

Public comment submission form			
Occupational Health and Safety Amendment (Psychological Health) Regulations and associated Regulatory Impact Statement			
<i>Note: Areas marked with an asterisk (*) denote required information.</i>			
Type of submission *	Individual <input type="checkbox"/>	Organisation <input checked="" type="checkbox"/>	
Organisation name * (where applicable)	Construction Material Processors Association		
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Do you consent to WorkSafe publishing your submission?*	<input checked="" type="checkbox"/> Yes – WorkSafe may publish this submission with my organisation's name/my name.		
	<input type="checkbox"/> Yes – WorkSafe may publish my submission, but please publish without my name.		
	<input type="checkbox"/> No – WorkSafe may not publish my submission due to confidentiality reasons.		
<i>Note: All submissions will be treated as public documents and will be published online unless clearly identified as being confidential. Where the submission is from an organisation, WorkSafe will publish the organisation's name, not the author's name.</i>			
Does your submission contain personal information of any third party individual/s?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, have you obtained consent from the third party individual/s to include their personal information in your submission?*	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Note: If you have not obtained consent from the third party individual/s, WorkSafe may elect not to publish your submission or may redact third party information from your submission.</i>			
Can WorkSafe contact you about your submission?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<i>Note: WorkSafe may use the information you have provided to inform you of further development of the proposed regulations.</i>			

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How to fill out this form

This form contains a table listing the different parts of the proposed Occupational Health and Safety Amendment (Psychological Health) Regulations (proposed regulations) and associated Regulatory Impact Statement (RIS) available for public comment.

Scroll to the section of the proposed regulations or RIS you want to comment on and type in your comment. Disregard any sections that do not apply.

If you only have general comments about the proposed regulations or RIS, you can simply fill out the first table preceding this page and disregard the rest of the form.

If you want to mail your submission, you can fill out the form online first then print as the tables will expand according to the amount of words you write.

For any questions about the form, email legislation@worksafe.vic.gov.au.

Proposed Occupational Health and Safety Amendment (Psychological Health) Regulations

Please provide your specific comments on the proposed regulations in the table below. Where possible, please indicate the section of the regulations you are commenting on.

General comments
<p>CMPA is the premier representative body for the Victorian earth resources industry. It represents a broad spectrum of those involved in construction material processing businesses and has a membership base consisting of over 200 quarries across the industry. Together, these members employ approximately 1500 Victorians which underpins the construction industry of almost 240,000 employees (https://liveinmelbourne.vic.gov.au/connect/victorian-industries/transport-defence-and-construction).</p> <p>CMPA members are typically small to medium sized family and private businesses, local government and utility providers. CMPA Members also include construction and demolition (C&D) waste recyclers. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.</p> <p>In 2020/21, the sector supplied approximately 68.5 million tonnes (adjusted for low reporting rates) of construction materials to the market, at a value of approximately \$1B directly supporting Victoria's \$80B Big Build (https://bigbuild.vic.gov.au/about) and the estimated 1.6M new homes required by 2050 (https://earthresources.vic.gov.au/geology-exploration/industry-investment/joint-ministerial-statement-on-extractive-resources). Small to medium quarries account for approximately half of this production and is submitted to be a vital industry supporting the ongoing economic prosperity of Victorians. Crucial to this is the circular economy and the contribution of an additional 6.5 million tonnes of recycled C&D waste.</p> <p>The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia.</p> <p>Thank you for the opportunity to comment on the proposed Occupational Health and Safety Amendment (Psychological Health) Regulations (Regulations) and accompanying Regulatory Impact Statement (RIS) Regulations</p> <p>Industry, in particular SMEs will be challenged, complicated and hindered by these regulations that are clearly unworkable. Due to their ambiguity they will be of little advantage to employees but of great financial advantage to the legal fraternity who will feed of the ambiguity of the definitions. If these regulations are to proceed the definitions which are the foundation of the document must be succinct, concise and easily understood, therefore able to be implemented and sustained. Employers in particular SMEs, do not generally have a psychologist's skill set which is required under the current draft regulations to determine what is a negative psychological response received by an individual employee. A code of practice covering these issues would be far more beneficial to industry to understand and control these issues. Employees would be made aware of that code through training and the communicated policy statements. Where a negative response is received, employees would be entitled to contact WorkSafe or their employee representative to intervene. Where required due to a negative psychological response being incurred resulting in that employee not being able to work to either protect or prevent further damage to their mental health, an employee would be entitled to lodge a claim and have that claim assessed by a medial practitioner as all other workplace injury claims are.</p>

The CMPA supports any initiative that will improve occupational, health and safety outcomes. However, the Regulations proposed are excessively onerous with an expected cost to industry of \$2.4 Billion with the benefits not necessarily certain. The Public Administration sector that has a 3 times higher rate of mental health injury per employee. The proposed Regulations should be amended to apply only to the Public Administration sector with lesser duties for the rest of industry such as a Code of Practice. For example, in the WorkSafe Silica Regulations 2021 and the engineered stone benchtop industry with lesser duties for the extractive industry. Applying across the whole industry sector is unreasonable and as such the proposed Regulations are NOT supported in their current form.

Specific comments

<p>1. Objective</p>	<p>1a) Regulations are not generally required to promote the importance of a hazard, that is generally done through campaigns. It is generally understood that regulations are adapted to enforce the control of the risk associated with a hazard.</p> <p>1b) This is incredibly ambiguous and will be an endless task as what is perceived as psychosocial hazards by one person may be very different to that of another and this would depend on their backgrounds, including exposures and their experiences.</p> <p>Some psychosocial hazards may be blatant and or and obvious but others are clearly not</p>
<p>2. Authorising provision</p>	<p>No comment</p>
<p>3. Commencement</p>	<p>Public administration has 3 times the industry average of mental health injury claims per worker (RIS). It is proposed here that the commencement date should apply for this sector only with a later date set for the rest of industry once more certainty is obtained around effectiveness of mitigation measures.</p>
<p>4. Principle Regulations</p>	<p>No comment</p>
<p>5. Definitions</p>	<p>Applicable employer: 50 or more employees. Does this number include contractors? Clarification is required.</p> <p>High Job Demands - means sustained or repeated physical, mental or emotional effort which is unreasonable or frequently exceeds the employee's skills or capacity;</p> <p>Response;</p> <p>Again, incredibly ambiguous. What is the definition of unreasonable? Who decides on what is unreasonable, the duty holder or the employee?</p> <p>What is the pathway from reasonable to unreasonable?</p> <p>Psychosocial Hazard - means any factor or factors that may arise in the working environment and may cause an employee to experience one or more negative psychological responses that create a risk to their health and safety;</p>

	<p>Response; Again, incredibly ambiguous. The Definitions define a psychological response. But once more what is a negative psychological response and who decides on its validity? If an employee was making a claim for a negative psychological response its validity would be decided by a psychologist or a doctor who would take into account why it was experienced as a negative response by that particular employee. SMEs do not have the resources to make these decisions that may result in significant changes to that workplace based on the perception of an individual employee. The human mind is complex and emotional and is formed through experience. These regulations have been written in a manner that does not take that into account. How do you define low recognition and reward, poor workplace relationships? If these regulations are to meet their objectives which are also questionable the Definitions must be much clearer and transparent.</p>
<p>Part 5A.1 – Duties of employers</p>	<p>The duties of employers should not be applied across all employers and should be limited to Public Administration employers due to the 3 times higher rate of mental health injury. 448D Prevention plans required for certain psychosocial hazards Response: Most SMEs have policy statements for the prevention of aggression or violence, bullying and sexual harassment as well as general harassment and discrimination. WorkSAFE inspectors regularly request to review these documents when on site. Their intention is to promote the prevention of this negative behaviour and assist with the re training or discipline of offenders. These policies state very clearly what behaviours are not tolerated and are not based on ambiguous definitions. If the prevention plan must identify the risk associated with the psychosocial hazard and include measures to control the risk associated with the identified psychosocial hazard it will be endless and never completed plan as the definitions as provided in these draft regulations in their current form are ambiguous and shall be defined by an individual's perceptions based on their life experiences. It may result in requiring a prevention plan for each individual, or groups of likeminded individuals.</p>

<p>Part 5A.2 – Reporting</p>	<p>Part 5A.2—Reporting Reportable psychosocial complaint means a complaint involving any of the following psychosocial hazards— (a) aggression or violence; (b) bullying; (c) sexual harassment; Response; Why is another reporting regime being established meaning another level of administration requiring more resources? There are not separate reporting regimes for other workplace hazards excluding the recently released Crystalline Silica Amendment regulations specific to manufactured stone. Is this the future of Workplace Safety in Victoria?. Separate reporting regime for individual hazard/incident types. Aggression, violence, bullying and sexual harassment are all negative acts which can be generalized as workplace incidents. Why are not they defined and included as Notifiable Incidents as per OHS Act Part 5—Duties Relating to Incidents.</p>
<p>Part 5A.3– Enforcement Amendments</p>	<p>No comment</p>
<p>Endnotes</p>	<p>No comment</p>

Occupational Health and Safety Amendment (Psychological Health) Regulations - Regulatory Impact Statement (RIS)

Please provide your general comments on the RIS in the table below. Where possible, please indicate the part and section of the RIS you are commenting on.

<p>General comments</p>	
<p>The Regulations are said to improve mental health in the workplace AND the community an extremely broad scope. Employers’ awareness has increased in recent years. There is uncertainty surrounding effectiveness of controls for mental health improvements. The benefits of the Regulations are unquantified. There is a need for industry to engage a consultant or outside expertise. The Regulations use employers to undertake social reform which is actually a government role.. CMPA was not contacted for stakeholder consultation.</p>	
<p>Specific comments</p>	
<p>1. Background</p>	<p>Click here to enter text.</p>

2. <i>The problem of mental harm in the workplace</i>	Public administration has three times the industry average for mental injury claims. Risks associated with poor psychological health may not be as easy to detect as physical hazards.
3. <i>Options</i>	State of knowledge in relation to mental health is evolving. The risk management process goes beyond the general duty.
4. <i>Options analysis of preferred option</i>	Eliminate and/or manage psychosocial health. This is unattainable. The cost to industry far outweighs the benefit, for example, for large industries they would have to employ 2 additional staff to comply with the proposed Regulations. The preferred option 4 was a forgone conclusion gathered from the way the RIS was written. The preferred option sensitivity analysis leads to scenarios where cost to society is estimated to be \$874 million which is very concerning. Additionally, it is not apparent that the RIS has taken into account the cost to community in terms of price increases passed onto consumers due to the cost to industry of the proposed Regulations.
5. <i>Small business and competition impacts</i>	The Regulations are not supported in their current form due to having a disproportionate impact on small businesses and possibly a negative impact on competition. Small businesses in the quarry industry are already departing the industry altogether because of the ever-increasing red tape.
6. <i>Implementation and evaluation strategy</i>	The Regulations (option 4) should only apply to the Public Administration sector due to having a 3 times higher mental health injury claim than the average across all industry.
7. <i>Limitation of our work</i>	The RIS makes definitive conclusions while using words such as potential, likely, expected, unknown, suggests, uncertainties, estimates etc.

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