

Psychological injury and the private message

The fastest-growing and most expensive workers compensation claim is driven by how people treat each other. Much of that conduct now happens in a channel employers cannot see and should not read.

Guardii Advisory, October 2026 For boards, general counsel, people and risk leaders, insurers and brokers

Executive summary

- **The claim class is growing fastest.** Serious claims for mental health conditions rose 161.1% in the ten years to 2023-24, to 17,600 claims, or 12.0% of all serious claims.¹
- **It is the most expensive.** In 2022-23 the median serious mental health condition claim paid \$67,400 and cost 35.7 working weeks. The median serious claim of any kind paid \$16,300 and cost 7.4 weeks.¹
- **People cause it more than workload does.** In the latest national cause breakdown, harassment, bullying and workplace violence caused 46.2% of mental stress claims. Work pressure caused 25.2%.²
- **Most of that conduct is never seen.** One in three Australian workers was sexually harassed at work in the last five years, and 18% of it was reported.⁵ Conduct between two phones is the hardest of all to see, and surveillance and privacy law keeps employers out of it.
- **The law judges prevention.** The positive duty in the Sex Discrimination Act and the psychosocial rules in WHS law ask what the employer knew, what controls were available, and which it put in place. The Commonwealth harassment code already names monitoring of communication apps as an example control.⁹
- **A defensible control documents prevention without a record of content.** It runs on the worker's own device, nobody can read the messages, and the employer holds a record of the control offered and used, never a message.

1 The claim class

Safe Work Australia's 2025 national statistics put serious claims of every kind at 146,700 in 2023-24, up 34.5% over ten years. Over the same decade, serious claims for mental health conditions rose 161.1%, to 17,600, which is 12.0% of the total. Year on year the increase was 14.7%.¹

+161.1%

Mental health condition serious claims, 2013-14 to 2023-24

\$67,400

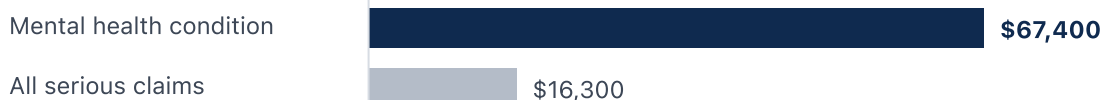
Median compensation, mental health condition claim, 2022-23

35.7 weeks

Median working time lost, mental health condition claim, 2022-23

Figure 1. A mental health condition claim against the median serious claim, 2022-23

Median compensation



Median working weeks lost



Source: Safe Work Australia, Key Work Health and Safety Statistics, Australia 2025.¹ Each panel drawn to its own scale.

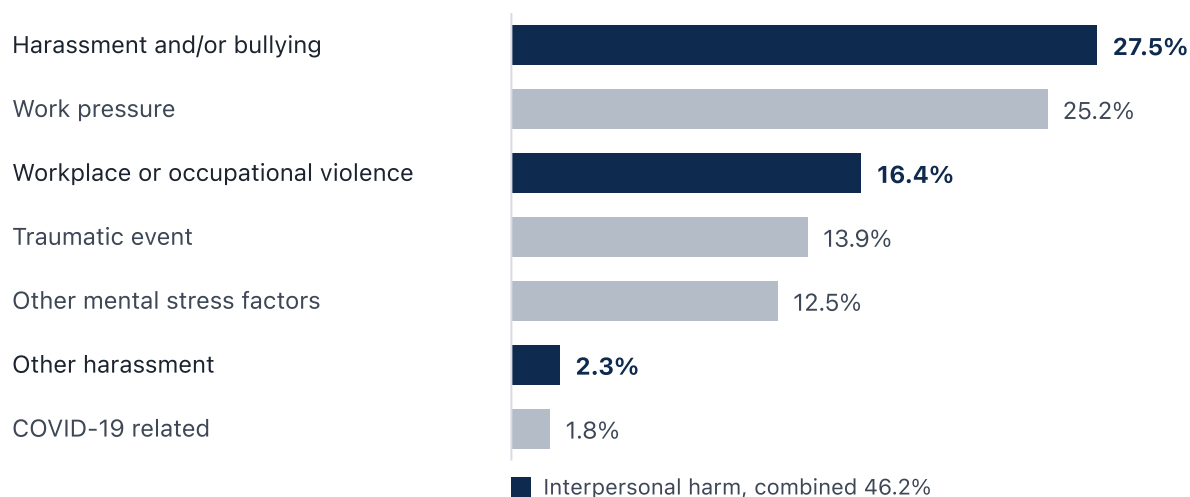
The time lost does not end at the first return. In Safe Work Australia's 2025 National Return to Work Survey, 76.5% of workers with a psychological injury had returned to work, against 90.2% for physical injuries.³

The largest state scheme reports the same direction. icare's Nominal Insurer received 6,537 new psychological claims in FY25, 9% of its claims, up from 2,999 (5%) in FY22. icare puts the average cost of these claims at 3 to 4 times that of other injury types.⁴

2 The mechanism is interpersonal

Most of the market's psychosocial controls address workload: surveys, wellbeing platforms, job design. The claims data points somewhere else. Safe Work Australia's February 2024 report breaks down the cause of mental stress claims for 2021-22. Work-related harassment and bullying is the largest single mechanism, at 27.5%. Add exposure to workplace violence (16.4%) and other harassment (2.3%) and interpersonal harm accounts for 46.2% of mental stress claims, against 25.2% for work pressure.²

Figure 2. Cause of mental stress claims, share of claims, 2021-22p



Source: Safe Work Australia, Psychological health and safety in the workplace, February 2024.² Mental stress claims by mechanism, 2021-22 preliminary. This classification differs from the mental health condition figures in section 1, and the two should not be combined.

Scheme data agrees. icare reports that 70% of psychological claims in the Treasury Managed Fund, which covers the NSW public sector, are caused by bullying, harassment and work pressure.⁴

Almost half of mental stress claims come from what one person does or says to another.

3 Where the conduct happens

No national dataset records the channel through which harassment or bullying arrives, and we have found no Australian source that does. What the data does show is how little of it reaches the employer. The Australian Human Rights Commission's 2022 national survey found that one in three workers had been sexually harassed at work in the last five years, and that 18% of it was reported.⁵

Conduct between colleagues no longer stops at the site or the office. It continues by direct message, text and chat app, on personal phones, after hours and in places no manager is present. In sectors with remote and rostered work the exposure is sharper: fly-in fly-out workers report high or very high psychological distress at nearly twice the benchmark rate, 33% against 17%.⁶

When that conduct surfaces, the evidence is usually screenshots taken by the person who received it, and a phone handed to someone else to search. Until then, the employer has no view of the channel at all.

4 Why employers cannot simply look

Every tool built to read private messages has, until now, been a form of surveillance, and Australian law is moving to constrain workplace surveillance, not widen it.

- **NSW.** The Workplace Surveillance Act 2005 places the duty on the employer for surveillance it carries out or causes to be carried out, requires 14 days' written notice, and restricts surveillance of an employee outside work.¹³
- **NSW digital work systems.** The Work Health and Safety Amendment (Digital Work Systems) Act 2026 requires a PCBU to consider whether digital work systems used to allocate work create risks including intrusive monitoring. It received assent on 18 February 2026; its substantive duties commence on proclamation after SafeWork NSW publishes guidelines.¹⁵
- **Victoria.** The Government's November 2025 response supported in principle a model requiring employers to show surveillance is "reasonable, necessary and proportionate", with notice, consultation and a mandatory policy. There is no bill yet.¹⁴
- **Privacy Act.** A statutory tort for serious invasions of privacy commenced on 10 June 2025. From 10 December 2026, entities must disclose in their privacy policy where a computer program makes, or does a thing substantially and directly related to making, decisions that significantly affect individuals.¹⁶

Legal advice is also telling employers to create fewer sensitive records, not more. In *Crafti v Cohealth Limited* [2025] FWC 3285, external workplace investigation reports were held not to attract legal professional privilege automatically.¹⁷ A system that copies worker messages into company hands would create exactly the kind of record that advice warns against.

5 What the law judges is prevention

Two positive duties reach conduct between workers, and neither waits for a complaint.

- **The positive duty, s 47C Sex Discrimination Act 1984.** Since 13 December 2022, employers and PCBUs must take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment, sex-based harassment, hostile workplace environments on the ground of sex, and victimisation. Since 12 December 2023 the Australian Human Rights Commission can inquire into compliance and issue compliance notices on its own motion.⁷
- **The WHS duty for psychosocial hazards.** PCBUs must eliminate or minimise risks to psychological health so far as is reasonably practicable. Harassment, bullying and violence are named psychosocial hazards. What is reasonably practicable weighs what is known about the risk and the controls available to address it.⁸

The approved codes of practice say what controls look like. The Commonwealth *Work Health and Safety (Sexual and Gender-based Harassment) Code of Practice 2025*, approved on 5 March 2025, lists as an example, for work conducted away from the usual workplace: "ensure technology used when away from the usual workplace is safe (e.g. monitor apps used to communicate for inappropriate behaviour, allow parties to be locked out of the platform after hours, or use quarantine or filtering functions pending review)". Its foreword states: "An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice." The NSW and ACT codes carry the same line.⁹ The example is framed around remote work and does not name messages between co-workers, but a regulator has now written monitoring of communication apps into the list of controls a duty holder is expected to consider.

Enforcement has followed the duty. A Commonwealth department was convicted and fined \$188,000 in December 2025 over psychosocial risk, and a Victorian public body pleaded guilty and was fined the maximum, \$379,157, in October 2023.¹⁰ Two other psychosocial prosecutions, in NSW and WA, were

withdrawn in 2025; the lesson practitioners drew is that documented procedure is what defends an employer.¹¹

Where the record is already compelled: WA mining

In WA mining the duty runs through records. A mine operator must report a gendered violence incident that caused or could have caused serious harm as soon as possible after becoming aware of it (reg 675V), and hold it in the mine record for seven years (regs 675Y and 675Z). Section 27 requires officers to have processes for receiving and responding to this information "whether or not the report meets the threshold for notification".¹² The regulator has also reached back. PCBU-reported sexual harassment incidents rose from about none in 2020 to about 141 in 2022, and over 2019 to 2021 the regulator compelled about 275 incidents that had never been reported at the time, using notices requiring information and answers.¹²

6 What employers have bought so far

We reviewed six publicly documented Australian employer responses to a harassment or psychosocial legal event: enforceable undertakings, prosecutions, inquiries and class actions. Every response was policy, training, campaigns, investigation capacity or physical security, such as duress apps, lighting and CCTV. None procured a control for communications.¹⁸ Investigation capacity was rebuilt; in one case the median time to close a bullying investigation was 75 days.

These are reasonable responses to the conduct they can reach. None reaches a message sent from one phone to another at eleven at night.

7 What a defensible control looks like

A control for this channel has to satisfy two tests at once: it must give the employer evidence of prevention, and it must not turn the employer into the party that reads its workers' messages. In our view a control meets both tests when it has these properties.

- 1 It runs on the worker's own device.** Detection happens on the phone. Nobody can read the messages: not the employer, not the vendor.
 - 2 The worker controls it.** Offered at onboarding, installed with the worker's consent, and removable by the worker.
 - 3 It is consulted before it is introduced.** Workers and their health and safety representatives are consulted on the control, as the WHS duty to consult requires for any new control measure.
 - 4 No message leaves the device unless the worker chooses.** The worker decides whether, and to whom, anything is escalated.
 - 5 It acts at the moment of arrival.** Explicit abuse is flagged to the worker when it arrives. Patterns of manipulation and coercion are detected and named, so the person can see what is happening to them.
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- 6 **Routing is care-first.** Distress goes to wellbeing and employee assistance support. Bullying goes to people and culture. Threats and exploitation go to security or police. Each route is agreed with the business in advance.
- 7 **The employer's record is prevention, not content.** Control offered, uptake, warnings given, escalations the worker chose. That is the record the positive duty and the WHS duty ask for, and it holds no message to be discovered.
- 8 **Evidence is captured when the worker needs it.** Where a worker escalates, the material is preserved as it arrived, with a chain of custody designed to meet court evidentiary standards, so nobody has to hand over a phone.
- 9 **The duty that follows knowledge is settled first.** Thresholds, who is told what, and how an escalation is handled are agreed with counsel before launch, not after the first flag.

What this design does not settle

No regulator or court has ruled on a worker-installed, worker-controlled tool under the surveillance statutes. The position changes when the employer pays for, mandates or receives output from the tool, and the message's other party has not consented. These are questions for each organisation's own counsel.¹³¹⁶

8 Methodology and limitations

- National figures are taken from Safe Work Australia publications, read in September 2026 through a text proxy over the primary URLs because the sites timed out on direct access. Figures should be checked against the live pages before reliance.
- "Mental health condition" and "mental stress" are different Safe Work Australia classifications, and counts differ between publications for overlapping years. Each figure here is cited to one publication and the two are never combined.
- The cause breakdown in Figure 2 is from the full February 2024 report. A summary version of the same report renders the harassment and bullying row differently, which appears to be an extraction error; the full report is used here.
- WA mining incident counts are read from a chart and are approximate.
- The employer response review in section 6 rests partly on secondary reporting where primary documents could not be retrieved.
- No national dataset records the channel through which harassment arrives. Section 3 is reasoned from the reporting gap and the regulator's own control examples, not from a channel statistic.

Sources

1. Safe Work Australia, *Key Work Health and Safety Statistics, Australia 2025*. data.safeworkaustralia.gov.au. Claim counts 2023-24 preliminary; medians 2022-23.

2. Safe Work Australia, *Psychological health and safety in the workplace*, February 2024. data.safeworkaustralia.gov.au. Mental stress claims by mechanism, 2021-22p.
3. Safe Work Australia, *National Return to Work Survey*, 2025. data.safeworkaustralia.gov.au.
4. icare NSW, *Annual Report 2024-25*. icare.nsw.gov.au.
5. Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces*, 2022.
6. WA Mental Health Commission and Curtin University, research on the mental health of FIFO workers.
7. Sex Discrimination Act 1984 (Cth) s 47C, inserted by the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022. AHRC, *The positive duty*.
8. Safe Work Australia, *Model Code of Practice: Managing psychosocial hazards at work*, July 2022. Work Health and Safety Act 2020 (WA) s 18, what is reasonably practicable, as an example of the harmonised provision.
9. Work Health and Safety (Sexual and Gender-based Harassment) Code of Practice 2025 (Cth), F2025L00326, approved 5 March 2025, s 5.5 and foreword. legislation.gov.au. SafeWork NSW, *Code of Practice: Sexual and gender-based harassment*, s 5.5. The ACT has approved the same code.
10. AREEA, *Landmark psychosocial risk prosecution*, December 2025, s 33 WHS Act 2011 (Cth). Victorian guilty plea, October 2023, maximum penalty \$379,157.
11. WorkSafe WA, *Prosecution summaries and enforceable WHS undertakings: first psychosocial charges under the WHS Act 2020 (WA)*, late 2024, withdrawn September 2025. SafeWork NSW psychosocial prosecution withdrawn March 2025.
12. WHS Act 2020 (WA) s 27; WHS (Mines) Regulations 2022 (WA) regs 675V, 675Y, 675Z. WorkSafe WA, *Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety*, updated 26 November 2024. WorkSafe Mines Safety, *Addressing psychosocial hazards and risk factors at Western Australian mining operations*, 17 June 2025, Part 3. The regulations do not name sexual harassment as a category of reportable incident; the duty operates through the harm tests.
13. Workplace Surveillance Act 2005 (NSW), as summarised in ALRC Report 123, ch 14, and Victorian Legislative Assembly Economy and Infrastructure Committee, *Inquiry into workplace surveillance*, 13 May 2025, pp 69 to 74.
14. Victorian Government Response to the Inquiry into workplace surveillance, November 2025, recommendations 1 to 6, supported in principle. [Corrs summary](#).
15. Work Health and Safety Amendment (Digital Work Systems) Act 2026 (NSW), ss 19(3)(c1), 21A. SafeWork NSW, *Legislation*.
16. Privacy Act 1988 (Cth), Schedule 2, statutory tort for serious invasions of privacy, from 10 June 2025 (OAIC); APP 1.7 to 1.9, automated decision-making transparency, from 10 December 2026. [Corrs](#).
17. *Crafti v Cohealth Limited* [2025] FWC 3285. Holding Redlich, *External workplace investigation reports do not automatically attract privilege*.
18. Guardii Advisory review of six publicly documented Australian employer responses, September 2026, drawing on enforceable undertakings, regulator releases, company progress reports and press reporting. Case list available on request.

This briefing is general research, not legal advice. It does not take account of any organisation's circumstances, and legislation and codes should be checked against their current versions before reliance. Guardii Advisory, October 2026.