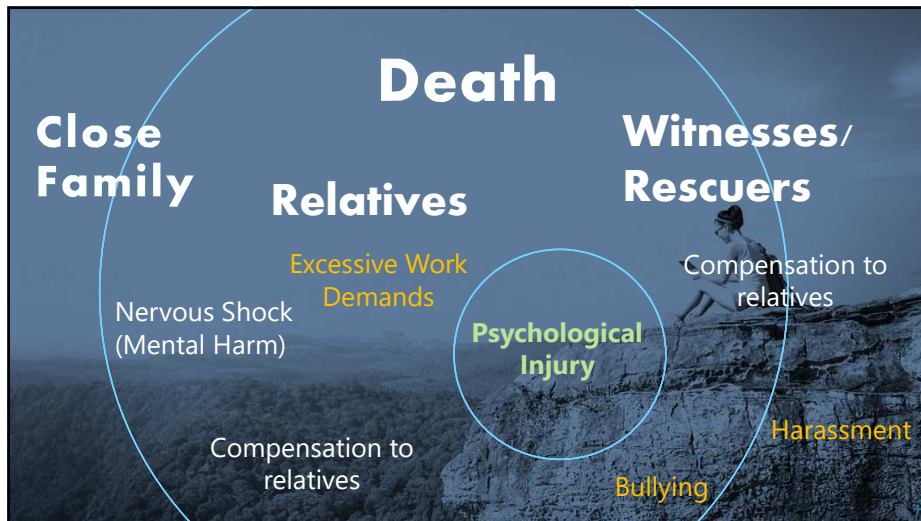




1

Psychosocial Safety

NSW Reforms

Workers Compensation changes

- Exempt: Police, Firefighters and paramedics

IRC Jurisdiction

- Psychological Injury Disputes
- WHS

WHS

- Code
- Digital Monitoring
- Unions and Safety Committees

2

Reforms

Workers Compensation

- Excesses
- Suitable duties- improvement notices and penalty doubled
- Strengthened 11A defence
- New dispute process - IRC
- Eligibility and entitlement changes
- Two tier system for psychological injuries
- Exemptions from changes
- Reasonable and necessary test
- One go at impairment assessment
- Premium freeze - 2 years
- Easier Commutations

3

Reforms

WHS

- Duty to Comply with Code 26A
- Digital work systems -21A
- Division 5 WHS matter disputes - matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue
- IRC WHS jurisdiction increased – WHS safety matters
- Union powers to prosecute for breaches
- Health and safety representatives - provisional improvement notices supplied to Regulator

4

What's New - NSW Workers Compensation

Workers Compensation Entitlements

- Reduced entitlements
- Increased thresholds
- Reasonable and necessary test
- Definitions
- Additional defences
- Funding for IRC disputes

Claims

- 2 Tier – Relevant Event & Relevant Conduct
- Exempt Workers
- Fast Track for Relevant Conduct claims
- Relevant Conduct disputes in IRC

5

What's New

IRC disputes

- Stop bullying orders
- Stop Harassment orders
- Bullying/harassment/excessive work demand dispute
- WHS matter disputes

Damages – NSW Government Sector

- Stop bullying damages up to \$100,000
- Stop harassment damages up to \$100,000
- WHS**
- Positive Duty to comply with Codes
- Digital Work Systems
- Union Powers and IRC Jurisdiction

6

Existing Rights

Continue to apply

Workers Compensation

- Termination in first 6 months after injury
- Reinstatement applications after termination – 2 years
- Suitable Duties & Return to Work

Fairwork

- Unfair dismissal claims
- Adverse Action claims

Corporations Law

- Whistleblower claims

7

Where to Look

IRC

1. [IRC Guidance Note](#)
2. [IRC Application to Determine Relevant Conduct](#)
3. [IRC Practice Note](#)

ILARS

- [Amending Instrument](#)

Workers Compensation Act

- [Workers Compensation Legislation Amendment Regulation 2026](#)
- [Reasonable Prospects Certificate](#)
- [New SIRA Claim Form](#)

SIRA

- [Workers Compensation Guidelines](#)

8

IRC

Industrial Relations Commission

Stop Bullying	Stop Harassment	Is there relevant conduct
Orders and \$100,000 damages	Orders and \$100,000 damages	Bullying/ harassment/excessive work demand finding

WHS matters – applications by workers, safety committees and unions- cease work and provisional improvement notices and WHS disputes

9

New WHS

Work Health Safety

Duty to Comply with Codes	IRC - Unions and Workers	Digital Work Systems
Managing Psychosocial Hazards	WHS matter disputes - cease work for safety/provisional Improvement Notices Union Prosecutions	Access to systems and interaction with Code

10

New Regime for Psychological Injuries arising from Relevant Conduct

1	2	3	4	5
WID 25% → 31%	IRC Dispute	130 weeks of wages	12 months medicals and treatment	More defences and definitions
Initial 8 weeks of medical, hospital, rehabilitation and wages (75%) for psychological injury claims. plus COMMUTATIONS				

11

WC CLAIMS

Workers Compensation - Relevant Conduct

42 days	Review	Worker not satisfied with review
Claim assessment	14 days	IRC dispute over "relevant conduct"

- Provisional payments for medicals, weekly payments and rehabilitation – 8 weeks
- 3 days to reject incomplete claim

12



“Applies to a “**psychological injury**”: an injury that is a mental or psychiatric disorder that causes behavioural, cognitive or psychological dysfunction..”

— Application

13

5 prerequisites for compensation

There is a **psychological injury**.

There is a **relevant event** (3 types of circumstances: an event of bullying/harassment/excessive work demands; or other prescribed by regulations).

The relevant event **caused the primary psychological injury**.

There is a real and substantial connection between the relevant event and the worker's employment.

The **employment is the main contributing factor** to the primary psychological injury.

14



Relevant Conduct

“an individual or a group of individuals repeatedly behaving unreasonably towards the worker or a group of workers of which the worker is a member”

— Bullying

15



Relevant Conduct

“Excessive work demands that are:

- Beyond the requirements expected of the workers role, and
- Repeated or persistent, and
- Not reasonable in all the circumstances.”

— excessive work demands

16



Relevant Conduct

“a person who makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker or engages in other unwelcome conduct of a sexual nature in relation to the worker”

— Sexual Harassment

17



Relevant Conduct

“an act that is

- reasonably likely in all the circumstances to offend, insult, humiliate or intimidate the worker, and
- done because of the race, colour or national or ethnic origin of the worker ”

— Racial Harassment

18



Relevant Event

Relevant Conduct
+
Other defined Events

19

Relevant Conduct Triggers



Relevant Conduct

- (a) being subject to sexual harassment , or
- (b) being subject to racial harassment, or
- (c) being subject to bullying, or
- (d) being subject to excessive work demands, or
- (e) another event prescribed by the regulations

20

Other Triggers
For psychological injury caused by other defined circumstances

!

- (a) subjected to an act of violence or a threat of violence, or
- (b) subjected to indictable criminal conduct, or
- (c) witnessing:
 - (i) a **traumatic incident** happening
 - (ii) a dead or seriously injured person at the scene of a **traumatic incident**
- (d) experiencing **vicarious trauma** — ↑
DEFINED TERMS

21

Traumatic Incident

!

- (a) any of the following incidents if the incidents results in, or is likely to result in the death of, or serious injury to, a person –
 - (a) an act of violence, or
 - (b) indictable criminal conduct, or
 - (c) a natural disaster, fire or explosion,
 - (d) a motor accident or other accident, or
- (b) a suicide or attempted suicide, or
- (c) an incident prescribed by the regulations

22

Vicarious Trauma

!

Psychological impact of repeated exposure, in the course of the workers duties, to traumatic experiences of others that result from traumatic incidents

23

Tests		Relevant Event
Relevant Conduct	Other Defined relevant events	Two Tier System
Fast Track Claims Regime	No Change –Personal Injury Commission	IRC – is there relevant conduct PIC – injury and other defences

24

Tests

Bullying, harassment or excessive work demand (EWD) –Relevant Conduct

Objective Test	Workers Perception	Defined criteria for EWD
Same as stop bullying order in FWC	Relevant but must be reasonable	Compulsory considerations

Subset of Relevant Event

25



EWD

- Usual work pattern in industry
- Supervision(control and surveillance)
- Role, responsibility and work arrangements
- OT pay, penalty rates, allowances, compensation for additional hours
- Remuneration that reflects expectation for additional hours
- Workplace needs
- Staffing levels, mix of qualifications and skills that relate to workers workload
- Industrial agreements/arrangements

26

11A Defences

No compensation is payable in relation to a psychological injury if a significant cause of the psychological injury was

1	2	3
reasonable management action taken or proposed to be taken by an employer in relation to a worker	a worker's expectation or perception of reasonable management action being taken in relation to the worker	a worker's perception of reasonable management action taken or being taken in relation to the worker

Note – A psychological injury includes a primary psychological injury and a secondary psychological injury.

27

reasonable management action

action taken in a reasonable way

action that is reasonable in all the circumstances

28

reasonable management action

1

- Appraisal of or feedback about the worker's performance,
- Counselling of the worker,
- Demotion, redeployment or retrenchment of the worker's performance,
- Disciplinary action taken in relation to the worker's employment,
- Dismissal of the worker,
- Investigation of misconduct:
 - by the worker
 - of a person relating to the workforce in which the worker was involved or which the worker was a witness

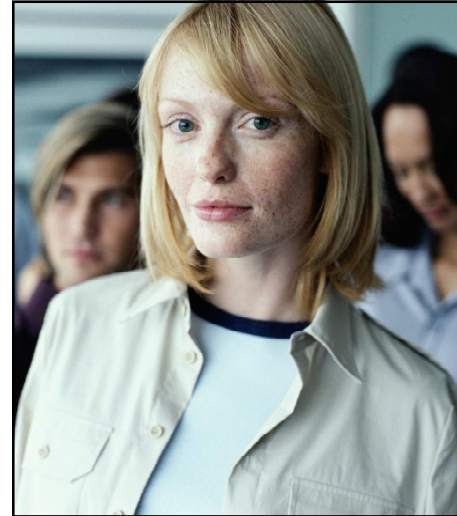


29

reasonable management action

2

- Promotion of the worker, including unsuccessful promotion
- Provision of leave,
- Provision of an employment benefit,
- Reclassification of position,
- Suspension or stand-down
- Training,
- Transfer of employment
- Reclassification of the worker's employment position,
- Communication in respect of all of the above
- Another action prescribed by the regulations



30

Summary

Conditions	Defences
Satisfies psychological injury definition	Not bullying or harassment
Caused by "relevant event"	No finding of bullying or harassment by tribunal, commission or court
Event satisfies definition of relevant event	Finding of bullying or harassment not related to a relevant event
Real and substantial connection between the relevant event and the worker's employment	Significant cause of injury was reasonable management action
Employment is the main contributing factor to the primary psychological injury	Significant cause of injury was workers perception of reasonable management action taken or being taken in relation to the worker

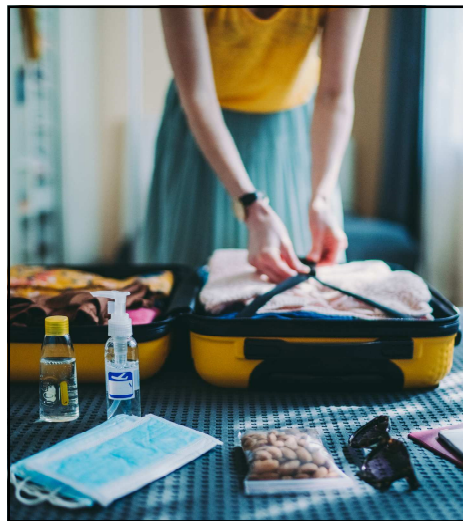
31

New Claim Form

- the specific nature of the conduct
- whether the conduct has been carried out repeatedly,
- examples of specific instances, including the date, time and location, of the conduct,
- the persons involved in the conduct,
- the names of witnesses to the conduct,
- as far as is reasonably practicable, an explanation of the relationship between the relevant conduct and the worker's employment,
- the name and contact details of the worker's treating medical practitioner,
- details of the worker's injuries, supported by a medical certificate specifying one or more mental or psychiatric disorders,
- the worker's consent to use and disclose the information for purposes reasonably connected with responding to and managing the claim



32



Insurer Considerations

- the account of a relevant event from
 - the worker, and
 - witnesses,
- the date, time and location of a relevant event,
- if a relevant event involved the worker being subject to the conduct of another person—the nature of the relationship between the worker and the other person,
- available medical and health information,
- information held by the worker's employer that relates to the relevant event, including audio and video recordings,
- a report of a relevant event made to
 - the worker's employer, or
 - a union,
 - or the NSW Police Force,
 - or SafeWork NSW,

33

33

3

FURTHER REQUIREMENTS

Regulations may provide for matters relating to primary psychological injuries, including—

- the type of matters or circumstances an insurer must take into account when determining whether an injury is a primary psychological injury, for which compensation is payable, and
- the evidence a worker must provide for a claim in relation to a primary psychological injury.



34

No Claim

Resolving and defending psychological injury compensation claims

Settlement at IRC

Finding and Admissions

Successful defence

Resolution at conciliation

Negotiated exit with findings and admissions

No bullying or harassment or excessive work demand finding

35

35

Prepare

What employers need to review

Return to work plan

Suitable Duty Strategy

Performance Management Process

Managing bullying and harassment complaints

Ongoing Interactions between workers: bullying or harassment

Reasonable management action

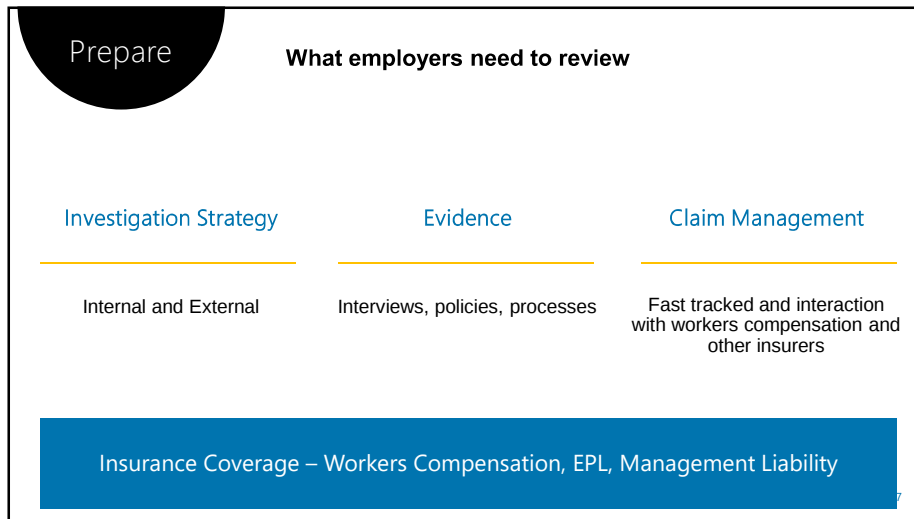
NB Improvement Notices
Penalty \$1,250



WHS Systems – Managing Psychosocial Hazards Code

36

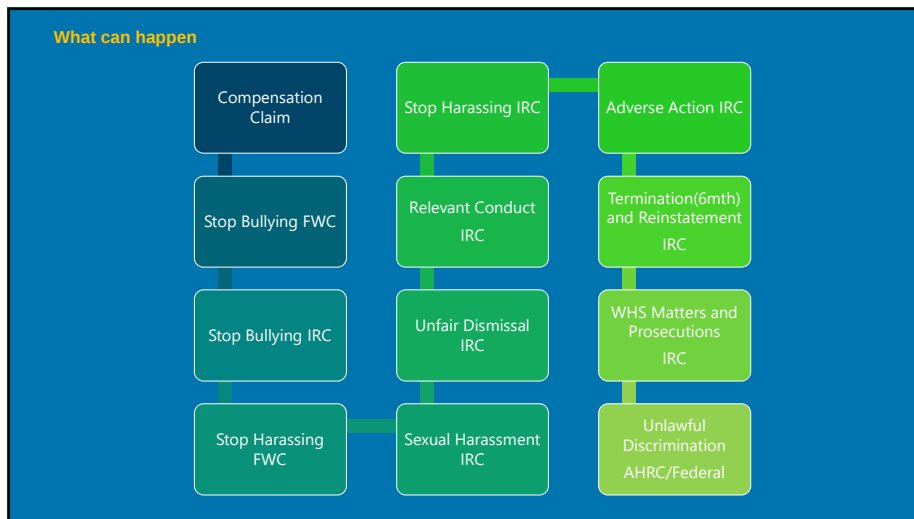
36



37



38



39



40

1

Relevance of WHS Act

ENGAGE

No reference in the Workers Compensation legislation
Relevant to **what is reasonable management action**

The Code of Practice - Managing psychosocial hazards will inform what is

- reasonable management action,
- whether action is reasonable in the circumstances
- Whether action taken in a reasonable way.

New Duty 26A – Comply with Code

New Duty 21A – Digital work systems



41

2

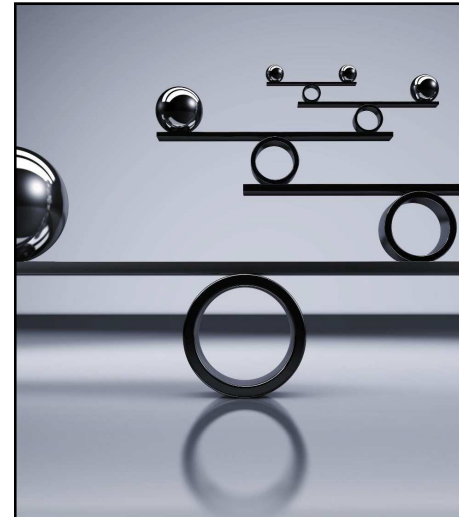
WHS Considerations

the way the tasks or job 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

social factors at work, workplace relationships
and social interactions.



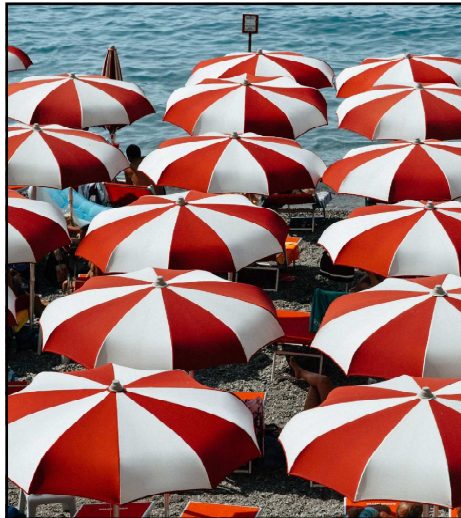
42

3

ADDITIONAL CONSIDERATIONS

Workers who are younger, in training, older, or who
are new to the organisation or doing those tasks with
diverse language, literacy, numeracy, or cultural
backgrounds

Workers who have experienced work-related injury,
illness or previous exposure to a traumatic



43

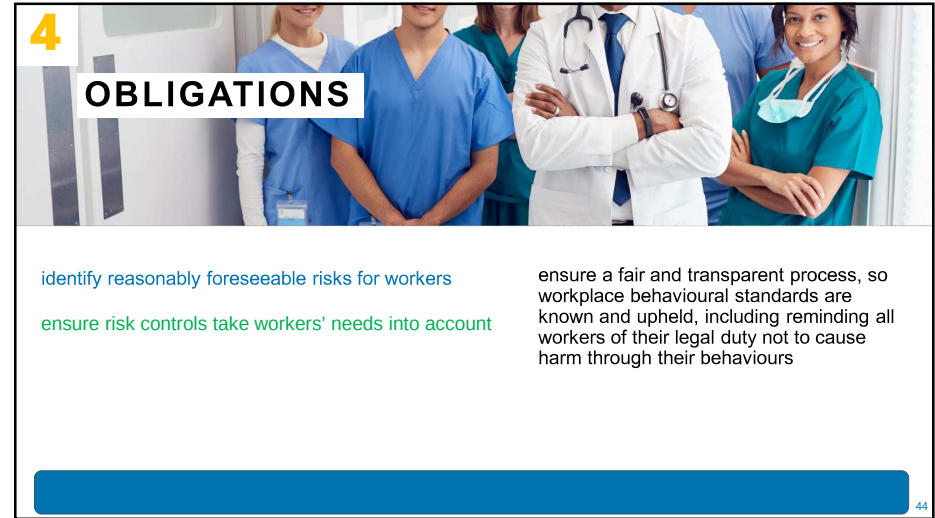
4

OBLIGATIONS

identify reasonably foreseeable risks for workers

ensure risk controls take workers' needs into account

ensure a fair and transparent process, so
workplace behavioural standards are
known and upheld, including reminding all
workers of their legal duty not to cause
harm through their behaviours



44

5

WHS DUTIES

1

consulting with workers about work health and safety

2

providing and maintaining safe systems of work

3

providing and maintaining a work environment that is without risks to health and safety

4

monitoring the health and safety of workers and the conditions at the workplace, to ensure that work-related illnesses and injuries are prevented

5

providing appropriate information, instruction, training or supervision to workers and others at the workplace, to allow work to be carried out safely

45

45

6

WHS DUTIES

6

implementing control measures to eliminate psychosocial risks so far as is reasonably practicable

7

if it is not reasonably practicable to eliminate psychosocial risks — to minimise the risks so far as is reasonably practicable.

46

46

psychosocial hazards



- Hazard Example Role overload (high workloads or job demands)
- Role underload (low workloads or job demands)
- Exposure to traumatic events
- Role conflict or lack of role clarity
- Low job control
- Conflict or poor workplace relationships between workers and their supervisors and managers and co-workers
- Poor support from supervisors and managers
- Poor co-worker support.

47

47

psychosocial hazards

- Workplace violence
- Bullying
- Harassment including sexual harassment
- Inadequate reward and recognition
- Hazardous physical working environments
- Remote or isolated work
- Poor procedural justice (processes for making decisions)
- Poor organisational change consultation



48

Return to Work and Injury Management Plans

What's the Plan

- Return to work plan for workers that have workplace injuries
- Injury management plan

Must deal with injuries that are psychological injuries as compensation may be payable.

"workplace injury" means an injury to a worker in respect of which compensation is or may be payable under this Act.



49

And More

The Commonwealth: Fair Work Act and Corporations Act

Unfair/Unjust Dismissal

High Income Threshold?

Adverse Action

Workplace Right

Whistleblower

Corporations Act

50

50

Insurance Mitigation

EPL and Management Liability cover

- Compensation for breach of employment contract
- Unfair dismissal
- Adverse action claims
- Whistleblower compensation



51

Risk appetite

Management Liability Insurance

Damages and Costs

EPL Insurance

Damages and Costs

Business Expense

Costs

Issues

- Premium
- Investigation costs
- Excesses
- Sub-limits
- Aggregate Limits

52

52

Psychological Injury Reform!

THANK YOU

Newey Bond Lawyers
10/179 Elizabeth Street Sydney 2000
www.neweybond.com.au
+61 2 9394 1177

David Newey
Partner
T: +61 2 9394 1111
E: dtn@neweybond.com.au