

# Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022

Explanatory notes for SL No. 141

made under the

*Work Health and Safety Act 2011*

## General Outline

### Short title

The short title of the regulation is the *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022*.

### Authorising law

Section 276(2) of the *Work Health and Safety Act 2011*.

### Policy objectives and the reasons for them

Section 4 of the *Work Health and Safety Act 2011* (WHS Act) defines 'health' to include psychological health. This means, any duties under the WHS Act that apply to 'health' apply to psychological health. Despite this the *2018 Review of the model work health and safety laws* (2018 Review) found that:

- persons conducting a business or undertaking (PCBUs) have limited understanding of their duties in relation to managing risks to psychological health at work, and
- while the work health and safety (WHS) laws already deal with psychological health at work, work-related psychological injury data, and the experiences of workers, indicates the existing framework is not operating effectively.

In response to this outcome, the 2018 Review recommended the model WHS Regulations be amended to '*deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks*' (Recommendation 2). Recommendation 2 was supported by Ministers responsible for WHS.

The model WHS Regulations were amended in June 2022 to give effect to Recommendation 2. Amendments to the model WHS Regulations do not automatically apply in each State, rather they must be separately introduced in each jurisdiction. The *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022* (the regulation) gives effect to the model WHS Regulations for psychosocial risks in Queensland.

The regulation, while largely mirroring the model WHS Regulations, also applies the hierarchy of controls (section 36, *Work Health and Safety Regulation 2011*) to psychosocial hazards. This ensures higher order control measures are implemented in the first instance unless it is not reasonably practicable to do so. Applying the hierarchy of controls is a fundamental element of WHS risk management and is consistent with the existing

expectation for how psychosocial risks should be managed.

Overall, the objectives of the regulation are to:

- reduce and prevent the incidence of work-related psychological injuries in Queensland
- provide clarity and certainty for PCBUs about their existing duties to manage risks to psychological health under the WHS Act
- ensure higher order control measures are implemented, so far as is reasonably practicable
- raise the profile of psychosocial risks through express provisions in *Work Health and Safety Regulation 2011*
- address the perception that psychosocial risks are not as important as physical risks
- assist the regulator by providing a clearer path for enforcement action, and
- ensure Queensland maintains an equivalent standard of health and safety for psychosocial risks at work.

## **Achievement of policy objectives**

The regulation will achieve the policy objectives by providing clarity and certainty for PCBUs about existing obligations to ensure psychosocial risks at work are eliminated or minimised, so far as is reasonably practicable. In particular, the regulation will provide a principles-based approach that raises the profile and awareness of existing duties and removes ambiguity regarding the duty to manage psychosocial risks at work.

## **Consistency with policy objectives of authorising law**

The regulation is consistent with the objects of the WHS Act to ensure:

- workers and others are protected against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work, and
- provision of a framework for continuous improvement and progressively higher standards of work health and safety.

## **Inconsistency with policy objectives of other legislation**

The regulation is not inconsistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The policy objectives can only be achieved by regulation. This is consistent with the agreed outcome of the 2018 Review.

## **Benefits and costs of implementation**

Research estimates that psychological health conditions cost Australian workplaces around \$11 billion per year. This comprises \$4.7 billion in absenteeism, \$6.1 billion in presenteeism (e.g. low productivity while at work), and \$146 million in compensation claims.

However, research indicates there is a return on investment of \$2.30 in benefits for every dollar spent on effective action to minimise psychosocial risks at work.

Research has also shown that psychologically healthy workplaces have more positive employee outcomes, including worker health (e.g. increased ratings of subjective health and reduced burnout), favourable job attitudes toward work (e.g. increased job satisfaction, commitment, positive attitudes toward self-development and lower turnover intentions) and positive work performance-related outcomes (e.g. better task performance, organisational citizenship

behaviours and creative performance).

Good psychological health at work is also associated with lower work-related injury rates, which can reduce business and compliance costs from lost productivity or increased absenteeism.

The cost impacts of the regulation will largely depend on whether PCBUs are currently meeting their existing duties or not. If they are, there will be few additional compliance costs. If they are not, costs may include labour costs to identify psychosocial risks, development of training and education to ensure the controls implemented to manage psychosocial risks are effective, updating workflow management systems, improving safety management systems, and improvements to the physical working environment.

Where PCBUs incur costs, these will likely occur in the initial year after the regulation is introduced as systems and processes are improved. There should be little to no ongoing costs beyond identifying and controlling any new psychosocial hazards that may arise and maintaining and reviewing control measures to ensure they continue to be effective.

## **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles. The use of subordinate legislation is considered justified noting the objective of the regulation to clarify existing duties under the *Work Health and Safety Act 2011*.

## **Consultation**

The recommendation to introduce psychosocial risk regulations in the 2018 Review was subject to a national Regulatory Impact Statement (RIS) process conducted by Safe Work Australia. Submissions to the Consultation RIS are listed on the Safe Work Australia 'Engage' website.

Targeted consultation was also undertaken with Queensland stakeholders through a Steering Group and Reference Group comprised of worker representatives, industry representatives, employer representatives, relevant government agencies and Commissions, and technical experts and academics.

## Notes on provisions

Clause 1 states the regulation may be cited as the *Work Health and Safety (Psychosocial Risks) Amendment Regulation 2022*.

Clause 2 states the regulation will commence on 1 April 2023.

Clause 3 states the regulation amends the *Work Health and Safety Regulation 2011* (WHS Regulation).

Clause 4 inserts new Division 11 in Part 3.2 of the WHS Regulation as follows:

### **Division 11 Psychosocial risks**

#### Meaning of psychosocial hazard

New regulation 55A defines a psychosocial hazard as a hazard that arises from, or relates to:

- the design or management of work
- a work environment
- plant at a workplace, or
- workplace interactions or behaviours.

Paragraph 55A(b) clarifies that a hazard is a psychosocial hazard if it may cause psychological harm, whether or not the hazard may also cause physical harm. This is consistent with section 4 of the Act which defines health as meaning both physical and psychological health.

#### Meaning of psychosocial risk

New regulation 55B defines a psychosocial risk as a risk to the health or safety of a worker or other person from a psychosocial hazard, as defined in regulation 55A.

#### Duty to manage psychosocial risks

Regulation 55C specifies that a PCBU must manage psychosocial risks, as defined in regulation 55B, under part 3.1 of the WHS Regulation.

Some hazards (e.g. remote or isolated work) may create both physical and psychosocial risks, and other regulations may apply (e.g. regulation 48). Where this occurs, the duty to manage psychosocial risks applies in addition to other requirements to manage hazards under the WHS Regulation. In the example of remote and isolated work this means both physical *and* psychosocial risks must be managed under Part 3.1 of the WHS Regulation, *and* any safe system of work must include effective communication with the worker as required in regulation 48.

The note following regulation 55C means that a person's duty under section 19 of the Act (Primary duty of care) is to be performed in accordance with regulation 55C. Regulation 9 explains the effect of notes linking a regulation to health and safety duties in the Act.

#### Determining control measures for psychosocial risks

Regulation 55D sets out matters to have regard to when determining control measures for psychosocial risks. These matters are in addition to the requirements for control measures under Part 3.1. of the WHS Regulation (e.g. the requirement to apply the hierarchy of controls under regulation 36).

Sub-regulation 55D(1) clarifies that section 55D applies to a PCBU who implement control measures to manage psychosocial risks under part 3.1 of the WHS Regulation.

Sub-regulation 55D(2) provides that in determining the control measures to implement, the person must have regard to all relevant matters including:

- the duration, frequency and severity of the exposure of workers and other persons to the psychosocial hazards – this recognises the risk of harm, and the potential severity of any subsequent injury or illness, increases with the frequency, duration and severity of exposure to psychosocial hazards
- how the psychosocial hazards may interact or combine – this recognises the need to holistically consider the interaction of any psychosocial hazards present, including that they may interact or combine to create new, changed or higher risks
- the design of work, including job demands and tasks – this recognises the need for PCBUs to consider the design of work as a control measure and implement control measures that eliminate or minimise psychosocial hazards (e.g. high job demands or exposure to traumatic events) at the organisation or systems level
- the systems of work, including how work is managed, organised and supported – this recognises that how work is managed, organised and supported can assist with controlling psychosocial risks such as job demands, low job control and poor support
- the design and layout, and environmental conditions, of the workplace, including provision of safe means of entering and exiting the workplace, and facilities for the welfare of workers – this requires PCBUs to consider controlling risks that may arise from the design, layout and environmental conditions of the workplace, and controlling risks through good design. For example, designing the workplace to ensure good visibility and provide safe access to welfare facilities
- the design and layout, and environmental conditions, of workers' accommodation – this recognises that the above considerations for the workplace also apply to workers' accommodation. The term 'workers' accommodation' is defined in subsection 19(4) of the WHS Act
- the plant, substances and structures at the workplace – this recognises that plant, substances and structures may create psychosocial risks but can also be used to control psychosocial risks. For example, the provision of plant to enable a job to be performed properly.
- workplace interactions or behaviours – this requires PCBUs to consider harmful behaviours (e.g. violence, aggression, bullying, harassment, sexual harassment, conflict and poor workplace relationships) in the workplace and implement control measures to manage the related risks, and
- the information training, instruction and supervision provided to workers – this recognises that training can support the implementation of controls for psychosocial hazards and be used as a control measure itself (e.g. training in conflict management). It is intended to ensure PCBUs provide the training, instruction and supervision necessary to support the implementation of control measures such as bullying policies.

Consideration is not limited to matters as they currently exist and the PCBU must also have regard to what changes, if any, should be made to those matters.

For example, a PCBU must consider existing plant, substances and structures in the workplace, but also consider whether different or additional plant, substances or structures should be in use in the workplace to manage psychosocial risks.

*Clause 5* amends Schedule 19 to include psychosocial hazard and psychosocial risk in the list of definitions.