



Government of **Western Australia**
Department of Commerce

Office of the Director General

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24 September 2014

Dr Graham Jacobs MLA
Chairman
Education and Health Standing Committee
Parliament House
PERTH WA 6000

Dear Dr Jacobs


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

Thank you for your invitation of 22 August 2014 to provide a submission to the Education and Health Standing Committee (the Committee) regarding the above inquiry.

The Department of Commerce (the Department) appreciates the opportunity to assist the Committee with its considerations. The Department has elected to respond to the questions and information requests outlined in the above letter, rather than make a full submission. The response to these is attached to this letter. Please do not hesitate to contact myself if further information is required.

Once again, thank you for the opportunity to assist the Committee.

Yours sincerely



Brian Bradley
DIRECTOR GENERAL

Attach

Education and Health Standing Committee
Inquiry into mental health impacts of FIFO work arrangements

Response to questions and requests for information

Submitted by the Department of Commerce

24 September 2014

Introduction

The Department of Commerce ('the Department') provides the following response to the questions and information requests outlined in the letter dated 22 August 2014 from the Education and Health Standing Committee ('the Committee').

As a general comment, the Department makes the observation that non-mining industries also have workers working in fly in/fly out work arrangements, including those in the health and education sector. These workers may also be subject to safety and health impacts from the work arrangements, where appropriate controls are not implemented.

Questions and requests for information

- 1. Does WorkSafe have any role in regulating or investigating mining or petroleum industry workplace health and safety in Western Australia?**

The WorkSafe Division ('WorkSafe') of the Department administers the *Occupational Safety and Health Act 1984* ('the OSH Act'). Section 4 of the OSH Act specifically states that the OSH Act does not apply to a workplace:

- that is, or at which is carried out on, a mine to which the *Mining Act 1978*, or the *Mines Safety and Inspection Act 1994* ('the MSI Act'), applies;
- at which a petroleum operation or geothermal energy operation, as defined in section 5(1) of the *Petroleum and Geothermal Energy Resources Act 1967*, is carried out; or
- at which an offshore petroleum operation, as defined in section 4 of the *Petroleum Pipelines Act 1969* and *Petroleum (Submerged Lands) Act 1982* is carried out.

Notwithstanding the above, there is the ability, under section 4 of the OSH Act, for the Minister responsible for this Act and the Minister responsible for the MSI Act to declare in an instrument of declaration that a workplace or parts of it fall under the jurisdiction of the OSH Act.

To provide clarity on legislative coverage, there are currently instruments of declaration in place in relation to two power stations on mining leases. There are also four instruments of declaration in place in relation to privately owned mining railways in the northwest.

2. Does WorkSafe have any role in regulating or investigating mining or petroleum construction sites in Western Australia?

As outlined above, there are specific exclusions under section 4 of the OSH Act, which mean that WorkSafe does not have a role in regulating or investigating construction work occurring on sites covered by the above-mentioned legislation.

Previously, instruments of declaration have been put in place to cover certain construction projects at mining sites. These were put in place to enable technical specifications for construction work under the OSH Act to apply and for these to be administered by WorkSafe, which has the appropriate technical expertise. However, there are no current instruments of declaration in place in relation to this matter.

3. The extent to which workplace mental health is captured by the legislation through which WorkSafe regulates occupational safety and health in Western Australia.

Under the OSH Act, employers have an obligation to ensure workers are not, so far as is practicable, exposed to work-related hazards that could have an impact on their safety and health. This includes the prevention of both physical and psychological injuries.

The relevant provisions under the OSH Act are:

- section 19(1) of the OSH Act – the general ‘duty of care’ places an obligation on employers to provide and maintain a safe *working environment*, so far as is practicable, through the provision of safe systems of work and information, instruction and training and supervision to enable workers to work safely.

In relation to mental health, depending on the workplace and identified hazards and assessed risks, the general ‘duty of care’ obligation may obligate the employer to provide policies and procedures, a code of conduct, information and training, an employee assistance program and a critical incident response;

- section 23K of the OSH Act – this general ‘duty of care’ provision places an obligation on the employer to investigate and provide feedback on the action that has been determined following an incident or hazard report made by a worker; and
- regulation 3.1 of the Occupational Safety and Health Regulations – this regulation requires identification of hazards and assessment of risks, including risk factors that could give rise to psychological harm, and consideration of controls to be implemented.

In relation to determining whether a mental health issue should be investigated by an inspector, reference is made to WorkSafe's *Compliance policy*. This sets 'criteria for investigations' for investigations. In particular, this states that:

- 'undertaken for a range of reasons, such as to determine the causes of an incident, assess compliance with OSH laws and/or determine what action may be needed to prevent a further occurrence and enforce OSH laws. Lessons learnt from investigations inform development of inspectorate policy and campaigns;
- WorkSafe must make appropriate choices on how it can best apply its resources to improve safety and health at workplaces and therefore a risk management approach is applied to the inspectors' activities; and
- WorkSafe exercises discretion in deciding whether incidents, cases of ill health, or complaints should be investigated'.

With prosecutions, they are only commenced, instead of or in addition to the other enforcement actions (ie issuance of verbal directions or notices), where an inspector obtains sufficient evidence to establish a prima facie case, there is a reasonable prospect of a conviction and it is in the public interest. This is determined by reference to WorkSafe's *Prosecution policy*.

4. Details of WorkSafe's actions with respect to promoting, improving or otherwise regulating mental health.

One of the principal objects of the OSH Act is to promote and secure the safety and health of people at work. In relation to work-related mental health issues, WorkSafe carries out both compliance and educative activities aimed at promoting the prevention of work-related psychological injuries and harm.

A key message in WorkSafe's activities is promotion of the message that a psychologically healthy and safe working environment is one that promotes workers' psychological well-being and proactively endeavours to prevent harm to workers' psychological health.

With both reactive inspections and proactive inspectorate campaigns, WorkSafe investigates compliance with the above-mentioned legislation in relation to mental health hazards, such as workplace bullying, occupational stress, occupational violence and aggression and working hours, which could result in psychological injury or harm.

Reflecting the above-mentioned legislative obligations under the OSH Act, the activities conducted by WorkSafe are aimed at promoting:

- implementation of systems and procedures to put in place to prevent psychological injury and harm;
- conducting proactive risk assessments to assess relevant organisational risk factors (for example, workplace culture); and
- implementation of processes to respond appropriately and adequately to reports of injury or harm.

In its reactive work, WorkSafe investigations are prompted by complaints or notifications. Complaints are made by members of the public or workers notifying WorkSafe of exposure to workplace factors that could affect or have affected their psychological health. Employers are also required to notify WorkSafe of workplace deaths and injuries of the prescribed kind that occurred at a workplace.

Of note is that WorkSafe's investigations into complaints of psychological injury or harm are focussed on the work-related aspects. As per the above legislation, the inspectors' focus is on whether there are systems and procedures in place to prevent and deal with such injuries, the workplace has conducted a risk assessment in relation to potential risk factors and responded to hazard reports about psychological harm or injury. WorkSafe inspectors do not diagnose psychological conditions nor respond to these specifically.

In cases where WorkSafe inspectors have determined that enforcement action is necessary, according to WorkSafe's *Compliance Policy*, they are empowered to issue improvement notices. Reflecting the above-mentioned legislation, the notices are focussed on the implementation of preventative measures to prevent further injury or injuries.

With the response to people making contact with WorkSafe about a mental health complaint, recent developments include:

- the recruitment of Senior Inspectors/Scientific Officers with specialist knowledge and training to deal with the increased number of complex enquiries raised in relation to psychosocial matters, particularly pertaining to workplace bullying and workplace behavioural issues;
- implementation of procedures for the early referral by WorkSafe's call centre of callers with issues that are better dealt with another agency, for example WorkCover WA, Resources Safety Division of the Department of Mines and Petroleum, the Equal Opportunity Commission and the Western Australian Industrial Relations Commission; and

- training of WorkSafe's call centre staff to deal with phone calls involving highly distressed callers, with a procedure to facilitate a 'warm transfer' of these calls to the Mental Health Emergency Response Line.

As mentioned above, WorkSafe inspectors also conduct proactive campaigns to promote compliance in relation to the above-mentioned legislation. In relation to this, 'mental health disorders' is a specific focus of WorkSafe's Human Factors and Ergonomics Team.

Proactive campaigns are held in industry sectors and workplaces where there is some evidence, including workers' compensation data and anecdotal information, to suggest there are greater risks of injury or harm.

Previously, Worksafe has conducted proactive campaigns in relation to:

- the management of aggression in the health care sector;
- work-related stress and bullying in state government agencies; and
- work-related stress in the education sector (which is an ongoing project).

Further proactive campaigns will be conducted in the 2014/15 year in relation to workplace conduct in not-for-profit organisations.

WorkSafe provides a range of educative services to promote understanding legislative obligations and rights in relation to matters that may be associated with mental health. In particular, WorkSafe provides:

- website guidance on the prevention and management of occupational stress, workplace bullying, workplace aggression and violence, fatigue management, alcohol and other drugs at the workplace and working alone;
- print and online copies of the Commission for Occupational Safety and Health's *Code of practice: Violence, Bullying and Aggression*, *Code of practice: Working hours*, *Guidance note: Alcohol and other drugs at the workplace* and *Guidance note: Working alone*;
- the WorkSafe publication, *Psychologically safe and healthy workplaces: Risk management approach toolbox*, to emphasise a preventative approach and provide guidance on it; and
- information sessions and workplace presentations on occupational stress, workplace bullying and workplace aggression and violence.

At the jurisdictional level:

- since 2013, WorkSafe has convened meetings for senior government officers across State government on workplace bullying and associated matters to examine current legislation, services and information and identify gaps and improvements;
- WorkSafe has provided presentations on mental health matters to an interagency network of injury and occupational safety and health professionals within the public sector; and
- WorkSafe will be participating in a newly formed mental health network co-ordinated by the Department of Health.

5. Details of complaints made to WorkSafe for each of the past five financial years relating to workplace mental health concerns in Western Australia, or suicides or attempted suicides.

Mental health complaints

WorkSafe is only able to provide the general data with respect to mental health complaints. This is because complaints are recorded in a database that is essentially a case management system and there are limitations with respect to producing data on the specific complaint types.

Notwithstanding the above, for the committee's information, WorkSafe provides the following analysis of psychological hazards trends for the 13.5 years 2000 to June-2014.

Note that the data provided below was:

- drawn from activity by the Human Factors/Ergonomics Team, which deals with the majority of complaints about psychological hazards; and
- focused on complaints and notices issued by inspectors containing the terms 'bullying', 'harassment', 'abuse', 'threaten', 'stress' and does not include 'suicide'. Note that, with the complaints, the description of the matter is supplied by the complainant rather than being a technical classification by an inspector.

While subject to revision, a preliminary analysis of the data indicates that:

- the OSH enquiry (ie public enquires to WorkSafe) shows a steady increase over 2008-2013, from 410 to 1,450 (an increase by 3.5 times);
- 7,141 calls/enquiries, identified as mental health related, were received for 2000-June 2014;
- 3,337 'mental health related requests to attend' (ie a request for a workplace visit by an inspector) were also received;

- 2,992 investigations resulted; and
- 141 notices were issued on mental health related matters (please note that these notices may not necessarily relate to the 'mental health related requests to attend' as the notices may also result from other investigations).

Workers' compensation data

WorkSafe also refers to workers' compensation data supplied by WorkCover WA for analysis of trends with lost time injuries and diseases. Table 1 (below) outlines the number of successful workers' compensation claims categorised under 'mental stress'. These were for an absence of one or more days from work

Table 1 Workers' compensation claims – 'mental stress'

	2009-10	2010-11	2011-12	2012 -13p*
	415	486	426	512
Exposure to a traumatic event	35	56	50	73
Exposure to workplace or occupational violence	101	120	85	93
Other harassment	7	6	14	8
Other mental stress factors	9	7	2	6
Suicide or attempted suicide	0	0	0	5
Work pressure	191	195	190	224
Work related harassment and/or workplace bullying	72	102	85	103

Notes: 1) *p = preliminary data, which is subject to revision; and 2) 2008-09 is not supplied as the coding of data was different for this period.

In relation to data on suicides or attempted suicides in the above table, it is noted that it may be anticipated that some may not be captured within the workers' compensation system because they were not strongly identified as being work-related or even claimed as such.

WorkSafe information on suicides

In relation to WorkSafe's complaints data, the above-mentioned limitations on the mental health complaints data also apply in relation to providing statistics on suicides. In addition, as mentioned, the data is drawn from complainants' descriptions rather than being a classification of the matter by an inspector.

Notwithstanding the above limitations, WorkSafe information indicates that, from July 2009 to June 2014, there were:

- 80 enquiries (queries at the call centre level where the word 'suicide' was mentioned);
- 20 enquires became a 'request to attend' (ie where the call centre referred the enquiry to the inspectorate);
- four enquiries were notified injuries (ie referred to the inspectorate for further consideration);
- 51 enquiries were requests for information;
- 20 enquiries resulted in an investigation by an inspector (however, the workplace visit by the inspector may not necessarily have addressed the suicide but instead identified other issues not related to mental health).

WorkSafe also compiles information on known fatalities that have occurred at a workplace. Some of these are notified by employers; whereas others are deaths that WorkSafe has become aware of through other intelligence. A subset of this information is 'death by own hand'.

Table 2, below, indicates the fatalities arising from suicides that WorkSafe has been made aware of. However, it must be noted that it can be assumed that some suicides that were work related have not been reported to WorkSafe.

Table 2 Fatalities – 'death by own hand'

	2012-13	2013-14	2014-15 (up until 23/09/14)	Total
Construction	1	1	1	3
Education & Training		1		1
Information Media & Telecommunications			1	1
Mining		2		2
Transport, Postal and Warehousing	1			1
Agriculture, Forestry & Fishing	1			1
Undetermined industry grouping		3	1	4
Total	3	6	3	13

Conclusion

Generally, in WorkSafe's experience, community's awareness that mental health can be a workplace safety and health issue is continuing to grow. This is particularly evidenced in relation to workplace bullying. WorkSafe continues to review how to best serve workplace participants, both employers and workers, in relation to the prevention of and response to work-related psychological injury.

Where additional information is required by the Committee on WorkSafe's activities, the Department would welcome the opportunity to provide further assistance.