

Psychosocial Risks and Your Legal Obligations in the Workplace



What are Psychosocial Hazards & Risks

Psychosocial hazards - anything in the workplace that has the potential to cause psychological harm.

Psychosocial risks - risks to the health or safety of a worker arising from a psychosocial hazard.

What are some examples of psychosocial hazards in the workplace?



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Psychosocial hazards that arise at work



SafeWork SA

Examples of psychosocial hazards in the workplace

Harmful Behaviours - Bullying, harassment, aggression, discrimination, conflict or poor workplace relationships.

Poor Support – Training, resources or from supervisors or colleagues

Poor Role Clarity - Unclear responsibilities, expectations or changing priorities.

High or Low Job Demands - Excessive workloads, long hours, emotional strain, repetitive work, or insufficient challenges/not enough work to do

Poor Organisational Justice - Unfair processes, inconsistent decisions, poor communication or lack of respectful treatment

Examples of psychosocial hazards in the workplace

Traumatic Events or Material - Exposure to distressing, confronting or emotionally harmful situations.

Poor Organisational Change Management - Poorly planned or communicated workplace change with inadequate support or training.

Poor Physical Environment - Unsafe, uncomfortable or distracting workplace conditions.

Inadequate Reward & Recognition - Lack of feedback, recognition, career opportunities or fair rewards.

Low Job Control – Little autonomy over how work is done. .

Remote or Isolated Work - Limited support, communication difficulties, or isolation from assistance and resources.

How do they cause harm?

Work-related stress itself is not an injury

however

if it becomes *frequent, prolonged or is severe in nature*, it may cause harm to the health of a worker.

The risks are then that the level of stress experienced develops into:

- Anxiety
- Depression
- Sleep Disorders
- Burnout
- Post Traumatic Stress disorder (PTSD)

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If you could address one workplace hazard immediately,
what would it be?

Harmful Behaviours

Poor Support

Poor Role Clarity

High or Low Job Demands

Poor Organisational Justice

Traumatic Events or Material

Poor Organisational Change Management

Poor Physical Environment

Inadequate Reward & Recognition

Low Job Control

Remote or Isolated Work



Why Manage Psychosocial Hazards

- Impact on workplace health & safety
- Impact on productivity
- Legislative obligations and consequences
 - Work Health & Safety Act & Fair Work Act

WHS Act - Category 1, 2 & 3 offences

- Recklessly expose someone to risk of death or serious injury/illness.
 - PCBU or Officer - \$2.368 million + up to 5 years imprisonment;
Other Individual \$1.183 million + up to 5 years imprisonment
- A duty is breached, which exposes someone to risk of death or serious injury/illness
 - PCBU or Officer - \$475,000; Other Individual \$237,000
- A WHS duty is breached / even if there is no exposure to serious risk proven.
 - PCBU or Officer - \$475,000; Other Individual \$237,000

WHS Act

- Person Conducting a Business or Undertaking (PCBU) has a primary duty of care
- Officers
- Workers

Why Manage Psychosocial Hazards?

- Changing nature of workforce & challenges
- Workers Compensation Claims - Work-related mental health conditions are on the rise and account for almost 10 per cent of all serious workers' compensation claims.

Mental health conditions accounted for:
10.5% or 14,600 claims in 2022-23.

This is a 19.2% increase on 2021-22, and
a
97.3% increase compared with 10 years
ago

Longer recovery times - poorer return
to work outcomes

Higher costs - median compensation
was more than 3 times greater

Require more time away from work -
median time lost was more than 4
times greater

Elisha v Vision Australia Ltd [2024] HCA 50

- Mr Elisha worked for Vision Australia for approximately nine years. He had generally performed well and there had been no formal disciplinary findings against him.
- Allegations were made against him, relating to conduct during a work trip.
- Vision Australia commenced an investigation.
- Relied on previous allegations and historical complaints that had never been raised with him for response,
- Importantly, Mr Elisha was not given a proper opportunity to respond to those additional matters.
- This was contrary to its disciplinary procedures own disciplinary procedures requiring procedural fairness
- Vision Australia concluded Mr Elisha had engaged in serious misconduct and terminated his employment.

- Mr Elisha was later diagnosed with major depressive and adjustment disorders.
- His psychiatric condition was linked to the manner in which the disciplinary process and dismissal were handled.
- The psychiatric injury was not merely upset or distress from losing a job – it was a medically recognised psychological condition.

Elisha v Vision Australia Ltd [2024] HCA 50

Learnings:

Trial judge awarded over \$1.4 million in damages for psychological injury.

High Court confirmed:

- damages can be awarded for psychiatric injury caused by the manner of dismissal;
- psychological harm from flawed dismissal processes is reasonably foreseeable; and
- failure to follow contractual disciplinary procedures can create significant liability.

Decision significantly increases employer risk in investigations, disciplinary action and dismissals.

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The Risk Management Approach (the 'how to')

Step 1 – Identify Hazards

- Consultation
- Reviewing relevant data and tools
- Direct Observation
- Survey Tools

Step 2 – Assess the Risks

1. How severe is the risk
2. How urgently do you need to take action.
3. Options for what action you can take to control the risk.

A risk assessment helps you to consider **what could happen** if someone is exposed to a psychosocial hazard, the **degree of harm** and the **likelihood** of that outcome.

Step 3 – Control the Risks

You must eliminate or minimise risks (as far as reasonably practicable).

Hierarchy of controls



Step 4 – Review

Ensure controls are working as planned and make changes as required.

This should be done regularly



Record Keeping

Gairns v Pro Music Pty Ltd (2024)

- Mr Gairns had been employed by Pro Music Pty Ltd as an Internal Sales Supervisor, having worked with the company from 1997 to 2003 and then again from 2005 until the February 2019.
- During his tenure, the “odd word” had been spoken to Mr Gairns over the years in reprimand of the frequency of his smoking breaks and talking too much on the job about his personal life and matters unrelated to work.
- In 2019, the Managing Director, decided that as part of a company re-structure, Mr Gairns was no longer suitable to undertake his supervisory role as he was not performing well and that Mr Evans, another employee was a better fit to undertake these duties and this would now be National Sales Manager position.
- It was decided that Mr Gairns was better suited to an internal sales role, removing his supervisory duties, and this would include a salary reduction of \$4,000-\$5,000.
- Pro Music were aware that Mr Gairns had pre-existing psychological vulnerabilities, including anxiety and stress-related issues and most recently, he had been visibly distressed at work due to personal matters.

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Case Study 1 - Outcomes

- Just before the close of business on a Friday, the Managing Director had called Mr Gairns into an urgent meeting in an open plan office, where he was told that as of the following Monday, he would be demoted from his role and his salary would be reduced by \$4,000-\$5,000. The meeting lasted 15 minutes and Mr Gairns alleged that the MD raised his voice during the meeting.
- The meeting was overheard by two other employees leaving Mr Gairns humiliated over what had just transpired and he immediately left the office in a shocked and upset state.
- Minutes later the MD notified staff by email that Mr Evans had been moved to the new position of National Sales Manager.
- Mr Gairns's mental health significantly deteriorated following the meeting, resulting in ongoing symptoms of anxiety, stress and depression.
- Two months later, he resigned from his employment, unable to return to the workplace.
- He filed proceedings for the psychiatric injury sustained

The Court held that Pro Music owed a duty of care to take all reasonable steps to avoid unnecessarily exposing Mr Gairns to a risk of psychiatric injury and that the risk was **reasonably foreseeable** and not insignificant due to the office layout; his employment history; the knowledge of his emotional issues and the poor notice of the meeting. The Court awarded him damages in the sum of \$301,197

Lessons:

- employers have a duty of care when handling employment changes
- while businesses have the right to make decisions about restructuring, demotions, or pay cuts, they must do so in a manner that considers the psychological impact on employees
- employers must exercise procedural fairness during performance management

Mitigating Risk - Leadership Commitment

- Establish clear expectations from day one, provide regular constructive feedback via check ins and one-on-ones and address issues early
- Encourage communication - listen to employees and see if their concerns are valid – don't assume that they aren't
- Regularly review workloads
- Consider any health concerns raised by an employee and their effect, if any, on the employee's capacity for work
- Assist and offer resources, including training
- Move to a formal disciplinary process if there are performance issues
- Follow procedural fairness – notice, areas of concern, support person, opportunity to respond
- Obtain medical advice or direct employee to an Independent Medical Examination (IME) if mental health issues are raised during disciplinary action or where risks are identified

“Rules of Play” for the 2026 landscape

- ✓ Have your WHS policies been updated within the last 6 months to specifically address psychosocial hazards?
- ✓ Do you have a clear policy regarding after-hours communication and availability expectations?
- ✓ Is there a signed zero-tolerance policy covering harassment, bullying?
- ✓ Have you identified workflow bottlenecks or high-pressure areas contributing to stress and fatigue?
- ✓ Are role descriptions current, accurate, and clearly understood by staff?
- ✓ Have you assessed how new technology or AI tools may affect workload, stress, or fatigue?
- ✓ Have leaders and managers been trained to identify and respond to early signs of psychological harm?
- ✓ Do employees understand how to report psychosocial hazards or wellbeing concerns?
- ✓ Are regular WHS or wellbeing discussions documented through meetings or toolbox talks?
- ✓ Is there a documented return-to-work process following psychological injury or absence?

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Key Takeaways

- Leaders must understand and actively manage psychosocial health and safety obligations.
- Build a workplace culture that supports respectful behaviour, early reporting, and psychological safety.
- Maintain clear and current WHS policies that address psychosocial hazards and expected workplace behaviours.
- Consult regularly with employees about workload, role clarity, workplace pressures, and team wellbeing.
- Implement a psychosocial risk management process that is appropriate for the organisation's size and complexity.
- Take proactive action early to prevent issues from escalating into injuries, claims, or absenteeism.
- Maintain ongoing review and continuous improvement — psychosocial safety is not a “set and forget” process.

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Tools & Resources

- **Safework SA** - South Australia's workplace health and safety regulator and your primary resource for understanding how to effectively manage psychosocial health and safety risks in workplaces [https:// www.safework.sa.gov.au](https://www.safework.sa.gov.au)
- **SafeWork SA's psychosocial risk assessment tool template** - SafeWork SA provides a template to help workplaces develop a risk management plan to systematically review and address psychosocial hazards and risks within workplaces. This tool can be used for all sized businesses.
www.safework.sa.gov.au/__data/assets/pdf_file/0007/918691/Psychosocial-risk-assessment.pdf-SWSA-branded.pdf
- **Safe Work Australia:** the new national guidance material provides guidance on the cause of work-related psychological harm, advice on how to intervene early and ideas and strategies for taking preventative action <https://www.safeworkaustralia.gov.au/>
- **People at Work** - A free and validated Australian psychosocial risk assessment survey to identify and manage psychosocial hazards in workplaces. Suitable for businesses with 20 or more staff <https://www.peopleatwork.gov.au>

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Thank you and Questions

