

Mental Health and the Law

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INTRODUCTION

World Mental Health Day serves as a timely reminder of the importance and necessity of ensuring psychological wellbeing in the workplace. It creates a much needed forum for open and honest dialogue with family, friends and colleagues. Our familial, interpersonal, and workplace relationships give rise to psychosocial stressors and, as a consequence, create a need for establishing safe environments and building resilience in all facets of our lives.

Further skewing our social dynamics are work-life imbalances. That is, as individuals spend more time in the workplace, it is increasingly incumbent on organisations to implement controls to ensure health and safety in the workplace. Moving beyond the obvious regulatory obligations imposed upon employers and business cases in support of creating a healthy workplace environment, there is a fundamental human element in ensuring our workers arrive and leave work safely, both physically and mentally.

This paper explains the approach in Australia in regulating mental health in the workplace and outlines the various pieces of legislation (both state and federal) which govern the broad topic of mental health. Case studies are discussed to illustrate the importance of prioritising workplace mental health initiatives and reflect the increasing regulatory attention in this area. Strategies are raised as to how mental health initiatives can be implemented and monitored, for example, by way of a psychosocial safety climate. Finally, the need for a holistic approach to wellbeing, including nutrition, exercise, mindfulness, is posited and workplace support for such initiatives is suggested as a means by which organisations can support their workers in creating a safe working environment and building resilience.

REGULATORY FRAMEWORK

Organisations have a legal obligation to ensure the psychological safety of their workers under the *Work Health and Safety Act 2011 (WHS Act)*. These obligations operate in conjunction with legislative protections criminalising certain kinds of workplace behaviour which, in turn, establish a standard of psychological wellbeing in the workplace. Confusingly, the legal obligations are spread across a number of state and federal legislative instruments, giving rise to inter-jurisdictional inconsistencies. Together they form a fragmented structure for the regulation of mental health in which organisations must familiarise themselves (not only from a regulatory compliance perspective). Importantly, these obligations should and must be treated as a baseline standard in which an organisation's system must meet at a minimum.

The primary duty of care under the WHS Act provides one mechanism by which workers' psychological safety is broadly protected at both state and federal levels.¹ The WHS Act requires persons conducting a business or undertaking (**PCBUs**) to ensure the health and safety of workers, so far as is reasonably practicable.² Separately, workers also have a duty

¹ The model *Work Health and Safety Act 2011* has been adopted in the following state and federal jurisdictions: Commonwealth, Australian Capital Territory, New South Wales, Queensland, South Australia, Northern Territory and Tasmania. For the purposes of this paper, citations provided refer to the Commonwealth legislation.

² *Work Health and Safety Act 2011* (Cth), s 19.

to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.³ For completeness, health is defined to mean physical and psychological health.⁴ These requirements extend beyond mere physical safety and include psychological wellbeing.

In addition to the protections afforded by the WHS Act, the *Fair Work Act 2009* (Cth) and some Crimes Acts in various states and territories governs psychological hazards (including conduct which may affect workers' mental health). These include, for example, bullying and stalking. In some jurisdictions, the concept of stalking encompasses workplace bullying on the basis that the conduct is intended to intimidate, cause apprehension or fear of harm, or harass. Bullying is seen through an objective (rather than subjective) lens.⁵

The bullying provisions under the *Fair Work Act 2009* (Cth) are limited by virtue of being reactive in nature (as distinct from the primary duty of care under the WHS Act). That is, they require a worker to first self-identify that they are being bullied at the workplace and have the courage to seek an application for a stop bullying order. This means, in the first instance, the burden is on the worker to initiate the process in order to ensure their own psychological safety. Bullying for the purposes of the *Fair Work Act 2009* (Cth) means repeated unreasonable behaviour towards a worker or group of workers (of which the worker is a member) which creates a risk to health and safety.⁶ The Fair Work Commission may make any orders appropriate (with the exception of payment of a pecuniary amount) in circumstances where it is satisfied that the worker was bullied at work and there is a risk that the worker will continue to be bullied at work.⁷

Separately, in Victoria, the definition of "stalking" under the *Crimes Act 1958* (Vic) has been expanded to include, inter alia: making threats, using abusive or offensive words, performing abusive or offensive acts or directing abusive or offensive acts towards a victim.⁸ Further, stalking also includes acting in any way that could reasonably be expected to cause physical or mental harm (including self-harm) or arouse apprehension or fear in the victim for his or her own safety or that of any other person.⁹ Relevantly, mental harm means psychological harm and suicidal thoughts.¹⁰ Persons found guilty of stalking are liable for 10 years imprisonment.¹¹ This amendment is also known as "Brodie's Law", in memory of Brodie Panlock.

Similarly, in Western Australia, the *Criminal Code Act Compilation Act 1913* (WA) creates two offences of stalking (which includes behaviour such as workplace bullying). Firstly, it is an offence to pursue another person with intent to intimidate that person or a third person. Doing so attracts a 3 years term of imprisonment (or 8 years in circumstances of aggravation).¹² Secondly, it is an offence to pursue another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person. Doing so attracts a 12 month term of imprisonment and a fine of \$12,000.¹³

To further illustrate the fragmented nature of the laws across jurisdictions, the Australian Capital Territory creates an offence to stalk someone with intent to cause apprehension, fear of harm, harm or harass.¹⁴ Relevantly, harm includes harm to mental health (including

³ *Work Health and Safety Act 2011* (Cth), s 28.

⁴ *Work Health and Safety Act 2011* (Cth), s 4.

⁵ See also SB [2014] FWC 2104 at [43].

⁶ *Fair Work Act 2009* (Cth), s 789FD.

⁷ *Fair Work Act 2009* (Cth), s 789FF(1).

⁸ *Crimes Act 1958* (Vic), s 21A(2)(d).

⁹ *Crimes Act 1958* (Vic), s 21A(2)(g).

¹⁰ *Crimes Act 1958* (Vic), s 21A(8).

¹¹ *Crimes Act 1958* (Vic), s 21A(1).

¹² *Criminal Code Act Compilation Act 1913* (WA), s338E(1).

¹³ *Criminal Code Act Compilation Act 1913* (WA), s338E(2).

¹⁴ *Crimes Act 1900* (ACT), s 35(1).

psychological harm).¹⁵ Further, the definition of stalking requires one or more of the following acts to have occurred on at least 2 occasions: following or approaching the stalked person, interfering with the property in the possession of the stalked person, telephoning or sending electronic messages or otherwise contacting the stalked person; and sending electronic messages about the stalked person to anyone else.¹⁶ Notably, it is not necessary for the prosecution to prove that the stalked person apprehended or feared harm, or that the stalked person was harassed.¹⁷

In the three jurisdictions outlined above which criminalise bullying and stalking, there are already disparate standards regulating workplace behaviour which may give rise to psychological harm. Notwithstanding jurisdictions which are silent on the matter, the definition of "stalking" differs from state to state and certain jurisdictions adopt a more robust stance. Comparatively, the provisions enshrined in Victoria provide the most vigorous protections for stalked persons in that they account for the manner in which the conduct is received. In contrast, the language of the respective stalking provisions in the Western Australian and the Australian Capital Territory Crimes Acts focus on the perpetrator's intent, and fail to consider the reception of that prohibited conduct.

Arguably, the criminalisation of inappropriate workplace behaviour, while being one mechanism by which to ensure the health and safety of workers, is deficient in that it is reactive in nature and focuses on individual perpetrators. That is, the provisions take effect post-incident and do not create a system which proactively protects mental health and wellbeing in the workplace.

In 2012, the House of Representatives Standing Committee on Education and Employment undertook a Parliamentary Inquiry into Workplace Bullying and released its report titled "Workplace Bullying: We Just Want it to Stop". Of note, the Inquiry made the following recommendation:

"The Committee recommends that, through the Standing Council on Law and Justice, the Commonwealth Government:

- *Encourage all state and territory governments to coordinate and collaborate to ensure that their criminal laws are as extensive as Brodie's Law; and*
- *Encourage state and territory governments to consider greater enforcement of their criminal laws in cases of serious workplace bullying regardless of whether work health and safety laws are being enforced."*¹⁸

The Inquiry observed that strong arguments were made in support of the position that criminal enforcement should not be a replacement to the enforcement of WHS laws. One argument considered by the Inquiry was that while criminal laws punish individual offenders with a view to deterrence, bullying (especially workplace bullying) could not be conceptualised as a "one-on-one interpersonal exchange". In the majority of cases, the focus should be on preventing and mitigating the effects of bullying in the workplace. Similar arguments suggested that workplace bullying should be approached as a work health and safety hazard which required elimination. Accordingly, the Committee agreed that WHS laws should be the primary avenue for dealing with workplace bullying and that WHS laws and criminal laws served different purposes. Consequently, they should not be seen as replacements for one another.

¹⁵ *Crimes Act 1900 (ACT)*, s 35(6).

¹⁶ *Crimes Act 1900 (ACT)*, s 35(2).

¹⁷ *Crimes Act 1900 (ACT)*, s 35(5).

¹⁸ House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: We Just Want it to Stop* (Report, October 2012).

In any event, the approach under the WHS Act differs to that of the state-based criminalisation of workplace behaviour in that it advocates (at a high level) a baseline standard which organisations must meet. A 2017 study which assessed changes in WHS policy in relation to psychological health over two time periods found that harmonisation of the WHS laws was of benefit to workplace psychological safety climate levels.¹⁹ In particular, it was noted that Western Australia reflected a decline in the reported psychosocial safety climate levels during the relevant period.²⁰

Yet, even in the harmonised states there is room for improvement. Marie Boland's recent review of the model WHS laws dated December 2018 (**Review of the model WHS laws**) found that although reference to psychological health in the WHS Act was widely accepted, there was a consistent view that it was neglected at the Regulations and Codes of Practice levels. Boland further noted that while there was provision under the WHS Act to make provisions for regulations relating to exposure to psychological hazards, there were currently no model WHS Regulations or model Codes of Practice focused on psychological health or the management of psychosocial risks or hazards.²¹ This was a consistent theme raised during the consultation phase of the Review, with many of the view that the current arrangements were inadequate and unclear.

Accordingly, the Review of the model WHS laws recommended the development of additional regulations identifying psychosocial risks in the workplace and appropriate control measures in managing those risks.²² Further, it was also recommended that notification triggers for psychological injuries be included in relation to the incident notification provisions under the WHS Act.

Specifically, the Review of the model WHS laws made the following recommendations with respect to psychological health:

Recommendation 2: Make regulations dealing with psychological health

Amend the model WHS Regulations to deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks.

...

Recommendation 20: Review incident notification provisions

Review incident notification provisions in the model WHS Act to ensure they meet the intention outlined in the 2008 National Review, that they provide for a notification trigger for psychological injuries and that they capture relevant incidents, injuries and illnesses that are emerging from new work practices, industries and work arrangements.

This finding is consistent with the 2017 study which found, in respect of the four levels of policy for managing WHS (being the WHS Act, WHS Regulations, model Codes of Practice and guidance material) the WHS Act does not specifically describe examples of psychosocial hazards and the WHS Regulations do not explicitly reference the terms 'psychological', 'psychosocial hazard', 'psychosocial risk' or 'work stress'. In contrast, the non-regulatory policy instruments (such as the model Codes of Practice and guidance

¹⁹ Rachael E. Potter, Maureen F. Dollard, Mikaela S. Owen, Valerie O'Keeffe, Tessa S. Bailey and Stavroula Leka 'Assessing a Work Health and Safety Policy Intervention Using the Psychosocial Safety Climate Framework' (2017) 100 *Safety Science* 91.

²⁰ *Ibid.*

²¹ Marie Boland, *Review of the Model WHS Laws* (2018) 30.

²² *Ibid.* 7.

material) provide examples of work-related stress, bullying, fatigue and occupational violence.²³

In response to the Review of the model WHS laws, Safe Work Australia undertook a Consultation Regulation Impact Statement. In particular, Safe Work Australia differentiated between the impacts of broad principles-based regulations and prescriptive regulations and noted that while broad regulations would allow for flexibility, they would not add much more to the current duties under the model Act (or provide a greater degree of certainty regarding the content of the obligation). It was also noted the prescriptive regulations would have increased compliance costs, regulatory burden and curtailed innovation.²⁴

WHS laws provide a broad framework of obligations which organisations must meet to ensure health and safety, including psychological safety, for their workers. The WHS framework has been recognised as one part of the overall regulatory framework which deals with psychological hazards, and works in conjunction with the criminalisation of certain workplace behaviours which give rise to psychological risk, such as Brodie's Law, the *Criminal Code Act Compilation Act 1913 (WA)* and the *Crimes Act 1900 (ACT)*. However, there has also been movement in WHS laws, as recent reviews have identified room for improvement by way of increasing regulations dealing with psychological risk.

CASE STUDIES

Concurrently, there has been a recent focus by regulators on bullying and harassment in the workplace and courts are sending a strong message that such behaviour will be penalised.

Brodie's Law

The catalyst for change in Victoria arose in 2006 when a Victorian by the name of Brodie Panlock committed suicide. This followed systematic physical and emotional bullying at her workplace (a café) by the café manager (with whom she had been in a personal relationship), a waiter and a chef. The café owner turned a blind eye to the bullying.

As a consequence, WorkSafe Victoria investigated and laid charges against the café employees (that is, the manager, waiter and chef) as well as the café owner and his company (MAP Foundation). All parties entered pleas of guilty and were fined and convicted in 2010. The penalties ranged between \$10,000 and \$45,000 for individuals and \$220,000 for the body corporate.

This prosecution was a turning point in the treatment of workplace bullying and the conceptualisation of mental health at work. In the same year, lobbying by Brodie Panlock's family successfully resulted in amendments to the *Crimes Act 1958 (Vic)*, which expanded the types of conduct which constituted stalking and introduced the definition of 'mental' harm into that section of the Act. Brodie's Law also had flow-on effects in raising the profile and awareness of mental health issues at work, particularly the notion that safety at work also encapsulates psychological safety.

Bullying and Harassment

In July 2016, Wayne Allen Dennert was fined under the Victoria *Occupational Health and Safety Act 2004 (Vic)* for "failing to provide a safe system of work, adequate supervision, or

²³ Rachael E. Potter, Valerie O'Keeffe, Stavroula Leka, Mardi Webber and Maureen F. Dollard, 'Analytical Review of the Australian Policy Context for Work-Related Psychological Health and Psychosocial Risks' (2019) 111 *Safety Science* 37.

²³ Ibid.

²⁴ Safe Work Australia 'Consultation Regulation Impact Statement: Recommendations of the 2018 Review of the Model Work Health and Safety Laws' (June 2019).

adequate information, instruction and training on workplace bullying to employees". These charges arose in relation to the bullying of a teenage apprentice.

Mr Dennert ran Quality Carpentry and Building Maintenance. Between 2013 and 2015, Mr Dennert supervised an apprentice who commenced at age 16. During the entirety of his employment, the apprentice was subject to bullying and harassment which took many forms. This included Mr Dennert using the apprentice's social media accounts on his phone to post sexual comments to the apprentice's female friends, ripping the apprentice's clothing, smearing and rubbing (or holding near the apprentice) various substances including methylated spirits, plaster, sandpaper and water, calling the apprentice derogatory names and putting a mouse down the back of the apprentice's shirt. Mr Dennert also participated in instances of bullying perpetrated by other employees, including pinning the apprentice's arms in place so he could not resist. As a result, the apprentice experienced anxiety, insomnia and depression which continued after his employment at Quality Carpentry and Building Maintenance had concluded. Mr Dennert was fined \$12,500 and ordered to pay costs.

More recently, in July 2019, Paul Kearney was sentenced by the Downing Centre Local Court after pleading guilty to breaching the worker duty under the WHS Act. Mr Kearney (who was a carpenter and joiner) had bullied apprentices by using abusive and derogatory language towards them over an extended period of time. Consequently, apprentices reported experiencing distress, anxiety, nightmares and apprehension in going to work. Kearney was fined \$6,000 and ordered to pay costs. Additionally, he was ordered to attend bullying, harassment, anger management and emotional intelligence training courses.

Increased regulatory action to enforce the laws which relate to health and safety in the workplace is occurring not only within Australia but at a global level. In May 2019, former executives from France Telecom went on trial over a spate of suicides which occurred between 2008 and 2011 when the company underwent a mass restructuring. Although the media reported that between 35 to 60 employees committed suicide during the relevant period, prosecutors relied on 18 suicides, approximately 12 suicide attempts and 8 employees who suffered depression and other psychological injuries.

Seven executives and the company itself were charged under the Code du Travail (French Labour Code),²⁵ which provides that "no employee shall be subjected to repeated acts of moral harassment that have as their object or effect a deterioration of his working conditions that may affect his rights and dignity, alter his physical or mental health, or compromise his promotion". It was alleged that between 2008 to 2011, restructuring methods included forcibly placing people in new roles and setting unattainable performance objectives. Notably, court documents allege that the former CEO, Didier Lombard, stated in 2007, "*I'll get them out one way or another, through the window or through the door*". The trial concluded on 12 July 2019 and the judgment is forthcoming. If found guilty, the executives face penalties of up to one year imprisonment and €15,000 each in fines.

Fatigue and Working Conditions

Regulatory intervention relating to fatigue and excessive working conditions has also increased, including in relation to professional service firms. In Victoria, a law firm experienced increased workloads during the Financial Services Royal Commission. Consequently, WorkSafe Victoria received a complaint in relation to employee fatigue. Allegations arose that lawyers were sleeping in the office and a roster had been made allocating day and night shifts to junior lawyers (which had not been implemented until two months after the increased demands manifested). Consequently, WorkSafe Victoria issued

²⁵ Code du Travail, art L1152-1.

an improvement notice in August 2018, and undertook a listening tour among staff in November 2018.

Relevantly, at the end of May 2019, the World Health Organisation redefined "burn-out" from a "state of vital exhaustion" to:

"a syndrome conceptualised as resulting from chronic workplace stress that has not been successfully managed. It is characterised by three dimensions: 1) feelings of energy depletion or exhaustion; 2) increased mental distance from one's job, or feelings of negativism or cynicism related to one's job; and 3) reduced professional efficacy. Burn-out refers specifically to phenomena in the occupational context and should not be applied to describe experiences in other areas of life."

A 2019 study found that where an individual experienced unfavourable psychosocial working conditions over time, they were at risk of developing burnout systems.²⁶ In particular, the study recognised that burnout symptoms developed as a result of the simultaneous effects of job demands, decision authority (an individual's capacity to make decisions and be responsible for the outcome), and reward-effort ratios²⁷. A recommendation issued by the study was to monitor workplace conditions in order to foresee and prevent a case of burnout.²⁸

There is a changing tide in the treatment of occupational stresses and an increasing recognition by organisations on the need to understand and evaluate existing controls with respect to psychological safety in the workplace. This may be, in part, due to the growing enforcement actions by regulators, coupled with increasing attention drawn to the business imperatives and benefits associated with the creation of a psychologically safe workplace.

PSYCHOSOCIAL SAFETY CLIMATE

According to another 2019 report co-authored by PwC and the Shared Value Project, titled "The Business Imperative to Improve Mental Health in Australia", the direct financial cost of mental health conditions to Australian businesses is estimated to be approximately \$13 billion each year (divided as follows: \$2.6 billion arising from absenteeism; \$9.9 billion arising from reduced productivity and \$543 million in compensation claims).

The report articulates the business case for prioritising mental health in the workplace. Particularly, a driver for investing in solutions to mental ill-health is that engaged and thriving employees increase the value of products, services and enhance engagement with clients. Business can expect to receive (on average) \$2.30 in benefits for every \$1 spent on effective mental health initiatives for employees (or \$3.60 in benefits in the case of the financial services industry).

That being said, these benefits to products, services and client engagement, while important, should be a secondary incentive to mental health initiatives. That is, they are ancillary to the primary objective, which underscores the human element of prioritising mental health in the workplace. Ultimately, the first incentive for businesses must be, without seeking business or financial benefits, that their workers are mentally and physically safe.

One method organisations can employ to gauge the psychosocial risks (and obtain feedback on their mental health initiatives) is by monitoring psychosocial safety climate (**PSC**), an important component of the organisational climate. PSC is a construct which exists at the level of the team or organisation. It refers to the shared belief held by workers that senior

²⁶ Emina Hadžibajramović, Gunnar Ahlborg Jr and Anna Grimby-Ekman, 'Concurrent and Lagged Effects of Psychosocial Job Stressors on Symptoms of Burnout' (2019) 92(7) *International Archives of Occupational and Environmental Health* 1013.

²⁷ Ibid.

²⁸ Ibid.

management are genuinely committed to upholding their psychological safety and well-being, through enacting, supporting and maintaining relevant policies, procedures and practices.²⁹ In this way, the construct of PSC differs from ideas of culture and values, as it is concerned with tangible manifestations.³⁰

Empirical evidence strongly suggests that having a high PSC benefits workers and the working environment. Organisations with strong PSC (that is, where workers are confident that senior management care about, and proactively address risks to, their psychological health and safety) are able to achieve higher levels of productivity and engagement. In contrast, employees in low PSC environments are likely to demonstrate lower levels of the same; these employees have higher emotional exhaustion as they have over-invested in averting psychological injuries.³¹ Such workers may experience "*psychological resource loss*", derived from perceiving threats such as "*unmanageable workload, low levels of supervisor support or job control, or workplace violence and bullying*".³² Accordingly, low PSC organisations struggle with participation, motivation, and engagement, and have higher levels of unplanned leave.³³

In a recent review of the literature, Potter et al. found an increasing body of evidence supporting the position that PSC should be used as a leading indicator, referring to studies that found PSC to have a predictive and moderating role in certain health and productivity outcomes.³⁴ In particular, having low or strong PSC was a plausible predictor of how often workers reported workplace injuries; in strong PSC organisations, workplace injuries were reported more frequently and experienced a drop in the rate of injury.³⁵

However, it should be noted that monitoring and improving PSC is not a sure-fire solution to addressing the issue of psychosocial health and safety risks in the workplace. The academic literature acknowledges research gaps exist. For instance, while groups with strong PSC have identified broad features such as strong communication and prioritisation by management for mental health, research has yet to pin down specifically which practices and processes are affected by high PSC organisations.³⁶ Further, as with any initiative, monitoring PSC requires additional investment of resources. In addition to the actual cost of monitoring, organisations will need to invest in education and training (at all levels, but particularly senior management) and in establishing controls or bettering low PSC.

There are many practical steps an organisation can take to monitor and improve PSC. Two such examples are the survey tools "PSC-12" and "PSC-4", which were developed by Hall, Dollard and Coward,³⁷ and Dollard, respectively.³⁸ PSC-4 takes one key indicator from four

²⁹ Stephanie A. Bond, Michelle R. Tuckey and Maureen F. Dollard, 'Psychosocial Safety Climate, Workplace Bullying and Symptoms of Posttraumatic Stress' (2010) 28(1) *Organization Development Journal* 37.

³⁰ Ibid.

³¹ Amy Jane Zadow, Maureen Frances Dollard, Sarven Savia Mclinton, Peter Lawrence and Michelle Rae Tuckey, 'Psychosocial Safety Climate, Emotional Exhaustion, and Work Injuries in Healthcare Workplaces' (2017) 33 *Wiley* 558.

³² Ibid.

³³ Maureen F. Dollard and Tessa Bailey, 'PSC in Practice' in Maureen F. Dollard, Christian Dormann and Mohd Awang Idris (eds) *Psychosocial Safety Climate: A New Work Stress Theory* (Springer, 2019).

³⁴ Rachael E. Potter, Tessa S. Bailey and Maureen F. Dollard, 'A Qualitative Investigation in High Psychosocial Safety Climate University Work Groups', in Maureen F. Dollard, Christian Dormann and Mohd Awang Idris (eds) *Psychosocial Safety Climate: A New Work Stress Theory* (Springer, 2019).

³⁵ Amy Jane Zadow, Maureen Frances Dollard, Sarven Savia Mclinton, Peter Lawrence and Michelle Rae Tuckey, 'Psychosocial Safety Climate, Emotional Exhaustion, and Work Injuries in Healthcare Workplaces' (2017) 33 *Wiley* 558.

³⁶ Rachael E. Potter, Tessa S. Bailey and Maureen F. Dollard, 'A Qualitative Investigation in High Psychosocial Safety Climate University Work Groups', in Maureen F. Dollard, Christian Dormann and Mohd Awang Idris (eds) *Psychosocial Safety Climate: A New Work Stress Theory* (Springer, 2019).

³⁷ Garry B. Hall, Maureen F. Dollard and Jane Coward, 'Psychosocial Safety Climate: Development of the PSC-12' (2010) 17(4) *International Journal of Stress Management* 353.

³⁸ Maureen F. Dollard, 'The PSC-4; A Short PSC Tool' in Maureen F. Dollard, Christian Dormann and Mohd Awang Idris (eds) *Psychosocial Safety Climate: A New Work Stress Theory* (Springer, 2019).

domains to measure PSC. These four domains are, generally, "management support and commitment", "management priority", "organisational communication" and "organisational involvement and participation".³⁹ For example, under the first domain, employees would be surveyed on whether "senior management show support for stress prevention through involvement and commitment" and respond on a 5-point Likert scale ('strongly disagree' to 'strongly agree').⁴⁰ PSC-4 was developed from PSC-12 as a response to the aforementioned cost of compliance. Regardless of which method is used to measure PSC, it has been recommended that PSC should be established as an organisational KPI.⁴¹

Other means by which organisations can improve their PSC is through facilitating employee participation in designing systems of work which are psychologically safe. Employees should also be aware, and be able to avail themselves, of an adequate system to communicate their issues with psychological risks and health. Further, workplaces should identify work conditions which precipitate mental ill-health (such as excessively high demands and pressure, or low job control) and reduce these conditions where possible.⁴²

At its core, PSC is an indicator which organisations can use to benchmark their mental health initiatives and the psychosocial safety of the working environment. Its utility can be realised through employing it as one step in a process of determining whether more needs to be done. Ultimately, PSC offers a way for organisations to develop a working environment that is psychologically safe and ensures the mental wellbeing of their employees.

HOLISTIC WELLBEING

Owing to the dynamic and multifaceted nature of mental health organisations need to undergo a paradigm shift in their approach towards mental health and employee wellbeing and move beyond traditional approaches such as education and training, or revisions of policy and procedure. By supporting initiatives that address nutrition, exercise, and mindfulness, an organisation can enable workers to build resilience in response to stressors and other psychological risks, and create a safe working environment.⁴³

The ability for factors such as nutrition, exercise and mindfulness to build resilience and contribute to the creation of a safe working environment is well-documented and supported by empirical evidence. Mindfulness, developed through meditation, is most clearly linked with improved emotional regulation. That is, the ability to process emotional information, and manage responses to the same. Mindfulness and meditation, in addition to improving emotional regulation generally, reduce emotional interference when an individual is confronted by unpleasant stimuli and decrease the extent to which an individual changes their performance or behaviour when they become aware that they are being observed (psychological reactivity).⁴⁴ Furthermore, meditation and mindfulness have also been linked in studies to improving executive control (cognitive processes which are essential to the control of behaviour), allowing individuals to recognise transient affective states and quickly marshal the regulatory resources to manage their emotions.⁴⁵ Other cognitive functions are also suggested to improve with meditation, such as conflict monitoring (monitoring and

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Harry Bercher, Maureen F. Dollard, Asia Pacific Centre for Work Health and Safety, WHO Collaborating Centre in Occupational Health and the University of South Australia, 'Psychosocial Safety Climate and Better Productivity in Australian Workplaces: Costs, Productivity, Presenteeism, Absenteeism' (Safe Work Australia, November 2016).

⁴² Ibid.

⁴³ Michael Tooma, *Safety Security, Health and Environment Law* (Federation Press, 3rd ed, 2019) 192.

⁴⁴ Yi-Yuan Tang, Britta K. Hölzel and Michael I. Posner, 'The Neuroscience of Mindfulness Meditation' (2015) *Nature Reviews Neuroscience* (online).

⁴⁵ Rimma Teper, Zindel V. Segal and Michael Inzlicht, 'Inside the Mindful Mind: How Mindfulness Enhances Emotion Regulation Through Improvements in Executive Control' (2013) 22(6) *Current Directions in Psychological Science* 449

resolving conflict between computations in different neural areas) and decreased attention blink (a lapse in attention following the presentation of a stimulus within a rapid stream of presented stimuli).⁴⁶

Although nutritional psychiatry is a nascent field, studies have demonstrated strong connections between diet and mental health. As a result of this research, nutraceuticals (food, or part of a food, that provides medical or health benefits) are being used increasingly in psychiatric practice.⁴⁷ Nutritional psychiatry moves beyond the traditional conception of diet as a means to secure physical health. In fact, there is a consistent base of evidence, drawing on observational data, which reveals that quality of diet can affect how likely an individual is to develop a common mental disorder such as anxiety or depression.⁴⁸ In particular, cross-sectional and longitudinal studies have found that consumption of a 'Western diet' (highly processed food) is linked with an increased risk of developing depression and anxiety.⁴⁹ Marx et al. note that systematic reviews for the link between diet and common mental disorders and that individuals were less likely to develop depression where their diets had "*high intake of vegetables, fruit, wholegrains, nuts, seeds and fish, with limited processed foods*".⁵⁰ Research has also identified that nutrition may be able to have an impact on brain plasticity, function, and mental health, through modulation of hippocampal neurogenesis (the creation of new functional brain cells) may be achieved through diet.⁵¹

Exercise also has a role to play building an individual's resilience to stressors. These are positive effects resulting from the combination of different physiological changes occurring in the body with exercise. For instance, they identify elevated mood, decreased levels of stress and anxiety, and positive feelings associated with achievement and mastery.⁵² Common psychiatric disorders may also be mitigated or prevented through exercise, including anxiety and mild depression.⁵³

It is important to note that with initiatives that address aspects of general wellbeing, such as nutrition, exercise and mindfulness, the onus is not just one any one party. These initiatives build resilience and operate hand-in-hand with developing a safe working environment.

CONCLUSION

Australia has spread its regulation in the area of psychological health and safety across various state and federal legislative instruments, creating a framework which provides a baseline standard for organisations to meet. Organisations must familiarise themselves with (inter alia) criminal laws, work health and safety laws, and employment laws, and recognise that these operate concurrently, serving different purposes to protect the psychological health of employees. The growing awareness of the role that employers play in securing their employees' mental health has been recognised in recent reviews, such as the Review of the model WHS laws, and may signify further changes to the regulation of psychological hazards in the workplace in the near future.

⁴⁶ Yi-Yuan Tang, Britta K. Hözel and Michael I. Posner, 'The Neuroscience of Mindfulness Meditation' (2015) *Nature Reviews Neuroscience* (online).

⁴⁷ Lauren Owen and Bernard Corfe, 'The Role of Diet and Nutrition on Mental Health and Wellbeing' (2017) 76 *Proceedings of the Nutrition Society* 425.

⁴⁸ Felice N. Jacka, 'Nutritional Psychiatry: Where to Next?' (2017) 17 *EBioMedicine* 24.

⁴⁹ Lauren Owen and Bernard Corfe, 'The Role of Diet and Nutrition on Mental Health and Wellbeing' (2017) 76 *Proceedings of the Nutrition Society* 425.

⁵⁰ Wolfgang Marx, Genevieve Mosely, Michael Berk and Felice Jacka, 'Nutritional Psychiatry: the Present State of the Evidence' (2017) 76 *Proceedings of the Nutrition Society* 427.

⁵¹ *Ibid.*

⁵² Kathleen Mikkelsen, Lily Stoanovska, Momir Polenakovic, Marijan Bosevski and Vasso Apostolopoulos, 'Exercise and Mental Health' (2017) 106 *Maturitas* 48.

⁵³ *Ibid.*

The case studies illustrate the devastating impact of neglecting mental health in the workplace, including suicide and ongoing mental health disorders. They further illustrate the wide range of penalties which are being imposed against offenders, whether they are actual perpetrator of bullying or harassment, a manager, a company executive, or the company itself. In the case of France Telecom, we can see that greater enforcement of laws which protect worker psychological health is not localised to Australia; it is a global trend and an issue for international concern.

Further shedding light on the business and financial aspect of worker mental health, the business case reveals that the return on investment for effective mental health initiatives is high (\$2.30 - \$3.60 in benefits for every \$1 spent) and will enhance outcomes for products, services and clients. However, pursuit of these benefits should be secondary to ensuring that workers arrive at, and leave work, mentally and physically safe. In order to achieve this, organisations and their employees have their own equally important parts to play. Organisations must build a safe working environment and support initiatives which build employees' wellbeing. Organisations can promote awareness of the aspects of the holistic approach to wellbeing, which include the betterment of exercise, nutrition and mindfulness. All these are empirically proven to improve mental health, through changes in brain function, physiology and cognitive function.

In this way, mental health and the initiatives which build an individual's resilience are not only in the hands of individuals themselves, but operate in conjunction with an employer maintaining a safe working environment.

Resources

If you or someone you know requires assistance, the following organisations are available to provide assistance. In the event of an emergency please call 000.

- *Lifeline on 13 11 14*
- *Kids Helpline on 1800 551 800*
- *MensLine Australia on 1300 789 978*
- *Suicide Call Back Service on 1300 659 467*
- *Beyond Blue on 1300 22 46 36*
- *Headspace on 1800 650 890*
- *ReachOut at au.reachout.com*

Alternatively, you are able to download resources for your organisation or for your own information relating to anxiety, depression, suicide, wellbeing and perinatal mental health from:

- *BeyondBlue: <https://www.beyondblue.org.au/get-support/order-printed-information-resources>*
- *Safe Work Australia: <https://www.safeworkaustralia.gov.au/doc/work-related-psychological-health-and-safety-systematic-approach-meeting-your-duties>*
- *SANE: <https://www.sane.org/>*