

**Occupational Health and Safety (Psychological Health)
Regulations Amendment 2022**

Regulatory Impact Statement

WorkSafe Victoria
January 2022

Deloitte
Access **Economics**

Contents

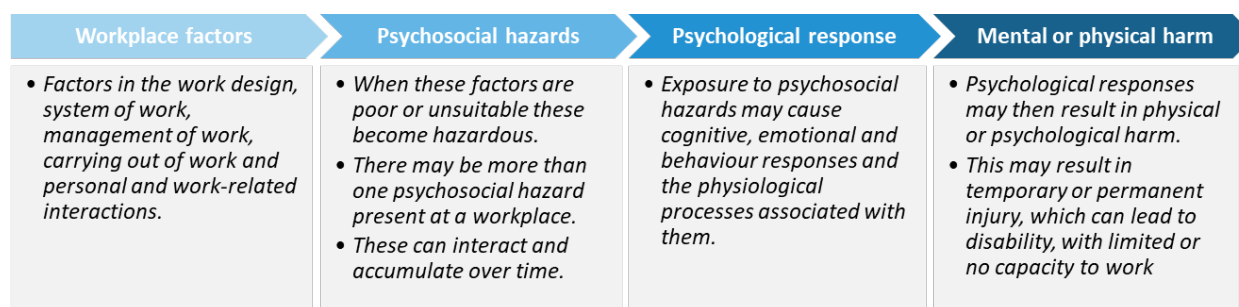
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Executive Summary

Deloitte has been engaged by the Victorian Government to prepare this Regulatory Impact Statement (RIS) to assess WorkSafe’s proposed amendments to the Occupational Health and Safety Regulations 2017 (OHS Regulations) to improve mental health in the workplace and the community.

Exposure to psychosocial hazards has the potential to cause mental injury that impacts upon a person’s functioning within and beyond the workplace, as shown in Figure i below.

Figure i How workplace factors can create mental or physical harm



Source: WorkSafe Victoria

The nature, severity and frequency of harms relating to mental health have been explored in detail in recent major inquiries into mental health and workplace safety, including the Boland Review, the Productivity Commission’s inquiry into mental health and the Royal Commission into Victoria’s mental health system. These inquiries have identified workplace mental health as a priority issue, presenting findings which suggest that the prevalence of mental injury has been, and continues to be, a serious and persistent problem in Victoria. This is supported by research which suggests that approximately one in three workplaces pose a high-risk of mental harm to their employees.¹

Under Victoria’s occupational health and safety framework, employers have a general duty to provide a working environment that is safe and without risk to health, including psychological health. Despite this general duty, the findings of the above inquiries, WorkSafe’s own stakeholder engagement and the stakeholder consultation undertaken in preparation of this RIS indicates that significant harms arise due to exposure to risks arising from psychosocial hazards.

The Victorian Government accepted all recommendations of the Royal Commission, including Recommendation 16, which targets the creation of mentally healthy workplaces.² In May 2021, the Victorian Government committed to introduce new regulations to strengthen the occupational health and safety framework and prevent harm and recognise that psychosocial hazards can be just as harmful to workers’ safety and wellbeing as physical hazards.

The potential benefits of regulating to improve mental health are substantial and include benefits in terms of reduced illness and injury and improved workplace productivity. The feasible opportunity costs to employers of undertaking the activities necessary to improve mental health in

¹ Safe Work Australia, The Australian Workplace Barometer: Report on Psychosocial Safety Climate and Worker Health in Australia (December 2012) <<https://www.safeworkaustralia.gov.au/doc/australian-workplace-barometer-report-psychosocial-safety-climate-and-worker-health-australia>>

² Royal Commission into Victoria’s Mental Health System, *Volume 2 Collaboration to support good mental health and wellbeing* (February 2021) <https://finalreport.rcvmhs.vic.gov.au/wp-content/uploads/2021/02/RCVMHS_FinalReport_Vol2_Accessible.pdf>.

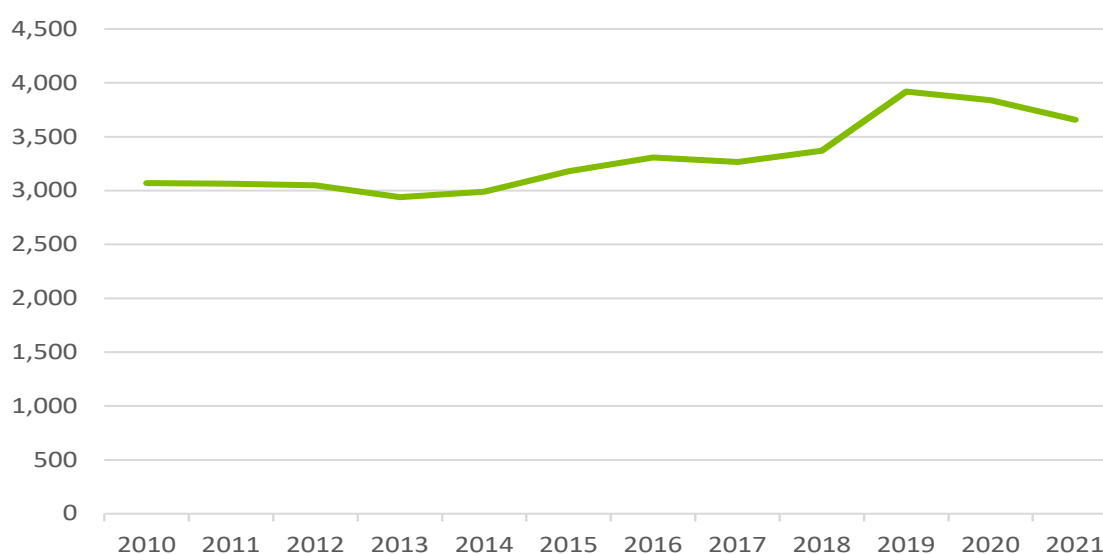
their workplaces are similarly significant, even though costs to employers are likely to be directly offset at least in part by improvements in employee productivity.

Given the significance of the potential costs of regulating to improve mental health, this RIS includes an overview of WorkSafe’s consideration of its available non-regulatory tools and the crucial role of new regulations in sufficiently addressing the problem.

The problem and its causes

Trends in WorkSafe’s claims data show growth in the number, cost and duration of claims for work-related mental injury. Claims for mental injuries in Victoria increased 20 per cent between 2017 and 2019 (Chart ii). While claims have decreased slightly during the coronavirus pandemic (likely due to lockdown restrictions and their impact on workplace activity) the proportion of mental injury claims to total claims was the highest in recent history, reaching 14%. WorkSafe forecasts that claim numbers for mental injury will continue to grow over the next five years.

Chart ii Number of claims for primary mental injury, Victoria 2010-2021

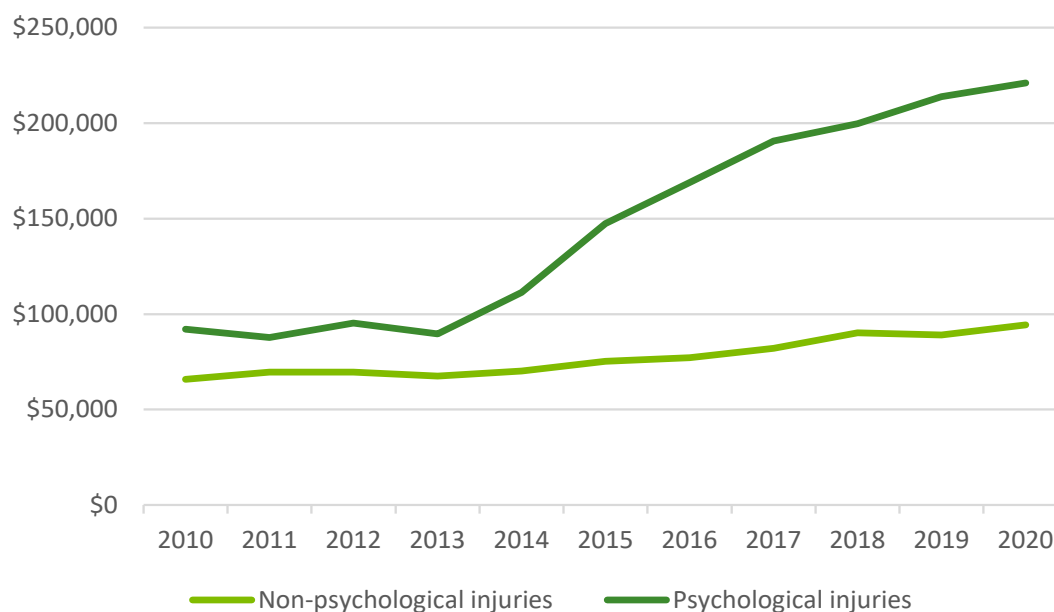


Source: WorkSafe claims data

Relative to other injuries, mental injuries can be some of the costliest, which is largely due to the longer duration of claims. In Victoria, the average duration of a claim for mental injury was 37.5 weeks in 2020. This is more than double the average duration for other injuries. According to SafeWork Australia, the typical time off work for mental injury spans approximately 15.3 weeks compared to an average of 5.5 for all other claims.³ In 2021, the average cost of a mental injury claim was approximately \$220,000 (Chart iii). This cost has more than doubled over the last decade.

³ Safe Work Australia, *Mental Health* (2019) <<https://www.safeworkaustralia.gov.au/topic/mental-health>>

Chart iii Average claim size, mental injury vs non-mental injury, Victoria, 2010-2020



Source: WorkSafe claims data

Workplace bullying, high job demands, exposure to work-related violence, exposure to traumatic events and harassment (including sexual harassment) are some of the most common reasons for mental injury.

The presence and rising incidence of these harms in the workplace in spite of the general duty occurs for number of reasons. One is that changes in the composition of the economy, as well as the greater use of technology and machinery, mean that the relative level of manual and physically dangerous work is decreasing. However psychological harms are also increasing because among some employers there is:

- a lack of understanding of employers' obligations to control psychosocial hazards, and of the nature of those hazards
- a lack of knowledge of how best to control the risks arising from psychosocial hazards
- a lack of prioritisation of mental health, and/or
- a perception that the costs of compliance to employers exceed the benefits.

1. A lack of understanding of employers' obligation to control psychosocial hazards, and of the nature of those hazards

Some employers are unclear about their obligations to protect the mental health of their employees.

The Boland Review, a review of the model Workplace Health and Safety (WHS) laws, presented evidence which suggests that this lack of clarity has been driven by an absence of specific references to psychological health within the general duties.⁴

The Productivity Commission's Inquiry into Mental Health supports this view, stating that the objectives of current WHS legislation do not clearly specify the protection of workers from psychological harm.⁵

⁴ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

Stakeholder consultation during the RIS process also suggests that, despite education and guidance currently provided by WorkSafe, many employers remain unaware of or are not clear on their obligations regarding mental health under the current OHS Framework.

Further, Recent inquiries into mental health suggest that employees and their representatives are also relatively uncertain of the ways in which employees' mental health is protected by the OHS framework.

Even when employers are aware of their obligations, there is limited understanding around workplace mental health as well as the definition and nature of psychosocial hazards. The Productivity Commission includes evidence which suggests that, in 2017, nearly one in five businesses only had basic awareness of workplace mental health.⁶ Qualitative analysis of survey responses and stakeholder consultation conducted throughout the RIS process confirms that whilst employers' awareness has increased in recent years, knowledge of workplace mental health and how to control psychosocial hazards is still evolving.

2. A lack of knowledge of how to control psychosocial hazards

Among those employers who do understand their obligations and the nature of the risk, many do not know how to control these risks in the workplace. The findings of the major inquiries noted above suggest that many employers are generally committed to mental health but do not know how to best manage it in their workplace. The Boland Review called on a need for some "architecture to build on the foundations laid by the primary duty of care". Using regulations to prescribe additional obligations beyond the general duty in the OHS Act is a common approach used in the context of managing many other complex physical risks (e.g. manual handling or management of crystalline silica) to elevate the status of those risks in regulatory framework

In particular, the Boland Review suggests that employers want more prescription and practical guidance to assist them to identify and manage psychosocial risks and hazards, and that many employers feel that they lack the requisite expertise to intervene. This is partly due to the fact that the knowledge base around mental health and psychosocial hazards is still evolving, making it more difficult for employers to meet their obligations without additional clarity on their specific duties. Stakeholder consultation to develop this RIS reinforced these findings.

The lack of knowledge in relation to controlling psychosocial hazards may be due to a number of factors including:

- psychosocial hazards are not tangible or easily observable
- psychological safety in the workplace may be a new concept for some employers. Therefore, some employers have not sufficiently developed their state of knowledge in relation to the control of psychosocial hazards as well as mental health and safety more broadly
- stakeholder consultations suggest that, although there is a wealth of guidance material and toolkits provided by WorkSafe and other mental health and OHS experts, some employers can be overcome by the options available, and
- without a clear and consistent framework on how to identify and control risks arising from psychosocial hazards, that goes beyond the framework in the OHS Act, it is more difficult for WorkSafe to take a "constructive compliance" approach (that is, one that uses advice, information and education to encourage good practices and compliance rather than relying solely on enforcement measures).⁷

3. A lack of prioritisation of mental health

⁵ Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, vol. 2, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health-volume2.pdf>>

⁶ This is based on a New South Wales Government survey of businesses. As New South Wales is similar to Victoria in terms of demographics and industry composition, it is likely that employer awareness levels of workplace mental health would be comparable in Victoria.

⁷ WorkSafe Victoria, *WorkSafe Victoria's General Prosecution Guidelines* (March 2017)

Inquiries suggest that employers may not place equal importance on mental and physical health. Specifically, the Productivity Commission highlights that less attention is given in occupational health and safety legislation and by occupational health and safety regulators and inspectors to mental health and safety compared to physical health and safety.⁸ The Boland Review also notes the “widespread view” of stakeholders that mental health is neglected in current WHS legislative and regulatory frameworks.⁹

As such, even if employers know that they are obliged to protect mental health, some employers may prioritise the physical aspects of health and safety that have been highlighted as of importance. The OHS Regulations prescribe risk management processes for some physical hazards (e.g. manual handling, noise), but they are silent on psychosocial hazards. This may lead to a perception that physical hazards are of greater importance than psychosocial hazards and therefore duty holders may not prioritise identifying and controlling psychosocial hazards.

While some employers may prioritise productivity over the mental health and safety of their employees, in many cases it is possible the lack of prioritisation can be linked to the challenges duty holders face in understanding the nature of psychosocial hazards and the best methods for controlling them (see Causes 1 and 2).

Risk associated with psychological health may not be as easy to detect as physical hazards. For example, poor organisational justice is not as readily identifiable as a missing guard on plant. Accordingly, employers may also be less likely to prioritise mental health (and WorkSafe may face challenges in undertaking constructive compliance).

4. Perceptions of the costs of compliance

Stakeholder consultation suggests that employers have mixed perceptions of the costs associated with creating a mentally healthy workplace. Uncertainty in relation to the controls required to manage psychosocial hazards has prompted some employers to perceive compliance with the general duty as costly and time consuming. Such employers are less likely to comply with their obligations under the general duty.

However, consultation has also indicated that employers underestimate the sizable benefits, in the form of avoided costs (presenteeism, absenteeism and claims costs), associated with providing their employees with workplaces that are more mentally healthy.

As a result, faced with uncertainty and/or a lack of prioritisation for the reasons outlined in Causes 1, 2 and 3 above, many employers do not act due to the perceived costs of taking further action to promote mentally healthy workplaces while understating the potential benefits of mentally healthier workplaces.

⁸ Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, vol. 2, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health-volume2.pdf>>

⁹ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

The key objective of government intervention is to prevent harm and support employers to create mentally healthy workplaces

WorkSafe's Mental Health Strategy states that a key objective of government intervention is to prevent harm and support employers to create mentally healthy workplaces.¹⁰

In doing so, the intermediate objectives of government intervention are to:

- ensure employers identify psychosocial hazards in the workplace
- ensure employers eliminate or reduce the risks that may arise from psychosocial hazards in the workplace
- ensure employers prevent harm that may arise from psychosocial hazards in the workplace, and
- increase what employers know or ought reasonably to know about psychosocial hazards in the workplace or risks, and any ways of eliminating or reducing the hazard or risk.

The effectiveness of any intervention in achieving these objectives can be gauged by the extent to which:

- employers and employees consider mental health to be of equal importance to physical health
- employers develop and implement practices, and demonstrate leadership behaviours to create a positive safety culture around mental health
- employers communicate with and involve employees and health and safety representatives (HSRs) in matters of psychological health and safety, and
- employers and employees will have further developed knowledge in relation to psychosocial hazards and how to control them.

These indicators form part of WorkSafe's proposed strategy for evaluating the effectiveness of the government interventions.

Why a regulatory approach is proposed to address mental health in the workplace.

WorkSafe has a number of tools at its disposal to support employers to meet their duties under the OHS Act, including regulation, compliance codes, guidance, information and education, stakeholder engagement and partnerships, and constructive compliance and enforcement activity.

Regulations are set apart from these other tools as they prescribe a framework that provides consistency and clarity for duty holders and provide WorkSafe with powers that other tools cannot.

Regulations create a clear, consistent framework providing clear processes for managing risks specific to mental health.

Regulations are able to prescribe a clear and consistent framework on how to identify and control risks arising from psychosocial hazards. A regulatory framework can outline what is expected of employers which may go beyond the level of effort that some employers would ordinarily invest into managing risks to mental health.

This works to build an employers' state of knowledge around psychosocial hazards (addressing Cause 1) and the appropriate amount of effort required to control them (addressing Cause 2 and Cause 4) and also provides WorkSafe with a stronger basis for undertaking constructive compliance activities, providing clear incentives in the form of both motivators and deterrents. This, in turn, can build employers' knowledge of the nature of psychosocial hazards (addressing Cause 1) and the best methods for controlling them (addressing Cause 2).

¹⁰ WorkSafe Victoria, *Mental Health Strategy 2021 to 2024* (November 2021)

Regulations send a strong message to employers, elevating the importance of mental health risks to that of physical risks.

Regulations have been made for managing many other complex physical risks (e.g. manual handling or management of crystalline silica). Amending the OHS Regulations is expected to send a strong message to employers that WorkSafe, as regulator of workplace health and safety in Victoria, considers mental health in the workplace to be of high and equal importance to physical health. In this way, the Regulations can reinforce employers' prioritisation of mental health in their workplace (addressing Cause 3).

Regulations can prescribe additional obligations.

Unlike WorkSafe's other tools, the OHS Regulations can prescribe additional procedural or administrative obligations to support the objectives of the OHS Act. For example, the proposed regulatory amendments will require employers to keep written records of prevention plans for prescribed psychosocial hazards and impose reporting requirements on medium and large employers.

Express obligations prescribed within the OHS Regulations can provide an enforceable set of standards, which can augment the effectiveness of WorkSafe's constructive compliance approach (addressing Cause 2 and Cause 3).

Options

Four options are analysed in this RIS in addition to the base case of no change. Each option comprises one or more of the following three regulatory components which can be combined:

- a **risk management process** requiring employers to identify and control psychosocial hazards (and review this process as necessary),
- the development of a written **prevention plan** for a list of prescribed psychosocial hazards (including bullying, high job demands, sexual harassment, trauma and workplace violence), in cases where any one of those hazards is identified through the above risk management process, and
- **reporting requirements** for employers to periodically report de-identified data on complaints relating to work-related violence, bullying and sexual harassment to WorkSafe.

The requirement to consult with employees in section 35 of the OHS Act will apply to all options.

The options in this RIS comprise the following combinations of these components:

- Option 1 – a risk management process
- Option 2 – a risk management process and reporting requirements
- Option 3 – a risk management process and prevention plan for prescribed psychosocial hazards (where these hazards are present)
- Option 4 – a risk management process, prevention plans for prescribed psychosocial hazards (where these hazards are present), and reporting requirements.

Preferred option

It is important to note the uncertainty which exists in terms of quantifying both the costs and benefits of the proposed regulatory changes. First, there is an evolving state of knowledge in relation to mental health and the establishment of appropriate workplace controls for psychosocial hazards. Further, consultation with a range of stakeholders (including employer representatives, employee representatives and mental health experts, as well as a business survey) found that the impact of the proposed regulatory option is generally difficult to predict.

This is because the impacts of the components — both costs of compliance and benefits in terms of improved mental wellbeing — will depend on how individual employers respond to the proposed changes, as well as the implementation activities associated with these regulations and the support given by WorkSafe.

This RIS therefore provides a cost-benefit analysis (CBA) of options to select a preferred option by modelling an illustrative scenario where all high-risk employers (estimated to be around one in three Victorian businesses):

- are affected by the proposed amendments and must undertake new or additional identification and control activities, relative to the base case
- identify at least one prescribed psychosocial hazard in their workplace, requiring them to develop a prevention plan
- use training as a control to address that risk (requiring all employees to undergo training),
- consult all employees in each step of the process outlined above
- repeat the process at least once per year.

The CBA in this RIS should therefore be regarded as a test of whether, subject to these assumptions and noting the sources of uncertainty, the benefits of the proposed changes are likely to exceed the costs, rather than a point estimate of the specific impacts.

Estimates used in the CBA have been conservative wherever possible regarding the potential costs and benefits and focus on a high-risk subset of employers. Most employers are expected to have lower costs than costs estimates used in the CBA. Benefits are only estimated for high-risk employers, where potential benefits are highest. The regulations may also benefit low and medium risks employers and their employees. To this extent, depending on alternative scenarios and responses of employers, the benefit-cost ratio (BCR) of the interventions at a whole-of-economy level may be larger.

Options analysis

The CBA results are summarised in Table i.

Table ii Results of options analysis (\$ million, present values)

	Option 1 – Risk management process	Option 2 – Risk management process and reporting requirements	Option 3 – Risk management process and prevention plans	Option 4 – Risk management process, reporting requirements and prevention plans
Total costs	1,388.10	1,740.44	2,030.20	2,382.54
Total benefit	1,480.34	1,707.18	2,287.81	2,514.64
Net-benefit	92.24	-33.26	257.60	132.10
Benefit-cost ratio	1.07	0.98	1.13	1.06

In the modelled scenario, it is estimated that Option 4 will impose total costs of approximately \$2.38 billion (present value over the lifespan of the regulations) in terms of compliance costs for employers and implementation costs for WorkSafe.

Option 4 is also estimated in the modelled scenario to yield benefits of \$2.52 billion (present value over the lifespan of the regulations) in terms of improved mental wellbeing, better health and safety outcomes and avoided costs.

As such, Option 4 yields a positive BCR and net-benefits of \$132 million (present value over the lifespan of the regulations).

The preferred option is Option 4, which combines all three components - risk management processes, prevention plans and reporting requirements. This option yields high net-benefits, a positive benefit-cost ratio and is likely to achieve all objectives.

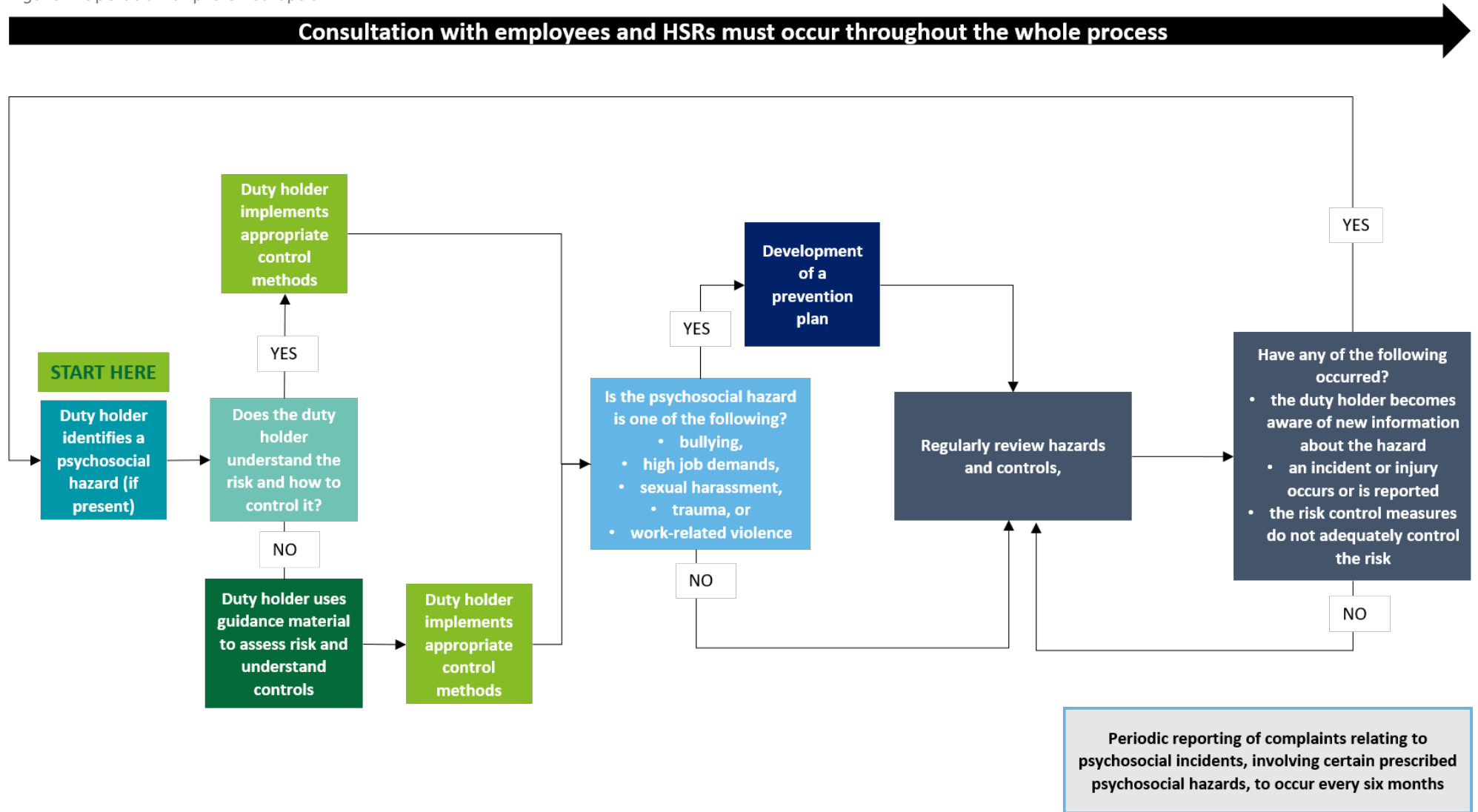
While it does not provide the greatest net benefits, WorkSafe considers that Option 4 is preferred over Option 3 (which does not include reporting requirements) for the following reasons:

- Given the prevalence of mental health issues in the workplace and the upward trend in mental injury claims, capturing more information through psychosocial complaint reporting is seen as a more strategic step forward and will allow for more informed regulatory interventions in the future.
- There are many unknowns relating to the impacts and causes of negative mental health in the workplace. In addition, there is little by way of a jurisdictional equivalent to the proposed Regulations and a lack of systematic, quantified data. Reporting requirements will allow WorkSafe and Victorian businesses to build a better knowledge and understanding base of psychosocial hazards and the causes of incidents in workplaces. This increased knowledge and evidence will help develop strategic policy interventions in the future.
- A range of benefits will also occur which have not been quantified in this RIS.

WorkSafe invites all stakeholders with views on the likely impact of the proposed changes, including in particular employers with information on the costs of complying, to respond to this RIS. WorkSafe specifically invites feedback from stakeholders on the following:

- The extent to which identification and control activities are likely to result in cultural changes in the workplace, for example more effort being put into creating and maintaining mentally healthy workplaces, barriers to reporting are reduced, stigma is decreased.
- The likely actions that employers would undertake under the proposed amendments and whether they would need to engage a consultant or other outside expertise.
- How these actions differ from their current approach to managing risks arising from psychosocial hazards in their workplace.
- The expected incremental effort, cost and frequency of new actions undertaken as a result of the proposed amendments (compared to their current approach)
- Which types of psychosocial hazard (including, but not limited to, the proposed prescribed psychosocial hazards) are likely to be identified in workplace (either already identified through existing risk management conducted to meet the general duty or expected to be identified if undertaking new or different identification and control processes as a result of the proposed amendments).
- What alternative controls to training stakeholders would use to address the psychosocial hazards likely to be present in their workplaces and whether the costs of any new or additional activities undertaken to comply with the proposed Regulations would differ substantively from the estimates in the scenario modelled above.
- How frequently those psychosocial hazards (including, but not limited to, the proposed prescribed psychosocial hazards) would be likely to change in a sufficiently material way to warrant repeated reviews of risk control measures.
- The types of systems used to collect de-identified information on complaints relating to psychosocial incidents and the time and effort taken to establish these.
- The broader societal factors which may impact the management of psychosocial hazards but be outside the control of regulation.
- The types of support or guidance material that employers would like WorkSafe to provide to assist them in complying with the proposed amendments.
- The extent to which businesses think their costs would be reduced or intervention effectiveness would be improved by the provision of guidance material.

Figure ii Operation of preferred option



Source: Deloitte Access Economics

The impacts of Option 4 on employers are presented in Table ii, which shows the estimated costs of the preferred option in the modelled scenario in the first and subsequent years, and the average annual cost over the five-year life of the regulations for an average small, medium or large business.¹¹

Table iii Modelled annual costs of the preferred option (to the nearest \$'000) for an average small, medium or large employer

Business size	Cost in first year	Annual cost in every subsequent year	Average annual cost over the five-year life of the regulations
Small	\$11,000	\$4,000	\$6,000
Medium	\$64,000	\$38,000	\$44,000
Large	\$704,000	\$518,000	\$555,000

Source: Deloitte Access Economics

Under the modelled scenario for the preferred option, small employers are estimated to incur one-off costs of approximately \$11,000 per business and average annual costs of approximately \$4,000. As such, the preferred option may have a marginally disproportionate impact on small businesses. This is because the risk management process is likely to require the owner or manager of a small businesses more time to ensure compliance than a larger business with existing systems and dedicated HR resources. However, it is noted that controls will be proportionate to business size and risk profiles and guided by WorkSafe guidance material. Therefore, by definition, the volume and cost of implementing controls will be lower for smaller businesses.

Prevention plans are likely to place a proportionate impact on businesses, given the conditional nature of the regulations which only require that, when certain prescribed psychosocial hazards are identified through the risk management process, employers must develop and keep a written record of a prevention plan for the relevant prescribed psychosocial hazard. As the proposed reporting requirements will only apply for employers with over 50 employees, there will be no impact on small business.

WorkSafe will provide guidance material and codes of conduct to lessen the burden and assist small businesses in complying with the new requirements. It is important to note that businesses of all sizes are expected to benefit from the productivity gains, reduced absenteeism and increased employee engagement associated with the improved mental health of employees. Under the modelled scenario, the preferred option is estimated to impose total costs to employers of \$2.37 billion (present value over the five-year life of the regulations), or an average annual cost to all employers of \$537.75 million per year, over the five-year life of the regulations.

The economy-wide costs of the modelled scenario on employers by size of business are shown in Table iii below, which summarises the present value of total costs and the average annual cost to employers over the five-year life of the regulations for all small, medium and large employers.

¹¹ Business sizes are based on ABS data for which small businesses are defined as employing 1 to 19 employees, medium businesses are defined as employing 20 to 199 employees, and large businesses are defined as employing 200 or more employees.

Table iv Modelled total costs of the preferred option all small, medium or large employer over the five-year life of the regulations.

Business size	Total cost to all employers (\$m, present value)	Average annual cost to all employers (\$m)
Small	\$807.91	\$182.98
Medium	\$613.00	\$138.99
Large	\$951.81	\$215.78
Total	\$2,372.72	\$537.75

Source: Deloitte Access Economics

The total impact of the preferred option on employers by size of business are show in Table iv below. This table summarises the present value of total costs and total benefits to small, medium and large employers over the five-year life of the regulations.

Table v Total impact of the preferred option all small, medium or large employer over the five-year life of the regulations

Business size	Total cost to all employers (\$m, present value)	Total benefit (\$m, present value)	BCR
Small	\$807.91	\$935.98	1.15
Medium	\$613.00	\$631.98	1.03
Large	\$951.81	\$946.68	0.99

Source: Deloitte Access Economics

Given the uncertainty noted above, this RIS includes sensitivity analysis of the effectiveness of the intervention, the value of a statistical life, the total costs to all employers, and the total costs to businesses of different sizes (small, medium and large). The results of this sensitivity analysis are summarised Table v.

Table vi Results of sensitivity analysis for modelled parameters

Parameter	Upper and lower bounds	BCR for preferred option
Effectiveness	Upper (35%)	1.48
	Modelled (25%)	1.06
	Lower (15%)	0.63
VSLY	Upper (\$475,000)	1.32
	Modelled (\$350,000)	1.06
	Lower (\$220,000)	0.76
Small business costs	Upper (20% higher than modelled)	1.03
	Modelled	1.06
	Lower (20% lower than modelled)	1.08
Medium business costs	Upper (20% higher than modelled)	1.03
	Modelled	1.06
	Lower (20% lower than modelled)	1.08
Large business costs	Upper (20% higher than modelled)	1.03
	Modelled	1.06
	Lower (20% lower than modelled)	1.08
Costs to all employers	Upper (20% higher than modelled)	0.88
	Modelled	1.06
	Lower (20% lower than modelled)	1.33

The net benefits of the proposed amendments are most sensitive to deviations in the effectiveness of the intervention and are estimated to break even in the modelled scenario if the proposed amendments substantively improve mental health and safety in approximately 24 per cent of Victorian workplaces. The sensitivity of the modelling reinforces the importance of effective implementation, guidance material and/or a compliance code to support employers in employing appropriate and proportionate controls to manage psychosocial risks. It also illustrates the importance of a rigorous evaluation of the proposed regulations over the next five years until the OHS Regulations sunset.

Implementation and evaluation strategy

While WorkSafe is still in the process of finalising its implementation plan, the proposed Regulations are anticipated to take effect on 01 July 2022.

Usually for a reform with impacts of this scope, a mid-term evaluation would follow implementation of the proposed regulatory changes. Given that the OHS Regulations as a whole will expire in five years, evaluation of the proposed changes will be folded into the broader review of the OHS regulations prior to their remake and will be considered as part of the broader monitoring framework in WorkSafe’s mental health strategy.

1 Background

This chapter provides context to the proposed regulatory changes, outlining the relationship between mental health and the workplace.

1.1 Introduction

Mental health is a 'state of wellbeing in which a person realises their own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to their community'.¹²

There are many aspects of life which can either positively or negatively impact upon an individual's mental health. This includes impacts related to work, family, experience of trauma, physical health and so forth. Of these, adverse mental health impacts from work and the work environment, can result in poorer outcomes for individuals, employers (as duty holders), and society more broadly.¹³

Recognising these potential impacts, amendments to the *Occupational Health and Safety Regulations 2017* (OHS Regulations) are being considered to strengthen Victoria's occupational health and safety framework to recognise that psychosocial hazards can be just as harmful to workers' safety and wellbeing as physical hazards and providing clarity for employers. Under the *Occupational Health and Safety Act 2004* (OHS Act), employers have a range of obligations relating to providing and maintaining for employees 'a working environment that is safe and without risks to health'. The OHS Act defines "health" to include mental health.¹⁴ The duties in the OHS Act therefore apply equally to both physical and mental health.

Notwithstanding that mental health is included within the broad obligations relating to health in the OHS Act, a number of recent reports and inquiries¹⁵ have found that:

- current health and safety laws include no specific provisions relating to the management of mental health
- there is a lack of clarity regarding employer's current obligations to identify and manage risks to mental health.

In May 2021, the Minister for Workplace Safety announced the Victorian Government's commitment to strengthening workers' right to a safe place of employment through new regulations to better prevent workplace psychological hazards and injuries.

1.2 Mental health and the workplace

1.2.1 What is the relationship between work and mental health?

The relationship between work and mental health is bi-directional.¹⁶ Work can influence a person's mental health, and a person's mental health can influence their performance at work.

¹² World Health Organisation, *Mental health: strengthening our response* (30 March 2018)

<<https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>>.

¹³ Royal Commission into Victoria's Mental Health System, *Volume 2 Collaboration to support good mental health and wellbeing* (February 2021) <https://finalreport.rcvmhs.vic.gov.au/wp-content/uploads/2021/02/RCVMHS_FinalReport_Vol2_Accessible.pdf>.

¹⁴ As the OHS Act defines health to include both psychological health, the formal title of the regulations will refer to psychological health regulations. In this RIS we will be referring to psychological health as mental health throughout.

¹⁵ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018)

<https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>; Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>; Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health.pdf>>

A positive work environment contributes to positive impacts on a person's mental health by providing them with a greater sense of autonomy, improved sense of wellbeing and a reduction in symptoms of depression and anxiety.¹⁷ It also provides positive social interaction and a means to financially and materially support oneself and one's dependents. Research has developed strong links between organisational culture and mental health.¹⁸

Conversely, a workplace environment that exposes employees to psychosocial hazards¹⁹ such as poor support, poor environmental conditions and bullying can take a toll on their mental health (see 1.2.2) and may lead to mental injury. Relative to other work-related injuries, claims for mental injury are increasing and represent the fastest growing area of workers' compensation claims and scheme liability in Victoria (Chapter 2).

Mental health can also directly impact on a person's performance at work. People with poor mental health are much more likely to exhibit instances of absenteeism and presenteeism²⁰. For example, employees with severe mental health issues can take up to 20 times more sick days per month compared with the other employees.²¹

The Productivity Commission estimated the cost of absenteeism and presenteeism in Australia to be approximately \$17 billion each year.²² Similarly, the University of South Australia estimated that employees experiencing mental distress exhibited drastic performance losses when compared with employees not experiencing mental distress.²³

Conversely, workplace cultures that safeguard mental health have been associated with higher productivity, better problem solving and better creativity.²⁴ By promoting mental health in the workplace, businesses can avoid costs and create a more productive and effective working environment.

1.2.2 What are psychosocial hazards?

Harm to mental health can be caused by work-related factors known as **psychosocial hazards**. According to WorkSafe, psychosocial hazard means:

- work design; or
- systems of work; or
- management of work; or
- carrying out of the work; or
- 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 that their health and safety.

Psychosocial hazards can lead to mental or physical harm. This can occur either in a specific instance or over time. Employees may be exposed to a single or combination of psychosocial

¹⁶ See above n 2

¹⁷ Modini M, Joyce S, et al. *The Mental Health Benefits of Employment: Results of a Systematic Meta-Review, Australasian Psychiatry* (15 January 2016) 24(4), 331-336.

¹⁸ See above n 2

¹⁹ Psychosocial hazards can be any aspect of an individual's social or work environment which increases work-related stress

²⁰ Presenteeism refers to the practice of being present at one's place of work for longer hours than is required, often as a manifestation of job insecurity. This can further perpetuate poor psychological health and lower productivity.

²¹ Safe Work Australia, *Mental Health* (2019) <<https://www.safeworkaustralia.gov.au/topic/mental-health>>

²² Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health.pdf>>

²³ Dollard M & Becher H, *Psychosocial safety climate and better productivity in Australian workplaces* (November 2016) University of South Australia <<https://www.safeworkaustralia.gov.au/system/files/documents/1705/psychosocial-safety-climate-and-better-productivity-in-australian-workplaces-nov-2016.pdf>>

²⁴ See above n 2

hazards which, without intervention, can result in the development of a mental injury.²⁵ The complex and multi-faceted nature of psychosocial hazards means that they often interact and, in some cases, compound. This means that the nature and severity of mental injury can vary as a result.

Psychosocial hazards in the workplace are described in Table 1.1.

Table 1.1 Description of psychosocial hazards (non-exhaustive)

Psychosocial hazard	Description
Low job control	Low job control is where workers have little control over aspects of the work, including how or when a job is done.
High job demands	<p>Sustained physical, mental or emotional effort which are unreasonable or frequently exceed the employee's skills or capacity. Examples include:</p> <ul style="list-style-type: none"> • long work hours • workload, for example, too much to do, fast work pace or significance time pressure • long periods of attention looking for infrequent events, for example, air traffic controllers, during long distance driving, security monitoring • emotional effort in responding to distressing situations or distressed or aggressive clients, for example, paramedics dealing with difficult patients or situations • emotional effort required to display emotion the organisation required when the emotions do not align with those of the employee • exposure to traumatic events or work-related violence, for example, emergency employees • shift work leading to higher risk of fatigue • frequently working in unpleasant or hazardous conditions, for example, extreme temperatures or noise, around hazardous chemical or dangerous equipment having to perform demanding work while wearing uncomfortable protective clothing or equipment working with clients with challenging behaviours.²⁶
Low job demands	Sustained low physical, mental or emotional effort is required to do the job.
Poor support	<p>Poor support involves tasks or jobs where workers have inadequate:</p> <ul style="list-style-type: none"> • emotional or practical support from supervisors and co-workers • information or training to support their work performance • tools, equipment, and resources to do the job.
Poor organisational change	Poor organisational change management occurs in workplaces

²⁵ Chirico F, Heponiemi T, Pavlova M, Zaffina S, & Magnavita N. 'Psychosocial risk prevention in a global occupational health perspective: A descriptive analysis' (2019) 14 *Int J Environ Res Public Health* 2470.

²⁶ WorkSafe Victoria, *Preventing and managing workplace stress: A guide for employers* (February 2021)

Psychosocial hazard	Description
management	<p>where there is:</p> <ul style="list-style-type: none"> not enough consideration of the potential health, safety and performance impacts during downsizing or relocations or the introduction of new technology and production processes not enough consultation and communising with key stakeholders and employees about major changes not enough practical support for employees during transition times.
Poor organisational justice	<p>Poor organisational justice occurs in workplaces where there is:</p> <ul style="list-style-type: none"> inconsistent application of policies and procedures unfairness or bias in decisions about allocation of resources and work poor management of under-performance.
Low recognition and reward	<p>Low recognition and reward occurs in jobs where:</p> <ul style="list-style-type: none"> there is a lack of positive feedback there is an imbalance between employees' efforts and formal and informal recognition and rewards There is a lack of opportunity for skills development.
Low role clarity	<p>Low role clarity involves jobs where there is:</p> <ul style="list-style-type: none"> uncertainty about or frequent changes to tasks and work standards important task information, which is not available to the worker conflicting job roles, responsibilities or expectations.
Poor workplace relationships	<p>Poor workplace relationships occur in jobs where there is:</p> <ul style="list-style-type: none"> workplace bullying, aggression, harassment, sexual harassment and gendered violence, discrimination or other unreasonable behaviour by colleagues, supervisors or clients poor relationships between employees and their managers, supervisors, colleagues and clients or others the employee has to interact with conflict between employees and their managers, supervisors or colleagues lack of fairness and equity in dealing with organisational issues or where performance issues are poorly managed.
Poor environmental conditions	<p>Poor environmental conditions involve exposure to poor-quality or hazardous working environments. Examples include:</p> <ul style="list-style-type: none"> hazardous manual handling poor air quality high noise levels extreme temperatures working near unsafe machinery.
Remote and isolated work	<p>Remote work is work at locations where access to resources and</p>

Psychosocial hazard	Description
	<p>communications is difficult and travel times might be lengthy.</p> <p>Isolated work is where there are no or few other people around or where access to help from others, especially in an emergency, might be difficult.</p>
Sexual harassment	<p>As outlined in Section 92(1) of the Equal Opportunity Act 2010 (EO Act), a person sexually harasses another person if he or she:</p> <p>(a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or</p> <p>(b) engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated</p>
Exposure to trauma	<p>Incidents that can cause fear and distress and involve exposure to abuse, the threat of harm or actual harm. Direct or indirect exposure to violence or traumatic events can cause trauma.</p> <p>Vicarious trauma, also known as secondary trauma, refers to the negative effects of indirect exposure to potentially traumatic events during the course of one's work. For example, helping others cope with traumatic events, witnessing a fatality, reviewing distressing information or investigating a serious injury or fatality.</p>
Violence and aggression	<p>Involves incidents in which a person is abused, threatened or assaulted.</p>
Bullying	<p>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.</p>
Gendered violence	<p>Gendered violence is any behaviour, directed at any person, or that affects a person, because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety.</p>

Source: WorkSafe Victoria, *Preventing and managing workplace stress: A guide for employers* (2021)

Improper control of work-related psychosocial hazards may lead to mental injury over the short, medium, or long term. However, it is important to note that exposure to psychosocial hazards may not always result in mental injury. A number of factors may influence this such as duration of exposure to the hazard or the resilience of the individual in coping with the exposure. Symptoms of mental injury can significantly affect how a person feels, thinks, behaves, and interacts with others, and can manifest over both short- and long-term periods.

1.3 Legislative and regulatory framework

1.3.1 Victorian approach to regulating risk to mental harm

1.3.1.1 Existing regulatory framework in Victoria

Under the OHS Act, the definition of health includes psychological health. Accordingly, risks relating to psychological health are currently regulated through the general duties set out in Part 3 of the OHS Act.

Part 3 of the OHS Act places general health and safety duties on employers, employees, manufacturers, and suppliers of plant and substances. The main duty relating to employers requires an employer to provide and maintain for their employees a working environment that is safe and without risk to health. To fulfil their duties, employers must eliminate or reduce risks to health so far as is reasonably practicable. These duties extend to any independent contractors engaged by the employer and any employees of the independent contractor but are limited to matters over which the employer has control. Employers must also monitor conditions at any workplace under the employer's management or control. The OHS Act also provides that when employers are doing certain things in relation to occupational health and safety that an employer must, so far as is reasonably practicable, consult with employees or their representatives.

Employers and self-employed persons have a duty to ensure that persons other than employees are not exposed to health and safety risks arising from conduct undertaken by the employer or self-employed person. Additionally, employees must take reasonable care for their own health and cooperate with their employers' efforts to make the workplace safe.

The OHS Regulations expand upon and clarify how to fulfil the obligations imposed on employers by the OHS Act. There are currently no specific provisions under the OHS Regulations relating to mental health.

The Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC Act) addresses what happens when a Victorian worker is injured or dies in the course of, or arising from, their employment. It covers:

- insurance
- compensation
- rehabilitation
- return to work
- dispute resolution.

The WIRC Act came into effect on 1 July 2014 and replaced 2 previous acts:

- Accident Compensation Act 1985
- Accident Compensation (WorkCover Insurance) Act 1993

1.3.1.2 Existing guidance material and support for mental health in Victoria

WorkSafe has published guidance material to assist employers to implement safe work practices and meet their duties under the OHS Act. This guidance may be considered part of the employers 'state of knowledge' when determining what is reasonably practicable in discharging their duties. This guidance includes, but is not limited to, the following:

- Mental health: Safety basics²⁷
- Preventing and managing work-related stress: a guide for employers²⁸
- Gendered violence including sexual harassment: a guide for employers²⁹
- Work-related violence: a guide for employers³⁰
- Work-related fatigue: a guide for employers³¹
- WorkWell toolkit³²
- Workplace bullying: a guide for employers.³³

²⁷ WorkSafe Victoria, *Mental health: Safety basics* (2020) <<https://www.worksafe.vic.gov.au/mental-health-safety-basics>>

²⁸ WorkSafe Victoria, *Preventing and managing workplace stress: A guide for employers* (February 2021) <<https://content.api.worksafe.vic.gov.au/sites/default/files/2021-02/ISBN-Preventing-and-managing-work-related-stress-guide-2021-02.pdf>>

²⁹ WorkSafe Victoria, *WorkSafe related gendered violence including sexual harassment* (March 2020) <<https://www.worksafe.vic.gov.au/resources/work-related-gendered-violence-sexual-harassment>>

³⁰ WorkSafe Victoria, *Work-related violence: a guide for employers* (October 2020) <<https://www.worksafe.vic.gov.au/resources/work-related-violence-guide-employers-pdf>>

³¹ WorkSafe Victoria, *Work-related fatigue: a guide for employers* (October 2020) <<https://www.worksafe.vic.gov.au/resources/work-related-fatigue-guide-employers>>

³² WorkSafe Victoria, *WorkWell Toolkit* (September 2021) <<https://www.workwell.vic.gov.au/toolkit>>

In relation to mental health, WorkSafe has published guidance on work-related violence, workplace bullying, work-related stress, work-related fatigue, family violence and gendered violence including sexual harassment. In addition to guidance material, WorkSafe launched the WorkWell program and toolkit in 2018. WorkWell contains practical resources, funding, and networking opportunities to promote mentally healthy Victorian workplaces and to prevent mental injury at work.

The Victorian Government has also established a Ministerial Taskforce on Workplace Sexual Harassment to develop reforms that will prevent and better respond to sexual harassment in workplaces. A key initiative of this reform program will be starting consultation on a mandatory incident notification scheme that would require employers to notify WorkSafe of workplace sexual harassment. The Taskforce will consider ways to strengthen the occupational health and safety framework to address sexual harassment, clarify employer obligations to boost accountability, encourage and support workers to speak up and consider measures to prevent the misuse of non-disclosure agreements in sexual harassment matters.

Other programs that WorkSafe have implemented to engage employers and support them to understand and meet their mental health and safety obligations include:

- Stakeholder working groups
- Industry partnerships
- Strategic programs
- Learning networks
- Education and awareness campaigns
- Psychosocial Operations Inspectorate.

1.3.2 Regulatory frameworks in other Australian jurisdictions

1.3.2.1 Existing regulatory framework

Victoria's OHS Act came into effect in 2005. In 2011, Safe Work Australia (SWA) developed a set of workplace health and safety (WHS) laws known as the "model WHS laws".³⁴ The laws aim to achieve a balanced and nationally consistent framework to secure the health and safety of employees and workplaces. At present, all states and territories with the exception of Victoria have adopted the model WHS laws (with the model laws expected to commence in Western Australia early 2022).

At present, no state or territory has embedded specific measures to protect mental health in the workplace into either their workplace safety legislation or regulations. This is notwithstanding that the model WHS laws already encompass mental health by virtue of the duties model.

1.3.2.2 Statutory guidance and non-statutory approaches to mental health

In the absence of specific regulations in the model WHS laws, other states and territory have currently adopted varied approaches to managing mental health through non-statutory means and Codes of Practice.

In May 2021, Safe Work NSW released a Code of Practice for managing psychosocial hazards at work. This outlines who has duties to manage psychosocial hazards, how to manage psychosocial hazards and how to respond to a report of a psychosocial hazard.

Western Australia has a Code of Practice for Mentally Healthy Workplaces specifically for fly-in-fly-out employees in the resources and construction sector. This Code of Practice provides guidance to employers around providing an environment that promotes wellbeing, applying risk management processes to psychosocial hazards and developing response strategies when employees raise concerns regarding work-related stress. Western Australia has also released a broader Code of Practice on psychosocial hazards for public comment.

³³ WorkSafe Victoria, *A guide for employers- Workplace bullying* (March 2020)

<<https://content.api.worksafe.vic.gov.au/sites/default/files/2020-04/ISBN-Workplace-bullying-guide-for-employers-2020-04.pdf>>

³⁴ Safe Work Australia, *Model WHS laws* (Accessed 28 June 2021) <<https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws>>

WorkSafe Queensland developed a 'toolkit' to provide employers with guidance and resources on how to create a mentally healthy workplace, promote positive practices, prevent mental harm, intervene early and support recovery from mental injury.

Further, in October 2021, WorkSafe ACT launched its *Strategy for Managing Work-Related Psychosocial Hazards 2021-2023*. The Strategy is an overarching document that captures WorkSafe ACT's approach to work-related psychosocial hazards and guides the activities of WorkSafe ACT to educate, engage and enforce management of work-related psychosocial hazards in the ACT over the next three years. The Strategy also provides for targeted plans to address work-related violence and sexual harassment.

To increase consistency across jurisdictions, SWA is currently in the process of developing a model Code of Practice for managing psychosocial hazards for all states and territories that have adopted the model WHS laws. This code will be used to provide practical guidance to assist employers to meet their duties under the model WHS laws.

Specifically, under the model WHS framework, the model Code of Practice will be able to:

- demonstrate 'deemed compliance' and be admissible in proceeding as evidence of whether or not the duty outlined in the model WHS laws has been complied with be used by courts as evidence of what is known about psychosocial hazards, mental health risks, risk assessment and risk control, and
- be used by courts as evidence of what is reasonably practicable in relation to managing psychosocial hazards.

1.4 Recent inquiries into mental health and workplace health and safety

Several recent inquiries have recommended that workplace health and safety laws and regulations be strengthened to address mental health.

1.4.1 The Boland Review

The Boland Review (2018)³⁵ undertook an extensive analysis of the *Model Work Health and Safety Act 2011* (Model WHS Act). The purpose of this national review was to identify where amendments to the Model WHS Act were necessary based on whether laws are operating as intended, creating unintended consequences or failing to deal with current working arrangements or conditions. The final point is most pertinent to the issue of mental health in the workplace setting.

The review notes that prior the introduction of the model WHS laws, Victoria was the only jurisdiction featuring health and safety laws which defined 'health' to include mental health.

The Boland Review describes the inadequacy of the model WHS laws in addressing mental health. The review report notes that the following matters were raised:

- there is an absence of specific requirements in relation to controlling psychosocial hazards in the model WHS laws
- there is similarly a lack of clarity about how to manage these hazards, and
- workplaces have expressed they want more prescription and practical guidance on how to identify and manage these hazards.

In response to this, the review recommended that regulations be developed specifically to impose measures which ensure employers identify psychosocial risks associated with mental injury and implement appropriate controls to manage those risks. In response to this recommendation, WHS Ministers agreed to amend model WHS regulations to deal with mental injury.³⁶ The review also recommended that incident notification provisions within the model WHS laws should be reviewed

³⁵ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

³⁶ The Attorney-General's Department, *Communique: Meeting of Work Health and Safety Ministers* (20 May 2021) <[ag.gov.au/sites/default/files/2021-05/communique-meeting-WHS-ministers-20-may-2021.pdf](https://www.ag.gov.au/sites/default/files/2021-05/communique-meeting-WHS-ministers-20-may-2021.pdf)>

to ensure they provide employers with appropriate visibility of work-related mental injuries and illnesses.

1.4.2 The Royal Commission into Victoria's mental health system

In 2019, a Royal Commission was established into Victoria's mental health system. It revealed that in many instances the state's mental health system was failing to support those who needed it.³⁷ The Royal Commission found evidence which reinforced the link between mental health and the workplace.³⁸ It noted that employment provides purpose, sense of identity and facilitates social interaction and economic participation. Additionally, workplace stress and stressors can lead to mental distress and even mental injury. In acknowledging this relationship, the Royal Commission highlighted the importance of education and awareness to promote mental health and wellbeing in the workplace.

Recommendation 16 of the Royal Commission³⁹ targets the creation of mentally healthy workplaces, proposing in part that that the Victorian Government:

- foster the commitment of employers to create mentally health workplaces
- advise on, develop, and provide resources to assist employers and employees across Victorian businesses to:
 - promote good mental health
 - address workplace barriers to good mental health
 - promote inclusive workplaces that are free from stigma and discrimination
 - support people experiencing mental illness at work.

The Victorian Government has accepted all recommendations in the report. In response to findings and recommendations of the report, Victorian Premier Daniel Andrews stated the recommendations will serve as a 'blueprint' for social reform, highlighting that workplaces share in a 'responsibility to recognise, respond and help those who are struggling'.⁴⁰

1.4.3 The Productivity Commission inquiry into mental health

After a comprehensive inquiry into the widespread issue of mental health in Australia, the Productivity Commission released a report in 2020⁴¹ highlighting the importance of promoting mental health in a work setting. The inquiry references the strong two-way links between employment and mental health, the benefits to employers of promoting mental health and the high number of potential risk factors in a workplace. The inquiry presented a number of key findings and recommendations specifically in relation to how mental health should be managed in the workplace. Overall, most of these findings and recommendations relate to better equipping workplaces to be mentally healthy.

Among the key findings were:

- prevention and early intervention in relation to mental health should prevail through employment
- mental safety should receive the same level of focus as physical safety in the occupational setting.

Among the recommendations were:

- state and territory governments should amend workplace health and safety arrangements to make mental health and safety in the workplace as important as physical health and safety.
- codes of practice should be developed to guide employers to meet their duty of care in relation to the mental health of their employees

³⁷ Royal Commission into Victoria's Mental Health System, *Final Report Summary and Recommendations* (2021)

³⁸ Royal Commission into Victoria's Mental Health System, *Volume 2 Collaboration to support good mental health and wellbeing* (February 2021) <https://finalreport.rcvmhs.vic.gov.au/wp-content/uploads/2021/02/RCVMHS_FinalReport_Vol2_Accessible.pdf>.

³⁹ Ibid

⁴⁰ The Hon. Daniel Andrews, Statement from the Premier (2021)

⁴¹ Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, vol. 2, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health-volume2.pdf>>

- minimum standards for employee assistance programs should be developed, and individual support programs expanded, for people with poor mental health
- OHS authorities should monitor and collect evidence from existing, duty holder-initiated interventions and advise employers on best practice intervention.

1.5 About this RIS

This RIS has been prepared in accordance with the *Victorian Guide to Regulation*,⁴² which provides a best practice approach to analysing any proposed regulatory intervention. This RIS estimates the impact of the proposed Regulations on Victorian businesses and community.

Key steps in the process to introduce the proposed Regulations are:

- preparation of the RIS (this document)
- public comment on the proposed Regulations
- addressing public comment.

The key purpose of this RIS is to assess the impact of different options for improving the management of psychosocial hazards in the workplace. The general approach to the assessment is as follows:

Identification of the nature and extent of the problem

This involved consideration of the nature and extent of the problem that the proposed Regulations aim to address, including the need for government intervention, the risks of non-intervention and the objectives of such intervention.

Identification of the options to achieve the objectives of the proposed Regulations

The proposed Regulations and alternative options were developed by WorkSafe in consultation with stakeholders (employer representatives, employee representatives, health experts, supplier representatives and businesses) and informed by the RIS consultation (see Appendix A for details of consultation undertaken). The establishment of options allowed possible costs and benefits to be examined as part of the stakeholder consultation.

Stakeholder consultations

Stakeholder consultation was undertaken to gather relevant information on the impact of the proposed Regulations and possible alternatives for different groups. WorkSafe consulted with government agencies and employee and duty holder representatives through a series of discussion papers and workshops. These were complemented by a business survey and targeted stakeholder interviews with select peak bodies conducted by Deloitte.

The survey was conducted to obtain information from employers regarding current workplace practices relating to mental health and potential impacts of the proposed amendments to the OHS Regulations. The survey (see Appendix A) sought to understand the types of activities employers currently undertake to manage mental health. The survey also sought to obtain information in relation to possible regulatory changes to address mental health. Questions focused on whether the employers already implemented the types of practices described in the proposed amendments as well as the feasible costs to employers of undertaking those activities.

Assessment of the costs and benefits

Assessment of the costs and benefits under all options, relative to the base case, was undertaken consistent with the requirements of the *Victorian Guide to Regulation*. The analysis included the quantification, where possible, of benefits to businesses, employees, and the Victorian community from improved management of work-related risks to mental health. It also included the costs to businesses of complying with regulations, and costs to government of implementing and administering regulations. The analysis reflects data held by WorkSafe Victoria, data gathered through independent research and information provided by stakeholders.

⁴² Commissioner for Better Regulation, *Victorian Guide to Regulation: A handbook for policy-makers in Victoria*, (2016) <<http://www.betterregulation.vic.gov.au/Guidance-and-Resources>>

Assessment of the other impacts

We have considered the likely impacts of the preferred option on small businesses and general competition among firms. This part of the RIS draws on stakeholder consultations.

Implementation, enforcement, and evaluation

These sections describe the arrangements for implementation, enforcement, and evaluation of the preferred option.

1.5.1 Public comment

The proposed Regulations and this RIS will be released via Engage Victoria for a 42-day public comment period to provide employers, employees, other interested parties and members of the public with the opportunity to consider and provide feedback on the proposed Regulations and RIS.

WorkSafe Victoria will consider all submissions received during public consultation and prepare a formal Response to Public Comment document which will detail the submissions received, and WorkSafe Victoria's response.

1.6 Structure of the report

This structure of the remainder of the report is as follows:

- Chapter 2: Problem analysis
- Chapter 3: Identification of options
- Chapter 4: Options analysis and preferred option
- Chapter 5: Small business and competition impacts
- Chapter 6: Implementation and evaluation strategy.

2 The problem of mental harm in the workplace

This section outlines the nature and extent of the problem, which establishes the case for further government intervention to reduce risks to mental health in the workplace.

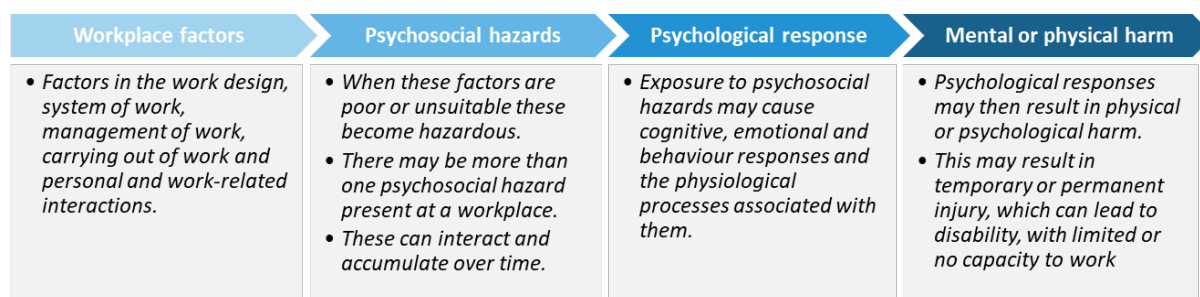
This section explains the scale and nature of the problem and explains the current understanding of the causes of the problem, based on both the available literature and stakeholder feedback.

2.1 Overview of the problem

The current OHS Regulations build on the duties in the OHS Act and set additional requirements in relation to a range of physical hazards (e.g. working from heights, working with plant or machinery). There are no specific requirements relating to psychosocial hazards. Given the absence of specific regulation, some workplaces, particularly small businesses, may have limited awareness, capacity or capability to identify, assess and control risks to mental health. Responses to workplace mental health have traditionally focussed on supporting individual employees, without addressing underlying psychosocial hazards that may be negatively impacting on employees' mental health.

Exposure to psychosocial hazards has the potential to cause mental injury that impacts upon a person's functioning within and beyond the workplace.

Figure 2.1 How workplace factors can create mental or physical harm



Source: WorkSafe Victoria

2.2 Evidence of the problem

2.2.1 Prevalence of mental injury

WorkSafe's workers' compensation claims data can be used as a proxy to demonstrate the prevalence of mental injury in Victorian workplaces. It is important to note that WorkSafe claims data may underestimate the problem due to the existing framing and scope of the workers' compensation legislative framework as well as cultural barriers, such as stigmatisation of mental health, which may prevent employees from lodging a claim. Further, due to the nature of the mental injuries, employees may find it difficult to identify if and when they have sustained a mental injury and may not lodge a claim as a result.

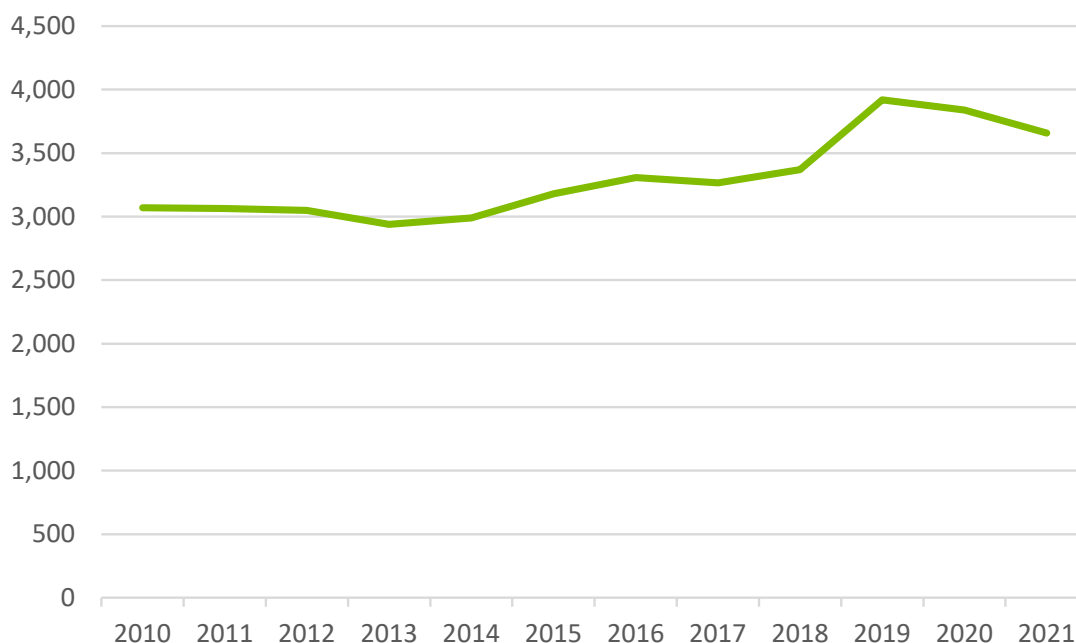
Recent inquiries (discussed in section 1.4) indicate that mental injury has been a persistent problem in the workplace. The number of claims per year for mental injuries was relatively stable until 2014 where it began to increase (Chart 2.1). While this coincides with the introduction of Victoria's *Mental Health Act 2014*, increases in claims for mental injuries are not limited to

Victoria.⁴³ According to Safe Work Australia (2021), the number of claims for mental injury as a result of mental stress and sub-category harassment and/or bullying also began to increase around a similar time. Across Australia, claims of this nature began to grow from 2015-16 onwards. Other data from Allianz Australia suggests that primary workers' compensation claims for mental injury have risen by an average of 22 per cent year-on-year since 2017.⁴⁴

The increase in claims in Victoria occurred slowly at first, increasing by six per cent over the seven years between 2010 and 2017 (Chart 2.1). In more recent years, growth in claims has become sharper, increasing by 20 per cent between 2017 and 2019. During 2020 and 2021 claims decreased slightly. This is likely due to the impact of COVID-19 which saw claims for all injuries fall due to lockdown restrictions which prevented employees from working. However, during this time, the proportion of mental to total claims was the highest in recent history, reaching 14% of total claims.⁴⁵ As the economy recovers and the workforce returns, WorkSafe estimate that claim numbers for mental injury will continue to grow over the next five years.

While these trends may imply the existence of an escalating risk of mental harm in the workplace, the increases in claims may also represent an adjustment towards a more accurate representation of the rate and severity of mental injury. General awareness of mental health has increased within recent years (as a result of increased media coverage and educational campaigns) which may have informed and encouraged employees to make claims for mental injury.

Chart 2.1 Number of claims for primary mental injury, Victoria 2010-2021



Source: WorkSafe claims data

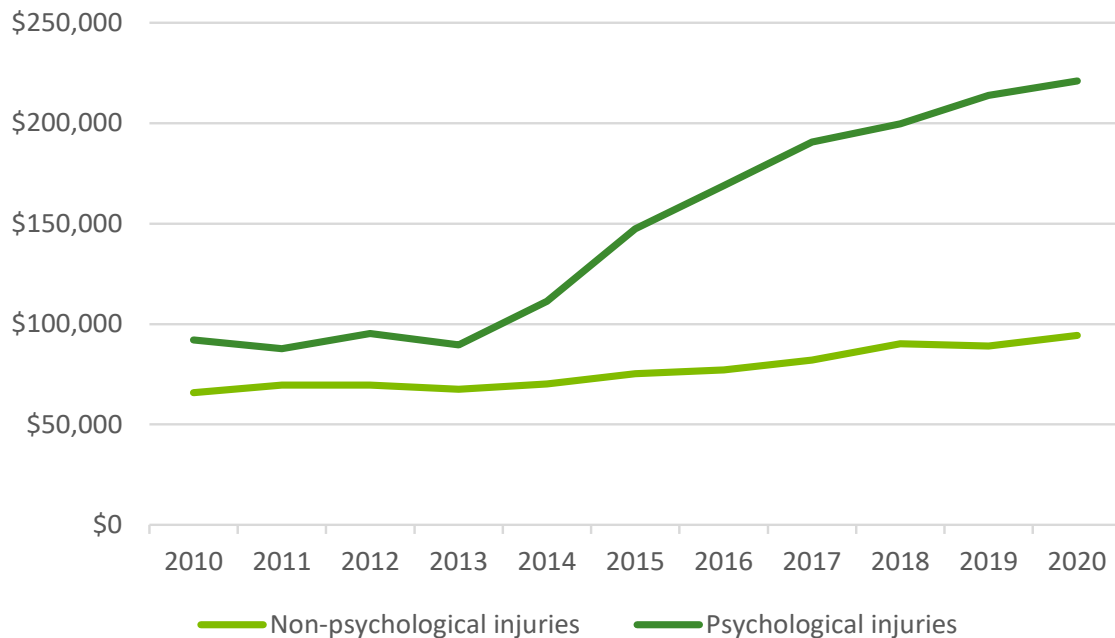
Relative to other injuries, mental injuries can also be some of the costliest. In 2021, the average cost of a mental injury claim was approximately \$220,000 (Chart 2.2). This cost has more than doubled over the last decade.

⁴⁴ Allianz Australia, *Allianz Future Thriving Workplaces* (October 2020) <https://www.allianz.com.au/images/internet/allianz-au/ContentImages/Allianz_Future%20Thriving%20Workplaces%20report.pdf> 6.

⁴⁵ WorkSafe Victoria, Claims data (1986-2021), client provided.

In terms of prevalence of mental injury in the workplace, the Australian Council of Trade Unions (ACTU) submission to Safe Work Australia’s Consultation RIS provided data from its *2019 Safe at Work Survey* which found 61 per cent of respondents experienced poor mental health as a result of hazards in their workplace and 67 per cent did not think their employer knew how to address mental health in the workplace.⁴⁶

Chart 2.2 Average claim size, mental injury vs non-mental injury, Victoria, 2010-2020



Source: WorkSafe claims data

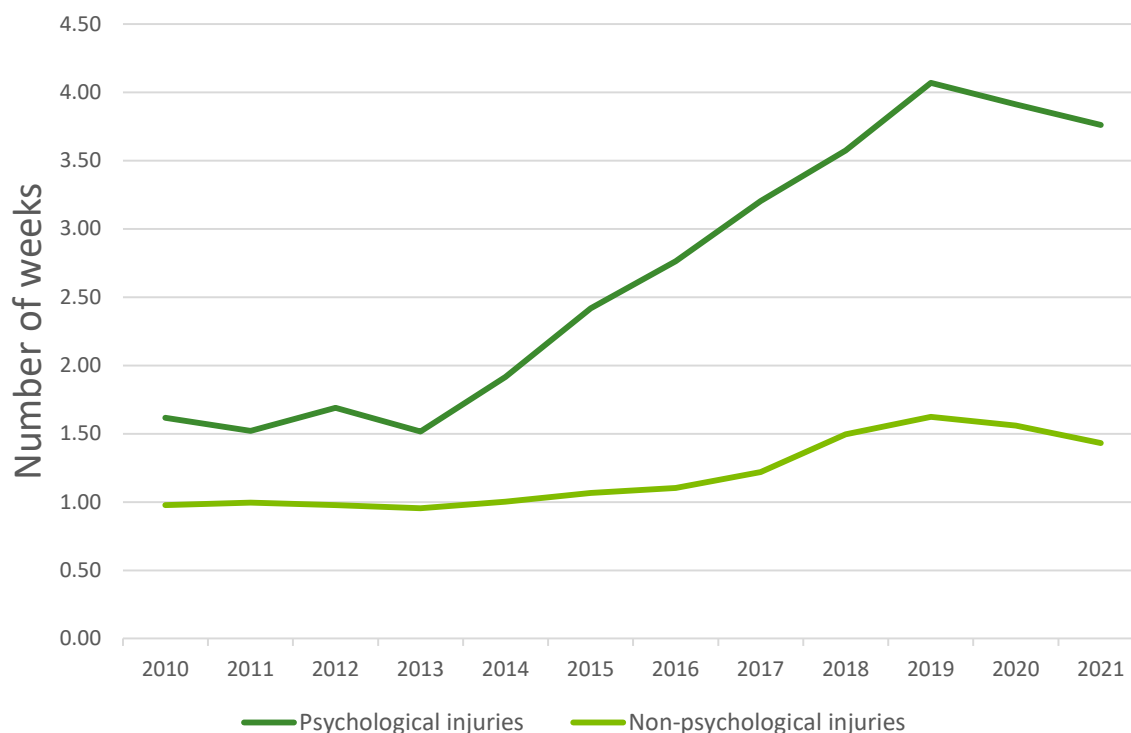
The high cost is associated with the longer duration of claims as employees with mental injuries generally require a longer than average time off work to recover.⁴⁷ In Victoria, the average duration of a claim for mental injury was 3.75 weeks in 2020 (Chart 2.3). This is more than double the duration for a non-mental injury. This trend is heightened in other jurisdictions across Australia, where claims involving mental conditions were almost three times as long as all other claims. According to SafeWork Australia, the typical time off work for mental injury spans approximately 15.3 weeks compared to an average of 5.5 for all other claims.⁴⁸

Chart 2.3 Average weekly claim duration, mental injury vs non-mental injury, Victoria, 2010-2020

⁴⁶ Safe Work Australia, *Decision Regulation Impact Statement Recommendations of the 2018 Review of the model Work Health and Safety laws* (2019), client provided.

⁴⁷ Safe Work Australia, *Mental Health* (2019) <<https://www.safeworkaustralia.gov.au/topic/mental-health>>

⁴⁸ Ibid.



Source: WorkSafe claims data

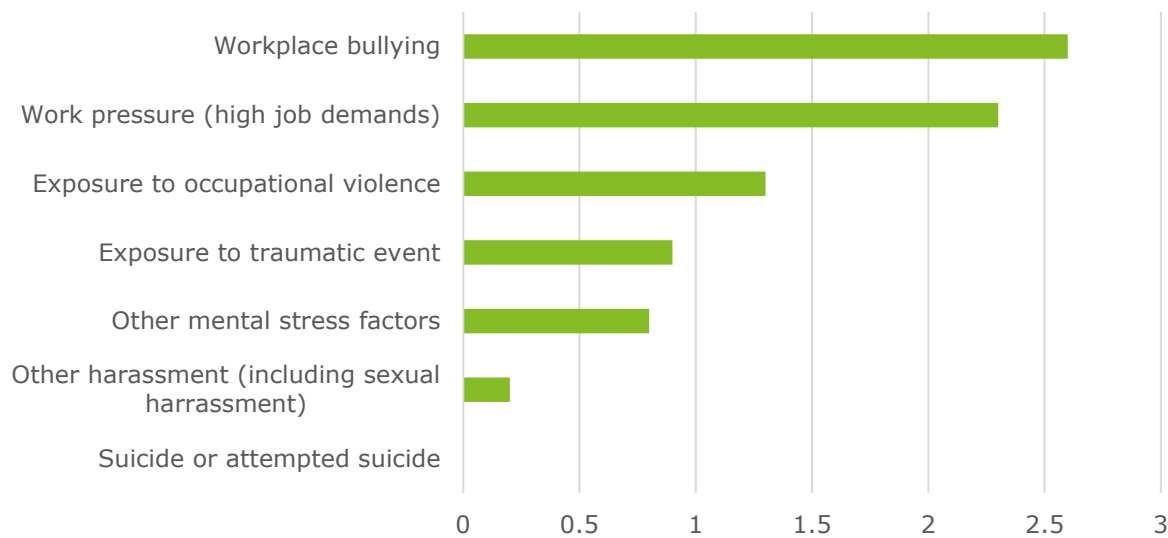
Workplace bullying, high job demands, exposure to work-related violence, exposure to traumatic events and harassment (including sexual harassment) are some of the most common reasons for mental injury. This is supported by Safe Work Australia claims data which suggests that for every 10,000 workers more than 2 workers will suffer injury as a result of workplace bullying alone (Chart 2.4).

It is important to note here that claims data is likely to significantly understate the actual prevalence of incidents and injuries due to a combination of factors including a lack of understanding, a lack of awareness or stigmatisation in relation to risks of a mental nature.⁴⁹ While the actual rate of understatement is unknown, its significance is noted, accepted and reinforced throughout the literature, with a feasible rate of actual injury of up to thirty times larger than injuries that are claimed.⁵⁰

⁴⁹ Safe Work Australia, *Return to work in psychological injury claims: Analysis of the Return to Work Survey results* (2017) <<https://www.safeworkaustralia.gov.au/system/files/documents/1711/return-to-work-in-psychological-injury-claims.pdf>>

⁵⁰ Montagne D, Keegel T, Vallance D, Ostry, A & Wolfe R, *Job strain – Attributable depression in a sample of working Australians: Assessing the contribution to health inequalities* (2008) 181 *BMC Public Health* 8.

Chart 2.4 Incident rate of claims per 10,000 employees, by sub-category of mental stress, Australia



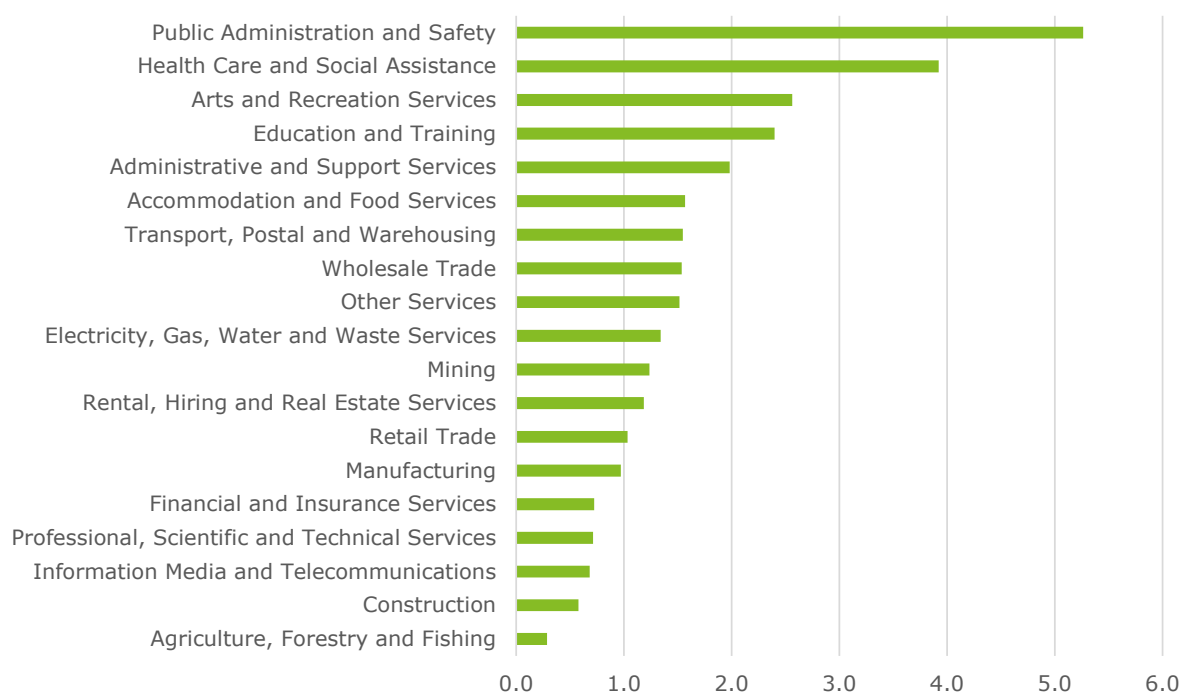
Source: SafeWork Australia (2021) *Psychological health and safety and bullying in Australian workplaces 6th edition*
 Note: This data excludes information from Victoria as sub-category data for mental stress is not available on a Victorian level. The other harassment sub-category includes victims of sexual or racial harassment by a person or persons including work colleague/s.

2.2.1.2 Industry characteristics of mental injuries

Whilst psychosocial hazards exist in all workplace, the incidence of claims submitted differs across industries. On average across all industries, there are approximately 1.6 claims for mental injury made per thousand employees in Victoria (Chart 2.5). The public administration (three-times the industry average) and healthcare industry (double the industry average) have the highest number of mental injury claims per worker.

However, it is important to note that the concentration of claims across industries may not reflect the presence of psychosocial hazards in the workplace. This data may also reflect fluctuations in general awareness of mental health and psychosocial hazards across industries, as well as other cultural barriers associated with lodging a claim. However, this data does account for industry size by calculating claims on a per thousand workers basis.

Chart 2.5 Mental injury claims per thousand workers in Victoria, by ANZSIC industry division, 2020



Source: WorkSafe claims data

2.2.1.3 Demographic of employees with mental injuries

There are a number of demographic differences between employees with mental injuries in relation to age and gender (Chart 2.6). In 2021, the majority of claims (55 per cent) for mental injury came from female employees. This trend applies across all age categories, with female employees submitting more claims for mental injuries than their male colleagues. The largest difference between claims submitted by gender is for employees aged 20-29. In 2021, female employees aged 20-29 submitted 64 per cent more than male employees in the same age group. This may be due to a higher prevalence of female participation in service-based roles.⁵¹ A range of cultural forces such as stigmatisation may also contribute to this trend.

Stigmatisation is a common problem in a workplace environment that can increase the occurrence of psychosocial injury. Failure and reluctance of employees to report instances of psychosocial hazards due to stigmatisation may prevent employers from adequately addressing them. For example, sexual harassment in the workplace is a prevalent and pervasive issue, with barriers such as fear of retribution often preventing victims from reporting incidents.⁵² Similarly, a recent study showed that men are less likely to report instances of workplace bullying.⁵³ This is consistent with trends observed in Chart 2.6, showing a lower number of workers' compensation claims made by men relating to mental injury in Australia. In addition to this, reluctance to report job-stress is a common issue for both men and women.⁵⁴ Job-stress can be caused by high job demands and factors such as insecure work may exacerbate an employee's reluctance to report.

⁵¹ Australian Bureau of Statistics, *Gender Indicators Australia* (15 December 2020)

<<https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release#>>

⁵² Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (5 March 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces>>

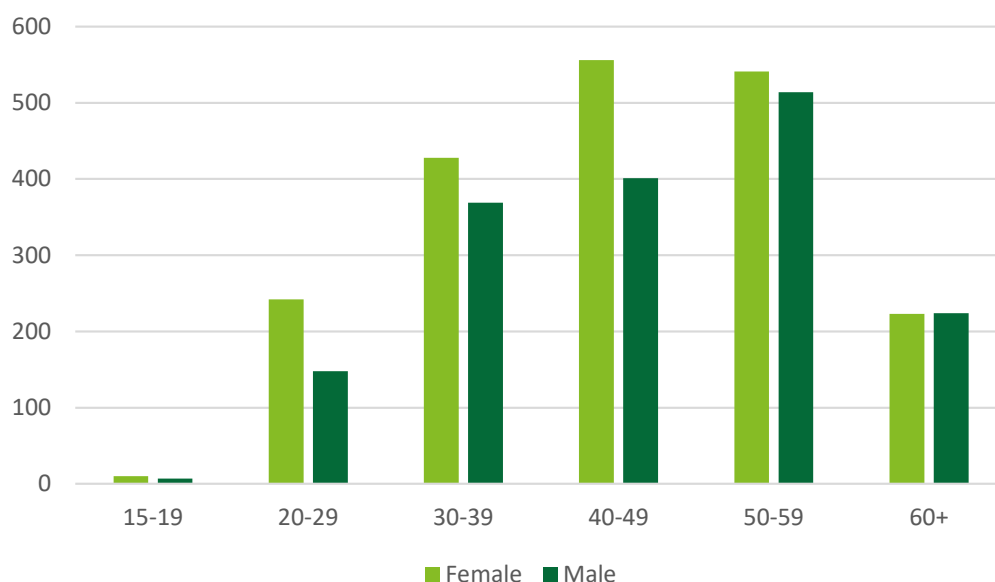
⁵³ Rosander M, Salin S, Viita L & Blomberg S, *Gender Matters: Workplace Bullying, Gender, and Mental Health* (6 October 2020) <<https://doi.org/10.3389/fpsyg.2020.560178>>

⁵⁴ VicHealth, *Workplace stress in Victoria: Developing a systems approach* (22 November 2014)

<<https://www.vichealth.vic.gov.au/media-and-resources/publications/workplace-stress-in-victoria>>

The presence of such stigmatisation calls for cultural change within workplaces to ensure employees are comfortable reporting psychosocial hazards, incidents and injuries as they occur. The example above highlights the importance of providing clarity to employers on how to identify and control psychosocial hazards so as to overcome barriers related to varying forms of stigmatisation.

Chart 2.6 Mental injury claims by age and gender, Victoria 2021



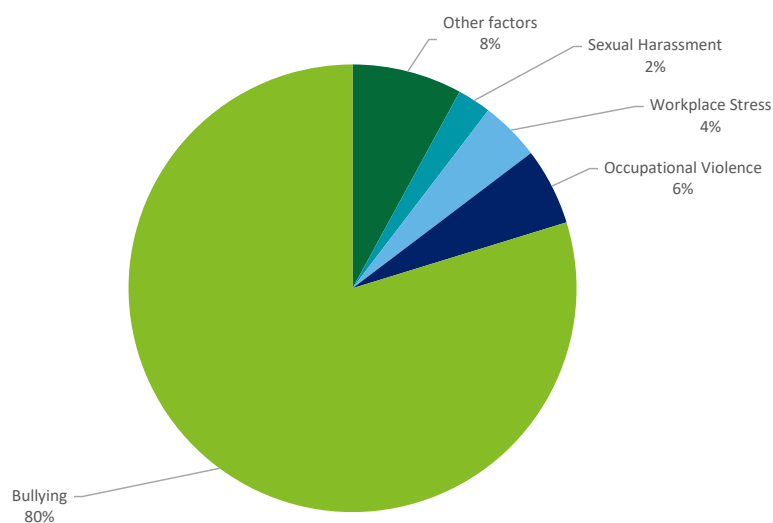
Source: WorkSafe claims data

2.2.2 Prevalence of psychosocial incidents

As there is currently no legislative reporting requirements for psychosocial incidents, voluntary calls received by WorkSafe's advisory service have been used as a proxy to estimate the prevalence of psychosocial incidents in the workplace.⁵⁵ It is important to note that the number of psychosocial calls to the advisory service is likely to underestimate the number of psychosocial incidents in the workplace. As discussed below it is also likely that the number of bullying calls may represent a combination of other psychosocial hazards as the term "bullying" is more widely known and better understood.

⁵⁵ WorkSafe's advisory service can assist with reporting an incident, safety alerts, advice on how to create a safe workplace, laws and regulations, licenses, WorkCover insurance, lodging a claim, returning to work, WorkSafe providers and general information about WorkSafe.

Chart 2.7 Psychosocial calls to WorkSafe Advisory, by wrap codes



Source: WorkSafe advisory calls data

In 2020-21, 80 per cent of psychosocial calls to WorkSafe’s advisory service involved questions relating to workplace bullying (Chart 2.7). This may indicate that bullying is one of the most prevalent psychosocial hazards in workplaces, but it may also be a representation of ambiguity around the definition of workplace bullying or because bullying is more commonly recognised by employees as a workplace safety issue. This ambiguity could lead to more queries around bullying as people seek to understand whether an incident should be classified as bullying or not. Conversely, work-related violence is less ambiguous and as such may elicit less queries. While noting this limitation, the dominance of bullying related calls is a clear indication that bullying is a proportionately significant psychosocial hazard in the workplace. Varying degrees of prevalence amongst psychosocial hazards supports calls from the various past inquiries to put in place specific measures and minimum standards to address particular hazards, such as anti-bullying policies.

2.2.3 Approximately one-third of Victorian workplaces have a high-risk or very high-risk psychosocial safety climate (PSC)

Psychosocial safety climate (PSC) is an innovative theoretical framework which underpins the Australian Workplace Barometer (AWB) report.⁵⁶ The PSC-12 is a survey instrument used to measure employees’ workplace safety experience of “policies, practices and procedures for the protection of worker mental health and safety”.⁵⁷ Here, practices refer to workplace culture and perceptions of an enacted commitment to, or prioritisation of, mental health and safety in a workplace. In the AWB report, Safe Work Australia proposes that the most efficient organisational intervention target to reduce the impact of psychosocial hazards is to build PSC, and literature on mental health and workplace safety confirms the relationship between PSC survey scores and prevalence of mental injury.⁵⁸

⁵⁶ Safe Work Australia, *The Australian Workplace Barometer: Report on Psychosocial Safety Climate and Worker Health in Australia* (December 2012) <<https://www.safeworkaustralia.gov.au/doc/australian-workplace-barometer-report-psychosocial-safety-climate-and-worker-health-australia>>

⁵⁷ Hall G, Dollard M & Coward J ‘Psychosocial Safety Climate: Development of the PSC-12’ 17 *International Journal of Stress Management* (2010) <doi.org/10.1037/a0021320> 353.

⁵⁸ Dollard M, Dormann C & Idris M, *Psychosocial Safety Climate A New Work Stress Theory: A New Work Stress Theory* (Springer International Publishing, 1, 2019); Idris M, Dollard M, Coward J & Dormann C, ‘Psychosocial safety climate: Conceptual distinctiveness and effect on job demands and worker psychological health’ 50 (1) *Safety Science* (2012); Zadow A, Dollard M, McClinton S, Lawrence P & Tuckey M, ‘Psychosocial safety climate, emotional exhaustion, and work injuries in healthcare workplaces’ 33 (5) *Stress and Health* (2017) 558.

The survey instrument has scores ranging from 12 to 60 and comprises 12 questions, three for each of the following four subscales:

1. **Management commitment** e.g. "Senior management considers employee mental health to be as important as productivity"
2. **Management priority** e.g. "Senior management clearly considers the mental health of employees to be of great importance"
3. **Organisational communication** e.g. "There is good communication here about mental safety issues that affect me"
4. **Organisational participation** e.g. "Employees are encouraged to become involved in mental safety and health matters"

Each subscale comprises of three questions measured using a 5-point Likert scale 1 (strongly disagree) to 5 (strongly agree) that includes a midpoint (neither disagree nor agree). A full list of questions is provided in Appendix B. Table 2.1 shows the benchmarks which have been empirically determined to show risk levels and prognosis for PSC scores.

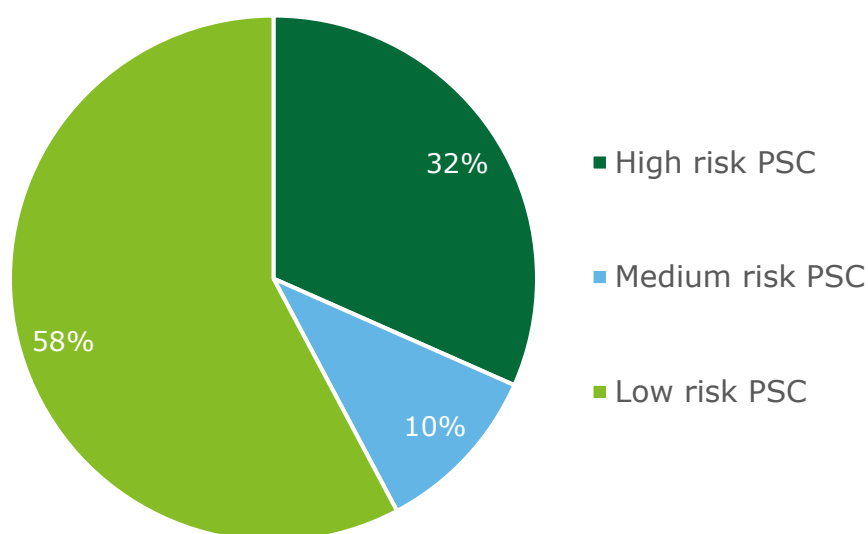
Table 2.1 PSC Risk Benchmarks

PSC Risk level	Range 12-60	Prognosis
Low risk (High score)	≥41	Performing well, improvement in PSC levels may be reflected in positive appraisals of leader performance in PSC
Medium risk (Moderate score)	41 < and >37	Steady state, improvement in PSC levels may lead to improvements in mental health however injuries are not expected
High risk (Low score)	37 ≤ and >26	Increasing PSC levels from low a low score (high risk) to medium could reduce depression by 16% and job strain by 14%
Very high risk (Very low score)	≤26	Urgent action required to prevent further dramatic increases in depressive periods, worsening conditions

Source: Adapted from Dollard and Bailey (2019)⁵⁹

The 2014-15 data collection round of the AWB report included PSC benchmarks across a variety of demographic variables including all Australian states and territories. A comparison of demographic data between AWB and ABS workforce statistics showed that the sample was representative of the national working population in terms of industry, contract and work hour status, mean age by industry and other general population characteristics.⁶⁰ Chart 2.8 shows the PSC risk ratings for the Victorian working population, indicating that approximately a third of Victorian employees work within a high-risk environment.

Chart 2.8: PSC Risk in Victorian workplaces



Note: High and very high-risk PSC categories have been combined for the purposes of this analysis

Source: Deloitte Access Economics analysis of AWB data⁶¹

⁵⁹ Dollard M & Bailey T, 'PSC in Practice' in Dollard M, Dormann C, Awang Idris M (eds) *Psychosocial Safety Climate*. (Springer, 1, 2019)

⁶⁰ Safe Work Australia, *The Australian Workplace Barometer: Report on Psychosocial Safety Climate and Worker Health in Australia* (December 2012) <<https://www.safeworkaustralia.gov.au/doc/australian-workplace-barometer-report-psychosocial-safety-climate-and-worker-health-australia>>

⁶¹ Centre for Workplace Excellence (CWeX), *Psychosocial Safety Climate*, (2019) <stresscafe.com.au/8203psychosocial-safety-climate-psc.html>

When broken down by industry and omitting outliers for sectors that have low sample sizes (e.g. cultural and recreational services and mining), the proportion of high-risk workplaces across Victorian industries remains relatively stable at approximately 30%. This indicates that the 32% of businesses that are 'high-risk' are distributed across sectors and are not disproportionately affected by outlying higher risk industries.

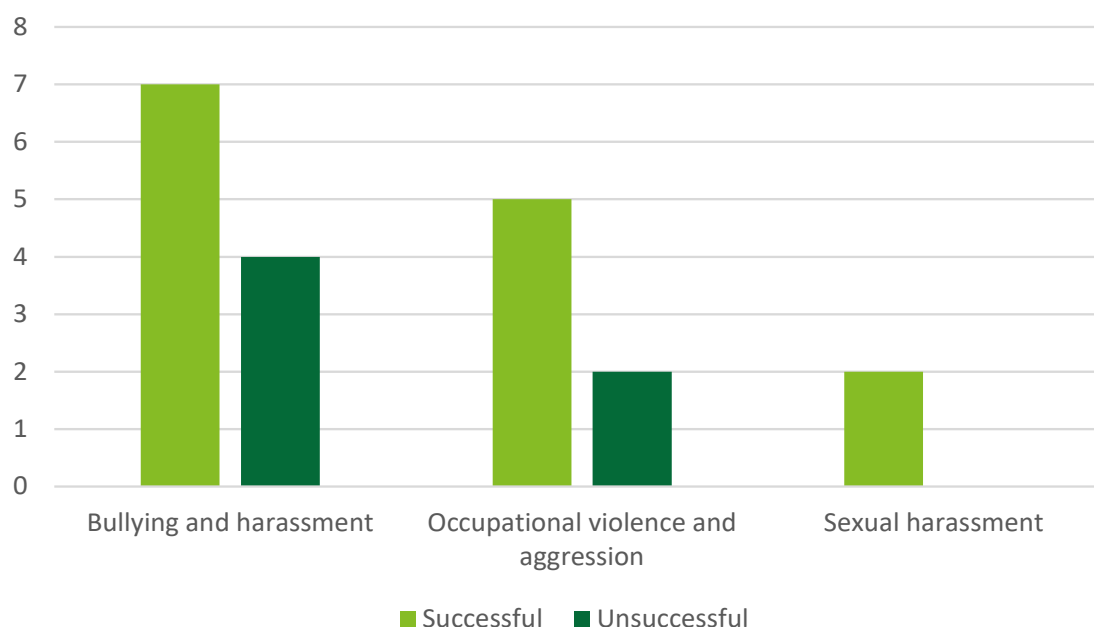
2.2.4 Lack of compliance

WorkSafe data also points to a lack of compliance from employers to meet their current mental health obligations under the OHS Act. Between 2016 and 2021, 20 prosecutions for non-compliance with general OHS duties, relating to circumstances involving mental health were completed.

All completed prosecutions stem from three types of psychosocial risk: bullying and harassment; work-related violence and aggression; and sexual harassment.

On average, 70 per cent of all completed prosecutions were successful (Chart 2.9). Whilst the majority of prosecutions involved bullying and harassment, prosecutions involving work-related violence (70 per cent success rate) and sexual harassment (100 per cent success rate) had higher rates of success.

Chart 2.9 Outcome of completed mental health prosecutions, by referral risk



Source: WorkSafe prosecutions data (2016-2021)

2.3 Cause of the problem

In light of the data above, it is clear that the prevalence of psychosocial hazards within the workplace is a persistent problem. This is occurring despite obligations contained within the OHS Act requiring employers to eliminate or reduce risks to health and safety and ensure the health and safety of employees so far as reasonably practicable.

In spite of the general duty, psychological harms because among some employers there is:

- a lack of understanding of employers' obligations to control psychosocial hazards, and of the nature of those hazards
- a lack of knowledge of how best to control the risks arising from psychosocial hazards
- a lack of prioritisation of mental health, and/or
- a perception that the costs of compliance to employers exceed the benefits.

1. A lack of understanding of employers' obligation to control psychosocial hazards, and of the nature of those hazards

Some employers are unclear about their obligations to protect the mental health of their employees.

The Boland Review, a review of the model Workplace Health and Safety (WHS) laws, presents evidence which suggests that this lack of clarity has been driven by an absence of specific references to psychological health within the general duties.⁶²

The Productivity Commission's Inquiry into Mental Health supports this view, stating that the objectives of current WHS legislation do not clearly specify the protection of workers from psychological harm.⁶³

Further, recent inquiries into mental health suggest that employees and their representatives are also relatively uncertain of the ways in which employees' mental health is protected by the OHS framework.

Even when employers are aware of their obligations, there is limited understanding around workplace mental health as well as the definition and nature of psychosocial hazards. The Productivity Commission references research which suggests that, in 2017, nearly one in five businesses only had basic awareness of workplace mental health.⁶⁴ Stakeholder consultation conducted throughout the RIS process confirms that whilst employers' awareness has increased in recent years, the knowledge base around workplace mental health is still evolving.

In an attempt to educate and build employers' state of knowledge in relation to their mental health obligations, WorkSafe has published a number of guidance materials (see section 1.3.1.2). These materials provide employers with guidance on their obligations for managing mental health at work in addition to raising awareness among employers of these obligations. This support includes other activities such as stakeholder working groups, the WorkWell program, industry partnership, education and awareness campaigns and the operational psychosocial inspectorate.

In addition, other jurisdictions across Australia have also introduced a range of guidance on managing risks to psychosocial health in the workplace, including Safe Work Australia's *Work-related psychological health and safety: A systematic approach to meeting your duties*.⁶⁵

Stakeholder consultation during the RIS process indicated that, despite all of the education and guidance that WorkSafe has provided, there are still questions on what employers are required to do under the current OHS Framework.

This implies that employers may require additional assistance in understanding their obligations, the nature of psychosocial hazards and how to identify them. This has been supported by recent reviews, including the Boland Review and the Productivity Commission Inquiry, that have highlighted the need for a proactive, risk-based approach to managing psychosocial hazards, similar to the approach to managing physical hazards.^{66,67} A robust risk-based approach involves

⁶² Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

⁶³ Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, vol. 2, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health-volume2.pdf>>

⁶⁴ This is based on a New South Wales Government survey of businesses. As New South Wales is similar to Victoria in terms of demographics and industry composition, it is expected that employer awareness levels of workplace mental health would be comparable in Victoria.

⁶⁵ Safe Work Australia, *Work-related psychological health and safety: A systematic approach to meeting your duties* (21 January 2019) <<https://www.safeworkaustralia.gov.au/doc/work-related-psychological-health-and-safety-systematic-approach-meeting-your-duties>>

⁶⁶ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

⁶⁷ Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health.pdf>>

ongoing hazard identification and control while ensuring appropriate consultation with employees and representatives (e.g. Health and Safety Representatives).⁶⁸

The Boland review noted that duty holders believe appropriate management of mental health in the workplace is important and are generally in favour of regulatory reform and further guidance.⁶⁹ The Boland review recommends the introduction of regulations to support effective identification of risks associated with mental injury.⁷⁰

Under the OHS Act, employers have a duty to, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health. Employers must eliminate or reduce, so far as is reasonably practicable, risks to health or safety associated with psychosocial hazards including bullying, high job demands, sexual harassment, and violence or aggression.

As well as complying with occupational health and safety duties in relation to psychosocial hazards, other laws may also apply such as workplace relations, criminal, anti-discrimination and equal opportunity laws.

For example, an employer may identify high job demands as a psychosocial hazard where employees are working with clients with challenging behaviours, frequently working in unpleasant or hazardous conditions, working long or irregular hours, or under a high workload. Under occupational health and safety laws, where an employer identifies high job demands as a psychosocial hazard the employer is required to implement measures to eliminate or reduce risks to health or safety associated with that psychosocial hazard so far as is reasonably practicable.

The employer would also need to ensure it is complying with any obligations it may have under other laws, such as the Fair Work Act 2009 (Cth) which sets maximum weekly hours of work that cannot be exceeded unless the additional hours are reasonable, having regard to a range of factors such as the employee's personal circumstances, any risks to the employee's health and safety from working the additional hours, and the usual patterns of work in the industry.

Occupational health and safety laws do not operate in isolation and other laws may also apply in respect of factors in the working environment which can constitute a psychosocial hazard.

2. A lack of knowledge of how to control psychosocial hazards

Among those employers who do understand their obligations and the nature of the risk, many do not know how to control these risks in the workplace. The findings of the major inquiries noted above suggest that many employers are generally committed to mental health but do not know how to best manage it in their workplace. The Boland Review called on a need for some "architecture to build on the foundations laid by the primary duty of care".

In particular, the Boland Review suggests that employers want more prescription and practical guidance to assist them to identify and manage psychosocial risks and hazards, and that many employers feel that they lack the requisite expertise to intervene. This is partly due to the fact that the knowledge base around mental health and psychosocial hazards is still evolving, making it more difficult for employers to meet their obligations without additional clarity on their specific duties. Stakeholder consultation during the RIS process reinforced these findings.

The lack of knowledge in relation to controlling psychosocial hazards may be due to a number of factors including:

- psychosocial hazards are not tangible or easily observable

⁶⁸ WorkSafe Victoria, *The risk management approach to health and safety* (27 June 2021) <<https://www.worksafe.vic.gov.au/risk-management-approach-health-and-safety>>

⁶⁹ Ibid

⁷⁰ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

- psychological safety in the workplace may be a new concept for some employers. Therefore, some employers have not sufficiently developed their state of knowledge in relation to the control of psychosocial hazards as well as mental health and safety more broadly
- stakeholder consultations suggest that, although there is a wealth of guidance material and toolkits provided by WorkSafe and other mental health and OHS experts, some employers can be overcome by the options available, and
- without a clear and consistent framework on how to identify and control risks arising from psychosocial hazards, that goes beyond the framework in the OHS Act, it is more difficult for WorkSafe to take a “constructive compliance” approach (that is, one that uses advice, information and education to encourage good practices and compliance rather than relying solely on enforcement measures).⁷¹

3. A lack of prioritisation of mental health

Inquiries suggest that employers may not place equal importance on mental and physical health. Specifically, the Productivity Commission highlights that less attention is given in occupational health and safety legislation and by occupational health and safety regulators and inspectors to mental health and safety compared to physical health and safety.⁷² The Boland Review also notes the “widespread view” of stakeholders that mental health is neglected in current WHS legislative and regulatory frameworks.⁷³

As such, even if employers know that they are obliged to protect mental health, some employers may prioritise the physical aspects of health and safety that have been highlighted as of importance. The OHS Regulations prescribe risk management processes for some physical hazards (e.g. manual handling, noise), but they are silent on psychosocial hazards. This may lead to a perception that physical hazards are of greater importance than psychosocial hazards and therefore duty holders may not prioritise identifying and controlling psychosocial hazards.

While some employers may prioritise productivity over the mental health and safety of their employees, in many cases it is possible the lack of prioritisation can be linked to the challenges duty holders face in understanding the nature of psychosocial hazards and the best methods for controlling them (see Causes 1 and 2).

Risk associated with psychological health may not be as easy to detect as physical hazards. For example, poor organisational justice is not as readily identifiable as a missing guard on plant. Accordingly, employers may also be less likely to prioritise mental health (and WorkSafe may face challenges in undertaking constructive compliance).

4. Perceptions in relation to the costs of compliance

Stakeholder consultation revealed that employers have mixed perceptions of the costs associated with creating a mentally healthy workplace. Uncertainty in relation to the controls required to manage psychosocial hazards has prompted some employers to perceive compliance with the general duty as highly costly and time consuming. Such employers are less likely to comply with their obligations under the general duty.

However, consultation has also indicated that employers underestimate the sizable benefits, in the form of avoided costs (presenteeism, absenteeism and claims costs), associated with providing their employees with workplaces that are more mentally healthy.

As a result, faced with uncertainty and/or a lack of prioritisation for the reasons outlined in Causes 1, 2 and 3 above, many employers do not act due to the perceived costs of taking further action to

⁷¹ WorkSafe Victoria, *WorkSafe Victoria's General Prosecution Guidelines* (March 2017)

⁷² Productivity Commission, *Mental Health Productivity Commission Inquiry Report*, (Inquiry No 95, vol. 2, 30 June 2020) <<https://www.pc.gov.au/inquiries/completed/mental-health/report/mental-health-volume2.pdf>>

⁷³ Boland M, *Review of the model Work Health and Safety laws Final report* (December 2018) <https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf>

promote mentally healthy workplaces while understating the potential benefits of mentally healthier workplaces.

2.4 Objectives of proposed changes to OHS Regulations

WorkSafe's Mental Health Strategy states that a key objective of government intervention is to prevent harm and support employers to create mentally healthy workplaces.⁷⁴

In doing so, the intermediate objectives of government intervention are to:

- ensure employers identify psychosocial hazards in the workplace
- ensure employers eliminate or reduce the risks that may arise from psychosocial hazards in the workplace
- ensure employers prevent harm that may arise from psychosocial hazards in the workplace, and
- increase what employers know or ought reasonably to know about psychosocial hazards in the workplace or risks, and any ways of eliminating or reducing the hazard or risk.

The effectiveness of any intervention in achieving these objectives can be gauged by the extent to which:

- employers and employees consider mental health to be of equal importance to physical health
- employers develop and implement practices, and demonstrate leadership behaviours to create a positive safety culture around mental health
- employers communicate with and involve employees and health and safety representatives (HSRs) in matters of psychological health and safety, and
- employers and employees will have further developed knowledge in relation to psychosocial hazards and how to control them.

These indicators form part of WorkSafe's proposed strategy for evaluating the effectiveness of the government interventions.

⁷⁴ WorkSafe Victoria, *Mental Health Strategy 2021 to 2024* (November 2021)

3 Options

This chapter outlines the set of options considered in this RIS.

3.1 Options development

As part of the RIS process, it is necessary to consider different options that could achieve the Victorian Government's objectives. The *Subordinate Legislation Act 1994*, the *Subordinate Legislation Act Guidelines*,⁷⁵ and the *Victorian Guide to Regulation* recommend that this includes considering a range of approaches, including co-regulation and non-regulatory approaches, and those that reduce the burden imposed on business and/or the community.

In order to determine the options available in relation to mental health and safety obligations and controls, WorkSafe engaged in the following:

- input to and recommendations from a number of inquiries including the Boland Review, Productivity Commission, Respect@Work and Mental Health Royal Commission
- desktop review of evidence and current regulation
- targeted stakeholder consultation with key stakeholders such as employee and employer organisations, people with lived experience, mental health experts and medical professionals.

3.2 Options considered but not progressed

3.2.1 Coordinated or integrated use of non-statutory tools

The Victorian Guide to Regulation requires a RIS to consider a range of different options, including non-regulatory options that address the underlying causes of the problem. During the options development process, WorkSafe considered an option which involved the coordinated or integrated use of non-regulatory tools. This approach would combine the advantages of each non-statutory tool, summarised in Table 3.1.

Table 3.1 Advantages of non-regulatory tools

Non-regulatory tool	Key advantages of tools
Guidance material	<p>A suite of guidance material and support (including the WorkWell toolkit) already exists in relation to mental health and is provided to the public through WorkSafe's website (section 1.3.1.2). This includes industry partnerships, a constructive compliance approach and the operational psychosocial inspectorate.</p> <p>This guidance material provides information to grow the understanding and awareness of employers and employees alike in relation to psychosocial hazards in the workplace and how to control them.</p>
Education and awareness campaign	<p>WorkSafe already undertakes education and awareness campaigns to employers in relation to mental health. This supports the development of an employer's state of knowledge in relation to mental health and their obligations. As mentioned above, this is also linked to enforcement activity</p>

⁷⁵ Office of the Chief Parliamentary Counsel, *Subordinate Legislation Act Guidelines*.

as WorkSafe Victoria provide a “constructive compliance” approach by using their inspectorate to educate employers.⁷⁶

Compliance Code without regulatory amendment	A compliance code provides employers with a comprehensive guide on how to comply with their obligations under the OHS Act and/or OHS Regulations. This provides an optional framework for meeting obligations and supports the development of an employer’s state of knowledge around hazards and how to control them.
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Source: WorkSafe Victoria

WorkSafe and industry guidance, and the proposed compliance code, increase duty holder state of knowledge about:

- Psychosocial hazards in workplaces
- Understanding the risk of harm created by psychosocial hazards; and
- Knowing what steps can be taken to eliminate or reduce those risks.

Clear, simple and accessible guidance supports businesses to easily and quickly educate themselves, to identify their risks and put appropriate controls in place to eliminate or manage those risks. As state of knowledge changes over time, due to changes in ways of working or new risks emerging or evidence on best practice controls, WSV enhances the guidance available to duty holders.

Such guidance is particularly important to support small-to-medium sized businesses. It enables those businesses to easily identify their risks of harm and be compliant with their obligations, without creating additional or excessive costs to business (such as costs associated with engaging specialists or consultants).

However, WorkSafe believes that, without a clear framework, these tools alone do not go far enough to achieve the objectives and address the causes of the problem.

The Victorian Government has therefore decided that amending the OHS Regulations is a necessary part of an integrated approach to dealing with mental health for three key reasons:

1. Regulations create a clear, consistent framework providing clear processes for managing risks specific to psychological health.

Regulations are able to set out a clear and consistent framework on how to identify and control risks arising from psychosocial hazards, that goes beyond the framework in the OHS Act. A regulatory framework outlines what is expected of employers which may go beyond the level of effort that some employers would ordinarily invest into managing risks to psychological health. This works to build an employers’ state of knowledge around psychosocial hazards (Cause 1) and the appropriate amount of effort required to control them (Cause 2, Cause 4) and also provides WorkSafe with a stronger basis for undertaking constructive compliance activities. This, in turn, can build employers’ knowledge of the nature of psychosocial hazards (Cause 1) and the best methods for controlling them (Cause 2).

2. Regulations send a strong message to employers, elevating the importance of mental health risks to that of physical risks.

Regulations have been made for managing many other complex physical risks (e.g. manual handling and management of crystalline silica). The creation of Regulations is expected to send a strong message to employers that WorkSafe, as regulator of workplace health and safety in Victoria, considers psychological health in the workplace to be of high and equal importance to

⁷⁶ WorkSafe Victoria, *WorkSafe Victoria’s General Prosecution Guidelines* (March 2017)

physical health. In this way, Regulations can shift employers' prioritisation of psychological health in their workplace upwards (Cause 3).

3. Regulations can prescribe additional obligations.

Unlike WorkSafe's other tools, the OHS Regulations can prescribe additional obligations over and above what is currently included within the OHS Act. For example, the proposed regulatory amendments will require employers to keep written records of prevention plans for prescribed psychosocial hazards and impose reporting requirements on medium and large employers.

Express obligations prescribed within the OHS Regulations can provide an enforceable set of standards, which can augment the effectiveness of WorkSafe's constructive compliance approach (addressing Cause 2 and Cause 3).

This RIS notes that WorkSafe still intend to use these other tools as part of an integrated non-regulatory and regulatory approach.

Here, WorkSafe will continue to provide support to duty holders to comply with their obligations. Specifically, WorkSafe prevention interventions focus on creating awareness, education, training and capability building via multiple approaches including (but not limited to) strategic workplace visits, a suite of guidance, provision of the OHS Essentials Program and the WorkWell toolkit. The WorkWell Toolkit is a free online tool and tailored to small businesses (and specific industries). It uses a step-by-step approach to help business leaders to promote a mentally healthy workplace and prevent mental injury through access to tailored and relevant research, tools and information.

WorkSafe will continue to work with duty holders to build on and create new prevention interventions that will best support duty holders to comply with their obligations and prevent harm.

Additionally, WorkSafe will prioritise the development of a psychological health compliance code. While the guidance provided in the Code is not mandatory, a duty holder who complies with the Code will – to the extent it deals with their duties or obligations under the OHS Act and OHS Regulations – be considered to have complied with those duties or obligations.

3.2.2 Prescriptive regulatory option

Another feasible option that is not formally considered through this RIS is a more prescriptive regulatory approach. In the case of mental health, prescriptive regulation could set out specific design standards or detailed methods of control for each type of psychosocial hazard. For example, for organisational justice, prescriptive regulation may take the form of comprehensive regulatory provisions, setting out detailed controls to eliminate or reduce risks and associated compliance criteria for implementation.

A more prescriptive regulatory approach is not being considered for a number of reasons. Firstly, the state of knowledge in relation to mental health is evolving. This means that the evidence on best practice controls is changing as the state of knowledge grows. Therefore, any comprehensive control processes set out in prescriptive regulation would not be sufficiently evidence-based to manage mental risk.⁷⁷ In a recently released White Paper, The Black Dog Institute warns against prescribing specific controls for mental risks in regulation. The Black Dog Institute cautions that this may promote unhelpful or unproven responses in workplaces.⁷⁸

There is also disparity in how different industries and businesses should best manage mental health in the workplace. As such, options that are principles-based (which give businesses more flexibility to manage psychosocial hazards in their specific context) are considered more appropriate to address the problem given the emerging and varied nature of approaches to controlling mental risk in the workplace.

⁷⁷ Royal Commission into Victoria's Mental Health System, *Final Report Summary and Recommendations* (2021)

⁷⁸ Black Dog Institute, *Modern work: how change to the way we work are impacting Australians' mental health White Paper* (October 2021)

3.2.3 Mandatory formal risk assessment of all psychosocial hazards

WorkSafe Victoria previously considered and consulted with stakeholders on an option requiring all employers to undertake formal risk assessment of all risks arising from psychosocial hazards in their workplace. This option did not intend to prescribe the manner in which these formal risk assessments should be conducted.

This option was not progressed as stakeholder feedback indicated that a formal risk assessment process for all risks arising from psychosocial hazards would impose unnecessary and undue costs on employers. This is particularly due to the fact that some risk controls are already well known, and that undertaking formal risk assessment plans in these cases might delay or distract from acting to control the risk using known methods.

On this basis, this option is not being proposed. Instead, where an employer's knowledge of the risks arising from a particular psychosocial hazard and how to control the risks is low, duty holder's will be expected to use WorkSafe guidance material, as well as other available risk assessment templates and tools, to better understand to assess risk and how to control it. Information on when risk assessment should take place and the factors that should be considered will be included in guidance.

The effectiveness of the proposed intervention will in part be dependent on the effectiveness of WorkSafe's implementation and supportive guidance material (Chapter 6). For this reason, WorkSafe is committed to providing guidance and templates to assist employers, if and when required, to undertake risk assessment that is both adequate and proportionate to the risk.

3.2.4 Requirements for policies and procedures relating to health and safety issues

WorkSafe Victoria considered and consulted with stakeholders on an option to specifically include requirements for employers to have policies and procedures for preventing, reporting and responding to inappropriate workplace behaviours such as bullying and sexual harassment.

Part 7 Division 8 of the OHS Act includes provisions relating to the resolution of health and safety issues and Part 2.2 of the OHS Regulations includes procedures an employer can use (if there are no agreed procedures already in place in the workplace) for reporting health and safety issues within a workplace and the resolution of such issues.

These provisions adequately capture the requirements for employers to resolve health and safety issues including reporting and responding to inappropriate workplace behaviour but does not require a procedure to be in place that prevents the issue from arising. Given this WorkSafe Victoria considers the introduction of new provisions relating to responding to and reporting issues is not required. However, the introduction of provisions relating to prevention is.

Based on stakeholder feedback that it was important for workplaces to have such procedures in place, WorkSafe considers that further information on the application of the existing requirements in the OHS Act and Regulations to risks to mental harm will be addressed through guidance.

3.3 Base case

In the base case, employers still have a general duty under the OHS Act to provide a working environment that is safe and without risk to health.

If no specific Regulations for mental health were made, the definition of health in the OHS Act would still include mental health, and employers would continue to be guided by WorkSafe and other regulators (e.g. through better practice standards published as guidance material) but would be legally bound to comply with their OHS obligations in another way if they chose not to follow WorkSafe guidance. The management of mental health in the workplace would thus continue to face the barriers outlined in Chapter 2 of this RIS.

In Chapter 4, the benefits and costs of options to address the problem are assessed against this base case as a point of comparison.

3.4 Options progressed for further analysis

Four options are being analysed through this RIS. Each option comprises one or more of the following three components which can be combined:

- a **risk management process** requiring employers to identify and control psychosocial hazards (and review this process as necessary),
- the development of a written **prevention plan** for a list of prescribed psychosocial hazards (including bullying, high job demands, sexual harassment, trauma and workplace violence), in cases where any one of those hazards is identified through the above risk management process, and
- **reporting requirements** for employers to periodically report de-identified data on complaints relating to work-related violence, bullying and sexual harassment to WorkSafe.

All options will require employers to consult with employees as set out in section 35 of the OHS Act.

The options in this RIS comprise the following combinations of these components:

- Option 1 – a risk management process
- Option 2 – a risk management process and reporting requirements
- Option 3 – a risk management process and prevention plans for prescribed psychosocial hazards (where these hazards are present)
- Option 4 – a risk management process, prevention plans for prescribed psychosocial hazards (where these hazards are present), and reporting requirements.

The options are discussed in more detail below.

3.4.1 Option 1 – Risk management process

Under this option, the OHS Regulations would be amended to include a risk management process that must be undertaken by employers to identify and control psychosocial hazards in the workplace. Specifically, the proposed regulations will contain express obligations for employers to:

- identify psychosocial hazards in the workplace
- control psychosocial hazard in the workplace (eliminate risk so far as reasonably practicable or, where it is not possible to eliminate the risk, reduce the risk so far as is reasonably practicable through a list of prescribed actions)
- review and revise controls in prescribed circumstances, such as where new information about a psychosocial hazard becomes available.

As highlighted in the RIS for the OHS Regulations 2017, WorkSafe takes into consideration a number of principles when proposing regulation to deal with a particular risk. In this case, the purpose of including a risk management process in regulation is to:

- **Mandate processes to be followed** - This type of regulation is appropriate when it is unlikely that a duty holder will arrive at appropriate risk control measures without following the prescribed process.
- **Prescribe matters of detail to make the OHS Act work** – this type of regulation is appropriate where the OHS Act sets out the general rule or procedure to be followed and leaves matters of detail to be prescribed in regulations.

This risk management process goes beyond the general duty by specifying that employers must identify hazards and review risk controls. While Section 20 of the OHS Act states that duty holders must eliminate or reduce risks to health and safety, so far as is reasonably practicable, the Regulations will go further by defining the risk control approach that duty holders should take.

As such, this principles-based regulation sets out how employers need to comply with their existing duties under Part 3 of the OHS Act. It also allows the risk management process to be tailored to address unique factors (including risk profile, work environment and job design) within each workplace. The risk management process accounts for the fact that employees are often exposed to a combination of psychosocial hazards and will require employers to identify and consider all psychosocial hazards and their associated risks. Employers would then apply

appropriate control(s) to ensure the highest level of protection so far as is reasonably practicable based on their particular work environment.

The proposed Regulations will require employers to, so far as is reasonably practicable, eliminate risks to a person's health or safety associated with a psychosocial hazard. 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:

- altering the –
 - management of work; or
 - plant; or
 - systems of work; or
 - work design; or
 - workplace environment; or
- using information, instruction or training; or
- any combination of the above

Employers can only rely solely or primarily on the use of information, instruction or training to control a risk associated with a psychosocial hazard if it is not reasonably practicable to alter any of the other measures outlined above.

Where these factors change in ways that have a material impact on psychosocial hazards, their associated risks and/or the appropriate control measures to manage those risks, employers would be required to review the relevant risk controls.

This goes beyond the OHS Act by specifying how employers should eliminate or reduce mental health risks to their employees. Specifically the proposed control of risk provision in the regulations prescribes the specific factors that should be altered or used to reduce risk.

In accordance with their obligation under the OHS Act, employers would be required to consult with employees and Health and Safety Representatives at each stage of the risk management process, so far as is reasonably practicable. This is an Act requirement (under Section 35). The regulations will not impose any express requirements regarding consultation but may include a compliance note to this provision.⁷⁹ Consultation would likely improve decision making in relation to the risk management process as employees are often the most involved in the day-to-day occurrences of the workplace and experience or witness psychosocial hazards firsthand.

3.4.2 Option 2 – Risk management process & reporting requirements

Under this option, the OHS Regulations would be amended to include the risk management process as it is described in 3.4.1. Additionally, the proposed Regulations would include obligations for applicable employers to periodically report de-identified data on complaints of incidents involving bullying, sexual harassment and work-related violence to WorkSafe. De-identified reporting would be periodic, required every six months, rather than as complaints occur. Reporting will only be required of employers with over 50 employees and if the incident involves an employee.

As noted above, WorkSafe takes into consideration a number of principles when proposing regulation to deal with a particular risk. In this case, the purpose of regulation here is to:

- **Mandate processes to be followed** - This type of regulation is appropriate when it is unlikely that a duty holder will arrive at appropriate risk control measures without following the prescribed process.

⁷⁹ If a note at the foot of a provision of the proposed Regulations states "Act compliance" followed by a reference to a section number, the regulation provision sets out the way in which a person's duty or obligations under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

- **Prescribe matters of detail to make the OHS Act work** – this type of regulation is appropriate where the OHS Act sets out the general rule or procedure to be followed and leaves matters of detail to be prescribed in regulations.
- **Require record keeping** – this type of regulation may be appropriate to ensure the health and safety of persons or to facilitate the discharge of duties by others.

The introduction of de-identified reporting would complement the introduction of broader mental health regulations. Requiring applicable employers to periodically report data to WorkSafe is intended to increase employers' state of knowledge regarding the nature, size and frequency of incidents occurring within their workplaces as well as the high-level characteristics of those incidents. It is intended that this data will enable employers to analyse trends in their incidents to better inform their risk management process and to increase employers' prioritisation of mental health (Section 3.5.3).

As an added benefit, providing this data to WorkSafe would build an evidence base regarding incidents involving certain psychosocial hazards which would be crucial in the development of future initiatives to promote mental health. This evidence base may also show trends based on business characteristics which could be used to inform future strategic interventions.

3.4.3 Option 3 – Risk management process with prevention plans

This option involves introducing the risk management process as outlined in 3.4.1 as well as the requirement to develop and keep written prevention plans in cases where prescribed psychosocial hazards have been identified.

As noted above, the purpose of regulation here is to:

- **Mandate processes to be followed** - This type of regulation is appropriate when it is unlikely that a duty holder will arrive at appropriate risk control measures without following the prescribed process.
- **Prescribe matters of detail to make the OHS Act work** – this type of regulation is appropriate where the OHS Act sets out the general rule or procedure to be followed and leaves matters of detail to be prescribed in regulations.
- **Require record keeping** – this type of regulation may be appropriate to ensure the health and safety of persons or to facilitate the discharge of duties by others.

As in Option 1, the proposed regulations will require employers to identify, control and review all psychosocial hazards. In Option 3, the proposed amendments to the OHS Regulations will include an additional requirement that, when certain prescribed psychosocial hazards are identified through the risk management process, employers must keep a written record of a prevention plan for the relevant psychosocial hazard.

Under this option, the following list of prescribed psychosocial hazards will require prevention plans if identified through the risk management process:

- bullying;
- high job demands
- sexual harassment;
- exposure to trauma; and
- violence and aggression.

Based on WorkSafe's review of workplace mental health data, WorkSafe claims data, Safe Work Australia data resources⁸⁰, SafeWork NSW's *Mentally healthy workplaces in NSW: Return on Investment* discussion paper⁸¹, the Senate Education and Employment References Committee's

⁸⁰ Safe Work Australia, *Mental Health* (2019) <<https://www.safeworkaustralia.gov.au/topic/mental-health>>.

⁸¹ Safe Work NSW, *Mentally healthy workplaces in NSW: Return on Investment discussion paper* <https://www.safework.nsw.gov.au/__data/assets/pdf_file/0011/320132/Mentally-healthy-workplaces-A-return-on-investment-study-August-2017-SW08735.pdf> p 13.

inquiry into the mental health of first responders⁸² and reports from the Australian Human Rights Commission⁸³, WorkSafe has identified that these five hazards lead to disproportionate harm in comparison with other psychosocial hazards.

As per consultation requirements in the OHS Act, each prevention plan will be required to be developed in consultation with employees and HSRs. The Regulations will include a requirement for duty holders to document the consultation that has occurred during the risk management process in the prevention plan. However, the requirement to undertake consultation, and the nature of consultation required, is an OHS Act requirement (under Section 35) and will be referred to in the proposed Regulations as an Act compliance note.⁸⁴

The regulations will prescribe, at a high level, what is required in a prevention plan, including risk identified, control selected and how the control will be implemented in the workplace. Templates and guidance material will be provided for employers to support them to meet this obligation. It is expected that the prevention plan will document the psychosocial hazards, relevant risk controls and how the controls will be implemented.

Prevention planning for these prescribed hazards is intended to ensure that in workplaces where these hazards are present there is a documented plan for preventing the potential harms posed by these five highest-risk psychosocial hazards. By providing transparency, consistency and accountability for employers and their employees in how a workplace manages psychosocial hazards is expected to improve culture, awareness and safety practices in relation to mental wellbeing beyond the level that can be achieved by identification and control alone.

In the event that workplace safety factors change in ways that trigger a need to review the relevant risk controls, prevention plans may also need to be updated. The OHS Regulations will be reviewed as part of the making of the Occupational Health and Safety Regulations 2027, accordingly this allows to adequate time for the development of an evidence base for controls.

3.4.4 Option 4 – Risk management process with additional obligations & reporting requirements

Option 4 would entail WorkSafe implementing all of the proposed changes as described in 3.4.1, 3.4.2 and 3.4.3. That is, the OHS Regulations would be amended to include the risk management process alongside the development of prevention plans for prescribed psychosocial hazards and reporting requirements exactly as they are described previously.

3.5 Intervention logic of components

The primary goal of the proposed Regulations is to prevent harm and support the creation of mentally health workplaces. The regulations aim to achieve this by increasing awareness of psychosocial hazards and ensuring psychosocial hazards are appropriately identified and controlled.

Current literature affirms the importance of culture and leadership in reducing mental injury in the workplace. Psychosocial hazards are influenced by macro-level factors such as the psychosocial safety climate (PSC) within the workplace. Again, as stated above, the overall effectiveness of each intervention will depend in part on WorkSafe's implementation efforts and supportive guidance material (Chapter 6). This has been taken into consideration in modelling the impact of each component (Chapter 4).

⁸² Commonwealth of Australia, *The people behind 000: mental health of first responders* (February 2019) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Mentalhealth/Report>

⁸³ Australian Human Rights Commission, *Everybody's business: Fourth National Survey on sexual harassment* (12 September 2018) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>>

⁸⁴ If a note at the foot of a provision of the proposed Regulations states "Act compliance" followed by a reference to a section number, the regulation provision sets out the way in which a person's duty or obligations under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

The impact of each component of the proposed regulations on the PSC is discussed further in sections 3.5.2 to 3.5.4.

3.5.1 Component 1: Risk management process

The Boland Review presents evidence which suggests that employers require more prescription and practical guidance on how to identify and manage psychosocial hazards (section 1.4.1). The introduction of a high-level risk management process will provide a clear, regulatory framework for employers to identify psychosocial hazards, control the risks associated with psychosocial hazards and review these risks and controls.

This risk management process goes beyond the general duty by specifying that employers must identify hazards and review risk controls. Whilst Section 20 of the OHS Act states that duty holders must eliminate or reduce risks to health and safety, so far as is reasonably practicable, the Regulations will go further by defining the risk control approach that duty holders should take.

In this way, component 1 will require some employers to exert more effort than they might ordinarily in cases where the perceived or actual costs associated with identifying and controlling psychosocial hazards are large (section 4.2.2.1). Here, perceived costs may act as disincentives to undertake this process. In actuality, the costs would be at least in part offset by the productivity benefits to employers of preventing psychosocial hazards are often understated. Therefore, component 1 is expected to work to build an employers' state of knowledge around psychosocial hazards (Cause 1) and the appropriate amount of effort required to control them (Cause 2, Cause 4).

Prescription of this framework in regulation also provides WorkSafe with a stronger basis for undertaking constructive compliance activities. This, in turn, can build employers' knowledge of the nature of psychosocial hazards (Cause 1) and the best methods for controlling them (Cause 2). This is expected to encourage employers to prioritise mental health in their workplaces (Cause 3) and practise a culture of proactive mental health risk management.

For these reasons, Component 1 is expected to contribute most to a positive change in PSC within workplaces.

3.5.2 Component 2: Prevention plans

Prescribing prevention plans for identified psychosocial hazards may encourage an improved culture of risk management over time by creating additional obligations for employers to keep written records of their approach to controlling high-risk psychosocial hazards including:

- bullying
- high job demands
- sexual harassment
- exposure to trauma
- violence and aggression.

The additional obligations to develop and keep written prevention plans will require employers to exert a higher level of effort in controlling high-risk psychosocial hazards than they may otherwise do, particularly because the development of a prevention plan will be a specific new requirement in addition to the existing obligations under the OHS Act.

WorkSafe considers that, as is the case for Component 1, the preparation of prevention plans is not anticipated to be impracticable or unreasonable and is also expected to contribute to productivity benefits to employers of preventing psychosocial hazards are often understated.

The process of preparing prevention plans is expected to increase employers' understanding of the nature of certain psychosocial hazards (Cause 1), what is required to control them within their workplace (Cause 2) and how much these control measures cost (Cause 4)

In addition, these additional obligations require employers to keep documented evidence of the implementation of controls and consultation with employees which are critical components to ensuring that psychosocial risks are controlled and mental healthy workplace is created.

Component 2 is therefore likely to address each cause of the problem and lead to a positive shift in PSC. To be effective, Component 2 needs to be applied in conjunction with Component 1. This is because employers must identify the prescribed psychosocial hazard before a prevention plan can be developed.

3.5.3 Component 3: Reporting requirements

De-identified reporting requirements create an additional obligation requiring employers to collect quantitative information in relation to complaints about psychosocial incidents. These obligations will ensure that applicable employers are monitoring and observing psychosocial incidents in the workplace. This requirement is intended to increase employers' state of knowledge regarding the nature of mental health risks and psychosocial hazards, by bringing employers' attention to the nature, size and frequency of incidents occurring within their workplaces as well as the high-level characteristics of those incidents.

Reporting requirements will therefore add to the state of knowledge for what an employer knows, or ought to reasonably know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk. This can be used to determine what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety (as pursuant to Section 20(2) of the Act).

This is expected to elevate the importance of mental health and safety (Cause 3), shifting organisational priorities toward proactive identification of risks associated with psychosocial hazards and the need to control them.

In addition, the collection of data by WorkSafe in relation to psychosocial hazards will increase the capability and capacity of WorkSafe's inspectorate to detect risks to mental health. This is likely to increase employers' prioritisation of mental health (Cause 3).

Therefore, Component 3 is likely lead to a positive shift in PSC by increasing understanding employers understanding of the nature of certain psychosocial hazards and elevating employers' prioritisation of them. However, Component 3 is not able to be implemented without a clear framework to identify, control and review psychosocial hazards.

4 Options analysis and preferred option

4.1 Approach to options analysis

The Victorian Guide to Regulation requires a RIS to assess both the costs and benefits of the proposed Regulations to identify the preferred option. The options in this RIS have been assessed using Cost-Benefit Analysis (CBA), which provides a robust, structured and transparent approach to balancing the different impacts, using modelled illustrations of the economic costs and benefits.

CBA calculates the incremental costs and benefits of an intervention relative to a comparative base case, through determining whether the extra benefits outweigh the extra costs. For interventions which deliver incremental benefits but are also more costly, the return on investment can be assessed through the Benefit to Cost Ratio (BCR).

4.1.1 Challenges in estimating impacts

It is important to note the uncertainty which exists in terms of quantifying both the costs and benefits of the proposed regulatory changes. First, there is an evolving state of knowledge in relation to mental health and the establishment of appropriate workplace controls for psychosocial hazards.

Further, consultation with a range of stakeholders (including employer representatives, employee representatives and mental health experts, as well as a business survey) found that the impact of the proposed regulatory options is generally difficult to predict. This is because these impacts – both costs of compliance and benefits in terms of improved mental wellbeing – will depend on how individual employers respond to the proposed changes. The proposed approach would leave to the employers' discretion the choice of most appropriate control for, risks and hazards.

A dominant view among stakeholders was that employers' likely responses would vary significantly based on:

- sector
- business size
- the specific risks that are likely to present themselves in a given employer's workplace (see section 1.2.2)
- the baseline prevalence of, and familiarity with, psychosocial hazards in their workplaces
- existing processes of risk management and policies and procedures in place
- whether an employer considers a risk requires elimination or control and what they deem to be an appropriate control
- the level of compliance (which may be lower in cases where employers are not aware of or do not understand and implement the requirements of the proposed regulatory amendments).

4.1.2 Addressing uncertainty and challenges in estimating impact

The numerous uncertainties highlighted by stakeholders make it difficult to estimate with precision, or confidence, the total expected economy-wide impacts of the proposed change. Nonetheless, it is possible to use CBA to provide an illustrative estimate of the feasible costs and potential benefits, subject to a number of assumptions. The resulting benefit-cost ratio (BCR) can also be used as a measure of the potential net benefits of the change.

The CBA in this RIS should therefore be regarded as a test of whether the benefits of the proposed changes are likely to exceed the costs, rather than a point estimate of the specific impacts. Estimates used in the CBA have been conservative wherever possible regarding the potential costs and benefits and focus on a high-risk subset of employers. To this extent, depending on alternative scenarios and responses of employers, the BCR of the interventions at a whole-of-economy level may be larger.

Therefore, the CBA in this RIS models an illustrative scenario where all high-risk employers:

- are affected by the amendment to the OHS Regulations and undertake training to better understand psychosocial hazards and the best methods for identifying and controlling them
- implement new or additional identification and control activities, relative to the base case
- identify at least one prescribed psychosocial hazard in their workplace, requiring them to develop a prevention plan
- use training as a control to address that risk (requiring all employees to undergo training),
- consult all employees in each step of the process outlined above
- repeat the process at least once per year.

For a given business size, different employers will undertake a different amount of effort depending on what processes they have in place, the types of risks specific to an employer's sector in general and their workplace in particular, and their baseline familiarity with psychosocial hazards as noted in 4.1.1. above.

The modelled scenario is therefore based on conservative estimates of impact by assuming that all conditional obligations are triggered. This is considered feasible in a high-risk work environment where psychosocial hazards are more likely to be present and require appropriate risk management.

The modelled scenario presents levels of efforts which are considered conservative in that stakeholder consultation suggests they are typical or, in the case of larger-scale organisational change in large businesses, examples of best practice efforts to address psychosocial hazards.

It is noted that training is not a specific requirement under the proposed Regulations and is neither the only nor necessarily the most appropriate control to address psychosocial risks. Training for employees would focus on raising employee awareness and understanding of their role in supporting a mentally healthy workplace as well as explaining psychosocial hazards. The most appropriate control will vary based on the nature of the risk, as well as the various factors above that create uncertainty surrounding the likely impacts of the proposed change (for example, other risks may best be controlled by altering the design of work or systems of work).

Training is used as an example in this section not because it is assumed to be the best or most appropriate control, but because stakeholder consultation undertaken to prepare this RIS routinely identified training as one typical control that can be used to address psychosocial hazards where they relate to group behaviours or cultural workplace pressures, which are a common factor in many psychosocial hazards. Training is therefore used for the purposes of this CBA; training has been used as a practicable and tangible example to elicit stakeholder feedback and discussion.

WorkSafe invites all stakeholders with views on the likely impact of the proposed changes, including in particular employers with information on the costs of complying, to respond to this RIS. WorkSafe specifically invites feedback from stakeholders on the following:

- The extent to which identification and control activities are likely to result in cultural changes in the workplace.
- The likely actions that employers would undertake under the proposed amendments and whether they would need to engage a consultant or other outside expertise.
- How these actions differ from their current approach to managing risks arising from psychosocial hazards in their workplace.
- The expected incremental effort, cost and frequency of new actions undertaken as a result of the proposed amendments (compared to their current approach)
- Which types of psychosocial hazard (including, but not limited to, the proposed prescribed psychosocial hazards) are likely to be identified in workplace (either already identified through existing risk management conducted to meet the general duty or expected to be identified if undertaking new or different identification and control processes as a result of the proposed amendments).
- What alternative controls to training stakeholders would use to address the psychosocial hazards likely to be present in their workplaces and whether the costs of any new or additional

activities undertaken to comply with the proposed Regulations would differ substantively from the estimates in the scenario modelled above.

- How frequently those psychosocial hazards (including, but not limited to, the proposed prescribed psychosocial hazards) would be likely to change in a sufficiently material way to warrant repeated reviews of risk control measures.
- The types of systems used to collect de-identified information on complaints relating to psychosocial incidents and the time and effort taken to establish these.
- The broader societal factors which may impact the management of psychosocial hazards but be outside the control of regulation.
- The types of support or guidance material that employers would like WorkSafe to provide to assist them in complying with the proposed amendments.
- The extent to which businesses think their costs would be reduced or intervention effectiveness would be improved by the provision of guidance material.

4.1.3 Cost and benefits illustrated in this RIS

The **costs** of the intervention that have been quantified in this RIS include an illustrative estimate of implementing the proposed amendments to the OHS regulations, such as staff time and resource allocations associated with activities required to understand and comply with the amended Regulations (incremental to what would have been done in the absence of this change).

These include costs of undertaking work to identify and control psychosocial hazards (including time spent improving an employer's understanding of psychosocial hazards and how to control them, if necessary), to prepare prevention plans for any of the five prescribed psychosocial hazards, and to collate and provide to WorkSafe regular de-identified reports complaints relating to psychosocial incidents within a 6-month period.

The **benefits** of the intervention have been estimated in terms of:

- the *quality-adjusted life years* (QALYs) which are gained, or the *disability-adjusted life years* (DALYs) which are avoided. A QALY represents a year of life that is gained through avoiding premature death, and the gain in healthy life. A DALY is the inverse of a QALY, in that it represents a year of life that is lost
- the avoided harms related to claims resulting from mental injury that is averted through a safer psychosocial climate
- avoided productivity costs from less absenteeism and presenteeism through higher engagement and avoided mental injury of employees.

Compared to the costs, which have been estimated based on the number of employers undertaking new or additional activities compared to the base case, and have been determined separately for each component, the benefits have been estimated based on the potential reduction in harm to employees in high-risk workplaces undertaking new or additional activities compared to the base case. These benefits have been estimated based on the combined implementation of all three components, with the total feasible benefits then being disaggregated into the benefits attributable to each separate component.⁸⁵

For this RIS, the costs and benefits above associated with the proposed Regulations are compared against a counterfactual scenario in which the regulations are not implemented (status quo maintained).

In the case of managing psychosocial hazards in the workplace, there will be both upfront and ongoing costs imposed on employers. These costs are associated with duty holder's ongoing obligation to eliminate and/or manage psychosocial hazards as they arise. This will be followed by a series of ongoing benefits in the form of improvements to wellbeing and avoided costs.

⁸⁵ An overview of the qualitative analysis undertaken to attribute benefits to each component is provided in Appendix C.

4.2 Component analysis

As stated previously, each option for consideration within this RIS features a different combination of three components. The potential impact of each option is cumulative, combining the incremental impact of each component included. Therefore, to identify the preferred option, the costs and benefits of each component will be estimated first. These estimates will later be combined (section 4.3) to assess the impact of each option and identify which is preferred.⁸⁶

4.2.1 Approach to estimating costs

The analysis estimates the costs of each component by assessing:

- the costs to employers of complying with the proposed regulatory amendments relative to activities undertaken and costs already borne in the base case
- the costs to the government of implementing and administering the proposed regulatory amendments compared to the base case.

4.2.1.1 Calculating the cost of each component

The activities that would potentially be undertaken by employers to meet the requirements of each element have been estimated on the assumption noted above – that stakeholders use training as a control to address psychosocial hazards. While there are no specific training requirements in the proposed Regulations, the sub elements of the general duty in the Act can include training as a method to meet obligations, and stakeholder feedback suggests that training employees to better understand and promote mental health in the workplace would be a common response. Feasible time and costs involved in undertaking these, outlined in section 4.2.2, were informed by survey data and stakeholder consultation including with OHS experts.

To calculate the total costs associated with these activities both the initial costs of adopting the proposed requirements and the annual ongoing costs of complying with those requirements were estimated. These estimates were based on a number of assumptions including:

- the number of labour resources required to complete the task
- the number of hours required to complete the task
- the frequency of ongoing activities and associated costs
- the appropriate wage for the type of personnel completing the task (managerial or non-managerial).

The assumptions associated with each of these inputs differ based on business size. This reflects that business size is a large determinant in how an employer will comply with the proposed regulations. This plays a significant role in determining the impacts on employers. The difference between small, medium and large businesses are discussed in further detail in Chapter 5.

Given the uncertainty and variation (section 4.1.1), the impact modelling involves a number of conservative assumptions (section 4.2.1.2) in estimating the cost to businesses. As noted above, these costs will vary based on:

- sector
- business size
- the specific risks that are likely to present themselves in a given employer's workplace (see section 1.2.2)
- the baseline prevalence of, and familiarity with, psychosocial hazards in their workplaces
- existing processes of risk management and policies and procedures in place
- whether an employer considers a risk requires elimination or control and what they deem to be an appropriate control
- the level of compliance (which may be lower in cases where employers are not aware of or do not understand and implement the requirements of the proposed regulatory amendments).

⁸⁶ To determine costs, the analysis has measured the incremental impact of each component. To determine benefits, the analysis has measured the impact of the proposed regulatory changes as a package and then attributed a proportion of impact to each component, informed by advice from WorkSafe, stakeholder consultations and the literature on psychosocial safety climate.

As noted above, the effectiveness of interventions will in part rely on WorkSafe's implementation of the proposed approach, including sufficient guidance and support for employers to efficiently and effectively undertake measures where required. As such, the costs to businesses may be substantially lower than the estimates presented in the modelled scenario.

4.2.1.2 Key modelling assumptions

The analysis of costs and benefits in this RIS provides an illustrative estimate of the potential costs imposed on businesses not already undertaking activities equivalent to those required by the proposed regulatory amendments, and the feasible benefits of those activities being undertaken as a result of the proposed regulatory amendments.

The number of businesses where psychosocial hazards were likely to be prevalent was estimated by taking the feasible rate of mental injury in the labour force and distributing the feasible injuries in the labour force across employers of different sizes and in different sectors using ABS data.

To do so, feasible injury rates were estimated by adjusting current WorkSafe mental injury claims rates to reflect the extent to which psychological claims injuries are underrepresented in claims data, based on the mental health literature. Weighting by sector and business size was done using Business Longitudinal Analysis Data Environment (BLADE) data from the ABS. In terms of weighting by sector, this method has included ANZSIC codes that capture public sector and emergency service employees. In terms of weighting by business size, ABS data and Deloitte Business Outlook employment estimates suggest that a small business consists of 7 employees on average, a medium business consists of 56 employees on average and a large business consists of 928 employees on average.⁸⁷

ABS data on Victorian businesses was also used to estimate the average annual growth in the total number of businesses, and to adjust for expected rates of business entry and exit over time.

For simplicity, the model assumes that each case of mental injury was associated with a separate duty holder (that is, that each expected mental injury occurred in a different workplace). This is considered a very conservative assumption given that in at least some cases (particularly larger firms in higher-risk industries) there is a high likelihood that there would be multiple injuries in a single workplace.⁸⁸

These estimates were then adjusted to reflect the extent to which employers already undertake risk management processes and consultation on those processes in the base case, using survey data from stakeholders that differentiated between small, medium and large businesses.⁸⁹

Business size classifications were based on ABS data for which small businesses are defined as employing 1 to 19 employees, medium businesses are defined as employing 20 to 199 employees, and large businesses are defined as employing 200 or more employees.

This method estimates that around 30 per cent of Victoria's nearly 230,000 business (excluding sole traders) are feasibly high-risk workplaces.⁹⁰

As required by the Victorian Guide to Regulation, when assessing the impact of regulatory changes, the total cost over the lifetime of the proposed regulations (5 years, given that the proposed changes would amend the existing regulations that will expire in 2027) was calculated and discounted to present value (PV) terms based on a four per cent real discount rate.

⁸⁷ ABS Catalogue 8155.0.

⁸⁸ This assumption is conservative in terms of estimating costs because it assumes that if there are, for example, 1,000 feasible injuries in Victoria, then 1,000 duty holders were high-risk workplaces that resulted in those injuries, and that the total compliance costs to those duty holders would be 1,000 times the estimated average compliance costs for a typical duty holder.

⁸⁹ Survey results suggested that approximately two in five small and medium sized businesses and two in four large businesses already undertook activities that would comply with the changes proposed by WorkSafe or would not incur costs incremental to the base case if the changes proposed by WorkSafe were enacted.

⁹⁰ This estimate aligns with the Australian Workplace Barometer's estimate of the proportion of businesses in Victorian with high-risk PSC rating (see 2.2.3).

Wage inputs were also from the ABS, growing yearly based on a conservative real growth rate and adjusting for on-costs and overheads using a multiplier of 1.75, with an estimated opportunity cost of an hour of a manager's or employer's time of approximately \$102 and an estimated opportunity cost of an hour of an employee's time of approximately \$67. Average numbers of employees per small, medium and large businesses were estimated using ABS data. The modelling of costs allowed for capital costs associated with Component 3 based on stakeholder advice that organisations may need to install or upgrade IT systems to facilitate aggregated reporting. No costs other than labour were included in the modelling of costs associated with Components 1 and 2 on the assumption that employers would not face incremental additional costs of materials or IT systems upgrades beyond those covered by business-as-usual overheads compared to the base case for these components.

The cost model also incorporates compliance rates which grow over time to reflect that not all businesses will immediately comply.⁹¹ These compliance rates differ based on business size and reach varying long-run compliance rates where growth ceases.

4.2.1.3 Survey data and stakeholder consultation

Assumptions around activities were informed by survey data and stakeholder consultation including OHS experts. The expected annual costs associated with each component were also sense-checked and tested with stakeholders who provided input on the scale of costs during targeted consultation.

4.2.2 Cost of components

4.2.2.1 Cost to business of compliance

Component 1 – Risk management process

The risk management process is estimated to impose the highest level of costs on employers. This is based on the higher quantity of activities and time required to undertake each stage of the risk management process, relative to other components.

Specifically, the estimated costs to employers associated with Component 1 are:

- an average annual cost of \$313.02 million per year, or
- \$1.38 billion in present value over the life of the Regulations.

In the modelled scenario, it is estimated that Component 1 would impose the following costs on employers of different sizes:

Table 4.1 Modelled component 1 costs (to the nearest \$'000) for an average small, medium or large business

Business size		First year	Every subsequent year
Small	Total hours of employers'/managers' effort undertaking RMP	60	18
	Total hours of time per employee in	2	2

⁹¹ It was necessary to recognise the reality that not all businesses may be aware of and/or comply with their OHS obligations. Therefore, not all businesses will incur OHS-related costs. In the absence of robust data on compliance rates, the same assumptions made in the Occupational Health and Safety Regulations 2017 RIS have been used. These were based on the results of a Productivity Commission survey which set out the extent to which businesses were aware of their OHS requirements as a proxy for compliance. These assume that long-run compliance will be 100 per cent for large employers, 77 per cent for medium-sized employers and 69 per cent for small employers. The model assumes that compliance rates converge on these long-run rates over five years at ten percentage points per year. The use of compliance rates that increase over time following the introduction of the proposed amendments is consistent with WorkSafe's intention to phase penalties in on 1 September 2023, after the regulations are made. De-identified reporting penalties will be included from 1 September 2023, which means that if duty holders do not submit to WorkSafe by 30 January 2024 a report for the period from July 2023 to December 2023, penalties may apply.

		training/consultation	
	Annual cost to a small business	\$7,000	\$3,000
Medium	Total hours of employers'/managers' effort undertaking RMP	120	35
	Hours of time per employee in training/consultation	2	2
	Annual cost to a medium business	\$27,000	\$22,000
Large	Total hours of employers'/managers' effort undertaking RMP	1098	720
	Hours of time per employee in training/consultation	2	2
	Annual cost to a large business	\$343,000	\$312,000

Source: Deloitte Access Economics

The feasible activities required by employers to comply with each stage of the risk management process were considered to estimate the costs. These activities, both once-off and ongoing, are shown in Table 4.2. The number of labour resources and time taken to complete these activities were conservatively estimated, along with the frequency of ongoing costs. These time estimates were informed by both survey responses, stakeholder consultation including OHS experts. Different employers will need different levels of effort to comply with the Regulations depending the factors outlined in 4.2.1.1 above.

Component 1 is expected to impose one-off costs associated with identifying psychosocial hazards, determining and implementing the appropriate controls, including training of employees. Ongoing costs are expected to be associated with the periodic review of the risk management process. The cost model also considers that there is likely to be additional ongoing costs associated with the identification of new hazards or the update of necessary controls as a result of the review process.

It is difficult to predict what control activities employers may undertake as a result of the proposed risk management process. This is due to the inherent uncertainty in relation to the response of employers in relation to:

- existing processes of risk management and policies and procedures in place,
- whether an employer regards a risk as material and what they deem to be an appropriate control
- the level of compliance (which may be lower in cases where employers are not aware of or take time to understand and implement the regulations).

Therefore, for illustrative purposes, the cost model assumes that the training of employees will be used as a likely control measure. This assumption is based on consultation with industry stakeholders and OHS experts.

Whilst a formal, written assessment of psychosocial hazards will not be mandated (section 3.2.3), some employers are expected to incur costs associated with undertaking additional activities to better understand the hazard before they are able to control it. To be conservative, costs associated with risk assessment activities have been included in the costs of the risk management process component. The probability that a business will be required to undertake risk assessment varies based on business size. This reflects that the availability of resources and level of risk management expertise is likely to differ between small and large businesses.

In addition to these costs, the cost model assumes that large businesses will incur further costs associated with change management processes within their business. Here, it is assumed that a large business is likely to have numerous departments or branches which will each need to action the decision of a higher decision-making body or head office. Based on consultation with OHS experts, the model assumes that a psychosocial safety committee is established comprising

representatives of internal human resources, occupation health and safety, and management teams. This group would meet on a quarterly basis to identify and review the state of psychosocial risks in the workplace, and to determine the appropriate controls to use. Decisions made by this committee would need to be considered by an internal operations team and communicated to each department or branch. Leaders of these branches would then have to understand these communications and then implement changes within their workplaces. Training and consultation costs for employees are incurred at a departmental or branch level.

Further, it is assumed that both once-off and ongoing costs would be associated with the consultation of employees as well as the training of employers or appropriate staff who would be required to undertake risk management processes.

Table 4.2 Key modelling assumptions for the risk management process (Component 1)

Compliance activities	Description
Identification of psychosocial hazards	<ul style="list-style-type: none"> Identify, collate and review/analyse available data on psychosocial hazards, risks, incidents, and/or claims.
Assessment of psychosocial hazards	<ul style="list-style-type: none"> If an employer does not understand the risk and how to control it, they will need to use guidance material to assess the risk and consider how to control it.
Control of psychosocial hazards	<ul style="list-style-type: none"> Determine controls for each hazard Implementation of controls Training of employees, including: <ul style="list-style-type: none"> design training materials review and update training materials opportunity costs of training (employee time taken to complete training).
Review of risk management process	<ul style="list-style-type: none"> If the employer becomes aware of new information about the hazard, an incident or injury occurs or is reported, or the risk control measures do not adequately control the risk, or the employer makes an alteration to anything, process or system of work or after receiving a request from a HSR, the employer will be required to review the risk and update controls accordingly.
Training of employers	<ul style="list-style-type: none"> Training required of employers, or relevant staff, in relation to psychosocial hazards and risk management activities, including relevant controls.
Change management (large businesses only)	<ul style="list-style-type: none"> Committee meeting with representatives from human resources, occupational health and safety teams, and management to make decision for the whole business in relation to the management of psychosocial hazards Operations team to consider how these decisions will be implemented system-wide Communications team to draft and distribute communications to smaller departments or branches Branches to read communications and implement controls as instructed

Compliance activities	Description
Consult with employees	<ul style="list-style-type: none"> • Determining consultation mechanism and developing materials • Conduct consultation and interpret/analyse responses • Opportunity cost of consultation
WorkSafe support	<ul style="list-style-type: none"> • WorkSafe will provide guidance material and templates to assist employers in understanding psychosocial hazards as well as how to identify and control them.

Source: Survey responses and stakeholder consultation including OHS experts.

WorkSafe invites all stakeholders with views on the likely impact of the proposed changes, including in particular employers with information on the costs of complying, to respond to this RIS. WorkSafe specifically invites feedback from stakeholders on the following:

- The extent to which identification and control activities are likely to result in cultural changes in the workplace.
- The likely actions that employers would undertake under the proposed amendments and whether they would need to engage a consultant or other outside expertise.
- How these actions differ from their current approach to managing risks arising from psychosocial hazards in their workplace.
- The expected incremental effort, cost and frequency of new actions undertaken as a result of the proposed amendments (compared to their current approach)
- Which types of psychosocial hazard (including, but not limited to, the proposed prescribed psychosocial hazards) are likely to be identified in workplace (either already identified through existing risk management conducted to meet the general duty or expected to be identified if undertaking new or different identification and control processes as a result of the proposed amendments).
- What alternative controls to training stakeholders would use to address the psychosocial hazards likely to be present in their workplaces and whether the costs of any new or additional activities undertaken to comply with the proposed Regulations would differ substantively from the estimates in the scenario modelled above.
- How frequently those psychosocial hazards (including, but not limited to, the proposed prescribed psychosocial hazards) would be likely to change in a sufficiently material way to warrant repeated reviews of risk control measures.
- The types of systems used to collect de-identified information on complaints relating to psychosocial incidents and the time and effort taken to establish these.
- The broader societal factors which may impact the management of psychosocial hazards but be outside the control of regulation.
- The types of support or guidance material that employers would like WorkSafe to provide to assist them in complying with the proposed amendments.
- The extent to which businesses think their costs would be reduced or intervention effectiveness would be improved by the provision of guidance material.

Component 2 – Prevention plan

The requirement to prepare prevention plans for any prescribed psychosocial hazards identified by the employer imposes less burden on employers as the risk management processes of Component 1.

This is because prevention plans would only ever be required in conjunction with the prescribed risk management process from Component 1. Less effort is required to prepare a prevention plan than for Component 1 because the prevention plan effectively involves documenting the hazards and appropriate controls for a psychosocial risk already identified and controlled during the risk management process (see 3.4.3 for further details).

Specifically, the estimated costs to employers associated with Component 2 are:

- an average annual cost of \$145.71 million per year, or
- \$642.10 million in present value over the life of the Regulations.

In the modelled scenario, it is estimated that Component 2 would impose the following costs on employers of different sizes:

Table 4.3 Modelled Component 2 costs (to the nearest \$'000) for an average small, medium or large business

Business size		First year	Annual cost in every subsequent year
Small	Hours of employer/manager effort preparing prevention plans	30	15
	Hours of employee time in consultation	0.5	0.5
	Annual cost to a small business	\$4,000	\$2,000
Medium	Hours of employer/manager effort preparing prevention plans	45	30
	Hours of employee time in consultation	0.5	0.5
	Annual cost to a medium business	\$10,000	\$7,000
Large	Hours of employer/manager effort preparing prevention plans	510	382.50
	Hours of employee time in consultation	0.5	0.5
	Annual cost to a large business	\$174,000	\$130,000

Source: Deloitte Access Economics

The feasible activities required of employers to comply with the additional obligations are summarised in Table 4.4. The costs associated with the development of a written prevention plan for prescribed psychosocial hazards (being bullying, high job demands, sexual harassment, exposure to work related violence or trauma) are expected to be most burdensome for this component, particularly in terms of initial development. Ongoing costs are expected in terms of reviewing or updating these prevention plans as necessary.⁹²

Given the prevalence of the prescribed hazards, it is assumed that businesses of all sizes will need to prepare prevention plans for both bullying and sexual harassment. This assumption is supported by stakeholders who indicated that many businesses would already have policies and procedures in place to address these risks. It is then assumed that, by definition, medium and large businesses would be more likely than small businesses to develop prevention plans for other hazards given the increased number of employees. Here, it is assumed that large businesses will need to prepare the most prevention plans.

Component 2 also creates costs for employers associated with the consultation of employees in developing prevention plans. This includes the opportunity cost of consultation, in terms of employee time taken during this process, as well as time taken by employers to conduct consultation and interpret responses. The majority of these costs are likely to be incurred during the initial development of each prevention plan, however, consultation will need to be ongoing if and as updates are required.

⁹² The modelling accounts for repeated cycles each year of preparing new or revised prevention plans in response to new or changing prescribed psychosocial hazards in each high-risk workplace.

To avoid double counting, the cost associated with implementing these plans is captured in the costing of component 1. This is because component 1 aims to capture the effort undertaken to prevent harm, including the implementation of controls set out in prevention plans. It is therefore assumed that component 2 only requires employers to write the approach to control down in the form of a prevention plan and consult with employees while doing so, and that it is the requirement to control risks in component 1 that would result in the controls set out in that plan being put into action.⁹³

In addition to these costs, it is assumed that large businesses will incur further costs associated with change management processes. As with Component 1, it is assumed that a large business is likely to have numerous departments or branches which will each need to action the decision of a higher decision-making body or head office. For the proposed reporting requirements, the model assumes that a psychosocial safety committee (consisting of representatives of internal human resources, occupation health and safety, and management teams) meets quarterly to determine and review appropriate prevention plans for their organisation. As a result of these decisions, an internal operations team would accordingly prepare or update the organisation's prevention plans which would then be review by leaders of each department or branch. Consultation with employees would be undertaken as part of this process. The modelled scenario assumes that the prevention plans will typically represent a formal plan to address the identified risk using the same controls implemented under Component 1, and that there are therefore no further incremental implementation costs.

Table 4.4 Key modelling assumptions for additional obligations (Component 2)

Compliance activities	Description
Prevention plan	<ul style="list-style-type: none"> Develop a written prevention plan for prescribed psychosocial hazards if identified through the risk management process. Update and review prevention plan as necessary.
Consultation with employees	<ul style="list-style-type: none"> Conduct consultation and interpret/analyse responses Opportunity cost of consultation
WorkSafe support	<ul style="list-style-type: none"> WorkSafe will provide guidance material and templates to assist employers in the development of their prevention plans

Source: Survey responses and stakeholder consultation including OHS experts.

Component 3 – Reporting requirements

Component 3 imposes the lowest cost of the three components. The cost of putting in place internal policies or procedures to collect and report de-identified data on complaints relating to prescribed psychosocial incidents is expected to be relatively low compared to the compliance costs for Components 1 and 2, particularly in cases where employers are able to adapt their existing IT systems and internal processes or policies to gather and report this data.

The estimated costs of Component 3 are also relatively low because de-identified reporting will only be required for employers with more than 50 employees, which avoids imposing costs on a large majority of potentially affected high-risk employers. The modelled scenario assumes that the costs associated with reporting requirements are imposed on all medium and large sized employers. Given the definition of medium sized employers (those with 20 to 199 employees), this is a conservative approach to estimating the total costs to medium sized employers.

⁹³ Underpinning this assumption is the challenge associated with predicting the varied responses taken by duty holder to control psychosocial hazards. This is something which has aimed to be addressed in the modelling of component 1

Specifically, the estimated costs to employers associated with Component 3 are:

- an average annual cost of \$79.02 million per year, or
- \$351.61 million in present value over the life of the regulations.

In the modelled scenario, it is estimated that Component 2 would impose the following costs on employers of different sizes:

Table 4.5 Modelled Component 3 costs (to the nearest \$'000) for an average small, medium or large business

Business size		First year	Every subsequent year
Small	Hours of employer/manager effort preparing reporting system	0	0
	Annual cost to a small business	\$0	\$0
Medium	Hours of employer/manager effort preparing IT systems and internal policies for reporting	67.5	45
	Annual cost to a medium business	\$27,000	\$10,000
Large	Hours of employer/manager effort preparing reporting system	862.5	115
	Annual cost to a large business	\$187,000	\$76,000

Source: Deloitte Access Economics

The feasible activities required of applicable employers to comply with the additional obligations are summarised in Table 4.6. For these activities, it is expected that the majority of costs are associated with the initial establishment of IT systems and internal policies and processes required to collect, extract, analyse and report the de-identified data. The routine collection and reporting of data of complaints involving notifiable psychosocial hazards is expected to impose additional ongoing costs on employers to be incurred every six months.⁹⁴

In addition to these costs, it is assumed that large businesses will incur further costs associated with change management processes. As with Component 1, it is assumed that a large business is likely to have numerous departments or branches which will each need to action the decision of a higher decision-making body or head office. For the proposed reporting requirements, the model assumes that a psychosocial safety committee (consisting of representatives of internal human resources, occupation health and safety, and management teams) is likely to make decisions relating to the system-wide approach to data collection and management. As a result of these decisions, an internal data management team would need to develop a system-wide data system or portal. This system would then be rolled out to each department or branch, where leaders would need to undertake training to use the system and enter data into the company portal periodically on an ongoing basis.

⁹⁴ Total costs to a typical medium business were informed by stakeholder consultation and were based on five days' of a manager's time to establish the internal reporting policies and processes and then two days spent each year reviewing or revising those policies and processes. Costs also included two days, twice a year to compile and report to WorkSafe the six-monthly reports. Stakeholder feedback on the need for IT system upgrades varied widely, so illustrative average costs of approximately \$20,000 for any initial upgrades and approximately \$5,000 for annual system maintenance costs were included.

Table 4.6 Key modelling assumptions for reporting requirements

Compliance activities	Description
Report de-identified psychosocial complaints data to WorkSafe	<ul style="list-style-type: none"> Establish/update IT systems and internal processes to collect psychosocial complaints data Extract, analyse and report de-identified data to WorkSafe
Change management (large businesses only)	<ul style="list-style-type: none"> Committee discusses system-wide approach to data collection and management Internal data team develops a data system or portal Branch leaders undertake training to use the system Branch leaders periodically enter data into company data system or portal
WorkSafe support	<ul style="list-style-type: none"> WorkSafe will provide guidance material and templates to assist employers in collating, analysing and reporting complaints data.

Source: Survey responses and stakeholder consultation including OHS experts.

4.2.2.2 Implementation cost to government

Component 1 – Risk management process

Cost of additional labour resources

To build the capacity and capability of WorkSafe, and to meet the increasing demand for duty holder support, in the short term WorkSafe will:

- increase the psychosocial health inspectors and mental health/human factors specialists by 47%
- increase learning capability and capacity across the entire OHS inspectorate, compliance and enforcement and frontline staff.

To do so, WorkSafe expects to hire additional staff to carry out additional inspections, specialised support and training required by the proposed changes. This corresponds to an ongoing annual cost of \$1.9 million in wages paid. In addition to ongoing staff, WorkSafe also expect to hire staff to assist with the change management, operation design costs and the communication of changes. This corresponds with a fixed cost of approximately \$235,000 to employ these staff over a period of 12 months. Therefore, in total, the employment of additional staff is estimated to cost approximately \$2 million per year, on average over the five-year life of the amended regulations.

It is noted that, under the base case, WorkSafe is already committed to support workplaces to be mentally healthy, alongside a focus on mental health prevention. Therefore, WorkSafe already has labour resources devoted to supporting employers to identify, assess and control psychosocial hazards and prevent mental health injuries. The proposed risk management process will affect the way in which WorkSafe does this, requiring awareness raising and training for the inspectorate. As indicated above, additional resources will be required to ensure a focus on this priority hazard, which will marginally increase the quantum of funding required by WorkSafe to support mental health in workplaces.

Cost of developing guidance material

WorkSafe has operational resources dedicated to support employers to comply with the OHS legislative framework. This includes (but is not limited to) resources to develop guidance materials, information, and campaigns, engaging with stakeholders through forums, reference groups and other channels.

Specific to mental health, WorkSafe has a suite of existing guidance materials (including WorkWell) that support employers to identify and control psychosocial hazards.

WorkSafe will use existing operational resources to enhance, amend or develop new guidance, as needed. WorkSafe will deliver this guidance and/or communication materials through a phased approach, prioritising the most needed materials to support employers upon commencement of the regulations. This includes dedicating multiple existing operational resources to prioritise the development and delivery of the proposed future mental health compliance code in 2022.

Should demand for duty holder support significantly increase or alter, WorkSafe will take this into consideration in allocating resources. However, at this time, changes associated with the risk management process are not expected to impose costs beyond the existing budget for such activities.

Cost of communication

WorkSafe has dedicated resources to help employers comply and communicate. No additional costs of communication are expected over and above regular communication activity to external stakeholders (the base case).

Training costs

There are also costs associated with the training of inspectors and investigators. WorkSafe expect that inspectors and investigators may need to participate in training to cover the proposed changes to the risk management process. It is estimated that this training will cost approximately \$335,000 in work forgone.⁹⁵ WorkSafe does not expect there to be any other costs associated with this training. This is because the cost of training materials is likely to be captured under business-as-usual training expenses which are incurred regularly in accordance with their upskilling approach. Therefore, this cost should already be captured by existing training budgets.

Component 2 – Prevention plan

WorkSafe does not expect to incur any costs associated with employers preparing prevention plans, over and above those already discussed for the risk management process.

Component 3 – Reporting requirements

WorkSafe estimates it will need to employ additional staff to administer Component 3 and increase internal data analytics capability. This will cost \$163,000 per year, on average over the five-year life of the amending regulations. This estimate is highly conditional on the estimated number of reports being provided per annum. For the purposes of this analysis, WorkSafe has estimated 400,000 reports to be received annually. This estimate also assumes that the reports are online and easy to use.

WorkSafe will undertake further scoping work to identify the exact business requirements for de-identified reporting to be able to be provided to WorkSafe online. There are no other costs associated with reporting requirements over and above those discussed for the risk management process.

4.2.2.3 Summary of costs

Table 4.7 below summarises the costs to businesses and government associated with each component.

Table 4.7 Summary of modelled component costs to business and government (present value over a five-year period, \$ million)

	Component 1 – Risk management process	Component 2 – Prevention plan	Component 3 – Reporting requirements
Cost to business of	1,379.01	642.10	351.61

⁹⁵ This has been calculated using the base wage for inspectors starting at band 9.

compliance			
Implementation cost to government	9.09	N/A	0.73
Total costs	1,388.10	642.10	352.34

Source: Deloitte Access Economics

4.2.3 Approach to estimating benefits

Benefit framework

The approach to modelling the benefits is summarised in Figure 4.1. The relative impact of each component on PSC has been discussed in section 3.5. To determine the flow on benefits associated with improvements in PSC, a number of assumptions have been made regarding the degree of impact associated with improving a workplace's PSC rating from a high-risk to medium risk (section 4.2.3.2). This is a conservative approach to estimating benefits by assuming that the proposed regulatory changes are not likely to eliminate psychosocial hazards but instead, lessen the degree of risk present in Victorian workplaces.

Research shows that improving PSC from high risk to medium risk can yield benefits to work outcomes, mental health and avoided costs. As discussed in section 3.5, PSC has been used as an evidence-based mechanism to model the feasible benefits which stem from:

- improvements in employees' perceptions of management commitment to, and prioritisation of, mental health in the workplace, and
- improvements in the level of communication and collaboration with employees on matters relating to mental health and safety.

Burden of disease methodology

The burden of disease methodology was developed by the World Health Organization (WHO) and is a comprehensive measure of mortality and disability from conditions for populations around the world. The burden of disease methodology is a non-financial approach, where life and health can be measured in terms of disability-adjusted life years (DALYs). Disability weights are assigned to various health states, where zero represents a year of perfect health and one represents death. Other health states are given a weight between zero and one to reflect the quality of life that is lost due to a particular condition.

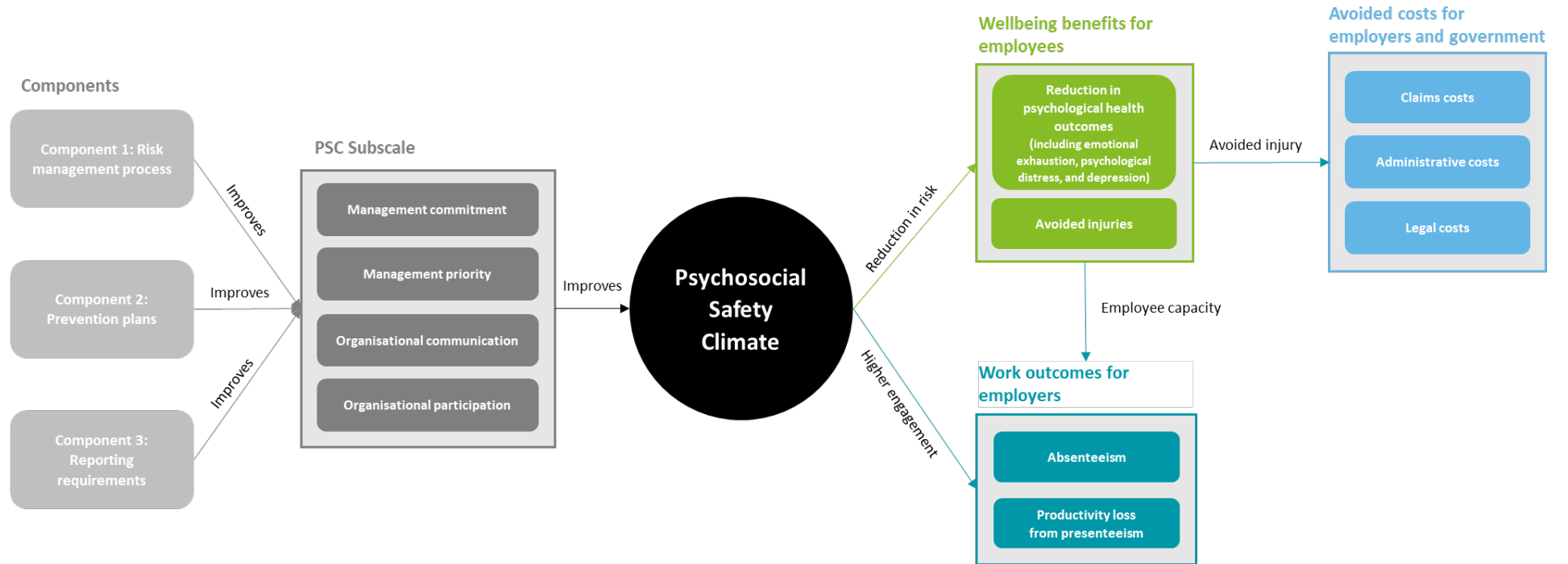
For example, a disability weight of 0.2 is interpreted as a 20% loss in the quality of life relative to perfect health for the duration of the condition. DALYs are composed of premature mortality (years of life lost due to premature death – YLL) and morbidity (years of healthy life lost due to disability – YLD) components:

$$\text{DALYs} = \text{YLLs} + \text{YLDs}$$

The burden of disease as measured in DALYs can be converted into a dollar figure using an estimate of the value of a statistical life (VSL). The VSL is an estimate of the value society places on an anonymous life. The Australian Safety and Compensation Council estimate of the 'net' VSLY (that is, subtracting financial costs borne by individuals) is approximately \$350,000 inflated to 2020-21 dollars.⁹⁶

⁹⁶ Deloitte analysis and adjustment for CPI of a meta-analysis of VSL estimates, including Abelson (2007), which forms the basis for the Commonwealth's Office of Best Practice Regulation guidance note on VSLY, [Australian Safety and Compensation Council](#).

Figure 4.1 Benefit modelling framework



Source: Deloitte Access Economics

4.2.3.2 Benefit parameters and assumptions

Benefits were modelled for the scenario in which the proposed regulations improve the PSC risk of 25% of high-risk workplaces from high-risk to medium-risk, effectively moving 25% of workers in high-risk workplaces to a safer workplace environment.

In practice, moving from high-risk to medium-risk is estimated to require improving a high-risk workplace's PSC subscale scores by approximately 1.2 points each. Given the low base PSC scores of high-risk workplaces, and as noted in recent inquiries into mental health (including the Boland Review, the Royal Commission into Victoria's mental health system, and the Productivity Commission inquiry into mental health – see 1.4), even modest improvements in workplace culture and awareness can lead to substantially improved outcomes.

These benefits were then discounted further by assuming initially low levels of compliance, and by modelling lower growth in the population of employed Victorians that might benefit from improved workplace safety (approximately 1 per cent per year) than the rate of growth in businesses that may incur costs (3.5 per cent per year).

The proposed psychological health regulations support WorkSafe to meet its commitment to playing a lead role in helping employers and workers create mentally healthy workplaces.

To successfully implement the proposed regulations, alongside commitments within WorkSafe's Mental Health Strategy 2021-2024, its supporting Action Plan 2021 to 2022 and WorkSafe's Corporate Plan, WorkSafe will increase the capacity of its inspectorate, enforcement group, advisory services and data analytics.

In particular, WorkSafe's inspectorate will increase its capacity and activities to proactively inspect, educate and help employers implement the processes required to identify and mitigate the impacts of psychological hazards.

WorkSafe is committed to undertaking strategic workplace visits that focus on the underlying causes of mental injury. The strategic workplace visits are intended to occur across a range of high risks industries, including (but not limited to), health care and social assistance, education and training, manufacturing, constructions, , public administration and safety and agriculture, forestry and fishing.

The regulations support WorkSafe's proactive compliance and enforcement approach by creating certainty for duty holders and enabling consistent compliance with the duties and obligations under the OHS Act.

Through this work, and with the implementation of the regulations, mental health programs are developed and refined to align with the focus areas and to target priority groups. This work is undertaken in collaboration with stakeholders including (but not limited to) elected Health and Safety Representatives (HSRs)."

Such guidance was considered by many stakeholders to be vital in ensuring that the process-based requirements serve as an effective and fundamental first step towards culture change. Some stakeholders also noted that such guidance and WorkSafe's approach to implementing the proposed regulations would be critical to avoid the prescribed processes becoming a 'box-ticking' exercise in which paperwork and compliance activities were undertaken without any real change in practice or culture.

Given these considerations, the sensitivity of the modelling to the expected benefits, and the significant uncertainty regarding the likely behavioural responses of employers to the proposed regulations, the effectiveness of the intervention in improving workplace culture (and the corresponding population of Victorians that would be expected to see improvements in the safety of their workplaces) is subject to sensitivity analysis in section 4.3.1.

As required by the Victorian Guide to Regulation, when assessing the impact of regulatory changes, the total benefit over the lifetime of the proposed regulations (5 years, given that the proposed changes would amend the existing regulations that will expire in 2027) was calculated and discounted to present value (PV) terms based on a four per cent real discount rate.

As with costs, the benefit model also incorporates compliance rates which grow over time to reflect that not all businesses will immediately comply.⁹⁷ These compliance rates differ based on business size and reach varying long-run compliance rates (below 100%) over the five-year life of the regulations.

Component analysis

As with costs, the estimates are provided as illustrative examples of the feasible benefits associated with improvements in culture and awareness and controlling risks to health and safety expected to result from the proposed regulatory changes. It is assumed that the at-risk population are those employed within workplaces with high-risk PSC ratings. Therefore, the benefit model assumes that the proposed regulatory changes will benefit those who are employed in workplaces that improve from high-risk to medium-risk PSC ratings. AWB survey data suggest that 32 per cent of employed Victorians work in high-risk workplaces.⁹⁸ This means approximately 1.1 million Victorians may be at risk of mental injury under the base case, and that if the proposed intervention results in 25% of workplaces improving from high-risk to medium-risk PSC, then approximately 270,000 employed Victorians will benefit from the change.

The feasible impacts of the proposed changes on PSC and the relative importance are based on advice from WorkSafe and stakeholders and has been tested against the latest literature. Analysis to translate these qualitative judgements into illustrative impacts was undertaken in consultation with WorkSafe and with their occupational health and safety experts. A multi-criteria analysis approach was used to assess each option in terms of its impact on culture against each of the subscales of the PSC survey score. This was done by considering the feasible impact of all three components combined in improving PSC, scoring each component in terms of its expected impact on different aspects of PSC, and then assigning a weight to each one. As such, it is assumed that:

- Component 1, the risk management process, accounts for 55 per cent of total benefit.
- Component 2, the requirement to develop written prevention plans for prescribed psychosocial hazards, accounts for 30 per cent of total benefit.
- Component 3, the requirement to report de-identified complaints that involve notifiable mental hazards, accounts for 15 per cent of total benefit.

The expected effectiveness of the proposed regulatory amendments is based on advice from WorkSafe, stakeholder views, and the findings of the Boland Review, Respect at Work, the Mental Health Royal Commission, and the Productivity Commission. This is supported by the public health literature on mental health and PSC.

Wellbeing benefits

It is assumed that benefits are felt by those employees who avoid the disability associated with mental disorders that may be exacerbated by unsafe work environments, regardless of whether this disability results in a formal claim for mental injury.

Estimates of the years of healthy life lost to disability are sourced from the 2019 Global Burden of Disease (GBD) study, conducted by the Institute for Health Metrics and Evaluation (IHME) at the University of Washington. The GBD study provides a standardised analytical approach for estimating prevalence and YLDs by age, sex, cause, year, and location.

⁹⁷ It was necessary to recognise the reality that not all businesses may be aware of and/or comply with their OHS obligations. Therefore, not all businesses will incur OHS-related costs. In the absence of robust data on compliance rates, the same assumptions made in the Occupational Health and Safety Regulations 2017 RIS have been used. These were based on the results of a Productivity Commission survey which set out the extent to which businesses were aware of their OHS requirements as a proxy for compliance. These assume that long-run compliance will be 100 per cent for large employers, 77 per cent for medium-sized employers and 69 per cent for small employers.

⁹⁸ This is based on the AWB's estimated that 32 per cent of employees work in workplaces are high-risk, which is approximately equivalent to the proportion of high-risk workplaces estimated in this RIS using WorkSafe claims data weighted by business sector and size, and assumes a proportionate distribution of employees across workplaces across the economy.

Data for Australians aged 15-49 has been used as the best approximation for the age group captured by our model (working age population). Estimates for 'all mental disorders' (which includes substance abuse, depressive and anxiety disorders) have been used. The GBD study estimates that mental disorders result in 397,231 YLDs and 229 YLLs, affecting approximately 35% of Australians. This equates to 0.151 DALYS per person with a mental disorder per year. Applying the VSLY (see section 4.2.3), the wellbeing cost of having a mental health condition is \$53,444 annually per person.

The AWB report determined that a 10 per cent increase in PSC is expected lead to a 3 per cent decrease in mental health problems. With approximately six 10 per cent intervals between the mid-points of the high-risk and medium-risk PSC categories, this suggests that moving from high-risk to medium-risk PSC will result in a 17.4 per improvement in mental health outcomes. This reduced risk is applied to the wellbeing cost to estimate the total benefit for the total population of employees who will benefit from the proposed regulatory changes.

For example, this suggests that if the proposed intervention results in the 25% of high-risk workplaces improving from high-risk to medium-risk PSC, and approximately 270,000 employed Victorians benefit from the change, and assuming that the prevalence of mental disorders in this group (35%, as noted above) is representative of the population, approximately 92,000 of these employees would be expected to accrue wellbeing benefits from improvements in their mental health outcomes due to their workplaces being shifted to a lower PSC risk category. To avoid double counting, this excludes the estimated number of workers expected to avoid significant mental injuries resulting in claims (see below).

Avoided injury

In addition to these wellbeing benefits, it is expected that separate benefits will be created through the avoidance of claimable mental injury. Here, claimable injuries are assumed to be distinct instances of mental harm resulting from work and are considered severe in nature. The value of each of these avoided claims is estimated to be equal to the current average value of a mental claim, approximately \$222,965.⁹⁹

Based on the current rate of claims for mental injury (relative to the feasible rate of injuries noted above), and if significant mental injuries only occur in high-risk environments, it is estimated that if the proposed intervention results in the workplaces of 25% of employees improving from high-risk to medium-risk PSC, and approximately 110,000 employed Victorians benefit from the change, then this would avoid 960 significant injuries. As discussed in Chapter 2, it is noted that claims data may underrepresent the true incidence of mental injury in the workplace.

Avoided costs

In addition to the avoided harm associated with the injuries associated with these claims, it is likely that, for each claim avoided, there will be a reduction in:

- administrative costs to WorkSafe
- administrative costs to businesses
- legal costs to businesses associated with disputes.

Avoided costs accrue from averted claims for mental injury. It is assumed that mental injury is most likely to occur in high-risk working environments. The benefit model assumes that administrative costs associated with each avoided claim is approximately \$2,000.^{100,101}

⁹⁹ WorkSafe data on claims.

¹⁰⁰ This figure includes administrative costs associated with processing claims, assumed to be equivalent to five hours of manager time, as well as legal costs assuming disputes occur at a rate of 1 dispute per 8 claims.

Average legal costs associated with a dispute are approximately \$12,500 per Safe Work Australia (see below)

¹⁰¹ Safe Work Australia, *The cost of work-related injury and illness for Australian employers, workers and the community 2012-13* (October 2015) <<https://www.safeworkaustralia.gov.au/doc/cost-work-related-injury-and-illness-australian-employers-workers-and-community-2012-13>>

Work outcomes

According to Becher & Dollard, moving from a high risk to a medium risk PSC work environment results in a 11.3 per cent reduction in absenteeism and a 13.1 per cent reduction in presenteeism.¹⁰² This literature determines the average annual cost of absenteeism per person employed in a workplace with a high-risk PSC rating is \$1,941. This same research estimates that the average annual cost of presenteeism per person employed in a workplace with a high-risk PSC rating is \$1,257. These parameters are used in the model as the best available estimates of the benefits in terms of improved PSC in workplaces.

These benefits are expected to be felt economy wide in the form of productivity gains. These productivity gains are associated with every employee whose workplace moves to a lower PSC risk category as a result of the proposed regulations, on the basis that productivity gains associated with improvement PSC are not limited to those employees with pre-existing mental disorders.

4.2.4 Benefit of components

4.2.4.1 Component 1

Table 4.8 shows the estimated total benefit associated with the risk management process in the modelled scenario in which approximately 25% of employees have the PSC of their workplace improve from high-risk to medium risk is \$1.48 billion (present value over a five-year period). This amounts to an estimated \$337.93 million per year, on average, over the five-year life of the amended regulations.

Table 4.8 Breakdown of modelled component 1 benefits

Benefit type	Benefit (PV, \$ million)
Avoided injuries	267.21
Wellbeing benefits (DALYs)	1,070.34
Work outcomes	131.29
Avoided administrative costs	2.50
Total benefit	1,480.34

Source: Deloitte Access Economics

4.2.4.2 Component 2

As shown in Table 4.9, the estimated net-benefit associated with prevention plans is \$807.46 million (present value over a five-year period). This amounts to an estimated \$184.33 million per year, on average, over the five-year life of the amended Regulations.

¹⁰² Dollard M & Becher H, *Psychosocial safety climate and better productivity in Australian workplaces* (November 2016) University of South Australia
<<https://www.safeworkaustralia.gov.au/system/files/documents/1705/psychosocial-safety-climate-and-better-productivity-in-australian-workplaces-nov-2016.pdf>>

Table 4.9 Breakdown of modelled component 2 benefits

Benefit type	Benefit (PV, \$ million)
Avoided injuries	145.75
Wellbeing benefits (DALYs)	588.73
Work outcomes	71.61
Avoided administrative costs	1.37
Total benefit	807.46

Source: Deloitte Access Economics

4.2.4.3 Component 3

As shown in Table 4.10, the estimated net-benefit associated with reporting requirements is \$226.83 million (present value over a five-year period). This amounts to an estimated \$51.78 million per year, on average, over the five-year life of the amended regulations.¹⁰³

Table 4.10 Breakdown of modelled component 3 benefits

Benefit type	Benefit (PV, \$ million)
Avoided injuries	40.94
Wellbeing benefits (DALYs)	165.39
Work outcomes	20.12
Avoided administrative costs	0.38
Total benefit	226.83

Source: Deloitte Access Economics

4.2.4.4 Summary of benefits

As summarised in Table 4.11, the risk management process is expected to yield the most benefits, with total benefits estimated at approximately \$1.48 billion (present value over a five-year period). This is followed by the development of prevention plans which is expected to yield approximately \$807.46 million in feasible benefits. Reporting requirements are likely to create the least benefits, yielding approximately \$226.83 million in total benefits.

¹⁰³ Note that the benefits of Component 3 are particularly low in comparison to Components 1 and 2 because, by limiting the reporting requirement to businesses with more than 50 employees, a majority of high-risk employers are excluded from the intervention. Those employers incur not costs associated with Component 3 and their employees receive no benefits.

Table 4.11 Summary of modelled component benefits, \$ million, present value

	Component 1 – Risk management process	Component 2 – Prevention plan	Component 3 – Reporting requirements
Avoided injuries	267.21	145.75	40.94
Wellbeing benefits (DALYs)	1,079.34	588.73	165.39
Work outcomes	131.29	71.61	20.12
Avoided administrative costs	2.50	1.37	0.38
Total benefits	1,480.34	807.46	226.83

Source: Deloitte Access Economics

4.2.5 Results of component analysis

In the modelled scenarios for costs and benefits, Components 1 and 2 are expected to yield net benefits. Component 3 is expected to impose a net cost. (Table 4.12).

Table 4.12 Summary of CBA of components (\$ million, present value)

	Component 1 – Risk management process	Component 2 – Prevention plan	Component 3 – Reporting requirements
Total costs	1,388.10	642.10	352.34
Total benefits	1,480.34	807.46	226.83
Net benefit	92.24	165.36	-125.50

Source: Deloitte Access Economics

4.3 Options analysis

The options assessed in this RIS comprise combinations of the three components analysed above. The costs and benefits associated with each option in this CBA are the sum of the costs and benefits for each component. As noted above, these costs and benefits are incremental. This is reflected in the modelling which was undertaken carefully to avoid potential double counting.

The results of this process of addition are summarised in Table 4.13 and has been used to identify the preferred option. The preferred option is Option 4, which combines all three components; risk management processes, prevention plans and reporting requirements. This option yields the high net-benefits, a positive benefit-cost ratio and is likely to achieve all objectives.

While it does not provide the greatest net benefits, WorkSafe considers that Option 4 is preferred over Option 3 (which does not include reporting requirements) for the following reasons:

- Given the prevalence of mental health issues in the workplace and the upward trend in mental injury claims, capturing more information through reporting requirements is seen as a more strategic step forward and will allow for more informed regulatory interventions in the future.
- There are many unknowns relating to the impacts and causes of negative mental health in the workplace. In addition, there is little by way of a jurisdictional equivalent to the proposed

Regulations and a lack of systematic, quantified data. Reporting requirements will allow WorkSafe and Victorian businesses to build a better knowledge and understanding base of psychosocial hazards and the causes of incidents in workplaces. This increased knowledge and evidence will help develop strategic policy interventions in the future.

- A range of benefits will also occur which have not been quantified in this RIS.

Table 4.13 Results of options analysis (\$ million, present values)

	Option 1 – Risk management process	Option 2 – Risk management process and reporting requirements	Option 3 – Risk management process and prevention plans	Option 4 – Risk management process, reporting requirements and prevention plans
Total costs	1,388.10	1,740.44	2,030.20	2,382.54
Total benefit	1,480.34	1,707.18	2,287.81	2,514.64
Net-benefit	92.24	-33.26	257.60	132.10
Benefit-cost ratio	1.07	0.98	1.13	1.06

Source: Deloitte Access Economics

4.3.2 Sensitivity analysis of the effectiveness of the preferred option

As noted in 4.2.3.2, benefits were modelled for the scenario in which the proposed regulations improve the PSC risk of 25% of high-risk workplaces from high-risk to medium-risk, effectively moving 25% of workers in high-risk workplaces to a safer workplace environment. At this rate of effectiveness, compared to the modelled cost scenario, the proposed Regulations yield a net benefit of \$132.10 million (present value over the five-year life of the regulations). The proposed Regulations break even if they are effective and improving PSC from high-risk to medium-risk in at least 23.66% of high-risk workplaces.

To test the sensitivity of results associated with the preferred option against this assumption, sensitivity analysis was conducted for scenarios 10 percentage points either side of the 25% effectiveness rate modelled above.

The results in Table 4.14 suggest that the benefit of the proposed regulations are highly sensitive to this parameter. When the effectiveness is reduced to 15%, the combined potential costs and feasible benefits are estimated to pose a net cost to society of \$873.75 million (present value, over the five-year life of the regulations). Alternatively, when the effectiveness is increased to 35%, the net benefits are \$1.14 billion (present value, over the five-year life of the regulations).

The sensitivity of the modelling to the effectiveness of the intervention reinforces the importance of effective implementation, guidance material and/or a compliance code to support employers in employing appropriate and proportionate controls to manage psychosocial risks. It also illustrates the importance of a rigorous evaluation of the proposed regulations over the next five years until the OHS Regulations sunset.

As noted above, to successfully implement the proposed regulations, alongside commitments within WorkSafe's Mental Health Strategy 2021-2024, its supporting Action Plan 2021 to 2022 and WorkSafe's Corporate Plan, WorkSafe will increase the capacity of its inspectorate, enforcement group, advisory services and data analytics.

In particular, WorkSafe’s inspectorate will increase its capacity and activities to proactively inspect, educate and help employers implement the processes required to identify and mitigate the impacts of psychological hazards.

WorkSafe is committed to undertaking strategic workplace visits that focus on the underlying causes of mental injury. The strategic workplace visits are intended to occur across a range of high risks industries, including (but not limited to), health care and social assistance, education and training, manufacturing, construction, public administration and safety and agriculture, forestry and fishing.

The regulations support WorkSafe’s proactive compliance and enforcement approach by creating certainty for duty holders and enabling consistent compliance with the duties and obligations under the OHS Act.

Through this work, and with the implementation of the regulations, mental health programs are developed and refined to align with the focus areas and to target priority groups. This work is undertaken in collaboration with stakeholders including (but not limited to) elected Health and Safety Representatives (HSRs).”

Table 4.14 Results of sensitivity analysis of the effectiveness parameter (\$ million, present value)

Effectiveness of preferred option in reducing the at-risk population			
	15%	25%	35%
	(modelled scenario)		
Total costs	2,382.54	2,382.54	2,382.54
Total benefit	1,508.78	2,514.64	3,520.50
Net-benefit	-873.75	132.10	1,137.96
Benefit-cost ratio	0.63	1.06	1.48

Source: Deloitte Access Economics

4.3.3 Sensitivity analysis of the value of a statistical life year

The wellbeing benefits of the preferred option comprise around 70 per cent of the total benefits, and so are sensitive to variation in the value of a statistical life year (VSLY). To test the sensitivity of the modelling to VSLY, sensitivity analysis was conducted to compare the value of a statistical life in the modelled scenario of approximately \$350,000 (see 4.2.3) with low VSLY and high VSLY scenarios of approximately \$220,000 and \$475,000 — approximately 36 per cent below or above the VSLY in the modelled scenario.¹⁰⁴

The results in Table 4.15 suggest that the benefit of the proposed regulations is also sensitive to the VSLY. For a VSLY of approximately \$220,000, the proposed option poses a net cost to society of \$570.72 million (present value, over the five-year life of the regulations). Alternatively, when

¹⁰⁴ Adapted from the Australian Safety and Compensation Council, The Health of Nations: The Value of a Statistical Life (July 2008). This analysis presents an econometric random-effects meta-analysis and draws on over 200 studies of the value of a statistical life. The results of that analysis suggest using an estimated VSL of \$8.4m, with a range of \$5.2m to \$11.3m, and a corresponding VSLY of around \$350,000 (as used in the RIS), with estimates of approximately \$220,000 and \$475,000 recommended for sensitivity analysis for low and high values of a statistical life year. The low VSLY estimate aligns with the Commonwealth Office of Best Practice Regulation’s guidance on the value of a statistical life.

using a VSLY of approximately \$475,000, the net benefits are \$773.81 million (present value, over the five-year life of the regulations).

Table 4.15 Results of sensitivity analysis of the VSLY parameter (\$ million, present value)

	VSLY (approximate)		
	\$220,000	\$350,000	\$475,000
	(modelled scenario)		
Total costs	2,382.54	2,382.54	2,382.54
Total benefit	1,811.82	2,514.64	3,156.35
Net-benefit	- 570.72	132.10	773.81
Benefit-cost ratio	0.76	1.06	1.32

Source: Deloitte Access Economics

4.3.4 Sensitivity analysis of costs to small, medium or large employers

Given the uncertainty noted above regarding the likely responses of employers to the proposed changes, sensitivity analysis was conducted for changes in the costs to small, medium or large employers at 20% below and above the modelled scenario.

Table 4.16 Results of sensitivity analysis of costs to small businesses (\$ million, present value)

	Costs to small business 20% lower than modelled scenario	Modelled scenario	Costs to small business 20% higher than modelled scenario
Total costs	2,322.79	2,382.54	2,442.28
Total benefit	2,514.64	2,514.64	2,514.64
Net-benefit	191.85	132.10	72.36
Benefit-cost ratio	1.08	1.06	1.03

Source: Deloitte Access Economics

Table 4.17 Results of sensitivity analysis of costs to medium businesses (\$ million, present value)

	Costs to medium business 20% lower than modelled scenario	Modelled scenario	Costs to medium business 20% higher than modelled scenario
Total costs	2,324.93	2,382.54	2,440.15
Total benefit	2,514.64	2,514.64	2,514.64
Net-benefit	189.71	132.10	74.49
Benefit-cost ratio	1.08	1.06	1.03

Source: Deloitte Access Economics

Table 4.18. Results of sensitivity analysis of costs to large businesses (\$ million, present value)

	Costs to large business 20% lower than modelled scenario	Modelled scenario	Costs to large business 20% higher than modelled scenario
Total costs	2,301.15	2,382.54	2,463.92
Total benefit	2,514.64	2,514.64	2,514.64
Net-benefit	213.49	132.10	50.72
Benefit-cost ratio	1.09	1.06	1.02

Source: Deloitte Access Economics

4.3.5 Sensitivity analysis of costs to all employers

In addition to sensitivity analysis of the costs to employers by business size (above), sensitivity analysis was also undertaken for total costs to employers overall.

Table 4.19. Results of sensitivity analysis of costs to large businesses (\$ million, present value)

	Total costs to all employers		
	20% lower	Modelled scenario	20% higher
Total costs	1,898.18	2,382.54	2,847.27
Total benefit	2,514.64	2,514.64	2,514.64
Net-benefit	616.46	132.10	-332.63
Benefit-cost ratio	1.33	1.06	0.88

Source: Deloitte Access Economics

4.3.6 Impacts of the preferred option on employers

Because the preferred option, Option 4, combines all three components, the estimated impact of the preferred option on employers under the modelled scenario is equal to the cumulative impacts of the three separate components.

This cumulative impact is presented in Table 4.20, which shows the estimated costs of the preferred option in the modelled scenario in the first and subsequent years, and the average annual cost over the five-year life of the regulations for an average small, medium or large business.¹⁰⁵

¹⁰⁵ Equivalent costs for each component reported in tables above are rounded to the nearest \$'000, and so do not sum exactly to these stated costs shown here for the preferred option.

Table 4.20 Modelled annual costs of the preferred option (to the nearest \$'000) for an average small, medium or large employer

Business size	Cost in first year	Annual cost in every subsequent year	Average annual cost over the five-year life of the regulations
Small	\$11,000	\$4,000	\$6,000
Medium	\$64,000	\$38,000	\$44,000
Large	\$704,000	\$518,000	\$555,000

Source: Deloitte Access Economics

Under the modelled scenario, the preferred option is estimated to impose total costs to employers of \$2.37 billion (present value over the five-year life of the regulations), or an average annual cost to all employers of \$537.75 million per year, over the five-year life of the regulations. Table 4.21 below summarises the present value of total costs and the average annual cost to employers over the five-year life of the regulations for all small, medium and large employers.

Table 4.21 Modelled total costs of the preferred option all small, medium or large employer over the five-year life of the regulations

Business size	Total cost to all employers (\$m, present value)	Average annual cost to all employers (\$m)
Small	\$807.91	\$182.98
Medium	\$613.00	\$138.99
Large	\$951.81	\$215.78
Total	\$2,372.72	\$537.75

Source: Deloitte Access Economics

The total impact of the preferred option on employers by size of business are show in Table 4.22 below. This table summarises the present value of total costs and total benefits to small, medium and large employers over the five-year life of the regulations.

Table 4.22 Modelled total impact of the preferred option all small, medium or large employer over the five-year life of the regulations

Business size	Total cost to all employers (\$m, present value)	Total benefit (\$m, present value)	BCR
Small	\$807.91	\$935.98	1.15
Medium	\$613.00	\$631.98	1.03
Large	\$951.81	\$946.68	0.99

Source: Deloitte Access Economics

4.4 Description of preferred option

As noted above, the preferred option, Option 4, combines all three components; risk management processes, prevention plans and reporting requirements. The way in which the preferred option is expected to operate in practice is summarised in Figure 4.2.

The above analysis of costs and benefits highlights the difficulty in predicting the exact actions of employers in response to the preferred option (see section 4.1.2). For this reason, the preferred option has been selected based on an illustrative scenario where all high-risk employers:

- are affected by the amendment to the regulations and must undertake new or additional identification and control activities, relative to the base case
- identify at least one prescribed psychosocial hazard in their workplace, requiring them to develop a prevention plan
- use training as a control to address that risk (requiring all employees to undergo training),
- consult all employees in each step of the process outlined above
- repeat the process at least once per year.

As outlined in section 4.2.2.2, WorkSafe will continue to provide support to duty holders to comply with their obligations. Specifically, WorkSafe prevention interventions focus on creating awareness, education, training and capability building via multiple approaches including (but not limited to) strategic workplace visits, a suite of guidance, provision of the OHS Essentials Program and the WorkWell toolkit.

The WorkWell Toolkit is a free online tool and tailored to small businesses (and specific industries). It uses a step-by-step approach to help business leaders to promote a mentally healthy workplace and prevent mental injury through access to tailored and relevant research, tools and information.

WorkSafe will continue to work with duty holders to build on and create new prevention interventions that will best support duty holders to comply with their obligations and prevent harm.

Additionally, WorkSafe will prioritise the development of a psychological health compliance code. While the guidance provided in the Code is not mandatory, a duty holder who complies with the Code will – to the extent it deals with their duties or obligations under the OHS Act and OHS Regulations – be considered to have complied with those duties or obligations.

As discussed in section 3.2.1, WorkSafe and industry guidance, and the proposed compliance code, increase duty holder state of knowledge about:

- Psychosocial hazards in workplaces
- Understanding the risk of harm created by psychosocial hazards; and
- Knowing what steps can be taken to eliminate or reduce those risks.

Clear, simple and accessible guidance supports businesses to easily and quickly educate themselves, to identify their risks and put appropriate controls in place to eliminate or manage those risks. As state of knowledge changes over time, due to changes in ways of working or new risks emerging or evidence on best practice controls, WSV enhances the guidance available to duty holders.

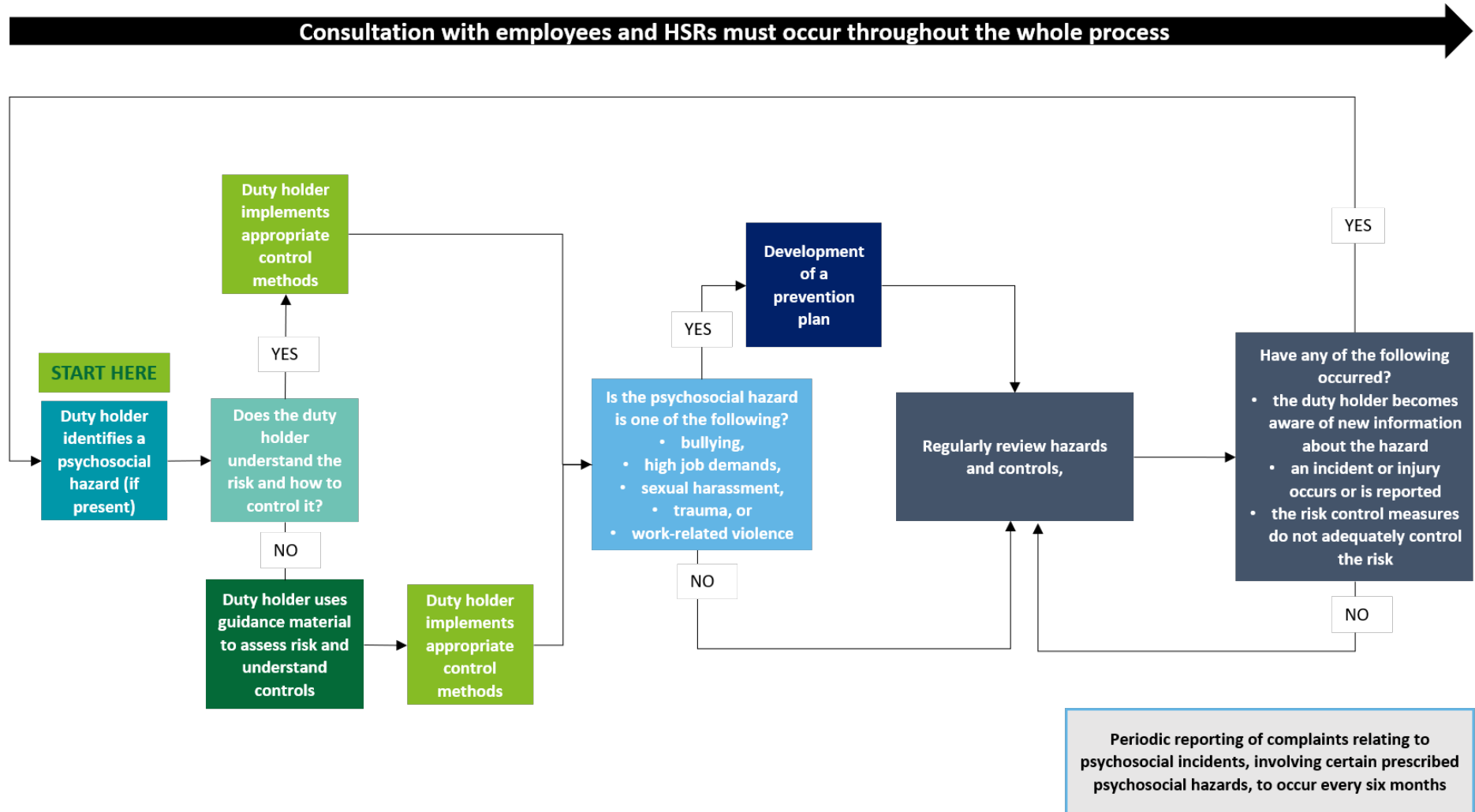
Such guidance is particularly important to support small-to-medium sized businesses. It enables those businesses to easily identify their risks of harm and be compliant with their obligations, without creating additional or excessive costs to business (such as costs associated with engaging specialists or consultants).

WorkSafe invites all stakeholders with views on the likely impact of the proposed changes, including in particular employers with information on the costs of complying, to respond to this RIS. WorkSafe specifically invites feedback from stakeholders on the following:

- The extent to which identification and control activities are likely to result in cultural changes in the workplace.
- The likely actions that employers would undertake under the proposed amendments and whether they would need to engage a consultant or other outside expertise.
- How these actions differ from their current approach to managing risks arising from psychosocial hazards in their workplace.
- The expected incremental effort, cost and frequency of new actions undertaken as a result of the proposed amendments (compared to their current approach)

- Which types of psychosocial hazard (including, but not limited to, the proposed prescribed psychosocial hazards) are likely to be identified in workplace (either already identified through existing risk management conducted to meet the general duty or expected to be identified if undertaking new or different identification and control processes as a result of the proposed amendments).
- What alternative controls to training stakeholders would use to address the psychosocial hazards likely to be present in their workplaces and whether the costs of any new or additional activities undertaken to comply with the proposed Regulations would differ substantively from the estimates in the scenario modelled above.
- How frequently those psychosocial hazards (including, but not limited to, the proposed prescribed psychosocial hazards) would be likely to change in a sufficiently material way to warrant repeated reviews of risk control measures.
- The types of systems used to collect de-identified information on complaints relating to psychosocial incidents and the time and effort taken to establish these.
- The broader societal factors which may impact the management of psychosocial hazards but be outside the control of regulation.
- The types of support or guidance material that employers would like WorkSafe to provide to assist them in complying with the proposed amendments.
- The extent to which businesses think their costs would be reduced or intervention effectiveness would be improved by the provision of guidance material.

Figure 4.2 Operation of preferred option



Source: Deloitte Access Economics

4.4.2 Example case studies

As mentioned above (see section 4.1.2), the options analysis uses training as an illustrative example of a control method that stakeholders suggested businesses may use to manage psychosocial hazards. It is noted that training is not a specific requirement under the proposed regulations and is neither the only nor necessarily the most appropriate control to address every psychosocial risks. The most appropriate control will vary based on the nature of the risk, as well as the various factors above that create uncertainty surrounding the likely impacts of the proposed change.

Therefore, this section of the RIS presents a number of case studies as qualitative illustrations of different types of activities and responses that employers of all different sizes and in different industries may undertake in response to manage the risk posed by psychosocial hazards.

The proposed regulations do not specify the controls an employer must implement. Where an employer identifies a risk, they must eliminate the risk, so far as is reasonably practicable. Where elimination is not possible, they must reduce that risk so far as reasonably practicable through consideration of a range of specified control measures.

The controls an employer uses will vary depending on the situation, the availability and suitability of controls for each workplace and other factors listed in section 20(2) of the OHS Act. The examples include a range of controls that could be implemented however the examples are not exhaustive. The controls that an employer chooses to implement will, in part, determine the cost and benefit.

As noted above, WorkSafe encourages any and all stakeholders with views on the likely impacts of the proposed regulations to share these with WorkSafe through a submission as part of the consultation process for this RIS, including consideration of the types of risks and controls most relevant to their workplace and whether the costs of undertaking any new or additional activity would be substantively different from those presented in the modelled scenario above.

Case study 1: Café X (small business)

Café X is a small business in the hospitality sector. It employs nine people. The owner and manager of Café X is also the employer. The employer has very little understanding of psychological health and accordingly, has not performed the risk management process for psychosocial hazards and there are no policies or procedures in place. As the employer does not know much about psychosocial hazards, they believe they can sort out any issues 'as they arise' and they don't need to worry about talking to their employees.

There is also no incident monitoring in place for physical or psychological health incidents, and no written records of psychosocial incidents are kept. Any issues that do come up tend to be when staff raise concerns of sexual harassment or bullying from other staff members and occasionally from customers.

Changes required to comply with regulations

Risk management process

Café X will need to perform a risk management process to identify, control and review psychosocial hazards, so far as reasonably practicable. In accordance with requirements in the *Occupational Health and Safety Act 2004* (OHS Act) this process needs to be completed in consultation with Café X's employees.

The manager of Café X uses WorkSafe's Compliance Code*, WorkWell toolkit, non-statutory guidance, and other online tools such as the People at Work risk assessment tool, to learn how to identify psychosocial hazards, assess their risk and determine the appropriate control measures to be put in place.

Through consultation and use of the WorkSafe's guidance, Café X identifies psychosocial hazards and implements a range of control measures. Café X is required to review their control measures in circumstances outlined in the regulations.

Controls Café X has chosen to implement

Psychosocial hazard	Control measures
Workplace bullying	<p><u>Systems of work:</u></p> <p>To control workplace bullying, the manager of Café X (the employer in this case) decides to draft a workplace policy in consultation with their employees.</p> <p>The policy outlines the standard of behaviour expected of all employees, including examples of what is and what is not workplace bullying, how employees can report allegations of workplace bullying, and how reports will be investigated. The policy is made easily accessible and promoted to employees. Rather than developing their own procedures, Café X and its employees have chosen to adopt the procedure for reporting issues and resolving issues contained in regulation 24 and 25 of the OHS Regulations. These procedures are included in the policy.</p> <p><u>Information, instruction, training:</u></p> <p>The manager of Café X undertakes an online course on workplace bullying to ensure that they understand how to identify, prevent, and respond to incidents of bullying. Café X also trains employees on the new policy and procedure including the expected standards of behavior, identifying bullying, what to do if they witness or experience bullying, and the process for reporting and responding to complaints.</p>
Sexual	<u>Work environment:</u>

harassment Café X identifies the staff area behind the cafe is poorly lit and complaints from employees often say this is where they are sexually harassed. Café X installs flood lights to make sure the area is adequately lit and puts up WorkSafe’s posters on intrusive questions and the sexual harassment complaints process.

After consulting with employees, Café X determines that staff are more likely to be sexually harassed by customers when they are working alone (such as when they are preparing to open or close). Café X installs deadlocks on the doors to ensure the public cannot access the café when employees are working alone.

Systems of work:

Similar to bullying, Café X decides to draft workplace policy for sexual harassment in consultation with employees. The policy outlines the standard of behaviour expected of all employees, including examples of what is and what is not sexual harassment, how employees can report allegations, and how reports will be investigated. The policy is made easily accessible and promoted to employees.

Rather than developing their own procedures Café X and its employees have chosen to adopt the procedure for reporting issues and resolving issues contained in regulation 24 and 25 of the OHS Regulations. These procedures are included in the policy.

Information, instruction, training

Further to improving the control measures for sexual harassment, the manager of Café X undertakes an online course on sexual harassment to ensure that they understand to identify, prevent, and respond to incidents.

Café X also delivers training to employees outlining policies and procedures, expected standards of behavior, what is sexual harassment, what to do if they witness or experience sexual harassment, and the process for reporting and responding to complaints.

Prevention plan

As Café X has identified bullying and sexual harassment as potential psychosocial hazards, they need to keep a written record of a prevention plan for both hazards. This means they will need to write out how these hazards have been identified and how they will be controlled in their workplace, as well as document how the control measures will be implemented, and the consultation process undertaken to identify hazards and relevant control measures. Café X uses the template for prevention plans provided in WorkSafe guidance to develop the prevention plans. In accordance with the consultation provisions in the OHS Act, Café X is required to consult with employees when developing the prevention plan.

De-identified Reporting

As Café X is a small business with less than 50 employees, it will not need to provide regular de-identified information on complaints to WorkSafe.

Costs to comply with regulations

Café X will have a relatively high amount of upfront cost to comply with the proposed regulations both in terms of physical modifications to the workplace, time and opportunity cost, and will have a moderate ongoing cost updating their prevention plan, risk management and training of staff. It is expected, however, that Café X's psychosocial safety climate (PSC) will improve significantly as a result of complying with the proposed regulations.

Case study 2: Medical Centre Y (medium business)

Medical Centre Y is a medium-sized business in the health sector. It employs 35 people in various roles. Medical Centre Y is open 24 hours a day, five days a week and provides services to a wide range of clients.

The employer is well read and proactive about identifying and managing any psychosocial hazards that may arise in their workplace and have put in place procedures for staff who may be exposed to work-related violence, sexual harassment, and bullying. Medical Centre Y has a health and safety representative (HSR) and infrequently consults with employees and HSRs on health and safety matters. Medical Centre Y keeps a risk register which documents the hazards and controls.

Medical Centre Y's employees are required to complete regular training on how to identify and manage psychosocial risks, and any incidents that occur are all recorded and investigated by the employer.

Changes required to comply with regulations

Risk management process

Medical Centre Y will need to perform a risk management process to identify, control and review psychosocial hazards in consultation with employees and HSRs.

While Medical Centre Y is well read and proactive about identifying and managing any psychosocial hazards, when the proposed regulations commence, they refer to WorkSafe's Compliance Code and non-statutory guidance and undertake consultation with their employees. Through this process they identify additional psychosocial hazards and determine appropriate controls.

Controls Medical Centre Y has chosen to implement

Psychosocial hazard	Control measures
Workplace bullying and sexual harassment	<p><u>Systems of work and information, training and instruction</u></p> <p>Given Medical Centre Y has a strong understanding of these hazards they already have controls in place that adequately eliminate or reduce the risk so far as reasonably practicable.</p> <p>Upon the making of the regulations, Medical Centre Y reviews its policies and procedures (in consultation with its employees) and uncovers that its procedure was inadequate for serious allegations or incidents. Medical Center Y develops a new procedure in consultation and chooses to engage an OHS consultant to deliver training to all employees instead of relying on available material.</p>
Exposure to trauma	<p><u>Systems of work</u></p> <p>Medical Centre Y understands that their staff may be exposed to trauma, for example through medical consultations.</p> <p>Accordingly, they review, in consultation with employees and HSRs, their existing controls and make the following changes to the systems of work:</p> <ul style="list-style-type: none"> • updating their procedures on workplace issues to include requirements for reporting incidents of exposure to distressing circumstances • implementing practices to identify traumatic documents or images and

	<p>restricting them to only people who need to see them and developing guidance for staff on vicarious trauma</p> <ul style="list-style-type: none"> • implementing a critical incidents stress management plan, that includes counselling and professional support for employees following a traumatic incident • regularly monitoring of employees' wellbeing following exposure to traumatic event • redesigning recruitment and onboarding processes that ensure job-person fit and sufficient preparedness. <p><u>Information, instruction, training</u></p> <p>Medical Centre Y ensures that all managers are reminded of the risks from exposure to trauma by preparing new training materials and holding workshops with all affected employees to ensure they understand the hazard, the risk and any new practices or procedures arising from the review.</p>
<p>Work-related violence</p>	<p><u>Work environment</u></p> <p>Medical Center Y believes that more action is required to control the risk of work-related violence given some recent incidents. Accordingly, Medical Centre Y alters the work environment by installing alarm systems throughout the premises, CCTV systems, secure onsite parking, and hires security guards for after-hour's consultations.</p> <p><u>Systems of work and information, instruction, training</u></p> <p>Like workplace bullying and sexual harassment, Medical Centre Y reviews, in consultation with employees and HSRs, their current policy and procedure for work work-related violence. In doing so Medical Centre Y recognises that many staff do not understand what constitutes work-related violence. As such Medical Centre Y uses their upcoming training day to hold workshops for managers and all employers to ensure that they understand the risk associated with work-related violence and Medical Centre Y's policies and procedures for reporting and responding.</p> <p><u>Personal Protective Equipment</u></p> <p>Medical Centre Y also gives duress alarms to all staff and they are worn at all times whilst working.</p>
<p>High job demands</p>	<p><u>Systems of work</u></p> <p>As part of the risk management process Medical Centre Y review some recent complaints about staff fatigue. Medical Centre Y reviews a draft roster for the upcoming months and realises that rostering polices often lead to staff working 3 13-hour night shifts in a row followed by an early shift on the 5th day. Medical Centre Y believes this creates a large risk of fatigue and determine that addition 4 FTE are required to provide longer breaks between night shifts and a more balanced roster.</p> <p><u>Support and monitoring</u></p> <p>To ensure that risks like this do no occur again, Medical Centre Y puts a new agenda item on month team meetings to check in on workloads and shifts.</p> <p><u>Information, instruction, training</u></p> <p>Medical Centre Y decides to further develop and provide employees with an information sheet about the early warning signs of stress and fatigue,</p>

encourage them to report fatigue and stress and take breaks when they need to, where reasonably practicable.

Prevention plan

As Medical Centre Y has identified bullying, sexual harassment, exposure to traumatic events, work-related violence and high job demands as potential psychosocial hazards, under the proposed regulation they would need to develop a Prevention Plan each of these psychosocial hazards.

Medical Centre Y currently has a system where they document the risk management process for psychosocial hazards. On the making of the regulations, Medical Centre Y modifies their system to ensure they are also documenting information about their consultation process and how the controls are implemented.

De-identified reporting

As Medical Centre Y has less than 50 employees, it will not need to provide regular de-identified information on complaints relating to psychosocial incidents to WorkSafe.

Costs to comply with regulations

Medical Centre Y will have moderate upfront and ongoing costs to comply with the proposed regulations' requirements as they undertake most of these activities already. It is expected that Medical Centre Y's PSC will only have a moderate impact as a result. Harm arising from trauma and high job demands is expected to decrease significantly due to the changes made.

Case study 3: Supermarket Z (large business)

Supermarket Z is a large business in the retail sector. It has a head office that provides human resources and health and safety co-ordination to its 20 supermarket locations across the State. Each of the 20 locations has 45 staff.

Due to incidents of sexual harassment and bullying occurring in the past, head office has established detailed written policies, procedures, and training for all areas of the business to follow.

Over the past year, the HR area has noticed that there are an increasing number of incidents being reported around work-related violence and increased job demand impacts as a result of COVID-19. Supermarket Z does not have any policies and procedures in place to deal with these issues.

Currently, incidents of work-related violence and complaints of high job demands are only addressed at the supermarket location and not escalated to head office or reported to management.

Changes required to comply with regulations

Risk management process

Supermarket Z will need to perform a risk management process to identify, control and review psychosocial hazards in consultation with employees and HSRs.

The risk management process will need to take account of the different psychosocial hazards that employees are exposed to in each supermarket location, as well as the different hazards that different employees will be exposed to. For example, hazards in the head office are likely to be different to those working in the supermarket location.

Controls Supermarket Z has chosen to implement

Psychosocial hazard	Control measures
Bullying and sexual harassment	<p><u>Systems of work and Information, instruction, training</u></p> <p>Given Supermarket Z size they are aware of the risk of bullying and sexual harassment in their various locations and already have controls in place that adequately eliminate or reduce the risk so far as reasonably practicable.</p> <p>Upon the making of the regulations, Supermarket Z reviews its policies and procedures in consultation with employees and HSR's and through the various management committees that exist within the organization.</p> <p>The head of HR proposes that Supermarket Z should become a leader in occupational health and safety and recommends to the Board that values-driven leadership should be introduced, and investigations of complaints should be conducted by an independent third party. The Board agrees with these recommendations and agrees to fund the development of a leadership program and third-party investigations.</p>
Work-related violence	<p><u>Work environment</u></p> <p>When undertaking the risk management process Supermarket Z identifies that while all of their stores have experienced an increase risk of work-related violence, there has been an exponential increase</p> <p>in stores that are located in suburbs with higher crime rates.</p> <p>To reduce these risk Supermarket Z decides to install plastic screens between</p>

all customers and employees and emergency alarms under all registers in high-risk stores. They also decide to employ security guards in all stores to reduce the risk of work-related violence.

Systems of work

Given the increase in work-related violence Supermarket Z decides to draft a workplace policy for work-related violence in consultation with employees and HSRs. The policy outlines what is work-related violence, how employees can report incidents and how reports will be investigated. The policy is made easily accessible and promoted to employees through each store location, the intranet page and notice boards.

To assist Supermarket Z to support staff after workplace violence incidents occur, the board also decides to employ an Employee Assistance Program that are able to attend the workplace after significant incidents occur, and employees are able to contact 24/7 for counselling or debriefing.

Information, instruction, training

Further to improving the controls, Supermarket Z HR department develops an e-learn for all staff outlining work related violence, how to identify violence, what to do if they witness or experience violence, and the process for reporting and responding to complaints.

High job demands

Systems of work

Supermarket Z had not considered its systems of work in relation to high job demands. Accordingly, Supermarket Z review its systems of work and uncovers that often safety-critical tasks are performed during the early hours of the morning, from 1am to 6am and shift work often exceeds 14 hours.

Accordingly, Supermarket Z's HR department works with local store managers to develop a new schedule to enable safety critical tasks to be undertaken in the middle of the day. The HR team also add an additional shift into the roster and employ additional staff to ensure that staff have adequate respite and are not becoming fatigued.

Prevention plan

As Supermarket Z has identified bullying, sexual harassment, work-related violence, and high job demands as potential psychosocial hazards, they need to keep a written record of the prevention plans each prescribed hazard.

Supermarket Z currently has a system where they document the risk management process for psychosocial hazards. On the making of the regulations, Supermarket Z modifies their system to ensure their documentation includes information about consultation and how the controls are implemented.

De-identified reporting

As Supermarket Z is a large business with multiple workplaces, it will also need to make significant modifications to their incident reporting systems to allow for the collection of psychosocial complaints data across the whole business (rather than only at the store location), as well as developing the ability to extract, analyse and report this data to WorkSafe on a de-identified basis every six months.

Costs to comply with regulations

As Supermarket Z has established policies, procedures and training for sexual harassment and bullying, the cost of compliance with the risk management process, and prevention plans will be minimal.

However, as Supermarket Z does not have a system for identifying and controlling risks associated with work-related violence and high job demands, there will likely be a major upfront cost to develop these systems and implement control measures. It is likely that developing identifying and controlling hazards as well as documenting prevention plans may be more costly than in a small to medium sized business, because:

The employer needs to ensure that the identification and control of risks associated with psychosocial hazards adequately considers the different hazards and risks for different groups of employees. To achieve this, the employer needs to ensure there is adequate representation of these different roles in the consultation process. Consultation is likely to be more complex and time consuming for this reason.

In a large business, there is likely to be more a complex hierarchical management structure for approval of prevention plans and implementation of controls. This will add time and complexity to this process.

Supermarket Z is also likely to have a significant upfront cost for building a system to collect psychosocial complaints data across all of its locations, as well as developing the ability to extract, analyse and report this data to WorkSafe on a de-identified basis every six months.

It is expected that Supermarket Z's PSC will improve by a moderate amount as a result.

5 Small business and competition impacts

This section assesses the small business and competition impacts of the preferred option.

Small businesses may experience disproportionate effects from regulation for a range of reasons. This may include that the requirement applies mostly to small businesses, or because small businesses have limited resources to interpret compliance requirements or meet substantive compliance requirements compared to larger businesses. Small businesses may also lack the economies of scale that allow fixed regulatory costs to be spread across a large customer base. However, businesses of all sizes are likely to benefit from a mentally healthier workforce.

The Victorian Guide to Regulation also requires a RIS to assess the impact of regulations on competition. Regulations can affect competition by preventing or limiting the ability of businesses and individuals to enter and compete within particular markets. In undertaking this assessment we have considered questions such as:

- Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?
- Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?
- Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc.)?
- Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?
- Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?
- Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?

Under the modelled scenario for the preferred option, small employers are estimated to incur one-off costs of approximately \$11,000 per business and average annual costs of approximately \$4,000.

Further analysis of small business and competition impacts is provided in the following table. In summary, the proposed regulatory changes are anticipated to have a marginally disproportionate impact on small businesses. The proposed changes may also have a small impact on competition.

Table 5.1 Small business and competition impacts

Proposed Regulations	Impact on small business	Impact on competition
Risk management process	<p>Survey data revealed that the risk management process will likely impose marginally disproportionate costs when compared with larger businesses.</p> <p>Small businesses noted that it could require a substantial amount of the owner/managers time to ensure compliance with each step of the risk management process. This time would otherwise be spent on core operations. On the other hand, large businesses commonly expressed being able to delegate these tasks to a pre-existing HR function that would easily be able to incorporate them in current systems at little extra costs. However, it was noted that controls will be proportionate to business size and risk profiles and guided by WorkSafe guidance material. Therefore, by definition, the volume and cost of implementing controls will be lower for smaller businesses.</p> <p>WorkSafe will provide guidance material and codes of conduct to lessen the burden and assist small businesses in complying with the new requirements.</p> <p>It is important to note that businesses of all sizes are expected to benefit from the productivity gains, reduced absenteeism and increased employee engagement associated with the improved mental health of employees.</p>	<p>The effect of the risk management process on competition is likely to be small. Relative to other components, the risk management process is likely to impose significant costs on industry. However, these costs are expected to be shared across all businesses in the Victorian economy and are therefore unlikely to have a significant impact on the price of any one good or service.</p> <p>Similarly, the risk management process is not expected to have a significant impact on market entry. Survey respondents indicated that a proportion of Victorian employers already undertake risk management processes in relation to mental health. These employers are not only operating but also successfully competing against other businesses (Victorian, interstate and/or international) who do not have these processes in place.</p> <p>Stakeholder consultation undertaken in developing this RIS suggests that the impact of the proposed regulations not only differs between businesses sizes, but also between businesses within different sectors. For example, some sectors may be more exposed to various competitive pressures from overseas or interstate than others.</p> <p>WorkSafe welcomes any and all feedback from stakeholders on the impacts of the proposed risk management process on competition which may be specific to their sector.</p>

Proposed Regulations	Impact on small business	Impact on competition
Prevention plan	<p>Prevention plans are likely to place a proportionate impact on businesses, given the conditional nature of the regulations. Rather than having a requirement to keep written records of the risk management process for all identified hazards, the proposed regulations require that, when certain prescribed psychosocial hazards are identified through the risk management process, employers must develop and keep a written record of a prevention plan for the relevant prescribed psychosocial hazard. As with the risk management process, the opportunity cost of time to meet these obligations is estimated to be lower for small businesses. The level of detail within prevention plans are also likely to be lower for small business given fewer staff.</p> <p>In relation to the development of policies and procedures, some small businesses expressed uncertainty around undertaking this process on their own, suggesting they would require support from WorkSafe guidance material or assistance from an external safety consultant in developing prevention plans relating to prescribed psychosocial hazards. Large businesses, however, frequently highlighted that they already have similar documents and controls in place.</p>	<p>Prevention plan requirements are likely to pose a very small impact on competition. The extent to which prevention plan requirements increase costs for industry will depend on the prevalence of the prescribed risks within each business. This increase in costs is likely to be similar to those associated with the risk management process.</p> <p>Costs associated with developing bullying and sexual harassment prevention plans are expected to be shared across all employers in the Victorian economy. Costs associated with developing high job demand and trauma related prevention plans are expected to impact certain sectors such as emergency first responders disproportionately. As a result, the impact on prices and market entry is not expected to vary significantly according to sector and prevalence of psychosocial hazards.</p> <p>Similarly, survey respondents indicate that a moderate proportion of employers already undertake record keeping processes and maintenance of policies (e.g. for bullying or sexual harassment) which may be easily adapted into prevention plans relating to prescribed psychosocial hazards. These employers are able to operate and do so while competing with other employers who do not carry out these procedures currently.</p>
Reporting requirements	<p>As the proposed reporting requirements will only apply for employers with over 50 employees, there will be no impact on small business.</p>	<p>Reporting requirements are not expected to have a material impact on competition.</p> <p>Both survey respondents and stakeholders in consultation have suggested that these requirements will not increase costs significantly enough (per duty holder) to deter entry or lead to a tangible increase in prices.</p>

6 Implementation and evaluation strategy

This chapter outlines the actions that WorkSafe will undertake to implement and assess both the efficiency and effectiveness of the proposed Regulations.

6.1 Implementation

The key questions for implementation are:

- What needs to be done?
- Who will do it?
- Who will monitor implementation including risk management and identification?

6.1.1 What needs to be done?

6.1.1.1 Summary of implementation tasks

The specific activities to be undertaken by WorkSafe, along with the timing, are summarised in Table 6.1. As noted above, as WorkSafe is still in the process of finalising its implementation plan, the activities and their timing might deviate slightly from the below.

Table 6.1 Implementation tasks and timing

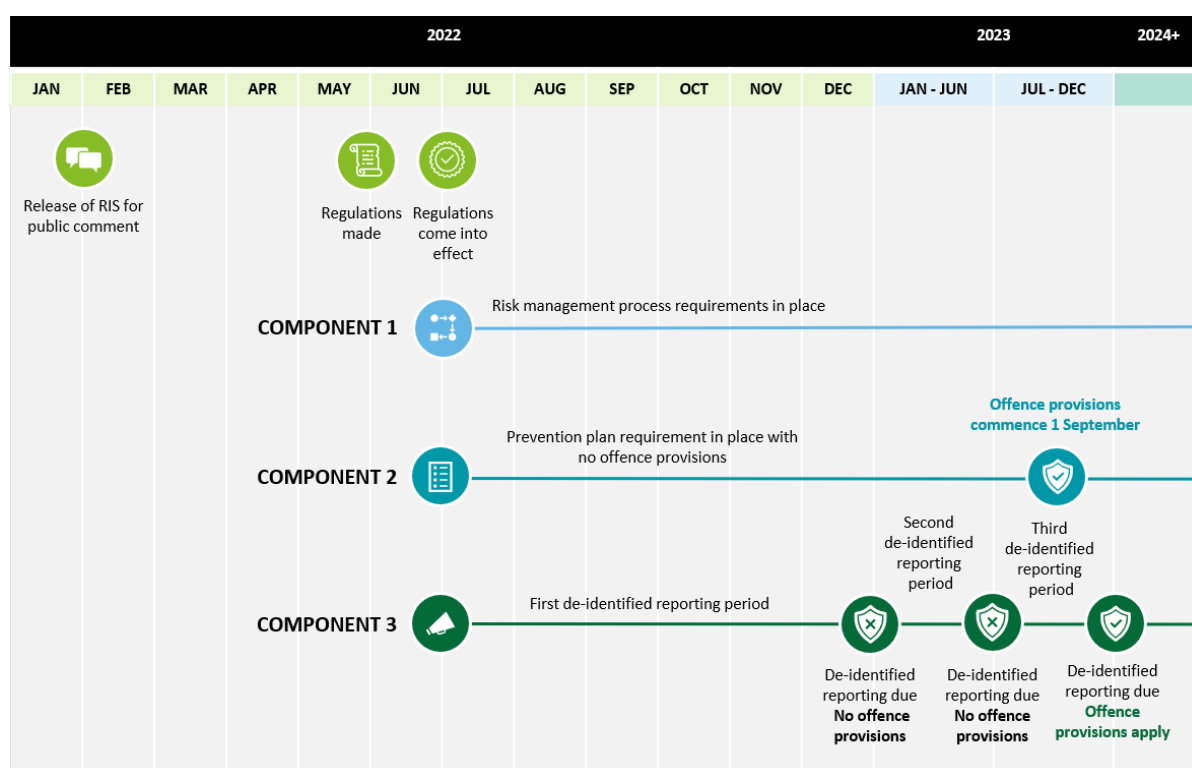
Task	Timing
Determine key organisational impacts for WorkSafe and undertake necessary internal change management activities (i.e. operating model or process changes, communications, training etc.)	January 2022 to commencement of regulations
Develop and deliver education, guidance and a range of communication activities to promote awareness of the regulatory amendments with employers	Education, guidance, and communications to support employers to comply will be delivered through a phased approach. Priority assets and supports will be available at the commencement of regulations.
Development and delivery of a proposed mental health compliance code, in consultation with stakeholders.	Anticipated to be delivered in mid-to-late 2022.
Prepare and send formal communication informing stakeholders that proposed regulatory amendments have been made and commenced. Including updates to WorkSafe website and other communication channels (e.g. Facebook, Twitter) to include information about the regulatory changes and what they mean	At making and commencement of the regulations.
Formally communicate the changes to the general public	At making and commencement of the regulations.
Develop evaluation information and data strategy	At commencement of the regulations.

The regulations are intended to come into effect on 1 July 2022. Penalties will be phased in on 1 September 2023, and will be associated with failure to:

- produce a prevention plan for prescribed hazards upon request (60 penalty units for a natural person, 300 penalty units for a body corporate)
- provide a report on de-identified complaints data to WorkSafe (60 penalty units for a natural person, 300 penalty units for a body corporate)
- keep a copy of the report to WorkSafe (60 penalty units for a natural person, 300 penalty units for a body corporate)
- produce a copy of the report for inspection upon request (60 penalty units for a natural person, 300 penalty units for a body corporate).

The anticipated timing associated with this phasing is shown in Figure 6.1 below. Because de-identified reporting penalties will be included from 1 September 2023, if duty holders do not submit to WorkSafe by 30 January 2024 a report for the period from July 2023 to December 2023, penalties may apply.

Figure 6.1 Phased implementation of offence provisions



Source: WorkSafe Victoria

6.1.1.2 Stakeholder communications

WorkSafe is responsible for ensuring businesses and workers understand and adhere to the amended regulations.

Once the new regulations are in place, WorkSafe will undertake a range of communication activities to assist stakeholders and the general public to understand and comply with the new regulations. This will include (but is not limited to):

- Notification of the making of new regulations through formal communication channels (e.g. the Victorian Government Gazette and a state-wide newspaper)
- The development of accessible information that explains the changes introduced by the new regulations, includes update of existing guidance and development of new guidance, where appropriate (including the proposed psychological health compliance code). It is anticipated these documents will help to lessen transitional costs to businesses (in particular small businesses) by removing uncertainty and spelling out exactly what needs to be done.

Additionally, WorkSafe intends to release social media posts, make updates to the WorkSafe website, electronic Direct Mail (EDM) to stakeholders, Ministerial and WorkSafe media releases, and direct communications to key WorkSafe Advisory Committees, including employer and employee representative groups that represent a broad range of industries and businesses across Victoria, and impacted stakeholders and duty holders.

To ensure WorkSafe fully considers all affected stakeholders, this plan will target all stakeholders consulted on the proposed amendments as well as identify additional stakeholders in the implementation process, what their interest is likely to be, and how the stakeholder relationships are to be managed.

6.1.1.3 Resourcing needs

WorkSafe has operational resources dedicated to support employers to comply with the OHS legislative framework. This includes (but is not limited to) resources to develop guidance materials, information and campaigns, engaging with stakeholders through forums, reference groups and other channels.

Specific to mental health, WorkSafe has a suite of existing guidance materials (including WorkWell) that support employers to identify and control psychosocial hazards.

WorkSafe will use existing operational resources to enhance, amend or develop new guidance, as needed. WorkSafe will deliver this guidance and/or communication materials through a phased approach, prioritising the most needed materials to support employers upon commencement of the regulations. This includes dedicating multiple existing operational resources to prioritise the development and delivery of the proposed future mental health compliance code in 2022.

Should demand for duty holder support significantly increase or alter, WorkSafe will take this into consideration in allocating resources. However, at this time, changes associated with the risk management process are not expected to impose costs beyond the existing budget for such activities.

The costs to WorkSafe to implement and enforce the requirement to keep written prevention plans are negligible. As identified previously, WorkSafe adopts a risk-based planning approach to compliance and enforcement. Therefore, where demand for support to comply increases, we WorkSafe will factor this into our future organisational compliance and enforcement planning.

To progressively build the capacity and capability of WorkSafe, and to meet the increasing demand for duty holder support, in the short term WorkSafe will:

- increase the psychosocial health inspectors and mental health/human factors specialists by 47 per cent
- increase learning capability and capacity across the entire OHS inspectorate, compliance and enforcement and frontline staff.

These additional resources enable WorkSafe to better prevent and respond to risks to mental health including sexual harassment in Victorian workplaces.

In addition to the above, WorkSafe will include a number of fixed period roles to support oversight and development of some implementation activities. Whilst not a 'new' or 'fixed-term' resource costs, there are also costs associated with the training of inspectors and investigators which are detailed in the Impacts section of the RIS.

Whilst there will be an immediate cost to WorkSafe's to educate and train staff on any regulation which requires an employer to keep written prevention plans, that cost will be absorbed as it forms part of WorkSafe's ongoing and standard approach to operationalization of any legislative or regulatory reforms.

6.1.2 Who will be doing it?

Whilst WorkSafe will primarily be responsible for implementation of the proposed regulatory changes, we acknowledge the significant and essential contribution our stakeholders make in

increasing duty holder awareness of the regulations and their obligations, and the benefits of a mentally healthy workplace.

WorkSafe works with its partners, across government. In particular, WorkSafe has formal partnership with the Victorian Department of Health, Beyond Blue, WorkSafe agents, self-insurers and treating health practitioners, and works closely with other government departments and agencies.

In relation to the implementation of the proposed psychological health regulations, WorkSafe will continue to work with the *Risk to Psychological Health Working Group*, who support the design and delivery of strategic occupational health and safety initiatives. Members of the working group keep their own members informed of initiatives and emerging issues.

6.1.3 Who will monitor implementation?

Monitoring of implementation, including identification and management of implementation risks, will be undertaken by WorkSafe.

6.2 Evaluation Strategy

Usually for a reform with impacts of this scope, a mid-term evaluation would follow implementation of the proposed regulatory changes. However, given the OHS regulations as a whole will expire in five years, evaluation of the proposed changes will be folded into the broader review of the OHS regulations prior to their remake.

Evaluation for the proposed regulations will follow similar methodology laid out in the 2017 OHS Regulations RIS. It is likely that the evaluation for the proposed psychological health Regulations will be incorporated into the broader review of the OHS Regulations 2017 which are due to sunset in the same year (2027).

WorkSafe will also explore whether a separate survey of PSC indicators would be warranted in addition to the above, as detailed in Appendix C.

WorkSafe has recently released its Mental Health Strategy 2021-2024, which has a comprehensive outcome monitoring framework and multiple indicators that will measure the extent to which:

- mental injuries are prevented, and Victorians' mental health is improved
- all Victorian workers with a mental injury are protected and have access to support
- employers' and employees' capability is improved to create mentally healthy workplaces.

There is an obvious complementarity between what this framework will measure and the outcomes to be measured from the proposed regulatory changes. These will be used in addition to the above to help inform WorkSafe of the scale and attribution of behavioural change.

Key methods of evaluation and indicators that WorkSafe will develop as part of its evaluation strategy are summarised in Table 6.2.

Table 6.2 Evaluation indicators

Indicator	Method of evaluation
<p>Changes in PSC scores</p> <p>Specifically, whether or not:</p> <ul style="list-style-type: none"> • employers and employees consider mental health to be of equal importance to physical health • employers develop and implement practices, and demonstrate leadership behaviours to create a positive safety culture around mental health • employers communicate with and involve 	<p>WorkSafe's mental health strategy includes and outcomes monitoring framework that uses information from PSC surveys. WorkSafe will explore whether a separate survey of PSC indicators would be warranted in addition to the above.</p>

-
- employees and health and safety representatives (HSRs) in matters of psychological health and safety, and
 - employers and employees will have further developed knowledge in relation to psychosocial hazards and how to control them.

Employers' understanding of obligations

Survey data around employers' understanding of risk management process, compliance and understanding of their obligations. Here, WorkSafe will be looking to see an increase from the estimates used in this RIS.

Number of incidents reported

WorkSafe expect to see an increase in numbers at the start of the process as employers and employees become more knowledgeable of mental health in the workplace. WorkSafe is aiming for a decrease in the medium to long term to demonstrate efficacy of controls.

Work outcomes

Collection of data on absenteeism, presenteeism and productivity measures in workplaces. WorkSafe will be looking to see improvements in these indicators as well as a decrease in claims.

Compliance and enforcement

WorkSafe will also evaluate trends in compliance and enforcement notices, infringements and prosecution rates. WorkSafe expect that these rates will increase in the short-term as employers and employees become more knowledgeable of mental health in the workplace as they will be more likely to act. Again, WorkSafe will be looking for a long-term decrease to demonstrate the regulations efficacy, and will incorporate in its evaluation strategy analysis of changes in PSC in Victorian workplaces over time to assess the effectiveness of the intervention (see Appendix C).

Appendix A Consultation Summary

A.1. Breakdown of survey respondents

Survey responses were received from a wide cross-section of businesses of different sizes, locations and industries.

In relation to business size, survey respondents were spread relatively evenly across small, medium and large businesses (Table A.1). Only 7 per cent of responses were from sole traders.

Table A.1 Proportion of survey respondents by business size

Business size	Number of employers	Proportion of respondents
Sole trader	Self-employed	7 per cent
Small business	1-19 employees	29 per cent
Medium business	20-199 employees	34 per cent
Large business	200+ employees	29 per cent

Source: Deloitte Access Economics survey data

The majority of respondents were from metropolitan Melbourne (66 per cent) with the remaining responses submitted by those from regional Victoria (24 per cent). Many of the survey responses originated from six key industries (Table A.2).

Table A.2 Proportion of survey respondents by industry

Industry	Proportion of respondents
Construction	17 per cent
Professional, scientific and technical services	15 per cent
Health care and social assistance	13 per cent
Manufacturing	12 per cent
Education and training	11 per cent
Transport, postal and warehousing	10 per cent
Other	22 per cent

A.2. Common themes from stakeholder engagement

Survey responses and targeted follow-up consultations suggest that some employers understand and comply with their existing legislative obligations to prevent mental harm in the workplaces. However, other employers would need to undertake new or different action in response to the proposed amendments. The associated impacts and training costs would be dependent on business size and implementation.

A.2.1. Some employers understand and meet their existing obligations

Stakeholder feedback confirmed that some employers understand their existing obligations to protect employees from mental harm. According to survey results, around 40 to 50 per cent of respondents already undertake measures to address these risks (e.g. risk management process similar or equivalent to Component 1). Survey results suggest that compliance with current obligations depends on business size.

Targeted consultations suggest that familiarity and understanding of controls will vary between industry according to role functions. For example, work related violence and trauma was considered well understood for frontline emergency services including police and healthcare workers. This was contrasted against farmers or retail workers who are less exposed to high stress situations on a daily basis. Peak bodies, representing both employers and employees, consider mental health an important workplace safety consideration. Peak bodies assert that they understand and communicate to their members the duty to prevent mental harm in the workplace.

This stakeholder feedback assisted in the refinement of proposed options. For example, mandatory risk assessment was not progressed after targeted consultation where some stakeholders noted that mandatory risk assessment was an approach which had been removed from the OHS regulatory framework in 2007 because it was considered disproportionately burdensome and focused on assessing risk, rather than controlling the risk as quickly as possible in cases where employers were confident to do so. The 2017 sunset review of the OHS regulations found that restoring this approach would have been disproportionate.

A.2.2. Burden will depend on business size and maturity

Consultation suggested that where employers are not already meeting their existing obligations relating to mental health risks, and where the proposed amendments prompt new or different activities to do so, the costs of those activities are expected to vary based on business size. For example, introducing risk management processes to address mental health (if these are not already in place) is expected to be more costly for smaller businesses.

Targeted consultation confirmed that most self-insurers and other large employers in Victoria currently have good capability and established processes with regards to controlling mental risk, albeit within the diversity and inclusion paradigm rather than within a health and safety framework. One participant raised concern that introducing these regulations will require this work to be redone, adding implementation costs but potentially leading to the same outcomes. Larger businesses are more likely to have capacity and capability to absorb these costs and are less likely to require external advice on how best to meet their general duty in the context of mental health.

A.2.3. Education and training will comprise a large proportion of implementation costs

From the survey, those respondents who anticipated incurring additional costs suggested that these would largely be attributable to training and education costs. These costs may be associated with developing and understanding risk management processes and the policies to support them. Risk management processes were seen as the biggest step in terms of a cultural shift. Survey respondents also suggested that there would be costs associated with training employees to use new systems to meet record keep and reporting requirements.

One targeted consultation participant also raised that a phased approach to implementing the regulations given uniform implementation could lead to high demand on education and compliance facilitators.

A.2.4. Implementation approach is critical

Survey respondents emphasised that the implementation approach and associated further guidance material from WorkSafe will be critical. Specifically, the implementation approach will:

- clarify best practice approaches to mitigating risk given the complex nature of mental health, and
- provide certainty for industry in relation to when and how to control mental risks and harm in practice.

Consultation participants were also concerned the proposed regulations will place equal or disproportionate emphasis on process and procedural requirements at the expense of safety outcomes. In particular, the prevention plan regulations were flagged as having the potential to lead to unintended consequences if not appropriately supported by guidance or effectively enforced in which case they would be conceived as setting up duty-holders to fail. In implementing these regulations, the distinction between identification, control and prevention will need to be clearly stated. Evaluation of the regulations throughout their 5 year lifetime was considered crucial to determine whether they have reduced risk, claims and the social cost associated with psychosocial hazards.

Appendix B PSC-12 questionnaire

Management commitment

1. In my workplace senior management acts quickly to correct problems/issues that affect employees' psychological health.
2. Senior management acts decisively when a concern of an employees' psychological status is raised.
3. Senior management show support for stress prevention through involvement and commitment.

Management priority

4. Psychological well-being of staff is a priority for this organisation.
5. Senior management clearly considers the psychological health of employees to be of great importance.
6. Senior management considers employee psychological health to be as important as productivity.

Organisational communication

7. There is good communication here about psychological safety issues which affect me.
8. Information about workplace psychological well-being is always brought to my attention by my manager/supervisor.
9. My contributions to resolving occupational health and safety concerns in the organisation are listened to.

Organisational participation

10. Participation and consultation in psychological health and safety occurs with employees', unions and health and safety representatives in my workplace.
11. Employees are encouraged to become involved in psychological safety and health matters.
12. In my organisation, the prevention of stress involves all levels of the organization.

Appendix C Impact of components on PSC

The impact of each component of the proposed Regulations on the PSC and each subscale was assessed in collaboration with WorkSafe Victoria with results shown in Table C.1. Each component was awarded an ordinal score out of 5 based on the anticipated potential impact of the component on each of the PSC subscales. These ordinal scores were then summed and used to assign a relative weight to each component in terms the proportion of any overall impact on PSC that would be attributed to each component.

Table C.1 Impact of revised components on PSC

PSC Subscale	Component 1: Risk management process	Component 2: Prevention plans	Component 3: Reporting requirements
<i>Management commitment</i>	3	2	2
<i>Management priority</i>	2	2	1
<i>Organisational communication</i>	3	1	0
<i>Organisational participation</i>	3	1	0
Total Score	11	6	3
% total impact	55%	30%	15%

Source: Consultation with WorkSafe Victoria

Limitation of our work

General use restriction

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