

14 September 2018

Ms Jo-Anne Holmes
Administration Officer
Select Committee on Stillbirth Research and Education
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: stillbirth.sen@aph.gov.au

Dear Ms Holmes,

Thank you for the opportunity to present to the Committee on Thursday, 9 August 2018.

From our reading of the transcript from that Public Hearing, we have determined that there are two Questions on Notice to which we committed to respond with additional information:

- The **compensation avenues** available for parents who have lost a baby, either through stillbirth or in the neonatal period and the discrepancy in damages negotiated or awarded in the various states and territories; and
- Best practice **employer responses** including paid leave entitlements provided to workers suffering from pregnancy cessation due to miscarriage or stillbirth.

Background – compensation avenues

Where a death results from negligence, those left behind, such as direct family members and potentially others, may be entitled to compensation for their losses flowing from the death.

Negligence occurs where a duty to take reasonable care is owed to the deceased person and this is breached. If that breach or negligence is established, on the balance of probabilities, as the cause of the death, legal liability to pay compensation can arise.

This position applies broadly in many contexts where deaths occur as a result of a failure to take reasonable care including:

- workplaces,
- road use,
- accidents on property owned or managed by a party or statutory authority,
- deaths from faulty products, and
- resulting from the provision of medical services or treatment.

A health care provider always owes a duty of care to their patient and in the context of a claim arising from death, can owe a duty to other 'third parties' that it would be 'reasonably foreseeable' would suffer injury, loss and damage from the negligently caused death.

There are three broad categories of damages that can be claimed under the common law arising from negligently caused death:

1. Loss of dependency on the financial support or domestic and other services provided by the deceased to dependants (usually a spouse and children);
2. Damages for a recognised and diagnosed psychiatric injury/mental harm (formerly referred to as 'nervous shock') arising from being at/or witnessing the scene of the event and death or being in a relationship with the deceased covered by the various state / territory legislative provisions (usually family members). A normal grief and emotional reaction to the death is not compensable; and
3. Funeral and other expenses arising from the death incurred by the estate of the deceased.

These common law (case made law) entitlements have over time been modified by legislation through the introduction of thresholds, caps and limitations.

The first category of damages for loss of dependency is relevant to the death of an adult leaving behind a spouse, children and other potential dependants. In these circumstances, a claim can be pursued for both loss of dependency and psychiatric injury.

In the case of the death of a baby or stillbirth, the only potentially available claim is to pursue a claim for psychiatric injury (such as for anxiety, depression, adjustment disorder or post-traumatic stress disorder).

Such a claim potentially covers damages for:

- pain and suffering/loss of enjoyment of life arising from the psychiatric injury (also referred to as general damages or non-economic loss); and
- financial losses arising from the psychiatric injury including the cost of past and future treatment and medication, travel expenses relating to this treatment and loss of earnings and loss of earning capacity (also referred to as special damages and economic loss).

As medical negligence lawyers pursuing claims for psychiatric injury for negligently caused death, we have experienced on the one hand a 'pushing up' of damages for psychiatric injury in Victoria, the Australian Capital Territory and New South Wales.

On the other hand, in other states, for reasons including limitations introduced as part of legislative reform in the early 2000s and a more modest approach to general

damages/damages for non-economic loss generally, damages for psychiatric injury are modest and we would say out of keeping with community expectations.

We believe that the damages available in Victoria, the ACT and NSW are more in keeping with the community's increased understanding of the impact of impaired mental health on an individual, their work capacity and ability to contribute to society and the ripple effects on families and the wider community.

In **Attachment 1**, you will find a summary table setting out the various statutory provisions in the various states and territories which illustrates the discrepancies outlined above.

We would submit that damages negotiated or awarded in the range of \$15,000 to \$25,000 for psychiatric injury arising from the death of a baby from established medical negligence is not sufficient or appropriate. We consider that there should be levelling up of the damages awarded to appropriately reflect the extent of the loss and far reaching psychological harm suffered by parents in these situations.

The concern is that the low potential quantum of such damages presents a disincentive for a claim to be pursued and thus a lost opportunity for transparency, accountability and learnings to improve patient care and reduce stillbirths and neonatal deaths.

There are limited other avenues to shed light on poor medical treatment resulting in perinatal the loss of life which include:

- Internal hospital reviews, including root cause analysis;
- Matters and complaints raised with the various state based health complaints bodies and AHPRA;
- Reviews by state based mortality and morbidity committees;
- Coronial inquiries (not currently a process open in the case of stillbirths);

However, other than coronial inquiries, the avenues are generally confidential processes and so their ability to provide individual transparency is limited.

We remind the Committee that broadening the coronial jurisdiction to include stillbirths formed a significant part of Maurice Blackburn's original submission to this inquiry.

Background – best practice employer responses

The transcript from the public hearing, the Chair made the following request:

“We also want to understand leave entitlements and the kind of support that families can receive from their employers. I'm just wondering if you're able to share with us any examples or stories of leave arrangements in relation to any of your clients — what they may have received or accessed or if there's anything you think is important for us to be aware of”. (p.36)

Maurice Blackburn believes that the best practice can be seen in the Enterprise Agreement of Ausgrid, as negotiated with the Electrical Trades Union¹.

¹ Refer to CPSU NSW submission to this inquiry. Submission #68.
<https://www.aph.gov.au/DocumentStore.ashx?id=d951b335-05b6-4d60-9bd1-6f8ffe799646&subId=612898>

Section 30.8 of that agreement reads as follows:

“30.8 Cessation of pregnancy - stillbirth and miscarriage

30.8.1 Where the pregnancy ceases by way of miscarriage between 12 and 20 weeks gestation then subject to providing a medical certificate:

(a) the birth parent will be entitled to six weeks paid special parental leave; and

(b) the non-birth parent will be entitled to compassionate leave in accordance with Clause 29 of this Agreement.

30.8.2 Where the pregnancy ceases by way of stillbirth after 20 weeks gestation to birth then subject to providing medical certificate:

(a) the birth parent will be eligible for 16 weeks paid special leave; and

(b) the non-birth parent will be eligible for one week of paid special leave.

30.8.3 The leave set out above in this Clause 30.8 may be added to with approved accrued leave including annual leave, personal carer’s leave and accrued personal leave.”

Maurice Blackburn recommends that the Committee consider advocating for the inclusion of the above section, or equivalent, in the National Employment Standards of the *Fair Work Act 2009*.

In doing so, Maurice Blackburn submits that the learnings from this Inquiry should inform the amount of paid leave that should be included, which balances the needs of both the parents and the employer.

A period of paid special leave will not only be of great assistance and comfort for the parents suffering a miscarriage or stillbirth but will also benefit the workplace bearing in mind the impact on work performance from the psychological impact of such loss. We note the reference in the submission of Leanne Smith to this Inquiry (sub 77) that:

I was not a functioning member of society or the workforce for at least 6 months. I believe that people need to be given sufficient time away from the workforce in the first instance to deal with the emotional and physical turmoil.

We know from our experience that the psychiatric impact of such loss includes loss of concentration and impaired thinking and judgement which can have consequences in the workplace. Parents that we have acted for in relation to peri-natal loss have struggled with impaired work capacity and performance.

A period of paid leave will provide parents with the opportunity to take the time to grieve and adjust to their loss and will maximise the opportunity for a successful return to work.

Thank you again for the opportunity to participate in the Committee’s valuable work.

If the Committee identifies any way that Maurice Blackburn might further assist, please do not hesitate in making contact.

Yours faithfully,

Dimitra Dubrow
Principal and Head of Medical Negligence
Maurice Blackburn

Attachment 1

State-based approaches to damages for psychiatric injury.

State	Legislation or Rule	Threshold / Narrative	Range of Damages
Vic	<p>Section 72 of the <i>Wrongs Act 1958</i> (Vic) provides that a duty of care to take care not to cause pure mental harm is owed where the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken. Circumstances include the nature of the relationship between the plaintiff and any person killed, injured or put in danger.</p> <p>Section 73 provides that the plaintiff is not entitled to recover damages for pure mental harm unless the plaintiff is or was <u>in a close relationship with the victim</u>.</p> <p>Pursuant to s.28LE, there is a restriction on the recovery of damages for non-economic loss. A person is not entitled to recover damages for non-economic loss in any proceeding in a court in respect of an injury to a person caused by the fault of another person unless the person injured has suffered 'significant injury'.</p>	<p>Pursuant to s.28LF(1)(c) of the <i>Wrongs Act 1958</i> (Vic), a 'significant injury' includes loss of a foetus.</p> <p>Pursuant to s.28LF(ca), a 'significant injury' can also be psychological or psychiatric injury arising from the loss of a child due to injury to the mother, child or foetus before, during or immediately after birth.</p> <p>In other cases of psychiatric injury, the 'significant injury' threshold to recover general damages is 10% whole person impairment as assessed under the American Medical Association Guides and the Guide to the Evaluation of Psychiatric Impairment (s.11 of the <i>Wrongs Amendment Act 2015</i> (Vic).</p> <p>Duty not to cause pure mental harm requires development of "recognised psychiatric illness".</p> <p>"Pure mental harm" is harm other than consequential mental harm.</p> <p>Mental harm means "psychological or psychiatric injury".</p>	<p>The cap on damages for non-economic loss is set out under s.28G of the <i>Wrongs Act 1958</i> (Vic) and is indexed in accordance with the consumer price index for the preceding two financial years under s.28H of the <i>Wrongs Act</i>.</p> <p>As at 15 June 2018 the cap on general damages is \$605,067</p> <p>Damages are awarded depending on the severity of the injury.</p> <p>At the time the Bacchus Marsh Hospital perinatal deaths were being scrutinised, we noted that damages for families affected by avoidable stillbirth and neonatal death had previously received between \$50,000 and \$250,000 for their pain and suffering.²</p>
NSW	<p>Section 30(1) of the <i>Civil Liability Act 2002</i> (NSW) provides that the section applies to the liability of the defendant for pure mental harm to the</p>	<p>No damages may be awarded for non-economic loss unless the severity of the non-economic loss is at least 15% of a most extreme case (s.16(1) CLA).</p>	<p>The current maximum amount of damages that may be awarded for non-economic loss is \$612,500, but the maximum amount is only to be awarded in a most extreme case.</p>

² See <https://www.theage.com.au/national/victoria/bacchus-marsh-hospital-stillbirth-count-rises-to-11-after-fresh-review-20160608-gpe3jh.html>

	<p>plaintiff arising wholly or partly from mental or nervous shock in connection with the victim being killed, injured or put in peril by the act or omission of the defendant.</p> <p>Section 30(2)(b) of the <i>Civil Liability Act 2002</i> (NSW) provides that a plaintiff is not able to recover damages for pure mental harm unless the plaintiff is a <u>close family member</u> of the victim.</p> <p>“Close member of the family” includes a parent of the victim.</p> <p>Section 31 of the CLA provides that there is no liability to pay damages for pure mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.</p> <p>Section 32 provides that the defendant does not owe a duty to the plaintiff not to cause mental harm unless the defendant ought to have foreseen that a person of normal mental fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken. The circumstances of the case includes the nature of the relationship between the plaintiff and any person killed.</p>		<p>If the severity of the non-economic loss is at least 15%, then damages are worked out as a proportion of the maximum amount that may be awarded for non-economic loss, pursuant to s.16.</p> <p>For example, a rating of 15% would incur a proportion of 1% of the maximum, or \$6,125. However, each amount is to be rounded to the nearest \$500, so would in effect be \$6,000.</p> <p>A rating of 34% or higher will incur a proportion of the total of the same value.</p> <p>For example, a rating of 34%, would incur a proportion of 34% of the maximum, or \$208,250, or with rounding, \$208,500.</p> <p>Upon review of judgments in NSW, the range of damages awarded was between <u>\$36,800 and \$426,000</u>.</p> <p>The latter was for injury assessed as being 75% of the most extreme case, and was for a near catastrophic level injury.</p>
Qld	<p>In Queensland, the Psychiatric Impairment Rating Scale (PIRS) is used to determine the level of psychiatric injury of a person, which is set out in schedule 6 of the <i>Civil Liability Regulation 2014</i> (Qld).</p> <p>Part 2 of the Regulation concerns “mental</p>	<p>PIRS rating thresholds are used to determine ISV:</p> <ul style="list-style-type: none"> a) Extreme mental disorder: 31 – 100% (ISV of 41 – 65) b) Serious mental disorder: 11 – 30% (ISV of 11 to 40) c) Moderate mental disorder: 4 – 10% (ISV of 2 to 10) 	<p>Current range of general damages for those ISVs:</p> <ul style="list-style-type: none"> a) Extreme mental disorder: \$100,280 - \$193,500 b) Serious mental disorder: \$17,590 - \$96,600 c) Moderate mental disorder: \$2,820 - \$15,600 d) Minor mental disorder: \$0 - \$1,410.

	<p>disorders". There are 4 levels:</p> <ul style="list-style-type: none"> a) Extreme mental disorder b) Serious mental disorder c) Moderate mental disorder d) Minor mental disorder <p>The PIRS rating is then a factor used to determine the Injury Scale Value (ISV) of the injury alongside the following:</p> <ul style="list-style-type: none"> a) Degree of insight b) Age and life expectancy c) Pain and suffering d) Loss of amenities of life e) Likelihood difficulties would have emerged in any event f) If there is extreme psychological trauma, the immediate adverse psychological reaction 	<p>d) Minor mental disorder: 0 – 3% (ISV of 0 to 1)</p>	<p>From our experience, about <u>95% of clients would qualify as having a moderate mental disorder or below</u>, and therefore be entitled to \$15,000 or less.</p> <p>For a person to be assessed in categories a) and b), their ability to perform activities of daily living and to earn an income would have to be very significantly affected.</p>
WA	<p>The relevant Act is the <i>Civil Liability Act 2002</i> (WA). Part 1B concerns mental harm.</p> <p>Section 5S provides that the defendant does not owe a duty of care to the plaintiff to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.</p> <p>The circumstances of the case include the nature of the relationship between the plaintiff and any person killed, injured or put in peril.</p>	<p>Damages for non-economic loss are governed by Part 2, Division 2 of the CLA.</p> <p>Pursuant to s.9(1) if the amount of non-economic loss is assessed as not more than Amount A, the net compensation payable will be nil.</p> <p>Pursuant to s.9(2) if the amount assessed is to be more than Amount A but less than Amount C, damages are not to be awarded in an amount that is more than the excess of the amount assessed over amount A.</p> <p>Pursuant to s.9(3) if the amount of loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C damages are not to be awarded in an amount that is more than the</p>	<p>Currently if the amount assessed is less than \$21,500 there will be no award for non-economic loss.</p> <p>If the amount of loss is assessed as being more than \$21,500 but less than \$63,500, damages will not be awarded in excess of the amount assessed over \$21,500.</p> <p>If the injury is assessed as being above \$85,000, or approximately 20.5% or higher, damages are not to be awarded in an amount that is more than the excess over \$21,500 – (Amount assessed - \$63,500)</p> <p>The maximum amount of general damages payable for pain and suffering in the 2018 – 2019 financial year is \$418,000.</p>

	<p>Pursuant to s.5T, a court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness.</p>	<p>excess of the amount assessed over the amount calculated as follows: Amount A – (Amount assessed – Amount C)</p> <p>For the financial year ending on 30 June 2003 — (a) Amount A is \$12 000; and (b) Amount C is \$36 500.</p> <p>Currently as per the Government Gazette: Amount A: \$21,500 Amount B: \$7,000 Amount C: \$63,500</p> <p>There is no fixed method of calculation and each case is assessed individually.</p>	
SA	<p>The relevant Act is the <i>Civil Liability Act 1936</i> (SA).</p> <p>Section 33 provides that the defendant does not owe a duty to the plaintiff to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.</p> <p>In a case of pure mental harm, the circumstances of the case to which the court is to have regard include:</p> <p>(a) The nature of the relationship between the plaintiff and any person killed, injured or put in peril.</p> <p>'Mental harm' means impairment of a person's mental condition.</p> <p>Pursuant to s.53, damages may only be awarded for mental harm if the injured person:</p>	<p>Section 52 provides that damages for non-economic loss may only be awarded if:</p> <p>(a) the injured person's inability to lead a normal life was significantly impaired by the injury for a period of 7 days; or</p> <p>(b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury (indexed in accordance with the Consumer Price Index).</p> <p>If damages are to be awarded for non-economic loss the injured person's non-economic loss is to be assigned a numerical value from 0 to 60, with 60 being the gravest conceivable kind of non-economic loss.</p>	<p>The maximum would be $\\$172,500 + (10 \times \\$6,900) = \\$241,500$. This would then be multiplied by the most recent CPI for September divided by the CPI for September 2002.</p> <p>General damages for psychiatric injury are generally modest and at the lower end and can be \$15,000.</p>

	<p>(a) Was physically injured in the accident or was present at the scene of the accident when the accident occurred; or</p> <p>(b) Is a parent, spouse, domestic partner or child of a person killed, injured or endangered in the accident. (Siblings are excluded in this part. This was endorsed by the High Court in <i>King v Philcox</i> [2015] HCA 19)</p> <p>Damages may only be awarded for pure mental harm if the harm consists of recognised psychiatric illness.</p>																				
ACT	<p>The Civil Law (Wrongs) Act 2002 ACT. Part 3.2 governs mental harm claims.</p> <p>Mental Harm is defined in Section 32 as ‘impairment of the person’s mental condition’.</p> <p>Pure mental harm to a person is defined as ‘mental harm to the person other than consequential mental harm.’ Consequential mental harm means mental harm that is a consequence of bodily injury to the person.</p> <p>Section 33 says that a person can claim damages when the ‘injury arose completely or partly from mental or nervous shock.’</p> <p>Section 34 says that the mental harm or nervous shock must be a</p>	<p>Case example - Judgement of Supreme Court of ACT</p> <p><i>KS and XT [2018] ACTSC 84</i></p> <p>First Plaintiff (mother who lost baby) Pain and suffering damages assessed at \$230,000 – of which half attributable to the past (i.e 6 years in total)</p> <table border="0"> <tr><td>General damages</td><td>\$230,000.00</td></tr> <tr><td>Interest</td><td>15,525.00</td></tr> <tr><td>Past out of pocket</td><td>2,117.05</td></tr> <tr><td>Future out of pocket</td><td>11,504.00</td></tr> <tr><td>Past economic loss</td><td>79,383.50</td></tr> <tr><td>Interest</td><td>8732.00</td></tr> <tr><td>Future econ. loss</td><td>290,321.30</td></tr> <tr><td>Interest</td><td>31,935.30</td></tr> <tr><td>Total</td><td>\$669,518.15</td></tr> </table> <p>Second Plaintiff (father)</p> <p>Court accepted that he suffers/continues to suffer major depression to mild to moderate severity, adversely affecting relationships and enjoyment of life.</p>	General damages	\$230,000.00	Interest	15,525.00	Past out of pocket	2,117.05	Future out of pocket	11,504.00	Past economic loss	79,383.50	Interest	8732.00	Future econ. loss	290,321.30	Interest	31,935.30	Total	\$669,518.15	<p>The Court has discretion to award damages for pain and suffering taking into account previous cases.</p>
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	<p>'recognised psychiatric injury'.</p> <p>Section 35 says that damages generally (s.35(1)) and Damages for economic loss (s.35(2)) cannot be awarded unless the pure mental harm was a 'recognised psychiatric injury'.</p> <p>Section 36 extends liability in certain cases and says that where liability relates to an injury caused by a wrongful act or omission by which someone else (A) is killed includes liability completely from mental or nervous shock received by:</p> <ul style="list-style-type: none"> (a) a parent of A (b) a domestic partner of A (not relevant in neonatal death) (c) Another family member of A if A was killed, injured or put in danger within the sight or hearing of the other family member. <p>Section 36 (2) says the Court can decide who is party to the action and who is to have conduct of the action and the Court can award damages that it considers proportional to the damage to the plaintiffs resulting from the wrongful act or omission.</p> <p>Regarding damages for pain and suffering, loss of amenities of life and loss of expectation of life Section 99 says the Court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.</p>	<p>General damages - \$200,000.00 and out of pocket expenses, plus interest. = \$229,373.00</p>	
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<p>Tas</p>	<p>The relevant Act is the <i>Civil Liability Act</i> (2002) – Part 8</p> <p>Relevant definitions: s.29</p> <p>- consequential mental harm means mental harm that is a consequence of a personal injury of any other kind;</p> <p>- mental harm means impairment of a person's mental condition;</p> <p>- pure mental harm means mental harm other than consequential mental harm.</p> <p>Part 8 (except s.31) applies to any claim for damages for mental harm resulting from a breach of duty except civil liability (intentional acts, dust diseases, MVA, workers injuries).</p> <p>Section 31 says the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.</p> <p><u>Pure Mental Harm</u> Recovery for pure mental harm arising from shock under s.32 where mental or nervous shock in connection with another person being killed, injured or in peril as a result of act or omission D. P cannot recover damages for pure mental harm unless</p> <p>- the plaintiff witnessed the scene, the victim being killed, injured or put in peril or the immediate aftermath of the victim being killed or injured OR - the plaintiff is a close family member. (Close</p>	<p>Section 27 – restriction on general damages.</p> <p>27(1) If the amount of non-economic loss is assessed to be not more than Amount A, no damages are to be awarded for non-economic loss.</p> <p>27(2) If the amount of non-economic loss is assessed to be more than Amount A but not more than Amount B, damages awarded for non-economic loss are calculated as follows:</p> <p>Amount awarded = 1.25 x (amount assessed minus Amount A)</p> <p>27(3) If the amount of non-economic loss is assessed to be more than Amount B, damages awarded for non-economic loss are an amount equal to the amount assessed. S.27(4)</p> <p><u>Amount A</u> Amount A = \$4,000 for year ending 30 June 2004 AND For each subsequent financial year:</p> $A = A_0 \times \frac{C}{D}$ <p>A = Amount A A₀ = \$4,000 C = CPI for Hobart for March quarter immediately preceding the financial year in which threshold applies D = values of CPI for March 2003 Quarter</p> <p><u>Amount B</u> Amount B = Amount A x 5</p> <p>S.27(5) Provides that if Amount A is not a multiple of \$500 – the amount is to be rounded off to the nearest multiple of \$500, with an amount that is \$250 more than a multiple of \$500 – then it is round off to the next highest.</p>	<p>1 July 2018 – 30 June 2019</p> <ul style="list-style-type: none"> - Amount A = \$5,500 - Amount B = \$27,500 <p>If the amount of general damages being claimed is between \$5,501 and \$27,500, the award should be calculated as follows:</p> <p>Amount awarded = 1.25 x (amount assessed - \$5,500).</p> <p>If the amount of general damages is assessed as being over \$27,500 then it is awarded at the amount it is assessed.</p>
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	<p>family member means parent, spouse, child, step child, sibling)</p> <p>Section 33 says that damages for pure mental harm resulting from breach of duty cannot be awarded unless the pure mental harm was a 'recognised psychiatric injury'.</p> <p>Section 34 says that that the defendant does not owe a duty to another person to take care not to cause mental harm unless a reasonable person in the position of the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.</p> <p>For pure mental harm circumstances of case include</p> <ul style="list-style-type: none"> - whether or not the pure mental harm was suffered as a result of a sudden shock (34(1)(2)(a)) and - whether or not there was a pre-existing relationship between P & D. <p>For consequential mental harm circumstances of case include</p> <ul style="list-style-type: none"> - circumstances of the case include the nature and extent of the personal injury suffered by the defendant s.34(3) 	<p>S.28 provides tariffs for general damages: In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.</p> <p>For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.</p> <p>In this section – other courts includes a court of any jurisdiction within Australia, including Tasmania.</p>	
NT	<p>Nervous shock claims in the Northern Territory are governed by Part VII of the <i>Law Reform (Miscellaneous Provisions) Act 1956</i>.</p> <p>Section 25 extends the liability of tortfeasors to include liability for mental or nervous shock sustained by:</p>	<p>Damages for non-economic loss are awarded according to the injured person's degree of permanent impairment.</p> <p>Section 26 of the <i>Personal Injuries (Liabilities and Damages) Act</i> provides that the Court must determine the degree of permanent impairment based on evidence from a medical practitioner</p>	<p>Currently, the maximum amount is declared at \$660,000, however this is subject to change in the near future.</p> <p>Under s. 27(3) of the <i>Personal Injuries (Liabilities and Damages) Act</i>.</p> <ul style="list-style-type: none"> • If whole personal impairment (WPI) is held to be >85%, then the

	<p>(a) A parent, spouse or de-facto partner of a person killed, injured or put in peril by a negligent act;</p> <p>(b) A child, sibling or half-sibling of a person killed, injured or put in peril – but only if they were within sight or hearing at the time the person was killed, injured or put in peril.</p> <p>Pursuant to section 23, a “parent” is taken to include a biological parent, grandparent, step-parent or person standing in the place of a parent.</p> <p>A “child” includes a son, daughter, grandson, granddaughter, step-son, step-daughter or person to whom that person stands in the place of a parent.</p>	<p>who has undertaken an assessment in accordance with the “prescribed guides”.</p> <p>Under section 18 of the Act, the prescribed guides are the American Medical Association Guides to the Evaluation of Permanent Impairment. For personal injury claims in the Northern Territory, the appropriate Guides are AMA6 (Chapter 14).</p> <p>The maximum award for non-economic loss is Declared by the minister and published in the <i>Gazette</i> on or before 1 October each year.</p>	<p>maximum amount must be awarded;</p> <ul style="list-style-type: none"> • If WPI is 15% to 84%, the equivalent percentage of the maximum amount is awarded; • If WPI is 5% to 14%, the relevant percentage ranges between 2% and 12% of the maximum amount (see <i>Table under s. 23(3)(c)</i>). • If WPI is <5%, there is no entitlement to non-economic damages. <p><i>Example: If the Court determines the plaintiff’s WPI to be 18% arising from psychological/ psychiatric injury, the plaintiff would be awarded 18% of \$660,000 (\$118,800) for non-economic loss.</i></p>
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