

New Mental Health Obligations for All Victorian Employers Expected to Take Effect on 1 July 2022

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The Victorian Government's proposed *Occupational Health and Safety Amendment (Psychological Health) Regulations* (Vic) (the Proposed Regulations) are expected to commence on 1 July 2022.

The Proposed Regulations contain strict obligations for employers in the management of risks to employees' mental health, including duties to identify and control **psychosocial hazards** and to implement "prevention plans".

Given that State and Territory Work Health and Safety (WHS) Ministers agreed in May 2021 to implement regulations focused on mitigating risks to employees' mental health, some other states and territory governments will likely follow Victoria's lead.

WHAT IS A "PSYCHOSOCIAL HAZARD"?

The focus of the Proposed Regulations is the identification and mitigation of "psychosocial hazards". The term is defined to mean any factor or factors in:

- a. the work design; or
- b. the systems of work; or
- c. the management of work; or
- d. the carrying out of the work; or
- e. personal or work-related interactions;

that **may arise** in the working environment and **may cause** an employee to experience one or more negative psychological responses that create a risk to their health and safety.

Examples of psychosocial hazards contained in the Proposed Regulations include bullying, sexual harassment, aggression or violence, and exposure to traumatic events or content. However, the list of examples also includes "high job demands", "low job demands", "low job control", "poor support", "poor organisational justice", "low role clarity", "poor environmental conditions", "remote or isolated work", "poor organisational change management", "low recognition and reward", and "poor workplace relationships". Many of these concepts are not defined.

WHAT WILL BE REQUIRED OF EMPLOYERS?

Under the Proposed Regulations, employers would be required to, so far as is reasonably practicable:

- **Identify** any risks associated with any psychosocial hazards;
- **Eliminate** (or if that is not possible, **reduce**) any risks associated with any psychosocial hazards; and
- **Review** (and if necessary **revise**) any measures implemented to control risks associated with any psychosocial hazards.

In addition, it is proposed that employers with more than 50 employees provide WorkSafe Victoria with half-yearly reports about "reportable psychosocial complaints" received during the previous six months.

WHEN IS AN EMPLOYER REQUIRED TO PUT IN PLACE A PREVENTION PLAN?

The Proposed Regulations would require an employer that has identified any of the following hazards to put in place a written **prevention plan**:

- aggression or violence;
- bullying;
- exposure to traumatic content or events;
- high job demands;
- sexual harassment.

The purpose of a prevention plan is to identify the risk associated with the psychosocial hazard and measures to control the risk, to contain an implementation plan for the control measures, and to detail the consultation undertaken by the employer in relation to the matters canvassed in the plan.

WHAT MUST BE INCLUDED IN THE HALF-YEARLY REPORTS?

It is proposed that employers with more than 50 employees be required to provide WorkSafe Victoria with a written report in respect of any psychosocial complaint they receive during a reporting period

(being 1 January to 30 June or 1 July to 31 December) involving **aggression or violence, bullying, or sexual harassment**.

Under the Proposed Regulations, the report must identify:

- each psychosocial hazard involved;
- the gender of the persons involved; and
- a description of the workplace relationship between the persons involved in the reportable psychosocial complaint.

If this requirement is included in the final regulations, it will be important for employers to make employees aware of the requirement to ensure that the making of complaints occurs on a fully informed basis.

WHAT DO EMPLOYERS NEED TO DO?

Employers should act now to ensure they have identified all psychosocial hazards relevant to all aspects of their businesses and undertakings in Victoria, noting that a "one size fits all" approach is not going to be sufficient. This will likely involve:

- arranging for robust risk assessments to be conducted by qualified and experienced personnel (or having pre-existing risk assessments reviewed);
- ensuring that reasonably practicable control measures are identified; and
- consulting with employees in accordance with section 35 of the OHS Act in respect of identified risks and proposed control measures (if such consultation has not already occurred).

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National Law Review, Volume XII, Number 129

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