



safe work australia

Submission to the Productivity Commission National Inquiry into Mental Health

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Introduction

1. Safe Work Australia (SWA) welcomes the opportunity to make a submission to the Productivity Commission (the Commission) inquiry into the role of improving mental health to support economic participation and enhancing productivity and economic growth (the Inquiry).
2. The model Work Health and Safety (WHS) laws apply a robust legal framework to the management of all WHS risks, including risks to psychological health. This framework assists workplaces to identify and assess risks to the health and safety of workers and other persons at the workplace, and requires duty holders to eliminate or minimise those risks so far as is reasonably practicable.
3. To help duty holders understand and meet their obligations under the model WHS laws, SWA has released a national guide: [Work-related psychological health and safety: A systematic approach to meeting your duties](#) (Psychological Health Guide). This Guide summarises the relevant law, identifies and describes some common hazards and risks, and sets out a systematic and practical approach that duty holders can follow to prevent and address work-related risks to psychological health.
4. Psychological health conditions are a significant factor in work-related injuries and are associated with longer periods away from work. The Inquiry provides an opportunity to shine a spotlight, across the whole economy, on the causes and costs of psychological health conditions. With over 12 million Australians in paid employment, the workplace can have a significant impact on a person's psychological health – both positively and, at times, negatively.¹
5. The Commission issues paper: The Social and Economic Benefits of Improving Mental Health, identified a range of 'components' contributing to psychological health and wellbeing. SWA's submission focuses on one of these: the regulation of workplace health and safety. It addresses the following questions on this topic:²
 - What, if any, changes do you recommend to workplace health and safety laws and regulations to improve mental health in workplaces? What evidence is there that the benefits would outweigh the costs?
 - What workplace characteristics increase the risk of mental ill-health among employees, and how should these risks be addressed by regulators and/or employers?
6. SWA's submission is provided in the context of our ongoing work following the recent review of the model WHS laws, which considered how effective those laws are in addressing risks to psychological health and safety in the workplace. The review has recommended changes to the model WHS Regulations to deal with how to identify risks associated with psychological injury and appropriate measures to manage those risks. All Ministers responsible for WHS will consider the recommendation in the second half of 2019. SWA is currently working towards further consultation on the review's recommendations in relation to work-related psychological risks.

Who is Safe Work Australia?

7. SWA is the Australian Government statutory agency with responsibility for national WHS and workers' compensation policy. We were established under the *Safe Work Australia Act 2008* (Cth) and are comprised of 15 Members: an independent Chair, nine Members

¹ Australian Bureau of Statistics, *Labour Force, Australia* January 2019.

² Productivity Commission Issues Paper, *The Social and Economic Benefits of Improving Mental Health*, January 2019, p31.

representing the Commonwealth and each state and territory, two Members representing the interests of workers, two Members representing the interests of employers and the Chief Executive Officer of SWA.

8. Our key functions are to:
 - monitor and improve Australia’s model WHS laws
 - lead national policy development on WHS and workers’ compensation
 - collect, analyse and share WHS and workers’ compensation data and research
 - provide guidance on how to manage WHS risks, and
 - support the implementation of the *Australian Work Health and Safety Strategy 2012-2022* (the Australian Strategy).
9. SWA is not a regulator – we do not implement or regulate WHS laws or manage workers’ compensation schemes. The Commonwealth, state and territory governments are responsible for making, regulating and enforcing WHS laws and managing workers’ compensation schemes in their respective jurisdictions.
10. SWA’s vision is to achieve *healthy, safe and productive working lives*. All workers in Australia, regardless of the work they do or how they are engaged, have the right to a healthy and safe working environment.

Workplace mental health and wellbeing data

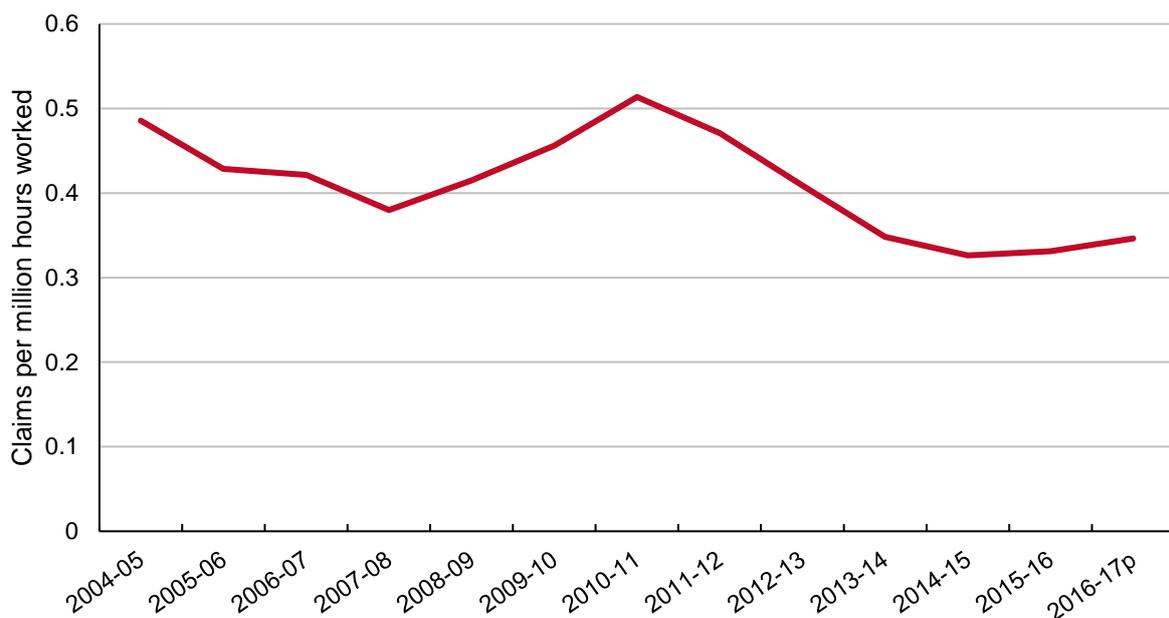
11. Work-related mental health conditions (or psychological injuries) are a major concern for Australian workplaces due to the negative impact on workers, and the costs associated with the long periods away from work that are typical of these injuries.
12. SWA compiles national data on all workers’ compensation claims in Australia, through the National Data Set for Compensation-based Statistics (NDS). This includes information on the injury or disease that led to the claim, including mental health conditions, as well as the cause (mechanism) of the injury or disease, including mental stress.
13. While this data can provide an indicator of work-related mental health conditions, it is important to note that it only covers those employees that are eligible for workers’ compensation and only where a claim has been made and accepted.
14. The NDS data³ show that, on average each year (2012-13 – 2016-17p⁴):
 - approximately 7,140 Australians are compensated for work-related mental health conditions
 - 6 per cent of workers’ compensation claims are for work-related mental health conditions
 - females are twice as likely to have a claim for a mental health condition, compared to males – 0.6 claims per million hours worked, compared with 0.3 for males
 - 92 per cent of claims for work-related mental health conditions are attributed to work-related mental stress, and
 - approximately \$428 million is paid in workers’ compensation for work-related mental health conditions.

³ The NDS data presented in this submission relate to serious workers’ compensation claims which are defined as accepted claims resulting in one or more working weeks lost.

⁴ 2016-17p – preliminary and subject to change as final claims are finalised.

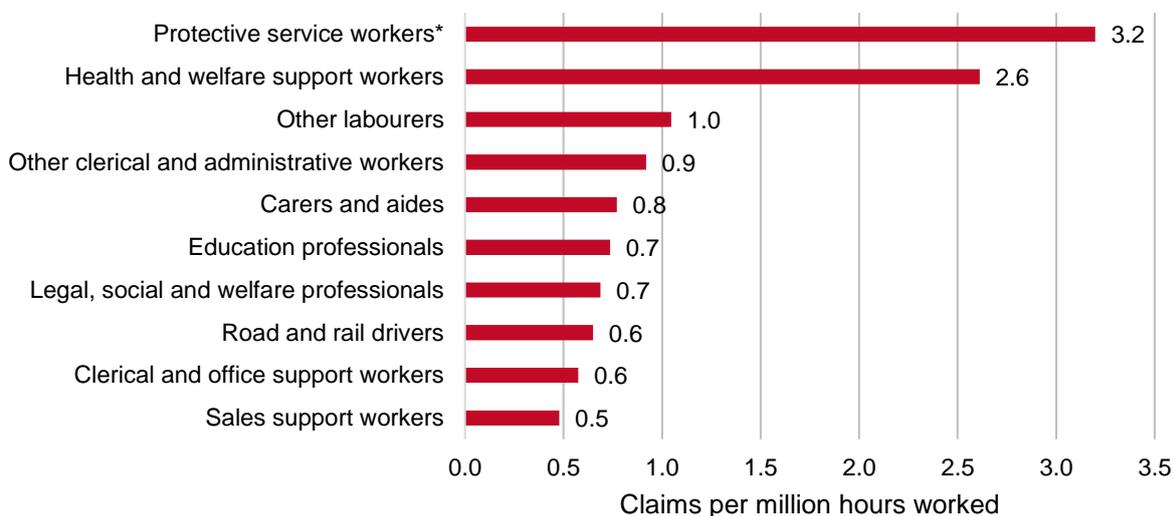
15. Over this same period, the main causes of mental health conditions that led to a claim were:
- work pressure – 21 per cent
 - work-related harassment or bullying – 20 per cent, and
 - exposure to workplace or occupational violence – 10 per cent.
16. The main types of mental health conditions for which workers received compensation were:
- reaction to stressors – 37 per cent
 - anxiety/stress disorder – 31 per cent
 - post-traumatic stress disorder – 12 per cent
 - anxiety/depression combined – 11 per cent, and
 - depression – 4 per cent.
17. Claims involving mental health conditions are usually associated with substantially more time off work and higher compensation paid. Over the five years between 2012-13 and 2016-17p:
- typical compensation payment per claim for a mental health condition was \$25,650 compared to \$10,600 for all claims, and
 - typical time off work was 16.2 weeks per claim for a mental health condition compared to 5.7 weeks for all claims.
18. As shown in Figure 1 below, following an increase in the period from 2007-08 to 2010-11, the frequency rate of claims for mental health conditions decreased significantly up until 2014-15. It has increased slightly again in recent years.

Figure 1: Frequency rate (per million hours worked) of claims for mental health conditions, 2004-05 to 2016-17p



19. A range of factors can impact on the number and rate of workers' compensation claims over time, and it is difficult to correlate a change in claim numbers to any one factor. When analysing trends in workers' compensation claims, particular consideration should be given to any amendments to jurisdiction-specific legislation and claims administrative processes during the period concerned.
20. Information on key changes to jurisdictional workers' compensation schemes are outlined in the *Comparison of workers' compensation arrangements in Australia and New Zealand*, which SWA publishes annually based on information received from the jurisdictions.
21. Figure 2 below shows the occupations with the highest rates of claims for mental health conditions. Over the five years from 2012-13 to 2016-17p, Protective service workers recorded the highest frequency rate of 3.2 claims per million hours worked, followed by Health and welfare support workers (2.6), Other labourers (1.0) and Other clerical and administrative workers (0.9).

Figure 2: Top occupations^a – frequency rate of claims for mental health conditions, 2012-13 to 2016-17p (combined)

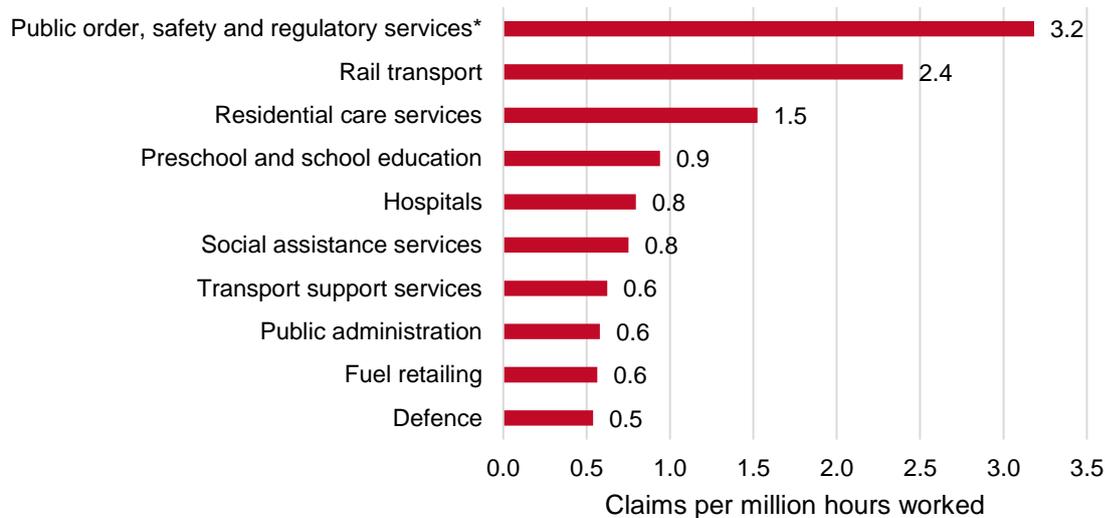


(a) Based on occupation sub-major groups outlined in the *Australian and New Zealand Standard Classification of Occupations*

* Excludes Western Australia.

22. In line with the occupation data and as shown in Figure 3, the industry with the highest frequency rate of claims for mental health conditions was the Public order, safety, and regulatory services industry with a rate of 3.2 claims per million hours worked. This was followed by the Rail transport industry (2.4), the Residential care services industry (1.5) and the Preschool and school education industry (0.9).

Figure 3: Top industries^a - frequency rate of claims for mental health conditions, 2012-13 to 2016-17p (combined)



(a) Based on industry subdivisions as outlined in the *Australian and New Zealand Standard Industrial Classification 2006*

*Excludes Western Australia.

23. In addition to data on workers' compensation claims, SWA in conjunction with jurisdictions, conducts a National Return to Work Survey every two years. This survey is designed to gather information on the return to work experience and outcomes of injured workers, including factors that may have had an effect on their return to work.

24. The data from this survey show that returning to work from a work-related mental health condition can be more difficult than for other injuries. The 2018 National Return to Work Survey⁵ shows that compared with workers who suffered a physical injury, workers with a mental health condition:

- were less likely to have returned to work
- generally reported a lower perception of their ability to work
- generally work fewer hours on their return to work
- were significantly more likely to report negative perceptions of their employers' and colleagues' attitudes and behaviour related to their injury/illness⁶, and
- were significantly less likely to report receiving positive support from their employer.

⁵ National Return to Work Survey 2018, Summary Report, September 2018, Safe Work Australia.

⁶ This includes: thinking they would be treated differently by people at work; feeling that their supervisor thought they were exaggerating or faking the injury/illness; being concerned about being fired if they submitted a claim; and, being discouraged by their employer from putting in a claim.

25. In recent years, SWA has also contributed funding to research⁷ utilising the Australian Workplace Barometer, which is a national project looking at surveillance of workplace trends in psychological health. Specifically, the research looked at the impact of low levels of psychosocial safety climate (PSC) within workplaces on productivity and the associated costs. The research found that:
- workplaces with a low PSC had significantly higher absenteeism and presenteeism than those with high PSC
 - depression led to higher rates of absenteeism and presenteeism, with the total cost to Australian employers estimated to be approximately \$6.3 billion per annum, and
 - psychological distress led to higher rates of absenteeism and presenteeism (although not to the same extent as depression), with the total cost to Australian employers estimated to be approximately \$1 billion per annum.
26. While the data on work-related mental health conditions shows there has been some improvement in the rate of claims for mental health conditions, these conditions continue to have significant negative impacts on workers and employers.

Model WHS laws

Overview

27. SWA led the development of the model WHS laws in 2011 to harmonise the regulation of WHS in Australia. The main object of the model WHS laws is to provide a balanced and nationally consistent framework to secure the health and safety of workers and other persons. 'Health' is defined to specifically include psychological health.
28. The model WHS laws aim to provide all workers in Australia with the same standard of health and safety protection regardless of the work they do or where they work. The laws apply broadly to all organisations regardless of size or industry. The laws are outcomes-based and provide organisations with the flexibility to tailor their approach to WHS to suit their circumstances.
29. The model WHS law framework comprises a model WHS Act, model WHS Regulations and model Codes of Practice (model Codes).
30. The model WHS Act is broad in scope and application, covering 'persons conducting a business or undertaking' (PCBUs) and 'workers'; not just employers and employees. This reflects the policy intention to cover non-traditional, new and evolving working arrangements by moving away from a reliance on the traditional employer-employee relationship. The health and safety duties of PCBUs are set out below.
31. Defining 'health' to specifically include psychological health makes it clear to duty holders that their health and safety duties under the model WHS Act extend to risks to psychological health, including those that arise from psychosocial hazards.⁸ 'Psychosocial hazards' are hazards or factors in the design and management of work that increase the risk of work-related stress, which can lead to psychological or physical harm. Psychosocial hazards are sometimes referred to as psychological hazards, work-related stressors and organisational factors. Psychosocial hazards in the workplace are described in more detail in SWA's Psychological Health Guide.

⁷ Becher, H. & Dollard, M, [Psychosocial safety climate and better productivity in Australian workplaces: Costs, productivity, presenteeism, absenteeism](#), November 2016, Safe Work Australia.

⁸ Section 4 of the model WHS Act.

32. The model WHS Regulations set out detailed requirements that apply to specific work activities and hazards to meet health and safety duties. The model Codes provide practical information on how the requirements of the model WHS Act and Regulations can be met by duty holders.
33. The model WHS laws are supported by a National Compliance and Enforcement Policy, which sets out guiding principles to support regulators in monitoring and enforcing compliance.
34. The model WHS laws have no force or effect as law on their own. For the laws to be legally binding in a jurisdiction, the relevant jurisdiction must separately implement them as their own laws.
35. The model WHS laws were implemented by the Commonwealth, the Australian Capital Territory, New South Wales, the Northern Territory and Queensland on 1 January 2012, and by South Australia and Tasmania on 1 January 2013.
36. The model WHS laws are yet to be implemented in the Victorian and Western Australian jurisdictions, however Western Australia undertook consultations in 2018 with a view to drafting new WHS laws based on the model WHS Act.

PCBU duties

37. A PCBU is defined broadly, covering businesses or undertakings conducted alone or with others, whether or not for profit or gain.⁹ The phrase 'business or undertaking' covers businesses or undertakings conducted by persons including employers, principal or head contractors, franchisors and the Crown. PCBUs can include sole traders or self-employed persons, partners within a partnership, bodies corporate (companies), unincorporated bodies or associations and government departments or public authorities such as municipal councils, but excludes volunteer associations.
38. Under the model WHS Act, a PCBU owes the primary duty of care to ensure, so far as reasonably practicable:
 - the health and safety of workers (however engaged) while they are at work in the business or undertaking, and
 - the health and safety of other persons carrying out work as part of conducting the business or undertaking.¹⁰
39. To ensure the health and safety of a person under the model WHS Act, the PCBU must do all that is reasonably practicable to eliminate risks to health and safety. If it not reasonably practicable to eliminate those risks, the PCBU must minimise those risks so far as reasonably practicable.¹¹
40. This duty includes requirements to ensure, so far as is reasonably practicable:
 - the provision and maintenance of a work environment that is without risk to health and safety
 - the provision and maintenance of safe systems of work, and
 - that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business of undertaking.¹²

⁹ Section 5 of the model WHS Act.

¹⁰ Subsections 19(1) and (2) of the model WHS Act.

¹¹ Section 17 of the model WHS Act.

¹² Paragraphs 19(3)(a), (c) and (g) of the model WHS Act.

41. The model WHS Act defines 'reasonably practicable' and sets out the matters that need to be taken into account for ensuring health and safety.¹³ SWA's guide: [How to determine what is reasonably practicable to meet a health and safety duty](#) provides general guidance to PCBUs on how to meet the standard of 'reasonably practicable' in this context.
42. The focus of the primary duty is not only the immediate causes of injury or illness but also covers what the PCBU knew or should have known about the risk, and the actions they took based on that knowledge to provide and maintain a work environment without risks to the health and safety of workers.
43. As outcomes-focused legislation, the model WHS Act does not prescribe how PCBUs should meet their primary duty. The onus is on PCBUs to determine how to create a safe work environment in light of their organisations' circumstances.

Officer duties

44. Officers of PCBUs also have health and safety duties. An 'officer' includes an officer within the meaning of the *Corporations Act 2001* (Cth), an officer of the Crown or an officer of a public authority, other than an elected member of a local authority acting in that capacity such as a municipal council.¹⁴
45. Officers are required to exercise due diligence to ensure the business or undertaking complies with the model WHS laws, including the primary duty.¹⁵
46. 'Due diligence' includes, amongst other things, taking reasonable steps to:
 - gain an understanding of the nature of the business or undertaking's operations, including the hazards and risks associated with those operations, and
 - ensure the business or undertaking has and uses appropriate resources and processes to eliminate hazards or minimise these risks.¹⁶

Worker duties

47. Workers are required to take reasonable care for their own health and safety by ensuring that their acts or omissions do not adversely affect the health and safety of themselves or other persons.¹⁷ Workers must also comply, so far as the worker is reasonably able, with any reasonable instruction given by the PCBU in addition to cooperating with any reasonable policy or procedure of the PCBU in relation to health and safety at the workplace.¹⁸
48. A 'worker' is defined broadly to mean a person who carries out work in any capacity for a PCBU and includes employees, contractors, subcontractors and their employees, employees of labour hire companies, outworkers, apprentices and trainees, work experience students and volunteers.¹⁹

Consultation and issue resolution

49. Consultation with workers and other duty holders is another key element of providing a healthy and safe work environment and should occur throughout the risk management process.
50. PCBUs are required to, so far as is reasonably practicable, consult with workers and health and safety representatives (HSRs). This duty is described in more detail in the model

¹³ Section 18 of the model WHS Act.

¹⁴ Section 4 of the model WHS Act.

¹⁵ Subsection 27(1) of the model WHS Act.

¹⁶ Subsection 27(5) of the model WHS Act.

¹⁷ Paragraphs 28(a) and (b) of the model WHS Act.

¹⁸ Paragraphs 28(c) and (d) of the model WHS Act.

¹⁹ Section 7 of the model WHS Act.

Code of Practice: Work health and safety consultation, cooperation and coordination, which recognises workers' input and participation as a crucial part of effective consultation and can improve decision-making about WHS matters.

51. Consultation on WHS matters involves sharing information on hazards and risks, giving workers a reasonable opportunity to express their views, raise issues and contribute to the decision-making process and taking those views into account. It is important to respect the privacy of workers and keep information confidential where it is necessary. Consultation also requires advising workers (and HSRs) of the outcomes as soon as possible, providing information to help them understand the reasons for the final decision or course of action.
52. The model WHS Act requires that, where an issue or conflict arises which may cause physical or psychological harm to individuals in the workplace, reasonable efforts to achieve a timely, final and effective resolution must be made using any agreed issue resolution procedures or, in the absence of agreed procedures, the default procedure prescribed by the model WHS Regulations.²⁰

Compliance and enforcement

53. Ensuring compliance with the model WHS laws by enforcing its provisions is central to its effective operation.
54. The model WHS Act sets out the functions of the regulator, which include:
 - monitoring and enforcing compliance with the WHS Act and Regulations
 - providing WHS advice and information to duty holders and the community
 - fostering and promoting WHS
 - conducting and defending legal proceedings under the WHS Act, and
 - advising and making recommendations to the minister responsible for the WHS laws.²¹
55. The model WHS Act confers a general power on the regulator to do all things necessary or convenient to be done for or in connection with the performance of its functions.²² The regulator is also empowered to obtain information, documents and evidence to assist it to monitor or enforce compliance with the model WHS Act.²³
56. The model WHS Act enables the regulator to appoint inspectors to perform functions and exercise powers to assist it secure compliance with the model WHS laws. These functions and powers include providing information and advice about compliance with the WHS Act and Regulations, assisting in resolving WHS issues, requiring compliance with the WHS Act by issuing notices, investigating contraventions of the WHS Act and assisting in prosecuting offences.²⁴ Part 10 of the model WHS Act sets out the different kinds of notices that inspectors can issue such as improvement notices to remedy or prevent contraventions of the WHS Act and infringement notices to impose a fine for certain prescribed offences, amongst others.

²⁰ Section 23 of the model WHS Regulations.

²¹ Section 152 of the model WHS Act.

²² Section 153 of the model WHS Act.

²³ Section 155 of the model WHS Act.

²⁴ Section 160 of the model WHS Act.

57. In carrying out their functions, inspectors have broad powers to enter workplaces to inspect and examine anything (including documents), make enquiries, take measurements, conduct tests and make sketches or recordings.²⁵ When entering a workplace, inspectors are also empowered to require the production of documents and answers to questions.²⁶

Penalties

58. The model WHS Act provides for a range of criminal offences for non-compliance and imposes penalties based on the severity of the conduct. There are three categories of criminal offences for breaching WHS duties, with penalties based on the degree of culpability, risk and harm.

59. A Category 1 offence covers the most serious cases of non-compliance and involves a duty holder, without reasonable excuse, engaging in conduct that recklessly exposes a person to a risk of death, serious illness or injury.

60. Category 2 and 3 offences involve less culpability than Category 1 offences, as there is no fault element.²⁷ A Category 2 offence applies where a duty holder fails to comply with a health and safety duty that exposes a person to a risk of death, serious illness or injury. A Category 3 offence applies when a duty holder fails to comply with a health and safety duty.

61. The maximum penalties differ depending on the category of the offence and upon whether the offender is an individual (i.e. a PCBU or worker), an officer or a body corporate. The highest penalties apply to Category 1 offences and include provision for five years imprisonment and maximum fines of \$3 million for a body corporate and \$600 000 for a PCBU as an individual or an officer and \$300 000 for a worker.

62. Unlike the common law duty of care, there is no requirement under the model WHS laws for workers to actually suffer a work-related injury for an offence to have been committed. Under the model WHS laws a duty holder breaches their WHS duty by failing to eliminate or minimise the risk of harm to the physical or psychological health of workers or other persons.

Identifying and responding to psychosocial hazards in the workplace

63. Currently, there are no specific regulations relating to managing work-related psychological risks or psychosocial hazards. However, the model WHS Act allows these matters to be prescribed in the model WHS Regulations. There are also no model Codes specifically covering psychological risks or psychosocial hazards.

64. However, SWA has published a range of information and guidance relevant to psychological health, including the previously mentioned Psychological Health Guide (see [Attachment A](#) for more examples).

65. The Guide provides a systematic and practical approach for PCBUs to follow to assist compliance with their duties in relation to psychological health under the model WHS laws. The guide deals with how to identify the hazards to good psychological health, how to assess the severity of risks, what steps to take to eliminate and minimise risks, how to intervene early and how to support recovery.

66. The Guide also directly addresses the question posed in the Inquiry's issues paper: what workplace characteristics increase the risk of mental ill-health among workers, and how

²⁵ Section 165 of the model WHS Act.

²⁶ Section 171 of the model WHS Act.

²⁷ See sections 32 and 33 of the model WHS Act.

should these risks be addressed by regulators and/or employers?²⁸ These are summarised in turn, below. SWA continues to promote awareness raising and application of the Guide and is developing additional complementary supporting material on effective approaches to managing psychological health in the workplace.

67. Jurisdictional WHS regulators also have a range of information and initiatives addressing psychological health in the workplace. For example, New South Wales and Victoria, are investing \$2.1 billion and \$705 million respectively in mental health services and infrastructure. Both states, along with other jurisdictions, have developed a number of resources, tools and training on managing workplace mental health or psychosocial risks.

The causes of risk to psychological health – psychosocial hazards

68. The Guide identifies several work-related psychosocial hazards as potential causes of psychological injury. Psychosocial hazards are anything in the design or management of work that increases the risk of work-related stress. Generally, isolated stress incidents will not result in physical or psychological injury. However, work-related stress if prolonged and/or severe can cause both psychological and physical injury.

69. Common psychosocial hazards include:

- High job demands, where sustained high physical, mental and or emotional effort is required to do the job. This may involve: long work-hours; high workloads; long periods of vigilance looking for infrequent events (like air traffic controllers); emotional effort in responding to distressing situations or distressed or aggressive clients (like paramedics); exposure to traumatic events or work-related violence (like emergency workers); shift work leading to fatigue; or frequently working in unpleasant or hazardous conditions (like extreme temperatures or noise).
- Low job demands, where sustained low levels of physical, mental or emotional effort required to do the job. This includes jobs where there is too little to do or where tasks are highly repetitive or monotonous (like monitoring production lines).
- Low job control, where workers have little control over aspects of the work including how or when a job is done. This includes jobs where: work is machine or computer paced; work is tightly managed (like scripted call centres); workers have little say in the way they do their work, when they can take breaks or change tasks; workers are not involved in decisions that affects them or their clients; or workers are unable to refuse to deal with aggressive clients (like police services).
- Poor support, where workers have inadequate emotional support from supervisors and co-workers or lack the information, training or tools to do the job.
- Poor workplace relationships, where a workplace is a psychologically unpleasant environment. This could include workplaces where there is: workplace bullying, aggression, harassment (including sexual harassment), discrimination, or other unreasonable behaviour by co-workers, supervisors or clients; or lack of fairness in dealing with organisational issues or where performance issues are poorly managed.
- Low role clarity, where workers are uncertain about what is required of them, or not provided with important information.

²⁸ Productivity Commission Issues Paper, The Social and Economic Benefits of Improving Mental Health, January 2019, p31.

- Poor organisational change management, where insufficient consideration is given to the impacts of change, workers are inadequately consulted, or receive insufficient practical support during transitions times.
- Low recognition and reward, where workers receive a lack of positive feedback, have limited opportunities for skills development, or where their skills and experience are underused.
- Poor organisational justice, where workplace policies and procedures are inconsistently applied, where resources and work are allocated unfairly or underperformance is poorly managed.
- Remote and isolated work, where access to resources and communications is difficult, there are no or few other people around and travel times may be lengthy.

70. Workers are likely to be exposed to a combination of psychosocial hazards in the workplace. Some psychosocial hazards may always be present, while others may present themselves occasionally.

Managing risks to psychological health and safety

71. The model WHS laws require a PCBU to eliminate and manage risks, including risks to psychological health, by eliminating those risks so far as is reasonably practicable. If eliminating the risk is not reasonably practicable, then the PCBU is required to minimise the risks so far as is reasonably practicable.

72. The Guide recommends PCBUs follow a four step risk management process, which is illustrated by the figure below.



73. The four steps involve:

- i. Identifying hazards – identifying psychosocial hazards involves a thorough consideration of what could cause harm in the workplace. There are numerous ways PCBU's can identify psychosocial hazards: they can seek assistance from their workers or health and safety specialists; they can observe work practices in their workplace; and they can review workplace data including incident reports, workers' compensation claims, staff surveys, absenteeism and staff turnover rates.
- ii. Assessing risks – assessing risks involves considering what could happen if someone is exposed to a psychosocial hazard, the degree of harm that may result, and the likelihood of that outcome. The complexity of a risk assessment will depend on the types of hazards present, how workers are exposed, and the information and resources available.

The risk assessment process helps PCBU's determine how severe a risk is, how urgently action needs to be taken, and what options exist for eliminating the hazard(s) or minimising their associated risks.

- iii. Controlling risks – the model WHS laws require work-related hazards that present a risk to psychological health and safety to be eliminated so far as is reasonably practicable, or if that is not reasonably practicable, minimised so far as is reasonably practicable.

Eliminating the risk means completely removing the psychosocial hazard and associated risks. This is the most effective control measure and should always be considered first. Examples include removing the risk of assault during a robbery by exclusively using remote payment methods.

Where risks cannot be eliminated, work design should be used to minimise the risks. This can be achieved through substituting hazardous ways of working with less hazardous alternatives, isolating the hazard from workers or putting in place engineering controls. Examples include designing work and work systems that match work allocation with appropriately experienced staff or provide workers with greater job control.

Once all reasonably practicable substitution, isolation and engineering control measures have been implemented, PCBU's should look to administrative controls as a means of managing psychosocial risks. Administrative controls include an organisation's policies and standard operating procedures and cover, for example, expected workplace behaviours and to manage unreasonable behaviour internally and by clients or customers. Administrative controls include the provision on appropriate tools, information, training and supervision to do a job safely.

As a last resort PCBU's should manage risks by providing their workers with personal protective equipment (PPE). Examples include providing personal distress alarms, body armour (for police), gloves, gowns, and face shields (for doctors and nurses).

- iv. Reviewing hazards and control measures – to be effective control measures need to be regularly reviewed, and revise if necessary. Reviews should occur when a new hazard or risk is identified, a risk is not being adequately minimised, ahead of significant workplace changes occurs, or where consultation with workers/a HSR indicates a review is necessary.

Workers' Compensation

74. SWA undertakes research and policy projects to improve Australia's workers' compensation arrangements, with a particular focus on return to work and strengthening the connection with enhanced WHS outcomes. However, SWA does not oversee, regulate or

enforce workers' compensation laws, which is the responsibility of the Commonwealth, state and territory governments.

75. There are 11 main workers' compensation schemes operating in Australia – three Commonwealth schemes and one for each of the eight Australian states and territories. Workers' compensation arrangements, including entitlements, vary between schemes.
76. SWA compiles an annual report: *Comparison of Workers' Compensation Arrangements in Australian and New Zealand* (the Comparison Report). The report provides information about the coverage, benefits, return to work, self-insurance, common law, dispute resolution and cross border arrangements under each scheme.
77. Of particular interest for the purposes of the Inquiry may be the tables on the definition of injury and employment contribution (Tables 2.4d and 3.9), exclusionary provisions for psychological injuries (Table 3.14) and common law provisions (Table 4.6) in the *26th Edition Comparison of Workers' Compensation Arrangements in Australian and New Zealand 2018* (the Comparison Report 2018).
78. Employees are eligible to claim for the impacts of physical and psychological injuries under jurisdictional workers' compensation schemes. Each scheme has different rules in relation to coverage, however no workers' compensation schemes compensate for loss or suffering outside of medical costs and time off work.
79. Claims for psychological injury are generally not accepted if they are wholly or predominantly caused by reasonable action taken by the employer relating to the employee's employment such as transfer, demotion, promotion, performance appraisal, discipline, suspension, retrenchment or dismissal. Exclusionary provisions for each jurisdiction are detailed in Table 3.14 of the Comparison Report 2018.
80. An employee who has sustained a work-related injury or illness may elect to take action against their employer for a breach of the employer's common law duty of care. At common law, an employer has a duty to take reasonable care to protect workers against foreseeable injuries arising out of employment, which is owed in either contract or tort.
81. An employee's access to common law varies across jurisdictions, and a successful claim under common law may have an impact on whether an employee is required to pay back a claim awarded under a workers' compensation scheme. Common law provisions for each jurisdiction are detailed in Table 4.6 of the *Comparison Report 2018*.
82. While the Comparison Report provides useful background information relevant to the Inquiry, it is recommended that individual workers' compensation authorities be contacted to provide information about current scheme arrangements and provisions.

The 2018 Review of the model WHS laws

83. WHS ministers asked SWA to review the content and operation of the model WHS laws in 2018 (the Review). The Review's Terms of Reference focused on assessing whether the model WHS laws are achieving the objects of the model WHS Act, particularly in relation to concepts that were new or a significant change to most jurisdictions. This included the WHS duties framework, penalties and enforcement measures, and consultation, participation and representation provisions. SWA appointed an independent reviewer, Ms Marie Boland, to conduct the Review.

84. Ms Boland undertook an extensive public consultation process to inform the Review. After releasing a discussion paper and opening a series of online discussion forums in February 2018, she travelled across the country to meet with WHS regulators; businesses; unions; industry organisations; health and safety representatives; WHS and legal practitioners; researchers; and community groups. In addition, Ms Boland examined previous jurisdictional reviews of the model WHS laws, case law, coroners' findings, SWA and other jurisdictional research as well as the various reviews covering WHS matters, such as the Senate inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia.
85. Ms Boland's central finding is that the model WHS laws are largely operating as intended and are sufficiently flexible to accommodate the evolving nature of work and changing work relationships. Ms Boland considered some changes are needed to provide clarity and to drive greater consistency in the application and enforcement of the laws across jurisdictions.
86. Psychological health was a key area of stakeholder interest during the Review. Employers, particularly those in small business, repeatedly expressed uncertainty about how to best address psychological health in the workplace. Small businesses in particular want practical guidance to help identify and manage psychological risks and hazards. While the importance of workers' psychological health was acknowledged, some employer representatives queried the extent to which PCBUs should have responsibility for their workers' overall psychological wellbeing. There was a perception that many employers feel they lack the requisite expertise and are wary of intervening in case they do further harm.
87. Many stakeholders – beyond just employers – said that the model WHS laws are currently inadequate when it comes to protecting psychological health and wellbeing. This was largely attributed to the model WHS Regulations and Codes lacking an explicit focus on psychological hazards.
88. In her report Ms Boland recommends that new regulations be developed that deal with how to identify psychosocial risks associated with the appropriate control measures to manage those risks.
89. WHS Ministers are expected to respond to the Review recommendations later in 2019. To inform their response, SWA is conducting a regulation impact statement process which will include the recommendation to develop regulations on managing risks to psychological health. This process will examine the impacts and costs to business, individuals and the community of implementing this recommendation.

The Australian Work Health and Safety Strategy 2012-2022

90. The Australian Strategy is a 10-year framework that aims to drive key national activities to achieve improvement in WHS in Australia. It was launched in 2012 following endorsement by the Workplace Relations Ministers' Council, the Australian Council of Trade Unions, the Australian Chamber of Commerce and Industry and the Australian Industry Group.
91. The Commonwealth, states and territories are responsible for implementing the Australian Strategy in their jurisdiction.
92. The Australian Strategy aims to drive key national activities to achieve improvement in WHS. The Australian Strategy is aimed at WHS regulators, industry, unions, other organisations and governments that in turn influence work and workplaces across Australia.
93. The prevention of mental health conditions is one of the six work-related disorders agreed as national priorities for the life of the Australian Strategy.

94. The Australian Strategy has seven action areas which collectively will help to reduce the exposure to or the risk of injury. The most relevant to psychological health are:
- Hazards are eliminated or minimised by design – to ensure that work processes and systems of work are designed to eliminate or minimise the risks that give rise to psychological injury
 - Improved work health and safety capabilities – to ensure workers have the knowledge, skills and resources to fulfil their role in relation to work health and safety to eliminate or minimise the risks that give rise to psychological injury
 - Promote a positive culture for health and safety – to ensure that leaders within organisations promote positive cultures by setting and modelling high standards of conduct and ensuring procedures are developed and followed.
95. The Australian Strategy sets three targets to measure progress towards achieving the vision:
- a reduction of at least 20 per cent in the number of worker fatalities due to injury
 - a reduction of at least 30 per cent in the incidence rate of claims resulting in one or more weeks off work, and
 - a reduction of at least 30 per cent in the incidence rate of claims for musculoskeletal disorders resulting in one or more weeks off work.
96. It is common for regulators to develop initiatives that address a combination of priority industries, conditions and action areas of the Australian Strategy. For example, initiatives on mental health conditions in the leadership and culture action area. Many regulators are embracing digital avenues of communication to enhance the effectiveness of the content and reach of their WHS messaging. These activities show there is a strong emphasis on providing practical tools for workplaces based on evidence-based research. This is being effectively translated into awareness campaigns and step by step approaches to enhancing safety.
97. Within their own jurisdictions WHS regulators are, in the main, well advanced in taking action to support psychological health and safety in the workplace. All jurisdictions have initiatives in place to support workplace psychological health and safety, either under the auspices of their WHS regulator or as part of cross-government initiatives. Many WHS regulators are working collaboratively with partners from within and outside of the government sector and New South Wales and Queensland are currently implementing comprehensive five-year strategic plans to help create mentally healthy workplaces.
98. Actions already being undertaken by WHS regulators include the development of websites and toolkits that provide practical, research-based assistance to workers and managers. Some jurisdictions have created specific guidance materials to assist in areas such as early intervention, workplace stress and bullying. This includes the development of checklists and toolkits, convening relevant workshops and undertaking workplace visits with a particular focus on high-risk industries, occupations and mechanisms of injury. Regulators are also partnering with organisations working in mental health to drive these initiatives.

International Developments

99. The focus on psychological health in the workplace is also increasing internationally. However, SWA is not aware of any examples of express regulation of psychosocial risks to date. The International Organisation for Standardisation is developing a new international standard on psychological health and safety in the workplace. This standard is intended to provide guidance in relation to managing psychological risks within a WHS management system, and is expected to be published in 2021.

100. The Canadian Mental Health Commission has developed the National Standard of Canada for Psychological Health and Safety in the Workplace (the Standard). The Standard is not mandatory – it is made up of voluntary guidelines and resources to help organisations prevent psychological harm at work. It provides a framework and system to manage and improve a psychologically healthy and safe workplace, including:

- identification and elimination of hazards that pose a risk of psychological harm
- assessment and control of those risks that cannot be eliminated
- implementing structures and practices that support and promote psychological health in the workplace (including education and training, reporting, evaluation and corrective action), and
- fostering a culture that promotes psychological health and safety in the workplace (including active participation of all stakeholders, commitment and leadership, and management review).

101. In the United Kingdom, the Health and Safety Executive (HSE) has voluntary Management Standards and related tools that apply to work-related stress, which help employers to meet their legal duty to protect the psychological health of employees. An independent review of mental health and employers in the UK in 2017 (the Stevenson/Farmer Review) recommended the HSE review its guidance on psychological health, including the Management Standards, to raise employer awareness of the legal obligations. It also recommended an increased focus on psychological health during inspections, more coordinated enforcement and that regulators encourage the take up of six voluntary 'core standards' for mental health identified in the Review. These core standards outline practical steps that all workplaces can and should take to improve mental health, including:

- produce, implement and communicate a mental health plan
- develop mental health awareness
- encourage open conversations about mental health and support
- provide employees with good working conditions
- promote effective people management, and
- routinely monitor employee mental health and well-being.

102. These international standards and guidance materials are similar to SWA's Psychological Health Guide, in that they provides systematic and practical guidance on how to apply the risk management framework to psychological health in the workplace.

Conclusion

103. The model WHS laws already contribute to improving mental health by clearly requiring workplaces to manage risks to the psychological health of workers and others at the workplace, in a way that is most relevant to that particular workplace. SWA is continuing to explore options for helping workplaces to understand their duties to protect psychological health. Part of this work involves looking at developments internationally and evidence-based best practice in managing risks to psychological health and appropriate control measures, which has informed SWA's Psychological Health Guide. The Guide has been well-received, but more time is needed for workplaces to become familiar with applying the risk management process to psychological health before its impact can be fully evaluated.

104. The evolving understanding of psychological health and risk factors means there are challenges in identifying preferred and well-established measures that can be applied universally across all workplaces through regulation or codes of practice. Further consultation on the 2018 Review recommendation to include more specific requirements to

identify and manage risks associated with psychological injuries will further inform our understanding of what is needed for workplaces to fully understand and meet their obligations.

Attachment A – SWA resources

In addition to model Codes, SWA produces a number of guides, factsheets and online seminars covering a range of WHS matters, including mental health, some of which may be of interest to the National Inquiry. These include:

- Model Code of Practice: *How to manage work health and safety risks*
- Model Code of Practice: *Work health and safety consultation, cooperation and coordination*
- Guide: *Work-related psychological health and safety: A systematic approach to meeting your duties*
- Guide: *How to determine what is reasonably practicable to meet a health and safety duty*
- Guide: *Preventing and responding to workplace bullying*
- Guide: *Dealing with workplace bullying – a worker’s guide*
- Handbook: *Principles of Good Work Design*
- Report: *Bullying and harassment in Australian workplaces: Results from the Australian Workplace Barometer 2014/15*
- Report: *Psychosocial safety climate and better productivity in Australian workplaces: Costs, productivity, presenteeism, absenteeism*
- Statistical report: *Psychosocial health and safety and bullying in Australia*
- *Comparing workers’ compensation across Australia and New Zealand*, and
- *Taking Action: A Best Practice Framework for the Management of Psychological Claims in the Australian Workers’ Compensation Sector*.
- M Wyatt and T Lane, *Return to work: A comparison of psychological claims and physical injury claims*, commissioned by SWA, (2017)

For further information about our work, please visit our website at www.swa.gov.au.