



The Regulation of Psychosocial hazards at the workplace

The risk management and regulation of psychosocial hazards is complex but necessary. Many hazards can contribute to psychosocial illness/mental stress or injury, including bullying, work pressure caused by long hours or shift work, work intensification, fatigue, occupational violence, aggression or harassment.

Variances in definitions make psychosocial risks difficult to categorise and measure. The Productivity Commission Report, *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety –Research Report* (April 2010) explores the categories and trends in psychosocial hazards.

The Report notes that “*Estimates of the prevalence and cost of psychosocial hazards vary considerably*”. However, it also concludes that estimates indicate the average cost of claims for work-related mental stress are much higher than for all workers’ compensation claims.

In March 2010 the ILO formally classified psychosocial hazards as an occupational disease for the first time.¹

Each occupational health and safety jurisdiction in Australia currently implies a duty to manage psychological health. Victorian legislation specifically includes ‘psychological health’ in its definition of health and the “psychological needs” of employees are prescribed in the Objects of the NSW legislation. The South Australian *Occupational Health, Safety and Welfare Act* provides that an inspector can investigate an allegation of inappropriate behaviour which amounts to the bullying of an employee.

In Victoria and NSW, a detailed risk management approach to preventing bullying is limited to Guidance material.

Only Queensland (the *Prevention of Workplace Harassment Code of Practice 2004*) and Western Australia (Codes addressing *Fatigue Management, Working Hours* and *Violence, Aggression and Bullying*) enshrine reference to psychosocial hazards in Codes of Practice.

Currently inspectors in each jurisdiction are trained to recognize psychosocial hazards. As the Productivity Commission Report notes: “*the detection, management*

¹ R194 *List of Occupational Diseases Recommendation*, 2002 – www.ilo.org

and regulation of work-related stress present challenges to employers and regulators alike".²

THE FINANCE SECTOR

According to the Australian Bureau of Statistics, the finance sector has one of the lowest rates of illness and injury of any industry.³ However, evidence indicates that psychosocial illness and injury is on the rise, and in particular workers' compensation claims related to work pressure.

In the finance sector, common psychosocial hazards are:

- Bullying
- Unachievable work targets linked to discretionary pay
- Understaffing
- Work intensification
- Long hours of work
- Customer aggression
- Violence

Safe Work Australia and OHS practitioners acknowledge that illness and injury data is problematic and certainly in the finance sector it is difficult to disaggregate absenteeism based on sick leave, lost productivity due to mental stress, incidents of injury, and actual claims. The Productivity Commission Report⁴ cites accepted claims from 'work pressure' as the highest cause of mental stress claims for the finance sector in 2007/08, followed by those caused by harassment and bullying.

This data matches that collected by FSU over the last decade or so -since off shoring, retrenchments and understaffing started to impact banking staff, particularly in customer facing roles.

In 2008/09 the FSU undertook comprehensive **staffing audits** in retail bank branches across ANZ, NAB and CBA.⁵ These banks had experienced significant restructuring over the previous decade and member feedback and calls to FSU demonstrated that overwork had reached unacceptable levels amongst our membership.

The FSU audit found that the situation at NAB was the worst of the three banks.⁶

- FSU organizers visited 356 NAB branches nationally and found 410 vacancies in these branches.
- Of these branches, 77% had requested staffing relief and 56% of these had not had the relief provided.

² *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety – Research Report*, Productivity Commission (April 2010); pg. 280.

³ *Work Related Injuries Australia 2009-2010*, Catalogue 6324.0, December 2010.

⁴ op cit, Appendix E, Productivity Commission (April 2010).

⁵ An audit at Westpac was less comprehensive as it occurred as the Bank was merging with St. George Bank.

⁶ FSU presented NAB with a national and state reports of the audit outcomes in 2009. Some efforts have been made to increase staffing numbers.

- 70% of the branches noted that workloads had increased over the last year
- 76% had worked overtime over the last pay period.
- The national average amount of overtime worked over this 2 week pay period was 12 hours, and there is evidence to suggest that much of this was unpaid – 76% of respondents had had trouble having their overtime authorized.⁷
- The national average response for number of hours which had been cut from a branch was 19 hours over the previous 12 months.

In 2007, NAB moved to the Comcare system and self-insured. At the time of the audit, NAB had experienced a rise in absenteeism due to sick leave and mental stress. This was reflected in calls to the FSU Member Rights Centre (MRC) and disputes being handled by FSU advocates.

NAB had made arrangements with return to work contractors to undertake forceful and regular contact with absent staff – whether they had made a workers' compensation claim or not. In many cases, this resulted in prolonging absences from work as staff felt harassed and pressured, adding to their mental stress. This in turn led to an increase in bullying complaints to the Union's MRC.

In 2008/09, pressure on retail staff in each of the major banks seemed to be at a peak. The use of often punitive Performance Improvement Plans to pressure staff to meet onerous branch performance targets, combined with understaffing and work intensification resulted in low morale and illness across bank branches. Long-term FSU members and officials commented that they had never seen such work pressure on banking members.

The FSU is conducting a new round of staffing audits in the retail branches of the 4 major banks and 2 mid-sized banks, in 2011/12.

The original staffing audit research was supported by findings of an **FSU national survey** of members in 2009.

- There were 1710 respondents to the survey.
- Included in the survey were several questions on staffing and workloads. Over 70% of respondents disagreed that their workplace was adequately staffed for them to complete all work during normal hours.
- Just under 60% noted that overtime is consistently worked in their workplace
- 53% of these disagreed that this overtime was always paid – either via income or time off in lieu.
- Just fewer than 50% of respondents had problems having their leave approved if they wanted time off work.
- In relation to targets, 62% of respondents agreed that they were fearful of losing their jobs if they did not meet targets
- 57% felt that they were sometimes bullied by management into meeting targets.

⁷ At the time it was often impossible to have overtime authorized in advance as it could not be authorized at the branch level. Staff therefore just stayed at work to cope with their workloads, and did so without pay.

The FSU ran a report on calls to our national Member Rights' Centre⁸ to try and isolate further data on psychosocial hazards. Between 1 January 2010 – 31st January 2011, the following categories of call were identified:

Bullying/Harassment	1261 calls
Workers' Compensation – identified as psychosocial cause	169 calls
Workers' Compensation – physical or non-identified cause	643 calls

6 of the calls related to members who were suffering as a result of branch robberies.

FSU contends that the complexity of psychosocial hazards in the workplace warrants a clear reference to such hazards in Regulation. This, combined with mandatory risk management should go some way to preventing a continued rise in illness and injury attributable to such hazards.

Please see Recommendation under main Submission.

⁸ The Member Rights Centre takes inquiries and provides advice to FSU members. Some calls are referred on to state based advocates if the inquiry is part of a workplace dispute. These figures may include more than one call from the same member on the issue.

RISK MANAGEMENT

The management of psychosocial hazards must go hand in hand with a risk management approach to health and safety which is an enforceable part of the Model Health and Safety Act.

Currently all state jurisdictions (except Victoria) include a risk management approach to safety in their legislation.

A recent case under the Comcare jurisdiction illustrates the problems which can arise if an injury is not documented and a comprehensive risk management approach is not employed.

The case concerned the Department of Education and Training and involved issues of under performance, performance improvement processes/performance management, lack of consultation and a failure to document processes; [*Yu and Comcare* [2010] AATA 960 (1 December 2010)].

The original mishandling of the issues in this case led to the employee concerned developing an anxiety disorder and lodging a worker's compensation claim.

In the finance sector, lack of guidance and management training often lead to poor handling of workers' compensation cases which can exacerbate an employee's illness or injury. A mandated duty of care in relation to psychosocial hazards, combined with mandatory risk management and comprehensive Codes of Practice would ensure that such mishandling of workplace issues was minimised.⁹

In our industry, cases which concern psychosocial illness or injury are often complex and can involve issues of discrimination and pressure from trying to balance work and family life.

FSU recently had a case where a member was caring for 3 family members who were suffering from cancer. The FSU member utilised her carer's leave entitlements and continued to achieve high levels of productivity at the workplace.

The employee was put under a lot of pressure from managers, questioning the legitimacy of her very unfortunate circumstances. She was also told her colleagues were 'unhappy' with her – an allegation they strenuously denied.

The FSU member ended up putting in a claim for bullying against management, which was accepted following investigation. Such an outcome is unnecessary and could probably be prevented if managers were aware of their obligations in relation to bullying, via a comprehensive Code of Practice.

⁹ See *Preventing Workplace Bullying*, Caponecchia, C and Wyatt, A, Allen and Unwin, (2011) for a discussion of the complexities involved in preventing and risk managing bullying.

The *Café Vamp*¹⁰ case in Victoria and *Bailey v Peakhurst Bowling & Recreation Club Ltd*¹¹ in NSW are examples of complex, multi-faceted cases of bullying which were exacerbated by extremely negligent management.

Please see Recommendation under main Submission, How to Manage Work Health and Safety Risks draft Code of Practice.

¹⁰ The case which resulted in the suicide of waitress Brodie Panlock was heard in the Victorian Magistrates' Court on 8 February 2010 before Magistrate Lauritsen. There were 4 individual defendants plus the employer, Map Foundation Pty Ltd, trading as "Café Vamp". No reasons for decision were published.

¹¹ *Bailey v Peakhurst Bowling and Recreation Club Ltd* [2009] NSWDC 284 (3 November 2009).