

# Healthy Workforce

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## The Trauma-Informed Organisation

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# 1. Executive Summary

## Vicarious trauma: preventing personal injury

1. **Recognising Trauma and Vicarious Trauma is a relatively recent social phenomenon**

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2. **Lawyers and administrative staff working with traumatised clients and traumatic materials are significantly and negatively impacted**

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3. **Lawyers and administrative staff working with traumatised clients and traumatic materials are more impacted than mental health professionals**

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4. **Recent Court cases in Australia are identifying the workplace as responsible for personal injury suffered through exposure to traumatic material at work**

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5. **Adopt trauma-informed organisational policy, practices, and strategies**

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  - a. Prevention: Workplace is informed about vicarious trauma

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  - b. Prevention: Help identify risks of indirect trauma including possible causes, including specific Workplace risk factors and employee risk factors

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  - c. Early Intervention: Psychological First aid: Normalise effects of exposure

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  - d. Early Intervention: Describe protective measures and effective responses; build skills. Develop individual resilience to clients' trauma; Individuals learn how to manage their own exposure to clients' trauma in daily practice

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  - e. Early Intervention: Team supportive systems in place (Team Clinical supervision)

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  - f. Specialist Intervention: If symptoms emerge provide access to individual specialist support to stop further deterioration and commence recovery

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  - g. Post Traumatic Growth: Build survive and thrive team programs

## 2. Understanding context: why now?

*Vicarious or secondary trauma experience has always been part of legal practice although many do not acknowledge the risk it can have on the mental health, well-being, and performance of legal professionals (James, 2020).*

### If it's always been part of the work, why has it taken so long recognising the harm?

Recognising the impacts of trauma is a relatively recent phenomenon. It takes society time to recognise new emergent phenomena.

Post-Traumatic Stress Disorder (PTSD) first appeared in the diagnostic manual in 1980. Indirect trauma, even later. In 1990 it was first identified that therapists working with traumatised clients may experience PTSD symptoms themselves, including intrusive thoughts of images and painful emotions connected to their patient's memories (McCann & Peartman, 1990).

Indeed, a paper published in Harvard Business Review identified trauma treatment only being recently introduced in Victoria's largest Mental Health System "We had not been primed to attend to the significance of trauma in our patient's lives, it was hiding in plain sight from us" (Casey et al, 2018).

The recognition of vicarious trauma came in the wake of 9/11. It became included in the diagnostic manual of mental disorders (DSM V, 2013) to de-stigmatise the reactions of first responders and reinforce the need for wellness training and post exposure care.

If the significance of trauma is only just being understood in healthcare systems, it is not surprising that the evidence base relating to trauma and vicarious trauma is only now informing the justice system. The largest evidence base relating to lawyers, administrative staff and members of the judiciary working with traumatised clients comes from the United States although more studies are emerging from Australia and thus gaining gradual acceptance that the psychological impacts are real. A recent study in Australia (Maquire and Byrne, 2016) showed lawyers had higher symptoms of vicarious trauma than mental health professionals. Another research study showed 75% of lawyers met criteria for functional impairment, 34% for Secondary traumatic stress, 11% PTSD (Levin, 2011).

## What is the psychological impact of legal work?

Staff working in the Courts listen to, observe, and then directly engage with clients and others who have been injured and traumatised. They work with the detail of the traumatic events, sometimes having to reread accounts, make sense of the human traumatic experience and how it fits within a legal process, and think about how a Justice System can restore some of what has been lost. In effect the Courts' work exposes staff to human suffering and their role necessitates they engage in a lengthy process looking at the traumatic details through a microscopic lens. The definitions of trauma and a traumatic event follow:

*Trauma is defined as an emotional response to a terrible event like an accident, rape or natural disaster, often followed by shock and denial, with unpredictable events in the long term, including emotions, flashbacks, strained relationships, even physical symptoms such as headaches and nausea (APA, 2019a).*

*A traumatic event is so overwhelming that it diminishes a person's capacity to cope as it elicits intense feelings of fear, terror, helplessness, hopelessness, and despair often subjectively experienced as a threat to the person's survival (Randall and Haskell, 2013).*

Because it has always been part of legal work, the system has normalised the experience so staff think the exposure to traumatic material is normal and one should just "toughen up" and get on with the work. A corollary of this thinking is if you can't work with this traumatic material without impact, there is something wrong with you or are weak, in competent or just not cut out for the work. Whilst exposure to traumatic material may be a normal part of the legal process it should not be conflated with normal human experience of being exposed to this material as akin to a computer processing information.

Every staff member who works with traumatic material and/or traumatised clients is affected to some degree. In some cases, the damage might not be career limiting or personally damaging, in other cases exposure to clients' trauma can lead to significant harm and life changing events (James, 2020). There are several variables that together determine an individual's risk of being adversely affected when working with traumatic material. These variables include the type of traumatic event, the broader work environment and other workplace stressors, the staff member's personality, life experience including traumatic ones, amount of experience and competence in role, quality of support networks and access to specialist help when required.

Research has also shown that staff who work in criminal law, family law, coronial law, domestic violence, child abuse, immigration and refugee law, and personal injury cases are at high risk as they need to discuss in detail, often particularising violent events and

injuries of clients that most people would find gruesome and upsetting (Albert, 2013).

## Personal Injury and workplace stressors

### A recent phenomenon and a change in who is responsible

A recent case in Australia found The Age liable for failing to provide a safe workplace awarding \$180,000 damages for PTSD acquired at work (ABC, 2019). In *State of Victoria v Kozarov* [2020] VSCA 301 (24 November 2020), a solicitor employed by the Office Public Prosecution sought damages because of psychological injury sustained during her work with the sexual offences' unit.

"It is self-evident that cases involving sexual offending, of themselves, invariably involve a degree of stress to a legal practitioner. In the period in question, the case load on the plaintiff, and her colleagues, was increasing significantly. At the same time, the content of the work became more confronting, particularly as the proportion of child sex offences handled by the plaintiff increased quite substantially. The work required the plaintiff to comply with several tight time limits that were prescribed by statute and by judicial direction. In those circumstances, there was little opportunity for the plaintiff to gain relief from the stresses of her work by stepping back and separating herself from it." *State of Victoria v Kozarov* [2020]

When viewed in isolation, each of the matters relied on by the judge might not individually constitute relevant notice to the defendant that the plaintiff was at risk of suffering psychiatric injury because of the nature of her work. However, the approach taken by the judge was to analyse and consider all those matters in combination and its impact on the staff member.

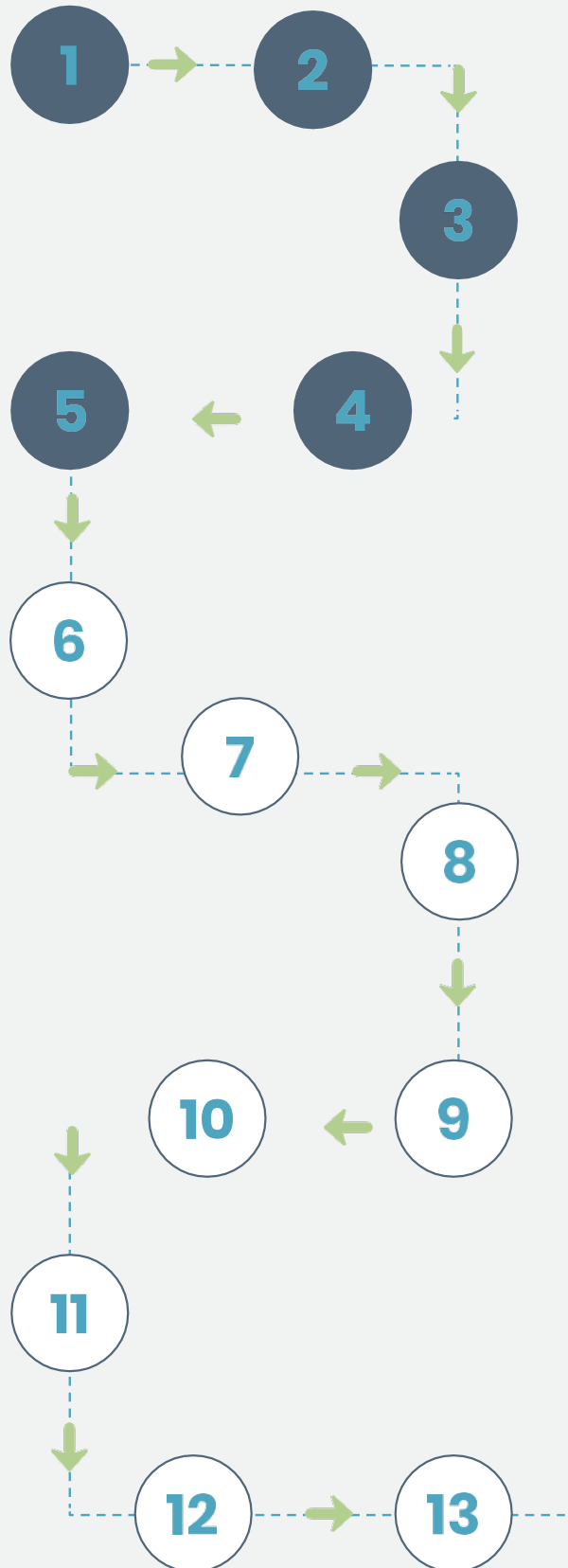
This case should serve as a warning that a Court will be prepared to find that, in certain circumstances, an employer's duty of care to an employee may extend to taking reasonable steps to avoid a particular employee developing a psychiatric injury.

### The changing case-mix at the Supreme Court: An example

The number of cases affecting children is on the rise. In the wake of Royal Commissions such as The Royal Commission into Institutional Responses to Child Sex Abuse, there are now over 500 cases in the Supreme Court relating to child sex abuse. The details of each case can be read by many staff members during the proceedings.

# One Traumatic Case: Several Staff Exposed

## Court Materials Staff Touchpoints



### 1. Registry Staff, Common Law Team, Parties' Legal Practitioners, Judicial Officer:

#### *Prior to commencement proceeding*

If an application for pseudonym order is made – staff in registry and common law team review application and liaise with parties' legal practitioners, the judicial officer reviews the affidavit in support and makes the orders.

### 2. Registry Staff, Self-Represented litigant coordinator

#### *Commencement proceeding*

Most parties are legally represented but not some are self-represented litigants ('SRLs'). The SRL co-ordinators provide information. They assist SRLs by explaining how to make applications such as fee waiver applications.

### 3. Common Law Team: Lawyers and Paralegals, Judicial Officer, Associate of Judge, Researchers, Secretaries, Library Staff

#### *Interlocutory stage of proceeding*

The common law team case manages proceedings. This includes reviewing consent minutes and preparing applications. Judicial officers consider and make (or decline) consent minutes and hear and decide contested and ex parte applications that require judicial determination. Associates clerk with judicial officers during the hearing and edit rulings. Sometimes library researchers who assist. Secretaries assist with typing / formatting orders and rulings. Library staff release externally published rulings to Austlii (website).

### 4. Registrars, Prothonotaries, Judicial Officers, Alternative dispute resolution staff, associates

#### *Judicial mediation / case conferences*

Registrars and Prothonotaries conduct case conferences, judicial officers conduct mediations, alternative dispute resolution staff liaise with parties to list mediations and receive position statements and other material from parties, associates and prothonotaries assist judicial officers with mediation.

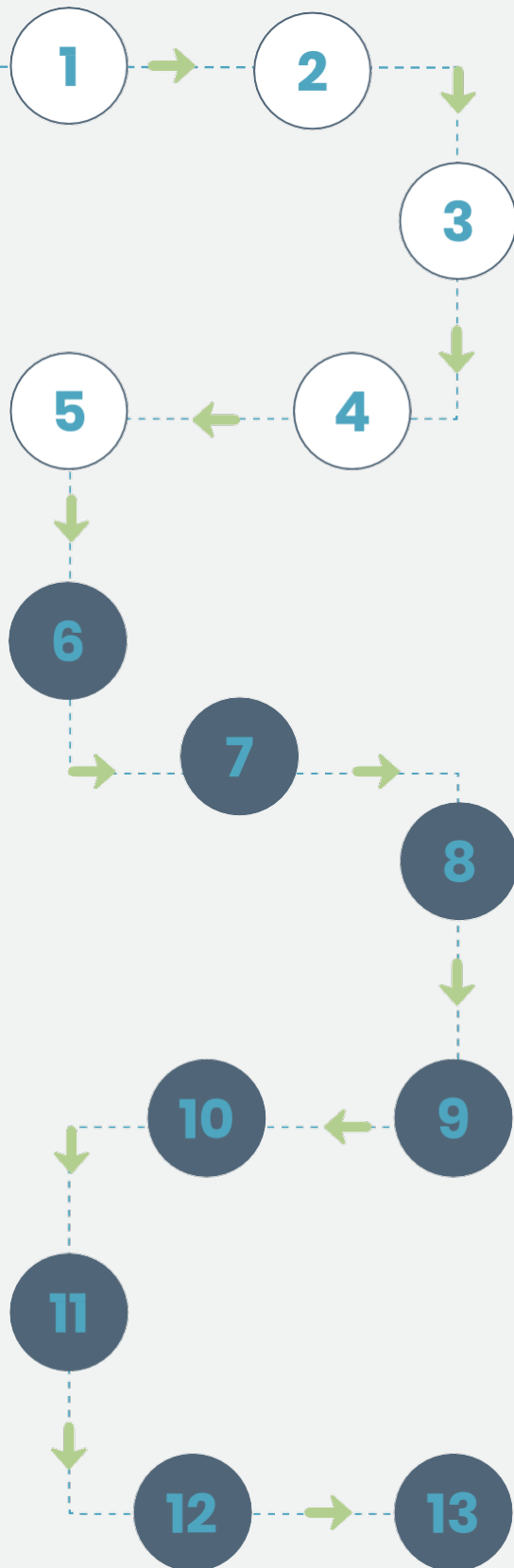
### 5. Judicial officers, Administrative Officer, Funds in Court lawyers, associates, Prothonotary

#### *Settlement approval*

If the plaintiff is under a disability the judicial officer needs to approve any settlement ('compromise'). Most applications for approvals of compromises are considered by a judicial registrar or associate judge, and sometimes by a trial judge. There is a dedicated administrative person in the associate judge / judicial registrar chambers who manages the process. Lawyers at Funds in Court review the application and provide a memo for the judicial officer. Associates finalise the order. If the application to approval relates to a former or current prisoner and needs to be made pursuant to the Corrections Act, then the Prothonotary becomes involved and issues a Crown Proceedings certificate.

# One Traumatic Case: Several Staff Exposed

## Court Materials Staff Touchpoints



### 6. Funds In Court Beneficiary Officer, Judicial Officer, Administrative Staff, Funds in Court Lawyers

#### *Funds in Court*

If the approval of compromise order is made, the settlement monies are paid into Court. The staff at Funds in Court (beneficiary officers) closely liaise with their 'beneficiaries' (the plaintiffs who have had their settlements approved) and do so closely, including visiting them at their home to ensure the money is applied to meet their needs. Judicial officers make an order each time monies are paid out of Funds in Court to meet the beneficiary's needs. Administrative staff assist, including receptionists who greet beneficiaries when they come to Funds in Court for meetings. The staff at Funds in Court will liaise with the beneficiaries (and their families) until the monies are exhausted, which is sometimes for the remainder of the beneficiary's life.

### 7. Judicial Officer, Associate, Staff who liaise with Juries, Tipstaves, other Court Staff

#### *Trial*

If the matter proceeds to trial, then a judicial officer, their associates, tipstaves, and other staff will become involved in the hearing and determination of the trial. (Jury exposure is an important issue not considered here.) If there is a jury trial, there are a range of staff who liaise with juries.

### 8. Court Of Appeal Judicial Officers, Associates, Court Staff

#### *Appeal*

If the matter is appealed, the Court of Appeal judicial officers and their staff become involved.

### 9. Judicial Registrar, Costs Registrars. Associate

#### *Taxation of costs*

Once the proceeding is finalised, either by settlement or trial, if there is a dispute about legal costs, then those costs will need to be examined. Disputes may be between the parties or between solicitor or client. The judicial registrar responsible for the Costs Court will then scrutinise the file and determine the dispute. His associate assists. There are two Costs Registrars who are involved in that work too. If the judicial registrar's decision is appealed, the appeal will be heard by an associate judge.

### 10. Archives and Records team

#### *File Audited*

This team will audit the file before it is closed.

### 11. Communications team

#### *Communicating Decision: Media*

If there is an inquiry from media regarding the matter, then our Communications team will become involved in liaising with the media about it.

### 12. Security staff (for in person hearings)

### 13. Court Network volunteers support distressed SRLs during in person hearings



## Risk factors: Organisational, Case and staff member

The nature of child sex abuse cases deals with material known to be a risk factor for vicarious trauma for anyone engaging with the traumatised client or material. This example provided illustrates the exponential number of staff involved who must engage with the traumatic material to do their job. Whilst there are risk factors associated with the material, there are also risk factors in relation to each staff member exposed to the material. Just as every case would have a risk load, so too do individual staff members. Due to their character, life experience, trauma history, competency in role and length of time in role, quantity of work, other stressors at work and home, and access to supports, all these factors collectively determine the staff member's risk of vicariously responding to the traumatic material.

PTSD is the only clinically diagnosable term currently (DSM-V), but it is well accepted that professionals exposed to traumatic material or traumatized clients in their work may in some cases even develop PTSD. Research has shown this, in Judges (Chamberlain & Miller, 2009) and lawyers (Levin 2003, Maguire & Byrne, 2017). Research in lawyers suggest compassion fatigue contributes to lawyers' mental health issues (Hourigan, 2015; Norton et al., 2016) and burn out (Bergin & Jimmieson, 2014; Bourg Carter, 2006).

## Trauma: A recently acknowledged phenomenon and the terms: inconsistent terminology

Trauma is ubiquitous. It is now widely accepted in trauma research that everyone has experienced trauma in their lives. What differs in human experience is the degree and severity of the trauma.

PTSD, Indirect trauma, vicarious trauma, secondary trauma stress, psychological distress, burn out, compassion fatigue, moral injury, and stress, are all terms used in this domain. Different countries have different definitions of each construct. The American Bar Association refers to secondary trauma stress and not vicarious trauma (ABA, 2017).

**The diagram on the next page provides working definitions used in this document.**

# Taxonomy: The Trauma Informed Organisation

## How vicarious trauma can manifest

01

### Stress

Stress is your body's response to anything that requires attention or action. Everyone experiences stress to some degree.

06

### Post Traumatic Stress Disorder (PTSD)

is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/ combat, or rape or who have been threatened with death, sexual violence, or serious injury.

02

### Psychological Distress

A state of emotional suffering associated with stressors and demands that are difficult to cope with in everyday life.

05

### Secondary Traumatic Stress

The emotional duress that results when an individual hears about the firsthand trauma experiences of another.

03

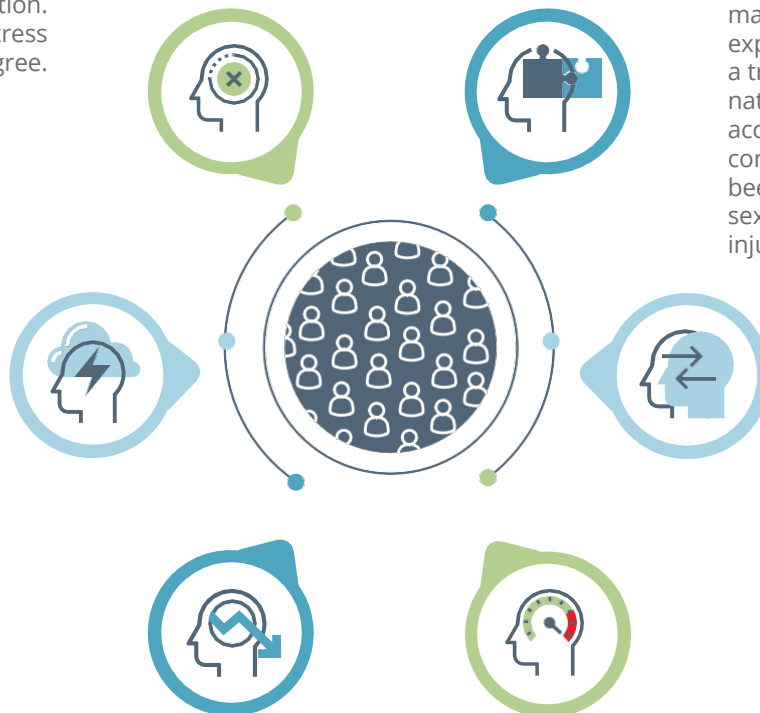
### Compassion Fatigue

Build up of emotional and physical exhaustion. Can result from the chronic use of empathy when responding to clients who are suffering.

04

### Burn Out, Moral Injury

Associated with loss of idealism for the professional and has direct and indirect health consequences.



## A change in thinking is being driven by five factors:

- Only recently has the connection been made between exposure to traumatic material as experienced vicariously by the staff member in the workplace, with subsequent personal injury of the staff member
- Research studies indicating that the prevalence of Mental Health issues and suicide are higher in lawyers than the general population – 48% reported a mental health problem, representing a rise of 33% over 12 months (JLD, 2018, 2019)
- Australian studies have shown there is a link between mental health and wellbeing of staff and the quality of work (Kelk, Luscombe, Medlow & Hickie, 2009; Beaton, 2007; Chan et al., 2014)
- The stigma of mental health is more being openly discussed in the legal profession. Still hard to openly acknowledge a lesser version of the robust profile lawyers portray. Yet what is reported as common experiences are high stress and anxiety, depression, substance abuse, and suicide ideation (James, 2020)
- Espoused resilience by lawyers in the face of exposure to traumatic material or traumatised clients can aggravate existing mental health vulnerabilities (Armbruster et al, 2015)

### 3. Understanding the solution: Trauma Informed Organisation

Research conducted in the USA showed that lawyers suffered significantly more vicarious trauma than mental health professionals. This gave insight that professional practices that mental health professionals use to mitigate their own stress when exposed to repeated traumatic events – could be used by lawyers/other professional groups to mitigate their stress when exposed to traumatic material. (Levin, 2003)

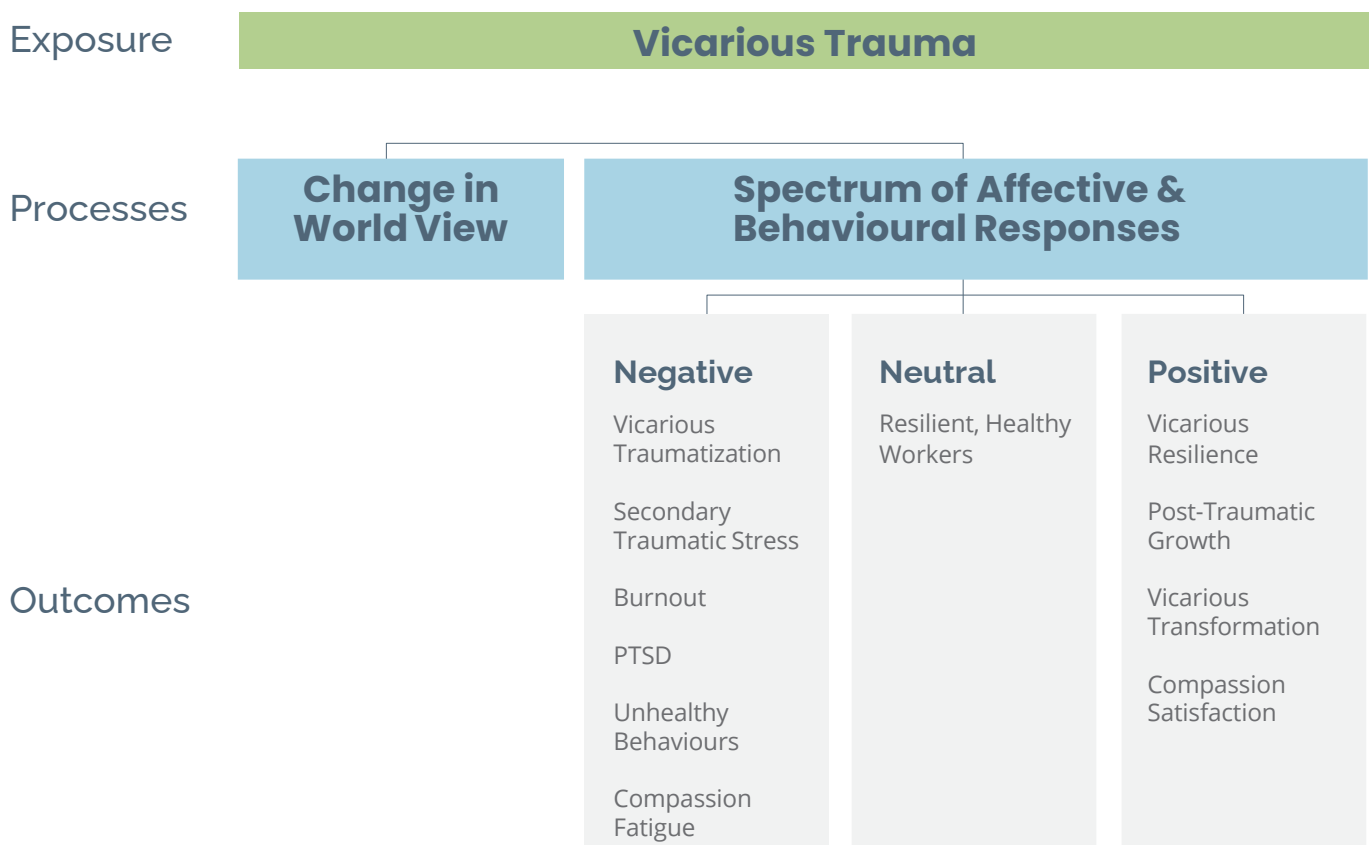


Figure 1. A conceptual model of vicarious trauma and its spectrum of impacts on workers (Molnar et al, 2017)

*"It is more than just the stress of overwork, it is a disintegrating ray gun aimed at your sense of who you are, what you think the world is like and where you find meaning in the world."  
 (Peters, Silver & Portnoy, 2004) Yale Law School Legal Scholarship Repository*

Left unmitigated, exposure to traumatic material or traumatic experiences of clients can have a range of negative outcomes on the Courts' staff member. Using a stepped care system's Intervention, informed by the evidence base relating to trauma, Courts' staff can experience *positive outcomes such as greater resilience, post traumatic growth, and compassion satisfaction.*

## 4. Evidence Based Practice: Trauma Informed Organisation

The aim of becoming a trauma informed organisation is staff can do the work of the Courts and build greater resilience, post traumatic growth, and compassion satisfaction rather than compassion fatigue, burn out, vicarious trauma, secondary traumatic stress, and PTSD. The trauma informed approach has at the highest conceptual level, six guiding principles.

For good mental health and wellbeing, psychological safety is the foundation from which all human experience stems.

The 6 human centered guiding principles build the framework for a Trauma Informed Organisation and a healthy workforce and are presented in Figure 2.

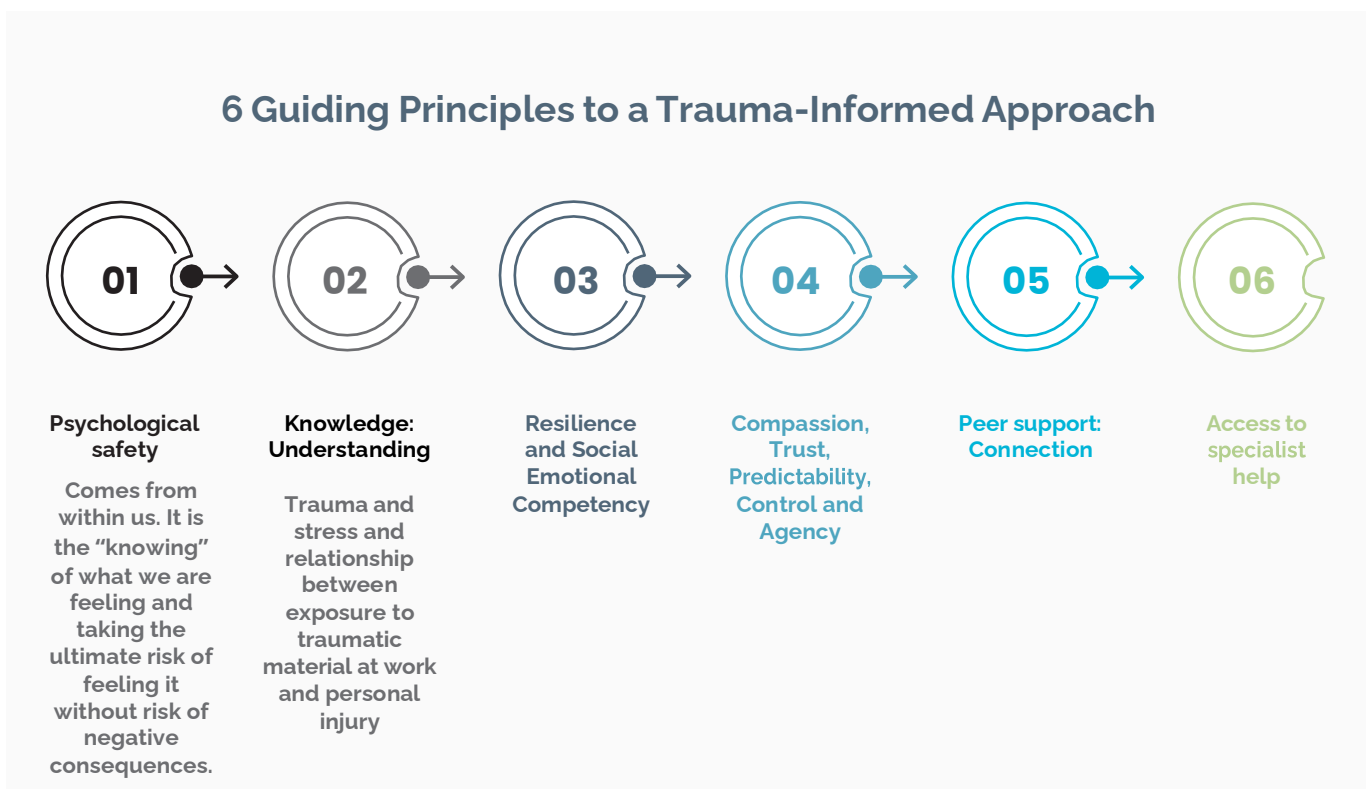


Figure 2. 6 Human Centered Principles that Build a Trauma Informed Organisation and Healthy Workforce

# 5. Framework: Trauma Informed Organisation

Each of the 5 pillars constitutes a focus for education and skills building that cumulatively enable staff who work with traumatised clients and traumatic material to build resilience and mitigate the negative personal effects that arise from being exposed to human suffering in the workplace. A multilevel approach is required as there are several risk factors including workplace and staff specific risk factors that are dynamic (amenable to change and develop).



Figure 3. The 5 Pillars of a Trauma Informed Organisation: providing education, capacity building, prevention and early intervention strategies transform trauma and vicarious trauma experiences into post traumatic growth.

## 6. Can Agile Mental Health Assist?

Agile Mental Health can provide a comprehensive consultation service to assist your organisation.

Please contact us for a preliminary conversation.

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