

# Managing the Risk of Psychosocial Hazards at Work Code of Practice

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- ▶ John is highly experienced in dispute resolution, focusing on the resolution of company disputes, commercial litigation and employment law.
- ▶ John also has considerable experience with employment contracts, unfair dismissal claims, privacy law, redundancy, restraints of trade, discrimination, sexual harassment and workplace health and safety investigations.
- ▶ Through his work, John has presented more than 40 legal papers to the legal, education, insolvency and accounting professions on topics including the duties of company directors, employment law, media law, education law and industrial relations reform.



# Managing Psychosocial Hazards Code of Practice



1 April 2023 – first legally enforceable Code of Practice addressing psychological health risks at work took effect in Queensland.



The Code of Practice aims to help businesses manage psychological health risks at work, as well as promote the mental wellbeing of employees.



Courts may regard the Code of Practice as evidence of what is known about hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.



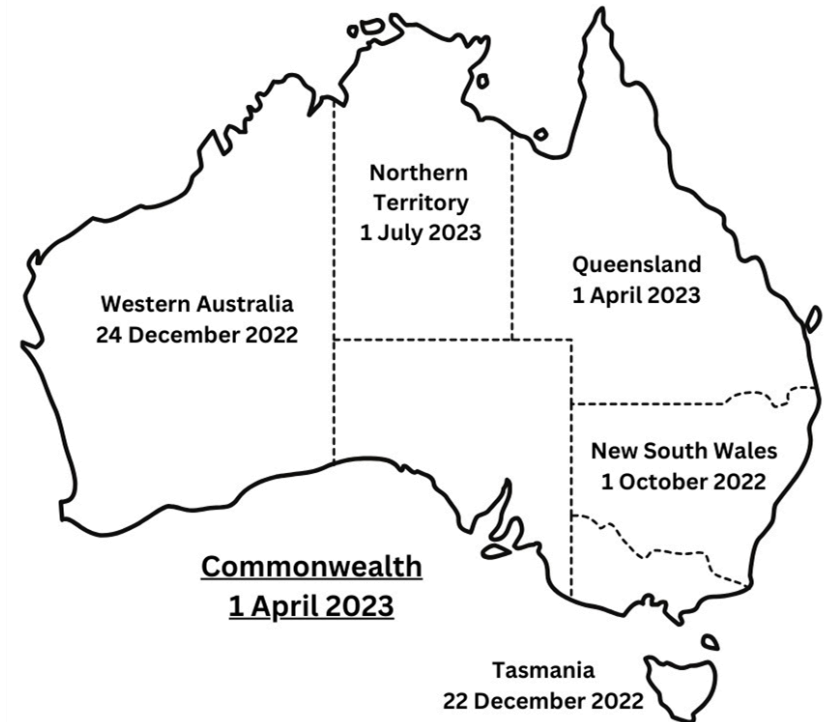
The Code applies to all Queensland workplaces and their need to managing work related psychological health risks.



It provides guidance on how to identify and assess psychological hazards, how to control and monitor risks as well as practical steps businesses can take to promote mental wellbeing.

# Managing Psychosocial Hazards Code of Practice

- ▶ Other states commenced/will commence these regulations as outlined.
- ▶ Victoria will require employers to eliminate or minimise the risks and to prepare a written prevention plan identifying measures to control the risk.
- ▶ These proposed changes will apply to all workplaces, regardless of their size or composition.



# Understanding the Code of Practice

## What is the Code of Practice?

- ▶ An approved code under section 274 of the Work Health and Safety Act 2011.

## Must it be complied with?

- ▶ Yes – under section 26A, a person conducting a business or undertaking (PCBU) must comply with an approved code of practice. It is also “evidence” of what is “known” in court proceedings.

## Are the obligations set out in the code new?

- ▶ No – the Act has long imposed an obligation on PCBUs to manage risks to physical and psychological health, as far as reasonably practicable. The code of practice codifies that process of identification, assessment and management response which is directly relevant to all employers and PCBUs.

# Understanding psychosocial hazards

## What is a psychosocial hazard? (WHS Regulation 5A)

- ▶ *“...a hazard that arises from, or relates to, the design and management of work, a work environment, plant at a workplace, or workplace interactions and behaviours and may cause psychological harm, whether or not the hazard may also cause physical harm.”*



# Psychosocial Hazards

- ▶ “psychosocial hazards can create harm through a worker’s experience of a frequent, prolonged and/or severe stress response, where stress is defined as a person’s psychological response (e.g. anxiety, tension) and physiological response (e.g. release of stress hormones, cardiovascular response) to work demands or threats.

# Common Psychosocial Hazards

- ▶ high and/or low job demands
- ▶ low job control
- ▶ poor support
- ▶ low role clarity
- ▶ poor organisational change management
- ▶ low reward and recognition
- ▶ poor organisational justice



# More Common Hazards

- ▶ poor workplace relationships including interpersonal conflict
- ▶ remote or isolated work
- ▶ poor environmental conditions
- ▶ traumatic events
- ▶ violence and aggression
- ▶ bullying
- ▶ harassment including sexual harassment

# Responsibilities

## **Who has a duty in respect to psychosocial hazards?**

- ▶ Person conducting a business or undertaking (PCBU)
- ▶ The primary duty of care
- ▶ Example: A PCBU must ensure, so far as is reasonably practicable, there is a safe work environment, safe systems of work, and sufficient information, training, instruction and supervision to ensure the risk of sexual harassment at work is eliminated or minimised

# Who Else?

- ▶ Managers
- ▶ A PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering/exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

# Who else owes a duty?

- ▶ Designers, manufacturers, installers, importers, and suppliers of plant, substances and structures
- ▶ Example: Taking reasonable steps to design workspaces that reduce the risk of work-related violence and aggression or designing plant to ensure that the cognitive demands for operating it do not create a psychosocial risk

# “Officers” of a PCBU

- ▶ Officers (company directors, senior managers and executives)
- ▶ An officer of a PCBU (e.g. company directors, senior managers or executives), must exercise due diligence to ensure PCBUs comply with duties under the WHS laws.
- ▶ Example: Taking active measures to confirm that the PCBU has allocated sufficient resources to health and safety and has considered risks from psychosocial hazards, implements control measures to manage identified risks, and reviews the effectiveness of those control measures.

# Workers

- ▶ Workers owe a duty to:
  - take reasonable care for their own health and safety, including psychological health
  - take reasonable care their acts or omissions do not adversely affect the health (including psychological health) and safety of other persons
  - comply, so far as the worker is reasonably able, with reasonable instructions given by a PCBU
  - cooperate with reasonable health and safety policies or procedures issued by a PCBU that have been notified to workers.

# Workers . . .

- ▶ Example: workers must cooperate with reasonable policies relating to work-related bullying, work-related violence and aggression, sexual harassment or other forms of harassment.

# “Other Persons”

- ▶ Other persons at the workplace (e.g. visitors, delivery people, customers, clients, and patients and their families) must:
  - take reasonable care for their own health and safety
  - take reasonable care not to adversely affect other people’s health and safety by exposing them to psychosocial hazards
  - comply, so far as they are reasonably able, with reasonable instructions given by a PCBU to allow them to comply with the WHS Act.



# Visitors

- ▶ Example: Visitors and others at a workplace must comply with any reasonable behavioural standards instructed by a PCBU, and adhere, so far as reasonably able, to site rules and procedures. This includes standards from the PCBU regarding prohibitions on violence and aggression, bullying and sexual harassment.

# Aspects of the duty

- ▶ It cannot be delegated
- ▶ It cannot be contracted away
- ▶ More than one person can have a duty
- ▶ One person can have a duty in several capacities
- ▶ What about personal issues relating to a worker?

# Responsibilities

## What is the duty?

- ▶ Section 20(2) – The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

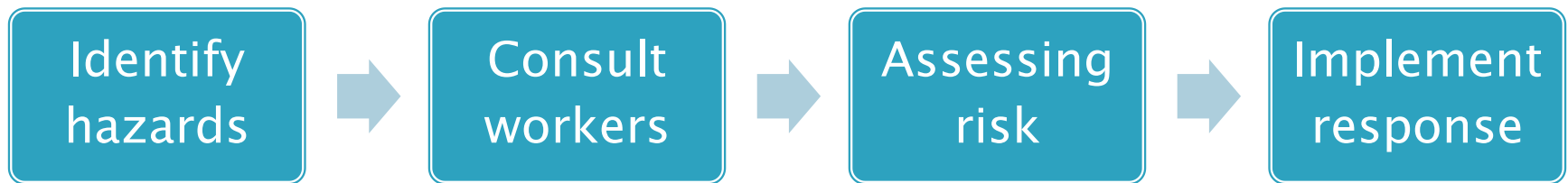
## “Reasonably practicable” – is that a “get out clause”?

- ▶ No – subjective concept but all relevant matters are to be considered. Question of balance.

# “Reasonably Practical”

- ▶ ‘Reasonably practicable’, in relation to a PCBU’s duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, taking into account and weighing up all relevant matters.
- ▶ It is a subjective assessment depending upon the circumstances.

# How do you manage psychosocial risks and hazards?



# The Duty to Identify Hazards

- ▶ PCBU's must identify reasonably foreseeable psychosocial hazards that could give rise to risks to health and safety.
- ▶ Psychosocial hazards can arise from or relate to:
  - the design or management of work
  - a work environment
  - plant at a workplace, or
  - workplace interactions or behaviours

# How to Identify?

- ▶ Site assessments
- ▶ Observe
- ▶ Walk around
- ▶ Hold discussions
- ▶ Think!

# Who is at risk?

- ▶ Examples of workers who may be at higher risk include workers with:
  - limited work experience (e.g. young workers, apprentices or trainees)
  - barriers to understanding (e.g. literacy/language)
  - perceived barriers to raising safety issues (e.g. workers engaged in insecure or precarious work)
  - certain attributes, such as sex, race, religious beliefs, pregnancy, gender identity, sexuality, age, or a combination of these attributes
  - an injury or illness preventing them from performing their full or normal duties.



# Consultation is key!

- ▶ PCBU's must consult workers when identifying hazards and assessing risks to health and safety.
- ▶ Workers will generally be aware of aspects of work which create, or are likely to create, psychosocial hazards and may have suggestions on how to manage these hazards

# What are you looking for?

- ▶ stressed or emotionally exhausted by workload
- ▶ anxious or scared about an aggressive customer or client
- ▶ humiliated, degraded or undermined by sexual harassment, other forms of harassment, discrimination, or bullying
- ▶ coerced to work beyond capacity (also understaffing)
- ▶ angry about policies being applied unfairly
- ▶ confused about what their role involves, torn between competing priorities or 'feeling like a failure' for not being able to meet unrealistic expectations
- ▶ distressed or unable to sleep from exposure to traumatic situations or content
- ▶ concerned that information, training is inadequate

# Assessment

- ▶ A risk assessment should be carried out for any psychosocial hazards that have been identified where the risk of the hazard(s) are not well-known. This includes where there is uncertainty about the:
  - likelihood or severity of consequences
  - how a psychosocial hazard may result in injury or illness
  - how psychosocial hazards may create new or greater risks
  - how changes at work may impact the effectiveness of control measures, or
  - ways of eliminating or minimising the risk.

# Implementation

- ▶ Under the WHS Act, a duty to ensure health and safety means PCBUs must eliminate risks to health and safety, so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, the risks must be minimised so far as is reasonably practicable.

# Examples

- ▶ Examples of eliminating psychosocial hazards include:
  - the introduction of rosters that provide advance notice of work hours schedules to eliminate the hazard of highly unpredictable work hours
  - self-service to eliminate workers interacting with customers
  - refusal of service to customers with higher risk of violence or abuse
  - setting achievable performance standards and workloads for the number of workers, work hours and their skill sets.

# What does this mean?

- ▶ Same old, same old?
- ▶ Will people be prosecuted?
- ▶ Penalties? Huge.
- ▶ Policies
- ▶ What to do if there is an incident?
- ▶ Report
- ▶ Lawyers?
- ▶ Every day is “RUOK?” day