



Proposed OHS Amendment (Psychological Health) Regulations

Mental Health Victoria's submission

April 2022

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About Mental Health Victoria

Mental Health Victoria (MHV) is the peak body for the mental health sector in Victoria. Our members include consumer and carer groups, community health and mental health services, hospitals, medical associations and colleges, police and emergency services associations, unions, local governments, and other bodies across the health and related sectors.

Our aim is to ensure that people living with mental illness can access the care they need, when and where they need it. Our view is that all Australians should have access to a core suite of services that they can choose from – be they delivered in the home, the community, or in the hospital.

About this submission

This submission provides general feedback on WorkSafe's Occupational Health and Safety (OHS) Amendment (Psychological Health) Regulations (proposed regulations) and Regulatory Impact Statement (RIS).

In preparing this submission, MHV consulted with mental health and intersecting sector organisations, our Lived Experience Advisory Network and a broad range of professional and peak bodies and service providers through the [Victorian Mental Health Peaks Network \(VMHPN\)](#) and [Service Reform Advisory Network \(SRAN\)](#). Recommendations are informed by this widespread consultation across March 2022, well as detailed survey responses received in a targeted consultation in March 2022.

Overview

MHV welcomes the development of legislative regulations to address psychological health in the workplace and to prevent, reduce and manage potential psychosocial hazards and mental injuries.

MHV supports the proposed regulations. The mental health sector in Victoria is experiencing chronic, systemic workforce shortages, which have been exacerbated by recent crises, especially the COVID-19 pandemic, leading to many workers entering or remaining in hazardous work environments that pose a risk to their own psychological health.

As such, MHV specifically applauds WorkSafe for including preventative plans for specific hazards in the proposed regulations. Preventative plans have previously been used to prevent violence and aggression towards nurses and midwives in the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024, receiving positive feedback.

General comments on the proposed regulations

We make the following specific recommendations to strengthen the proposed regulation.

1.) MHV strongly recommends the addition of 'direct and indirect discrimination' to the proposed regulation as a unique psychological hazard in the workplace. Discrimination is defined in the Victorian Equal Opportunity Act 2010 (Vic), s8(1): 'Direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute,' and s9(1): 'Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice—(a) that has, or is likely to have, the effect of disadvantaging persons with an attribute; and (b) that is not reasonable.' This recommendation is also reflected in our feedback regarding Definitions below.

2.) MHV recommends WorkSafe amends wording in the proposed regulations as for consistency with the OHS Regulations 2017 such that 'complaint' is replaced by 'report' or 'issue'.

3.) MHV recommends that WorkSafe include preventative supports for workers who declare an existing mental health condition, in the Objectives section and throughout the proposed regulation.

4.) Definitions

* MHV commends WorkSafe for including definitions of important terms, which are critical for consistency and clarity.

* MHV recommends aligning the definition of 'bullying' with the current WorkSafe definition for consistency.

* MHV recommends that WorkSafe including an additional definition for 'discrimination' as described in our General Feedback section. MHV also recommends including 'culturally safe conditions' as an Example in the Definitions section.

General comments on the RIS

MHV applauds WorkSafe for a clear, comprehensive report.

MHV seeks further information regarding how businesses will be supported by WorkSafe in implementing the proposed regulations, including timelines for implementation as well as opportunities for businesses to seek critical funding to meet the additional requirements associated with the proposed regulations, where upfront costs may not be viable. MHV recommends the Federal Government financially supports the initial roll-out phase of implementation tied to the legislative change.

MHV emphasises that prevention of psychological hazards and injury is often more complex than physical injury. Psychological health is often less visible, evidence regarding prevention and management is relatively new, and in many cases a bespoke approach is required for different sizes and types of organisations and services. The associated costs of effective implementation should be considered by WorkSafe and integrated into proposed costing.

In light of the unique and intrinsic psychosocial risks faced by the mental health workforce, MHV is concerned that the costs of implementing the proposed regulations may disproportionately impact mental health, wellbeing and suicide prevention organisations and services. These sectors have been significantly impacted by the COVID-19 pandemic and the associated rise in psychological distress across Australia, and as such, are likely to face increased WorkSafe premiums. MHV welcomes further discussion with WorkSafe on this topic.

MHV encourages WorkSafe to ensure implementation of the proposed regulations focuses on education rather than compliance. This will be crucial in assisting employers and workers to meaningfully understand and engage with the proposed regulations and to focus on how they will be embodied within their own workplace, in turn creating a more sustainable shift in workplace culture and practices. This may include subsidies for awareness campaigns, training initiatives, toolkits, and workplace consultants and informed by sector-specific consultations. WorkSafe should also ensure these activities are accessible to and appropriate for businesses in regional and rural areas.

For further information on this submission, please do not hesitate to contact Hayley Warren, Policy Adviser, MHV, via h.warren@mhvic.org.au or +61 (3) 9519 7000.