



FlourishDx

What do the new WHS Regs mean for your company?

Introduction

The COVID-19 pandemic has taken a heavy toll on mental health across the globe. While one silver lining of the pandemic may be the increased focus on addressing mental health globally – what is less known is the legislative reform underway in Australia. These reforms that are now starting to take effect to improve the psychological health of Australian workers started back in 2018.

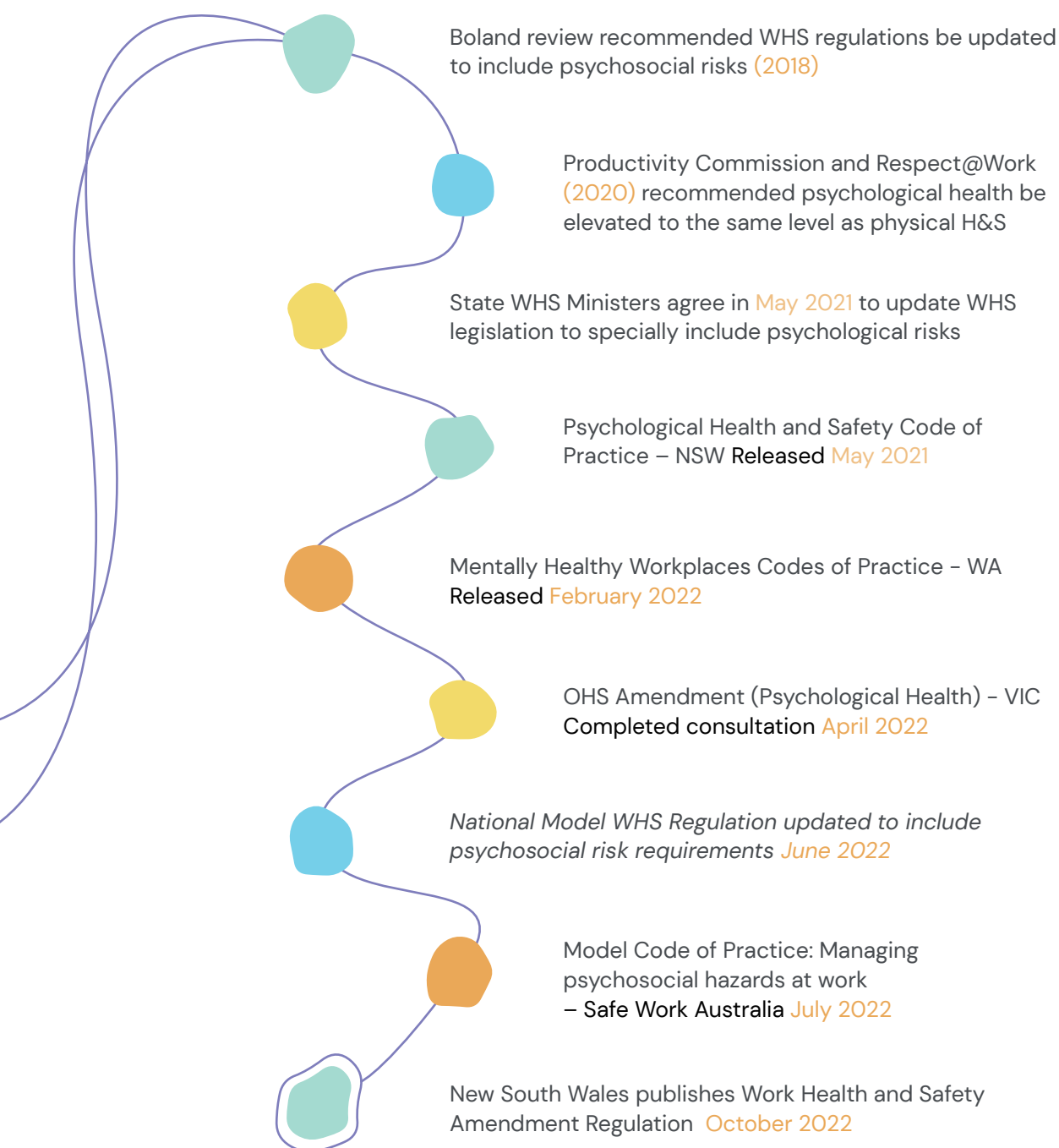
As many companies adjust to a hybrid way of working, navigating a shortage of talent, supply chain disruptions and rising costs; managing psychological health risk should be viewed as complementary to many of these challenges and sit at top of the C-suite's agenda.

How did we end up here?

Multiple Work Health and Safety (WHS) reviews, dating back to the Boland Review in 2018 delivered similar recommendations to elevate workplace psychological health and safety to the same level as physical health and safety through updates to legislation.

Worksafe Victoria summarises this sentiment as recognition that “hazards that pose a risk to psychological health are no less harmful to workers’ safety and wellbeing than physical hazards.”

Background to new regulation



State Ministers committed in May 2021 to update their respective regulations. Model WHS Regulations were updated in June 2022 for psychosocial risk management – providing guidance to the states. It is now up to the states to adopt these changes into their respective WHS legislation.

New South Wales is the first state to update its WHS legislation to incorporate psychosocial risk assessment, with the Work Health and Safety Amendment Regulation 2022 [NSW] coming into effect in October 2022.

What are psychosocial hazards?

Psychosocial hazards at work are aspects of work and situations that may cause a stress response which in turn can lead to psychological or physical harm¹.

Psychosocial hazards stem from:

- the way the tasks or jobs are designed, organised, managed and supervised
- tasks or jobs where there are inherent psychosocial hazards and risks
- the equipment, working environment or requirements to undertake duties in physically hazardous environments, and
- social factors at work, workplace relationships and social interactions

What is the problem regulators are solving?

The prevalence and cost of poor mental health to the Australian economy, employers, and individuals is unsustainable. The Federal government spent \$11.0 billion, or \$431 per person, on mental health-related services in Australia during 2019–20 with the vast majority of this expenditure on downstream, reactive services. Policy makers are seeking upstream, preventative actions in order to reduce the impact on an already struggling mental health system.

These legislative changes provide clear guidance to employers on their obligations to better protect their employees from psychological harm.

Economic and Social impact:

- Australia's Productivity Commission estimates that social and economic impacts of poor mental health costs the Australian economy up to \$200B–\$220B annually²
- 21.4% of all individuals struggle with some form of mental health issue over any given 12-month period,



meanwhile 43.7% of us will experience a mental health issue in our lifetime³

- There were 3,139 reported deaths due to suicide in 2020 (2,384 males and 755 females). Over 90% of people who died by suicide had risk factors identified including depression, substance use and abuse, and issues in spousal relationships⁴

Workplaces:

- Psychological workers compensation claims are growing at 15x the rate of physical claims, while also costing 6x as much to settle at \$85,000 average cost per claim corresponding to 175 days per claim⁵
- 3.4 days per person per annum are lost due to workplace stress alone
- Employee burnout is pervasive and underreported. Australia, according to McKinsey, reports the highest rate of burnout across regions analysed, with 61% reporting feeling at least somewhat burned out⁶

1 SafeWork NSW. Code of Practice for Managing psychosocial hazards at work May 2021

2 Productivity Commission Inquiry Report – Mental Health June 2020

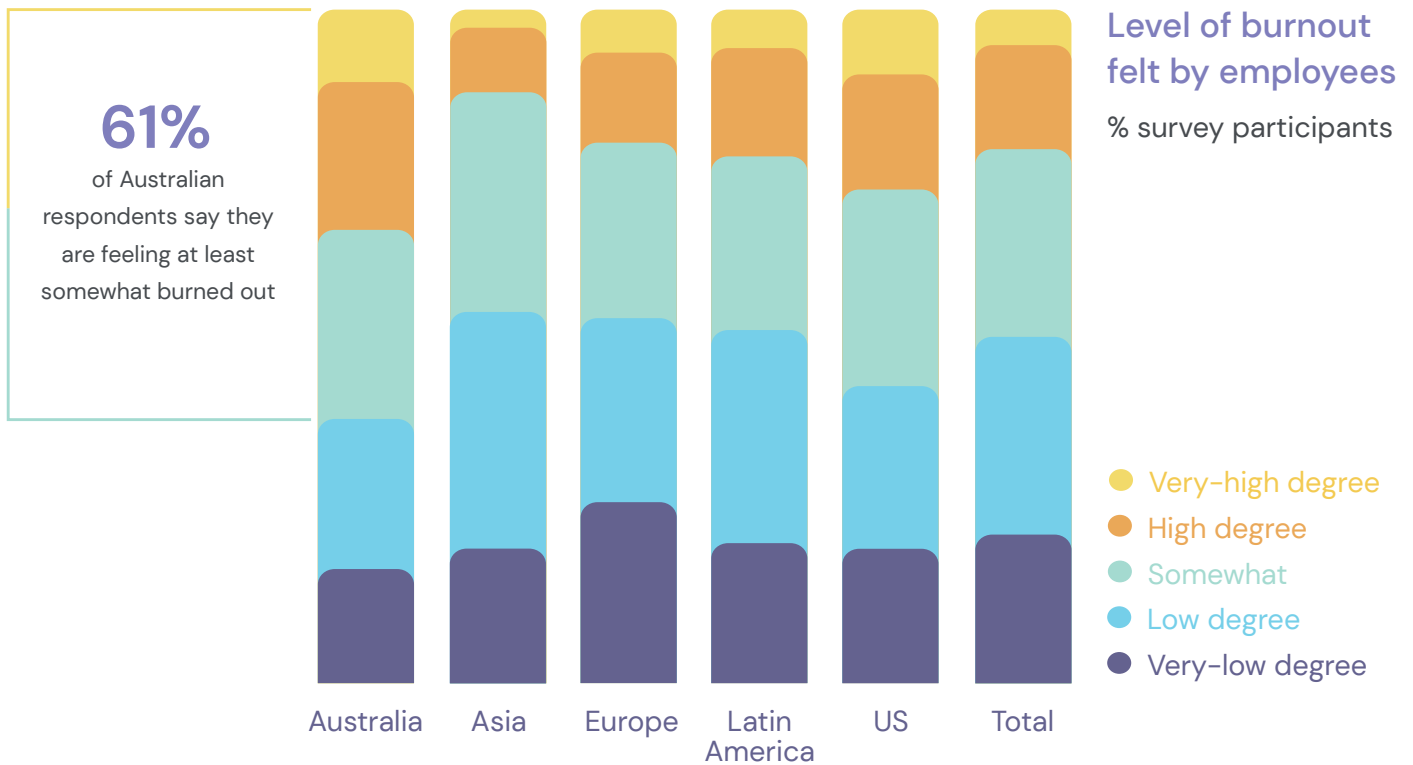
3 Australian Bureau of Statistics. National Study of Mental Health and Wellbeing July 2022

4 Australian Bureau of Statistic. Causes of Death September 2021

5 SafeWork NSW; growth compares 2014/15 to 2018/19 reporting period

6 McKinsey & Company 2021 Employee burnout is ubiquitous, alarming—and still underreported

Almost all employees report being at least somewhat burned out



Note: Burnout is likely underrepresented by our sample of full time employees, as employees experiencing burnout are less likely to respond to survey results, and those who feel the most burned out may have already left the workforce.

Source: McKinsey & Company 2021 Employee burnout is ubiquitous, alarming—and still underreported

The People Cost:

What is lost through the focus on the financial cost of poor mental health is that we are talking about the quality of life of our co-workers, friends, family and community members.

Measuring and reporting an organisation's direct impact on the mental health of its employees is perhaps the most overlooked ESG measure that quantifies how sustainable an organisation's practices are on its people – a topic for another day.

Lancet summarises the people impact in A New Resolution for Global Mental Health (2016): "Meanwhile, the burden on people living with mental disorders is incalculable. Many of these disorders are lifelong and cross generations; they also affect neighbours, friends, and beyond in a ripple of concentric circles."





What is required?

At a high level, updates to WHS regulation require employers to treat psychosocial risks in a similar manner to physical risks. Employers are required to identify psychosocial hazards, assess and mitigate risks, review the effectiveness of controls, demonstrate leadership commitment and consult with employees.

The New South Wales Regulations: Work Health and Safety Amendment Regulation 2022 [NSW] requires a duty holder to manage psychosocial risks in the same manner as other risks (Part 3.1), with the exception that the hierarchy of control measures (Clause 36) does not apply.

What does this mean? A duty holder must:

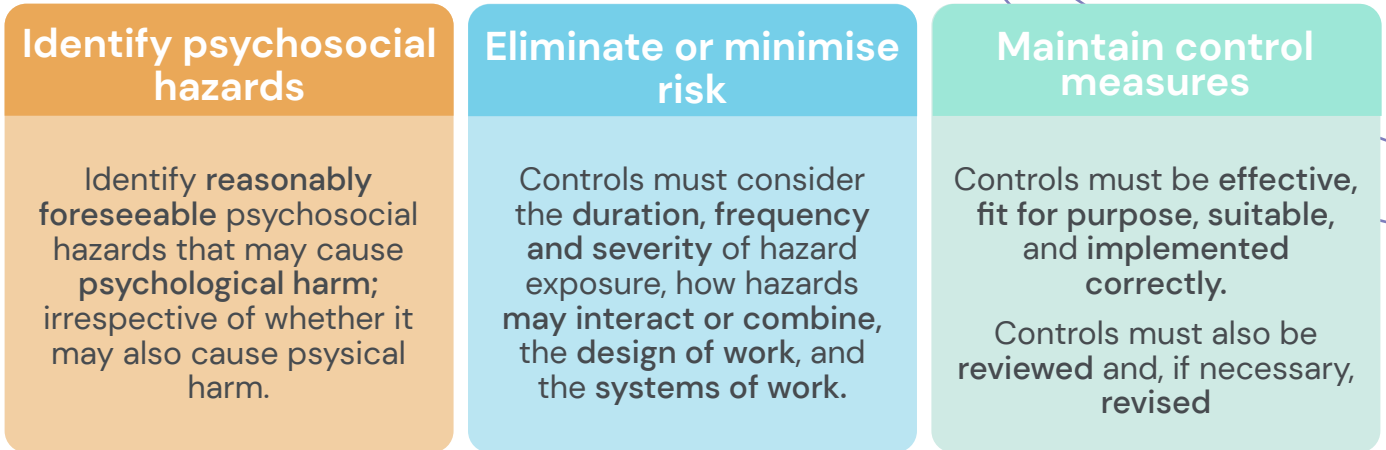
- **identify psychosocial hazards** that are reasonably foreseeable and that could give rise to risks to health and safety.
- **manage risks to psychological health and safety**
 - eliminate risks so far as is reasonably practicable, and
 - if elimination is not reasonably practicable, minimise the risks so far as is reasonably practicable
- **maintain an implemented control measure for psychosocial risk to ensure it is and remains:**
 - effective
 - fit for purpose
 - suitable for the nature and duration of work
 - installed, set up and used correctly

- **review and revise control measures for psychosocial risk** including in the following circumstances:
 - When the control measure does not control the risk it was designed to control.
 - Before a change at the workplace that is likely to give rise to a new or different risk that the measure may not effectively control.
 - A new relevant hazard or risk is identified.
 - Workforce consultation indicates that a review is necessary.
 - When a health and safety representative requests a review.

The Amendment Regulation also provides instruction on how to determine control measures to be implemented.

1. A PCBU must implement control measures to eliminate psychosocial risks so far as is reasonably practicable, and if elimination is not reasonably practicable, to minimise the risks so far as is reasonably practicable.
2. When determining the control measures to implement, the PCBU must have regard to relevant matters including:
 - a. the duration, frequency and severity of exposure to psychosocial hazards
 - b. how the psychosocial hazards may interact or combine
 - c. the design of work, including how work is managed, organised and supported
 - d. the design and layout, and environmental conditions of the workplace, including access and egress and welfare facilities

- e. the design and layout, and environmental conditions of workers accommodation
- f. the plant, substances and structures at the workplace
- g. workplace interactions or behaviours
- h. information, training, instruction and supervision provided to workers



Where to start?

Employers with operations in New South Wales need to ensure they comply with these regulations. Consideration needs to be given to the inherent differences between psychosocial hazards and physical hazards and potential differences once regulations are released/updated in other states. We recommend:

- gap analysis is undertaken to understand areas of improvement
- senior leadership are engaged to gain top-level support
- risk assessment, control measurement, review and a continuous improvement approach for psychosocial hazards are defined

- appropriate employee consultation is included at each stage
- changes are embedded into existing risk routines as appropriate

What is the impact on employers?

A regulatory impact statement prepared by Deloitte¹ was released alongside the draft regulation in Victoria. This statement identified the effort, cost and benefits of complying with this regulation.

The graphic below identifies the average impact on large businesses with >250 employees, the total cost of compliance will differ depending on the number of employees and complexity of hazards that exist within the organisation.



2.5

estimated average employee time required to comply with regulations



\$0.5M

estimated average annual costs of compliance for large businesses



1,098

hours of management effort required per organisation in the first year

¹ Deloitte Access Economics: Occupational Health and Safety (Psychological Health) Regulations Amendment. Regulatory Impact Statement 2022



Is this an issue for our Board to consider?

Yes. With workplace mental health moving from primarily an employment and HR issue into the realms of workplace health and safety, executives and the Board are responsible for ensuring this risk is managed. Directors have personal liability (up to and including jail time) as part of their due diligence obligations under the Work Health and Safety Act 2011. These obligations include a responsibility to reduce exposure to psychosocial hazards and to create psychologically healthy workplaces.

Apart from compliance with WHS legislation, the Board should also consider the impact of psychosocial hazards to reputation, culture and financial risks. ESG is on the agenda of many boards currently. How direct employees and those in the supply chain are protected from psychosocial hazards should be considered under social sustainability with implemented measures and their effectiveness reported alongside other sustainability metrics.

Is this just adding another compliance requirement and cost to already stretched businesses?

While the cost of compliance is significant, so are the benefits of a mentally healthy workplace. The Deloitte regulatory impact statement identified benefits that outweigh the cost to business. These benefits include improved productivity from lower absenteeism and presenteeism, fewer workers compensation claims and reduced occurrence and severity of employee mental illness.

We see additional benefits in improved sustainability of business practices, reduced reputational risk and strengthening the employee value proposition to attract and retain talent.



How do these changes compare with international best practice?

WHO Guidelines on Mental Health at Work

The WHO guidelines on mental health at work¹ were published in September 2022 and were accompanied by a jointly published WHO/ILO policy brief². The guidelines provide evidence-based recommendations to promote mental health, prevent mental health conditions, and enable people living with mental health conditions to participate and thrive in work.

The first two of the 12 recommended evidence-based guidelines were focused on psychosocial risk management as an organisational level intervention. This is in line with the recent addition by the ILO of occupational safety and health being a fundamental principle and right at work³.

ISO 45003:2021 Psychological health and safety at work

The new Regulations are generally consistent with ISO 45003:2021 Psychological Health and Safety at Work⁴, the international best practice standard for workplace mental health. This standard was published in June 2021 after two years of consultation with ~70 countries represented. Adoption of ISO 45003 requires an embedded, systemic risk-based approach to managing psychosocial hazards, enabled by a continuous improvement approach and leadership commitment.

1 <https://www.who.int/publications/i/item/9789240053052>

2 <https://www.who.int/publications/i/item/9789240057944>

3 <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/fprw/lang--en/index.htm>

4 <https://www.iso.org/standard/64283.html>

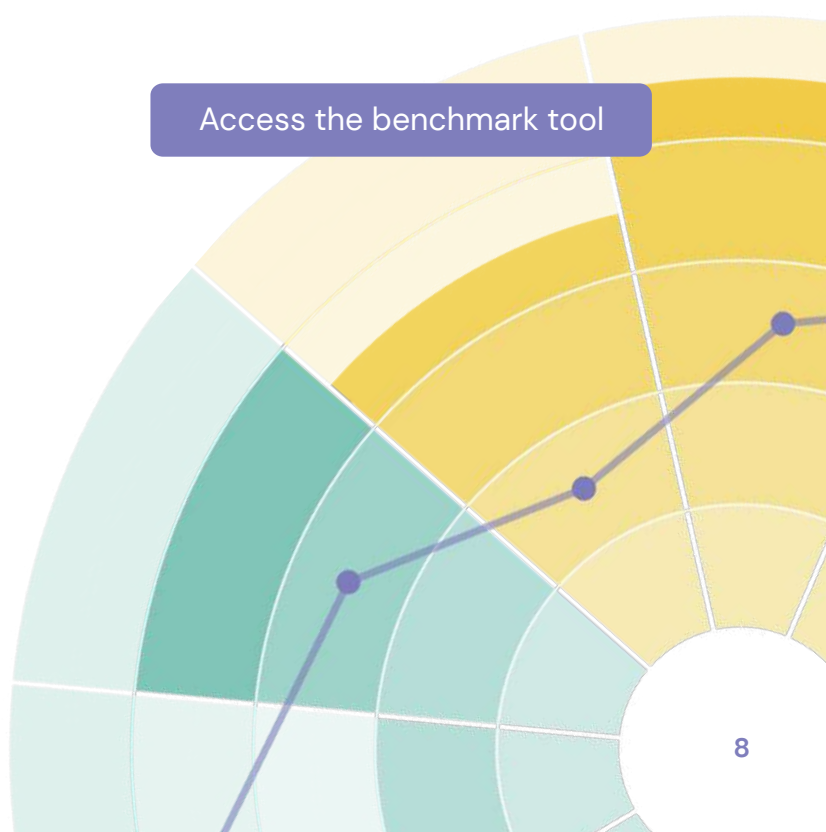
How does your strategy match up to international best practice?

The workplace mental health benchmark tool by FlourishDx is a self-audit assessment that can be supplemented by an optional employee check-in survey to help determine the maturity of an organisation's approach to employee mental health.

It was developed with input from 40 leading experts in the field of workplace mental health from six countries and aligns to the latest WHO and ILO joint guidelines on mental health at work.

It helps large organisations (>250 workers) incorporate psychosocial risk management into a holistic strategy that includes more common systems and interventions that support workers with ill-health and promote wellbeing.

[Access the benchmark tool](#)





How can FlourishDx help?

We saw these WHS legislative changes and the development of ISO 45003 coming back in 2018 and foresaw the need for enterprise-grade tools to help employers consult at scale, understand risk effectively and prevent harm to their workforce.

Through our scalable technology, we help organisations meet their compliance requirements in about half the time of traditional approaches; enabling you to minimise the cost of compliance, while also realising the benefits to your workplace. As an all-in-one workplace mental health solution, FlourishDx also contains built-in education content for leaders and employees, as well as wellbeing tools via desktop and a mobile app – to not just prevent harm but also promote wellbeing.

Want to learn more?

For many, psychological health and safety is new and unknown. In addition to our free resources, the Psych Health and Safety podcast and 45003 Academy, our team of subject matter experts have you covered with a step-by-step playbook for how to identify and manage psychosocial hazards following the plan, do, check, act framework. Sign up for the free version of FlourishDx (Basic) to get access to the psychosocial risk management playbook as well as many other great resources to operationalise psychosocial risk regulations.

Get started *Free*

How to conduct a psychosocial risk assessment eLearning

This free course from FlourishDx is designed for those who want practical guidance on how to conduct a psychosocial risk assessment. It will teach you how to meet your legal obligations to consult with staff on psychosocial hazards in depth and breadth at scale.

Enrol for *Free*



Relevant Podcast Episodes

SafeWork NSW

On [episode #120](#) of the Psych Health and Safety we chatted with guests Ian Firth and Jim Kelly from SafeWork New South Wales. They shared the WHS Regulations for psychosocial risk management that NSW have recently adopted the updated us on the progress of the NSW Mentally Healthy Workplaces Strategy.



WorkSafe Victoria

On [episode #84](#) of the Psych Health and Safety podcast we chatted with Dr Libby Brook, Principal Psychological Health and Safety Specialist at WorkSafe Victoria. Libby took us through the Exposure Draft OHS Amendment (Psychological Health) Regulations, providing more context on the objectives, employer duties, control of risk, prevention plans, and complaint reporting.



Australian Chamber of Commerce and Industry weigh in on the new model WHS regulations

On [episode #101](#) of the Psych Health and Safety podcast we welcomed back Jennifer Low from the Australian Chamber of Commerce and Industry to talk about the newly published Psychosocial Amendments to the Model WHS Regulations.



About the authors

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