

Mental Health and the Law

Mental Health Forum
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Agenda:

- 1 The Regulatory Framework
- 2 Case Studies
- 3 Psychosocial Safety Climate
- 4 Holistic Wellbeing
- 5 Key Takeaways

Regulatory Framework

Model Work Health and Safety Act

Section 4	The definition of "health" includes physical and psychological health
Section 19	The primary duty of care requires a person conducting a business or undertaking to ensure the health and safety of its workers, and other persons, is not at risk from work carried out as part of the conduct of the business or undertaking
Section 29	Workers have a duty to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons

Fair Work Act 2009 (Cth)

Section 789FC	A worker who reasonably believes that they have been "bullied at work" can apply to the Fair Work Commission for an order to stop bullying
Section 789FD	A worker is "bullied at work" when there is repeated unreasonable behaviour towards the worker (or a group of workers of which the worker is a member) that creates a risk to health and safety
Section 789FF	The Fair Work Commission can make orders (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work

Crimes Act 1958 (Vic)

Section 21A(1)	A person who stalks another person is liable for 10 years imprisonment
Section 21A(2)	<p>Stalking includes (among other things):</p> <ul style="list-style-type: none"> • making threats to the victim • using abusive or offensive words to, or in the presence of the victim • performing abusive or offensive acts in the presence of the victim • directing abusive or offensive acts towards the victim • acting in any other way that could reasonably be expected to cause physical or mental harm to the victim, including self-harm or arouse apprehension or fear in the victim for his or her own safety or that of any other person
Section 21A(8)	Mental harm means psychological harm and suicidal thoughts

Criminal Code Act Compilation Act 1913 (WA)

Section 338E(1)	A person pursues another person with intent to intimidate that person or a third person is liable for imprisonment for 3 years (and 8 years where there are circumstances of aggravation)
Section 338E(2)	A person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is liable for imprisonment for 12 months and a fine of \$12,000

Crimes Act 1900 (ACT)

Section 35(1)	A person must not stalk someone with intent to cause apprehension, or fear of harm, harm to the person stalked, or harass the person stalked
Section 35(2)	<p>Stalking requires (on at least 2 occasions) one or more of the following:</p> <ul style="list-style-type: none"> • 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 • sending electronic messages about the stalked person to anyone else
Section 35(3)	Section 35 does not apply to reasonable conduct engaged as part of the person's employment
Section 35(6)	Harm includes physical harm, harm to mental health (including psychological harm)

Case Study 1: Brodie Panlock

Parties:

- Nicholas Smallwood (Manager)
- Rhys MacAlpine (waiter)
- Gabriel Toomey (chef)
- Marc Luis Da Cruz (café owner)
- MAP Foundation (café owner's company)

Breach:

- Sections 21 and 25 of the *Occupational Health and Safety Act 2004* (VIC)
- All parties entered a plea of guilty

Facts:

- Brodie Panlock was a 19 year old waitress and was the subject of relentless physical and verbal bullying by her colleagues over a 12 month period at Café Vamp in Hawthorn, Victoria
- The bullying included being the subject of insults, ridicule, gossip and being mocked for previous suicide attempts with rat poison left in her pay envelope
- The bullying led Brodie Panlock to take her life in 2006

Penalty:

- Workers fined between \$10,000 - \$45,000
- Owner fined \$30,000
- Owner's company fined \$220,000

Case Study 2: WorkSafe Victoria v Wayne Allen Dennert

Parties:

- Wayne Allen Dennert (trading as Quality Carpentry and Building Maintenance)
- Apprentice Carpenter

Breach:

- Sections 21(1), 21(2)(a) and 21(2)(e) of the *Occupational Health and Safety Act 2004* (Vic)

Facts

- Mr Dennert supervised an apprentice during 2013 – 2015
- For the entirety of employment, Mr Dennert subjected the apprentice to various forms of bullying, including using the apprentice's social media to post inappropriate comments, ripping his clothing, smearing the apprentice with various substances and putting a mouse down the back of his shirt
- The apprentice experienced depression and anxiety which continued after his employment ended

Outcome:

- Mr Dennert was fined \$12,500 in the Geelong Magistrates' Court and ordered to pay \$757.71 in costs

Case Study 3: France Telecom

Facts:

- Between 2008 – 2011 France Telecom underwent a mass restructuring
- Restructuring methods included forcibly placing people in completely different roles and setting unattainable performance objectives
- Prosecutors allege that at least 18 employees committed suicide and approximately 12 attempted suicide
 - media reported 35 – 60 employees had committed suicide
- Seven executives of France Telecom and the company itself were charged

Breach

- Article L1152-1 of the Code du Travail (French Labour Code) which prohibits repeated acts of “moral harassment”
- Executives face penalties of up to one year imprisonment and €15,000 in fines

Outcome:

- The trial began in May 2019 and ran until 12 July 2019
- Judgment has not yet been handed down

Case Study 4: King & Wood Mallesons WorkSafe Victoria Investigation

Facts:

- King & Wood Mallesons (**KWM**) experienced an increased workload during the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, having had four clients affected (AMP, IOOF, Youi and Suncorp)
- WorkSafe Victoria received a complaint in relation to employee fatigue in the KWM Melbourne, and allegations were made that graduates were sleeping in the office
- Although a roster had been made allocating day and night shifts to junior lawyers, this had not been implemented until two months after the increased demands manifested

Investigation:

- WorkSafe issued an improvement notice in August 2018 and signs were posted in the firm informing staff that KWM may be in contravention of the *Occupational Health and Safety Act 2004* (VIC) for overworking its staff

Outcome:

- In June 2019, KWM informally installed 53 people (comprised by mainly senior non-partner staff) in its offices as 'people's champions' who are tasked with observing any potential issues in employee wellbeing and pressure

Psychosocial Safety Climate

Bond et al. (2010) define “Psychosocial Safety Climate” (**PSC**) as a construct, existing at a team or organisational level which relates to the shared belief of workers concerning how policies, practices and procedures are upheld by managers and leaders to protect their psychological safety.

Strong PSC Organisation

- Workers believe senior management protect psychological health and safety.
- Unlikely to provide favourable conditions for risks to mental health and safety to proliferate
- Workers invest less time and resources into managing perceived threats to well-being and mental health.

Low PSC Organisation

- Perception of insufficient support from senior management.
- Employees have high emotional exhaustion from over-investment in averting a psychological injury (Zadow et al. 2017).
- Creation of “fertile soil” for mental ill-health owing to absence of managerial ineffectiveness to address risks (Bond et al. 2010).

A greater focus by employers on monitoring and improving PSC may be one measure to address workplace injuries and psychological distress at work.

It can be used as a way to measure and improve productivity, work injuries and psychological distress at work.

Improving Psychosocial Safety Climate

1.

Establish a system to monitor and measure PSC – establish PSC as an organisational KPI.

2.

Encourage and facilitate employee participation in designing systems of work and work conditions which are psychologically safe.

3.

Ensure there are adequate systems for employees to communicate issues with psychological risks and health.

4.

Identify work conditions which precipitate mental ill-health and reduce these work conditions.

Holistic Wellbeing

Building Individual Resilience to Stress:

1



Mindfulness

- Promotes executive control and improved ability in emotional regulation
- Improves ability to recognise and regulate affective transient states

2



Meditation

- Improves cognitive abilities, such as capacity to monitor and resolve conflict between computations in different neural areas

3



Nutrition

- Impact on brain plasticity, function and health
- Good diet linked with decreased risk of developing depression and anxiety

4



Exercise

- Physiological changes occurring as a result of exercise elevate mood, decrease stress and anxiety levels and increase self-esteem

Key Takeaways

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- 1 • There is an absence of a consistent framework in Australia to address risks and hazards to psychosocial safety, which is formed through various State and Territory criminal laws, work health and safety laws, and the *Fair Work Act 2009* (Cth)
 - 2 • There is growing regulatory enforcement and focus on psychosocial safety risks in workplaces
 - 3 • One way of ensuring psychological safety and wellbeing in the workplace is by monitoring a workplace's psychosocial safety climate as a means of obtaining feedback and improving an organisation's safety systems
 - 4 • Organisations must enable workers to build resilience in response to psychosocial stressors. This is achieved through promoting awareness of factors such as mindfulness, meditation, exercise and nutrition