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Chief Executive Officer
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19 January 2022

Dear Mr Radford

**REGULATORY IMPACT STATEMENT FOR THE OCCUPATIONAL HEALTH AND SAFETY
(PSYCHOLOGICAL HEALTH) AMENDMENT REGULATIONS 2022**

I would like to thank your staff at the Victorian WorkCover Authority (WorkSafe) for working with the team at Better Regulation Victoria on the preparation of the Regulatory Impact Statement (RIS) for the Occupational Health and Safety (Psychological Health) Amendment Regulations 2022 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SL Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is appropriate to the proposal's expected effects. The RIS also needs to be clearly written, so it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 January 2022 meets the adequacy requirements of the SL Act.

Background and problem

Trends in workers compensation claims data show growth in the number, cost and duration of claims for work-related mental injury. The proportion of mental injuries as a share of overall workers compensation claims has increased. In Victoria, the average duration of a claim for mental injury is more than double the average duration for other injuries. Recent inquiries into mental health, and work health and safety including the Review of the model Work Health and Safety laws (the Boland Review), the Productivity Commission's inquiry into mental health and the Royal Commission into Victoria's Mental Health System have also found that mental injury in workplaces is a growing and

significant problem. However, workplaces and work can support good mental health and wellbeing.

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

WorkSafe outlines a framework in the RIS for understanding the causes of mental injury. It explains that workplace factors can lead to psychosocial hazards in the workplace, which in turn can lead to psychological responses and mental or physical harm. In this framework, when workplace factors are poor, such as poor management of work, these factors can become psychosocial hazards.

Under Victoria's *Occupational Health and Safety Act 2004* (the OHS Act) an employer must, so far as is reasonably practicable, provide and maintain for employees a working environment that is safe and without risks to health. The OHS Act further defines health to include psychological health. Currently, the duty is supported by guidance material, education and awareness campaigns, and compliance and enforcement activities. However, there are no regulations specifically addressing psychosocial hazards.

WorkSafe explains that there are four key problems with the current regulatory framework with respect to psychosocial hazards:

1. A lack of understanding by employers of their obligation to control psychosocial hazards, and of the nature of those hazards;
2. A lack of knowledge of how to control psychosocial hazards;
3. A lack of prioritisation of mental health; and
4. A perception by some employers that the costs of complying and creating a mentally healthy workplace are high and the benefits are low, meaning these employers are less likely to comply.

Options

In the RIS, WorkSafe explains that it has considered non-regulatory options to address psychosocial hazards, but these options will not sufficiently address the problems. WorkSafe notes that, in relation to mental health, it already has a suite of publicly available guidance material, provides support for employers to comply and undertakes education campaigns. It notes that it will develop a compliance code providing comprehensive guidance on how to comply with their obligations under the OHS Act, but regulatory amendments are also required.

WorkSafe states that Regulations provide a framework for duty holders and provides compliance and enforcement powers that other tools cannot. Therefore, only regulatory options are analysed in detail in the RIS.

WorkSafe analyses options with one or more of the following three components:

1. a risk management process requiring employers to identify and control psychosocial hazards (and review this process as necessary);
2. a written prevention plan which employers are required to prepare for a list of prescribed psychosocial hazards when these hazards are identified through the risk management process. Prescribed psychosocial hazards include bullying, high-job demands, sexual harassment, trauma and workplace violence; and
3. reporting requirements for employers to periodically report de-identified data on psychosocial incidents relating to work-related violence, bullying and sexual harassment to WorkSafe. These requirements will only apply to employers with more than 50 employees.

It analyses four options:

- Option 1 – a risk management process
- Option 2 – a risk management process and reporting requirements
- Option 3 – a risk management process and a written prevention plan
- Option 4 – a risk management process and a written prevention plan and reporting requirements (the preferred option).

WorkSafe undertakes a cost-benefit analysis (CBA) to analyse these options. It discusses uncertainty about the costs and benefits of the options, explaining that:

- there is an evolving state of knowledge about psychosocial hazards;
- the responses of employers are likely to vary considerably by type of employer; and
- the impacts depend on implementation and support given to employers from WorkSafe.

Given this significant uncertainty, WorkSafe uses a scenario of hazard assessment and control through staff training, to estimate possible costs and benefits. WorkSafe explains that the scenario is not a mid-point estimate of likely impacts but rather an indication of one possible set of impacts.

Using this scenario, it estimates the costs of options for each of the three components above over a five-year period, given the Occupational Health and Safety Regulations 2017 (principal Regulations) will sunset in 2027. Costs include both time costs for employers or managers undertaking required actions and time costs for staff consultation/training. It explains that estimates are based on conservative assumptions and that most employers will actually have lower costs than modelled costs. It estimates that for the preferred option:

- the risk management process will cost \$1.4 billion over five years;
- written prevention plans will cost \$640 million over five years; and
- reporting requirements will cost \$350 million over five years.

WorkSafe estimates costs for small, medium and large businesses for the next five years. It estimates that the requirements will cost the average small businesses \$6,000 per year over, the average medium business \$44,000 per year and the average large businesses \$555,000 per year.

WorkSafe explains that the benefits of the proposed Regulations will come from increasing awareness of psychosocial hazards and ensuring they are appropriately identified and controlled by employers. It notes that the potential benefits of the Regulations are substantial and include reducing mental illness and injury as well as improving workplace productivity. Employees and employers will both benefit from the Regulations.

To estimate benefits, WorkSafe draws on the concept of the psychosocial safety climate (PSC) of a workplace from the Australian Workplace Barometer report. WorkSafe notes that around one-third of Victorian employers are classified as high risk. The CBA only estimates benefits from reducing risk in workplaces of high-risk employers – i.e., benefits are not estimated for low- and medium-risk employers.

The CBA involves an illustrative scenario where all high-risk employers:

- must undertake new or additional identification and control activities;
- 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; and
- repeat the process at least once per year.

It is assumed that these actions reduce psychosocial risk for 25 per cent of high-risk employers, so that these employers become medium-risk employers. WorkSafe estimates that in this scenario, the gross benefits of the preferred option would be \$2.5 billion over five years. It explains that estimates of the scale of the potential benefits and the relative importance of different components were based on advice from WorkSafe’s occupational health and safety experts and other stakeholders, and were then tested against the latest literature including the burden of mental injury. Based on this advice, it is assumed that component 1 accounts for 55 per cent of the benefits, component 2 accounts for 30 per cent of the benefits and component 3 accounts for 15 per cent of the benefits.

WorkSafe notes that the preferred option, Option 4, does not have the greatest net benefit in the CBA but does have the greatest gross benefit. Option 3, which does not include reporting requirements, has a higher net benefit. WorkSafe explains that Option 4 is preferred because capturing additional information through reporting requirements will help WorkSafe and employers better understand psychosocial hazards in workplaces and improve any future regulatory interventions. These benefits are not captured in the CBA.

WorkSafe states in the RIS that its impact analysis is illustrative and invites stakeholder feedback on the likely impact of the proposed Regulations.

Implementation and evaluation

In the RIS, WorkSafe explains that the proposed Regulations are anticipated to take effect on 1 July 2022, and that it is still in the process of finalising its implementation plan. It states that key implementation activities include:

- determining organisational impacts and making necessary changes;
- developing and delivering education, guidance and a range of communication activities to promote awareness among employers;
- developing and delivering the proposed psychological health compliance code, in consultation with stakeholders;
- formally communicating regulatory amendments to stakeholders; and
- developing evaluation and data collection strategies.

In the RIS, WorkSafe notes that for regulatory amendments with impacts of this scale a mid-term evaluation would usually follow implementation. It explains that given that the principal Regulations will expire in five years, evaluation of the proposed Regulations will be folded into the sunset review and RIS in 2027. WorkSafe has recently released its *Mental Health Strategy 2021-2024* (the Strategy). It notes that this strategy complements the proposed Regulations and will help in evaluating them.

WorkSafe explains that evaluation of the proposed Regulations will assess the impacts using indicators including:

- changes in PSC scores in workplaces – the Strategy monitors outcomes using information from PSC surveys and will explore whether additional information is required;
- employers' understanding of obligations – this will be assessed using survey data on employers' understanding of risk management process, compliance and their obligations.
- number of psychosocial incidents reported;
- work outcomes including absenteeism, presenteeism and productivity in workplaces – benefits from the Regulations will be indicated by improvements in these indicators and a decrease in mental injury claims; and
- compliance and enforcement with the Regulations.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation