

RSHQ Consultation question	Response
<p>1. Do you support the proposed option of clarifying obligations to manage psychosocial hazards?</p>	<p>Fitzroy Australia Resources Pty Ltd (Fitzroy) supports, in principle, proposed amendments to Queensland's resources safety and health legislation (RSH laws) which clarify that obligation holders must manage psychosocial risks. However, as they are currently described on page 2 of the Discussion Paper, Fitzroy does not support the proposed amendments to Queensland's resources safety and health regulations (RSH Regulations) which include how obligation holders must manage psychosocial risks.</p> <p>Coal mining is potentially hazardous. It involves a range of real physical risks. The Safety and Health Management System (SHMS) and RSH laws, appropriately, focuses on these high-risk physical risks – including the development of specific principal hazard management plans. Fitzroy already takes steps to apply a risk management approach to psychosocial risks. Fitzroy is concerned that if a model is introduced similar to that under the WHS laws (i.e. risk management regulations and a prescriptive code of practice) resource industry duty holders' compliance burdens will unduly increase and, whilst recognising psychosocial hazards can be harmful, may see the SHMS divert focus from those risks which present a greater risk of death or serious injury.</p> <p>Further, the WHS law model is not fit for purpose for the resources industry. No resources focused obligations or examples exist in the Code of Practice. Rather, the Code of Practice, largely, deals with 'white collar' or office based environments or, to a lesser extent, construction and public sector environments. Coal mining is unique. It has its own specific risks and regulatory framework. The Code of Practice, if applied under the RSH laws, would not '<i>clarify obligations to manage psychosocial hazards in Queensland's resources industry</i>' – it would confuse coal mining participants and provide no, industry specific, guidance.</p> <p>As Fitzroy understands it, none of the key relevant reviews (e.g. the Brady Review; the parliamentary committee inquiry into coal mining industry safety; the Queensland Coal Mining Board of Inquiry) identified issues or made recommendations about the need for change in relation to psychosocial hazards. It is therefore difficult to understand the need for any change, given these extensive reviews. Just because other, non-coal mining, laws are changing, does not appear to be a compelling reason to amend the RSH laws.</p> <p>Finally, the development of a SHMS already requires a Site Senior Executive (SSE), when developing and enforcing a SHMS, to manage psychosocial hazards.</p>

	<p>The aspects of the proposed option which Fitzroy either supports (in principle) or does not support are discussed in response to consultation questions 2 and 3 below.</p>
<p>2. Which part of the proposed option do you support and why?</p>	<p>Fitzroy supports, in principle, the amendment of Queensland's resources safety and health Acts (RSH Acts) to provide for the definition of 'health' to encompass both physical and psychological health as is defined in Schedule 5 of the <i>Work Health and Safety Act 2011</i> (Qld) (WHS Act). This makes sense.</p> <p>Fitzroy opposes, or cannot properly comment on, a regulation-making power to further define how to manage psychosocial risks arising from psychosocial hazards and respond to complaints or incidents. This is because Fitzroy does not know what types of regulations may be introduced.</p>
<p>3. Which part of the proposed option do you not support and why?</p>	<p>Definitions</p> <ol style="list-style-type: none"> 1. On page 2 of the Discussion Paper, it states: <i>'provide clearer definitions in the context of psychological health, psychosocial hazards and psychosocial risks'</i> (our emphasis added). It is not apparent on what basis that the definitions of these terms will be made clearer given that none of these terms are currently defined in the RSH laws. 2. Fitzroy does not support the insertion of a definition of 'psychological health' within the RSH Regulations. The definition of 'psychological health' should be inserted within the RSH Acts to support the proposed insertion of the definition of 'health' within the RSH Acts. Given the proposed definition of 'health' will include the term 'psychological health', it is logical to include both definitions within the same legislative instrument. <p>Risk management</p> <ol style="list-style-type: none"> 3. Fitzroy does not support the proposed changes to the RSH Regulations regarding how psychosocial risks must be managed. <p>On page 2 of the Discussion Paper, it states: <i>'clarify the resources industry's duty to appropriately manage the risk of psychosocial hazards including:</i></p> <ul style="list-style-type: none"> - <i>identify psychosocial hazards</i> - <i>implement control measures in accordance with the hierarchy of controls</i> - <i>when determining control measures for psychosocial hazards, consider duration, frequency and severity of exposure to psychosocial hazards and how psychosocial hazards may interact or combine to increase risk</i> - <i>maintain and review controls.'</i>

	<p>The above points appear to have been drafted based on section 55C of the <i>Work Health and Safety Regulation 2011</i> (Qld) (WHS Regulation) and the associated general risk management requirements in Part 3.1 of the WHS Regulation.</p> <p>Fitzroy submits that such clarification of the duty to manage psychosocial risks cannot be achieved simply by adopting section 55C of the WHS Regulation.</p> <p>The proposed option regarding how psychosocial risks must be managed — as described on page 2 of the Discussion Paper — is inconsistent with the established ‘control and management of risk’ provisions at Part 2, Division 1 of the <i>Coal Mining Safety and Health Act 1999</i> (Qld) (CMSH Act).</p> <p>4. Fitzroy does not support the proposed amendments to the RSH Regulations requiring obligation holders to implement control measures in accordance with the ‘hierarchy of controls’.</p> <p>The term ‘hierarchy of controls’ does not exist within the CMSH Act and <i>Coal Mining Safety and Health Regulation 2017</i> (Qld) (CMSH Regulation) (together, the CMSH laws).</p> <p>We assume that this term is based on the ‘hierarchy of control measures’ within clause 36 of the WHS Regulation.</p> <p>Within the CMSH laws, risks are required to be eliminated or minimised to achieve an ‘acceptable level of risk’.¹ That is, the controls in which obligation holders implement to minimise a risk are not further prescribed or broken down into a hierarchy which must be followed in descending order. As such, requiring obligation holders to implement control measures associated with psychosocial risks in accordance with the ‘hierarchy of controls’ would cause inconsistencies in the way in which all other risks must be controlled in the CMSH laws.</p>
<p>4. If you do not support the proposed option, is there an alternate option which you do support?</p>	<p>Fitzroy submits the following as alternatives to the aspects of the proposed option which it does not support as set out in response to consultation question 3.</p> <p>Definitions</p> <p>1. Fitzroy submits that it should be made clear in subsequent consultation with the resources industry that the following definitions are proposed to be introduced in the RSH laws, as opposed to being made ‘clearer’:</p> <ul style="list-style-type: none"> • ‘psychological health’; • ‘psychosocial hazards’; and • ‘psychosocial risks’.

¹ CMSH Act s 29.

	<p>2. Fitzroy submits that the definition of ‘psychological health’ should be inserted in the RSH Acts as opposed to the RSH Regulations.</p> <p>Risk management</p> <p>3. Fitzroy submits that any proposed amendments to the RSH Regulations which state how obligation holders must manage psychosocial risks should be drafted consistently with the Act and Regulation which it amends. For example:</p> <ul style="list-style-type: none"> • managing psychosocial risks so that the level of risk to a person’s safety or health is at an acceptable level; and • must be specific to coal mining. <p>4. Fitzroy submits that the requirement for obligation holders to implement control measures to manage psychosocial risks in accordance with the hierarchy of controls should be excluded from any proposed amendments to the CSMH Regulation. Accordingly, the status quo should be maintained. That is, obligation holders must eliminate or minimise psychosocial risks so that the level of risk is at an acceptable level.</p> <p>Non-statutory guideline</p> <p>If guidance is to be developed, it should be coal mining specific. The WHS model is not fit for purpose and does not clarify or provide guidance to coal mining industry participants.</p> <p>As is mentioned on page 3 of the Discussion Paper, Fitzroy supports (in principle) the publication of a non-statutory guideline to provide practical guidance for resources industry participants in complying with amendments to the RSH laws related to managing psychosocial risks.</p> <p>Fitzroy further submits that a non-statutory guideline tailored to the nature and working environments of the resources industry would prove to be of greater benefit to resources industry participants than reference to the WHS model and the Code of Practice.</p>
<p>5. Within the proposed option, do you support clarify reporting obligations for incidents relating to psychosocial hazards and psychological injuries?</p>	<p>Fitzroy does not support the amendment of the RSH Regulations to clarify reporting obligations for incidents relating to psychosocial hazards and psychological injuries.</p> <p>Fitzroy submits that the existing reporting obligations are sufficiently clear to encompass the need to report psychosocial hazards and psychological injuries that meet the relevant definitions. Therefore, the status quo should be maintained.</p>

6. Do you have any other feedback or comments about the proposed option?

Queensland's RSH laws exist to address the specific hazards and circumstances of the mining industry. Consistent with this approach, any amendments to the RSH laws — including those which seek to clarify existing duties as is the case here — must reflect the unique nature and regulatory framework of these industries.

Fitzroy appreciates RSHQ's efforts in consulting with resources industry participants in this important matter.