW Government conducts an annual People Matters Employee Survey, NSW Health consistently has the highest rates of workers who report witnessing and/or being subjected to bullying at work of any NSW Government department. In 2018, 39% of respondents reported that they had witnessed bullying at work and 21% reported that they had experienced bullying at work, (in some local health districts this was as high as 51% of employees saying they had witnessed bullying at work).

Another serious psychosocial hazard within the industry is exposure to occupational violence and aggression. Current arrangements for preventing and controlling violence in the health sector in NSW are not effective, with NSWNMA members reporting increasing levels of exposure to violence as well as an increase in the severity of the incidents that are experienced, with members sustaining serious injuries (those physical and psychological), including but not limited to fractured cheekbones, fractured orbital sockets, dislocated shoulders, acquired brain injuries, sexual assault & permanent hearing loss.

While we know that violence towards nurses and midwives is a very serious issue, that is well documented, well researched and widely accepted to be a significant problem, quantifying the true extent of the issue is hampered by the lack of transparency and very poor incident reporting.

In order to better understand the nature and prevalence of violence and aggression currently experienced by nurses and midwives in NSW, the NSWNMA has been involved in a research collaboration with Dr Jacqui Pich from UTS, a nurse academic with a strong research background in this area.

Dr Pich has recently completed a study looking into the experiences of NSW Nurses and Midwives with Violence on the Job, the study involved over 3500 nurses and midwives making it one of the largest studies undertaken on this topic worldwide.

Preliminary results from the study were presented at the 6th International Conference on Violence in the Health Sector in Toronto in October 2018. A copy of the report provided to the NSWNMA on this study is attached at Appendix A.

Key findings from the study include:

- 47% of nurses & midwives had experienced violence at work in the week prior to completing the survey
- 80% of nurses & midwives had experienced violence at work in the 6 months prior to completing the survey
- 76% perceived that the frequency of violent episodes was increasing

The other thing that became very clear from the study is that exposure to violence is not restricted to nurses working in emergency departments or in mental health, with workers in each of the areas of nursing & midwifery shown below reporting exposure to violence in the last 6 months:

Table 1:

Clinical area/specialty	Experienced violence in the last 6 months
Midwifery	58%
Medical/surgical	82%
Emergency Department	94%
ICU, HDU, or CCU	85%
Aged care	79%
Drug and alcohol	94%
Mental health	94%
Community health	59%
Family & child health	56%
Perioperative	64%
Rehabilitation/disability	80%

NSWNMA surveyed members on their views about the recommendations around changes to the Model Act. Members need stronger regulation of psychosocial hazards, particularly occupational violence, and talked about their experiences to illustrate this:

On the morning shift, unprovoked, I was physically assaulted by a patient causing me severe injuries. I sustained a fractured skull, fractured cheekbone and eye socket and a brain bleed.

I was attacked in the bathroom by a patient, I was also charged at with a knife by a patient. I had to barricade myself in a room with other patients. Led to years of rehab and psychiatric help. It took me six years before I was able to return to work.

A recent survey of our membership (n: 1852) conducted July 2019 demonstrated that:

Table 2:

Risk	Response
Believe there should be regulations dealing with mentally healthy workplaces	98%
Know someone seriously injured or ill because of work	80%
Experienced physical or psychological injury at work themselves	78%
In the last 12 mths experienced high workloads	75%
In the last 12 mths experienced exposure to traumatic events, distressing situations or distressed or aggressive clients/customers	72%
In the last 12 mths experienced shift work or unsociable hours	62%
In the last 12 mths experienced occupational violence	53%
Had or witnessed a near miss that could of injured a workmate or self	70%

Practical Impacts of New Regulation

Key WHS issues for nurses and midwives are not currently effectively addressed by the WHS legislation, as evidenced by the high rates of serious injury claims across the sector. The Healthcare and Social Assistance industry is the largest employing industry in Australia. It is rapidly expanding and is projected to continue to do so as the population both grows and ages, amplifying any current work health and safety issues and trends. It has a large number of work-related injuries and illness reported each year.¹

New regulation on psychosocial hazards would provide for increased focus and understanding of these important health and safety issues and provide an impetus for change.

State of Knowledge on Psychosocial Hazards

Overall the level of understanding of psychosocial hazards and relevant and appropriate controls to manage the risks associated with these hazards is very low within the sector, with most interventions focused on low level administrative controls that are often impractical (e.g. patient only to be nursed by male nurses but then no male nurses rostered on shift).

Preferred Option

The NSWNMA strongly supports **Option 2 - include requirements for managing psychosocial risks in the model WHS Regulations.**

At this stage, there is little reference to psychological health beyond the definition of health within the Model WHS Act providing no certainty to PCBU's about the nature of psychosocial hazards nor appropriate controls for managing risks arising from exposure to psychosocial hazards.

Maintaining the status quo is not an option for nurses and midwives who continue to be seriously injured on a daily basis. True injury rates are masked by workers leaving the sector suffering "burnout" but not making claims. Losing experienced qualified workers imposes a large cost over and above the cost of workers compensation claims on both the PCBU and society as a whole.

¹ Healthcare and Social Assistance Overview, Safework Australia, 2018. Viewed online 1/8/2019 at https://www.safeworkaustralia.gov.au/industry_business/health-care-and-social-assistance

Form & Content of Regulation

The NSWNMA supports new Regulation of psychosocial hazards (as opposed to psychological health). As per Table 2 above 98% of membership who responded to a survey in July 2019 also support *Regulations specifically dealing with mental health conditions and psychological risks and hazards*. There is extensive research that demonstrates that psychosocial hazards impact both the psychological and physical health of workers.

The new Regulation should provide duty-holders with guidance on identifying, assessing and managing psychosocial hazards. It is crucial that the Regulation of psychosocial hazards requires duty-holders to eliminate hazards so far as reasonably practicable and to minimize the risks where hazards cannot be eliminated. Too many of the current interventions seem to focus on the individual and building their “resilience” rather than on ensuring workers are not exposed to the hazard in the first place.

The new regulation must be detailed enough to provide clear and meaningful guidance to duty holders about their duty to ensure the health and safety of workers exposed to psychosocial hazards in the workplace. What these hazards are, how to identify them and how to manage the associated risks. Any new Regulation around psychosocial risk must be supported by quality new codes of practice with explicit information about how PCBUs can meet their obligations in relation to particular psychosocial risks (including but not limited to occupational violence and aggression, sexual harassment, bullying and fatigue).

In addition to a new regulation around psychosocial hazards, changes must be made to Part 3 of the WHS Act “incident notification” specifically to the definitions of *serious injury or illness* in s36 and to *dangerous incident* in s37 in order to ensure that serious psychosocial incidents are reported to the regulator.²

NEW ARRANGMENTS FOR HSRs IN SMALL BUSINESS (RECOMMENDATION NO.7A)

The NSWNMA endorses and supports the contents of the ACTU submissions in relation to new arrangements for HSRs in small business.

CLARIFY ENTRY OF UNION OFFICIALS PROVIDING ASSISTANCE TO AN HSR (RECOMMENDATION NO.8)

² NSWNMA, 2018. Submission by the New South Wales Nurses and Midwives’ Association: Comment on the 2018 Review of the Model WHS laws, NSWNMA, 7. Online:

http://www.nswnma.asn.au/wp-content/uploads/2018/04/2018-Review-of-the-model-WHS-laws_April-2018.pdf

The NSWNMA endorses and supports the contents of the ACTU and ANMF submission in relation to entry of union officials providing assistance to an HSR.

REQUIRING INSPECTORS TO DEAL WITH SAFETY ISSUES WHEN CANCELLING A PIN (RECOMMENDATION NO.9)

How are NSWNMA members affected by the problems in the review?

At this stage there have been few PINS issued by nurses and midwives exercising roles as HSRs within the health sector in NSW, and the NSWNMA has no information about any being cancelled by SafeWork NSW inspectors, let alone cancelled without resolving the underlying health and safety issue, (by contrast, we are aware of a number of Improvement Notices issued by SafeWork NSW inspectors that have been cancelled on internal review without any discussion with the inspector or affected workers, without safety issues being addressed, leaving workers very disillusioned about the role of the safety regulator).

What practical impact would the options have on NSWNMA membership? What is your preferred option?

The NSWNMA supports **Option 2 – Require inspectors to deal with safety issue when cancelling a PIN.**

If nurses and midwives had confidence that safety issues would be addressed it would increase the likelihood of them engaging with the mechanisms for resolving workplace health and safety issues in the workplace including electing HSRs and having HSRs exercise powers to issue PINS.

CHOICE OF HSR TRAINING COURSE (RECOMMENDATION NO.10)

How are NSWNMA members affected by the problems outlined in the review? What do you consider to be the cause and extent of disagreement over HSR training?

NSWNMA members elected as HSRs have a range of difficulties in accessing HSR training, these difficulties include:

- Lack of acceptance by the PCBU that they are entitled to attend HSR training, (can sometimes including attempts to send them to other shorter, non HSR courses);
- Availability of training, particularly for more rural/remote workers and a reluctance of PCBUs to pay reasonable costs associated with travel and accommodation to attend;
- Staff shortages creating obstacles for release to attend training particularly for HSRs from smaller facilities;
- Increased numbers of PCBUs becoming authorised to run HSR training and an expectation that workers will attend the training run by their employer;

- Lack of knowledge from HSRs that they are entitled to training (but must request it) and that they have choice of provider.

In review of July 2019 survey responses (n: 1448) greater than 95% of respondents believe that unions should;

- *have a role in work health and safety, 98%*
- *be involved in educating and informing workers, Health and Safety Representatives, employers and companies about work health and safety, 95%*
- *have a role in supporting and assisting Health and Safety Representatives - 98%*
- *be able to represent workers and Health and Safety Representatives in disputes with their employer or company about work health and safety issues. - 99%*

Practical impact of options on NSWNMA members?

Should the status quo remain, this will continue to be a source of unnecessary disagreement and to delay access to HSR training for NSWNMA members.

Clarifying that workers are allowed the choice of training provider will remove unnecessary conflict at the beginning of the HSR term of office and improve working relationships moving forward.

What is the preferred option and why?

The NSWNMA supports **Option 2 – Allow HSR choice of training provider.**

This will remove unnecessary conflict between HSRs and PCBU's.

What do you consider the main course of disagreements over HSR training?

Please see response to question “how are NSWNMA members affected?”

REFERRAL OF DISPUTES (RECOMMENDATION NO.13)

How are NSWNMA members affected by the problems identified in the 2018 review findings, and to what extent?

The current systems in place for resolving WHS issues are often ineffective and significant issues are failing to be addressed for extended periods of time (if they are addressed at all). It takes a lot of bravery for workers to get to the point where they are requesting support from SafeWork and when the response is either not forthcoming, or not timely, this is very

disillusioning and further contributes to a poor reporting culture where workers don't bother raising safety issues as they feel that nothing will be addressed.

In review of July 2019 survey responses (n: 1442) 77% of respondents believe that *if workers and the company disagree about a work health and safety issue and a safety inspector is not able to help them to resolve the disagreement, either party should be able to go to a court or tribunal.*

What practical impact would the options have on NSWNMA members?

Option 1 – status quo would not address the ongoing issues being faced by NSWNMA members in having safety issues in their workplaces addressed, increasing the risk of further injuries to an industry that already has the highest rate of serious injuries in the country.

Option 2 would provide an avenue for NSWNMA to support our members to have safety matters resolved in a timely manner when discussions at a local level have failed to resolve the issues.

What is your preferred option and why?

The NSWNMA strongly supports **Option 2 – Allow referral to a court or tribunal of outstanding disputes on a WHS or cease work issue after 48 hours** as it would enable the resolution of ongoing WHS issues and reduce member injuries. If option 2 is adopted, it must allow for a trade union representing a party to a WHS issue or whose members are involved in a cease work to refer these matters and represent their members in these jurisdictions.

If option 2 is adopted, would you seek to refer issues that are not resolved under S 82 or 89 of the model WHS act to a court or tribunal? Please explain why?

Provided that trade unions had the authority to refer matters on behalf of members and to represent members in relation to unresolved issues then the NSWNMA would certainly seek to refer unresolved issues under s82 or s89 to a court or tribunal. The NSWNMA takes the safety of our membership very seriously and will exercise all available options to ensure the health and safety of nurses and midwives in NSW.

REMOVE 24-HOUR NOTICE PERIOD FOR ENTRY PERMIT HOLDERS (RECOMMENDATION NO.15)

How is the NSWNMA and our membership affected by this problem?

This matter is not currently an issue for the NSWNMA as the 24 hour notice period for entry permit holders has never been implemented in the NSW jurisdiction.

What practical impact would requiring or not requiring a WHS entry permit holder to provide prior notice of entry have on the NSWNMA and our membership?

The NSWNMA rarely exercises our right to enter a workplace with less than 24 hour notice, but when we do, it is because the health and safety issues affecting our members constitute a serious and imminent risk to our members.

Should the 24 hour notice remain in the Model WHS Act and be implemented at a future date within the NSW jurisdiction this would limit our capacity to support members facing serious and immediate risks to their safety.

What is your preferred option and why?

The NSWNMA supports **Option 2 – remove the 24 hour notice period for entry permit holders.** This would remove a historical anomaly that is not present in any of the harmonised jurisdictions and allow us to continue to provide support to our membership.

REQUIRE PRODUCTION OF DOCUMENTS AND ANSWERS TO QUESTIONS AFTER ENTRY (RECOMMENDATION NO.17)

The NSWNMA endorses and supports the contents of the ACTU submission in relation to requiring the production of documents and answers to questions after entry.

ENHANCE CATEGORY 1 OFFENCE (RECOMMENDATION NO.23A)

The NSWNMA endorses and supports the contents of the ACTU and ANMF submission in relation to enhancing Category One offence

PROHIBIT INSURANCE FOR WHS FINES (RECOMMENDATION NO.26)

The NSWNMA endorses and supports the contents of the ACTU submission in relation to prohibiting insurance for WHS fines.

CLARIFY THE RISK MANAGEMENT PROCESS IN THE MODEL WHS ACT (RECOMMENDATION NO.27)

The NSWNMA endorses and supports the contents of the ACTU submission in relation to clarifying the risk management process in the model WHS Act.

ADD A SWMS TEMPLATE TO THE WHS REGULATIONS (RECOMMENDATION NO.29A)

The NSWNMA endorses and supports the contents of the ACTU submission in relation to adding a SWMS template to the WHS regulations