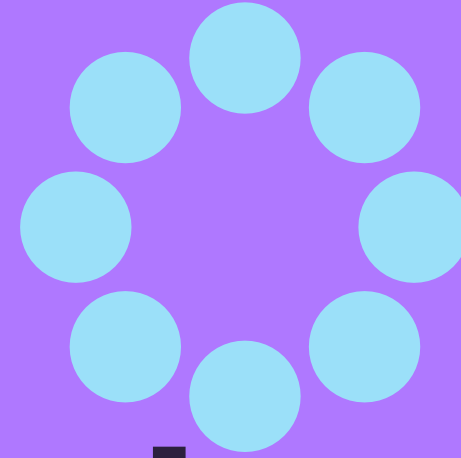


PSYCHOLOGICAL RISK - Managing Risks, Duties and Responsibilities

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Presented by
DAVID PRIOR
Workplace Relations
Specialist

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We would like to begin by acknowledging the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to the land on which we are meeting today.

We pay our respects to them and their cultures, and to the Elders both past and present, and extend that respect to all Aboriginal and Torres Strait Islander people attending today.

Agenda

The session today covers:

Legal Framework

What we learn about psychological risks to health in the workplace.

Risk Identification

What do the new Victorian regulations require:

- Moving beyond awareness and support to prevention.
- How do you risk assess
- What are the control measures.
- Translating legal expectations into effective psychological safety and compliance.

Discussion

Questions and Answers



How have the Courts treated psychosocial hazards?

Kozarov v State of Victoria

High Court decision involving Victorian DPP.

Implications for vicarious trauma

Comments on excessive workload – which could have been addressed by the employer.

Legal Framework

- Under model work health and safety laws, psychosocial hazards are treated the same as physical hazards or risks.
- The new OHS regulations came into effect on 1 Dec 2025 with compliance from 1 February 2026.

Proactive Duty

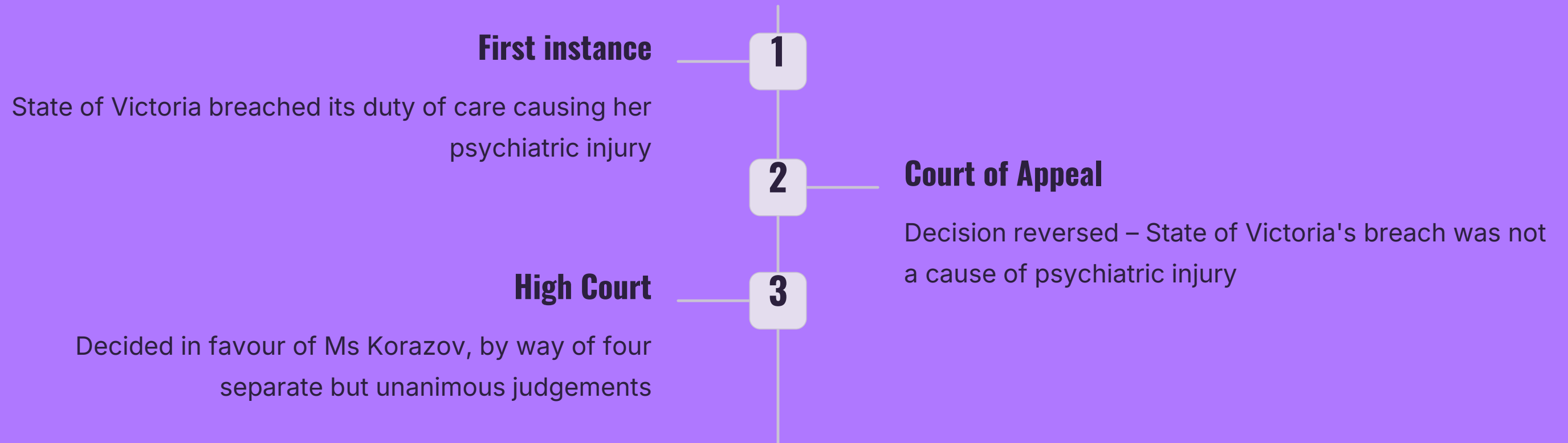
"It should be understood, however, that the circumstances of a particular type of employment may be such that **the work to be performed by the employee is inherently and obviously dangerous to the psychiatric health of the employee** in any such case, the employer is duty-bound to be proactive in the provision of measures to enable the work to be performed safely by the employee"

Kozarov v State of Victoria [2022] HCA 12

Psychiatric Injury claims: A New Paradigm

Korazov v State of Victoria [2022] HCA 12

- Claim for common law damages in negligence for psychiatric injury sustained by prosecutor within the Specialist Sexual Offences Unit of the DPP (with a focus on child sex crimes)
- Plaintiff was diagnosed with PTSD and was unable to return to work after period of leave
- Employment terminated, diagnosed with major depressive disorder



Korazov Decision – Implications for the Future

- The High Court confirmed there is no real distinction between mental and physical risks to health and safety – and the employer's duty of care is to be proactive in identifying and addressing them
- Employers must be aware of 'evident signs' warning of a specific risk of psychiatric injury
- Employers must take prompt steps to manage mental health risks, counselling psychological screening, work rotations and others
- Certain jobs pose an inherent and obvious danger to mental health (e.g. prosecutor in sexual crimes team- Korazov) and employers must be alive to such risks
- Employers need to avoid adopting a policy/ procedure which sits on a shelf without taking any steps to implement

Lessons from **Kozarov v State of Victoria**

The High Court accepted the findings at first instance that a safe system of work should have included:

- an active OH&S framework;
- more intensive training for management and staff regarding the risks to staff posed by vicarious trauma and PTSD;
- welfare checks and the offer of referral for a work-related or occupational screening, in response to staff showing heightened risk; and
- a flexible approach to work allocation, especially where required in response to screening, including the option of temporary or permanent rotation where appropriate.

Not for Profit Sector Guidance

Recognising risk

- Potentially long hours
- Various service delivery workloads and commitments
- Competing priorities (from community expectations, customers and funding arrangements)
- Targets that may rely on community engagement, differing KPI and activity reporting
- Differing levels of sector knowledge and experience of service delivery
- Varying workplace culture and community engagement, including client interaction and servicing
- Some roles with exposure to potentially traumatic content and experiences with insufficient support
- stigmatisation of stress and mental ill-health.
- Recognising negative interpersonal behaviours, including bullying, sexual harassment and discrimination.

OHS (Psychological Health) Regulations 2025 and Compliance Code

<https://www.worksafe.vic.gov.au/psychologicalhealth>

Worksafe Vic (Regulator) action

□ Vic Prosecutions

- **Sexual harassment \$40 to 100k fines**
- **Exposure to trauma, High Job Demands, Poor workplace relationships**
- **\$380k fine**

WorkSafe enforcement from 1 December 2025

- **[Exposure draft in 2022] so WorkSafe Vic expected employers to move on understanding obligations with the final two months about putting the finishing touches**
- **The making of the Regulations in September] to allow time ... over 2 months [for employers to comply] since 1 Dec 2025 WorkSafe have been running a range of awareness campaigns [including] social media**
- **Some employers may require time to adjust .. This will inform the Inspector's basis of belief [when deciding on enforcement options] commencing from 1 Feb 2026.**
- **Inspectors will consider each workplace's unique circumstances including maturity and size of the business...**

The principles of health and safety protection in OHS

- The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.
- Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.
- Employers and self - employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.
- Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.
- Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.
- Duties are not transferrable.
- More than one party can have a duty in relation to the same matter.

Wellbeing Guidelines - Good, Better and Best Actions

	 Good practice wellbeing actions	 Better practice wellbeing actions	 Best practice wellbeing actions
 Promote	Wellbeing plan	Wellbeing commitment statement and leadership visibility	Facilitated reflective practice groups
	"Managing for wellbeing" training	Designated wellbeing champions	Integrated policies
	Wellbeing induction, education, and resources	Mentorship programs	Knowledge-sharing and collaboration with the broader legal sector
 Protect	Regular one-on-ones with leaders or managers	Commitment to a no-blame culture	Professional in-house support
	Psychosocial risk assessment and early intervention	Workload management system	SMART job design
	Reporting system and risk register for psychosocial incidents	Health and Wellbeing Committee	Ethical compliance training
 Respond	Access to confidential counselling	Return to work policy	Proactive wellbeing supervision sessions
	Critical incident response policy	Designated peer supporters	Tailored wellbeing support
	Wellbeing response training for managers	Trained contact officers	Flexible leave and work arrangements

Safety duties are owed ‘*so far as is reasonably practicable*’

Duty to

- **eliminate** risks to health and safety so far as is reasonably practicable; and
- if it is not reasonably practicable to eliminate risks to health and safety, to **reduce** those risks so far as is reasonably practicable.

Likelihood of risk or hazard / Degree of harm / Knowledge / Ways to eliminate or reduce risk or hazard / Cost
(objective and subjective) of risk, harm and ways to eliminate or reduce

Beyond mere compliance

1. Support and develop your leaders
2. Educate your workforce
3. Prepare ahead – what will your top psychosocial hazards be in 2 years?
4. How will you measure success
5. How do you guard against complacency?

What is reasonably practicable?

This requires an assessment of the following:



Worksafe will issue improvement notice and prosecute if not complied with

Worksafe (Vic) Statement of Regulatory Intent

FOCUS INDUSTRIES, ISSUES AND HAZARDS

HEALTHCARE AND SOCIAL ASSISTANCE

- Aggression and Violence in Hospitals and Disability Services
- Hazardous Manual Handling in Hospitals and Early Childhood Education
- Slips, Trips and Falls
- Safe Building Design in Hospitals

MANUFACTURING AND LOGISTICS

- Hazardous Manual Handling
- Slips, Trips and Falls
- Occupational Noise
- Loading and Unloading, including Forklift Safety
- Food Manufacturing
- Dangerous Goods Storage and Handling

CONSTRUCTION

- Falls from Heights
- High Risk Work, including Safe Work Method Statements
- Respirable Dust (Asbestos, Silica)
- Occupational Noise
- Working in Isolation

GOVERNMENT

- Psychosocial hazards (including exposure to trauma, aggression and violence)
- Hazardous Manual Handling
- Safe Building Design
- Occupational Disease in Emergency Services

AGRICULTURE

- Mobile Plant (Tractors, Quad Bikes, Side by Sides)
- Cattle Handling
- Loading and Unloading

WORKPLACE CONSULTATION

WORKPLACE PSYCHOLOGICAL HEALTH

Psychosocial hazards that may arise at work



Job demands

Excessive or insufficient workload and pressure



Low job control

Limited autonomy over how work is done



Poor support

Inadequate assistance from management and colleagues



Lack of role clarity

Unclear responsibilities and expectations



Poor change management

Inadequate organizational transition processes



Poor organisational justice

Unfair decision-making and procedures



Inadequate reward

Insufficient recognition for effort and contribution



Traumatic events

Exposure to distressing situations or material



Remote or isolated work

Working with limited communication or support



Violence and aggression

Physical or verbal threats and attacks



Bullying

Repeated unreasonable behavior toward workers



Harassment

including sexual harassment and intimidation



Conflict

Unresolved disagreements between workers



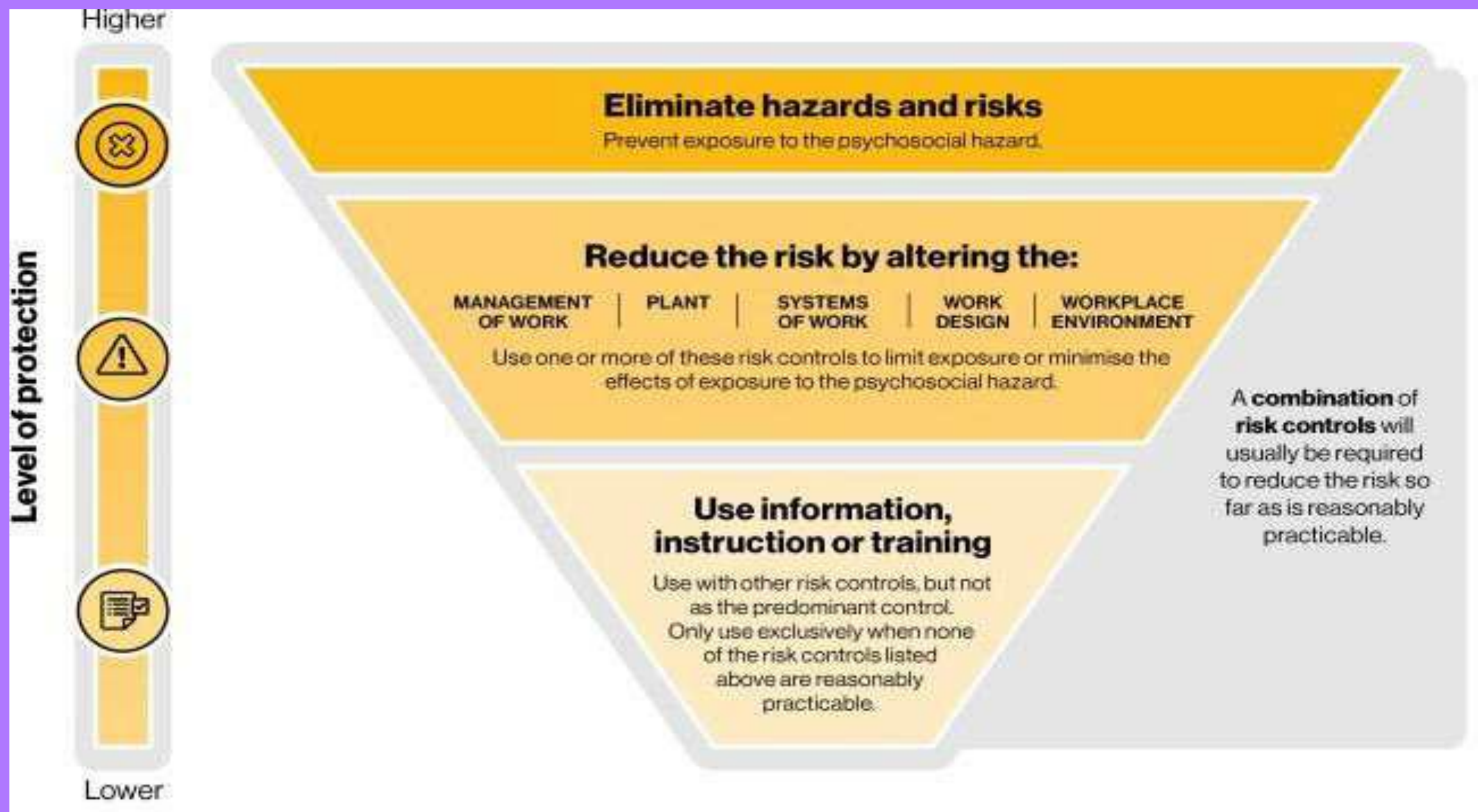
Poor workplace relationships

Negative interactions between colleagues

Accummulation and interaction



Control of Hazards



What does this mean in practice?

1. Move from response to prevention of psychological harm
2. Understand the hierarchy of control – do not rely on policies, complaints and training
3. Consult and review information and understand hot spots
4. Review control measures and prepare risk assessments
5. Assess effectiveness
6. Reports to Officers (Coordinator or Manager or Executive Officer)

What do you need to do?

- Review the factors to consider in identifying the hazard
- Review the material listed in Appendix B of the Code to assess the risk
- Undertake a risk assessment
- Implement control measures – see Appendix C of the Code
 - Consider a written Prevention Plan –
[see WorkSafe template]
- Consider effectiveness and methods of review



Duty of Officers

Officers have a duty to **exercise due diligence** to ensure the PCBU complies with its duties under the WHS Act and Regulations. In relation to psychosocial risks, an officer must take reasonable steps to:

- **Acquire** and keep up-to-date knowledge of psychosocial WHS matters
- Gain an **understanding** of the nature of the operations of the business or undertaking of the PCBU, and the associated psychosocial hazards and risks
- **Ensure** the PCBU has available for use and uses, appropriate resources and processes to eliminate or minimise psychosocial risks
- **Ensure** the PCBU has appropriate processes for receiving and considering information about incidents, psychosocial hazards and risks and responding in a timely way
- **Ensure** the PCBU has and implements processes for complying with any duty or obligation they may have under the WHS Act and Regulations
- **Verify** the provision and use of these resources and processes and their effectiveness

Duty of Workers

A worker carries out work in any capacity for a PCBU including:

Employment-Based Workers

- employees
- employees of a labour hire company assigned to work in the business
- apprentices and trainees

Contract-Based Workers

- contractors and subcontractors
- employee of a contractor or subcontractor
- outworkers

Other Workers

- students gaining work experience
- Volunteers

Worker responsibilities:

1

Take Reasonable Care

Workers **must take reasonable care** for their own psychosocial and physical health and safety

2

Protect Others

Workers must not adversely affect the health and safety of other persons

3

Follow Instructions

Workers **must comply with reasonable health and safety instructions**, as far as they are reasonably able

4

Cooperate

Workers must **cooperate** with reasonable health and safety policies or procedures that have been notified to workers

Identification of HR and business practices that contribute to psychosocial hazards and psychological risks



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Organisational risks

On average, work-related psychological injuries require **longer recovery times, higher costs, and require more time away from work** when compared to psychical injuries

Failure to effectively manage psychosocial hazards in the workplace can give rise to **legal, operational and reputational risks**

- WHS / OHS investigation and prosecution
- Worker's compensation claims / increased insurance premiums
- General Protections claims
- Discrimination claims
- Application to stop bullying
- Absenteeism / staff turnover
- Poor morale and workplace culture
- Inadequate resourcing



Promoting Wellbeing and Managing Risk

Changes to how people perform their role

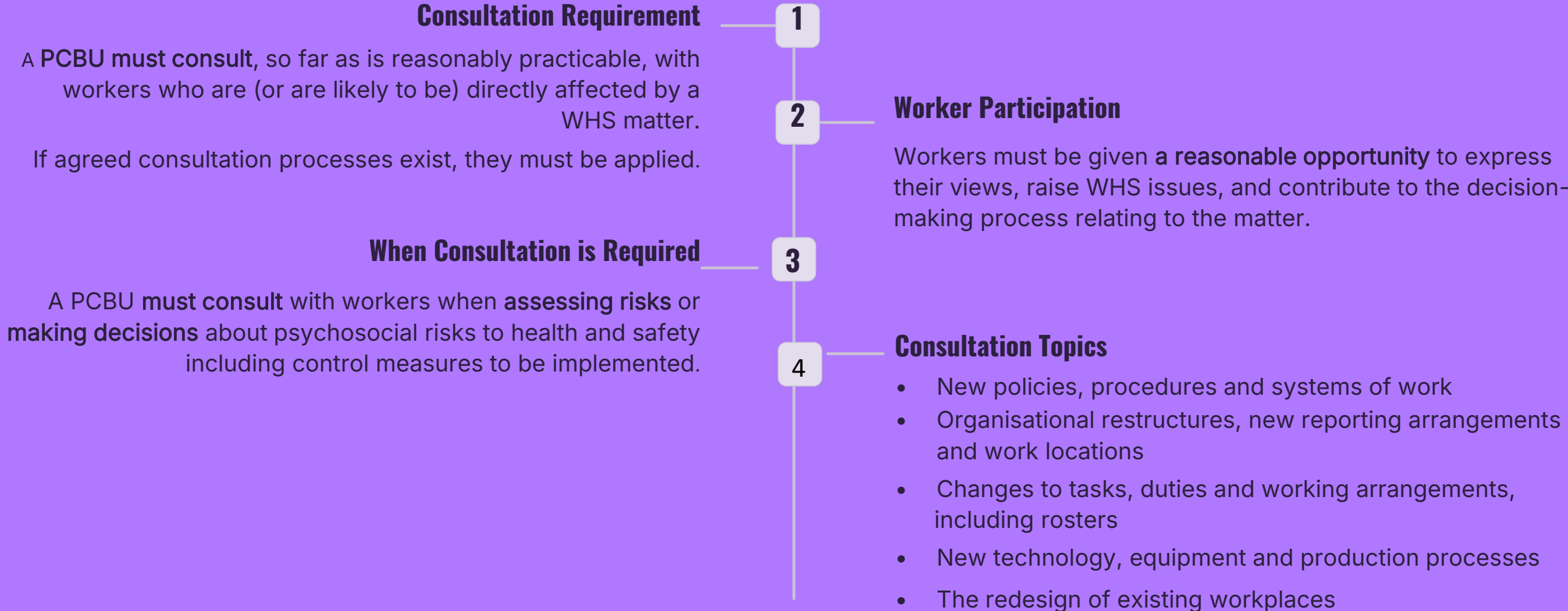
- Flexible hours or change to start/finish times
- Return to work policies
- Agreement to give an employee leave at short notice and time off for appointments
- Reallocation of some tasks or changes to people's job description and duties
- Redeployment to a more suitable role

Extra support

- Increased supervision or support from manager / extra training, coaching or mentoring
- Mediation may help if there are difficulties between employees
- Extra help with managing and negotiating workload
- encourage employees to work on building resilience / to be more aware of their mental state and workplace factors affecting it / encourage good mental health activities (exercise, meditation)
- More positive and constructive feedback

Consultation

PCBUs must consult with workers on work health and safety matters related to psychosocial risks. Here's the consultation process:



Issues arising

- Understanding hazards and risks
- Considering interaction and masking factors
- Demonstrating compliance – what action you already take but don't call a risk control
- Link to Wellbeing Guidelines [see Worksafe Vic website]
- Provide support and Training for Leaders
- Awareness, Engagement and Reporting
- Up to date job descriptions and review of expectations
- Investigation of psychosocial hazards when addressing HR issues/grievances

Practical steps

Identify

Identify the **psychosocial hazards** which may arise

- Collect and review information and data
- Observe and discuss work activities with workers

Address

Assess and prioritise these psychosocial hazards and associated risks

- Determine seriousness (including consequences, likelihood of harm) and who is affected
- Risk assessment should be part of a continuous improvement process

Control

Implement **effective controls** to eliminate/minimise psychosocial hazards and risks

- ensure appropriate work design / implement safe systems of work (policy, procedure and practice)
- Information, training, instruction and supervision

Review

Proactively maintain, monitor and review the effectiveness of controls

- Allocate accountabilities for monitoring, reviewing and maintaining controls
- Don't assume risks remain the same and controls remain suitable, sufficient and effective over time

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QUESTIONS



THANK YOU

David Prior
Workplace Relations Specialist
drior@amplifyalliance.org.au

