

EEG



Welcome to the ECU Law Assembly 2024

Mental health and Wellbeing in the Workplace



Managing Psycho- Social Risks

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BARRISTER

APRIL 2024

“This new report by Safe Work Australia aims to increase understanding of the impact of psychosocial hazards at work by highlighting trends in psychological health in Australian workplaces.

The data gives insights that can help ...to address current and future challenges in psychological health and safety.” 27 Feb 2024

MARIE BOLAND

CEO

SAFE WORK AUSTRALIA

SafeWork Feb 2024 Report : Psychological H & S in the workplace

Psychosocial hazards are those that may cause psychological harm (whether or not it may also cause physical harm).

People who are exposed to psychosocial hazards at work are at greater risk of developing a work-related psychological injury, and poorer mental health outcomes.

Feb 2024 Report – Safe Work Australia

In 2020-22, the ABS National Study of Mental Health and Wellbeing reported that 2 in 5 (42.9%) Australians had experienced a mental health condition at some point in their lifetime .

Currently, mental health conditions contribute a small but **increasing** proportion of work-related injuries and illnesses in Australia. In 2021-22, mental health conditions accounted for 9% (11,700) of all serious claims and 7% of all work-related injuries and illnesses. This represented a 36.9% increase in claims since 2017-18.

Feb 2024 Report – Safe Work Australia

The most common type of mental health condition claim in 2021-22 was anxiety/stress disorders (45.8%).

Mental health conditions represent a significant personal impact as well as a financial cost for workplaces. In 2020-21, the median compensation paid for mental health conditions was \$58,615 per serious claim

Feb 2024 Report – Safe Work Australia

In addition, mental health conditions are associated with increased loss of productivity: over the same period, the median time lost for mental health conditions was 34.2 working weeks per serious claim compared to 8.0 working weeks per serious claim for all injuries and diseases.

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Workers' compensation claims identify the mechanism as the action, exposure or event that best described the circumstances that resulted in the most serious injury or disease.

The onset of mental health conditions resulting in a claim may primarily be related to mental stress at work, or a physical injury or other incident.

Of the approximately 10,000 serious mental stress claims in 2021-22, the highest proportion were attributed to work related harassment and/or workplace bullying (27.5%), work pressure (25.2%) and exposure to workplace or occupational violence (16.4%).

Table 1: Serious claims for mental health conditions with mechanism of mental stress,

Subcategory of mental stress claims	No. serious Mental Health condition claims
• Work related harassment/ bullying	2,213
• Work pressure	2,030
• Exposure to a traumatic event	1,121
• Exposure to workplace or occupational violence	1,318
• Other mental stress factors	1,003
• Other harassment	187
• Mental stress related to Novel Coronavirus (COVID-19)	145
Total	10,918

Safe Work Australia National Dataset for Compensation-based Statistics (2021-22).

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Workers' compensation claims data show that workers in the Health Care and Social Assistance industry were more likely to have an accepted workers' compensation claim for mental health conditions (25.8%) . One in four claims were due to bullying and harassment suffered at , or in connection with, work.

Public administration & safety (23.4%) and Education/training (18.8%) also accounted for a high proportion of accepted serious workers' compensation claims for mental health conditions.

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Serious claims in 2021/22 for mental health conditions by occupation included:

- Community and personal service workers	32.1%
- Health Care and Social Assistance	25.8%
- Public administration & safety	23.4%
- Professionals	22.0%
- Education/training	18.8%
- Clerical/administrative workers	10.9%

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Given the occupations more greatly impacted, it is unsurprising that 57.8% of all serious claims for mental health conditions were made by women .

In 2021-22, women also accounted for the majority (59.0%) of accepted workers' compensation claims for occupational violence.

Feb 2024 Report – Safe Work Australia

The return to work rate for people with mental health condition claims in 2021 was 79.1% compared to 91.6% for all injuries.

44.5% of claimants required additional time off .

Workers with claims for mental health conditions reported poorer return to work outcomes and were more likely to report stigma from colleagues and their employers.

Feb 2024 Report – Safe Work Australia – Summary Findings

- 💡 Mental health conditions accounted for 9% (11,700) of all serious workers' compensation claims and 7% of all work-related injuries and illnesses in 2020-21. This represented a 36.9% increase in claims since 2016-17.
- 💡 The most common mechanism attributed to claims for mental health conditions were work related harassment and/or workplace bullying (27.5%), work pressure (25.2%) and exposure to workplace or occupational violence (16.4%).
- 💡 The median time lost and compensation paid for mental health conditions were more than 4 times greater than that of all injuries and illnesses.

A group of people in a meeting, with a man in a suit leaning over a table and others looking on. The background is dark with some green decorative lines.

Getting on the Front Foot

The New
Psychosocial
Risk Legislation

Work Health and Safety Act 2020 (WA)

Underlying Principle

In furthering the objects of this Act, regard must be had to the principle that workers and **other persons** should be given the **HIGHEST LEVEL** of protection against harm to their health, safety and welfare from hazards and risks arising from work as is **reasonably practicable.**

Management of Risks

A duty imposed on a person to ensure health and safety requires that person –

(a) to **eliminate** risks to health and safety, so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety, to **minimise** those risks so far as is reasonably practicable.

Risk Management



- Spot the hazard



- Assess the risk



- Make the change



- Undertake audit/review

Hierarchy of Control



Primary duty of care – WHS Act 2020*

PCBU must , so far as is **reasonably practicable**, ensure the health and safety of:

- (a) workers engaged or caused to be engaged by it; and
- (b) workers whose activities in carrying out work are influenced or directed by that PCBU.

s 19(1) WHS Act 2020

PCBU duty of care – WHS Act 2020*

A person conducting a business or undertaking must ensure, so far as is **reasonably practicable**, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

s 19(2) WHS Act 2020*

Other PCBU Duties – Control the Workplace

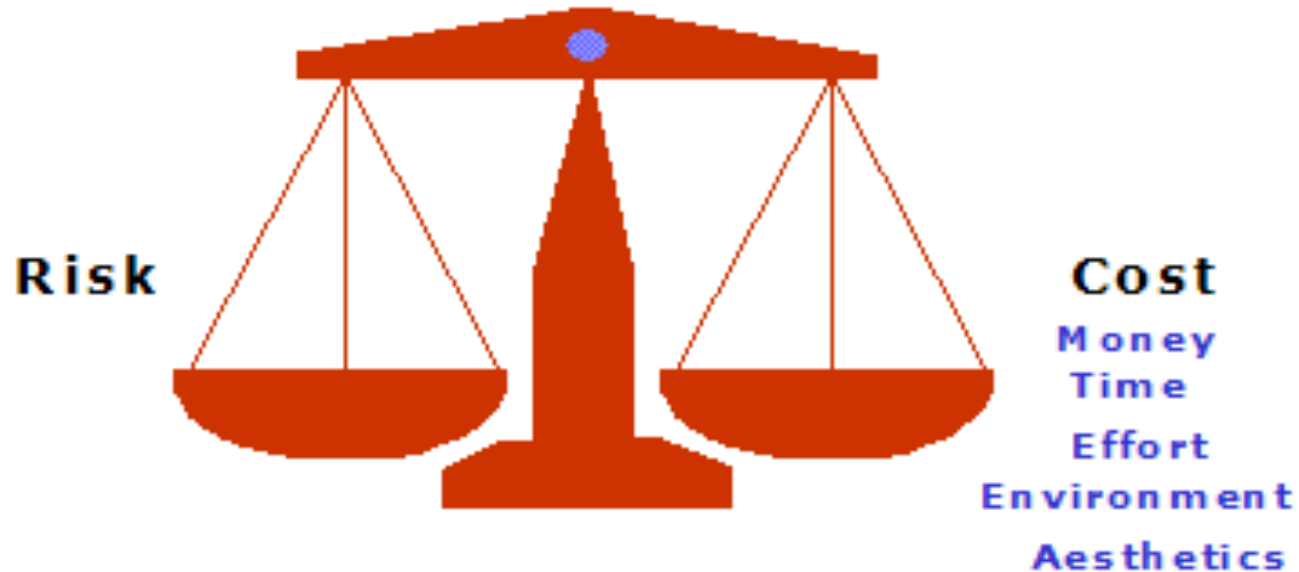
A PCBU who ,either fully or partly, manages or controls a workplace must ensure, insofar as is reasonably practicable that the:

- workplace;
- means of entering and exiting the workplace; and
- anything arising from the workplace

are without risks to the health and safety of **any** person.

Reasonably Practicable – WHS Act 2020 s 18 definition

REASONABLY PRACTICABLE



Worker's Duty of Care

While at work, a worker must:

take **reasonable** care for his/her own health and safety and not by act or omission adversely affect the health and safety of others;

Comply with any **reasonable** instruction given by the PCBU to allow it to comply with its obligations under the Act; and

Co-operate with any **reasonable** PCBU policy/procedure re health and safety at workplace of which he/she has been notified.

Due Diligence - Officers

“Due Diligence “includes taking reasonable steps to:

- (i) acquire and keep up to date knowledge of work health and safety matters;
- (ii) gain an understanding of the nature of the operations and generally of the associated hazards and risks
- (iii) ensure use (and have available for use) appropriate resources /processes to eliminate or minimise risks;
- (iv) ensure appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely manner;
- (v) ensure have and implement processes for complying with any duty or obligation under this Act; and
- (vi) verify the provision and use of the resources and processes here referred to.

WHS (General) Regulations 2022 (WA) – Division 11

55A. A *psychosocial hazard* is a hazard that :

- (a) arises from, or relates to —
 - (i) the design or management of work; or
 - (ii) a work environment; or
 - (iii) plant at a workplace; or
 - (iv) workplace interactions or behaviours; and
- (b) may cause psychological harm (whether or not it may also cause physical harm).

55B. A *psychosocial risk* is a risk to the health or safety of a worker or other person arising from a psychosocial hazard.

55C. A person conducting a business or undertaking must manage psychosocial risks in accordance with Part 3.1 other than regulation 36.

WHS (General) Regulations 2022 (WA) – Division 11, s 55D

A person conducting a business or undertaking must implement **control measures** —

- (a) to eliminate psychosocial risks so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate psychosocial risks — to minimise the risks so far as is reasonably practicable.
- (2) In determining the **control measures** to implement, the person must have regard to all relevant matters, including —
- (a) the duration, frequency and severity of the exposure of workers and others to the psychosocial hazards; and
 - (b) how the psychosocial hazards may interact or combine; and
 - (c) the design of work, including job demands and tasks; and
 - (d) the systems of work, including how work is managed, organised and supported;

WHS (General) Regulations 2022 (WA) – Division 11, s 55D

- (e) the design and layout, and environmental conditions, of the workplace, including the provision of —
- (i) safe means of entering and exiting the workplace; and
 - (ii) facilities for the welfare of workers; and
 - (f) the design and layout, and environmental conditions, of workers' accommodation; and
 - (g) the plant, substances and structures at the workplace; and
 - (h) workplace interactions or behaviours; and
 - (i) the information, training, instruction and supervision provided to workers.





Getting on the Front Foot

The New Psychosocial Risk Legislation

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Code of Practice (WA)

Both short- and long-term exposure to psychosocial hazards may cause harm to a person. For example, while exposure to severe, short-lived (acute) psychosocial hazards such as experiencing violence at work may result in harm to health (e.g. acute-stress disorder, posttraumatic stress disorder), it is important to also recognise that the cumulative effect of low-level exposure to psychosocial hazards can also lead to psychological or physical injury. People may experience multiple psychological and physical symptoms of harm as a result of exposure.

In addition to adverse health outcomes for workers, exposure to psychosocial hazards and risk factors in the workplace can also affect performance and increase the risk of accidents or incidents

Code of Practice (WA) – risk management process



Code of Practice (WA)- Identifying hazards

- reviewing organisational structure (e.g. lines of reporting, supervisory responsibilities)
- consulting with the workforce (e.g. safety and health representatives, focus groups, surveys) to help identify circumstances that could impact worker mental health
- inspecting the design and use of the physical workplace (e.g. use of break-out areas, assistive equipment and condition of the work environment)
- assessing specific job requirements to ensure workload is reasonable
- observing how work tasks are completed
- reviewing reporting and investigation processes and worker trust in these processes
- examining hazard and incident reports to identify common themes
- analysing human resources data such as leave utilisation, exit interviews, staff turnover and complaints
- examining records of past incidents and injuries, including workers' compensation claims, at the workplace
- examining data, where easily available, or published literature for similar workplaces
- consulting relevant codes of practice and other guidance
- analysing available de-identified data from vocational rehabilitation or injury management personnel and employee assistance providers (EAPs)

Code of Practice (WA) - Risk Assessment

A risk assessment involves considering what could happen if a worker is exposed to a hazard and the likelihood of it happening.

The assessment helps determine:

- who might be exposed
- the source of the risks
- potential interactions of multiple risk and protective factors
- how severe the risks are — the frequency and duration of potential exposure to a psychosocial hazard, possible consequences of exposure and likelihood of harm
- whether existing controls are effective
- what additional measures should be implemented to control the risks
- how urgently action needs to be taken

Code of Practice (WA) – Implementing Controls

- Eliminate
- Minimise

Code of Practice (WA – Monitoring and reviewing

The review process is used to confirm that control measures are working as expected, and to check that other hazards and risk factors have not been introduced when implementing or modifying controls. It can also identify learning opportunities for the purpose of continuous improvement.

The monitoring results should be used during the review to trigger corrective measures, including early intervention if necessary.

Mechanisms for the recognition and early detection of psychosocial harm to health in the workplace include analysing workplace data from:

- hazard, incident and investigation reports
- complaints
- worker surveys
- consultation with safety and health representatives and work teams
- alcohol and other drug test results
- direct observations (e.g. workers displaying the early signs and symptoms of psychological or physical harm).

Code of Practice (WA) - Consultation with workers etc

Consultation with workers and their representatives is **required** throughout the risk management cycle, including when reviewing control measures.



DANGER

**PSYCHOSOCIAL
HAZARDS**

Psychosocial Hazards

- Poor leadership practices
- Poor workplace culture
- Inadequate HR policies & procedures
- Work demands
- Low levels of control
- Inadequate support
- Lack of role clarity
- Fatigue

Psychosocial Hazards

- Poor organisational change management
- Low recognition and reward
- Poor organisational justice
- Insecure work
- Adverse environmental conditions
- Remote work
- Isolated work

Psychosocial Hazards

- Burnout
- Bullying
- Inappropriate/unreasonable behaviour
- family and domestic violence
- Traumatic events
- Vicarious trauma
- Secondary trauma
- Available 24/7 (no “right to disconnect”)



How We Experience Stress

Behavioural

Cognitive

Physical

Emotional

Traps

- Head in the sand
- Failing to recognise signs & symptoms
- Is a personal matter for worker to resolve
- External stressors
- Take disciplinary action
- Require person to Work from Home
- Undertake pre-employment psycho-metric testing
- Requiring pre-employment declaration that person has not made a workers comp claim/ never suffered a mental health episode ,etc.
- No pro-active action is taken
- Trample the workers' workplace rights – potential FWC claim
- Settle workers comp claim on condition worker “resigns”

Tips

- Leadership commitment
- Management and supervisory personnel – RESPECT
- Organisational culture
- Workplace behaviours
- Good work design
- Safe systems of work
- Communication and consultation
- Information and training
- Act on early warning signs
- ETC.

Questions ?

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Disclaimer

The purpose of this presentation is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of the points of law discussed. Individual circumstances must be taken into account for purposes of obtaining legal advice. As such, you are advised to consult about your particular circumstances with an independent expert lawyer of your choice.

Mental Health and Wellbeing in the Workplace: Managing Psychosocial Risks

Associate Professor Kate Blackwood
MARS Centre Deputy Director

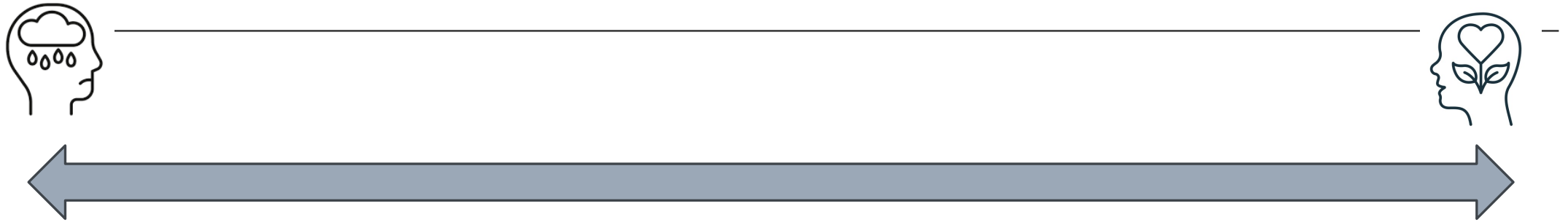
*The Mental Awareness, Respect and Safety (MARS) Centre is
an ECU Industry Collaboration Centre for the mining sector*

Understanding Psychosocial Hazards

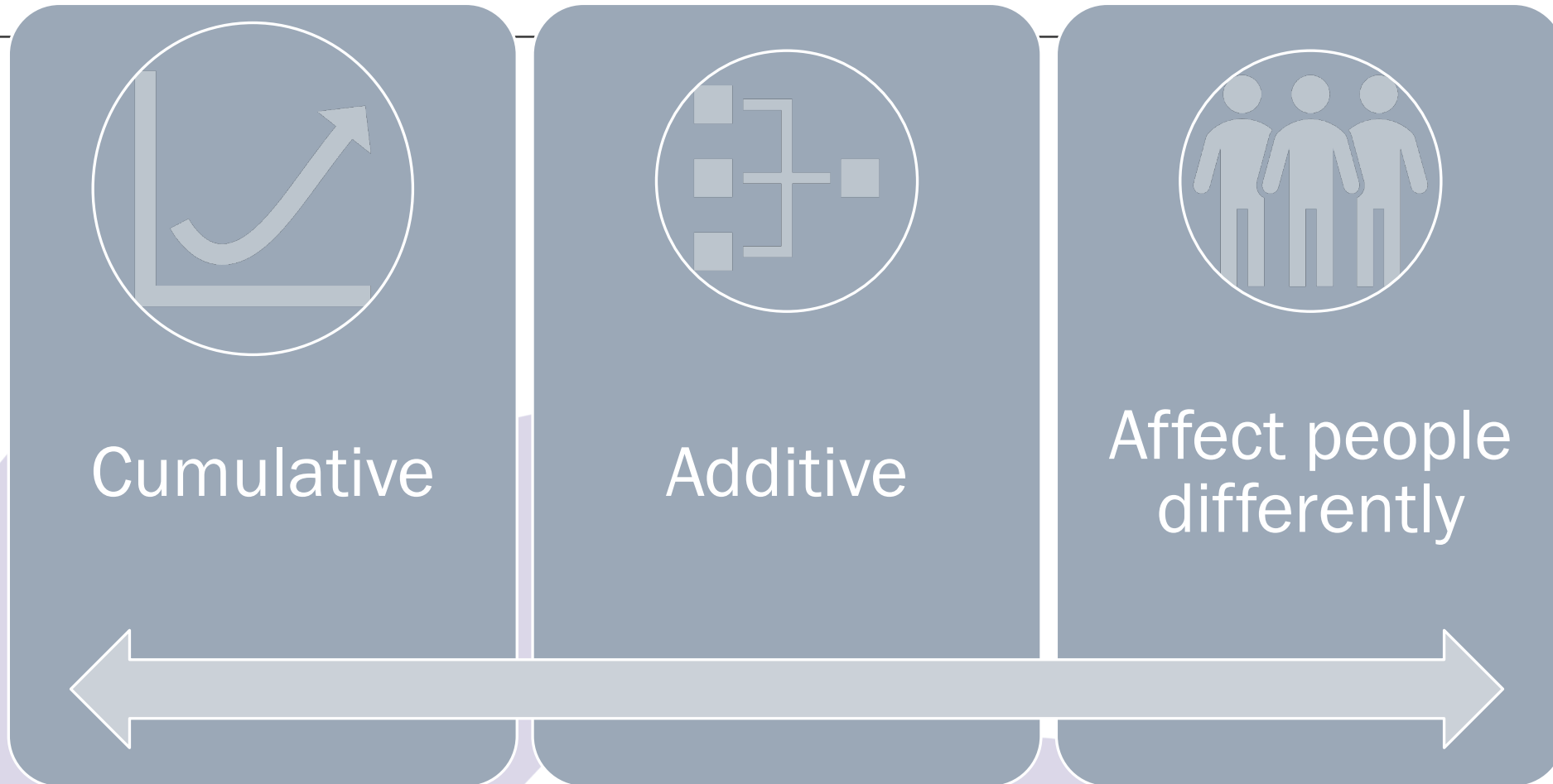
Psychosocial hazards at work are aspects of work and work situations which can lead to psychological or physical harm



Creating mentally healthy work



Understanding Psychosocial Risks



Psychosocial Safety Climate (PSC)

Psychosocial Safety Climate (PSC) is the shared perceptions of policies, procedures, and practices to protect the psychological health and safety of workers.



Building PSC

- What do your values and policies say about how you prioritise wellbeing?
- What are your methods for communicating about wellbeing to staff?
- How are staff involved in contributing to wellbeing efforts in your organisation?
- What channels are available for staff to raise wellbeing concerns?
- Are line managers committed and proactively supportive of wellbeing?
- Are there psychosocial hazards in your organisation that conflict with your wellbeing values?



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