

Legislation regarding the psychological health of workers

Under existing model workplace health and safety laws that apply Federally and in all States and Territories in Australia (except in Victoria where the Occupational Safety Act 2004 applies but which contains similar obligations), the duties set out in Introduction to the Legal Perspective extend to an obligation on duty holders to (as far as reasonably practicable) provide and maintain a safe working environment without risk to workers' **health**.

As previously stated, 'worker' does not just mean employees, but also captures contractors and the individuals they engage, subcontractors and the individuals they engage, labour hire workers, visitors to site (such as suppliers and clients) and, in some circumstances, volunteers.

Under these laws, the definition of health included both physical and psychological health.

Federal and State Governments have recently amended, or put forth proposed amendments to, their WHS regulations to impose a positive duty on PCBUs to identify and manage psychological & mental health hazards to protect workers from mental health injury.

Jurisdiction	Name of Legislation	Effective Date
Federal	Model Work Health and Safety Regulations https://www.safeworkaustralia.gov.au/doc/model-whs-regulations	June 2022
	Model Code of Practice: Managing psychosocial hazards at work https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work	July 2022
QLD	Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022 https://www.legislation.qld.gov.au/view/pdf/asmade/sl-2022-0141	1 April 2023
	Code of Practice: Managing the risk of psychosocial hazards at work https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice/managing-the-risk-of-psychosocial-hazards-at-work-code-of-practice-2022	1 April 2023
NSW	Work Health and Safety Amendment Regulation 2022 https://legislation.nsw.gov.au/view/pdf/asmade/sl-2022-551	1 October 2022
	Code of practice: Managing Psychosocial Hazards at Work https://www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice/codes-of-practice/managing-psychosocial-hazards-at-work	2021
WA	Work Health and Safety Regulations 2022 (WA) https://www.legislation.wa.gov.au/legislation/statutes.nsf/la_w_s53267.html	24 December 2022

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	Code of practice: Psychosocial hazards in the workplace https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221133_cp_psychosocialhazards_web.pdf	Jul 2022
VIC	Occupational Health and Safety Amendment (Psychological Health) Regulations amending the Occupational Health and Safety Regulations 2017 (Vic) https://www.vic.gov.au/sites/default/files/2022-03/Proposed-OHS-Amendment-%28Psychological-Health%29-Regulations%20%281%29.DOCX	Mid to late 2023
NT	Amendment to the model WHS Regulations and the Code of Practice https://worksafe.nt.gov.au/safety-and-prevention/workplace-mental-health	Mid to late 2023
	Model Code of Practice: Managing psychosocial hazards at work https://worksafe.nt.gov.au/safety-and-prevention/workplace-mental-health	Mid to late 2023
TAS	Work Health and Safety Regulations 2022 and Work Health and Safety (Transitional) Regulations 2022 https://worksafe.tas.gov.au/topics/laws-and-compliance/acts-and-regulations/new-whs-regulations-2022	22 December 2022
	Code of Practice: Managing psychosocial hazards at work https://worksafe.tas.gov.au/topics/laws-and-compliance/codes-of-practice/cop-folder/managing-psychosocial-hazards-at-work	4 Jan 2023
ACT	Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022 https://www.worksafe.act.gov.au/health-and-safety-portal/safety-topics/mental-health	1 April 2023
SA	No proposed amendments announced as yet to the Work Health and Safety Regulations 2012 https://www.legislation.sa.gov.au/lz?path=%2Fc%2Fr%2Fwork%20health%20and%20safety%20regulations%202012	Unannounced

A key change is the definition of psychosocial hazards and psychosocial risks into the model WHS Regulation.

The model WHS Regulation defines a **psychosocial hazard** as a hazard that:

- a. arises from, or relates to
 - a. the design or management of work,
 - i. a work environment,
 - ii. plant at a workplace, or

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- iii. *workplace interactions or behaviours, and*
 - b. *may cause psychological harm, whether or not it may also cause physical harm.*

The model WHS Regulation defines a **psychosocial risk** as *a risk to the health or safety of a worker or other person arising from a psychosocial hazard.*

The amendments to the model WHS Regulations imposes a duty on PCBUs to identify and manage psychosocial risks and consider all relevant matters when determining and implementing control measures to manage psychosocial hazards. Relevant matters includes:

- a. *the duration, frequency and severity of the exposure of workers and other persons to the psychosocial hazards,*
- b. *how the psychosocial hazards may interact or combine,*
- c. *the design of work, including job demands and tasks,*
- d. *the systems of work, including how work is managed, organised and supported,*
- e. *the design and layout, and environmental conditions, of the workplace, including the provision of—*
 - i. *safe means of entering and exiting the workplace, and*
 - ii. *facilities for the welfare of workers,*
- f. *the design and layout, and environmental conditions, of workers 'accommodation,*
- g. *the plant, substances and structures at the workplace,*
- h. *workplace interactions or behaviours, and*
- i. *the information, training, instruction and supervision provided to workers.*

New South Wales, Western Australia & Queensland have adopted changes similar to the national model WHS Regulations, however Queensland has a key difference with PCBU's required to apply the hierarchy of controls to psychosocial risks.

The Victorian Government has committed to introducing consistent changes to its OHS **regulations** that specifically deal with psychological hazards and injuries in the workplace. The proposed Occupational Health and Safety Amendment (Psychological Health) Regulations (proposed regulations), which will amend the Occupational Health and Safety Regulations 2017, is currently undergoing a consultation review process by SafeWork Victoria and the Victorian Government. Progress on the proposed amendments will continue throughout 2023 with an effective dated expected to be announced for mid to late 2023.

Similar to the model WHS Regulations, the Victorian amendments once in force will require PCBUs to manage psychosocial risks and their requirement to control risks associated with psychological hazards. Additional requirements under the proposed Victorian amendments:

- Prepare a written prevention plan, where an employer has identified one or more of the following psychosocial hazards: aggression or violence, bullying, exposure to traumatic content or events, high job demands or sexual harassment. The plans must identify, control measures to mitigate the identified risks and an implementation plan.
- Reporting obligations for employers of more than 50 employees. A written report must be provided to WorkSafe Victoria of any psychosocial complaints the employer has received during the reporting period. A hard copy of the report must be kept for five years.