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Driving business success for consulting firms in the built and natural environment

30 March 2022

Director, Legislation Policy and Information Services Division
WorkSafe Victoria
PO Box 279
Geelong Victoria 3220

Dear Director,

RE – Proposed OHS Amendment (Psychological Health) Regulations

Thank you for the opportunity to comment on the [Proposed OHS Amendment \(Psychological Health\) Regulations](#). I am writing on behalf of Consult Australia member businesses. We support the establishment of guidance such as codes of practice to assist employers to meet their duty of care in identifying and managing risks to psychological health in the workplace. However, we are concerned that the proposed OHS amendment for psychological health regulations, which we understand are looking to be introduced in July 2022¹, creates prescriptive obligations on employers that may be difficult to meet. Having reviewed the options presented in the regulatory impact statement, Consult Australia recommends option 3 over option 4.

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 58,600 businesses across Australia. This includes some of Australia's top 500 companies and many small businesses (97%). Our members provide solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry directly employs over 285,000 people in architectural, engineering, and technical services, and many more in advisory and business support. It is also a job creator for the Australian economy, the services we provide unlock many more jobs across the construction industry and the broader community.

Consult Australia and its members are committed to [striving for mentally healthy workplaces](#). This includes creating environments that build confidence and acceptance of employees seeking help (removing perceived barriers are a key here). Consult Australia's [mental health knowledge hub](#) includes resources from our Mental Health Ambassadors and Mental Health Working Group. Members dedicate time to developing these resources to support staff in raising mental health concerns in the workplace and supporting workplace wellbeing.

However, we know that a myriad of pressures and external factors outside of an employer's control can also impede on the mental health of our workforce and the sustainability of our industry. Given this, we have advocated for clients (both public and private sector) to set the tone from the top and strive for a mentally healthy industry. We have called on governments to adopt the principles outlined in our [Model Client Policy](#) to drive model procurement behaviours that support the sustainability and health of our industry. We have established an End of Year Tender Deadlines Campaign, calling on agencies to implement a black-out period across Christmas and New Year, to give those we represent a well-deserved and uninterrupted rest over that period. Furthermore, we have called on the Commonwealth Government to mandate a collaborative procurement policy in line with our [Uplifting Productivity Report](#), recommending ways in which the Commonwealth government can maximise the benefits from projects via procurement reform.

¹ Deloitte Access Economics, Occupational Health and Safety (Psychological Health Regulations Amendments 2022), Regulatory Impact Statement, WorkSafe Victoria (January 2022).

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We have four key areas of concern with the proposed OHS amendments:

- **Control of risk.** There are challenges in seeking to eliminate risks to psychological health in the workplace where external risk factors may have an impact.
- **Prevention plans.** We stress the need for employer guidance in the development of prevention plans.
- **Duty to report.** The duty to report does not make clear circumstances where an employer sends an employee to work at a site that is controlled by a third party.
- **Applicable employer.** We are concerned that the prescribed size of an applicable employer may capture entities that may not have the capacity or knowledge on how to capture the required data.

Control of risk

We note the proposed amendments intend to introduce a requirement for an employer to 'eliminate any risk' associated with a psychological hazard and introduce a risk reduction process for employer's where it is not reasonably practicable to eliminate a risk associated with a psychosocial hazard. This risk reduction process is welcomed, but we have outstanding concerns on how it could be implemented to address external risk factors.

External risk factors can impact a person's psychological health in a workplace setting. A key example of this is the current climate – industry cannot eliminate the economic impacts of COVID-19, but those impacts are likely to have impacted the mental health of employees. Additionally, pipeline demands, including client timetabling/tender requests and the lack of a collaborative culture is putting significant pressure on consultants to perform and produce, often to unreasonable standards. We see this both in terms of public and private sector clients.

These concerns are further complicated by the significant skills shortage that has impacted our industry prior to COVID-19 and the resource capacity constraints under increasing pipeline demands. These factors are outside of employer's control however, we are concerned that the proposed OHS amendments could capture these situations.

Prevention plans

We understand the proposed regulations intend to introduce a requirement for employer produced prevention plans following the identification of a psychosocial hazards such as 'aggression or violence, bullying, exposure to traumatic content or events, high job demands, and sexual harassment.'² We understand the need for prevention and control of identified psychosocial hazards, however, we stress the need for employer guidance in the development of prevention plans.

Duty to report

We note the duty to report under the proposed amendments captures applicable employers ('50 employees or more at any point in time during the reporting period'), 'an independent contractor engaged by the employer', and 'any employees of the independent contractor'. It is not clear how the duty to report impacts circumstances where an employer sends an employee to work at a site that is controlled by a third party, or where an employer sends an employee to work in a different jurisdiction. Further clarity is needed here.

² Exposure Draft - Proposed Occupational Health and Safety Amendment (Psychological Health) Regulations.

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Applicable employer

We note an applicable employer is defined under the proposed amendments as an employer with '50 employees or more at any point in time during the reporting period'. We are concerned that this figure captures entities that may not have the capacity (both administratively and financially) to report biannually.

We understand that the Regulatory Impact Statement as prepared by Deloitte Economics suggests that businesses with less than 50 employees will not be captured by the reporting requirements, but the predicted cost to businesses with over 50 employees (inclusive of anticipated costs associated with reporting requirements) is \$64,000 in the first year of the new regulations, and \$38,000 every year after.³

This is quite a substantial investment for a business of this size. Further, the administrative requirements will have a considerable impact on businesses, particularly in the current climate where our industry is facing a significant skills shortage.

A combination of turnover plus employee number to define a small business is well established in the regulatory environment. For example, see ASIC and the proposed protections for small businesses against unfair contract terms.⁴ For this reason we support redefining small business to be under 100 employees and suggest an annual turnover rate.

Although we understand the government's preference is for option four, we would prefer option 3. Not only does it have a significant cost benefit, but it removes much of the administrative burden which could have significant productivity impact.

We understand the benefits data collection could have, but our members report that they struggle in obtaining data, evaluating data, and then presenting the outcomes. This is particularly the case for organisations that do not have the capacity to employ an appointed HR professional.

While guidance is available through WorkSafe Victoria, further support on how to capture data and support employees through the process of reporting (including the potential psychological impacts that discussion may create) are needed.

Conclusion

For these reasons, we continue to push for option 3, with the potential for option 4 (i.e. reporting) to be introduced after five years when the proposed OHS regulations remake takes place. This will allow post implementation review as well as industry education.

Consult Australia would be pleased to meet (virtually) with you to discuss this further, with senior leaders from the Consult Australia membership. I invite your office to contact me at teone@consultaaustralia.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Teone", is positioned above the typed name.

Teone Tobin
Senior Policy Advisor

³ Deloitte Access Economics, Occupational Health and Safety (Psychological Health Regulations Amendments 2022), Regulatory Impact Statement, WorkSafe Victoria (January 2022).

⁴ ASIC, [Small business](#); Treasury, [Strengthening protections against unfair contract terms](#).