**Occupational Health and Safety Amendment (Psychological Health) Regulations**

**Exposure Draft**

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**Victoria**

**Occupational Health and Safety Amendment (Psychological Health) Regulations**

**Exposure Draft**

 1 Objective

The objective of these Regulations is to amend the **Occupational Health and Safety Regulations 2017**—

 (a) to promote the importance of psychological health and safety in the workplace; and

 (b) to require employers to identify and control risks associated with psychosocial hazards; and

 (c) to require employers to review, and if necessary, revise measures implemented to control risks associated with psychosocial hazards; and

 (d) to require employers to have in place a written prevention plan for certain psychosocial hazards; and

 (e) to require employers to periodically report to the Authority certain data on complaints of bullying, sexual harassment and aggression or violence.

 2 Authorising provision

These Regulations are made under section 158 of the **Occupational Health and Safety Act 2004**.

 3 Commencement

These Regulations come into operation on 1 July 2022.

 4 Principal Regulations

In these Regulations, the Occupational Health and Safety Regulations 2017[[1]](#endnote-2) are called the Principal Regulations.

 5 Definitions

In regulation 5 of the Principal Regulations **insert** the following definitions—

"***applicable employer***, in Part 5A.2, means an employer that has 50 employees or more at any point in time during the reporting period;

***bullying*** means repeated, unreasonable behaviour by a person which is directed at another person or group of other persons that creates a risk to health and safety;

***high job demands*** means sustained or repeated physical, mental or emotional effort which is unreasonable or frequently exceeds the employee's skills or capacity;

***psychological response*** includes cognitive, emotional and behavioural responses and the physiological processes associated with them;

***psychosocial hazard*** means any factor or factors in—

 (a) the work design; or

 (b) the systems of work; or

 (c) the management of work; or

 (d) the carrying out of the work; or

 (e) personal or work-related interactions;

that may arise in the working environment and may cause an employee to experience one or more negative psychological responses that create a risk to their health and safety;

**Examples**

Bullying, sexual harassment, aggression or violence, exposure to traumatic events or content, high job demands, low job demands, low job control, poor support, poor organisational justice, low role clarity, poor environmental conditions, remote or isolated work, poor organisational change management, low recognition and reward, poor workplace relationships.

**Note**

***Health*** is defined in section 5 of the Act as including psychological health.

***reportable psychosocial complaint*** means a complaint involving any of the following psychosocial hazards—

 (a) aggression or violence;

 (b) bullying;

 (c) sexual harassment;

***reporting period***, in Part 5A.2, means—

 (a) 1 January to 30 June (inclusive) of each calendar year; and

 (b) 1 July to 31 December (inclusive) of each calendar year;

*s****exual harassment***has the same meaning as it has in the **Equal Opportunity Act 2010**;

***work design*** meansthe equipment, content and organisation of an employee's work tasks, activities, relationships and responsibilities within a job or role;".

 6 New Chapter 5A inserted

After Chapter 5 of the Principal Regulations **insert**—

'Chapter 5A—Psychological Health

Part 5A.1—Duties of employers

 448A Identification of psychosocial hazards

An employer, so far as is reasonably practicable, must identify psychosocial hazards.

**Notes**

1 Act compliance—section 21 (see regulation 7).

2 Psychosocial hazard is defined in regulation 5.

3 Regulation 8(1) applies to this regulation.

4Part 4 of the Act sets out the duty of the employer to consult with employees, including in respect of identifying hazards, and requires the involvement of the health and safety representative (if any). See also regulation 21.

 448B Control of risk

 (1) An employer, so far as is reasonably practicable, must eliminate any risk associated with a psychosocial hazard.

 (2) If it is not reasonably practicable to eliminate a risk associated with a psychosocial hazard, the employer must reduce the risk so far as is reasonably practicable by—

 (a) altering—

 (i) the management of work; or

 (ii) the plant; or

 (iii) the systems of work; or

 (iv) the work design; or

 (v) the workplace environment; or

 (b) using information, instruction or training; or

 (c) subject to subregulations (3) and (4), a combination of any of the measures referred to in paragraphs (a) or (b).

 (3) The employer may only exclusively use the control measures set out in subregulation (2)(b) if none of the control measures set out in subregulation (2)(a) are reasonably practicable.

 (4) If using a combination of the control measures set out in subregulation (2)(a) and (b), a control measure set out in subregulation (2)(b) must not be the predominant control measure used.

**Notes**

1 Act compliance—section 21 (see regulation 7).

2 Regulation 8(1) applies to this regulation.

3 Part 4 of the Act sets out the duty of the employer to consult with employees, including in respect of making decisions about the measures to be taken to control risks to health or safety. This consultation must involve the health and safety representative (if any). See also regulation 21.

 448C Review of risk control measures

 (1) An employer must review and, if necessary, revise any measures implemented to control risks associated with any psychosocial hazards—

 (a) before any alteration is made to any thing, process or system of work that is likely to result in changes to risks associated with psychosocial hazards; or

 (b) if new or additional information about a psychosocial hazard becomes available to the employer; or

 (c) if an employee, or a person on behalf of an employee, reports a psychological injury or a psychosocial hazard to the employer; or

 (d) after any incident occurs to which Part 5 of the Act applies that involves one or more psychosocial hazards; or

 (e) if, for any other reason, the risk control measures do not adequately control the risks associated with a psychosocial hazard; or

 (f) after receiving a request from a health and safety representative.

**Notes**

1 Act compliance—section 21 (see regulation 7).

2 Regulation 8(1) applies to this subregulation.

 (2) A health and safety representative may make a request under subregulation (1)(f) if the health and safety representative believes on reasonable grounds that—

 (a) any of the circumstances referred to in subregulation (1)(a) to (e) exist; or

 (b) the employer has failed—

 (i) to properly review the risk control measures; or

 (ii) to take account of any of the circumstances referred to in subregulation (1)(a) to (e) in conducting a review of, or revising, the risk control measures.

 448D Prevention plans required for certain psychosocial hazards

 (1) This regulation applies if an employer has identified one or more of the following psychosocial hazards under regulation 448A—

 (a) aggression or violence;

 (b) bullying;

 (c) exposure to traumatic content or events;

 (d) high job demands;

 (e) sexual harassment.

 (2) An employer to whom this regulation applies must have a prevention plan that complies with subregulation (3) for any of the psychosocial hazards referred to in subregulation (1)(a) to (e).

 (3) The prevention plan must—

 (a) be in writing; and

 (b) identify the risk associated with the psychosocial hazard; and

 (c) include measures to control the risk associated with the identified psychosocial hazard in accordance with regulation 448B; and

 (d) include an implementation plan for any control measures associated with the identified psychosocial hazard; and

 (e) detail the consultation undertaken by the employer in accordance with section 35 of the Act.

 (4) An employer must update the prevention plan if any risk control measures are required to be revised under regulation 448C.

 (5) An employer must produce the prevention plan for inspection on request by—

 (a) an inspector appointed under Part 9 of the Act; or

 (b) a health and safety representative for any designated work group established by the employer (if any); or

 (c) a member of each health and safety committee established by the employer (if any).

 (6) In this regulation, the duties of an employer extend to an independent contractor engaged by the employer and any employees of the independent contractor.

Part 5A.2—Reporting

 448E Duty to report

 (1) For each reporting period, an applicable employer must provide the Authority with a report that complies with subregulation (2) in respect of any reportable psychosocial complaint that the employer has received during the reporting period.

**Notes**

1 Reportable psychosocial complaint is defined in regulation 5.

2 A report is required under this regulation even if no reportable psychological complaint was made during the reporting period.

 (2) A report under subregulation (1) must—

 (a) be in writing; and

 (b) be in a manner and form approved by the Authority (if any); and

 (c) be provided to the Authority within 30 days after the end of each reporting period; and

 (d) include the following information in relation to each reportable psychosocial complaint that the employer has received during the reporting period—

 (i) each psychosocial hazard involved in the reportable psychosocial complaint; and

 (ii) the gender of the persons involved in the reportable psychosocial complaint; and

 (iii) a description of the workplace relationship between the persons involved in the reportable psychosocial complaint.

 (3) In this regulation, the duty of an employer to provide a report in respect of any reportable psychosocial complaints received in the reporting period extends to an independent contractor engaged by the employer and any employees of the independent contractor.

 448F Copy of report to be kept

 (1) An applicable employer who provides the Authority with a report under regulation 448E must keep a copy of that report for 5 years after the date on which the report was provided.

 (2) In this regulation, the duty of an employer to keep a copy of a report provided under regulation 448E extends to an independent contractor engaged by the employer and any employees of the independent contractor.

 448G Copy of report to be available for inspection

 (1) An applicable employer who provides the Authority with a report under regulation 448E must produce a copy of that report for inspection on request by—

 (a) an inspector appointed under Part 9 of the Act; or

 (b) a health and safety representative for any designated work group established by the employer (if any); or

 (c) a member of each health and safety committee established by the employer (if any).

 (2) In this regulation, the duty of an employer to produce a copy of a report provided under regulation 448E extends to an independent contractor engaged by the employer and any employees of the independent contractor.

Part 5A.3—Enforcement amendments

 448H Regulations 448E(1), 448F(1) and 448G(1) substituted and Schedule 20 amended—1 September 2023

 (1) On 1 September 2023, for regulation 448E(1) **substitute**—

 "(1) For each reporting period, an applicable employer must provide the Authority with a report that complies with subregulation (2) in respect of any reportable psychosocial complaint that the employer has received during the reporting period.

Penalty: 60 penalty units for a natural person;

 300 penalty units for a body corporate.

**Notes**

1 ***Reportable psychosocial complaint*** is defined in regulation 5.

2 A report is required under this regulation even if no reportable psychological complaint was made during the reporting period.".

 (2) On 1 September 2023, for regulation 448F(1) **substitute**—

 "(1) An applicable employer who provides the Authority with a report under regulation 448E must keep a copy of that report for 5 years after the date on which the report was provided.

Penalty: 60 penalty units for a natural person;

 300 penalty units for a body corporate.".

 (3) On 1 September 2023, for regulation 448G(1) **substitute**—

 "(1) An applicable employer who provides the Authority with a report under regulation 448E must produce a copy of that report for inspection on request by—

 (a) an inspector appointed under Part 9 of the Act; or

 (b) a health and safety representative for any designated work group established by the employer (if any); or

 (c) a member of each health and safety committee established by the employer (if any).

Penalty: 60 penalty units for a natural person;

 300 penalty units for a body corporate.".

 (4) On 1 September 2023, in Schedule 20, after item 53 **insert**—

|  |  |  |  |
| --- | --- | --- | --- |
| "53A | An offence against regulation 448E(1) | 1·2 penalty units | 6 penalty units  |
| 53B | Anoffence againstregulation 448F(1) | 1·2 penalty units | 6 penalty units |
| 53C | An offence against regulation 448G(1) | 1·2 penalty units | 6 penalty units". |

 448I Regulation 448D substituted—1 September 2023

On 1 September 2023, for regulation 448D **substitute**—

"**448D Prevention plans required for certain psychosocial hazards**

 (1) This regulation applies if an employer has identified one or more of the following psychosocial hazards under regulation 448A—

 (a) aggression or violence;

 (b) bullying;

 (c) exposure to traumatic content or events;

 (d) high job demands;

 (e) sexual harassment.

 (2) An employer to whom this regulation applies must have a prevention plan that complies with subregulation (3) for any of the psychosocial hazards referred to in subregulation (1)(a) to (e).

**Notes**

1 Act compliance—section 21 (see regulation 7).

2 Regulation 8(1) applies to this subregulation.

 (3) The prevention plan must—

 (a) be in writing; and

 (b) identify the risk associated with the psychosocial hazard; and

 (c) include measures to control the risk associated with the identified psychosocial hazard in accordance with regulation 448B; and

 (d) include an implementation plan for any control measures associated with the identified psychosocial hazard; and

 (e) detail the consultation undertaken by the employer in accordance with section 35 of the Act.

 (4) An employer must update the prevention plan if any risk control measures are required to be revised under regulation 448C.

**Notes**

1 Act compliance—section 21 (see regulation 7).

2 Regulation 8(1) applies to this subregulation.

 (5) An employer must produce the prevention plan for inspection on request by—

 (a) an inspector appointed under Part 9 of the Act; or

 (b) a health and safety representative for any designated work group established by the employer (if any); or

 (c) a member of each health and safety committee established by the employer (if any).

Penalty: 60 penalty units for a natural person;

 300 penalty units for a body corporate.

 (6) The duty of an employer to produce a prevention plan for inspection under subregulation (5) extends to an independent contractor engaged by the employer and any employees of the independent contractor.".

 448J Schedule 20 amended—1 September 2023

On 1 September 2023, in Schedule 20, after item 53 **insert**—

|  |  |  |  |
| --- | --- | --- | --- |
| "53AA | An offence against regulation 448D(5) | 1·2 penalty units | 6 penalty units". |

 448K Revocation of this Part

This Part is revoked on 1 September 2024.".'.

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Endnotes

1. Reg. 4: S.R. No. 22/2017 as amended by S.R. Nos 71/2018, 176/2018, 71/2019, 84/2020, 106/2020, 141/2020, 8/2021, 88/2021, 112/2021, 137/2021.

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**Penalty Units**

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2021 is $181.74.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year. [↑](#endnote-ref-2)