



Submission to the WA Parliament Education and Health  
Standing Committee:  
Inquiry into mental health impacts of FIFO work  
arrangements

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

September 2014

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## Prepared by

Association of Mining and Exploration Companies Inc (AMEC)

### Head Office

6 Ord Street, West Perth WA 6005  
(Offices located in Perth and Brisbane)  
Please address all correspondence to:  
PO Box 948  
West Perth WA 6872  
P: 1300 738 184  
F: 1300 738 185  
info@amec.org.au  
[www.amec.org.au](http://www.amec.org.au)

## 1. EXECUTIVE SUMMARY

This submission has been prepared by AMEC on behalf of the mineral exploration and mining industry. AMEC has surveyed a number of its producer members and many consultants operating within the industry to bring this submission together. AMEC has a specialist health and safety committee with extensive experience with employment related issues and the provision of support services on site.

FIFO is a matter of choice for employees entering the resources workforce. In doing so, the employee makes an informed decision and a clear lifestyle choice. It is not confined to the resources sector but many other industry sectors. AMEC also recommends that a national perspective be taken when addressing issues of mental health. This is an issue that reaches across the entire Australian society and therefore needs to be considered in the context of all employment.

Companies are extremely cognisant of the health and well-being of the employees. They try to offer family friendly and flexible rosters and maximise initiatives promoting the health, safety and well-being of their employees. Companies provide employees with extensive assistance in the area of mental health on site and in other locations.

A FIFO workforce strategy may be the only viable option for many mining, exploration and service companies in Australia, and particularly in Western Australia where the mine site could be in an extremely remote location hundreds of kilometres away from the nearest community.

Research has indicated mental health is a state of emotional and social wellbeing, and extremely difficult to measure. There has been extensive research and subsequent reports completed that demonstrate FIFO workers do not have higher mental health issues from the rest of the population (Sibbel 2010; Joyce 2013; Meredith 2014).

An ABS 2007 survey of mental health found that *'Of the 16 million Australians aged 16–85 years, almost half (45% or 7.3 million) had a lifetime mental disorder, ie a mental disorder at some point in their life. One in five (20% or 3.2 million) Australians had a 12-month mental disorder. There were also 4.1 million people who had experienced a lifetime mental disorder but did not have symptoms in the 12 months prior to the survey interview<sup>1</sup>.*

*Research assessing the impact of FIFO/DIDO working arrangements on families and workers is also limited, and findings are sometimes conflicting and inconclusive<sup>2</sup>.*

AMEC has been unable to identify any contemporary research on potential mental health impacts of FIFO workforce arrangements in comparison with the 'general community'.

A research report by the School of Anatomy and Human Biology of the University of Western Australia in 2009<sup>3</sup> found that *FIFO workers may be as healthy, or healthier, than 'daily commute' workers, and have comparable long and short term stress levels.*

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<sup>1</sup> ABS 2007 National Survey of Mental Health and Wellbeing Summary of Results (4326.0), Canberra

<sup>2</sup> *beyondblue* submission to the Inquiry into the use of FIFO workforce practices in regional Australia, Sept 2012 – page 3

<sup>3</sup> The effects of FIFO commute arrangements and extended working hours on the stress, lifestyle, relationship and health characteristics of WA mining employees and their partners – Susan Clifford

AMEC has joined *beyondblue* and the Mentally Healthy Workplace Alliance initiative – “Heads Up”. It is proud to be part of this programme and has encouraged many companies to participate. AMEC is committed to ensuring high awareness of mental health issues across the Australian workforce.

AMEC looks forward to the findings of the Education and Health Parliamentary Standing Committee inquiry into the mental health impact of FIFO working arrangements.

AMEC takes all concerns into account and will work closely with government and industry stakeholders to find solutions that are workable for all involved.

## **RECOMMENDATIONS**

- AMEC recommends the Mental Health Commission complete a review of all literature relating to the subject of the inquiry and if necessary commission further research on the risk FIFO/DIDO poses to employees in the Mining industry.
- AMEC agrees with the *beyondblue* suggestion of further research – “While additional research is needed to better understand the impact of FIFO/DIDO working arrangements on families and workers, it is important to note that this working arrangement may be the preferred type of employment for workers and families, depending upon their life stage<sup>4</sup>.”
- AMEC suggests that before any recommendations are put forward by the Education and Health standing Committee of the WA Legislative Assembly, it further consults with industry.
- AMEC considers that no specific changes need to be made to legislation, regulations or policies in relation to mental health issues at this point in time.

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<sup>4</sup> Ibid – page 3

## **2. INTRODUCTION**

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of explorers, emerging miners and the companies servicing them, the majority of which have projects in Western Australia.

AMEC's strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

Further information on AMEC can be found at [www.amec.org.au](http://www.amec.org.au)

## **3. BACKGROUND TO FIFO WORK ARRANGEMENTS**

The general debate around fly-in, fly-out (FIFO) is a complex and sensitive one with many differing views. It becomes even more complex when considering the potential mental health impacts of FIFO work arrangements.

The exorbitant cost of housing and rental accommodation, as well as a lack of government infrastructure and services, can be major setbacks to a workforce based in a local community on a permanent basis. In order to deal with this issue and provide much needed workforce flexibility, mining companies, contractors and suppliers choose to use FIFO as a successful workforce strategy.

A significant issue facing mining companies, suppliers, workers and their families is the fact that Governments have not kept up with the scale and pace of development in regional areas. Local, State and Federal Government should have provided far better leadership in the coordination and strategic planning for basic community and infrastructure needs for the industry. The most obvious example is the inadequacy of suitable cost effective housing and rental accommodation in regional areas.

In order to deal with the lack of adequate and cost effective social infrastructure and Government services, mining companies have had to adopt FIFO as a legitimate workforce strategy as it provides them with much needed workforce flexibility.

The cyclical nature of mining also makes it difficult to strategically forecast permanent workforce requirements. The industry experiences peaks and troughs in its activities due to a number of issues including project funding, approvals, commodity prices, competitive forces, the quantity and quality of mineral deposits, and the mine life cycle itself.

In instances where the mine life is short-term and in a remote location, building a regional community where one does not already exist is not a viable decision for the sustainability of the project, especially if it would become redundant after the mine-life.

FIFO has provided a viable solution in attracting and retaining the right skill sets to work on mining and minerals exploration related projects in remote and regional communities throughout Australia. It has not only been successful in meeting the immediate needs of employers for construction and production purposes but it also provides workers with a choice.

A FIFO workforce may also be the only viable option open to mining companies on financial grounds, or simply due to the remote location of the mine site.

Workers are faced with a decision whether they want to work in a harsh environment, work on varying rosters involving 12 hour days, and be away from home, family and friends. If workers choose this lifestyle, FIFO provides the opportunity to receive appropriate financial rewards for their skill sets and lifestyle.

In many cases, FIFO rosters are family friendly, flexible and enable workers to set themselves up financially and provide the opportunity to spend quality time with family and friends when they are not on roster.

The industry has recognized some of the challenges of the FIFO lifestyle and as such, rosters are generally short and family friendly.

As a component of the health and well-being initiatives adopted by many companies specialised Employee Assistance Programs are made available on a full time basis to their workers, contractors and their families.

#### **4. RESEARCH ON MENTAL HEALTH**

The 2007 National Survey of Mental Health and Wellbeing by the Australian Bureau of Statistics found:

*Mental health is a state of emotional and social wellbeing. It influences how an individual copes with the normal stresses of life and whether he or she can achieve his or her potential. Mental health describes the capacity of individuals and groups to interact, inclusively and equitably with one another and with their environment, in ways that promote subjective wellbeing and optimise opportunities for development and use of mental abilities (Australian Health Ministers, 2003)<sup>5</sup>.*

*The measurement of mental health is complex and is not simply the absence of mental illness. A mental illness is a clinically diagnosable disorder that significantly interferes with an individual's cognitive, emotional or social abilities (Australian Health Ministers, 2003). Mental illness encompasses short and longer term conditions, including Anxiety disorders (eg Agoraphobia), Affective or mood disorders (eg Depression) and Substance Use disorders (eg Alcohol Dependence). Depending on the disorder and its severity, people may require specialist management, treatment with medication and/or intermittent use of health care services<sup>6</sup>*

*Of the 16 million Australians aged 16–85 years, almost half (45% or 7.3 million) had a lifetime mental disorder, ie a mental disorder at some point in their life. One in five (20% or 3.2 million) Australians had a 12-month mental disorder. There were also 4.1 million people who had experienced a lifetime mental disorder but did not have symptoms in the 12 months prior to the survey interview<sup>7</sup>.*

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<sup>5</sup> ABS 2007 National Survey of Mental Health and Wellbeing Summary of Results (4326.0), Canberra – page 4

<sup>6</sup> Ibid – page 4

<sup>7</sup> Ibid – page 7

*There were 3.2 million people who had a 12-month mental disorder. In total, 14.4% (2.3 million) of Australians aged 16–85 years had a 12-month Anxiety disorder, 6.2% (995,900) had a 12-month Affective disorder and 5.1% (819,800) had a 12-month Substance Use disorder<sup>8</sup>.*

*Women experienced higher rates of 12-month mental disorders than men (22% compared with 18%). Women experienced higher rates than men of Anxiety (18% and 11% respectively) and Affective disorders (7.1% and 5.3% respectively). However, men had twice the rate of Substance Use disorders (7.0% compared with 3.3% for women)<sup>9</sup>.*

*Mental health and mental illnesses are determined by multiple and interacting social, psychological, and biological factors, just as they generally are in health and illness (WHO, 2005). Mental health may be impacted by individual or societal factors, including economic disadvantage, poor housing, lack of social support and the level of access to, and use of, health services. A person's socio-economic circumstances (eg employment), may impact on their likelihood of developing a mental disorder. Studies have shown that people of lower socio-economic status have a higher prevalence of mental disorders, particularly Depression, and certain Anxiety disorders (Fryers et al, 2005). Mental illness may also impact on a person's employment, housing, social support, etc<sup>10</sup>*

*Of the 413,600 unemployed people, 29% had a 12-month mental disorder. In comparison, 20% of the 10.4 million people who were employed had a 12-month mental disorder. Unemployed people experienced almost twice the prevalence of Substance Use disorders than employed people (11.1% and 6.0% respectively) and almost three times the prevalence of Affective disorders (15.9% and 5.7% respectively). More than a third of unemployed women (34%) and more than a quarter of unemployed men (26%) had a 12-month mental disorder. Men who were not in the labour force had the lowest prevalence of 12-month mental disorders (14%)<sup>11</sup>.*

In a submission dated September 2012, *beyondblue* (the national depression and anxiety initiative) made the following relevant comments to the Federal Government Inquiry into FIFO workforce practices in regional Australia:

*Mental illness is the leading cause of non-fatal disability in Australia, and it is important to note that depression and anxiety accounts for over half of this burden. Globally, the World Health Organization predicts depression to become the leading cause of burden of disease by the year 2030, surpassing ischaemic heart disease<sup>12</sup>.*

*Additional research is needed to better understand the effect of a non-resident FIFO/DIDO workforce on established communities, with a particular focus on community wellbeing and mental health. This is particularly important given the increasing number of employees working under FIFO/DIDO arrangements, and the use of this employment*

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<sup>8</sup> Ibid – page 8

<sup>9</sup> Ibid – page 8

<sup>10</sup> Ibid – page 12

<sup>11</sup> Ibid – page 14

<sup>12</sup> *beyondblue* submission to the Inquiry into the use of FIFO workforce practices in regional Australia, Sept 2012 – page 1

model across not only the mining sector, but also construction, transport and healthcare services<sup>13</sup>.

Research assessing the impact of FIFO/DIDO working arrangements on families and workers is also limited, and findings are sometimes conflicting and inconclusive. Despite these limitations, some research suggests that:

- There may be relationship difficulties associated with FIFO/DIDO working arrangements, including difficulties in communication; unmet expectations while workers are at home; an unequal share of family responsibilities; and role conflicts. Despite these difficulties, families generally report accepting and coping with the FIFO/DIDO arrangements, and the benefits, including high salaries and extended time at home, may justify and/or outweigh the costs.
- There does not appear to be significant psychological impacts of FIFO/DIDO arrangements on children. Limited research indicates that rates of depression, anxiety, and the level of family functioning, do not significantly differ between FIFO families and a comparable community-based sample.
- FIFO workers may be as healthy, or healthier, than 'daily commute' workers, and have comparable long and short-term stress levels.
- Compared with locally resident miners, FIFO miners report higher levels of sleep disturbance, and more interference from work in the ability to perform social and domestic activities (such as participating in sport, attending the doctor, looking after children)<sup>14</sup>.

While additional research is needed to better understand the impact of FIFO/DIDO working arrangements on families and workers, it is important to note that this working arrangement may be the preferred type of employment for workers and families, depending upon their life stage<sup>15</sup>.

Based on this research, and the lack of any contemporary data, AMEC is unable to comment on whether there are any specific mental health impacts as a consequence of FIFO workforce arrangements in comparison with the remainder of the 'general community'.

## **5. SPECIFIC COMMENTS ON THE TERMS OF REFERENCE**

The following specific comments are made in respect of the Terms of Reference, as follows:

### **5.1 Contributing factors that may lead to mental health illness and suicide amongst FIFO workers**

Following the Mental Health Survey conducted by the Australian Bureau of Statistics in 2007<sup>16</sup> AMEC notes that the following major disorder groups were identified, as well as the mental disorders within each group in the following Table. Each of the identified mental disorders provides an indicative contributory factor:

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<sup>13</sup> Ibid – page 2

<sup>14</sup> Ibid – page 3

<sup>15</sup> Ibid – page 3

<sup>16</sup> ABS 2007 National Survey of Mental Health and Wellbeing Summary of Results (4326.0), Canberra – page 8

<b>Anxiety disorders</b>	<b>Affective disorders</b>	<b>Substance abuse disorders</b>
Panic Disorder	Depressive Episode	Alcohol Harmful Use
Agoraphobia	Dysthymia	Alcohol Dependence
Social Phobia	Bipolar Affective Disorder	Drug Use Disorders
Generalised Anxiety Disorder		
Obsessive-Compulsive Disorder		
Post-Traumatic Stress Disorder		

## 5.2 Current legislation, regulations, policies and practices for workplace mental health

AMEC has identified the main relevant legislative provisions addressing mental health and psychological hazards, as they exist within the:

- **Mines Safety and Inspection Act 1994 (WA) (MSI Act), and its associated subordinate legislation (collectively MSI Scheme); and**
- **Occupational Safety and Health Act 1984 (WA) (OSH Act), and its associated subordinate legislation, guidelines and codes (collectively OSH Scheme).**

The provisions of the MSI Scheme and the OSH Scheme that are relevant to psychological hazards and the control measures for those hazards are set out in **APPENDIX 1**.

### Definitions

Neither the MSI Act nor the OSH Act contains any express reference to the protection from psychological or mental harm, hazards or risks. Both acts contain the same broad definition of hazard, which refers to injury or harm to health. In contrast, the *Work Health and Safety Act 2011* (Cth), contains a definition of 'health' which includes physical and psychological health.

### General Duty of Care

Under both the MSI Act and the OSH Act, employers must, so far as is practicable, provide and maintain a working environment in which its employees (and other persons) are not exposed to hazards. This duty is contained in section 19 of the OSH Act and section 9 of the MSI Act.

The MSI Scheme contains a guideline, *General duty of care in Western Australian mines*, which expands upon an employer's duty of care with respect to safe workplaces and systems of work. It states at section 3.3 – Specific Duties: Safe workplace, plant and system of work:

*All aspects of the work must be effectively planned, from the physical process to the individual tasks carried out by employees. Both direct and indirect impacts on safety and health of each task or process should be considered at the planning level. This would include issues such as fatigue and psychological stress. (Emphasis added)*

The OSH Scheme contains a code of practice relating to working hours, which expressly contains a reference to 'work-related stress'.

### **Practicable**

The extent of employers' duties under both the MSI Act and the OSH Act is to do that which is practicable. In both acts, 'practicable' is defined as:

**practicable** means reasonably practicable having regard, where the context permits, 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). (our emphasis)

When considering what is reasonably practicable in all of the circumstances, it is not the actual knowledge possessed by a specific employer in the particular circumstances that is relevant, but rather it is the knowledge possessed by persons generally who are engaged in the relevant field of activity – *Laing O'Rourke (BMC) Pty Ltd v Kirwin* [2011] WASCA 117 at 33.

This means that the general duty of care requires employers to apply best practice in controlling hazards (including psychological hazards), subject to the availability, suitability, and cost of doing so.

### **Comment**

The current schemes for regulating health and safety in WA workplaces include an upwardly flexible standard of safety hazard control that gravitates towards best practice.

In AMEC's view, introducing express minimum standards regarding the control of particular psychological hazards considered to be associated with FIFO work arrangements runs the risk of stifling improvements of those control measures. The current schemes require employers to implement available best practice controls of psychological hazards. Regulated minimum standards of control measures would likely create an incentive for some employers to simply implement the minimum standards. Specified minimum standards also tend to become outdated more quickly than they are updated.

***AMEC therefore considers that no specific changes need to be made to legislation, regulations or policies in relation to mental health issues at this point in time.***

### **5.3 Current initiatives by government, industry and community**

AMEC is unable to make specific comment on mental health services provided by the State, but does note the content of the Stoker Review which stated that '*Mental health services in WA consist of acute inpatient services, community mental health services, recovery/rehabilitation services, and non-government organisations (NGOs). NGOs provide supported accommodation, psychological support, disease education, prevention, rehabilitation services and in-home assistance. Other contributors to mental health care include general practitioners (GPs) and other private services.*<sup>17</sup>

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<sup>17</sup> Review of the admission or referral to and the discharge and transfer practices of public mental health services in WA, Prof Bryant Stokes AM, July 2012 (Stokes Review), Executive Summary – page 2

Industry provides a wide range of services to employees, contractors and their families. These include:

- Specialist Employee Assistance Programs (EAPs) available 24 hours a day. This involves short term counselling for situations, incidents or circumstances with may be affecting the mental well-being of employees, contractors or their families,
- Full time on site wellness advisors,
- On site Registered Nurses,
- On site chaplains,
- Gym usage,
- Family friendly rosters - offering a work / life balance, including allowance for important dates and family events. Rosters range from 2:1(weeks), 9:5(days), 8:6(days) or 5:2(weeks). Employees are continually consulted on roster arrangements.
- Wi-fi, internet usage,
- Access to local Medical Practice (promoted and financially sponsored by the mining company)

Awareness of the various programs provided by individual companies varies, but includes:

- Pre-employment medical screening process for internal candidates and contractors
- Detailed Induction Program,
- Physical Activity Readiness Questionnaire,
- Leadership training for all line managers and supervisors,
- Sponsorship of community programs and events around health and fitness,
- Regular reviews and implementation of respective EAPs by Health and Safety experts,
- Toolbox meetings,
- Site visits by EAP staff,
- Engagement in the R U OK Day
- Provision of Wellness Programs.
- Extensive induction programs that cover all aspects of personal health and wellness.
- One on one discussions, intranet, email, notice board and newsletter communications,

#### Further References

Joyce. (2013). Lifeline WA (2013) FIFO / DIDO Mental Health Research Report. Perth Sellenger Centre for Research in Law, Justice and Social Change at Edith Cowan University.

Meredith. (2014). Lifeline WA (2013) FIFO / DIDO Mental Health Research Report. Perth Sellenger Centre for Research in Law, Justice and Social Change at Edith Cowan University.

Sibbel, A.M. (2010). *Living FIFO: the experiences and psychosocial wellbeing of Western Australian fly-in/fly-out employees and partners.*

## APPENDIX 1 - Summary of Relevant Workplace Safety Legislation, Regulation

### 1. OSH Scheme

Issue	Obligation	Legislative consequences of non-compliance	Legislation
<p>General duties of employers at the workplace in relation to employees</p>	<p>An employer shall, so far as is practicable , provide and maintain a working environment in which the employees of the employer are not exposed to hazards and in particular, an employer shall:</p> <ul style="list-style-type: none"> <li>• Provide and maintain workplaces , plant and systems of work such that, so far as is practicable, the employees are not exposed to hazards;</li> <li>• Provide such information, instruction and training to, and supervision of, the employees as is necessary to enable them to perform their work so that they are not exposed to hazards;</li> <li>• Consult and cooperate with safety and health representatives, if any, and other employees at the workplace, regarding occupational safety and health at the workplace;</li> <li>• Where it is not practicable to avoid the presence of hazards at the workplace, provide the employees with, or otherwise provide for the employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and</li> <li>• Make arrangements for ensuring, so far as is practicable, that the use, cleaning, maintenance, transportation and disposal of plant and the use, handling, processing, storage, transportation and disposal of substances, at the</li> </ul>	<p>If an employer contravenes this duty in circumstances of gross negligence :</p> <ul style="list-style-type: none"> <li>• To a Level Four Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention causes the death of or serious harm to an employee but this is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Three Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention does not cause the death of or serious harm to an employee AND is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Two Penalty</li> </ul>	<p>Section 19 of the OSH Act            Section 3 of the OSH Act - definitions:            Employer; Employee;            Practicable; Hazard;            Workplaces; Plant            Section 3A of the OSH Act - penalty levels            Section 3B - definition of first and subsequent offence</p>

Issue	Obligation	Legislative consequences of non-compliance	Legislation
	<p>workplace is carried out in a manner such that the employees are not exposed to hazards.</p> <p>In relation to the training required to be provided regard shall be had to the functions performed by employees and the capacities in which they are performed.</p>		
Duties of employers at the workplace in relation to others	<p>An employer shall, so far as is practicable, ensure that the safety or health of a person, not being an employee of the employer, is not adversely affected wholly or in part as a result of:</p> <ul style="list-style-type: none"> <li>• Work that has been or is being undertaken by the employer or any employee of the employer; or</li> <li>• Any hazard that arises from or is increased by work that has been or is being undertaken by the employer or any employee of the employer; or</li> <li>• The system of work that has been or is being operated by the employer.</li> </ul>	<p>If an employer contravenes this duty in circumstances of gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Four Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention causes the death of or serious harm to an employee but this is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Three Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention does not cause the death of or serious harm to an employee AND is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Two Penalty</li> </ul>	Section 21 of the OSH Act
General duties of controllers of the workplace	<p>A person that has to any extent, control of:</p> <ul style="list-style-type: none"> <li>• A workplace where persons who are not employees of that person work or are likely to be in the course of their work; or</li> <li>• The means of access to and egress from a workplace,</li> </ul> <p>shall take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace, as the case may be, are such that persons who are at the workplace or use the means of access to and egress from</p>	<p>If an employer contravenes this duty in circumstances of gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Four Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention causes the death of or serious harm to a person who is at or who is using the means of access</p>	Section 22 and 22A of the OSH Act

Issue	Obligation	Legislative consequences of non-compliance	Legislation
	<p>the workplace are not exposed to the hazards.</p> <p>Where a person has, by virtue of a contract or lease, an obligation of any extent in relation to the maintenance or repair of a workplace or the means of access to and egress from the workplace, the person shall be treated for the purposes of the paragraph above as being a person that has control of that workplace or that means of access or egress.</p> <p>Any reference to a person having control of any workplace or means of access to or egress from a workplace is a reference to a person having control of that workplace or that means of access or egress in connection with the carrying on by that person of a trade, business or undertaking (whether for profit or not).</p>	<p>to or egress from the workplace but this is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Three Penalty</li> </ul> <p>If an employer contravenes this duty and the contravention does not cause the death of or serious harm to an employee AND is not caused by gross negligence:</p> <ul style="list-style-type: none"> <li>• To a Level Two Penalty</li> </ul>	
Duty in relation to resolution of issues at the work place	<p>Where an issue relating to occupational health or safety arises at a work place the employer shall, in accordance with the relevant procedure, attempt to resolve the issue with:</p> <ul style="list-style-type: none"> <li>• The safety and health representative;</li> <li>• The safety and health committee; or</li> <li>• The employees.</li> </ul> <p>Whichever is specified in the relevant procedure.</p> <p>The relevant procedure means the procedure agreed between the employer and employees as applying in respect of the work place concerned or, where no procedure is so agreed the procedure prescribed for that purpose in the OSH regulations.</p> <p>If attempts to resolve an issue do not succeed and there is both a safety and health committee in respect of the work place concerned, the safety and health representative shall refer the issue to the safety and health committee for it to attempt to resolve the issue.</p>	A person commits an offence if they contravene this duty and is liable to the general penalty	Section 24 of OSH Act.
Duty to identify	An employer, main contractor, a person having control of the	<ul style="list-style-type: none"> <li>• To a Level One Penalty</li> </ul>	Clause 3.1 of the OSH

Issue	Obligation	Legislative consequences of non-compliance	Legislation
hazards, assess and address risks at workplaces	<p>workplace or a person having control of access to the workplace must as far as practicable:</p> <ul style="list-style-type: none"> <li>• Identify each hazard to which a person is likely to be exposed;</li> <li>• Assess the risk of injury or harm to a person resulting from each identified hazard, and</li> <li>• Consider the means by which risk may be reduced.</li> </ul>		Regulations
Duty to provide information	<p>Following a request from a person who works at the workplace, an employer or main contractor must ensure that as soon as practicable, an up to date copy of the following is available for perusal:</p> <ul style="list-style-type: none"> <li>• the OSH Act</li> <li>• The OSH Regulations</li> <li>• All Australian Standards, Australian/New Zealand standards and NOHSC documents that apply to that workplace;</li> <li>• All codes of practice approved under section 57 of the Act that apply to the workplace, and</li> <li>• Guideline or forms of guidance referred to in section 14 of the Act which apply to the workplace.</li> </ul>	<p>For an individual:</p> <ul style="list-style-type: none"> <li>• \$2 000 for first offence,</li> <li>• \$2500 for a subsequent offence</li> </ul> <p>For a body corporate:</p> <ul style="list-style-type: none"> <li>• \$4000 for first offence,</li> <li>• \$5000 for a subsequent offence</li> </ul>	Clause 3.2 of the OSH Regulations
Duty to communicate with isolated employees	<p>If an employee is isolated from other persons due to time, location or nature of work the employer must ensure that:</p> <ul style="list-style-type: none"> <li>• there is a procedure for regular contact with that employee and the employee knows the procedure, and</li> <li>• there is a means of communication which enables the employee to call for help in an emergency situation.</li> </ul>	A Regulation 1.16 Penalty	Clause 3.3 of the OSH Regulation

Issue	Obligation	Legislative consequences of non-compliance	Legislation
Duties in relation to the reporting of hazards	<p>If an <b>employer</b> receives a report from a safety and health representative about any <b>hazard</b> or potential <b>hazard</b> or an <b>employee</b> about:</p> <ul style="list-style-type: none"> <li>• any situation at the <b>workplace</b> that the <b>employee</b> has reason to believe could constitute a <b>hazard</b> to any <b>employee</b> cannot correct; or</li> <li>• any injury or harm to health of which he or she is aware that arises in the course of, or in connection with, his or her work</li> </ul> <p>the <b>employer</b> must investigate within a reasonable time.</p>	Regulation 1.16 Penalty	Clause 3.5 of the OSH regulation

## 2. MSI Scheme

Legislation/Regulations	Relevant sections	Obligations in addition to OSH Act
Mines Safety and Inspection Act 1994 (WA)	<p>s 12 – Employers’ duties s 11 – duty to report some occurrences or situations</p> <p>s 75 – Health surveillance of mine employees</p>	<p>Mirrors the general duties in s 19 of the OSH Act.</p> <p>Every person working in a mine must report immediately to the person in immediate authority over that person —</p> <p>(a) any potentially serious occurrence that arises in the course of or in connection with that person’s work; and</p> <p>(b) any situation at the mine that the person has reason to believe could constitute a hazard to any person, and</p> <p>a person receiving a report under this subsection must convey the information in that report immediately to the manager of the mine or to a person designated for the purpose by the manager.</p> <p>The principal employer and every employer at</p>

		<p>a mine must establish and maintain a system for the surveillance of the health of their employees, and provide information to the State mining engineer on this surveillance.</p>
<p>Mines Safety and Inspection Regulations 1995 (WA)</p>	<p>Part 3, Division 4: health surveillance - includes a number of regulations related to the monitoring and management of occupational diseases in minesite employees.</p> <p>Reg 4.7 – Intoxicating liquor or drugs</p>	<p>An ‘occupational disease’ is defined in reg 3.23 as a disease listed in Schedule 3 of the <i>Workers’ Compensation and Injury Management Act 1981 (WA)</i> (NB: the Schedule only refers to diseases that are the result of exposure to hazardous agents or substances and does not include any psychological diseases).</p> <p>A person (whether or not an employee) must not be in or on any mine while the person is adversely affected by intoxicating liquor or drugs.</p> <p>The principal employer at, or the manager or supervisor of, a mine may direct an employee reporting for duty to immediately leave the mine if in the opinion of the principal employer, manager or supervisor the employee is adversely affected by intoxicating liquor or drugs. An employee must comply with the above direction.</p> <p>A person must not, without the knowledge and permission of the manager of the mine —</p> <ul style="list-style-type: none"> <li>(a) have any intoxicating liquor or deleterious drug in his or her possession in or on a mine;</li> <li>or</li> <li>(b) consume any intoxicating liquor or deleterious drug while in or on a mine.</li> </ul>

## **Codes of practice and guidelines**

The MSI Act allows for Codes of Practice to be made. The purpose of these codes is to identify practices that are considered appropriate/inappropriate within the mining industry. These codes may be used in evidence to assist in establishing what is 'reasonably practicable' for the purposes of assessing the general duty offences in the MSI Act (section 93).

The following Codes and guidelines are relevant to mental health and safety in the mining and energy sector in WA (particularly relevant sections have been highlighted):

- a) Department of Mines and Petroleum, Resources Safety: *General duty of care in Western Australian mines* – Guideline.
  - i. The guideline provides more information on the requirements of the MSI Act, details good practice and explains means of compliance with standards prescribed in the MSI Act.
  - ii. **3.3: Specific duties: Safe workplace, plant and system of work:**

*All aspects of the work must be effectively planned, from the physical process to the individual tasks carried out by employees. Both direct and indirect impacts on safety and health of each task or process should be considered at the planning level. This would include issues such as fatigue and psychological stress.*

- b) Department of Consumer and Employment Protection, Resources Safety: *Prevention and management of violence, aggression and bullying at work* - Code of Practice.
  - i. The code details how to identify, prevent and respond to violence, aggression and bullying in the workplace. Includes a checklist of how to develop bullying prevention procedures and respond to bullying complaints.
  - ii. **8.6: Why is bullying a problem?**

*It is possible that workers who are bullied will experience some of the following effects:*

- stress, anxiety or sleep disturbance;*
- panic attacks or impaired ability to make decisions;*
- incapacity to work, concentration problems, loss of self-confidence and self-esteem or reduced output and performance;*
- depression or a sense of isolation;*
- physical injury;*
- reduced quality of home and family life; or*
- in extreme cases, risk of suicide.*

Similarly, the OSH Act contains provisions relating to the creation of Codes of Practice for general industry:

- a) Commission for Occupation Safety and Health: *Working hours* – Code of Practice.

i. The code details hazards and risks associated with long working hours and shift work. Provides guidelines and control measures for managing working hours on minesites.

ii. **1.2: Working hours arrangements and occupational safety and health:**

*[E]vidence suggests that sleep deprivation, sleep disturbance and fatigue are health risks commonly associated with long working hours. Fatigue has also been identified as a potential health risk with work that involves shifts or regular or periodic night work. Other issues associated with working hours arrangements may include:*

- impaired physical and mental performance;*
- symptoms of work-related stress;*
- increased exposure to hazards, for example hazardous substances, noise and physical hazards; and*
- longer-term health effects.*