

17 February 2021

Department of Health
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Sent via email: MHStrategy@health.gov.au

To whom it may concern,

**SUBJECT – PRODUCTIVITY COMMISSION REPORT INTO MENTAL HEALTH:
PUBLIC CONSULTATION**

Mental health and suicide are complex issues felt across all facets of Australian society. From the outset, The Chamber of Minerals and Energy of Western Australia (CME) has welcomed focus on these important issues through the Productivity Commissions' Mental Health Inquiry (Inquiry).

CME is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 86 per cent of the State's mineral and energy workforce employment.¹ The value of royalties received from the sector totalled \$9.3 billion in 2019-20,² accounting for 28.8 per cent of general government revenue.³ Now accounting for 47 per cent of the State's total industry Gross Value Added,⁴ the sector's exports are likely to remain a major contributor to Australia's economic recovery from its largest global contraction since the 1940s.⁵

The WA resources sector is committed to the mental health and wellbeing of its workforce and invests significantly in this area. CME works with our member companies to strive towards continuous improvement in all areas of workplace safety and health (WHS), whereby companies seek to continuously innovate and improve their practices. Along with safety, the industry's approach to mental health and wellbeing has evolved from predominately reactive compliance-based responses to proactive, tailored and diverse wellness programs.

CME has actively engaged in the current Inquiry, providing submissions in April 2019 to the Issues Paper *the Social and Economic Benefits of Improving Mental Health* and then again in February 2020 on the Inquiry's draft report. CME welcomes the opportunity provide comment as part of the Department of Health's current consultation process on the final report - the Productivity Commission Inquiry Report on Mental Health (the Report).

Overview - CME response to Inquiry Report

CME welcomes acknowledgement in the Report that a holistic approach is required when approaching workplace mental health and wellbeing. From the outset of the Inquiry, CME has reiterated the importance of a holistic and coordinated approach to addressing mental health as a society-wide issue. This is because mentally ill health generally does not result from a single cause or event, but from a complex interplay of biological, psychological, environmental and social factors. There is significant research to support the fact that a wide range of multiple and interacting risk factors may contribute to both mental health and mental illness. This demonstrates the complexity of addressing mental health issues and the importance of a holistic approach.

¹ Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

² Ibid.

³ Government of Western Australia, *2019-20 Annual report on State finances*, Department of Treasury, 25 September 2020.

⁴ Cassells, R. *et al*, *BCEC Quarterly economic commentary*, Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

⁵ Commonwealth of Australia, *Resources and energy quarterly: September 2020*, Department of Industry, Science, Energy and Resources, 29 September 2020.

It is recognised that employers have a role to play as part of this coordinated approach. Given CME's role in supporting our members across the WA resources sector, this submission will focus on the role of employers and actions associated with Recommendation 7 (Equip workplaces to be mentally healthy). The submission is structured to align to the submission guide and responds to specific questions that focus on identifying critical short-term compared to longer term focuses, as well as particular areas where there may be implementation issues.

CME agrees with the Commission's finding that there are benefits to employers and the wider community from improvements to workplace mental health and supports in part the associated actions with Recommendation 7.

CME notes that the definition of 'health' in the model WHS Act is explicit in its inclusion of psychological health and the Western Australian Department of Mines, Industry Regulation and Safety (DMIRS) has taken a clear position that our current Mines Safety and Inspection Act 1994 should be interpreted in a similar way until the proclamation of the new harmonised legislation, expected to occur this year (2021). As such, CME considers that the current and expected future legislative environment governing the management of WHS in Western Australia adequately provides for the appropriate consideration of mental health by employers.

The Report recommends that the model workplace health and safety (WHS) laws should be amended to ensure psychological health and safety in the workplace is given similar consideration to physical health and safety. DMIRS considers that current and incoming WA WHS legislation already captures psychosocial health and safety. As outlined in our 2019 and 2020 submissions to the Inquiry, CME agrees that current legislation appropriately captures psychosocial health and cautions against legislative changes in this regard.

When considering the diversity of the Western Australian resources sector's workplaces, practices, and demographics, it is imperative that a risk-based approach is applied to the prevention and mitigation of possible psychosocial hazards in the workplace. The varying size and nature of resource sector projects, spanning exploration, construction, production and closure means there is no 'one size fits all' approach to mental health in the workplace. CME is pleased to see the inquiry acknowledge "a prescriptive 'one size fits all' approach may not suit the needs of all workplaces".

A risk-based approach enables and encourages employers to tailor mental health strategies with the specific needs of the workforce and work environment in mind. A prescriptive approach to addressing psychosocial hazards is unlikely to result in improved WHS outcomes across the diverse industry landscape. A risk-based approach enables and encourages consideration of a wide range of factors without imposing arbitrary prescriptive requirements. CME therefore discourages a prescriptive, 'one size fits all' approach to managing psychosocial hazards and risks.

CME considers it critical industry is supported in taking a risk-based approach to mental health and wellbeing to ensure ongoing flexibility for the application of best practice approaches and continuous improvement across diverse industry contexts.

1. Critical short-term recommendations

Of the recommendations made, which do you see as critical for the Government to address in the short term and why?

Action 7.2 – Codes of Practice on employer duty of care

CME agrees that the uncertainty and confusion surrounding employee psychological health presents a significant challenge for workplace health - and safety and considers the development of Codes of Practice and supporting guidance will assist in this regard.

Acknowledging the importance of this, regulators in most Australian jurisdictions have begun steps to create guidance material for employers to assist with meeting their duty of care.

The WA resources sector has direct experience with the role Codes of Practice and guidance material can play in assisting employers in managing psychosocial hazards in the workplace. In 2019 the [Code of Practice – Mentally healthy workplaces for fly-in fly-out \(FIFO\) workers in the resources and construction sectors](#) (FIFO

COP) was released in WA, along with a suite of supporting guidance material. CME is pleased to see the Report identify this Code of Practice as a positive example. The FIFO COP takes a risk-based approach to support employers (and employees) in the management of risks associated with exposure to psychosocial hazards in the workplace. In addition to the existing FIFO COP, which applies to FIFO workers in the resources and construction sectors, WA's general WHS regulator - through the Commission for Occupational Safety and Health - is currently developing a mentally health workplaces Code of Practice for *all* workplaces, using the FIFO COP as a leading practice example.

While Codes of Practice play a role in providing practical advice to assist employers to meet their regulatory obligations, CME considers there is also a need for the development of additional guidance materials which are complimentary to Codes of Practice. For example, DMIRS has developed a [mentally healthy workplaces audit tool](#) to support workplaces to meet their WHS obligations outlined in the FIFO COP. Guidance materials are often detailed examples or contemporary advice, and can be easily introduced and updated as required to keep up with the rapidly growing body of evidence.

CME agrees that Codes of Practice have a role in providing guidance to employers on how to manage psychological risks, however, recommends the Inquiry acknowledge the need for these to sit within a broader suite of guidance materials and to ensure a risk-based approach.

CME supports Action 7.2 remaining as a *Start now* activity, noting that employers will benefit from supporting guidance regarding the management of psychological health.

Action 7.5 – Minimum standards for employee assistance providers

Employee assistance programs (EAPs) are a valuable tool for supporting workplace mental health. The support and counselling services provided on a confidential basis by EAPs are considered important to managing risks – both preventatively and when psychosocial injuries present. EAPs are often one of the first formal initiatives introduced by companies to assist in supporting their workforce's mental health and wellbeing.

As noted in the Report, EAPs do not have a set criterion on what is considered as the 'ideal'. CME sees value in the Report's recommendation for minimum standards to be developed for EAPs. The WA resources sector has a long history using EAPs as part of a broader suite of controls to support mental health and wellbeing. CME notes the wide range of mental health offerings and supports available can create challenges for organisations lacking specific knowledge about what quality and effective offerings entail. CME therefore recognises the value of setting minimum standards for offerings to ensure services are evidence based and delivering adequate support.

Given EAP's are increasing used and provide value in supporting employee's health and wellbeing, CME considers this recommendation should be a prioritised in the short term.

While EAP's provide support and value to employees, it is critical to acknowledge they are only a part of the wide range of strategies that should be in place.

CME supports the development of a minimum standard for EAPs and considers Action 7.5 as a *Start now* activity and welcomes the opportunity to participate in the development of a minimum standard.

2. Critical long-term recommendations & Implementation issues

The submission template seeks feedback on:

- *Of the recommendations made, which do you see as critical for the Government to address in the longer term and why?; and*
- *on implementation issues associated with the report recommendations.*

CME's feedback on these is provided in the below section.

Action 7.3 – Lower premiums and workplace initiatives

CME supports the intent of Action 7.3 however, has previously raised concerns with how this might be implemented in practice. As a result, CME considers Action 7.3 would be more appropriate as a longer-term priority to ensure complexities of any changes are appropriately considered across the jurisdictions.

The lowering of insurance premiums in return for implementing hazard control strategies is a well-established practice with regards to physical health and safety risk. As stated in the Report, *“there have not been enough well conducted studies of workplace interventions to conclude with certainty what is and what is not effective in improving workers mental health”*. This lack of quality evidence as to what is effective leads to CME’s concerns as to how Action 7.3 would work in practice.

The Report notes that diverse guidance is currently available from state WHS authorities, highlighting the lack of consistency in terms of what is considered a ‘validated’ workplace mental health initiative. Given that both the academic research and supporting industry guidance material provided by WHS authorities is in its infancy, Action 7.3 as written may inadvertently pass authority to insurance companies to take the lead on determining what constitutes good practice. Premature advice from insurance companies in this area will subsequently drive a ‘one-size fits all’ approach to applying workplace initiatives and may have unintended consequences.

Safe Work Australia (SWA) is a national tripartite body with responsibility for providing guidance to the state jurisdictions on WHS and workers’ compensation matters. CME suggests it would be appropriate for SWA to consider this recommendation in further detail given their expertise and subsequently provide advice to the jurisdictions.

CME is concerned about the unintended consequences of placing WHS Authorities or Insurers in a gate keeper position due to lack of academic evidence and recommends SWA be responsible for reviewing this recommendation. Given further consultation is required, CME supports placing Action 7.3 as a *Start later* activity.

Action 7.4 – No-liability treatment for mental health-related workers’ compensation claims

The Report recommends that workers’ compensation schemes should be amended to provide and fund clinical treatment for all mental health related works compensation claims. The funding should continue until either the injured worked returns to work or up to a period of six months following lodgement of the claim.

CME considers this recommendation could present implementation issues given the complexities of workers’ compensation schemes across different states. The Western Australian workers’ compensation scheme is largely implemented by private enterprise insurers who determine liability and fund the costs of treatment and lost wages. As a result, WA’s workers’ compensation scheme would experience significant impacts from this proposed change.

There is currently an incentive in place for WA-based employers to prevent work-related mental health injuries and illnesses and to have effective return-to-work programs in place to encourage mitigation and recovery, thereby keeping direct and indirect costs low and in turn reducing their individual premiums. The WA scheme would be particularly vulnerable to Action 7.4’s proposed change to allow no liability treatment, as the cost recovery burden would fall heavily on employers when the insurers secure their bottom line by passing on the costs. This is one example of why proposed changes in this space need to be carefully considered in detail. Therefore, CME recommends a full review of the impacts of this proposed change to the workers’ compensation scheme be carried out to ensure there are no unintended consequences which may reduce the outcomes for people experiencing mental health claims. CME considers a national body such as SWA conduct this review, ensuring national consultation and a harmonious approach.

CME considers that this recommendation in its current form is too broad to ensure successful implementation across all states and territories and would instead suggest that the Productivity Commission recommend an appropriate body, such as Safe Work Australia, conduct a specific review of the workers’ compensation system and how it can be made more fit for purpose for mental health case management. Therefore, CME agrees with the Report placing Action 7.4 as a *Start later* activity.

Action 7.6 – Disseminating information on workplace interventions

While CME supports the need for building an evidence base with respect to workplace interventions, there are complexities in regulators collecting information. Employers will require clarification on how collected data will be used, given the organisations identified in the Report (Safe Work Australia, WHS agencies) are regulators. CME has advocated the benefits of a collaborative relationship with WHS regulators and agrees that there is a role for these agencies to perform an education and guidance role for employers.

There is an ongoing need more broadly to build an evidence base for mental health programs and initiatives. CME agrees that regulators should remain focused on education and assisting employers to navigate this complex area. However, data collection of initiative examples and case evidence from employers presents a multi-faceted challenge. CME proposes that many employers would be concerned with how the data would be used by WHS agencies who are also regulators, including potential for prosecution where details of workplaces initiatives inadvertently points to current or previous gaps with regards to psychosocial risk management. Additionally, adequate privacy would need to be ensured for evidence that involved analysis of the features of mental ill health case management such as length of time off work and costs of treatment. CME recommends that an organisation such as the [Mentally Healthy Workplace Alliance](#) be considered for monitoring and collection of information regarding workplace mental health initiatives. This would provide a broader national approach and greater comfort to employers during the data collection process.

CME suggests that a national approach such as that by the Mentally Healthy Workplace Alliance may assist to improve data collection efforts of WHS agencies in the various states and territories.

CME agrees that sharing information on employer initiatives can play an important role in supporting mentally healthy workplaces more broadly and would be disappointed to see the above issues impact the sharing of information about successful workplace initiatives across companies.

The CME Mental Health Working Group was formed in mid-2013, with membership including representatives from CME member companies with expertise in mental health and wellbeing. Members have used this working group as a forum to share mental health issues across the sector, share leading practice and agree actions to prevent and mitigate risks. Members continue to communicate the benefits of this mechanism for sharing information. CME considers information sharing as a priority item, as the lack of supporting data and evidence-based initiatives may lead to employers ineffectively implementing interventions that are genuinely believed to support the mental health of their employees.

Provided the implementation issues discussed about can be addressed, CME supports the importance of a short-term focus on sharing best practice approaches within and across industries.

Conclusion

CME is appreciative of the opportunity to comment on the Report recommendations and is pleased to see support for a considered and holistic approach to mental health. The management of mental health in the workplace is a complex and multifaceted area, and the Western Australian resources sector remains committed to implementing best practice psychological risk management and promoting the mental wellbeing of its workforce.

CME broadly support the actions associated with Recommendation 7. There are some concerns on the implementation, with actions 7.3, 7.4, and 7.6 requiring further consultation to ensure a consistent approach across all states and territories and avoidance of potential unintended consequences.

Should you have questions regarding this letter, please contact Laila Nowell, Policy Adviser – Workplace Health and Safety, on 0419 712 053 or via email at L.Nowell@cmewa.com. Please note that this submission may be published by the Department.

Yours sincerely



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