

# When performance management becomes a psychosocial hazard - Norton Rose Fulbright

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## Executive Summary

This article addresses the legal and organisational implications of a landmark Australian workplace health and safety conviction involving a Commonwealth government department. The department was found guilty of failing to manage psychosocial risks arising from its performance management processes, following the death of a 34-year-old employee who took his own life after being placed on four consecutive Work Plans within six months. The author, writing from a legal advisory perspective, argues that performance management processes can constitute psychosocial hazards under the Work Health and Safety Act 2011 (Cth), and that employers have enforceable obligations to identify and mitigate these risks. Key evidence includes the court's finding that supervisors lacked training to recognise distress signals or intervene, the \$188,000 fine and adverse publicity order imposed, and the fact that this represents the first Commonwealth employer conviction for psychosocial risk management failures under the Act. The article draws implications for organisational practice: psychosocial risk is now a mainstream compliance issue, supervisor capability is a critical control mechanism, and HR and WHS functions require integrated governance rather than siloed management.

## Key Insights

1. A Commonwealth government department was convicted under Australia's Work Health and Safety Act 2011 for failing to manage psychosocial risks during performance management, resulting in an employee's suicide after four Work Plans in six months.
2. The court identified the absence of supervisor training as a critical failure — supervisors did not recognise distress signals, refer the worker for support, or pause the performance management process.
3. This is the first conviction of a Commonwealth employer for psychosocial risk management under the Act, signalling that regulators now treat psychological health obligations with the same enforcement rigour as physical safety.

## Practical Takeaways

- Organisations operating performance management processes face legal exposure if supervisors are not trained to identify psychosocial hazards and escalate or pause processes when worker distress is evident.
- HR and WHS functions operating in isolation create compliance gaps — integrated governance and shared accountability for psychosocial risk controls during HR processes is now a documented legal expectation in Australia.

## Critical Analysis

**Strengths:** The article is grounded in a verified legal case with documented charges, conviction, and sentencing — this is not opinion or prediction but a report of an established legal precedent. The three key themes are drawn directly from court findings, lending credibility. **Limitations:** The article is authored by Norton Rose Fulbright, a law firm with a commercial interest in compliance advisory services. The 'what organisations should do now' section closely mirrors the structure of legal advisory services, which introduces a soft promotional bias. The article does not explore alternate interpretations of the case, nor does it acknowledge any contested aspects of the conviction. It also does not engage with academic literature on psychosocial risk or comparative international frameworks. The case is jurisdiction-specific (Australian federal law), limiting direct applicability to other legal environments.

## Organizational Practice

The article describes a Commonwealth government department that used a tool called 'Work Plans' as a formal performance management mechanism. The employee was placed on four consecutive Work Plans over a six-month period. Supervisors did not refer the worker for medical or psychological support, did not place the worker on leave, and did not pause or suspend the performance management process despite observable signs of distress. The department lacked formal training for supervisors on psychosocial hazard identification within performance management contexts.

## Strategic Implications

The conviction establishes that performance management processes in Australia are now subject to formal psychosocial risk assessment requirements under WHS legislation. Organisations that treat HR and WHS as separate functions face documented legal exposure. The case signals a regulatory trajectory in which the design, frequency, and communication quality of performance management processes will be scrutinised as potential contributors to psychological harm. Further charges pending against the same department related to remote work psychosocial risks suggest enforcement activity in this space is ongoing and expanding.

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**Validation Status:** passed

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