

Mentally Healthy Workplaces

Australian Council of Trade Unions response to the draft
Productivity Commission report into Mental Health.

Contents

Introduction	1
Feedback on the draft report General feedback	1
Responses to individual recommendations	2
Responses to information requests.....	6
In Summation.....	7

Introduction

The ACTU, formed in 1927, is the peak body for Australian unions and is the only national union confederation in Australia. For more than 90 years, the ACTU has played the leading role in advocating for the rights and conditions of working people and their families. The ACTU is made up of 39 affiliated unions and trades and labour councils, and we represent almost 2 million working people across all industries. The ACTU and Australian Unions are proud of our history of standing up for workers' safety and ensuring that every Australian worker can do their work safely and return home at the end of each day. We are therefore grateful for the opportunity to comment on the Productivity Commission's (the Commission) Mental Health Draft Report (the Draft Report).

This response to the Draft Report will include a short general feedback section and will then provide some specific feedback relating to various recommendations made by the Commission. As the ACTU submission to this inquiry focussed primarily on mental health as a workplace safety (WHS) issue, the majority of the feedback provided is in response to Chapter 19 of the Commission's Draft Report - Mentally Healthy Workplaces.

Feedback on the draft report

General feedback

It should first be acknowledged that the ACTU was pleased that the Draft Report recognises the work-related 'risk factors' and hazards that are variables in what makes a workplace mentally healthy. This represents a positive step forward, in that the Commission appears to acknowledge that poor mental health is, in a workplace context, the result of hazards. This indicates a shift in the traditional 'resilience and mindfulness' narrative which places all the onus for mental health at work on the worker. Despite this improvement it was noticed, however, that this narrative did come through in some parts of the Report, with employers being recommended to help workers 'build resilience' in addition to designing work appropriately. It should go without saying that once we acknowledge a 'hazard model' of mental health 'damage' in the workplace that it should not be the responsibility of workers to adapt to those hazards created by their environment – this is certainly an unacceptable argument when it relates to physical hazards and should be just as unacceptable here.

It is also positive that the Draft Report recognises the relationship, both positive and negative, between employment and mental health. It has long been known that good jobs with good work design can have a positive impact on workers' mental health, while bad jobs with bad design have a negative effect.

The Draft Report also makes the point that psychological risks at work are given less attention and are harder to define within Australia's WHS framework, a point which was echoed in the ACTU's initial submission to this inquiry. However, again the Draft Report appears to be in two minds, both noting (as it should) that WHS arrangements need to provide more than just guidance to employers while also appearing to support the narrative that mental health hazards are still 'too hard' to identify and manage and that there is 'insufficient' guidance available to employers.

Another issue which the ACTU would welcome the Commission's investigation is the changing world of work and the impact on workers' mental health. This is an important issue which requires a collective community response; implications for workers and employers are compounding as the issue remains unaddressed. Different forms of non-standard work are emerging with changes in technology, such as the emergence of the gig economy. The International Labour Organisation's (2017) research on 'crowdworkers' accepts that workers who are dependent on the gig economy to provide employment regularly perform work which is predominantly demand-based. These new forms of work have obvious ramifications for workers' mental health, including a decline in work-life balance, and ultimately, a deterioration in the quality of people's lives. In the same token, ACTU affiliate unions regularly report union members' experiences with increases in workplace practices that can be hazardous to workers' mental health. When seeking feedback from affiliates to include in this submission, the Community and Public Sector Union (CPSU) highlighted the growing trend in redundancies and the negative outcomes for workers, particularly work intensification and stress. The ACTU views the Commission as a powerful stakeholder that can place some urgency in addressing these issues, which are of growing concern in labour markets which are constantly changing.

This Report is an opportunity for the Commission to take mental health in the workplace seriously and to make positive recommendations which will assist workers for years to come. This opportunity should not be missed because some employers, who are responsible for many of the hazards that workers are exposed to, still appear to believe that they are too complicated to manage.

Responses to individual recommendations

Recommendation 19.1 - Psychological health and safety in workplace health and safety laws - *Psychological health and safety should be given the same importance as physical health and safety in workplace health and safety (WHS) laws.*

It is encouraging to see that the Commission has acknowledged the imbalance in terms of the treatment of mental health vs physical health in the WHS legislation, codes of practice and regulations. This was also recognised as the case for workers' compensation laws, particularly with regard to serious mental health injuries not requiring regulator notification and the

additional steps required to prove that a mental health injury was work-related for the purposes of compensation. The ACTU fully supports this conclusion and the Commission's subsequent recommendation for mental health to be provided equal standing, particularly among the current WHS regulations. For psychological health and safety to be addressed equally in regulation, the obvious first step is to introduce an actual regulation. Many unions' initial submissions to the Commission called for regulations, such as the New South Wales Teachers Federation (2019, p.8):

“A clear regulation which educated employers and workers as to how to support and avoid potential risks would lead to improved workplace practices and a reduction in psychological injuries.”

The ACTU reinforced the deficit in the regulations in its submission to the Review of Model WHS Laws, highlighting that:

“The current Model Laws fail to establish a minimum standard for the management of psychological health and safety at work. This is completely unacceptable... This regulatory gap is resulting in a huge and unacceptable cost to workers, employers and the wider community.”

As it stands, there are over 20 regulations that exist in the WHS Model Laws which help employers to manage physical hazards, and yet nothing exists for psychological hazards. As a matter of priority, the ACTU calls on the Commission to encourage governments across all jurisdictions to adopt regulations for psychological health and safety. Government ministers responsible for work health and safety portfolios will be meeting in February 2020; this is the ideal opportunity for the Commission to express this view.

Recommendation 19.2 – Codes of Practice on Employer Duty of Care

Codes of practice should be developed by Workplace Health and Safety authorities in conjunction with Safe Work Australia to assist employers meet their duty of care in identifying, eliminating and managing risks to psychological health in the workplace. Codes of practices should be developed to reflect the different risk profiles of different industries and occupations

When addressing this recommendation, it is important to draw attention again to Recommendation 19.1, which highlights the need for specific regulations that address psychological health and safety. As the Commission's Draft Report acknowledges, codes of practice vary among jurisdictions in terms of their level of enforcement. For example, compliance codes of practice exist in Victoria whereas Queensland has mandatory codes of practice. As such, they cannot be relied upon as a sole mechanism to make employers accountable for eliminating

or reducing the impact of psychological hazards. The ACTU is firmly of the view that this issue must be dealt with through regulation to ensure full and proper compliance by all employers. Where industry-specific guidance is needed, the ACTU is supportive of codes of practice. However, it should be made clear that these industry-specific codes of practice need to be supported by an overarching, enforceable regulation. Anything less than this represents a capitulation to those who would prioritise expediency over worker safety.

Recommendation 19.4 – No-liability treatment of mental health-related workers compensation claims

Workers compensation schemes should be amended to provide clinical treatment for all mental health related workers compensation claims, regardless of liability, until the injured worker returns to work or up to a period of six months following lodgement of the claim. Similar provisions should be required of self-insurers.

On face value, this is a positive recommendation which the ACTU supports. However, there is a concern that the Commission makes no commitment in terms of who should pay for workers' treatment, instead leaving this issue open by asking for more information. It is the view of the ACTU that if a worker is claiming that work has impacted on their mental health, it could be reasonably expected that the employer's insurer would bear the cost. Additionally, the ACTU believes that any lost income associated with the injury should be compensated by the employer's insurer. If a worker developed such an issue through their personal circumstances, they themselves would bear the cost of seeking treatment. As the Draft Report notes, some Australian jurisdictions have adopted, or are in the process of trialling, provisional liability workers' compensation schemes for mental health injuries. The ACTU believes that a move to a provisional liability model which covers the cost of treatment and lost income will mitigate the risk of workers being re-injured as a result of the traditional process. The process being where workers are required to satisfy that the injury was work-related, that work was a significant contributing factor and did not arise out of 'reasonable management action'. To that end, recovery and return to work outcomes for injured workers will likely improve. In a recent study which compared physical and psychological return to work outcomes, 58 percent of respondents who made a psychological claim returned to work, compared with 79 percent who made a physical claim (Wyatt & Lane 2017). It should be noted that, the terms and conditions of each provisional liability schemes will differ in jurisdictions; the ACTU's support for these schemes would be provided on a case-by-case basis.

Note: refer to Information Request 19.1 for additional discussion on workers' compensation and the funding of treatment for work-related mental health injuries.

Recommendation 19.3 – lower premiums and workplace initiatives

Workers compensation schemes should provide lower premiums for employers who implement workplace initiatives and programs that have been considered by the relevant Workplace Health and Safety authority to be highly likely to reduce the risks of workplace related psychological injury and mental illness for that specific workplace.

The ACTU supports this recommendation in-principle, although it would need to be reviewed when more details become available. There will need to be a process in place to ensure that there is scrutiny of the validity of initiatives for premium reductions. This includes a consideration of the extent to which the initiative directly addresses workplace mental health hazards. It would also need to assess whether the initiative is of genuine intent. For example, if an initiative is found to place pressure on workers to stop submitting claims, seeking treatment for or reporting injuries, this would not be considered genuine. In cases like this, interventions could have a negative impact on workers' mental health. As the Queensland Nurses and Midwives Union (2019, p.14) pointed out in its original submission to the Commission, referring to its members in the health sector:

“Any delay or failure to seek timely referral and treatment can have adverse consequences for the health practitioner and the public.”

The ACTU's affiliate unions often report that there is a fundamental, across the board misunderstanding of what 'primary prevention' means. Often, employers will deploy secondary or tertiary interventions with the misguided view that they are meeting or even exceeding their obligations to eliminate or reduce the impact of psychological hazards. The variable in terms of creating change in employer behaviour is in the reward (the lowering of premiums); providing a reward to positively reinforce behaviour that is geared toward implementing primary, preventative interventions will be key.

Recommendation 19.5 – Disseminating information on workplace interventions

WHS agencies should monitor and collect evidence from employer initiated interventions to create mentally healthy workplaces and improve and protect the mental health of their employees. They should then advise employers of effective interventions that would be appropriate for their workplace.

If not managed properly, the ACTU is concerned that this recommendation may result in employers being advised to use interventions, such as EAP and resilience training, to discharge their duties. The Draft Report does acknowledge the different levels of interventions, primary being focussed on prevention (for example, interventions that promote good work design to eliminate hazards). However, it mentions resilience training and health promotion campaigns as

primary interventions. While this is technically correct, they are considered to be lower order interventions in the hierarchy of control.

In addition, before disseminating any interventions, the regulator would need to consider the context of the workplace, including any considerations relating to diversity. Workers of diverse backgrounds are increasingly exposed to discrimination, sexual harassment and gendered violence in workplaces. As such, the interventions to be disseminated will need to be responsive to these considerations. Further, the ACTU acknowledges the important role that workplace health and safety representatives (HSRs) play in creating mentally healthy and safe workplaces. HSRs have a unique understanding of work health and safety issues in their workplaces and can provide insight into psychological hazards and how best to control them. Regulators and employers should be compelled to consult with workplace health and safety representatives when discussing interventions.

In terms of the resources required to ensure that this recommendation can be properly implemented, UnionsNSW (2019, p.3) highlighted a need for more SafeWork NSW inspectors to ensure regulatory compliance within workplaces. If this recommendation is to be taken further, the ACTU agrees that appropriate staffing would need to be supplied to fill current gaps and perform the additional function of disseminating regulations.

The ACTU has no issue with regulators disseminating best practice, however, there needs to be focus on genuine work design. Consideration should be given as to if criteria should apply where the intervention is tested and evidenced based. It would be disappointing to see a situation where workplaces are misinformed about what interventions help them to stop workers from getting hurt and discharge their obligations.

Response to information requests

Information request 19.1 – How should the treatment be funded?

As outlined above, the ACTU is of the view that those responsible for the hazards which damage workers' mental health, their employers, the employer's insurer should be considered responsible for funding treatment. The fact that there is ambiguity in terms *who* will pay and *if* a worker will receive treatment for a work-related injury could be why workers avoid the system altogether.

In the ACTU's (2019) Work Shouldn't Hurt survey of over 25,000 workers across Australia, 91 percent of respondents said that they did not claim for workers' compensation when exposed to a work-related mental health hazard. One respondent and worker in the health sector said:

“It is difficult to make the decision to take time off or [go on] workers compensation for mental health issues. It feels like it will make things worse.”

It is clear that most workers who develop a work-related psychological injury do not have faith that they will be supported by workers’ compensation schemes. Consequently, mental health injuries go unreported and workers either bear the cost of treating their mental health condition, or, fail to get appropriate support. Another respondent in the health sector said that they had to take leave to recover from a bullying incident which caused them mental stress:

“The amount of stress that I have experienced through the bullying, several meetings with supervisors and HR, through the mediation process with the bully has been extreme and has resulted in my taking long service leave to protect my mental health. The HR department and my manager are both aware that I have taken long service leave to escape workplace bullying.”

It should also be noted that workers who claim for physical injuries often also acquire psychological injuries due to the complexity and frustration involved with workers’ compensation systems.

In seeking feedback from affiliate unions on this recommendation, the Community and Public Sector Union suggested that the definition of ‘treatment’ should be broadened depending on the worker and workplace context. For example, return to work and rehabilitation programs may only prescribe counselling in a worker’s treatment regime, in certain circumstances, workers of diverse backgrounds may respond to treatments better than others. For injuries sustained by trauma, for example, maintaining a connection with community might be an appropriate intervention for some workers. In other words, it is important for workers to be able to access a treatment plan that is responsive to their individual needs.

In Summation

The ACTU believes that the Draft Report takes a number of positive steps in recognising mental health hazards in the workplace. In particular, the ACTU commends the Commission on the following aspects of the Draft Report:

- Recognition of work-related factors or hazards that impact on workers’ mental health.
- Support for regulations that help employers better manage mental health hazards in their workplaces.
- Acknowledging the flaws in the workers’ compensation system which prevent workers from accessing treatment; recommending a no-liability system of treatment for psychological injury.

Key areas where the ACTU feels that the Commission fell short of what the ACTU would expect in improving mental health outcomes for workers include:

- Leaving the provision of payment for treatment and loss of income due to work related injuries open-ended.
- Being sympathetic to the notion that workers should be resilient where their workplace might not be mentally healthy.

It is our hope that the Commission will more fully consider the deleterious influence that mental health hazards have on hundreds of thousands of Australian workers and choose to recommend that strong, effective action be taken.

Again, the ACTU appreciates the opportunity to respond to the Commission's Draft Report and looks forward to reviewing the final.

Reference List

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