

Public comment submission form			
Occupational Health and Safety Amendment (Psychological Health) Regulations and associated Regulatory Impact Statement			
<i>Note: Areas marked with an asterisk (*) denote required information.</i>			
<b>Type of submission *</b>	Individual <input type="checkbox"/>	Organisation <input checked="" type="checkbox"/>	
<b>Organisation name *</b> (where applicable)	Australian Institute of Health and Safety		
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<b>State *</b>	VIC		
<b>Do you consent to WorkSafe publishing your submission?*</b>	<input checked="" type="checkbox"/> Yes – WorkSafe may publish this submission with my organisation's name/my name.		
	<input type="checkbox"/> Yes – WorkSafe may publish my submission, but please publish without my name.		
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<i>Note: If you have not obtained consent from the third party individual/s, WorkSafe may elect not to publish your submission or may redact third party information from your submission.</i>			
<b>Can WorkSafe contact you about your submission?</b>		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<i>Note: WorkSafe may use the information you have provided to inform you of further development of the proposed regulations.</i>			

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## How to fill out this form

This form contains a table listing the different parts of the proposed Occupational Health and Safety Amendment (Psychological Health) Regulations (proposed regulations) and associated Regulatory Impact Statement (RIS) available for public comment.

Scroll to the section of the proposed regulations or RIS you want to comment on and type in your comment. Disregard any sections that do not apply.

If you only have general comments about the proposed regulations or RIS, you can simply fill out the first table preceding this page and disregard the rest of the form.

If you want to mail your submission, you can fill out the form online first then print as the tables will expand according to the amount of words you write.

For any questions about the form, email [legislation@worksafe.vic.gov.au](mailto:legislation@worksafe.vic.gov.au).

## Proposed Occupational Health and Safety Amendment (Psychological Health) Regulations

Please provide your specific comments on the proposed regulations in the table below. Where possible, please indicate the section of the regulations you are commenting on.

General comments
<p>The Australian Institute of Health and Safety (AIHS) would like to congratulate WorkSafe Victoria ('WorkSafe') and associated stakeholders for developing the proposed regulations ('the regulations'), and thank you for the opportunity to provide feedback. This response has been developed by members of the Victorian Branch and the Policy Committee of the AIHS, and shared with those AIHS members who identify as being associated with Victoria.</p> <p>The regulations represent a landmark development in occupational health and safety (OHS) regulation in Australia. The first psychological OHS regulations in the country represent an important and long-overdue evolution in how this significant issue is approached in workplaces by regulators, employers and workers.</p> <p>The AIHS represents 4,000 member OHS practitioners and professionals nationally, with more than 1,000 of those based in Victoria. Our members and the broader OHS community will be the ones interpreting, implementing and assisting employers and workers with meeting their psychological OHS duties.</p> <p>Our response firstly includes eight general comments, before we provide more detailed feedback for selected sections in the template below.</p> <p><b>1. THE NEED FOR A PSYCHOLOGICAL HEALTH REGULATION</b></p> <p>We acknowledge and understand the significant community concern around the large numbers of Victorians experiencing preventable psychological injuries due to work-related factors. We note the duty to prevent work-related psychological injuries has been a requirement in Victoria since 2004. We recognise the important role that dedicated regulations will play, in addition to Compliance Codes, guidance, and other resources, in providing greater clarity to duty holders on how to provide psychologically healthy and safety workplaces. Notwithstanding the challenges and suggestions for improvements noted below, the AIHS believe that well-designed regulations in relation to psychological OHS are long overdue.</p> <p>The AIHS notes WorkSafe's commitment to the National Compliance and Enforcement Policy, which is endorsed by all Australian WHS regulators, and so requires a proportional and responsive approach to this matter. We believe this commitment should go some way to assuaging fears some stakeholders may carry in the literal interpretation and application of these regulations to all Victorian workplaces, and the subsequent risk of unintended consequences.</p> <p><b>2. RECOGNISING THE ONGOING EFFORTS TO PROVIDE COMPLIANCE RESOURCES</b></p> <p>WorkSafe has over the last decade developed significant evidence-based resources to support psychological OHS at work and psychosocial risk management.</p> <p>We note that Victorian businesses can also access psychosocial hazard management resources released by bodies such as the National Workplace Initiative, industry bodies, unions, and non-government organisations like BeyondBlue, as well as other OHS regulators around the country and overseas. Indeed, as noted below, one of the challenges for organisations is navigating the significant volume of materials available, and selecting and applying those most suitable for their needs.</p> <p><b>3. TERMINOLOGY</b></p>

For some duty holders, some terms used in the regulations may be confusing. In particular, 'systems of work' and 'work design' may be confused with 'management of work' and of 'the workplace/work environment'.

We endorse the definition of 'work design', and recommend that one for 'systems of work' is also included. We recommend that resources to support understanding of these and other commonly used terms is provided in parallel to or as soon as possible after the release of the regulation, possibly as a part of a supporting Compliance Code. Providing examples may also benefit duty holders here.

We believe the term 'psychosocial complaint' as defined lacks clarity, may cause confusion and may result in employers discouraging employees from reporting. "Psychosocial complaint" is ambiguous and reminiscent of HR bullying and harassment investigation processes. It is unclear how a complaint differs to an incident or event, or a series of incidents or events that may create a risk of, or actual, harm. Further, is a "complaint" reportable only if an employee makes a "formal complaint" or if concern about a psychosocial hazard is mentioned in passing? "Complaint" is also potentially a loaded term that is not victim centred. The onus of proof is on the 'complainant'. The use of this term may have unintended consequences for reporting.

#### 4. PREVENTION PLANS

We acknowledged the argument for the inclusion of written prevention plans for the most serious psychosocial hazards is to ensure duty holders have a management plan and that the control measures are monitored.

We have concerns in the section of the regulatory impact statement (RIS) regarding the estimated impact of the proposed regulations on small to medium businesses. In our experience, many more businesses than 1 in 3 will experience one or more of the stated psychosocial hazards on an annual basis.

To this end, as we have seen with 'COVIDSafe Plans' during the COVID-19 pandemic, there is a risk that the prevention plans and reporting requirements become "tick the box" exercises for employers, rather than leading to meaningful efforts to reduce psychosocial risks.

Further, the assessment of what constitutes (excessively) 'high job demands' is problematic. Additional information and the promotion of existing tools such as People at Work and Workwell resources would support duty holders to make informed assessments of excessively 'high job demands'.

#### 5. QUESTIONING THE VALUE OF STATE DATA COLLECTION

The RIS notes the WorkSafe preference to include reporting requirements in the regulations as it "will allow for more informed regulatory interventions in the future", will "build a better knowledge and understanding base of psychosocial hazards and the causes of incidents in workplaces", and the "increased knowledge and evidence will help develop strategic policy interventions in the future."

Our view is that longitudinal studies conducted by research experts would yield more reliable data and better intelligence compared to mandatory reporting. Research projects would enable more targeted data collection from defined industries. We acknowledge that mandating reporting provides other benefits though, such as drawing duty holders attention to the risks.

#### 6. RISK THAT SECTION 448E (REPORTING) DOES NOT ACHIEVE OBJECTIVES

We have concerns about the terminology used to define reportable events. The term psychosocial

"complaint" as defined in the proposed regulations is ambiguous and reminiscent of human resources (HR) bullying and harassment investigation processes. It is unclear to us how a 'complaint' differs to an incident or event, or a series of incidents or events that may create a risk of harm. Further, is a "complaint" reportable only if an employee makes a "formal complaint", or if concern about a psychosocial hazard is mentioned in passing?

In regard to the requirement to report every 6 months, we are concerned about the requirement to report even if an incident has not occurred. Whilst acknowledging the likely intent here is to increase an organisation's monitoring of serious incidents and to provide data on the incidence and prevalence of harm, we believe this may be burdensome for smaller organisations, particularly those without inhouse OHS support.

One of the objectives of the regulations as stated in the summary of changes document is to "reduce stigma and discrimination associated with mental health". There is a risk that the reporting requirements as proposed will deter the reporting of psychosocial incidents or risks, putting the achievement of this objective at risk.

Psychosocial risks and impacts are complex and multifactorial. They may be present and causing harm one day, benign and invisible the next. Job demands may increase and become (or no longer be) 'psychologically hazardous' from hour to hour, day to day, week to week. These factors can make reporting psychosocial 'complaints' or incidents in our existing paradigms impractical. There is a risk here that a health issue is being forced to fit into a regulatory and management ecosystem designed based on discrete, safety events (e.g. incidents or physical injuries).

COVID-19 has highlighted this fundamental misalignment. We encourage stakeholders including WorkSafe to acknowledge this systemic issue, and to collectively work towards reimagining our health and safety ecosystem, to better allow for the prevention, reporting, management, regulation and recovery from health-based injuries and illnesses.

## 7. ANY MANDATED REPORTING WILL NEED TO BE DIGITALLY ENABLED AND FUNDED

To minimise the reporting burden, if the requirement for regular reporting is maintained in the regulations, we strongly advocate for WorkSafe to establish a dedicated, simple, user-friendly platform to enable employers to complete mandated reporting efficiently. However, in doing so, WorkSafe will need to consider digital equity; not all employers have ready access to online systems or the required digital capability to use the platform, and allowances will need to be made for employers who lack adequate bandwidth, are visually impaired, etc.

The COVID-19 pandemic has shown how difficult governments can find it to design, execute and support digital platforms. Maintaining these systems also requires ongoing investment and expertise. The costs involved in doing this for these reporting requirements are another significant ongoing expense for the Victorian government, which risk eroding the overall benefits of the regulations.

Finally, many other larger employers already have digital systems to support their management of OHS. We recommend WorkSafe seek to engage with the suppliers of these software products, and investigate co-develop reporting frameworks, in order to better enable duty holders to meet these new reporting requirements by using existing systems. We recommend WorkSafe leverage the AIHS in collaborating with these types of stakeholders.

## 8. INDUSTRY CAPABILITY TO COMPLY

The new requirements should be supported by ongoing education and awareness campaigns. State-subsidised/supported/promoted preventative training programs, as well as more responsive



training like 'mental health first aid', would also greatly support industry capability uplift.

Despite the significant investments in resources over the past two decades, and despite the long-standing general duty to eliminate risks to psychological health and safety, our perspective is that the general state of knowledge on psychological health/psychosocial risk and understanding of the terminology and concepts used in the regulations is still low across Victorian organisations.

Given these regulations will apply to all workplaces, there will be a need for 1) a swift uplift in industry's capability to understand, identify and manage psychosocial hazards, as well as understanding the content of the regulations and actions required to comply, and 2) businesses to be able to access trusted subject matter experts in a timely manner.

Health and safety representatives (HSRs) play a role in the regulations in section 448C of the regulations. We support their explicit inclusion in the regulations. However we note that the thousands of HSRs in Victorian workplaces have likely not received dedicated training in relation to the terms, concepts and issues presented in the regulations.

We invite WorkSafe to work with us to develop improved capability across industry. WorkSafe webinars typically provide an avenue for only one-way communication, often simply re-stating policies with minimal practical advice. In these forums there is limited opportunity for debate and engagement, which we know is how real learning occurs. The AIHS would welcome the opportunity to work with WorkSafe to develop more effective education and learning opportunities for OHS professionals and practitioners and the broader OHS community, and for industry.

Further, we recommend WorkSafe partners with other suitable education and training stakeholders to ensure practical, effective development opportunities are made available to those who will be responsible for complying with the proposed regulations.

We also invite WorkSafe to engage with members of our profession (Victoria's OHS practitioners and professionals) to establish how our expertise can be best made available to employers, to enable them to receive suitable advice and resources to comply with the regulations.

We understand that the "WorkWell Toolkit" is seen by WorkSafe to be the 'go-to' source of information for employers. But even with access to these tools and resources, employers are time-poor, many are overwhelmed on this topic, and are fearful of not getting it right, or making the wrong decision with regards to interventions. Access to suitably qualified OHS professionals to assist with the interpretation and implementation of these tools and resources is critical. This may be achieved through increasing the funding to the OHS Essentials Program or similar schemes.

We would expect to see these new regulatory requirements to be embedded into the existing WorkWell Toolkit, rather than creating additional, separate resources for employers (and workers) to find.

To this end, we recommend all related stakeholders review the Occupational Health and Safety Body of Knowledge - Chapter 19: Psychosocial Hazards <https://www.ohsbok.org.au/chapter-19-psychosocial-hazards-and-occupational-stress/>. With the foundational support of WorkSafe, the AIHS has been developing the OHS BoK since 2012. We welcome any support from stakeholders in the continued growth and maintenance of this vital (and world leading) resource to achieve the goals as stated above.

#### **Specific comments**

<p><b>1. Objective</b></p>	<p>Overall, we support the stated objects of these regulations.</p>
<p><b>2. Authorising provision</b></p>	<p>No comments.</p>
<p><b>3. Commencement</b></p>	<p>No comments.</p>
<p><b>4. Principle Regulations</b></p>	<p>No comments.</p>
<p><b>5. Definitions</b></p>	<p>We provide comments on the following selected terms:</p> <p><b>High job demands</b>  We understand why this term has not been defined further, or even quantified, as the risk associated with job demands is linked to the nature of the role and many other individual factors. However we think examples could be provided in a Compliance Code to help duty holders interpret this term.</p> <p><b>Psychosocial hazards</b>  We support this term, see our Sept 2020 Position Paper on Psychological Health and Safety at Work (via <a href="http://www.aihs.org.au/aihs-policy">www.aihs.org.au/aihs-policy</a>).</p> <p><b>Reportable psychosocial complaint</b>  This definition lacks clarity, may cause confusion and may result in employers discouraging employees from reporting. "Psychosocial complaint" as defined is ambiguous and reminiscent of HR bullying and harassment investigation processes. It is unclear how a complaint differs to an incident or event, or a series of incidents or events that may create a risk of, or actual, harm. Further, is a "complaint" reportable only if an employee makes a "formal complaint" or if concern about a psychosocial hazard is mentioned in passing? "Complaint" is potentially a loaded term that is not victim-centred. The onus of proof is on the complainant. The use of this term may have unintended consequences for reporting. We think the threshold for a psychosocial complaint should be further defined, and perhaps elevated. For example, for clarity, any event that is reported to police, Fair Work Commission or Victorian Equal Opportunity and Human Rights Commission bodies (and potentially also their federal counterparts/ equivalents) should automatically be considered as a "reportable psychosocial complaint". We would expect to see further definition, perhaps supported by examples, in a Compliance Code.</p> <p><b>Work design</b></p>

	We support this definition.
<b>Part 5A.1 – Duties of employers</b>	<p>448A &amp; 448B - Guidance will be required for employers on how to comply with requirements for identifying, controlling and monitoring psychosocial risks for employees working virtually and physically disconnected from the workplace. The boundaries of responsibility will need to be clearly drawn for employers so that employees do not raise concerns about privacy breaches or encroachment on personal lives.</p> <p>We support the proposed hierarchy of 1) elimination, 2) adjust/reduction, and 3) information, instruction or training, as it approximately aligns with the 1) primary prevention, 2) secondary modification and 3) tertiary minimisation controls in our 2019 Position Paper Safeguarding Mental Health at Work (via <a href="http://www.aihs.org.au/aihs-policy">www.aihs.org.au/aihs-policy</a>).</p> <p>448B (4) – The requirement to not rely on controls listed 448B (2)(b) as predominant controls over 448B (2)(a). Our view is that many employers do not have the means to meaningfully and confidently assess that they have not used 'information, instruction or training' control measures as the 'predominant measure' over the other five listed in 448B (2) (a). Supporting guidance in a Compliance Code may help duty holders here.</p> <p>448D (1) In our experience, the psychosocial hazards listed in (1)(a) – (1)(e), without higher 'thresholds' defined, are unfortunately common in almost all environments where people work. Therefore, it should be expected that almost every Victorian employer will be required to prepare prevention plans – far greater than the one in three “high risk” businesses predicted to be impacted in the RIS.</p> <p>448D 3(a) We note that some will see the mandating of the documentation of prevention plans is a step backwards from the changes made to Regulations in 2007, which removed the need to document risk assessments for most critical hazards. While some employers will choose to document psychosocial risks and controls, prescribing for this does not align with the shift towards more a practical, human-centred approach in more mature OHS risk management settings. Therefore, there is a risk that some organisations will see this as just an additional administrative obligation.</p>
<b>Part 5A.2 – Reporting</b>	A longitudinal study conducted by research experts would likely yield more reliable data and better



	<p>intelligence compared to mandatory reporting.</p> <p>There is a risk that the reporting requirement will deter the reporting of psychosocial incidents or risks, defying one of the objectives of the regulations which is stated in the summary of changes document as being to “reduce stigma and discrimination associated with mental health”.</p> <p>448G – We believe there is a risk that in certain sized organisations HSRs are authorised to access reports which may allow them to identify individuals involved in incidents, based on information that meets requirements of 448E (2). We recommend that HSR training is updated to reflect details of this authorisation, and that additional privacy and identification protective measures are considered. A lack of confidence in remaining deidentified in medium-sized organisations may hinder the reporting of “psychosocial complaints”.</p> <p>The COVID-19 pandemic has shown how difficult governments find it to design, execute and support digital platforms. Maintaining these systems requires ongoing investment and expertise. The costs involved in doing this for these reporting requirements are another significant ongoing expense for the Victorian government, which will further erode the overall benefits of the regulations.</p>
<b>Part 5A.3– Enforcement Amendments</b>	Click here to enter text.
<b>Endnotes</b>	

**Occupational Health and Safety Amendment (Psychological Health) Regulations - Regulatory Impact Statement (RIS)**

Please provide your general comments on the RIS in the table below. Where possible, please indicate the part and section of the RIS you are commenting on.

<b>General comments</b>
<p>The requirement in 448D for documented prevention plans will be relevant to almost all employers in Victoria. Three of the five specified hazards in 448D that prompt the need for a prevention plan will be present in all workplaces where more than one person is present. The absence of a risk threshold for this requirement may create administrative burdens beyond the perceived benefit.</p> <p>As an example, the WorkSafe Victoria COVID-19 positive case notification requirements introduced in 2020 saw an administrative and reporting burden placed on workplaces in notifying the regulator of positive cases. These reports eroded critical time that could be better spent</p>

managing the cases themselves. The notifications produced negligible benefits, and caused confusion and another layer of reporting outside the regulatory notification requirements for notifiable incidents, and parallel to Department of Health reporting requirements. We are concerned by approaching “psychosocial complaints” in a similar manner, the confusion and burden on businesses, particularly small and medium businesses, will not outweigh the benefits identified by the regulator.

We believe an effective education and awareness campaign (supplemented with practical support for small and medium businesses) to raise capabilities to understand, identify and manage psychosocial risks (as per their current obligations) will be required to support the documented prevention plans and reporting requirements. Otherwise there is a risk that the prevention plans and reporting requirements become “tick the box” exercises for employers, rather than leading to meaningful efforts to reduce psychosocial risks.

**Specific comments**

1. <i>Background</i>	Click here to enter text.
2. <i>The problem of mental harm in the workplace</i>	Click here to enter text.
3. <i>Options</i>	<p>3.5.2 Component 2: Prevention plans</p> <p>We believe the logic for including a requirement for documented prevention plans (they are “likely to address each cause of the problem and lead to a positive shift in PSC”) will be challenged by many stakeholders.</p> <p>Our view is that many employers without significant support will lack the required knowledge to do this in a meaningful way, lack the resources to engage the required expertise, and may therefore prepare plans with a “tick the box” attitude.</p> <p>3.5.2 Component 3: Reporting requirements</p> <p>The new reporting obligation “is expected to elevate the importance of mental health and safety (Clause 3), shifting organisational priorities toward proactive identification of risks associated with psychosocial hazards and the need to control them”. There is a risk that mandating this reporting will have the opposite effect, causing employers to discourage or ignore “complaints” to avoid having to report them to WorkSafe and attracting attention to themselves. This may stifle progress on de-stigmatising mental health issues and creating mentally healthy workplaces.</p> <p>Further, reporting is expected to “increase employers’ state of knowledge regarding the nature of mental health risks and psychosocial hazards, by bringing employers’ attention to the nature, size and frequency of incidents occurring within their workplaces as well as the high-level characteristics of those incidents”.</p> <p>In our view few employers would have the frequency and</p>

	volume of “complaints” that would render them unaware of their “nature, size and frequency”. This might be true for very large employers, but less likely for small and medium-sized employers. Without proportionate and responsive compliance and enforcement, there is a risk that these regulations will therefore disproportionately impact small and medium-sized employers.
4. <i>Options analysis of preferred option</i>	Click here to enter text.
5. <i>Small business and competition impacts</i>	Click here to enter text.
6. <i>Implementation and evaluation strategy</i>	Click here to enter text.
7. <i>Limitation of our work</i>	Click here to enter text.

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