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Submitted via online form: <https://engage.vic.gov.au/proposed-psychological-health-regulations>

Response to the WorkSafe Victoria Occupational Health and Safety Amendment (Psychological Health) Regulations and associated Regulatory Impact Statement

Survey Question Responses

Proposed Occupational Health and Safety Amendment (Psychological Health) Regulations

General comments

The Australian Psychological Society (APS) commends WorkSafe Victoria (WSV) for leading the way with developing the first regulatory framework for the management of psychosocial risks in Australia. These regulations signal the significant contributions that workplaces can make toward the promotion of mental health and wellbeing through better prevention and management of psychosocial risks that emerge within a work context.

The APS's main concern in providing comment about the regulations and associated Regulatory Impact Statement (RIS) is that it is very difficult to assess (and therefore comment upon) the administrative burden and investment needed to implement the regulations given that the:

1. associated compliance codes, that will specify requirements of a range of stakeholders, have not been released for consultation, and
2. templates and tools which employers will be expected to utilise are unavailable for scrutiny and, hence, cannot be commented upon.

Accordingly, much of the APS's feedback looks at practical implementation considerations which would assist the Government and WSV to achieve the intended purpose of the regulations with minimum disruption and administrative load on employers.

The intent of these regulations is geared towards generating cultural shifts and increased awareness and utilisation of proactive mechanisms for preventing and managing psychosocial injuries in the workplace. This requires a move away from a reliance on reactive processes that follow the occurrence of an injury. The APS is strongly of the view that focus of the regulations should be for employers to engage with the process in a genuine way, in addition to investing time in understanding what is required of them.

Specific comments

1. Objective	<p>In principle, the APS agrees with the proposed objectives of the regulations. We believe the objectives of the proposed regulations are sound and of sufficient scope.</p>
2. Authorising provision	<p>The APS has no comment.</p>
3. Commencement	<p>The regulations, as noted elsewhere in this submission, represent (and will require) a substantial change to the way in which psychological injury has previously been addressed in the workplace.</p> <p>Rather than requiring the implementation of the full suite of requirements at one point in time, a phased implementation of the different obligations under the regulations is recommended to reduce the associated financial and administrative burden on employers. The following phased approach to implementation is suggested:</p> <p>Phase 1 – The introduction of the psychosocial risk assessment process, with appropriate emphasis given to resources and training for OHS professionals and duty holders to enable them to effectively understand and engage in the risk assessment process in a meaningful way.</p> <p>Phase 2 – The development of prevention plans, noting that depending on the size of the organisation and the nature of the risk, these prevention plans may be required at an organisational and work group/DWG (Designated Work Group) level in order to be targeted and specific to presenting risk factors.</p> <p>Phase 3 – The inclusion of a transition period that enables employers to effectively setup the necessary systems and processes for collecting and reporting the required data prior to the introduction of penalties.</p> <p>Such a phased approach would allow employers to develop their capability over time with the opportunity for WSV to take a “constructive compliance” approach at each stage, assisting and enabling employers to meet their obligations under the Act.</p> <p>For instance, WSV could consider randomised inspections (that provide expert guidance and support) at each phase in partnership with employers and other stakeholders aimed at achieving the objectives of the regulations. The outcomes of such inspections could be utilised to produce case studies to further guide implementation across industries.</p>

	<p>The APS believes the absence of such a phased approach has the potential to result in employers feeling overwhelmed by the enormity of the initial set-up, and resorting to meeting only minimum requirements without sufficiently understanding and acting to address the core issues. While regulation is a necessary step, an overemphasis on the regulatory aspect can be counter-intuitive to the regulations being implemented sufficiently well.</p>
4. Principle Regulations	<p>The APS has no comment.</p>
5. Definitions	<p>The regulations would benefit from non-technical examples to assist all stakeholders to best-understand them. For example, it is suggested that the following illustrations be adopted in relation to the terms noted below:</p> <ul style="list-style-type: none"> - Psychological response: including examples of what is meant by "cognitive, emotional and behavioural responses and the psychological processes associated with them". It is further suggested that the psychological responses associated with different types of psychosocial hazard be clearly defined in the proposed compliance codes to assist employers to easily recognise the signs and symptoms of a psychological response within the context of the hazard. - Psychosocial hazard: further describing what is meant by work design and systems of work will be important. As a starting point, examples of psychosocial hazards could be categorised under each factor. - Work design: while technically accurate, the definition provided is not layperson-friendly. The APS suggests using accessible language such as; job rotations, pace of work, work breaks, working hours, etc.
Part 5A.1 – Duties of employers	<p>In principle, the APS agrees with the duties of employers, as described in the clauses under this section of the regulations. As per clauses 448 A - D of the regulations, employers are best placed, as is reasonably practicable, to:</p> <ul style="list-style-type: none"> - identify psychosocial hazards - eliminate or reduce such hazards - introduce and review risk control measures and - develop prevention plans related to such risks. <p>However, more clarity and guidance needs to be provided in relation to each of these duties to ensure that employers understand exactly what is expected of them. For, example:</p> <ul style="list-style-type: none"> - Explaining who undertakes hazard/risk assessments and at what level of seniority within organisations.

	<ul style="list-style-type: none"> - Providing a list of questions to assist with the exploration of each risk at a workgroup level. - Developing a risk calculator tool and redefining risk consequences to include those relevant to psychosocial risks. - Providing examples of the controls listed in Section 2(a) to help employers understand what is required of them. <p>On the assumption that a hierarchy of controls approach is adopted, the compliance codes that will be required under the regulations will need to include specific measures for each risk listed under each of the hierarchy of control categories.</p> <p>Regardless, it is important that simple, accessible language is used. Examples include:</p> <p>Prevent - Proactive controls for minimising exposure to potential events and triggers and boosting protective factors.</p> <p>Manage - Building capability to reduce the potential impacts of identified psychosocial risks,</p> <p>Safety Net - Assisting those impacted by psychosocial risks, and supporting recovery through expert support.</p>
<p>Part 5A.2 – Reporting</p>	<p>The APS recognises the role of reporting in: (a) ensuring greater accountability for mental health in the workplace on the part of duty holders, and (b) enabling the capacity of WSV to prevent, act promptly, and proactively identify workplace behaviours with the potential to become associated with workplace injury. Despite this, there are issues for WSV to consider in relation to reporting provisions. They include:</p> <p>(1) Defining what constitutes a complaint to avoid the potential for confusion in the workplace. That is, making clear statements about what a complaint is, as opposed to an incident or “near miss”.</p> <p>(2) Adopting a threshold question for when a complaint/incident is reported/recorded by considering the following parameters:</p> <ul style="list-style-type: none"> - When a psychosocial hazard eventuates in a psychological response that impacts on the individual's ability to carry out their work to qualify the data that is reported. - When an alleged complaint is justified. - When a complaint relates to negative horizontal (worker-to-worker) behaviours. <p>(3) Accounting for privacy and confidentiality issues in providing reports to action officers or committees (such as OH&S committees), and</p> <p>(4) Appropriately resourcing systems of reporting to cover the setup costs and time investment.</p>

Part 5A.3– Enforcement Amendments	The APS has no comment.
Endnotes	The APS has no comment.

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

Specific comments

1. Background	The background RIS provides a valuable context for understanding the need for the regulations.
2. The problem of mental harm in the workplace	This section of the RIS well documents the mental health issues associated with work. The analysis provided clearly justifies the introduction of the measures outlined in the regulations.
3. Options	The options for action are well-articulated.
4. Options analysis of preferred option	The APS notes the preference for the adoption of Option 4. The option analysis provided in the RIS is thorough, balanced and well-described. The preference for the adoption of Option 4 is well argued.
5. Small business and competition impacts	The APS is pleased to see that due consideration has been given to the RIS around the effect of business size on the regulations and the burden that such changes would impose on business.
6. Implementation and evaluation strategy	<p>The APS has emphasised the importance of best practice implementation throughout the consultation process.</p> <p>We are therefore pleased that the implementation strategy, articulated in the RIS, specifically identifies what needs to be done, who will do it and who will monitor implementation, including risk management and identification.</p> <p>The APS notes the commitment to stakeholder communication, the need for resourcing (which is crucial to implementation), and the clear role delineation (with WSV's leadership) in the delivery of the Strategy.</p>
7. Limitation of our work	The APS has no comment.

Kind regards,

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Chief Executive Officer

Australian Psychological Society

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to this submission.