
11 Psychosocial hazards

Key points

- Work-related stress, and the psychosocial hazards of bullying, occupational violence and fatigue that give rise to it, are inconsistently defined by the jurisdictions and are not given the same attention in OHS legislation and by inspectors as physical hazards. These differences contribute to higher information and training costs for firms operating in more than one jurisdiction.
- Estimates of the prevalence and cost of psychosocial hazards vary considerably. For example, using international studies as a guide, estimates of the annual cost of workplace bullying to employers and the economy in Australia ranged from \$6 billion to \$36 billion (in 2000).
- The national total of accepted workers' compensation claims for mental stress has declined since reaching a peak in 2003-04. Declines were recorded in the combined rates of workers' compensation claims for workplace bullying/harassment and occupational violence in South Australia, Western Australia, Queensland and the Commonwealth in the five years to 2007-08.
- The average cost of claims for work-related mental stress are much higher than the average cost for all workers' compensation claims, both in terms of direct financial costs and time taken off work.
- Jurisdictional similarities and differences in managing psychosocial hazards include:
 - while all jurisdictions imply a duty of care for employers and others to manage psychosocial hazards in OHS legislation, Victoria has clarified this responsibility by specifically including 'psychological health' in its definition of health, South Australia refers to inappropriate bullying behaviours in its Act and New South Wales includes the need to adapt the work environment to physiological and psychological needs in its Act and regulations
 - all jurisdictions provide guidance material on bullying and occupational violence but only Western Australia provides a code of practice on both. Queensland has a code directed at preventing bullying
 - all jurisdictions provide guidance material on fatigue though Tasmania and the ACT do not provide this in a separate publication. In addition, South Australia and Western Australia have codes related to working hours
 - New South Wales and Victoria have produced harmonised guidance material on bullying and on fatigue
 - all jurisdictions train inspectors in psychosocial hazards with the larger jurisdictions having specialised inspectors
 - Victoria and New South Wales have been the most active in pursuing incidents of bullying in the courts.

Psychosocial hazards in the workplace contribute to work-related stress. Psychosocial hazards include: bullying and harassment; occupational violence or customer aggression; fatigue resulting from long hours of work or shiftwork; demands in excess of a worker's capacity to deliver; and alcohol and drug misuse. This chapter concentrates on bullying, occupational violence and fatigue. Psychosocial hazards have grown in prominence in recent years in response to a number of factors including increasing work intensification (in terms of longer working hours and greater workloads), changes in organisational practices, and changing social expectations of how employees should be treated by their supervisors, managers and fellow workers.

These hazards are also harder to define and to investigate than the traditional physical hazards in a workplace. Factors outside of the workplace can also contribute to stress on individuals. Hence the detection, management and regulation of work-related stress presents challenges to employers and regulators alike.

This chapter considers differences in how psychosocial hazards are treated in the various core OHS Acts, regulations, codes of practice and guidance material and whether these differences impose different costs on businesses. In doing so, this chapter provides: a broad outline of the concept of work-related stress, the psychosocial hazards that can trigger work-related stress and the costs to employers and the economy of work-related stress (section 11.1); an analysis of the jurisdictions' OHS regimes as they apply to work-related stress generally and the psychosocial hazards of bullying, occupational violence and fatigue — including the 'regulatory definitions' of these hazards (section 11.2); and the enforcement of the relevant OHS provisions by regulators and the treatment by courts of law of some cases of bullying (section 11.3).

11.1 Work-related stress

What is work-related stress and what are its causes?

According to the World Health Organisation (WHO), work-related stress is 'the response people may experience when presented with work demands and pressures that are not matched to their knowledge and abilities and which challenge their ability to cope'. Work-related stress is exacerbated if employees feel they have little support from supervisors or colleagues, as well as little control over work processes (WHO 2009). Different individuals have different tolerance levels to mental stress with some being able to 'absorb' a certain amount of work-related stress without detriment. However each individual has a threshold over which work-related stress

becomes damaging. This provides a challenge to employers in developing plans to detect and manage hazards that can contribute to stress in the workplace.

Although bullying, occupational violence and fatigue are considered the major psychosocial hazards in Australia, WHO (2009) and Econtech (2008) provide a broader categorisation of the psychosocial hazards that can trigger work-related stress, including:

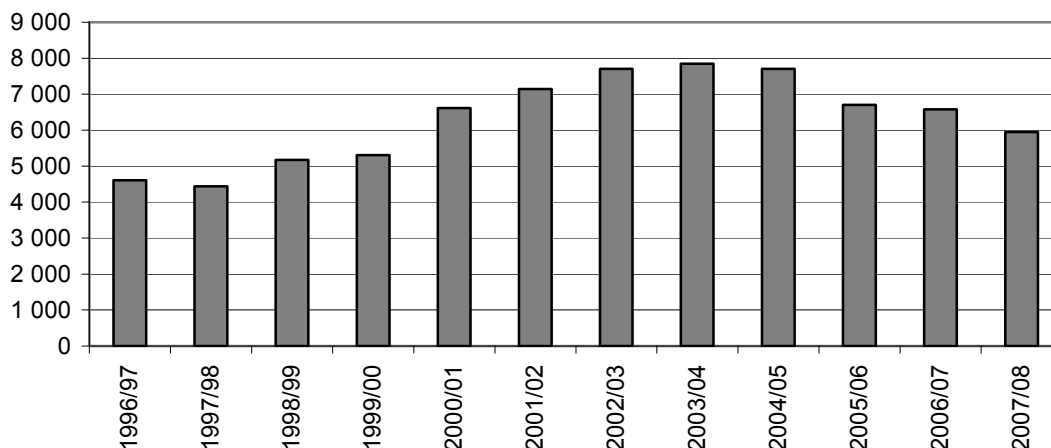
- work factors (such as excessive hours, unreasonable demands, or inflexible work arrangements leading to poor work-life balance)
- the physical work environment (such as noise or overcrowding or ergonomic problems)
- organisational practices (including poor lines of communication and unclear roles and responsibilities, poor leadership, and lack of clarity about organisational objectives and strategies)
- workplace change (which can contribute to job insecurity and high staff turnover)
- relationships at work (for example poor relationships of staff with supervisors, management and colleagues which may contribute to bullying and harassment or violence).

Trends in claims for mental stress

National Safe Work Australia (SWA) data show an increase in accepted or successful mental stress claims from 4440 in 1997-98 to a peak of 7850 in 2003-04 since when there has been a steady decline to 5950 in 2007-08 (figure 11.1). Nevertheless, the number recorded in 2007-08 is 34.0 per cent above the figure recorded in 1997-98.

Trends in workers' compensation claim statistics for mental stress should give some indication of the effectiveness of regulatory frameworks used by jurisdictions to manage psychological hazards. However, the data may also indicate that greater attention has been given to risk management practices by employers in relation to psychological hazards in recent years and reflect improved reporting. The data can also reflect industry compositional issues such as a greater concentration of employment in industries in some jurisdictions with occupations which are more susceptible to psychosocial hazards. As a result it is difficult to attribute which factors are having a more significant impact in driving improvement or deterioration in mental stress claim outcomes than others.

Figure 11.1 Number of accepted mental stress claims in Australia
1996-97 to 2007-08p



p preliminary data.

Source: Data provided by Safe Work Australia with permission from state and territory governments.

Further information on trends in aggregate mental stress claims, workers' compensation claims related to work pressure, and the characteristics of people who have had the claims for mental stress accepted are provided in Appendix E.

Differences in recording mental stress claims

There is considerable overlap in SWA definitions of claims for harassment (including bullying) and occupational violence (box 11.1). Both include assault and threatened assault, and verbal abuse (ASCC 2007c).

The two main differences between these two definitions are that:

- harassment/bullying involves repeated or systemic behaviour while occupational violence includes one-off instances
- harassment/bullying is conducted by a work colleague while occupational violence can be conducted by work colleagues or others.

These differences are likely to result in confusion for coders and may provide some explanation for the differences in figures provided across the jurisdictions. For example, while Western Australia records the highest rate for exposure to violence (accounting for 40.9 per cent of all mental stress claims in that state), it records the lowest rate for harassment/bullying (6.1 per cent). In contrast, Victoria's figures are the mirror opposite recording the lowest rate for exposure to violence (accounting

for only 4.4 per cent of that state's mental stress claims) and the second highest rate (37.4 per cent) for harassment/bullying (see table 11.1).

Box 11.1 SWA definitions of different types of workers' mental stress claims

SWA also provides definitions of different types of workers' compensation claims that contribute to work-related stress. These claims can arise from a number of causes, some of which could be regarded as 'physical' such as occupational violence, and include:

- work pressure — disorders arising from work responsibilities and workloads, workplace interpersonal conflicts and workplace performance or promotion issues
- various forms of harassment — work related harassment and workplace bullying, sexual or racial harassment (including repeated assault or threatened assault and repeated verbal harassment), threats and abuse from a work colleague
- exposure to workplace or occupational violence — includes being the victim of single acts of assault or threatened assault by work colleagues; and assault, threatened assault, verbal threat or abuse by persons other than work colleagues
- exposure to a traumatic event — disorders arising from exposure to a traumatic event such as the witnessing of a fatal or other accident suicide or attempted suicide.

Source: ASCC (2007c).

Claims for work pressure account for between a quarter and just over a half of all accepted mental stress claims in all jurisdictions (table 11.1). The Australian Federation of Employers and Industries claimed that a significant proportion of workers' compensation claims related to stress involve circumstances in which an employer has taken action to investigate an employee's performance and thus may not be legitimate (sub. DR26, pp. 13-14). The Federation further claimed that insurers tend to side with the employee's interpretation of events at work having triggered a stressful condition.

Table 11.1 Accepted mental stress claims by category by jurisdiction
Per cent of total mental stress claims 2007-08p

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT priv.</i>	<i>ACT Govt</i>	<i>Aus</i>
Exposure to traumatic event	8.1	2.0	7.5	9.8	7.7	15.2	7.1	np	10.0	na	6.3
Exposure to workplace or occupational violence	21.6	24.0	4.4	22.2	25.3	40.9	19.6	30.0	np	12.5	19.2
Work pressure	43.2	30.6	27.4	49.0	45.1	36.4	57.1	30.0	30.0	50.0	35.4
Workplace related harassment or bullying	24.3	21.5	37.4	17.0	20.9	6.1	16.1	20.0	np	37.5	24.0
Suicide or attempted suicide	np	0.9	np	na	na	na	np	na	na	na	0.3
Other mental stress factors	2.7	20.9	23.0	1.3	np	np	np	np	40.0	na	14.7

p preliminary data. **na** cells are those where either no claims were recorded or jurisdictions don't include this type of classification. **np** are cells with fewer than 5 claims where information has been suppressed and hence not provided. As a result of suppression of some cells totals do not sum to 100 per cent in some jurisdictions.

Source: Data provided by Safe Work Australia with permission from state and territory governments.

Differences between jurisdictions could also be affected by differences in the way claims are coded in individual jurisdictions. In addition, in some jurisdictions coding is undertaken internally by individual agencies while in others coding is undertaken by a central agency. In some cases jurisdictions have their own coding systems for recording mental stress claims which they subsequently reinterpret and align with the definitions supplied by SWA in order to supply data for recording national results.

Claims for workplace bullying/harassment and occupational violence

Despite these coding anomalies, trends in the combined totals for workplace bullying/harassment and occupational violence between 2002-03 and 2007-08 can be used to make jurisdictional comparisons if the data is consistently reported by each jurisdiction over the period. The data show significant declines in the rate of combined claims for bullying/harassment and occupational violence in the Commonwealth, Queensland, South Australia and Western Australia, and to a lesser extent in New South Wales. Tasmania was the only jurisdiction to record an increase in the rate of claims during the interval while the rate of accepted claims in Victoria, the Northern Territory and ACT Government were relatively stable (see table 11.2).

The relatively high figure recorded for bullying/harassment claims in Victoria may have been affected by the regulator being more active in highlighting bullying and harassment in the workplace through a combination of education programmes, proactive worksite visits by inspectors, and pursuing the prosecution of employers,

owners and employees who have allowed bullying behaviour to persist in the workplace. In other words, bringing more attention to the problem may have encouraged more victims to come forward and make a claim for mental stress.

Table 11.2 Trends in accepted claims for workplace bullying or harassment and occupational violence by jurisdiction

Accepted claims per 100 000 employees 2002-03 to 2007-08p

	<i>Cwlth</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT priv.</i>	<i>ACT Govt</i>	<i>Aus</i>
Bullying and harassment											
2002-03	22.4	10.0	22.8	11.1	18.2	8.1	22.1	16.6	4.9	26.6	14.5
2003-04	37.5	17.8	25.2	16.6	25.8	7.6	30.0	14.0	5.3	41.1	19.7
2004-05	54.8	16.7	27.1	13.7	15.9	5.9	27.0	13.1	np	143.8	19.1
2005-06	37.9	12.3	24.5	13.0	18.3	7.1	21.9	15.9	np	109.9	16.5
2006-07	27.8	14.3	26.2	8.9	16.0	4.7	18.1	16.0	4.1	106.7	15.9
2007-08	12.7	15.6	24.7	7.2	13.6	2.1	22.2	11.2	np	67.4	14.7
Occupational violence											
2002-03	9.6	15.2	4.4	7.9	22.0	20.1	13.0	15.5	np	42.6	11.9
2003-04	13.7	19.7	5.8	8.5	20.1	16.2	10.9	12.9	np	66.8	13.4
2004-05	9.8	21.3	7.1	8.3	23.6	12.9	15.6	18.5	6.0	46.2	14.1
2005-06	10.2	17.3	3.5	8.2	19.2	13.2	10.2	30.8	np	52.3	11.6
2006-07	11.6	17.9	3.3	9.5	21.0	8.5	20.6	16.9	4.9	48.0	11.7
2007-08	11.0	17.5	2.9	9.5	16.3	13.5	25.6	15.9	np	25.9	11.7
Total											
2002-03	32.0	25.3	27.2	19.0	40.3	28.2	35.1	32.1	7.3	69.3	26.4
2003-04	51.2	37.5	31.0	25.1	45.9	23.8	40.9	26.9	5.3	107.8	33.1
2004-05	64.5	38.0	34.2	22.0	39.5	18.8	42.5	31.6	8.5	190.0	33.1
2005-06	48.1	29.6	27.9	21.2	37.4	20.3	32.1	46.7	5.2	162.2	28.1
2006-07	39.4	32.2	29.6	18.4	37.0	13.2	38.6	32.9	9.0	154.7	27.7
2007-08	23.7	33.2	27.6	16.8	30.0	15.6	47.8	27.2	5.1	93.3	26.4

p preliminary data. np not provided — fewer than 5 claims and so the information has been suppressed.

Source: Data provided by Safe Work Australia with permission from state and territory governments.

What are the costs associated with work-related stress?

Research conducted into the cost of work-related stress in Australia found that there were considerable costs borne by employers due to both increased absenteeism and presenteeism (Econtech 2008). Absenteeism is time taken off work as a result of work-related stress, while presenteeism is less well known and is defined as ‘the lost productivity that occurs when employees come to work but as a consequence of illness, or other conditions, are not fully functioning’. Some studies have shown that presenteeism can reduce individual productivity by a third or more (Econtech 2007). It was estimated by Econtech that the combination of stress-related

absenteeism and presenteeism was directly costing employers in Australia around \$10.1 billion per year, while the cost to the economy was around \$14.8 billion per year (2008, p. 7).

These costs do not include the hidden costs associated with re-staffing and re-skilling associated with staff turnover. There are also many instances of workers resigning due to stress before the impacts of work-related stress fully manifest as lost productivity in their current job. In these circumstances employers bear the cost of having to replace those staff rather than the cost of the reduced productivity from workers who continue to remain in their jobs but do not function to their full capacity due to the effects of stress. Costs are also incurred through the need for greater supervision of staff who are experiencing work-related stress and the impact on morale and productivity on the entire workforce (not just individual workers) of increasing workloads and performance expectations.

The median time taken off work for accepted serious mental stress claims is much longer than the median time taken off for all workers' compensation claims — 10.9 weeks compared with 3.9 weeks respectively in 2006-07 (latest data available). The median direct cost of mental stress claims was also much higher at \$14 300 compared to the median for all workers' compensation claims of \$5800 (table 11.3) (SWA 2010b, p. 31).

Table 11.3 Median time lost and size of payment by mechanism of accepted mental stress claims
2006-07

Mechanism	No. of claims	Median payment	Median weeks off
Exposure to traumatic event	420	\$7 200	6.0
Exposure to workplace or occupational violence	1 115	\$10 100	7.4
Work pressure	2 560	\$18 200	12.8
Suicide or attempted suicide	10	\$11 600	1.9
Work-related harassment or bullying	1 395	\$13 500	12.0
Other harassment	115	\$14 100	12.7
Other mental stress claims	965	\$12 300	10.0
All mental stress claims	6 580	\$14 300	10.9
All workers' compensation claims	134 105	\$5 800	3.9

Source: Data provided by Safe Work Australia with permission from state and territory governments.

Claims for work pressure involved the longest time off (median of 12.8 weeks in 2006-07) and were also the most costly (median of \$18 200) (table 11.3). The median time taken off for work-related harassment/bullying was 12.0 weeks while the median cost was \$13 500.

These figures indicate that the costs of work stress claims are significant for businesses; it follows that clear and consistent guidance on how to manage the causes of work-related stress could play an important role in reducing these costs.

What are the costs associated with workplace bullying?

Workplace bullying is one of a number of causes of work-related stress. Estimates of the proportion of the Australian workforce subject to bullying/harassment and the costs it imposes vary considerably. As no surveys have been conducted of Australian workplaces on the incidence of bullying, researchers in Australia have used survey findings from other countries to estimate the numbers of people subjected to bullying. Estimates of annual prevalence rates range from a low of 3.5 per cent in Sweden (Leymann 1997) to 21.5 per cent in the United States of America.

Sheehan et al. (2001) applied a low and a high rate to Australia. The more conservative prevalence rate of 3.5 per cent was applied to the working population of 10 million in Australia, to estimate that 350 000 persons were bullied in Australia in 2000 and cost businesses somewhere between \$6 billion and \$13 billion.

A higher prevalence rate of 15 per cent was derived by using the approximate mid point of two international estimates — a survey of 5 300 employees in over 70 organisations in the United Kingdom which provided a bullying prevalence rate of 10.5 per cent (Cooper and Hoel 2000) and a survey conducted of the population of the state of Michigan in the United States which yielded a prevalence rate reported as 21.5 per cent (Jagatic and Keashly 2000). At this higher rate, 1 500 000 employees were estimated to be the victims of bullying in Australia in 2000 with estimated costs to businesses of somewhere between \$17 and \$36 billion.

Using the results of international research, the Beyond Bullying Association in Australia has estimated that somewhere between 2.5 million and 5 million Australians experience some aspect of bullying over the course of their working lives (AHRC 2010).

Indirect costs to businesses include declines in labour productivity and intra sector opportunity costs. Intra sector costs of bullying include: the costs of victims not taking up training or promotion opportunities due to stress; negative impacts on worker innovation and creativity which reduces company growth and profits; and the negative impact of publicised cases of bullying on the brand name and goodwill of a company.

Direct costs result from absenteeism, staff turnover, legal and compensation costs, and redundancy and early retirement payouts. Hidden direct costs include management time consumed in addressing claims for bullying, investigating allegations of bullying through formal grievance procedures and workplace support services such as counselling. Other costs include the loss of productivity resulting from: reduced performance of victims who continue to work; replacing victims with initially less experienced and so less productive staff; and internal transfers, and loss or absenteeism of co-workers (Sheehan 2001).

As well as the costs imposed on employers, victims of bullying also bear significant costs. These costs can include: isolation and withdrawal; fear of dismissal or loss of job promotion opportunities; stress and anxiety; low self esteem; other mental health symptoms; and a number of physical symptoms. Other costs to the economy include public sector costs such as the health and medical services needed to treat bullied individuals; income support and other government benefits provided to victims of bullying who become unemployed; and the legal costs associated with pursuing formal complaints.

11.2 Jurisdictional approaches to regulating psychosocial hazards

Much of the following analysis focuses on differences in the definitions and treatment of three psychosocial hazards — bullying, occupational violence and fatigue — among the jurisdictions without identifying which jurisdictions impose higher costs on businesses. Rather the diversity in definitions and regulatory treatment creates uncertainty and imposes unnecessary costs especially for businesses operating in more than one jurisdiction.

Differences in definitions of psychosocial hazards

Bullying

Individual jurisdictions have developed their own definitions of workplace bullying (table 11.4) and, as a result, there is no single nationally accepted statutory definition which has been adopted by all jurisdictions. Notwithstanding the number of different definitions, all jurisdictions, except Queensland, South Australia and Tasmania, use reasonably consistent definitions embodying the words ‘repeated unreasonable behaviour ... that creates a risk to health and safety’.

Some particular notable differences among those using the above phrase include:

- the Commonwealth and the ACT define bullying as being directed at persons in a workplace, while New South Wales, Victoria, Western Australia and the Northern Territory define bullying as being directed at workers/employees
- while these jurisdictions define bullying as repeated, New South Wales leaves open the interpretation that isolated incidents could be regarded as bullying (WorkCover NSW 2009b)
- Western Australia and the Northern Territory also include ‘inappropriate’ behaviour in their definition of bullying behaviour.

Queensland, South Australia and Tasmania use quite different definitions:

- Queensland clearly states bullying does not include sexual harassment
- Queensland and South Australia use the concept of what behaviour a reasonable person would find humiliating or threatening to define bullying
- South Australia defines bullying as ‘systematic’
- Tasmania specifies that the behaviour can include psychological and physical violence.

The *Occupational Health Safety and Welfare Act 1986 (SA)* also outlines actions which should not be constituted as bullying. These include ‘reasonable actions’ taken by employers to discipline, counsel, demote, dismiss or retrench workers. Other ‘reasonable actions’ also include decisions made by employers on ‘reasonable grounds’ not to award or provide a promotion, transfer, or benefit to a worker.

Table 11.4 Definitions of bullying included in OHS Acts, codes of practice and guidance notes

<i>Source</i>		<i>Definition of bullying</i>
Cwlth	Guidance note	'repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety'. ^a
NSW	Guidance note	'repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.'
Vic	Guidance note	'repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.'
Qld	Code of practice	'repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person's employer or a co-worker or group of co-workers of the person that: (a) is unwelcome and unsolicited (b) the person considers to be offensive, intimidating, humiliating or threatening (c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.'
SA	s. 55 (A) of OHS Act	'any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.' ^b
WA	Code of practice	'repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.'
Tas	Guidance note	'persistent and repeatedly aggressive behaviour (that) goes beyond a one-off disagreement, ... increases in intensity and becomes offensive or harmful to someone,...can include psychological and physical violence'
NT	Guidance note	'repeated, unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety'
ACT	Guidance note	'repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety'

^a 'Repeated' refers to the persistent or ongoing nature of the behaviour, not the specific type of behaviour, which may vary. 'Unreasonable behaviour' means behaviour that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten. 'Risk to health and safety' includes the risk to the emotional, mental or physical health of the person(s) in the workplace. ^b Repeated refers to the persistent or ongoing nature of the behaviour and can refer to a range of different types of behaviour over time. Systematic refers to having, showing or involving a method or plan.

Source: OHS Acts, codes of practice and guidance notes.

Fatigue

Work related fatigue can result from extended hours of work, shiftwork and inadequate time for sleep between shifts. Persons suffering from fatigue are likely to have impaired judgement, difficulty in concentration, reduced visual and hand to eye co-ordination and slower reaction times. These impacts are more likely to have more drastic consequences in work situations that involve heavy machinery or driving. However fatigue from working long hours or shiftwork is a possibility in a variety of occupations.

SWA records fatigue-related claims under 'work pressure' as disorders arising from work responsibilities and workloads, workplace interpersonal conflicts and

workplace performance or promotion issues. Work pressure or fatigue accounts for between quarter and a half of all mental stress claims for all jurisdictions.

Differences in definitions of fatigue are shown in table 11.5.

Table 11.5 Definitions of fatigue used in codes of practice and guidance notes and coverage in OHS legislation

	<i>Coverage of fatigue — Guidance notes or codes</i>	<i>Definition of fatigue</i>
Cwth	Guidance note	an acute or ongoing state of tiredness that affects employee performance, safety and health and requires rest or sleep for recovery.
NSW	Guidance notes	an acute and/or ongoing state of tiredness that leads to mental or physical exhaustion and prevents people from functioning within normal boundaries.
Vic	Guidance notes	same definition as provided in NSW.
Qld	Guidance notes	the increasing difficulty in performing mental and physical activities as a consequence of inadequate restorative sleep.
SA	Code of Practice <ul style="list-style-type: none"> • Approved Code of Practice on Working Hours Nov 2009 	includes definitions of “fatigue critical tasks” that are inherently dangerous and require a high level of concentration, alertness and/or co-ordination (such as operating machinery, working with electricity), “shift work”, “sleep debt” and “working hours”.
WA	Codes of Practice <ul style="list-style-type: none"> • Code of Practice — Fatigue Management for Commercial Vehicle Drivers 2004 • Code of Practice — Working Hours 2006 	the feeling of being tired, drained or exhausted. Fatigue is accompanied by poor judgment, slower reactions to events, and decreased skills, such as in vehicle control.
Tas	Guidance note None dedicated to fatigue — referred to in “Hidden hazards — Stress, bullying alcohol and other drug misuse”	does not define fatigue but Includes work overload and irregular working hours (including shift work) in a list of potential stressors in the workplace.
NT	Code of practice <ul style="list-style-type: none"> • Fatigue Management — Road Transport Code of Practice Information Bulletin	a loss of alertness which eventually ends in sleep — can result from long or arduous work, little or poor sleep and the time of day when the work is performed and sleep obtained.
ACT	Guidance note None dedicated to fatigue — referred to in “Employer Occupational Health and Safety Rights and Responsibilities”	does not define fatigue but included as one of the responsibilities of employers to monitor in transport and other workers.

Source: OHS Acts and regulations, codes of practice and guidance notes.

The Commonwealth, New South Wales, Victoria, Queensland and Western Australia all adopt a similar definition which characterises fatigue as tiredness which affects a worker's performance.

In contrast, South Australia defines 'fatigue critical tasks' that are inherently dangerous and require a high level of concentration, alertness and/or coordination (such as operating machinery, working with electricity), 'shift work', 'sleep debt' and 'working hours'. Tasmania includes work overload and irregular working hours in a list of potential workplace stressors. The Northern Territory has defined fatigue as a loss of alertness, while the ACT did not provide a definition.

The diverse definitions, identified causes and approaches to fatigue across the jurisdictions may create confusion for businesses operating in more than one jurisdiction.

Western Australia developed a code of practice on working hours in 2006 which formed the basis for the more recent development of the South Australian code on working hours in November 2009 (table 11.5). Both codes set out a risk management process for identifying potential sources of fatigue, and conducting risk assessment and risk control. The codes also identify the joint responsibilities of employers and employees to ensure safety, as well as the role of consultation and workplace education and awareness programmes to manage the risks associated with fatigue.

The South Australian code outlines a number of measures to control the impact of fatigue such as ensuring breaks are taken during and between work periods, examining the impact of additional hours of work on workers, designing shift work and rosters for staff that allows for sufficient sleep, and monitoring the impact of on-call work on staff.

While fatigue can have short-term catastrophic impacts in circumstances such as contribution to vehicle accidents and accidents involving heavy machinery there are also long-term impacts. For example, the long-term impact of fatigue has been linked to health effects such as cardio-vascular disease, depression and diabetes. As a result regulators are focusing on addressing the cumulative impacts of fatigue.

Occupational violence

Differences in how jurisdictions define occupational or workplace violence (also known as customer aggression) and the use of guidance material and codes of practice are highlighted in table 11.6. Most definitions do not clearly distinguish

between bullying/harassment and occupational violence except that the former is defined as being systematic and repetitive and the latter can be a single incident.

Notable differences in definitions include:

- New South Wales' has a more generic non-work specific definition of violence which includes attack on an individual's property as well as person
- Queensland's definition is limited to physical attack and threats of physical attack and extends to direct or indirect application of force on a person's clothing and any equipment they are wearing and provides individual definitions of threat and physical attack
- Victoria provides a number of examples of the types of behaviour that would be considered to be 'occupational violence' including verbal, physical or psychological abuse and sexual harassment or sexual assault
- South Australia describes occupational violence as a situation where people are abused, threatened or assaulted in work and provides individual definitions of what constitutes abuse, a threat or assault
- South Australia includes both employers and employees within its definition of those potentially affected by occupational violence, while Western Australia, the Northern Territory and the ACT refer to 'workers/employees and other people'. In contrast, Victoria and Queensland refer only to employees or workers.

Western Australia has a code of practice which focuses on occupational violence as well as the impact of bullying in the workplace (table 11.6). The code sets out a number of preventative measures to combat the potential for occupational violence such as consultation with workers, developing a management plan, hazard management, the provision of information and training on occupational violence and monitoring the effectiveness of actions taken.

Table 11.6 Definitions of occupational violence used in codes of practice and guidance notes

	<i>Coverage in codes, notes and bulletins</i>	<i>Definition of occupational violence</i>
Cwlth	Guidance note	any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed or injured in the course of, or as a direct result of, his or her work — can include threatening behaviour, verbal or written threats, harassment, verbal abuse and physical attacks.
NSW	Guidance note	verbal and emotional threats, and physical attack to an individual's person or property by another individual or group — can include verbal abuse over the phone, threats of violence, threats of a sexual nature, ganging up on an individual and physical or sexual assault.
Vic	Guidance note	any incident where an employee is abused, threatened or assaulted in circumstances arising out of, or in the course of, their employment — can include, but is not limited to, verbal, physical or psychological abuse, punching, scratching, biting, grabbing, pushing, threats, attack with a weapon, throwing objects/furniture, sexual harassment or assault, and any form of indecent physical contact.
Qld	Guidance notes	any incident where a worker is physically attacked or threatened in the workplace or during workplace activities. 'Threat' means a statement (verbal) or behaviour that causes a reasonable person to believe they are in danger of being physically attacked. 'Physical attack' means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where that application creates a risk to health and safety.
SA	Guidance notes	Violence at work is defined as any incident where an employer or employee is abused, threatened or assaulted in situations relating to their work. 'Abuse' is any unreasonable behaviour that involves the misuse of physical or psychological strength or power. 'Threat' is a statement of the intent to harm a person or damage their property; and 'assault' is any attempt to cause injury to a person and includes actual physical harm.
WA	Code of Practice • Violence, aggression and bullying at work 2006	actions or incidents that may physically or psychologically harm another person. Violence and aggression are present in situations where workers and other people are threatened, attacked or physically assaulted at work.
Tas	Guidance note	not defined separately from bullying. Includes psychological and/or physical violence (including physical abuse) under a broad definition of bullying.
NT	Information Bulletin	any incident in which employees and others are abused, threatened or assaulted in circumstances arising out of, or in the course of work undertaken.'
ACT	Guidance note	any action or incident which causes physical or psychological harm to another person. It includes situations where workers and/or other people are threatened, attacked or physically assaulted at work — it also includes non-physical violence, such as verbal abuse, harassment, intimidation and threatening behaviour, which may also significantly affect a person's health and well being.

Source: OHS Acts and regulations, codes of practice and guidance notes.

Differences in regulatory requirements to detect and manage work-related stress

The responsibility to detect and manage psychosocial hazards which contribute to mental stress in the workplace is implied in the OHS legislation of all jurisdictions by the duty of care held by employers to provide a healthy and safe working environment for their employees at the workplace (these duties are discussed in chapters 2 and 7). Workers also have a duty or responsibility under OHS legislation to ensure that their actions do not constitute a risk to the health and safety of themselves or others in the workplace — although the duty of workers in New South Wales only extends to others.

Within these broad duties, jurisdictions have taken different approaches to the issue of work-related stress. Victoria has broadened the definition of ‘health’ in its OHS Act, and with it the duty of employers, to include ‘psychological health’. The New South Wales OHS Act includes an object of promoting a safe and healthy work environment, including one that is adapted to their physiological and psychological needs, as has the ACT in its *Workplace Safety Act 2008* (which became operational from 1 October 2009).

OHS regulatory requirements to identify foreseeable hazards arising from work as part of the risk assessment process include the requirement to identify psychosocial hazards which contribute to work-related stress. Some are more specific:

- the Commonwealth’s *Occupational Health and Safety Code of Practice 2008* requires the detection and management of potential psychosocial hazards
- New South Wales regulations require employers and controllers of premises to identify hazards arising from work practices, work systems and shift working (including hazardous processes, psychological hazards and fatigue related hazards), and the potential for workplace violence.

Bullying

South Australia has provisions under its OHS Act which gives inspectors the powers to take reasonable steps to resolve a case of bullying or abuse at work between the existing parties themselves or refer the matter to the Industrial Commission if it remains unresolved.

All jurisdictions provide material on the negative impacts of workplace bullying to employers and employees in the form of guidance notes.

Only Queensland (*Prevention of Workplace Harassment Code of Practice 2004*) and Western Australia (*Violence, Aggression and Bullying at Work 2006*) provide

codes of practice on bullying. Both provide information on: how to manage bullying and how to manage this hazard through risk management; consultations; and monitoring and review of processes (Queensland) and policies (Western Australia). The Queensland code also looks at the impact of workplace harassment; and the legislation that covers workplace harassment. The Western Australian code also provides information on: provision of information and training; and ways to respond to bullying including dealing with complaints and their investigation. In addition, Queensland provides guidance notes to particular industries (restaurant, road freight and take away food retailing industry) on dealing with harassment.

New South Wales and Victoria share guidance material for employers and employees on preventing and responding to bullying at work. This guidance note defines bullying behaviours, outlines the risk management process in identifying, assessing and controlling bullying behaviours and provides alternative responses to managing bullying behaviour. As a result of the development of common guidance material on the topic in these jurisdictions, systems set up by an organisation in one of these jurisdictions to manage bullying and harassment could be replicated in the other jurisdiction. These arrangements potentially reduce costs of managing psychosocial hazards for firms operating in both jurisdictions.

There is some debate about the relative merits of codes of practice and guidance material in achieving compliance outcomes in relation to bullying (and harassment). Codes of practice provide guidance to duty holders about how to meet their obligations under OHS legislation and do not generally constitute legal obligations.¹ Hence, it may be misleading to place too much emphasis on the significance of having a code as distinct from guidance material in ensuring compliance. On the other hand, a study by Johnstone, Quinlan and McNamara observed that having psychosocial issues regulated through a separate code of practice (in Queensland and Western Australia) rather than guidance material, sent a strong signal both to employers and to inspectors, in terms of giving them stronger direction to monitor compliance behaviour (2008, p. 30). A review conducted by SafeWork SA in 2008 concluded that a definition of inappropriate behaviour should be retained in South Australia's Act and that guidance material or codes of practice were not a viable substitute for the definition, as it provides a heightened awareness among employers and employees of the consequences of inappropriate workplace behaviour.

¹ The exceptions are a few compliance codes operating under Victorian and Queensland legislation which have deemed to comply status.

Fatigue

In terms of detecting and managing fatigue, South Australia introduced a code of practice on working hours in November 2009 while Western Australia has a code of practice for working hours and a separate code for fatigue management for commercial vehicle drivers.

While all jurisdictions cover the issue of fatigue either directly within regulations, or within broader duties, the level of additional guidance varies. Some jurisdictions provide broad guidance material on managing fatigue which is appropriate to all workplaces. And some provide guidance material on fatigue for particular occupations and industries such as transport and commercial vehicle driving, forestry, security, mining and health and aged care. New South Wales and Victoria have developed mutual guidance material on fatigue management in the workplace.

Tasmania and the ACT do not provide separate guidance material on managing fatigue and instead provide references to management of a range of ‘hidden hazards’ in their guidance material. The ACT lists fatigue as a hazard for employers to manage under their responsibilities to ensure OHS.

Occupational violence

Guidance material on managing aggression in health services was developed by WorkSafe Victoria and is shared with jurisdictions such as Western Australia, New South Wales, South Australia, Queensland, and Tasmania as apart of the working across borders initiative (WorkCover Victoria 2008). All jurisdictions apart from Tasmania provide separate guidance material on how to detect and deal with occupational violence in the workplace. Tasmania includes violence and aggression as bullying behaviours in their guidance material under the umbrella of managing a number of hidden hazards including stress, bullying and drug and alcohol abuse. Western Australia is the only jurisdiction to have a code directed at occupational violence (along with bullying).

Do the different psychosocial provisions impose different burdens on business?

The differences in how psychosocial hazards are defined and are covered in the jurisdictions’ OHS legislation, codes of practice and guidance material contribute to differences in how these hazards are treated and understood by business. In particular, these differences can lead to higher information and training costs — particularly for firms operating in multiple jurisdictions.

Differences can also contribute to greater diversity of costs for firms in terms of developing risk management plans to manage psychosocial hazards. Some jurisdictions such as New South Wales and Victoria have attempted to minimise these costs by developing mutual guidance material for managing bullying and fatigue through risk management.

To add to this uncertainty there is no nationally accepted definition of psychosocial hazards such as bullying across Australia. For example, Queensland refers to bullying behaviours as a form of harassment but this is not the case in other jurisdictions. There is also a blurring of definitions of some psychological hazards. For example instances of verbal abuse could come under the definition of bullying and occupational violence in jurisdictional guidance material.

Similarly, the management of fatigue through guidance material is restricted in some jurisdictions to some industries which are characterised by long working hours and shiftwork such as driving occupations within the transport industry and the potential for fatigue in mining and forestry. However, other jurisdictions have much more comprehensive codes of practice or guidance material to manage fatigue across all industries. Those jurisdictions requiring fatigue management across all industries places higher cost burdens on firms than jurisdictions which only have a requirement for specific industries. These differences also have the potential to place further cost burdens on firms operating in multiple jurisdictions in developing appropriate risk management procedures to meet all requirements.

It is also possible that the more prescriptive approach taken by jurisdictions in relation to risk management — for example in Queensland's code of practice for bullying — could contribute to higher costs to employers in this state than less formal approaches taken in the code developed in Western Australia, and the guidance material provided on the topic in other jurisdictions. However, any additional costs incurred by employers from a more prescriptive approach need to be balanced by the greater certainty and clarity and the possibility of reduced incidence of hazards such as bullying and harassment in the workplace. The Australian Federation of Employers and Industries considers that procedures needed to manage these hazards are resource intensive and may be beyond the capacities of some businesses (sub. DR26, p. 12).

Differences in the regulations are only one factor affecting the burden on business from regulation. As outlined in chapter 5, the enforcement approach of regulators also has an effect on the burdens arising from regulation. The enforcement of psychosocial hazard provisions is considered in the next section (11.3).

11.3 How do jurisdictions enforce their requirements for psychosocial hazards?

Inspectors and psychosocial hazards

OHS inspectors generally find psychosocial issues in the workplace harder to address than physical hazards. OHS inspectors responded in a survey that they found it much harder to get employers, particularly small manufacturing firms, to deal with psychosocial factors. They also found cases of bullying to be much more difficult to resolve. Inspectors described bullying cases as being emotive and involving a range of different individual interpretations of the events, making it more difficult to substantiate a claim. As a result of these difficulties, some inspectors reported that they were reluctant to handle psychosocial complaints (Johnstone, Quinlan and McNamara 2008).

The views expressed by a number of regulators that they have sufficient resources to meet their responsibilities (chapter 5) is not shared by a number of OHS inspectors who are members of the Community and Public Sector Union (CPSU) and have responsibility for tackling psychosocial hazards in the workplace (sub. DR19).

The results of consultations between the CPSU and its members included comments such as:

- investigations of psychosocial issues are more time consuming than other activities
- there is a lack of capacity and not enough staff focussed on the issue²
- workers' compensation data is sufficient to demonstrate that issues such as violence, bullying, fatigue and job stress are not being dealt with effectively (sub. DR19).

All jurisdictions trained their inspectors to deal with psychosocial hazards in 2008-09, however the smaller jurisdictions did not have inspectors who specialised in these areas. To better address psychosocial hazards, Queensland appointed a number of OHS inspectors in 2004 to focus specifically on bullying and harassment and to mentor other inspectors. Recently, responsibilities of these inspectors were broadened to include work-related stress and fatigue. Queensland OHS inspectors have issued a number of improvement notices for cases of harassment. It is difficult

² The CPSU did not differentiate between the resource capacities of jurisdictions.

to judge the impacts of this new approach on costs outcomes and overall business costs but they are likely to differ from the other jurisdictions.

Victoria commenced a trial of a team of inspectors who targeted bullying behaviour in the workplace, which resulted in the full implementation of a dedicated bullying prevention inspectorate in September 2009. New South Wales has OHS inspectors who have multiple roles in relation to a number of hazards but have received specialist training in dealing with psychosocial hazards. Many of the smaller jurisdictions such as the ACT seek to recruit inspectors who also have a background in psychosocial issues so that they can handle these types of incidents as well as other breaches of OHS legislation. South Australia also has an inspector who has specific skills in handling psychosocial hazards and dealing with incidents of bullying.

How have cases of bullying been handled in the courts?

Along with attempts at improving the prevention of work-related stress through inspections, regulators have used prosecutions to both punish businesses and individuals who have breached their OHS responsibilities, and to provide greater clarity as to the responsibilities under OHS Acts.

Analysis of case law in Australia shows that New South Wales and Victoria have been the most active in terms of prosecution in clarifying the application of the law relating to bullying and harassment. There are a number of examples of courts having accepted evidence of less overt forms of bullying in actions for unfair dismissal, breaches of employment contracts and psychological injury. As most areas of bullying and stress are less tangible and attributable than physical harm, the acceptance of less overt forms of bullying is likely to increase the sense of responsibility and uncertainty faced by employers.

The CPSU complained that prosecution policy fails to aim for precedents in issues such as fatigue, stress and bullying, focussing instead on catastrophic incidents (sub. DR19). However, there have been a number of cases where employers have been prosecuted for contravention of major OHS Acts for allowing bullying to take place.

One notable example of prosecution of employers being liable for bullying occurred in 2004 where a company and two of its four directors were prosecuted for a breach of the *Occupational Health and Safety Act 2000* (NSW) in relation to the ‘initiation’ of a 16 year old labourer (*Inspector Maddaford v Coleman (NSW) Pty Ltd & Or* [2004] NSWIRComm 317). The two directors were found to be personally liable under the Act even though they were not directly involved in the incident. It was argued that the risk of bullying was foreseeable and that it was not sufficient for

employers to be reactive to cases of bullying. The implication of this decision is that employers need to be proactive in preventing bullying in order to meet their obligations under OHS legislation to provide a safe and healthy working environment.

WorkSafe Victoria has successfully prosecuted a number of individuals and companies for bullying behaviours. For example, it took action against a radio announcer who had repeatedly verbally abused and issued threats of violence against his fellow employees in 2002 and 2003 (*WorkSafe Victoria vs Ballarat Radio Pty Ltd and R. Mowatt (August 2004)*). The radio announcer was convicted and fined \$10 000 on two counts of relating to intimidating co-workers and for failing to take care for the health and safety of others in the workplace. The broadcasting company was fined \$25 000 for failing to provide a safe workplace and \$25 000 for failing to provide instruction, training and supervision in relation to bullying.

In a more recent case, a company and four employees were prosecuted for the bullying of a female employee at a café operating in an inner city suburb of Melbourne. In the ruling made in February 2010 it was determined that the female employee had committed suicide in September 2006 as a result of the persistent and relentless bullying she faced in the workplace.

The four staff members, including a director, were convicted for failing to provide reasonable care for the health and safety of persons in the workplace, and were fined a combined total of \$115 000, while the company which owned the cafe was fined \$220 000. The magistrate said that the acts of the defendants carried a high risk of serious injury and their culpability was far too significant to warrant non-convictions.

As a result of the decision, the Victorian Government announced that there would be a renewed focus by WorkSafe Victoria inspectors on bullying. As part of the response, WorkSafe Victoria will assist employers to train staff, promote the development of anti-bullying strategies and investigate cases that can result in charges being laid.

New South Wales and Victoria use prosecution more extensively than other jurisdictions to clarify the application of the law, especially the general duty of care upon employers to provide healthy and safe workplaces, as to responsibilities to address psychosocial hazards, particularly bullying and occupational violence.