



Mental Health Inquiry – Draft Report Consultation

The Productivity Commission | Australian Government

January 2020

Contents

Contents	2
About us	3
Introduction and summary	4
WHS findings and recommendations	6
Amending WHS laws to embed psychological health and safety	6
Code of practice on employer duty of care	7
Workers' compensation findings and recommendations	9
Lower premiums for employers with workplace initiatives that reduce risks	9
No liability treatment for mental health related compensation claims	10
Funding clinical treatment until return to work or up to a period of six months	12
Mentally healthy workplace findings and recommendations	13
WHS agencies sharing information on workplace interventions	13
Designating a proportion of personal leave days as 'personal care'	14
Contact	15

About us



Consult Australia is the industry association representing consulting firms operating in the built and natural environment sectors. These services include design, engineering, architecture, technology, survey, legal and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments. We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms with combined revenue exceeding \$40 billion a year.

Some of our member firms include:



Introduction and summary

Consult Australia welcomes the Australian Government's decision to conduct a mental health inquiry, and we would like to compliment the Productivity Commission's (PC's) work to date exploring the full range of current system-wide challenges, and proposing recommendations which seek to address these challenges in the inquiry's draft report. We believe this work is invaluable for putting a light on these challenges, understanding their costs, and developing a substantial reform agenda that will help shape Australia's approach to mental health for decades to come.

Mental health is an important topic to our industry and member firms. It is a topic that directly and indirectly affects many in our industry, and we believe caring about the mental health of our employees, providing effective support, and creating mentally healthy workplaces is the right thing to do. We believe our sector, and the broader business community should be looking at the mental health of employees through the following principles:

1. We have a social obligation to support the mental health of our staff;
2. We have a legal obligation to put in place appropriate measures to prevent and respond to mental health concerns; and
3. We can improve our performance and productivity by focusing on creating workplaces that thrive.

The draft report highlights the strong link between employment and mental health – being employed can improve our mental health, and mentally healthy workplaces are important to maintain good mental health. With at least three million working Australians either have mental ill-health or are carers of someone with mental ill-health, we agree with the draft report's finding that there is a growing role that businesses can play in supporting and maintaining the mental health of our workforce.

Our submission focuses on the draft report's fourth reform area – assisting people with mental ill-health to get into work and enabling the early treatment of work-related mental illness. A summary of our feedback to the recommendations and information requests under this reform area are outlined below.

Workplace health and safety (WHS) recommendations

19.1: WHS laws to embed psychological health and safety

- We support the objective of this recommendation but further information is required.
- Our concern with this recommendation is its broad nature. Further detail on the necessary amendments needed to embed like-for-like outcomes with physical health and safety is needed for us to provide feedback on potential impacts to our member firms.
- We believe there is a strong case for these amendments to be determined after codes of practice (recommendation 19.2) are developed and agreed with industry.

19.2: Code of practice on employer duty of care

- We support this recommendation but industry input will be required.
- A code of practice approach strikes the right balance between the need for flexibility and certainty, particularly when compared to a more prescriptive regulatory approach.
- The recommendation does not discuss how codes of practice will be developed - this will need extensive industry engagement to determine different types needed and their content.

Workers' compensation scheme recommendations

19.3: Lower premiums for employers with workplace initiatives that reduce risk

- We support this recommendation but not in conjunction with recommendation 19.4.
- Any practice that effectively considers premiums based on what employers are doing to mitigate workplace mental health risks is logical.
- We believe a major challenge will be ensuring this recommendation is implemented with processes that correctly, effectively and consistently determine how risk is reduced.
- The PC should also consider potential impacts on small businesses or particular business types from this recommendation.

19.4: No liability treatment for mental health compensation claims

- We support the objective of the recommendation but we believe there is either a better approach or further information on cost impacts need to be considered.
- The evidence is clear that early intervention and treatment are key actions that will improve an individual's recovery, and that liability relating to mental health claims is often not black and white and can be difficult to determine or pinpoint to one cause.
- The overarching issue on 'who pay's' for these changes has not been addressed in this recommendation, and it is incomplete without putting forward a position.
- The PC should seek advice from the insurance industry on likely impacts on premiums from these recommendations, and alignment to standard insurance practices.
- We will not support this recommendation if the final report proposes additional costs are covered by business through increased premiums or a employer levy.

Mentally healthy workplaces recommendation

19.5: WHS agencies sharing information on workplace interventions

- We support this recommendation but industry will need to be involved in the process.
- We believe there is an appetite from most businesses to better understand how they can support mental health in the workplace.
- WHS agencies could share information in easy to access 'knowledge hubs' - tailoring advice based on a business's circumstance.
- Information shared should include industry-wide interventions.
- We do not want this recommendation to create a situation where initiatives are not being recognised as best practice, despite being contested or delivering broader benefits.

Further detail on our response to each recommendation is below.

WHS findings and recommendations

This section of our submission responds to the draft report's findings and recommendations on improvements to WHS laws which will increase the prominence of psychological health and safety. We strongly support the draft report's call for further action on psychological health and safety in the workplace, and agree that outcomes achieved are not currently balanced.

The PC's inquiry, and its comprehensive broad-reaching approach, is an ideal platform to better understand the issues at play and to recommend effective and practical changes to WHS laws.

At this stage in the inquiry, we are somewhat cautious about the recommended approach to increasing the prominence of psychological health and safety in WHS laws. We believe the current recommendations on achieving this goal do not go into a sufficient level of detail, and importantly demonstrate how they will achieve like-for-like outcomes as those currently achieved with physical health and safety. Without a more detailed level of analysis, we believe there is a risk that recommendations will not resolve current challenges, and instead promote a like-for-like approach with physical health and safety, which may not achieve the same outcome or may not consider inherent differences and nuances with psychological health and safety.

Amending WHS laws to embed psychological health and safety

PC's draft recommendation 19.1: *Psychological health and safety should be given the same importance as physical health and safety in workplace health and safety (WHS) laws.*

In the short term (next two years), model WHS laws (and WHS laws in jurisdictions not currently using the model laws) should be amended to ensure psychological health and safety in the workplace is given similar consideration to physical health and safety.

All WHS legislation should clearly specify the protection of psychological health and safety as a key objective.

Necessary amendments should be made to ensure that the relevant legislation and regulation addresses psychological health and safety similarly to physical health and safety.

Our position: Support the objective of this recommendation but further information required

We believe the draft report appropriately acknowledges some of the current challenges around identifying and managing psychological health and safety hazards in the workplace. We see these as an inherent and underlying factors that go to the core of why the approach to psychological health and safety in the workplace is lagging behind. We therefore support the PC's call for efforts to help employers put in place actions that will better address these challenges and to create mentally healthy work environments.

We also agree with the draft report's findings that historical factors and our evolving understanding of mental health are also factors why psychological injuries in the workplace have not previously received the same attention as physical injuries. The number of mental health first aiders in most workplaces compared to first aiders is a strong example. We believe recent inroads by many employers to put in place an effective workplace mental health approach is addressing some of these historical factors and allowing employers to better understand how to identify and manage psychological health and safety risks.

To address these challenges and historical factors, we believe the PC has rightly identified a need to ensure psychological health and safety is receiving an equal focus as physical health and safety in workplaces and in WHS laws. We therefore support the PC's call to ensure workplace psychological health and safety is stated as a key objective, which we understand is already the case, and support the idea of further changes to WHS laws that effectively and practically help workplaces of all sizes and sectors. One example flagged in the draft report that we believe is logical is consistent reporting requirements for physical and psychological incidents in the workplace.

However, our concern with this recommendation is its broad nature. While the report provides a concise summary of the discussion to date on possible changes to WHS laws, including feedback from business groups, the recommendation does not identify what changes to current WHS laws will practically and effectively ensure psychological health and safety is given the same importance as physical health and safety. Without further detail on the necessary amendments needed to achieve this outcome, it is difficult for us to provide feedback on how effective this recommendation will be and flag any potential concerns, such as if proposed changes could be better achieved through an awareness raising or education approach that promotes cultural changes.

Given WHS laws already cover psychological matters and the PC's desire to increase the prominence of this as a key objective, we believe this recommendation could be expanded to also provide further clarity on overarching aspects of WHS laws where there are concerns. This could include further clarity on the definition of 'reasonably practicable' which is an area of confusion flagged by many of our member firms.

If the PC is not in a position to present more detail on necessary amendments to WHS laws, we instead encourage a bottom up approach to developing proposed changes. This would involve WHS agencies acting on recommendation 19.2 (codes of practice) first by engaging with industry to agree on the types of codes of practice and their proposed design. WHS agencies would then consider the types of legislative amendments needed to enact or formalise these codes of practice and any other outstanding issues relating to giving psychological health and safety the same level of importance as physical health and safety in WHS laws. This would also enable a trial period to ensure codes of practice are fit for purpose before they are formalised in WHS laws.

Code of practice on employer duty of care

PC's draft recommendation 19.2: *In the short term (next two years), codes of practice should be developed by WHS authorities in conjunction with Safe Work Australia to assist employers meet their duty of care in identifying, eliminating and managing risks to psychological health in the workplace.*

Codes of practices should be developed to reflect the different risk profiles of different industries and occupations.

Our position: Support this recommendation but industry input required

This draft recommendation addresses some of our concerns about potential implications from taking a blunt or 'one size fits all' regulatory approach towards amendments to WHS laws as part of an effort for greater consistency with psychological matters. The draft report acknowledges some of the greater complexities involved with managing psychological risks compared to physical risks which present further challenges with a prescriptive approach, and at the same time highlights that many employers are seeking greater certainty

on meeting their duty of care for psychological matters. We believe this recommendation's code of practice approach strikes the right balance between the need for flexibility and certainty.

The benefit of this recommendation is it takes an outcomes-based approach. We believe there are a number of different avenues to arrive at the same outcomes, particularly when considering different circumstances such as workplace size and the sector. For this recommendation to be effective, it will be critical that there is a wide range of codes of practice that appropriately consider these differences, and we believe engaging with industry associations is an appropriate first step for WHS agencies to understand this range needed. Our industry has previously been categorised in previous sector-based activities that do not completely represent our working environment or the mental health challenges we tend to face, such as a broad office work or a construction category. We therefore recommend the Australian Government ensure categories do not just consider the physical working environment, but also business models, procurement arrangements, and other influences such as project-based or client influenced working environments.

The draft recommendation does not discuss potential approaches for developing codes of practices, ensuring they are evidence-based, and considering any potential 'red tape' implications for suggested approaches that do not consider efficiencies. It is unlikely these capabilities exist entirely within WHS agencies, particularly those relating to business practices, and we therefore encourage the PC's final report to also recommend these codes of practice be developed with industry input. The development of codes of practice should be through a rigorous co-design process that also includes external expertise from academics and other mental health researchers.

Lastly, we also note the importance of implementing codes of practice before or at the same time that any amendment to WHS laws take place. There is already sufficient evidence and examples of effective actions that businesses can take to inform codes of practice without needing legislative amendments to capture this information first.

Workers' compensation findings and recommendations

This section of our submission responds to the draft report's findings and recommendations on workers' compensation schemes. We agree that current arrangements for workers' compensation arrangements, particularly the assessment of claims to determine liability, are critical blockers in the early intervention and treatment of individuals experiencing mental health challenges, and for ensuring a timely and successful return to the workplace. To this end, we support the inclusion of workers' compensation schemes as an area being considered in the inquiry.

This section of the draft report highlights a number of potential changes to workers' compensation arrangements that will result in a significant cost that will either need to be met by government funding, increased premiums or an employer levy. We strongly support many of the potential changes flagged to workers' compensation schemes to improve mental health outcomes and understand the significant challenges of the issues that the draft report is seeking to address. However, we believe these potential changes cannot be considered without a proposed position on how these additional costs will be funded.

We believe findings on workers' compensation schemes emphasise the importance and need for a well-funded public health system that provides fast access and quality mental health services. This is a core issue that has not been considered in detail in this section of the draft report, particularly when deliberating options on who would meet increased costs. We therefore believe the draft report needs to further question the rationale on why options related to employers (through increased insurance premiums or an employer levy) are appropriate when considering how a no liability approach for mental health related claims could be supported.

Lower premiums for employers with workplace initiatives that reduce risks

PC's draft recommendation 19.3: *In the medium term (two to five years), workers' compensation schemes should provide lower premiums for employers who implement workplace initiatives and programs that have been considered by the relevant WHS authority to be highly likely to reduce the risks of workplace related psychological injury and mental illness for that specific workplace.*

Our position: Support this recommendation but not in conjunction with recommendation 19.4

We support any practice that effectively considers what employers are doing to mitigate psychological health and safety risks in the workplace and lower insurance premiums for employers with effective mitigations in place. We therefore support this recommendation if design and implementation arrangements achieve its desired outcome.

The challenge for this recommendation is to ensure it is implemented with the right processes in places to determine what is an initiative that reduces risk, and to what extent the risk is reduced. This recommendation will also need to ensure these arrangements are not inversely impacting small or medium sized enterprises (SMEs) or particularly business types. We therefore encourage the PC to further explore the additional challenges and a potential uneven playing field that SMEs and particular sectors may face, such as resourcing, budget, and access to expertise constraints.

We also note that differences in worker compensation schemes across the country, and the limited ability for the Australian Government to influence these arrangements, will make it difficult to consistently implement this recommendation. It is likely that different jurisdictions and different scheme types (i.e. private, hybrid or government schemes) will continue to have a different take on setting premiums and therefore considering the effectiveness of workplace initiatives at reducing risk, and this will likely result in disjointed arrangements that will particularly impact organisations with a presence across more than one jurisdiction. As such, we believe this recommendation would be more successful if there was one consistent and accepted methodology on how employers can reduce risks, and as such we see this recommendation needing to be tied with recommendations 19.2 (codes of practice) and 19.6 (WHS agencies sharing workplace initiatives).

As the draft report discusses the effectiveness of workplace initiatives and also flagged some of the challenges around measuring benefits, we are somewhat cautious that an unintended impact of this recommendation could be to create a disincentive to implement initiatives that have not been deemed to reduce risks (but could be contested) or those that also seek to achieve broader wellbeing or workplace culture benefits. To address this concern, WHS authorities will need an effective approach to understanding the effectiveness of workplace initiatives and this approach will need to be co-designed with industry and mental health researcher stakeholders. The approach would also need to be designed in a way that allows it to consider new initiatives as our understanding of mental health issues improve over time.

We are also concerned that this recommendation will be linked with the other recommendation on workers' compensation scheme which proposes a no liability approach for accessing clinical treatment for mental health related claims (recommendation 19.4). We do not believe linking this recommendation would offset additional premium costs for employers when coupled with recommendation 19.4, or recognise that a mentally healthy workplace is only one component underpinning the mental health of an employee.

No liability treatment for mental health related compensation claims

PC's draft recommendation 19.4: *In the medium term (in the next two years), workers' compensation schemes should be amended to provide clinical treatment for all mental health related workers' compensation claims, regardless of liability, until the injured worker returns to work or up to a period of six months following lodgement of the claim. Similar provisions should be required of self-insurers.*

Our position: Support the objective of this recommendation but believe there is a better approach or further information of cost gap considerations needs to be included

We strongly support the intended benefits of this recommendation. It is the right thing to do to get employee experiencing mental health challenges into clinical treatment as soon as possible and ensure they are provided appropriate support to aid their recovery. To this end, we support the draft report's finding that the specific cause of a mental health concern is often unclear and based on a number of factors, and time lost determining liability can be an enormous detriment to the recovery of an employee. Early intervention and treatment are key actions that will improve successful return to work outcomes.

To achieve these desired objectives, this recommendation needs to answer the overarching issue raised in the draft report on 'who pay's?' for these changes. This is needed to ascertain the sustainability and equity of this recommendation, and to consider if this approach potentially creates unintended impacts.

In the PC's deliberations on the funding issue, three options were flagged:

1. Funding clinical treatment entirely through workers' compensation insurance premiums;
2. Governments providing some funding to reduce insurance premiums for employers; and/or
3. Governments levying a tax on employers to fund the treatment based on the number of their employees, the industry they operate in and their risk profile based on various metrics.

From these options, we cannot support this recommendation if the final report proposes that businesses be required to cover additional costs from workers' compensation schemes with no liability arrangements in place for mental health related claims. We do not believe this is equitable and instead relies on businesses to provide a solution to what should be supported, in cases when liability is not related to employment, by a health system that provides fast access and high-quality services.

It is important to again reiterate that we do not see a correlation with cost impacts for employers from this recommendation and any potential savings from the recommendation on lower premiums for employers with workplace initiatives in place that reduce risks (recommendation 19.3).

As such, we do not support option one or three flagged by the PC on the funding issue, and require further information on option two to understand the cost impact on our member firms. For example, government support to reduce insurance premiums would need to consider how costs would change over time from presumptive legislative clauses that mental health conditions claimed are to be covered by workers' compensation schemes rather than ensuring any initial change in insurance premiums is covered by government funding.

Another option we recommend the PC investigate further is a no liability treatment approach upfront for mental health related clinical treatment while the compensation claim is being accessed, and costs being retrospectively covered by an employer's workers' compensation arrangement if the claim is deemed to be workplace related or the claim costs need to be covered by the government if the claim is not deemed to be workplace related (as is the case in the public health system). We understand this creates two paths for those employed and those unemployed, however we believe any ramifications on this approach creating a two-tiered system should be addressed by broader efforts to improve access to, and the quality of, the public health system. This option would also address a concern raised in the draft report about continuing an incentive for workplaces to put in place measures that reduce risks.

We encourage the PC to extensively engage with the insurance industry to gauge their perspective on this recommendation. We believe the insurance industry can provide some valuable insights on how this recommendation could be restructured to better align with insurance principles, to further consider employer insurance premium impacts when limitations to managing liability risks are introduced, and to highlight why it not be reasonable to assume that recommendation 19.3 will help offset any increased costs for employers.

Lastly, compensation claims currently dictate the premiums of many businesses and also inform regulators about potential compliance. A no liability approach to mental health related compensation claims would need to uncouple these current arrangements.

Funding clinical treatment until return to work or up to a period of six months

PC's information request 19.3: *How should the clinical treatment for workers' with mental health related workers' compensation claims (irrespective of liability) be funded until return to work or up to a period of six months?*

We support the idea of ensuring that the clinical treatment for workers with mental health related compensation claims should be funded until they return to work or for a period of up to six months.

In regard to funding for this clinical treatment, we believe governments should be responsible for covering these costs if liability is not linked to the individual's employment. Existing arrangements should continue if the assessment of the compensation claim is linked to the individual's employment. We therefore again recommend an approach where mental health related clinical treatment is provided while the compensation claim is being assessed, and costs are retrospectively covered by an employer's insurance arrangements if workplace related or by the government if deemed not to be workplace related.

Mentally healthy workplace findings and recommendations

We believe the promotion of mentally healthy workplaces, and the implementation of supporting initiatives and interventions, is a critical component to supporting mental health across the community and to improving workplace outcomes. We agree with the point flagged in the draft report that employers are most likely to effectively implement interventions when they genuinely believe that the mental health of their employees is important.

To this end, we believe businesses have a social obligation to create mentally healthy workplaces for their employees, and most businesses recognise this is the right thing to do in addition to their legal obligation and the potential for a positive productivity return. This highlights the importance of WHS agencies recognising that they play a critical role in supporting businesses through education and awareness raising activities. We believe this is more effective than a 'stick approach', or prescriptive regulatory requirements.

WHS agencies sharing information on workplace interventions

PC's draft recommendation 19.5: *In the medium term (in the next two years), WHS agencies should monitor and collect evidence from employer-initiated interventions to create mentally healthy workplaces and improve and protect the mental health of their employees. They should then advise employers of effective interventions that would be appropriate for their workplace.*

Our position: Support this recommendation but industry input required

Sharing information on workplace interventions that employers can put in place to help create a mentally healthy workplace will be helpful for businesses. We believe there is an appetite from most businesses to better understand how they can support the mental health of their employees in the workplace, and from our perspective many do not see these initiatives as a burden – and instead see them as the right thing to do, and also recognise the productivity and performance benefits from a mentally healthy workplace.

It will be important for WHS agencies to engage with businesses of all types and from different sectors when considering appropriate information to share on workplace interventions. Many businesses in our industry already have a number of workplace initiatives in place that we believe have been effective, and we have seen a willingness for businesses to share these and their experiences with others.

We believe WHS agencies could share information on workplace interventions in easy to access 'knowledge hubs'. These knowledge hubs could be structured as one stop shops for businesses to access case studies, training material, 'toolkits', research reports, and other statistics and resources in addition to example workplace interventions. We also believe knowledge hubs could have a refined approach where businesses are asked to assess their current state of workplace mental health and to answer other profiling questions related to workplace mental health risks to help provide targeted material for their circumstance. To this end, we see the desire to create a mentally healthy workplace as a journey rather than a destination where businesses should be viewing their approach as continuously improving. We acknowledge the work to date by WHS agencies such as SafeWork NSW and WorkSafe Victoria in taking this approach and promoting partnerships with industry to improve outcomes.

We also recommend the final report consider how WHS agencies can proactively promote effective interventions and workplace mental health. The PC should consider if a mental health champions model

would also help promote the uptake on workplace interventions, where influential individuals from across industry can help champion the topic and the importance of taking action. Consult Australia has recently established a Mental Health Ambassador Network with the same objectives, and we believe additional support from governments could help increase the effectiveness of similar networks, and help drive positive changes particularly in industries with ongoing challenges.

It is also encouraging to see the draft report flag the involvement of industry associations in promoting mental health and the industry-wide initiatives that seek to influence broader change. We encourage WHS agencies to engage with industry associations as an early step in understanding the types of workplace interventions that would be useful to share, and we believe WHS agencies should also share and encourage the uptake of industry-wide workplace interventions as part of the implementation of this recommendation.

Lastly, we do not want this recommendation to create a situation where workplace initiatives are not being recognised as best practice, despite being contested or it being recognised that they are helping deliver some benefits, and for this to then create a disincentive for businesses to continue these activities. The draft report acknowledges that the understanding on the effectiveness of workplace initiatives can be difficult to measure, particularly the longer-term benefits during the early stages of implementation, and we believe WHS agencies will be in no better position to make this determination. This becomes even more important if these types of interventions then impact on premiums for workers compensation schemes.

Designating a proportion of personal leave days as ‘personal care’

PC’s information request 19.2: Would designating a number of days of existing personal leave as ‘personal care’ to enable employees to take time off without medical evidence to attend to their personal care and wellbeing improve workplace mental health and information on absenteeism due to mental ill-health? If so, what would be needed to make this provision effective?

We support the idea of designating a number of days of existing personal leave as ‘personal care’ for mental health purposes. Many of our member firms have implemented similar arrangements, coupled with flexible working arrangements, and many have noticed reductions in absence rates and improved employee engagement.

We believe this type of approach would need to be completed by a comprehensive workplace mental health policy and initiatives, including stay at work/return to work initiatives, to ensure these employees also have the option of taking up support available in the workplace.

Contact

We would welcome any opportunity to further discuss the issues raised in this submission. To do so, please contact:

Nicola Grayson

Chief Executive
Consult Australia

nicola@consultaaustralia.com.au

James Robertson

Policy Advisor
Consult Australia

james@consultaaustralia.com.au

0448 853 144