



Government of **Western Australia**
Department of **Commerce**
Office of the Director General

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Enquiries: Lex McCulloch
Ph: 6251 2302

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Dr. G.G. Jacobs MLA
Chair, Education and Health Standing Committee
Parliament House
Harvest Terrace
Perth WA 6000



Dear Dr Jacobs

DISCUSSION PAPER : SHINING A LIGHT ON FIFO MENTAL HEALTH

Thank you for the invitation to provide comments in relation to the interim findings of the Education and Health Standing Committee (the Committee) in relation to the mental health impacts of fly-in, fly-out (FIFO) work arrangements.

I would firstly note the Committee's adoption of the World Health Organisation's definition of mental health along with that organisation's broader description of the causes of mental health. The issue from the perspective of an Occupational Safety and Health (OSH) regulator is that not all the factors listed fall within the responsibilities of OSH duty holders.

More specifically, the employer's duty of care established by the *Occupational Safety and Health Act 1984* (the OSH Act) is qualified by the term "so far as is practicable," which is defined in section 3 of the OSH Act as reasonably practicable having regard to:

- (a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring; and
- (b) the state of knowledge about —
 - (i) the injury or harm to health referred to in paragraph (a); and
 - (ii) the risk of that injury or harm to health occurring; and
 - (iii) means of removing or mitigating the risk or mitigating the potential injury or harm to health; and
- (c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii).

The state of knowledge about a hazard or risk, and any ways of eliminating or minimising the hazard or risk, will be what the duty-holder actually knows, or what a reasonable person in the duty-holder's position (e.g. a person in the same industry) would reasonably be expected to know. The current level of the state of knowledge in relation to FIFO mental health in effect limits what is practicable when addressing FIFO mental health hazards. As the state of knowledge changes over time, so will OSH duty of care obligations.

The OSH Act has been careful to distinguish between workplaces and residential premises. The approach of limiting the operation of OSH laws to the workplace is consistent with the approach used across Australia in setting the boundary within which OSH laws operate.

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Although the definition of a workplace is very broad, the interpretation of the OSH Act is that an employer's duty of care to its employees covers them when they are working at FIFO accommodation, but the employer of off-duty workers staying at these facilities does not have the same OSH duty of care.

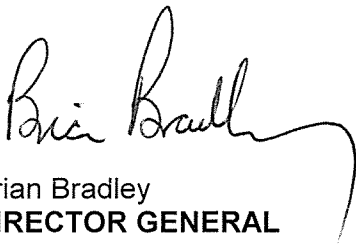
It is acknowledged that the OSH Act does provide some coverage of employer provided residential accommodation, however, the duties imposed on an employer by section 23G of the OSH Act is limited to the maintenance of the residential premises so that employees are not exposed to hazards. This provision was introduced after a shearer was electrocuted due to a faulty washing machine in the shearing quarters of a pastoral station, and WorkSafe's investigation revealed that the shearing quarters were not the shearer's workplace. The provision was not intended, nor designed, to extend the definition of workplace and thereby the general duty's operation.

I agree that the capacity to fully analyse the extent to which suicides occur amongst FIFO workers is limited due to the incompleteness of statistical information. Noting the Committee's observations concerning the many varied reasons that a person may choose to take their own life, I would observe that the availability of complete statistical information would be of restricted benefit.

In respect of information received by the WorkSafe division of the Department of Commerce, section 23I of the OSH Act requires certain cases of injury and disease to be notified to WorkSafe. Employers are responsible for reporting injuries to their employees, which includes injuries to contractors and labour hire staff. Fatal injuries directly associated with work activities are notifiable, but self-inflicted injuries such as suicides without a clear association with the employer's work would not fall within this category.

If you have any further queries in relation to this matter please contact the WorkSafe Western Australia Commissioner, Lex McCulloch, on 6251 2302 or by email lex.mcculloch@commerce.wa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Bradley', with a long, sweeping underline that extends to the right.

Brian Bradley
DIRECTOR GENERAL