

**Colin
Biggers
& Paisley**

HR Highlights Series.

Physical, Mental and Digital Harm in the Workplace

Cormack Dunn & Adam Foster



Background

SafeWork Australia's *Key Work Health and Safety Statistics Australia 2024*:

- 14,600 mental stress and harassment/bullying claims in 2022-2023
 - 19.2% increase on 2021-22
 - 97.3% increase over the last decade
- Highest proportions of claims were attributed to:
 - Work-relating harassment and/or workplace bullying (27.5%)
 - Work pressure (25.2%)
 - Exposure to workplace or occupational violence (16.4%)
- The median time lost from work in these cases is more than 5x that recorded across all injuries/diseases

Case Study: Physical Health

WorkSafe Victoria v Monjon (Australia) Pty Ltd (2019)

- Monjon Australia Pty Ltd (security services company)
- John Bernard Moncreiff (sole director, owner and Managing Director)
- 23 October 2015: Moncreiff physically assaulted an employee and refused to allow her to leave the office until she had promised not to resign
- WorkSafe's investigations found a culture of entrenched bullying:
 - Inappropriate physical touching
 - Verbal abuse and sexually inappropriate language
 - Issuing threats
- Monjon and Moncrief both convicted and fined a total of \$116,000.



Case Study: Mental Health

WorkSafe Victoria v Court Services Victoria (2023)

- CSV: independent statutory body which administers Victoria's court system
- Fined \$380,000 and costs on 19 October 2023 in relation to a toxic workplace culture and a range of psychosocial hazards that contributed to the suicide death of an employee lawyer.
- Multiple workers had reported feelings of anxiety, PTSD, stress and fear.
- Workers had been exposed to traumatic materials, role conflict, high workloads and work demands, poor workplace relationships and inappropriate workplace behaviours including bullying, invasions of privacy, intimidation etc.

Case Study: Digital Health

Robinson v Lorna Jane Pty Ltd [2017] QDC 266

- Ms Robinson (complainant) alleged that her supervisor (Ms McCarthy) had bullied and harassed her, including via social media (Facebook),
 - Made disparaging comments about her weight and physical appearance and referred to her as an "oxygen thief".
- Argued this conduct had caused her to develop a psychiatric illness and triggered a relapse of an eating disorder
- Plaintiff's claim was dismissed (found that she had exaggerated to various doctors). Contention regarding whether the posts were "done in the course of employment or connected with employment"
- Lorna Jane (company) determined to have responded to the incident appropriately and had satisfied their WHS duties.



Themes in hazard prevention

- Preventing work-related injuries because of physical, psychosocial and digital hazards requires:
 - Assessment of risks and identification of control measures
 - Implementation of policies and procedures
 - Training on those policies and procedures
 - Supervision
 - Thorough record-keeping



Risk assessment

Effective management of physical, mental and digital health and safety requires:

- Identification of hazards (see image)
 - Communication and consultation with staff
 - Consider previous complaints, workers compensation claims, Codes of Practice (incl. SafeWork NSW guidance)
- Assessment of risk
 - Duration, frequency and severity of exposure to the hazard or risk
 - Considered collectively rather than in isolation



Procedures

- Determine reasonably practicable measures to eliminate or minimise health risks and develop appropriate Workplace Behaviour Policies and Grievance Procedures
- Must include procedures for reporting and responding to psychosocial hazards
- Continue to review and update these procedures, particularly after being made aware of and investigating any incidents

Training

- For proper implementation of control measures in policies and procedures, training must be provided to all workers on those policies and procedures (mere existence is not enough).
- Keep records of training attendance
- Offer frequent refreshers



Supervision

- Frequent contact with and supervision of staff will reveal gaps and highlight any implementation failures
- Might also include:
 - check-ins
 - reinforcing policies
 - providing feedback
- The level of supervision required will depend on the risks and the experience of the workers involved



Records

- Continuously update records of injuries, incidents, worker complaints and investigations will:
 - Inform risk assessments;
 - Reveal where policies/procedures are inadequate or being unsatisfactorily implemented;
 - Serve as proof of meaningfully investigating hazards and protecting health and safety.



Get prepared ...

- Degree of urgency in establishing good WHS systems and procedures
- Regulator's have growing expectations of PCBU's and are increasing their focus on officers' and directors' individual liability
- **Kilcoy Timber Co Pty Ltd:** fined \$300,000 after the death of an employee
 - Magistrate found the PCBU's approach to safety was "blasé and wholly inadequate"
 - PCBU's WHS management role had been vacant for over 2 years
- **Multi-Run Roofing Pty Ltd:** company fined \$1,000,000 and director jailed for 12 months after the death of an employee

Conclusion

- Despite unique nature of physical, mental and digital risks, eliminating and managing them is no different than managing other organisational risks
- To satisfy WHS duties, employers should ensure they have:
 - Conducted thorough risk assessments
 - Developed effective policies and procedures
 - Provided training to implement hazard controls
 - Maintained supervision
 - Kept adequate records

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Questions

Presenters



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Thank you.

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