

Managing psychosocial hazards and risks to psychological health in the rail industry

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Agenda

- Investigations, inquiries and prosecutions
- Law and Regulator Guidance material
- Compliance suggestions

Investigations, inquiries and prosecutions

Regulator expectations

- Safety regulators now expect organisations to apply the systematic risk management approach to the elimination of sexual harassment and other psychosocial risks in the workplace (refer to the Safe Work Australia 'Guide to Preventing and Responding to Sexual Harassment' and National Guidance Material: 'Work-related psychological health and safety': a systemic approach to meeting your duties).
- Respect @ Work
- Rio Tinto Everyday Respect
- Prosecutions

Law and regulator guidance material

Legislation

- WHS Act PCBU primary duty: “...to ensure so far as is reasonably practicable, the health and safety of...”:
 - workers while the workers are at work in the business or undertaking; and
 - the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- WHS Act defines ‘health’ to include psychological health
- Rail Safety National Law and Rail Safety National Law National Regulations

Regulator guidance material

- In the last two years, safety regulators around Australia have released guidance materials including the guidance provided below:
 - Safe Work Australia Guide to Preventing and Responding to Sexual Harassment
 - SafeWork NSW - Code of Practice for Managing Psychosocial risks;
 - WorkSafe Qld – various guides
 - WorkSafe Vic – various guides;
 - WA – Code of Practice - Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors;

Victorian draft Regulations

- Victoria's proposed *Occupational Health and Safety Amendment (Psychological Health) Regulations (draft Regulations)* have been released and the comment period closed (31 March 2022)
- If approved by the Minister, the Proposed Regulations are to commence operation on 1 July 2022.
- Their introduction follows a period in which workers' compensation claims for mental injury have persistently increased across Australia. In Victoria, such claims increased by 20% between 2017 and 2019, and now constitute a record high of 14% of overall claims.

Victorian draft Regulations - psychosocial hazard?

- The Proposed Regulations define *psychosocial hazard* as any factor(s) in:
 - The work design;
 - The systems of work;
 - The management of work;
 - The carrying out the work;
 - Personal or work-related interactions,

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

Examples given include bullying, sexual harassment, aggression or violence, exposure to traumatic events or content, high job demands, low job control, remote or isolated work, poor organisational change management, poor workplace relationships and, low recognition and reward (amongst other things).

Victorian draft Regulations: employers

The Proposed Regulations require employers to:

- **Identify psychosocial hazards;**
- **Eliminate**, so far as is reasonably practicable, **any risk associated with a psychosocial hazard**. If it is not reasonably practicable to eliminate the risk, the employer must reduce this risk, so far as is reasonably practicable by altering the:
 - Management of work; Plant; Systems of work; Work design; Workplace environment; Information, instruction or training; or A combination of the control measures.
- An employer cannot rely exclusively on information, instruction or training unless the above listed higher order control measures are not reasonably practicable. If using a combination of control measures, information, instruction or training must not be the “*predominant control measure used*”;
- **Review** (and revise where needed) risk control measures

Victorian draft Regulations - plan

- If an employer identifies one or more of these psychosocial hazards:
 - aggression or violence;
 - bullying;
 - exposure to traumatic content or events;
 - high job demands;
 - sexual harassment,

it is required to have a prevention plan in place. That plan must be in writing, identify the risk associated with the hazard, include measures to control the risks, include an implementation plan and detail the consultation undertaken.

Victorian draft Regulations - records

- Additionally, **employers with 50 employees or more**, at any time during the reporting period (there are 2 reporting periods in a calendar year) must **create, keep for 5 years, and provide to** the Authority upon request **a written report** of any complaints involving bullying, aggression or violence, or sexual harassment.
- From 1 September 2023, a failure to have the written plan (for an employer who is required to do so by the Proposed Regulations) may constitute a failure to comply with the primary duty under section 21 *Occupational Health and Safety Act 2004* (Vic). Failure by an employer to report to the Authority (if required to do so by the Proposed Regulations), keep and have it available for inspection will become an offence against the Regulations (for which the maximum penalty is 300 penalty units for a body corporate or \$54,522 using the current penalty unit value).

Compliance suggestions

Actions

- Apply a systematic risk management approach of hazard identification, risk assessment, implementing controls and review, similar to any other WHS hazard
- Undertake organisational and project specific risk assessments in relation to psychosocial hazards and risks
- Develop new organisational and project level safety systems and procedures for psychosocial risk management, and integrate psychological risk considerations into existing systems where applicable
- Review of organisational and project level processes and procedures for reporting, investigating and responding to complaints of inappropriate workplace behaviour
- Integrate psychosocial incidents into existing incident reporting and investigation processes
- Develop psychosocial risk reporting lead and lag indicators
- Include psychosocial risk reporting in executive and board reporting
- Implement a consultation program seeking input into, and obtaining feedback on, the tools developed to prevent and respond to psychosocial hazards and risks
- Train officers and senior managers regarding psychological risk obligations and management

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