

Make Regulations dealing with Psychological Health

Submission of Tony Vane

Please find below my personal submission in respect of recommendation 2 of the review of the Model Work Health and Safety legislation.

Recommendation and summary of options from the regulatory impact statement

Recommendation 2: Make regulations dealing with psychological health

Amend the model WHS Regulations to deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks.

2018 Review findings

Industry representatives and PCBUs typically said that business owners are uncertain about how to address psychological health in the workplace. There was a widespread view that the model WHS laws inadequately protect psychological health and safety in the workplace. There was also criticism of the absence of specific requirements for managing psychosocial risks in the model WHS Regulations or practical examples of how to comply with duties in the model Codes of Practice. Small businesses in particular sought practical guidance to help them identify and manage risks to psychological health.

The 2018 Review found there is a need to build on the foundations of the primary duty and other duties in model WHS Act to provide a clear legislative framework within which to manage psychological health issues.

Option 1 - Status quo

The option would maintain the status quo so that psychosocial risks to psychological health would continue to be regulated by the model WHS Act. The definition of 'health' in the model WHS Act makes clear that health includes psychological health, so that the health and safety duties apply equally to psychological and physical health and safety.

Option 2 - Include requirements for managing psychosocial risks in the model WHS Regulations (Recommendation 2)

This option would amend the model WHS Regulations to introduce express requirements for identification and control of psychosocial risks that a PCBU must meet in order to satisfy the existing health and safety duties.

There are two parts to the recommended regulation: identifying psychosocial risks to psychological health and the appropriate measures to control those risks.

One approach suggested during consultation was to mirror regulation 36 of the model WHS Regulations for the purposes of psychosocial risks. However, it is not clear how this option would address the problems identified.

Submission

Context

Although I am now a private citizen, my working career in human resources, injury management and work health and safety in government agencies has coincided with the emergence of psychological injury as a significant risk. As a result I have worked, as a WHS regulator and WHS practitioner, with this area of risk for about 20 years.

I agree that there has been a considerable development in the resources and information that is available and I note the information contained in the Safe Work Australia publication *Work-related psychological health and safety: A systematic approach to meeting your duties*.

The regulatory impact statement says that:

“It is important to note that management of psychosocial risks is a relatively new area in work health and safety.”

I disagree. Information about this risk and risk controls has been available (and developing) for decades.

I can remember, as a late teenager in the 1970s, driving my father (who was a police medical officer) to police shootings in the middle of the night, so that he could provide psychological support to the police officers involved.

What has changed, is that we have developed better organisational models for looking at this risk. Based on my working experience, a psychological health risk assessment process for an employer was available from, at least, the mid 1990s in Australia.

Various WHS regulators have supported research in psychological injury and published resources to assist employers. Comcare has been particularly active in this field, because of the impact of psychological injury costs on the Australian Government, since the scheme's creation in 1988.

The publications by Comcare include:

- Quality of Working Life, Comcare (1993)
https://www.comcare.gov.au/_data/assets/pdf_file/0013/41350/Quality_of_working_life_strategy_OHS_24_Aug04.pdf;
- The Management of Occupational Stress in Commonwealth Agencies – Implementing an Occupational Stress Prevention Program, Comcare (1997) - no longer available;
- Psychological Health, Dr Peter Cotton and Comcare (2006) - no longer available; and
- [Working Well, An organisational approach to preventing psychological injury](#), Comcare (2008) which provides a good summary of the available research.

The considerable work has also been undertaken in various states and territories in Australia to address psychological injury risks in police work, the education and health sectors and for fly-in fly-out workers. WorkSafe South Australia produced a detailed manual on occupational stress in the 1990s (which I did use as a resource) and the Queensland Government also undertook a major psychological health injury prevention project using the Organisational Health Model <http://www.insightsrc.com.au/portal/resources/4ee986f9630bd.pdf>.

The research undertaken by Safe Work Australia [The Australian Workplace Barometer: Report on psychosocial safety climate and worker health in Australia](#) provides Australian benchmarks and promotes the value of applying a psychical safety climate approach.

There has also been considerable cross jurisdictional work including the People at Work Project <https://www.worksafe.qld.gov.au/injury-prevention-safety/mentally-healthy-workplaces/guidance-and-tools/people-at-work>, which also provides Australian survey benchmarks.

I have been involved in, or connected with, many of these projects.

I would like to acknowledge to long term commitment of the late Dr Peter Cotton to assist employers and workplaces understand and improve psychological health.

It is also important to acknowledge the valuable work of agencies that have promoted general mental health awareness and that have worked tirelessly to address the stigma associated with mental health. To name but a few, they include:

- BeyondBlue;
- Mental Health First Aid;
- the Black Dog Institute;
- the Mentally Healthy Workplace Alliance; and
- the National Mental Health Commission.

The risk assessment challenge

Despite the wealth of knowledge about psychological injury, my experience is that WHS practitioners struggle to use the available information to apply effective risk management and deliver primary injury prevention.

There are some psychosocial hazards that are so clearly recognised as a cause of psychological injury and where specific risk controls must be implemented to meet the primary duty of care, including:

- exposure to a traumatic event, such as a death or serious occupational violence;
- high emotional demand work; and
- experiencing bullying or harassment.

As a minimum, a responsible employer should be expected to manage these hazards through:

- implementing a co-ordinated response to critical incidents;
- managing occupational violence risks;
- providing professional psychological support for workers through an Employee Assistance Program (EAP); and
- having bullying policies, reporting systems and support programs.

Many human resource practitioners place an overreliance on the use of an EAP as a risk control. While there is no doubt great value in an effective EAP service for individual workers and managers (especially in assisting with critical incidents and workplace conflict), it is too low down the hierarchy of controls to be effective as a single risk control.

The risk controls identified above are significantly limited, as they do not address all the known risk factors. By way of illustration, I have selected the Health and Safety Executive (HSE) Management Standard from the United Kingdom <http://www.hse.gov.uk/stress/standards/index.htm>. This model is also largely consistent with the Organisational Health Model.

The HSE Management Standard recommends a focus on:

- *Job demands* - including such issues as workload, work patterns, working environment, high cognitive demands and high emotional demands.
- *Job control* - how much say the person has in the way that they do their work.
- *Organisational support* - which includes the encouragement, sponsorship and resources provided by the organisation, line managers and colleagues.
- *Relationships* - which includes positive working practices to avoid conflict and dealing with unacceptable behaviour, including bullying.
- *Role clarity* - whether people understand their role within the organisation and whether the organisation ensures that the person does not have conflicting roles.
- *Change management* - how organisational change (both large and small) is managed and communicated in the organisation.

While WHS practitioners can apply standard risk management procedures to psychosocial hazards, psychological injury risks involve a complex interaction between workers and their environment and the risk controls are consequently more complex than for some other hazards. The question for WHS practitioners is how to undertake a risk assessment.

It is worth comparing the approach to psychological health risk assessments to the how hazardous manual tasks are assessed.

If a WHS practitioner is considering a hazardous manual task risk, there is clear guidance in the WHS Regulations (regulation 60) about what an employer must consider, specifically:

- (a) postures, movements, forces and vibration relating to the hazardous manual task; and
- (b) the duration and frequency of the hazardous manual task; and
- (c) workplace environmental conditions that may affect the hazardous manual task or the worker performing it; and
- (d) the design of the work area; and
- (e) the layout of the workplace; and
- (f) the systems of work used; and

- (g) the nature, size, weight or number of persons, animals or things involved in carrying out the hazardous manual task.

The Work Health and Safety (Hazardous Manual Tasks) Code of Practice supports the WHS Regulations by providing information about the characteristics of hazardous manual tasks and how to apply the hierarchy of controls. This guidance provides a clear pathway for the identification of hazards, the assessment of risk and implementation of risk controls that any duty holder should be able to follow. While there will be occasions where a subject matter expert (such as an ergonomist) should be engaged to assist duty holders, there is substantial regulatory support.

There is no equivalent regulatory support for psychological health risks. Without that support, it is much more difficult for a duty holder or a WHS practitioner to undertake a risk assessment with any degree of assurance.

To address this lack of assurance some duty holders will engage subject matter experts (such as an organisational psychologist) to assist with a psychosocial risk assessment. Duty holders have also used survey tools, such as the [People at Work survey](#) to quantify the organisation's health factors and identify opportunities for improvement. The People at Work survey is only one of a range of survey instruments and tools.

The HSE Management Standard approach to this issue stands out, as it seems to effectively combine a regulatory approach with workplace support. It is worth noting how this is presented to employers as it is very similar to a code of practice:

Employers have a legal duty to protect employees from stress at work by doing a risk assessment and acting on it.

If you follow the Management Standards approach correctly, you will be adopting an approach that is considered suitable and sufficient. If you are starting from scratch, following the Management Standard step by step approach may save you time, and the tools and guidance are free.

The Management Standards includes an indicator tool at <http://www.hse.gov.uk/stress/assets/docs/indicatortool.pdf>. While the tool itself has some strengths and weaknesses, the concept of providing a free tool has merit.

Undertaking a risk assessment is a core WHS capability. The best model for undertaking a risk assessment for a psychological health risk involves:

- a validated survey tool (such as People at Work);
- focus groups and interviews;
- incident and injury data;
- human resources metrics (including disputes and change processes);
- business unit metrics; and
- observations (including cognitive demand).

However, a risk assessment can be tailored to the size and complexity of the issue and the workplace. For example, for smaller workplaces, a short survey tool, focus groups, interviews and observations would be sufficient.

In my opinion, this is where the skill of a WHS practitioner can, and should, be applied to designing practical risk management processes and using the consultation and communication arrangements to engage stakeholders.

However, without a regulatory framework there is insufficient:

- incentive to begin the risk assessment process; and
- information and support for an effective risk management process.

Questions and responses

1. How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

I support the view, based on my experience, that the model WHS laws do not adequately protect psychological health and safety in the workplace and, in particular, that there should be:

- a specific requirements for managing psychosocial risks in the model WHS Regulations; and
- practical examples of how to comply with duties in the model codes of practice.

The Safe Work Australia statistical data of serious claims for 2016-17 shows that 7 per cent of injuries and diseases were for mental health. These claims have high levels of incapacity, high claim costs and lower return to work rates. I cannot think of another area where a similar level WHS risk is occurring and there is no code of practice.

2. What practical impact, including the costs and benefits, would the options set out in this Consultation RIS have on you, your organisation or your stakeholders? Please provide evidence of the impacts wherever possible.

As I am making an individual submission, I will only comment that the costs involved in the implementation of any regulations or code of practice should be commensurate with the risk. If WHS regulators take a systems based approach and focus on the industries that already have established risk profiles, the requirements on duty holders should be appropriate.

The major benefit of implementing a regulation and code of practice is that employers in industries, or that have work with higher risks, would be required to assess the risk. Reviewing and improving risk controls is an integral part of an effective risk management process and would support continuous improvement.

WHS regulators would also be able to use their enforcement powers more effectively, especially to require a reluctant employer to assess their risk and risk controls. The risk assessment process, in consulting with workers, should also increase the level of transparency. Nothing in this approach would require a specific risk control, which is consistent with the general scheme design. The reasonably practicable test would continue to apply as with any other hazard.

3. Do you have suggestions for other options to address the problems identified in the 2018 Review findings? Please provide information and evidence on the impacts of your suggested option, including how it would improve the WHS outcomes or reduce compliance costs.

Significant risks in establishing a regulatory framework for psychological health would only arise if:

- A. WHS regulators were not competent at applying the regulatory framework; or
- B. duty holders use unnecessary, ineffective and/or expensive survey tools, or engage subject matter experts unnecessarily, to assess their risk; or
- C. employee representatives inappropriately used their powers and the regulatory framework to address issues (such as staffing levels) that should be more appropriately addressed in other fora.

I suspect that some stakeholders are significantly concerned about issue “C”. However, this issue is something that the WHS Act, through issue resolution, and WHS inspectors already deal with routinely. While I have no doubt that some interesting issues/cases might arise, I very much doubt that substantial costs would arise for community as a whole.

Issue “B” could be addressed if WHS regulators and Safe Work Australia made a survey tool (such as PSC or People at Work) available to employers at no cost. I am not suggesting that every employer should be required to survey their workers. I am suggesting that the option should be available at no or a reasonable cost.

4. What is your preferred option and why will it be best for you, your organisation and your stakeholders?

My preferred option is for:

- A. A new WHS regulation, similar to the approach used in regulation 60 that list the items that a duty holder should consider in the assessment of risk.
- B. A Work Health and Safety (Psychological Health in the Workplace) Code of Practice:
 - based on the model used for the Work Health and Safety (Hazardous Manual Tasks) Code of Practice; and
 - drawing on the Australian research, including the psychosocial safety climate model; and
 - drawing on the HSE management standard.

5. Is the state of knowledge on psychosocial hazards, risks and control measures widely accepted and well established? Please support your answer with evidence.

Having participated in, and undertaken, WHS risk assessments in different agencies, over many years, and using different tools, I am confident that duty holders and WHS practitioners could implement the proposed regulation and the code of practice. Please refer to the materials referenced on page 2.

As with many other hazards, examples of risk controls should be provided in the hierarchy of controls.

I suspect that some WHS practitioners will express concerns about applying a new WHS regulation and code of practice. Therefore, I also recommend that, if enacted, the implementation plan allow adequate time for communication and consultation, and training and information resources for industry stakeholders. This should be targeted at the industries and work that already has an established risk profile.

Small businesses will require some practical guidance material and tools to support them. This is no different from any other area of WHS. As I mentioned previously, it is important that there is a focus on the industries and work that is known to be higher risk. A small business doing high emotional demand work, and where workers are exposed to occupational violence risks, is really no different from a small business that handles hazardous chemicals and plant. Each WHS issue has its own complexities, but I cannot see why being small should make a duty holder exempt. The requirement for specific risk controls would still be subject to the reasonably practicable test.

6. Do you have suggestions for what prescriptive psychosocial regulations might look like?

Refer to my response to question 4.