

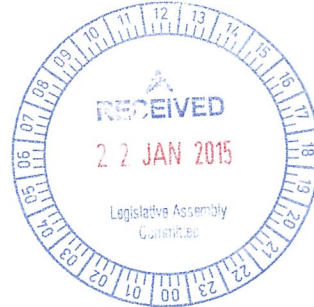


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Mr Mathew Bates  
Principal Research Officer  
Education and Health Standing Committee  
Parliament House  
PERTH WA 6000



Dear Mr Bates

### **INQUIRY INTO THE MENTAL HEALTH IMPACTS OF FIFO WORK ARRANGEMENTS**

I refer to the letter of 12 December 2014 from Dr G.G. Jacobs MLA, Chair, Education and Health Standing Committee, requesting WorkCover WA's input to the inquiry into the mental health impacts of fly-in, fly-out work arrangements.

Please find enclosed a response to the questions and areas of interest to the Committee.

If you wish to discuss the response please contact Mr Kevin Gillingham on 9388 5640 or email [kevin.gillingham@workcover.wa.gov.au](mailto:kevin.gillingham@workcover.wa.gov.au)

Thank you for the opportunity to provide input to the inquiry.

Yours sincerely

Wendy Attenborough  
A/CHIEF EXECUTIVE OFFICER

21 January 2015



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## **Inquiry into the Mental Health Impacts of Fly-In, Fly-Out Work Arrangements**

### **WorkCover WA and the Workers' Compensation Scheme in Western Australia**

1. WorkCover WA is the statutory authority responsible for the administration and regulation of the workers' compensation and injury management system in Western Australia.
2. This includes monitoring compliance with the *Workers' Compensation and Injury Management Act 1981* (the Act) and informing and educating workers, employers and stakeholders about workers' compensation and injury management, as well as providing an independent dispute resolution system.
3. In Western Australia workers' compensation is underwritten in a private insurance market. All employers must obtain workers' compensation insurance from one of the eight approved insurers or seek approval to self insure.
4. WorkCover WA does not underwrite insurance, manage claims or make compensation payments to injured workers (other than in very specific circumstances where an employer is not insured).
5. Insurers and self insurers make decisions on liability for compensation and are integral to the ongoing management of claims and the injury management process. The requirements relating to insurance, the claims procedure and injury management are specified in the Act (s160 & 164; s57A & s57B; Part IX).
6. WorkCover WA has limited capacity under the Act to direct insurers and self insurers on claim level decisions such as liability for, and management of, psychological injuries except via the dispute resolution processes.
7. WorkCover WA publishes general information on workers' compensation and injury management and provides advice and assistance to workers who may be experiencing difficulties with the claim process. WorkCover WA does not issue guidelines in relation to mental health injuries sustained in the workplace.
8. Mental health is a complex issue often involving broader health and non work related factors that cannot be resolved solely within a compensation environment. The type of conditions and circumstances giving rise to claims are normally multifaceted.
9. Appendix 1 provides statistical information requested by the Committee.

### **Work related injury and application to psychological injuries**

10. The definition of 'injury' in s5(1) of the Act is defined broadly and includes both 'personal injury by accident arising out of or in the course of employment' and 'diseases'. Psychological injury will generally fall within the definition of a 'disease'.
11. The worker making a claim bears the onus of proof in showing that an injury or disease is work related and therefore compensable.

12. In respect of a disease (or the recurrence, aggravation or acceleration of any pre-existing disease), the employment must be a contributing factor and contribute to a significant degree. Thus employment must be a significant contributing factor to the disease in order to be compensable.
13. There is also a general exclusion for stress claims arising wholly or predominantly from:
  - the worker's dismissal, retrenchment, demotion, discipline, transfer or redeployment;
  - the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment;
  - the worker's expectation of a matter or a decision by the employer in relation to the points above.

### **The claim procedure and issues relating to psychological injuries**

14. Whenever a claim is made the insurer or self insurer is required to make a liability decision within the required time as to whether to:
  - accept liability;
  - dispute liability;
  - notify the worker that a decision on liability cannot be made within the required time (known as a 'pended' claim).
15. This procedure applies regardless of the injury or disease.
16. Psychological injuries are generally more complex than physical injuries and usually require more medical and factual investigations by insurers and self insurers to enable an informed decision on liability to be made.
17. For example, the nature and extent of the injury or incapacity for work may not be clear from the medical certificate or the factual circumstances giving rise to a claim are not substantiated or are contested.
18. If liability for a claim is accepted compensation will be payable from the date of injury in accordance with the Act. This includes medical and allied health treatment and weekly payments for any lost time from work. If the worker has a partial incapacity for work it is likely a return to work program will commence.
19. If a claim is disputed the matter may be resolved in WorkCover WA's Conciliation and Arbitration Services.

### **Medical and injury management of psychological injuries**

20. A return to work as early as possible is a primary goal of injury management. It is therefore important for any return to work program to be outcome focussed with clearly defined actions and responsibilities for all parties.
21. The Act provides a framework for the establishment and implementation of return to work programs; however this framework is deliberately non-prescriptive allowing significant flexibility for actions to be tailored to the unique circumstances of workers and their injuries.

22. FIFO work arrangements and psychological injuries can present medical management and vocational rehabilitation challenges particularly in remote areas where access to services and injury management options may be limited.
23. Medical management and return to work activities for psychological injuries typically involve various parties including the worker, employer/insurer, treating medical practitioner or specialist, health providers (counselling or clinical psychologist). A workplace rehabilitation provider may be appointed to assist in the development of a return to work program or to provide support services.

### **Labour hire and contractual arrangements**

24. Employment methods used in the resources sector (use of labour hire and contractors) does not impact on the availability of workers' compensation for workers injured at work.
25. FIFO workers engaged in labour hire and contractual arrangements are covered by the workers' compensation scheme if working under a contract of, or for, service. Where workers are lent or let on hire to someone else the liability remains with the labour hire company.
26. The Act also provides a safeguard for workers engaged in complex contractual arrangements involving multiple contractors. It does this by deeming principals and contractors in the contract chain jointly and severally liable to pay compensation to subcontractors.
27. Finally WorkCover WA administers a safety net fund for workers of uninsured employers, thereby ensuring coverage irrespective of the insurance status of employers. In uninsured arrangements WorkCover WA will pay the compensation or common law damages payable to the worker.

### **Accommodation facilities**

28. Workers who are provided accommodation by an employer as part of their employment may be entitled to workers' compensation notwithstanding the injury occurs in circumstances not related to direct work activities or occurs outside of work hours.
29. However it is not possible to draw a precise line dividing cases into those that are compensable and those that are not, as injuries can be contracted in a variety of circumstances.

### **Cross border arrangements**

30. The Act also provides a mechanism for determining the relevant jurisdiction for compensating workers who may work in more than one jurisdiction. This mechanism is not relevant for FIFO workers working exclusively within WA but may come into play where employment is sporadic across state and territory borders.
31. In circumstances where a FIFO worker's state of connection is Western Australia but is residing outside the State, the WA Act will continue to apply. In practice workers may seek medical management of their injury in their home state, although the WA Act will apply in relation to compensation entitlements and fees for providers of medical and health services.

32. Employers/ insurers may also seek a medical review of the worker by an employer nominated doctor. Whether any review is conducted in WA or the worker's home state may be impacted by a number of factors, including cost, convenience, the worker's level of incapacity and whether they have returned to work on modified duties.



## Appendix 1 - Statistical information on psychological injuries

33. The information below is provided from data reported to WorkCover WA by insurers approved to operate within the WA workers' compensation scheme, and the Insurance Commission of WA. The Insurance Commission of Western Australia underwrites workers' compensation insurance for the public sector.
34. The data is provided on a financial year basis and was extracted from the WorkCover WA database on 18 December 2014.
35. All workers' compensation claims data in Australia is coded in a consistent manner for statistical purposes using the national Type of Occurrence Classification System (TOOCS). Coding of data includes the nature, mechanism, agency and bodily location of all work-related injuries and disease. The data relating to the causes (mechanism) of work-related injuries is classified using the TOOCS 3rd edition. The data relating to mental stress includes:
- exposure to workplace or occupational violence;
  - work pressure;
  - work-related harassment and/or workplace bullying;
  - other mental stress factors.
36. The following information is provided as requested by the Committee:

### Average length of time for a workers' compensation claim for psychological injury

37. Table 1 is based on the average duration of an accepted workers' compensation claim for psychological injury.

Table 1: Average duration of a workers' compensation claim for psychological injury (accepted claims only)

	2011/12	2012/13	2013/14
Average claim duration (months)	12.7	10.8	7.9

### Number of psychological injury claims received from the mining and resources sector over the past three years

38. Table 2 identifies the number of psychological injury claims received from workers in the mining and resources sector. Note this is not specific to FIFO workers.

Table 2: Number of psychological injury claims received from the mining and resources sector

	2011/12	2012/13	2013/14
Number of psychological injury claims	65	66	71

39. Table 3 identifies the number of psychological injury claims accepted from workers in the mining and resources sector. This is where liability was accepted by the employer/insurer.

**Table 3: Number of psychological injury claims accepted from the mining and resources sector**

	2011/12	2012/13	2013/14
<b>Number of accepted psychological injury claims</b>	25	30	19

40. Where liability is not accepted insurers may still make compensation payments on a without prejudice basis. WorkCover WA data indicated that 92% of psychological injury claims in the mining sector received some form of compensation.

**Number of psychological injury claims received in the past three financial years that arose from suicides or attempted suicides in the mining and resources industry**

41. A review of claim descriptions on workers' compensation claims located one claim record associated with suicidal behaviour in the mining and resources sector. Liability for this claim was not accepted by the insurer.