

17 October 2024

Safety Communications Team
Department of Energy, Mining, Industry Regulation and Safety
Locked Bag 100
EAST PERTH WA 6892

Via email: safetycomms@demirs.wa.gov.au

Dear Safety Communications Team

Draft Code of Practice: FIFO Code Consultation

CCIWA is a member-based organisation with over 7,000 members, spanning every sector of the economy, every size of business, and every region across our State. We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make WA the best place to live and do business.

CCIWA thanks the Department for the opportunity to provide comment on the Draft Code of Practice: Psychosocial hazards at work for FIFO workers in the resources and construction sectors (Draft Code).

We have engaged directly with impacted CCIWA members and provide the following overarching comments. Further concerns are outlined in Appendix 1.

Overarching Comments

At the outset, we hold particular concern with the continued creep of Work Health and Safety obligations and requirements that relate to functions outside of the workplace being imposed on employers.

The Draft Code is another example of this, where there is a blurring of lines between the practice and the nature of FIFO and the associated worksites. As a result, the Draft Code holds an unrealistic view that psychosocial risks can be eliminated, where oftentimes complete elimination is unlikely due to the nature of those hazards.

Regulations and Codes of Practice (Codes) must also emphasise simplicity and clarity, as well as be streamlined and not duplicative. At present, there are multiple Codes that have been developed, or are in the process of being developed, which relate to psychosocial hazards. Currently nine Codes issued by WorkSafe WA and Safe Work Australia hold significant overlap on individual psychosocial hazards. This creates duplication, and inconsistencies of how to approach individual psychosocial hazards. This Draft Code will, therefore, add another unnecessary layer of complexity, requiring relevant businesses to now navigate ten similar, yet different, Codes.

To this end, we strongly encourage working closely with the business community to ensure its successful implementation.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Aaron Morey, CCIWA Chief Economist, Director Membership, Campaigns, Strategy, via email at aaron.morey@cciwa.com.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CR' with a horizontal line extending from the right side of the 'R'.

Chris Rodwell
Chief Executive Officer

Appendix 1: Overview of key concerns

Key Concerns		<i>CCIWA's Recommendation</i>
<p>Simplicity of drafting/ language used in the Code.</p>	<p>In the Draft Code, the language continues to be overgeneralised, and at times, gives an erroneous view not aligned with current <i>Work Health and Safety Act 2020 (WA) (WHS Act 2020)</i> and associated regulations.</p> <p>As an example, in Section 1.4, page 7 starts with “<i>Under the WHS Act, everyone in the workplace has a duty to manage hazards and risks to worker health and safety</i>”. This does not align with the <i>WHS Act 2020</i> and associated regulations. The duty to manage psychosocial hazards is only a requirement for other PCBUs and other duty holders as noted in r. 55C of the <i>WHS Regulations (General and Mines)</i>.</p> <p>In addition, unlike WorkSafe’s Psychosocial Code of Practice (WA), the Draft Code does not include illustrative examples of how to appropriately deal with psychosocial hazards within a FIFO context. Examples can assist in making the Code simpler to interpret and apply, particularly for smaller employers.</p>	<p>Consider Code of Practice from other States and Territories for clearer wording and delineation of responsibility.</p> <p>For example, the NSW’s Code of Practice explains the importance for all to participate in creating a safe workplace, but that the duty falls specifically on PCBUs and other duty holders.¹</p> <p>Worksafe WA’s Psychosocial Code of Practice also includes illustrative examples on how to appropriately deal with psychosocial hazards within a FIFO context. These examples would support SMEs within construction and resources sector to comply with their WHS obligations.</p>
<p>Safety Management System</p>	<p>The Safety Management System referenced in Section 2.1 is problematic, as there is no statutory requirement for a Safety Management System to exist in non-mining operations.</p>	<p>As the Draft Code will apply beyond PCBUs that are covered under the <i>WHS (Mines) Regulations 2022 (WA)</i>, we suggest removing further references to a Safety Management System.</p>
<p>Performance-based reward systems</p>	<p>We are also concerned about the drafting in Section 2.3 related to performance-based rewards systems. Performance-based rewards systems can help drive positive outcomes in</p>	<p>We recommend removing this paragraph or substantially rewording it to acknowledge that such reward systems can drive positive WHS outcomes within an organisation.</p>

¹ (2021) [Code of Practice: Managing Psychosocial Hazards at Work](#), SafeWork NSW, May 2021- Section 2 Page 10

	terms of safety, by providing opportunities to be recognised and drive positive change.	
Job Insecurity	As noted in the development of Safe Work Australia's model code, the literature review did not sufficiently show a link between employment type/arrangement and high psychosocial risks across all sectors.	We would recommend the removal of references to job insecurity from Section 2.4 from the Draft Code. A review of its inclusion in the WA's Code of Practice: Psychosocial hazards in the workplace should also be undertaken.
Unrealistic nature of eliminating psychosocial risks	<p>The Draft Code has a focus on elimination of hazards, which due to the nature of psychosocial hazards is either not possible or highly unlikely in practice.</p> <p>In some instances, the risk is outside of the contractor's direct control, for example, when contractors are required to comply with their client's roster requirements. It is unclear how businesses are expected to eliminate that risk in these cases.</p> <p>Section 1.8.2 is also problematic, which requires the removal of workers from a workplace due to the existence of a psychosocial hazard impact at the mine. We hold concerns of the practicality of this, including potential unintended consequences of inequity and discrimination which will be dependent on the adverse health effects suffered and the psychosocial hazard an individual was exposed to. This is not practical, and in many ways, could also result in a breach of discrimination laws/protected attributes under relevant employment laws.</p> <p>We too are concerned about the requirement for investigations as outlined in Section 2.1. The current drafting suggests that all psychosocial hazards require investigation, which may not be necessary for every single hazard or circumstance. There are many well-known and well-understood psychosocial hazards and their respective risks</p>	<p>Given the nature of some psychosocial hazards, it would be more appropriate for businesses with FIFO workforces to focus on harm minimisation and management of psychosocial risks, rather than complete elimination. The Draft Code should then focus on harm minimisation and management, over complete elimination. This should be reflected in Section 1.8.2 as well.</p> <p>We also recommend the current drafting in Section 2.1 around investigations be changed to make it clear that investigations are only required where such knowledge and accepted control measures are not present.</p>

	with approved control measures, which should not require investigation.	
Consideration of impacted people's wishes	Section 5.1 outlines how to respond to a report of serious workplace psychosocial incident, but there is currently no consideration given to the wishes of impacted people. For many reasons, those involved may not want a formal investigation, which is a requirement of the Draft Code.	We recommend the inclusion of alternative pathways within the Draft Code. This will give PCBUs flexibility beyond a formal investigation where someone impacted may not wish for one.
Accommodation Clauses	<p>With respect to the clauses related to accommodation, and in particular, the use of the phrase, "accommodation premises" in the Draft Code, it is currently unclear whether these arrangements capture employer-subsidised housing within regional towns that are managed via the <i>Residential Tenancy Act 1987</i> (WA) agreements.</p> <p>The phrase "accommodation premises" does not align with what is present in current WHS regulations, which uses the term "worker's accommodation", and is defined under the <i>WHS Act 2020</i>.²</p> <p>The Draft Code continually mentions it will sit alongside a new Code of Practice for Accommodation (Accommodation Code), but it is unclear what this will entail, and how it will interact and intersect with this Draft Code.</p>	<p>Drafting in the Code should be consistent with references to what is present in WHS regulations, and already defined under the law. This would ensure that the relevant clauses with respect to accommodation are narrowly defined to address WHS risks associated with worker accommodation in purpose-built facilities, and not unintentionally cover other employer-subsidised accommodation.</p> <p>We strongly suggest that with the new Accommodation Code, the Department reviews other Codes that include clauses related to accommodation to ensure alignment.</p>
Confidentiality and the draft code	As currently drafted, the Draft Code does not take into considerations issues of confidentiality where PCBUs have a legal requirement to disclose information to satisfy other legal requirements.	The requirement to ensure privacy and confidentiality should be protected as far as reasonably practicable. This would ensure the Draft Code does not conflict with obligations set out by other legislation.

² R. 55D *Work Health and Safety (General) Regulations 2022*,