

Camp accommodation – living on the edge?

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Mine camps in the media

On 22 May 2014, mine camps hit the media courtesy of an article in the Courier Mail in which Labor MP Jo-Ann Miller was reported to have made the unfortunate comparison of mining fly-in, fly-out (**FIFO**) accommodation to concentration camps.

Leaving aside concerns about the appropriateness of the comparison made, the background to the comments were reported to have been based upon mine worker concerns over camp accommodation, including the imposition of terms for leaving camps, restrictions on drinking alcohol, curfews and lifestyle issues.

The regulation of health and safety matters for mine camps can walk a fine line in finding a balance between what are work activities that need to be managed and private activities that do not.

In addition, novel issues can arise in working out what health and safety laws camps are governed by, what matters occurring within camps should be governed as part of health and safety systems and how this should be appropriately done.

Even where there are specific obligations (for example those specified under the harmonised *Work Health and Safety Act 2011* (Qld) (**WHS Act**)), issues arise as to how those obligations are monitored and enforced.

This presentation is based on recent experiences in dealing with mine camp issues and will examine some key issues that have arisen, how the legislative regimes are set up to deal with those issues and some practical guidance for responding to them.

Some statistics about camp accommodation

Camp accommodation is clearly an established part of working life for many workers in the Queensland resources industry. A CQUniversity study in 2011 estimated that in the Bowen Basin, as at June 2010 only one third of the estimated local workforce

of approximately 34,438 people lived locally and that at least 40% of the jobs in the area were serviced by FIFO and drive-in, drive-out operations.¹

The quality of accommodation is important from a safety perspective, as well as in terms of broader lifestyle issues. In an August 2013 report from the University of Queensland,² based on a survey of 286 FIFO workers in the Australian resources industry, the majority of respondents (63%) rated their accommodation as good or very good, and about a quarter (23%) did not want to change anything, but:

- (a) 30% wanted to move to accommodation with better services and facilities;
- (b) 25% wanted a room upgrade;
- (c) 7% wanted to change from camp accommodation to a town rental.

Issues raised included wanting exclusive use of a room, having the same room each swing and having internet and TV connections.

From a health and well-being perspective, 75% stated they had good or very good levels of physical or mental health, but:

- (a) 20% reported moderate to severe sleep disturbance;
- (b) 60% agreed that the demands of long distance commuting work arrangements interfered with their home or family life;
- (c) 40% reported feeling lonely or socially isolated, to some degree;
- (d) 5% reported moderate to severe stress levels.

These results support a conclusion that there are potentially significant impacts of camp accommodation on the health and safety of resource industry workers. As a consequence, the risks must be properly identified and managed by mine operators and their accommodation providers, noting that significant obligations can be imposed under legislation.

What law applies?

For work health and safety (**WHS**) purposes, the regulation of camp accommodation will depend upon where the camp is located.

¹ Submission to the House Standing Committee on Regional Australia of Fly-In and Fly-Out (FIFO) workforce practices in regional Australia by Professor John Rolfe et al, Centre for Environmental Management, CQUniversity 2011

² Factors linked to the well-being of Fly-In Fly Out (FIFO) workers, research report by MA Barclay, J Harris, J Everingham, P Kirsch, S Arend, S Shi and J Kim, Centre for Social Responsibility in Mining and Minerals Industry Safety and Health Centre, Sustainable Minerals Institute, University of Queensland, August 2013

Both the *Coal Mining Safety and Health Act 1999* (Qld) (**CMSH Act**) and the *Mining and Quarrying Safety and Health Act 1999* (Qld) (**MQSH Act**) contain provisions under which the definition of a 'coal mine' or 'mine' respectively includes '*...buildings for administration, accommodation and associated facilities*', provided that the buildings are either:

- (a) within the boundaries of land that is the subject of a mining tenure; or
- (b) at a place adjoining, adjacent to, or contiguous with, land that is the subject of a mining tenure.³

The positioning of the accommodation can make the application of the above requirements difficult as there is limited legal guidance about when land will be considered 'adjoining, adjacent to, or contiguous with' land that is the subject of a mining tenure.

The WHS Act will apply if accommodation buildings do not meet the above criteria.

Accordingly, when considering what WHS legal obligations apply to camp accommodation, it is critical to know whether the accommodation is on tenure or off tenure, and if off tenure whether it is far enough away so as to not be on land that is adjoining, adjacent to, or contiguous with, land that is the subject of a mining tenure.

While this may seem obvious, it is an issue worth checking to ensure that WHS obligations are properly understood and applied. We are aware of at least one matter where the mine operator was unsure whether an incident that had occurred on recreation facilities that formed part of the mine camp was within the relevant tenement, and was therefore uncertain about which WHS law applied. Clearly the time for working this out is not in the aftermath of an incident.

What are the legal requirements?

Under the CMSH Act and MQSH Act, workers are required to carry out their activities in such a way that they do not expose themselves or others to an unacceptable level of risk, to comply with health and safety related instructions and to otherwise not do anything wilfully or recklessly that might adversely affect the health or safety of anyone else.⁴

This obligation will extend to workers while residing at accommodation that forms part of a mine.

Activities undertaken in private time may also impact on later work related obligations, such as the obligation to work at the mine only if in a fit state to do so without affecting the safety and health of others.⁵

³ See section 9(2) CMSH Act and section 9(2) MQSH Act

⁴ sections 39(2)(a), (d) and (f) CMSH Act; sections 36(2)(a) and (f) MQSH Act

⁵ section 39(2)(e) CMSH Act; section 36(2)(e) MQSH Act

Mine operators must ensure the risk to workers while at the operator's mine, which will include accommodation at the mine, is at an acceptable level.⁶

Accommodation service providers may also have obligations to ensure the safety and health of workers is not adversely affected as a result of the services they provide.⁷

If there is a breach of obligations, the matter may be investigated by the inspectorate, although there are limits on the ability of inspectors to enter places where a person resides.⁸

The lack of any specific accommodation related provisions in either the CMSH Act or MQSH Act is in direct contrast to the WHS Act, which contains a specific obligation at section 19(4):

(4) If—

(a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and

(b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available;

the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

For mine operators, the key to whether the above provision will apply to any off-site accommodation provided for their workers will be whether the relevant premises is owned by them, or can otherwise be said to be under their management or control.

Other obligations may be owed depending on whether a residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking.⁹

There are also limitations for WHS permit holders and inspectors for entering a place used only for residential purposes.¹⁰

⁶ section 41(1)(a) CMSH Act; section 41(1)(a) MQSH Act

⁷ section 47 CMSH Act; section 44 MQSH Act

⁸ section 133(3) CMSH Act; section 133(3) MQSH Act

⁹ see section 20 WHS Act regarding safe entry and exit and section 21 WHS Act obligations for persons with management or control of fixtures, fittings or plant

¹⁰ see sections 129 and 170 WHS Act

As a final consideration, where an incident occurs in camp accommodation, whether it is reportable may depend on the cause of the incident and whether it can be said to be work related.

In January 2011 a 55 year old construction worker was found dead in his accommodation at the Woodside Pluto LNG project in Western Australia after reportedly lying undiscovered for 12 days.

The Western Australian regulator, WorkSafe was reportedly was unsure of its position as to whether it could investigate how the worker's body was left undiscovered. A WorkSafe spokesperson was quoted as saying that because the man was believed to have died of natural causes and was found in accommodation, it was not considered a 'work-related death' and that it was up to police to prepare a report for the coroner.

The Queensland mining safety laws would require the reporting of any serious accident, high potential incident or death occurring at a mine and does not distinguish between whether it is work related or not,¹¹ which in turn may give rise to obligations for ensuring there is no interference with the site and conducting required investigations.¹²

However, where accommodation is subject to WHS Act obligations, in order to be notifiable there must be a '*notifiable incident arising out of the conduct of the business or undertaking*.'¹³

Therefore, for example, if a death occurs in an off-site camp in Queensland that is attributable solely to natural causes, it is not notifiable to Workplace Health and Safety Queensland as the regulator. If there is any doubt about whether work was a contributing factor, it would be prudent to ensure that notification occurs.

Impact of the legal requirements

The legal framework means that workers will have obligations arising out of their personal conduct where, based on WHS considerations, it may impact upon work at a mine.

This means that lawful and reasonable directions can be given around required standards of behaviour for workers at mine camps and appropriate disciplinary action taken for breaches.

So, for example, curfews and restrictions on alcohol usage can be required to ensure that workers remain fit for work as part of ensuring WHS standards are met.

¹¹ section 198 CMSH Act; section 195 MQSH Act

¹² Part 11, Division 2 of both the CMSH Act and MQSH Act

¹³ section 38(1) WHS Act

In *Desmond Robert Howard Anthony v Orbit Drilling Pty Ltd*¹⁴ it was found by Fair Work Australia that the dismissal of a manager based on his out of hours conduct was not unfair. The applicant was employed as a Safety and Training Manager and was dismissed from employment following an incident that the employer company says occurred in February 2011. Relevantly, it was alleged by a number of other employees that the applicant urinated in front of a group of employees and then physically assaulted an offsider. The applicant contended that he was advised by the employer that his dismissal was due to him breaching a direction by using a client's accommodation camp rather than the employer's camp. However, despite apparent process failures by the employer leading up to the termination, Fair Work Australia accepted that the seriousness of the out of hours conduct justified the termination of employment and was not harsh, unjust or unfair.

Equally, mine operators or their accommodation providers will have obligations under the various WHS laws both in relation to the safety of the accommodation provided and as to ensuring behaviours at the accommodation do not impact on required WHS standards.

This means that steps need to be taken to identify risks arising out of accommodation provided to workers. Where the accommodation provided raises WHS issues, such as sleep deprivation and stress as identified in the study referred to earlier, there will be a need to ensure that steps are taken to properly manage them. So, for example, if sleep deprivation is caused by noise and therefore creates a risk of fatigue that could have WHS consequences, then there will be a need to examine the design of the accommodation to ensure that there is appropriate soundproofing or that the risk is otherwise managed by removing the source of the noise, which may involve moving the accommodation or changing operations.

There is a further aspect of managing WHS for workers where they become sick while at work. Safety Bulletin 87, which was published by the Mines Inspectorate on 15 December 2008, highlighted the need for mines to review systems and practices to ensure the health and safety of workers in accommodation following a series of incidents, including deaths.

The incidents, as described in that Bulletin, were:

- *A worker who failed to turn up for his shift. In accordance with the mine procedure, local police were requested to check the person's accommodation. Police found the worker injured and their actions successfully reduced the severity of the injuries.*
- *A worker who failed to turn up for his night shift. It was thought he may have been doing different work so there was no check on his whereabouts. A colleague went to the worker's room the following morning and found the worker had died some time after dressing to leave his room for his night shift.*
- *After completing two night shifts of his roster, a worker reported sick to the first aid room, but declined an offer to be taken to a doctor. Several hours later he reported*

¹⁴ [2012] FWA 309 (unreported, Williams C, 16 January 2012)

he was worse and asked to be taken to hospital where he died of a severe bacterial infection two days later.

- *A contract maintenance worker who had been ill during his rostered break returned to work and completed his first shift. He failed to report for his second shift and could not be contacted. A supervisor went to the off-site camp to check the worker's welfare. With assistance from the camp staff, the supervisor gained access to the worker's room where the worker was found deceased.*

These incidents continue to occur.

As noted earlier, in January 2011 a worker was found dead in his accommodation at the Woodside Pluto LNG project in Western Australia.

In February 2013, a 54 year old deceased truck driver was reported to have lain undiscovered in his donga at the Rio Tinto Brockman 4 camp in Western Australia. He was reportedly last seen on site on Friday, 22 February 2013, and was not discovered until the following Tuesday, 26 February 2013.

In order to manage WHS risks for workers accommodated at mines between shifts, the Mines Inspectorate set out the following matters to be considered as part of systems reviews:

- *If a worker known to be in the camp or accommodation fails to turn up for a shift, a procedure should be in place to check the worker's whereabouts and wellbeing at any time during the shift.*
- *When a worker becomes ill, the worker should be examined as soon as possible by a paramedic, nurse or other health care provider to establish the type, severity and prognosis of the illness.*
- *Based on the examination, a decision must be made whether the worker should be allowed to recover in the accommodation provided, or should be relocated to where their health can be checked and medical assistance provided if needed. The worker should not be allowed to drive.*
- *If it is determined it is safe for the worker to remain in the accommodation unit, a reliable procedure must be put in place ensuring the person's health is monitored by an appropriate person at regular intervals during day and night.*
- *If it is determined the worker should not remain in the accommodation provided, care must be taken to ensure the worker's health is considered during transport to hospital, home or other place of treatment and recovery. The worker may need to be accompanied by an appropriately qualified person.*
- *It is important processes are in place on site that ensure a person's family or next of kin are contacted in the event of illness or death.*

Searching rooms

Given the legislative requirements to ensure WHS is properly managed for workers and, where necessary, investigate incidents, questions can arise as to the ability for a mine operator or accommodation provider to lawfully conduct searches of accommodation, or personal property in that accommodation, or to enter that accommodation for compliance purposes.

In circumstances where the mine operator or accommodation provider seeks to enter accommodation for lawful purposes, the conditions of providing the accommodation can stipulate that there is a specific right to enter the accommodation and, if required, to conduct appropriate inspections. This would likely be done by way of incorporation into the terms of use agreed to by workers or, less preferably, under policy requirements.

In the absence of this, or if there is a desire to adopt a more cautious approach (particularly in cases where very serious and illegal behaviour is suspected), lawful entry may be effected by police officers, assuming they have the required powers. This may not be practical in circumstances where the site is so remote that police are not available.

Where police officers are involved, in Queensland, under the *Police Powers and Responsibilities Act 2000* (Qld), a police officer may search (without a warrant) any person or vehicle where, for example, the officer suspects the person may possess a weapon, dangerous drug or stolen property.¹⁵ However, depending on whether the consent of the 'occupier' is given, they may require a warrant to exercise search powers within accommodation.

An example of the impact of conducting unlawful searches was highlighted in *Walker v Mittagong Sands Pty Ltd t/as Cowra Quartz*.¹⁶

In that decision, an employee was dismissed from his employment as a Leading Hand at the Cowra Quartz Quarry. The employer, Mittagong Sands Pty Limited, had accused the employee of stealing oil. In following up its suspicions about the employee's conduct, the employer searched for and took samples of oil from a container on the employee's vehicle without the employee's consent and without the employee being present.

It was held that this evidence could not be used to prove the alleged misconduct and, as a result, there was no valid reason for the dismissal. An amount of \$15,000.00 was ordered to be paid by the employer to the employee in lieu of reinstatement.

¹⁵ see sections 29 to 32 inclusive of the *Police Powers and Responsibilities Act 2000* (Qld)

¹⁶ [2010] FWA 9440 (unreported, Thatcher C, 8 December 2010)

Noting the limitations that can apply, the recommended approach is to ensure that agreed powers of entry are set out as part of the terms of providing accommodation and that the terms of entry and powers to be exercised upon entry are based on lawful and reasonable grounds.

Conclusion

Mine camps are now an ingrained part of life in the Queensland resources industry. As demonstrated from the above discussion, there are a range of issues that need to be considered when ensuring WHS compliance. While there are some challenges, sensible systems can be put into place to manage WHS responsibilities and avoid potential traps. The issues identified in this paper should serve as a starting point for reviewing existing systems and, with appropriate advice, ensuring that those systems provide a proper framework for meeting legal obligations.