

**To: WA Parliament Community Development and Justice
Standing Committee**

**Re: Inquiry into sexual harassment against women in the
FIFO mining industry**

17 August 2021

Introduction

The Association of Mining and Exploration and Companies (AMEC) appreciates the opportunity to provide a submission to the Western Australian Parliament Community Development and Justice Standing Committee's Inquiry into sexual harassment against women in the FIFO mining industry (the Inquiry).

About AMEC

AMEC is a national industry body representing over 400 member companies across Australia, with the majority having project interests in Western Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

AMEC Position

AMEC does not condone sexual harassment, discrimination, harassment, or bullying. These behaviours are unacceptable. We believe all workplaces should be free from discrimination, harassment and bullying, at work-related functions, using work-related technology, and during work-related travel.

Our members share these values and expectations, and our Industry is committed to eliminating sexual harassment, discrimination, harassment and bullying from our industry.

Industry can and does take steps to prevent sexual harassment from occurring, and if sexual harassment allegations are received, take immediate, appropriate corrective and supportive actions.

Executive Summary

The safety of our workers and workplaces is the highest priority for AMEC and our members. Western Australia's mineral exploration and mining industry has a strong reputation and foundation for maintaining leading work health and safety (WHS) standards.

The Inquiry, following recent reports of sexual harassment and assault in our sector, depicted in media reporting and raised by the Respect@Work Report, has brought into sharp focus the prevalence of sexual harassment in our sector.

Sexual harassment, discrimination, harassment, and bullying, are unlawful and unacceptable. The underpinning reasons for it occurring are a broad, systemic, societal issue. Sexual harassment is not a female-only issue, nor one that is unique to the mining industry. However, we recognise that we have a clear responsibility to work together to eliminate sexual harassment in our industry and our workplaces, and identify measures which support safe, diverse, and inclusive workplace cultures, in line with the shifting paradigm of safety in our sector.

Our industry already undertakes proactive measures to ensure the safety of their workers and workplaces, including the prevention of sexual harassment risks. Eliminating sexual harassment requires acknowledgement and addressing by every person and every workplace. There is no 'one-size-fits-all' approach to addressing risks posed by sexual harassment, but the more common of an understanding available to all, the more we can do to prevent it from occurring.

We acknowledge there is more we can do as an industry, to raise awareness and eliminate sexual harassment behaviours from our sector, to support the journey we are on to encourage more inclusive and diverse workspaces. There is momentum through recent reports and this Inquiry to take decisive actions now.

Industry associations such as AMEC, can work with member companies and Government to consider pragmatic, effective improvements to existing practices. The actions and measures a company can implement must be suitable to their unique circumstances, and commensurate with the potential risks applicable to them, to facilitate genuine improvements to physical and psychosocial safety in our industry.

Through this submission process, AMEC has engaged with member companies across WA and Australia. We have sought to gain a clear understanding of the prevalence of sexual harassment in the sector, the genuine positive steps companies have and are already taking to address and mitigate these risks, the support available to workers who have experienced unacceptable behaviours, and any identifications of best practice which could be replicated across Industry.

Consistent themes we have heard are the need for more understanding and awareness, delivered through training, of all workers, particularly those in leadership positions who play a pivotal role in the dynamics of a workplace, the importance a positive company culture has on the morale, physical and psychosocial safety of a workforce, and the benefits that can be expected from greater diversity and gender balance across our industry.

As discussed throughout this submission, AMEC has developed a list of recommendations for Government, along with positions AMEC would support as outcomes from this Inquiry. These are

intended to support positive change at all levels, including workers, managers, Industry associations, and regulators.

AMEC is committed to working with the Inquiry, Industry, and other Industry bodies to ensure our workplaces and workers are safe and equipped with practical improvements they can implement, where suitable, to increase the safety of our workforce and workplaces.

Recommendations to Government

The recommendations and positions listed below are not in order of importance but are instead in the order aligning with AMEC's response to the Inquiry's TOR.

- R1) Terminology used across the Industry and Government is standardised for consistency and aligns with existing legislation.
- R2) Government works with Industry to identify measures which can address the risk to safety of workers in underground mining and mineral exploration operations.
- R3) Government works with Industry to consider the practicalities and effectiveness of introducing mandatory Police checks for all Industry workers.
- R4) The Inquiry considers how incidents of sexual harassment can be reported on to future employers.
- R5) Development of non-statutory guidance material by Safe Work Australia (SWA) and the Department of Mines, Industry Regulation and Safety (DMIRS), in consultation with Industry, to support Industry with sexual harassment incident response process templates. These should be incorporated into the induction and training of all workers.
- R6) Development of non-statutory guidance on Commonwealth 'harassment on the ground of sex' legislation, if introduced.
- R7) DMIRS and SWA facilitates leadership training with a specific focus on sexual harassment, in consultation with industry.
- R8) DMIRS and SWA develops and publishes standalone sexual harassment policies and process templates, in consultation with Industry.

Positions AMEC will work to support with member companies:

- P1) Support the introduction of an anonymous integrity reporting platform (IRP), such as Crime Stoppers WA (CSWA)'s "Safe2Say" platform or comparable platforms.
- P2) Awareness-raising across the industry of access to support systems, including the 1800 RESPECT phone service.
- P3) Companies identify internal personnel to become dedicated contact officers to whom reports of sexual harassment can be made.
- P4) FIFO accommodation facilities undergo a risk assessment for sexual harassment. Ensure there is adequate lighting and high-quality locks installed on each accommodation door.

- P5) AMEC recommends all companies with a FIFO mining workforce provide access to an external Employee Assistance Programme (EAP) for employees.

Industry overview

The mining and mineral exploration industry make a critical contribution to the Australian economy, employing over 255,000 people nationally, and in 2018/19 collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

Western Australia's mineral exploration and mining workforce in 2020, employed a record 140,940 workers. This was a significant increase from the 120,000 directly employed in 2018. Of this record number, about 60,000 are FIFO, with 6,000 typically flying in from other Australian States and Territories¹. Interstate FIFO has been significantly reduced as a result of COVID-19 border restrictions. The remoteness of mineral resources means that FIFO work arrangements will continue to be a necessary primary means of employment for a large portion of the industry. In 2018, research estimated that 9.3% of Western Australia's population is directly impacted by FIFO work arrangements², demonstrating the significant impact and flow-on effects improvements made in our sector can have on the broader community.

In November 2020, the Workplace Gender Equality Agency³ released a data scorecard which outlined the diversity of Australian workplaces. 145 mining companies from around Australia surveyed.

The scorecard highlighted the following mining industry statistics:

- 18% females, 82% males in the workforce, which is much lower than the average for all industries of 50.5% females.
- Full time gender pay gap is 13.6% lower than the 20.1% average for all industries.
- 7.6% female CEOs, lower than the 18.3% average for all industries.
- 62.1% of the mining industry supplied primary carer leave which is higher than the average of 52.4% primary carer leave for all industries.

Broadly these statistics reflect the reality the mining and mineral exploration industry is already aware of and is working to change; mining is traditionally a male dominated industry.

Industry is aware of the need to improve these numbers. Many companies have set and are working towards ambitious targets to achieve a better gender balance within their workforce. It is important that we also consider the concentration of these roles so that more diversity can be supported in FIFO locations. There have been incremental improvements which should be noted. For example, in the

¹ <https://www.abc.net.au/news/2020-05-26/fifo-workers-keep-australian-mineral-exports-flowing/12283784>

² <https://www.mhc.wa.gov.au/media/2548/impact-of-fifo-work-arrangement-on-the-mental-health-and-wellbeing-of-fifo-workers-summary-report.pdf>

³ <https://data.wgea.gov.au/industries/87>

Workplace Gender Equality Agency 2014-15 scorecard, the mining workforce was comprised of 16% females⁴ (a 2% improvement over 7 years). However, there is clearly a long way to go.

An understanding of the breadth of the mineral exploration and mining industry

The operations and companies in the WA mining and mineral exploration industry are diverse in scale and complexity. The sector extends from a junior mineral exploration company, to drilling services providers, through to companies invested across multi-commodities and multiple sites, with several thousand employees engaged in 24/7 operations spanning across remote Western Australia.

A junior mineral exploration company will typically have a Managing Director, an Exploration Manager (a trained geologist), a Finance Officer or part-time Company Secretary, and an Administration Officer who is office-based. These are small teams usually with between 2-10 employees. A drilling company will, depending on the size of their fleet, have between 20 – 300 workers who will work either DIDO or FIFO, plus office-based staff. This is one area of the industry that is primarily male-dominated due to the physical nature of the role prior to the introduction more autonomous options, and remote locations. The entry-level criteria for driller's offsiders does not discriminate based on gender but is often more suited to individuals with a labouring background. Drillers and explorers often do site work which involves other contractors and relevant parties working in close proximity in a regional setting, without fixed accommodation settings such as those of a typical FIFO accommodation facility.

Mining contract companies typically provide short-term, contracted employees to mine sites. These workforces are known for being itinerant. The predominantly larger workforces offer more transient-natured roles, including mine closure, mine construction, and on-site catering services. Mining contractor workers will be subject to their own internal company policies, as well as those of each site to which they are contracted, typically deferring to the more stringent of the two policies.

Finally, the workforces of producing miners are typically large organisations, with variances in size depending on the commodity being mined. Many of these companies have a predominantly FIFO workforce.

Shifting expectations

Companies have a duty of care to their employees to maintain a safe workplace. Shifts in societal expectations and the nature of regulating risks has expanded that definition beyond the purely physical. This shift includes recognition of the risk of psychosocial hazards (which includes sexual harassment) in the workplace being treated with the same level of importance as any other workplace safety risk.

This recognition and acknowledgement of sexual harassment hazards in the workplace warrants a risk management approach that eliminates or minimises the risk so far as is reasonably practicable. Risk management practices include: identifying how, where and when sexual harassment might happen by undertaking sexual harassment in the workplace risk assessments; assessing the likelihood that a worker may experience sexual harassment and how it may affect them; implementing the most effective control measures to prevent sexual harassment from happening; working out how

⁴ Page 5, https://www.wgea.gov.au/sites/default/files/documents/2014-15-WGEA_SCORECARD.pdf

to effectively address sexual harassment reports and incidents within the workplace; ensuring that controls are working by undertaking regular reviews into their effectiveness; identifying if there are further measures that can be considered to improve the effectiveness of controls; and doing all of these things in consultation with workers and health and safety representatives.

During the development of the FIFO Mentally Healthy Code⁵, an outcome from the Legislative Assembly Education and Health Standing Committee Inquiry into the impact of FIFO work practices on mental health, research indicated that 33% of FIFO workers had high or very high psychological distress. A more recent study during COVID-19 lockdowns in 2020 found that this number escalated to 41%⁶. The definitions of mental health, psychosocial risks and how these can be addressed and managed in the workplace, continue to be a challenge.

Many companies are already proactively considering their control and prevention measures to minimise the risk of sexual harassment incidents in their workplaces, and regularly update these. However, many companies would benefit from support and guidance to fully consider and address the implications and significant risks to their workforce that sexual harassment poses.

Based on the above, and as has been identified by companies in response to this Inquiry and the Commonwealth consultation on the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (Respect at Work Bill), until recently, there has in general, been limited open and frank conversations and reporting of sexual harassment, leading to an unclear understanding of its prevalence in our industry. Some organisations within our industry have taken a proactive approach to addressing sexual harassment in the workplace. They are typically organisations with large workforces and dedicated Human Resources (HR) teams, those who have experienced an alleged incident directly related to an employee, and those who have specific resourcing that can address their WHS obligations in a proactive manner.

However, we must acknowledge in this statement, that while the ultimate intent is to eliminate and prevent such occurrences from happening, sexual harassment behaviour has been found to often be a one-off incident, that is not readily identifiable, repeated, or continuous⁷. That is why this Inquiry and the actions Industry will take from it, are so important. The more consistent the awareness and understanding of the prevalence of sexual harassment in the workforce is, the more tailored the recommendations that will encourage its elimination and prevention can be.

⁵ Code of Practice – *Mentally Healthy Workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors*

⁶ <https://www.mining-technology.com/features/is-there-a-future-for-australias-fly-in-fly-out-mining-workers/>

⁷ As per, <https://humanrights.gov.au/our-work/chapter-3-what-sexual-harassment-effectively-preventing-and-responding-sexual-harassment>

In *Hall & Ors v A. & A. Sheiban Pty Ltd & Ors* Justice Lockhart of the Federal Court of Australia said the definition of sexual harassment “clearly is capable of including a single action and provides no warrant for necessarily importing a continuous or repeated course of conduct”.

Respect@Work: Sexual Harassment National Inquiry Report 2020 (Respect@Work Report)

The Australian Human Rights Commission⁸ Sex Discrimination Commissioner Kate Jenkins authored the *Respect@Work: Sexual Harassment National Inquiry Report 2020*, which highlighted the need for all industries across all jurisdictions, to improve how they prevent sexual harassment in the workplace.

Sexual harassment is a sensitive topic, which until very recently has been considered a ‘taboo’ issue at a societal level. The Respect@Work Report identifies the 2018 #Metoo movement as beginning to reverse this taboo, with more victims of sexual harassment willing to come forward. At a broader level, across multiple industries and sectors, a number of victims have bravely come forward to reveal the true extent of sexual harassment that has occurred historically, and more recently.

AMEC agrees with the two fundamental statements presented in the opening pages of the Respect@Work Report, that “Sexual harassment is not a women’s issue: it is a societal issue, which every Australian, and every Australian workplace, can contribute to addressing”, and “Workplace sexual harassment is not inevitable. It is not acceptable. It is preventable.”⁹

The Respect@Work Report found that “gender inequality was the key power disparity that drives sexual harassment. Gender inequality relates to the unequal distribution of power, resources and opportunity between men and women in society, due to prevailing societal norms and structures.”¹⁰ Other factors increasing the likelihood of a worker experiencing sexual harassment include “workers under 30 years of age, workers who identify as LGBTIQ+, workers with a disability, workers from culturally and linguistically diverse backgrounds, migrant workers or workers holding temporary visas, and people in insecure working arrangements, eg casual, labour hire or part-time work”¹¹.

The journey we are on to eliminate and prevent workplace sexual harassment is not a new one, nor one that is unique to the FIFO mining industry in WA. The Commonwealth Government’s *Sex Discrimination Act 1984* (Sex Discrimination Act) represents Australia’s first legislative framework explicitly prohibiting sexual harassment at work.

The Australian Sex Discrimination Commissioner, Kate Jenkins, aptly identified that while the elimination of workplace sexual harassment is a key priority as a nation, Australia’s legal and regulatory system response to and prevention of sexual harassment is no longer fit for purpose. The systems are confusing and complex, with a heavy burden on victims to make complaints, despite most not wanting to report alleged incidents.

The Report found there is an urgency for reform to deliver consistency and clarity between anti-discrimination, employment, and work health and safety (WHS) legislation, and provide employers with the guidance they need, and victims with due support. There is a requirement for a shift from the

⁸ <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

⁹ <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020#fn2>

¹⁰ *ibid*

¹¹ <https://www.safeworkaustralia.gov.au/topic/workplace-sexual-harassment>

current reactive model to one that is proactive and creates safe and harassment-free workplaces which foster productive workspaces.

There are a number of intersecting legislative frameworks Industry is bound by, discussed later in this submission. As an Industry association, AMEC consistently advocates to State, Territory and Commonwealth Governments the need to address duplication across regulatory processes. This recommendation aligns with the recommendation from the Report, that there are already complementary and mutually reinforcing schemes in place.

Reform efforts to address sexual harassment should be directed to harmonising the existing frameworks while recognising their distinctive functions, in line with the Australian Government's Deregulation Agenda to minimise ambiguity and undue burden, while providing clarity and consistency across the sector.

Inquiry into sexual harassment against women in the FIFO mining industry

AMEC position statement to this Inquiry

Ensuring the safety of all workers is the highest priority for AMEC and our member companies. The duty of care companies have for the safety of workers extends beyond physical safety in the primary place of employment. Over the last three decades, the boundaries of the definition of the workplace have blurred and expanded to offsite events. So too has the definition of safety shifted from physical injuries to include the prevention of psychosocial harms such as sexual harassment.

Industry does not condone sexual harassment, discrimination, harassment, or bullying. Industry has developed policies and frameworks so that workplaces should be free from discrimination, harassment, and bullying, at work-related functions, using work-related technology, and during work-related travel. Industry is consciously working to create a diverse and supportive culture. The mining and mineral exploration sector have leading focus on safety; however, all acknowledge that there are still improvements needed to prevent sexual harassment from occurring, and effectively and appropriately manage sexual harassment allegations if received.

Context

In response to recent media attention surrounding sexual assault allegations at high-profile mine sites in WA, this Inquiry was launched. AMEC, along with other key Industry bodies, have committed to working together to ensure the health and safety of our workforces continues to be prioritised. This submission has received the endorsement of AMEC's Council, in recognition of the importance of the safety of our workers and workplaces.

AMEC, as a national Industry body, is aware that sexual harassment and the underpinning reasons for it occurring, are a broad, systemic, societal issue. However, given the significant representation of our industry in Western Australia, and Australia as a whole, it is important that we can work together to eliminate sexual harassment in our FIFO workplaces, and identify measures which support safe and inclusive workplace cultures, particularly in areas of Industry considered to have heightened risks.

Industry response

The majority of Industry is already undertaking proactive initiatives to create safe work environments for their employees. These measures can and do often extend beyond legislated responsibilities. Companies have established procedures, policies, and frameworks for addressing harassment that meet and often exceed legislated requirements. Companies have implemented structures that allow for the confidential reporting of incidents. All are seeking to create a productive and safe culture.

In recent years mental health and transparency about workforce diversity have begun to be discussed more broadly and openly. We continue to see a gradual shift, extending beyond our industry, to acknowledge and incorporate diversity and inclusion policies and practices into workplaces. Ultimately, research indicates that the more diversity and inclusivity we have in our workplaces, the more difficult issues, including but not only relevant to sexual harassment, can be discussed, and the more prominent they will be in the minds of our workers.

As highlighted in the *Respect@Work Report*, all industries have much more to do.

Recent media reports of sexual assault on mine sites have provided a stark wakeup call to our industry. The Community Development and Justice Standing Committee's Inquiry into sexual harassment against women in the FIFO mining industry presents another avenue to further steps in that journey.

Industry associations can work with member companies, State and Commonwealth Governments to undertake incremental improvements to our existing systems, to increase the awareness and prevention of safety incidents in the form of workplace sexual harassment. We are already a leader in WHS and can work together to drive systemic change. This will require transparency where possible, in line with confidentiality requirements, to undertake pragmatic, effective reforms to improve our industry's controls and response to sexual harassment in the FIFO mining sector.

Through this Inquiry, we can identify implementable recommendations that will genuinely seek to address the concerning reports of sexual harassment in our industry. There is an abundance of work available in WA's FIFO mining industry, with genuine career opportunities for people of all genders and backgrounds. We want our current and future workforces to feel safe and welcomed to join a sector that is a large and important part of WA's community.

AMEC Survey

To provide a more meaningful response to the Inquiry, AMEC surveyed a range of companies within the membership, as well as those represented in our Inquiry Working Group and Safety Committee.

The survey responses provided a small, but indicative sample of our membership. The short period of time for companies to provide information was a significant factor in the response rate.

Some of the key findings of AMEC's member survey are provided below:

Some key statistical findings (from respondents) included:

- Females represented 12.84% of the FIFO workforce, 17.46% of the DIDO workforce.
- Females represented 41.13% of Industry, primarily based at head office.
- Overall, 17.15% of leadership positions are held by females.
- Only 4.68% of FIFO (primarily based away from head office) leadership positions are held by females.
- Almost 72% make specific reference to sexual harassment and / or sexual assault in their workplace policy.
- Around 60% of company WHS and sexual harassment policies extend to incidents that occur away from the primary place of employment/
- 62.5% of companies specifically address workplace sexual harassment in their induction processes.

Some key policy and procedure findings included:

- The reporting of sexual harassment and sexual assault allegations varies greatly across companies, even those of a comparable size. These range from formal reporting frameworks to

multiple parties within the organisation that allegations can be reported to, different requirements depending on the position held by the alleged offender, either identifiable, or anonymous reporting options, or both are available. Follow up on reports includes via specific position holders within the organisation, external independent consultants, or a combination of a few different options.

- Companies who have experienced reports of incidents within their workplaces have implemented changes to prevent future incidents including code of conduct training, evaluating processes and policies to ensure they are focused on prevention and management, training courses to cover sexual and other forms of harassment for supervisors and employees, additional reminders at toolbox meetings, and organisation-wide training to set baseline behaviour expectations.
- On alcohol and drug use, companies had varying responses depending on the size of the organisation and nature of the company, but if alcohol is permitted, there are limits on the amount of alcoholic drinks that can be purchased in a specified period, fitness for work and regular breath alcohol concentration (BAC) testing (some prior to every shift), zero tolerance for illegal drug use, and regular random alcohol and drug testing.
- Support is available to reporters of sexual harassment in the form of Employee Assistance Programs (EAP), internally through HR teams, management and internal contact officers, and mental health first aid officers.
- Around 18% of respondents were concerned that their policies were not fully understood by all levels, for a variety of reasons, primarily because of the large number of short-term contractors who frequently change sites and the high turnover of staff who do not fully assimilate into the company's culture to see first-hand the policies in practice.
- On improving Industry's experience with workplace sexual harassment, the majority of respondents highlighted the importance of company culture and leadership, and the need for greater awareness and education across the industry (and society). Other recommendations included respect and awareness across all levels of the workforce driven by culture and values, and supported by training and development of all personnel. Improving gender and other diversity aspects of the workforce, maximising on-site personnel safety via increased lighting and room security options, improved recruitment practices with a focus on security and police clearances for all employees, and the development of consistent policy framework objectives which can be used across the sector to assist employers and employees in navigating reporting processes.

Submission

To ensure a comprehensive response, each item of the Terms of Reference (TOR) is addressed individually below:

Is there a clear understanding of the prevalence, nature, outcomes, and reporting of sexual harassment in FIFO workplaces?

As at 14 June 2021, the number of alleged bullying and sexual assaults in the WA mining industry reported to the Mines Safety Directorate of DMIRS and the former Department of Mines and Petroleum (until 1 July 2017) since 2015, by calendar year (1 January to 31 December) were:

Calendar year	Alleged sexual assaults	Alleged bullying*	Total
2015	2	12	14
2016	1	18	19
2017	0	17	17
2018	3	29	32
2019	3	29	32
2020	3	18	21
2021	7	15	22
Total	19	138	157

Of the 138 alleged bullying incidents reported to DMIRS from 2015 to 2021, nine of these incidents involved sexual harassment. The classification of sexual harassment ranges from name calling or sexist comments to sending pornographic material and threats of rape.

Furthermore, all of the 157 incidents counted above occurred at a workplace. They did not include incidents that occurred beyond the jurisdiction of the Mines Safety Directorate. The prevalence of such incidents that occur offsite, between employees, is not recorded by DMIRS. Their recording questions the separation of work and personal lives, and employees' rights to privacy.

AMEC considers that sexual harassment is under-reported in the mining industry in Western Australia.

Of note, many people involved in sexual harassment and / or assault incidents do not want their privacy compromised, so elect not to report. It is of critical importance that their choice to maintain confidentiality is upheld, in line with their wishes.

Under-reporting in Industry is further supported by the 2018 survey conducted by the Australian Human Rights Commission, which underpinned the Respect@Work Report. It found that one in three people had experienced sexual harassment at work in the five years prior to the survey, almost two in five females (39%) and one in four males (26%)¹². Furthermore, the Respect@Work Report found that 40% of mining sector employees experienced sexual harassment in the five years prior to the 2020 report. These findings have been more recently supported by the Minerals Council of Australia

¹² Australian Human Rights Commission, Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces (2018) 8

(MCA) that found that the likelihood of sexual harassment against women in the mining workforce is 74%, more than double that of men (32%)¹³.

The under-reporting of sexual harassment incidents can be attributed to a complex interplay of issues.

Currently, there is no fixed agreed definition of sexual harassment and sexual assault. Multiple regulatory bodies and legislative instruments have similar, albeit slightly different definitions. There is also a range of different terminologies used when referring to incidents and alleged victims and respondents. Aligning the terminology and definitions used is an important, implementable action, that will encourage a common understanding of sexual harassment in the workplace.

Safe Work Australia (SWA) identifies workplace sexual harassment as a known cause of psychological and physical harm. Under model WHS laws, businesses and organisations have a duty to manage the health and safety risks of workplace sexual harassment, including between workers and from other people in and at the workplace. SWA has defined sexual harassment as “any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature in circumstances where a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person harassed would be offended, humiliated or intimidated.”¹⁴

The Sex Discrimination Act defines sexual harassment as “a person sexually harasses another person if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or engages in other unwelcome conduct of a sexual nature in relation to the person harassed; in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.”¹⁵

Under the Criminal Code in Western Australia, there is no offence called 'sexual assault'. The law specifies sexual-related offences such as 'indecent assault' and 'sexual penetration without consent'. The term 'sexual assault' has been used to generally describe these types of offences as crimes of a sexual nature relating to the lack of consent on the part of the victim.

The boundaries of where sexual harassment are reported are also ambiguous and unclear. Under the model WHS laws about to be introduced in Western Australia, the broader definition of workplaces is shifting and will now include FIFO workcamps. The current mining safety regulations do not have jurisdiction over FIFO camps. This has not previously been a reporting requirement, but Industry has complied with the new requirements to report on workcamps and work adjacent settings, reflecting the importance of declaring this information to increase the safety of our workforces. Additionally, the definition of 'health' has recently been expanded to extend to psychological health and well as physical health, extending to sexual harassment.

¹³ <https://safetowork.com.au/sexual-harassment-taskforce-launched-for-mining/>

¹⁴ <https://www.safeworkaustralia.gov.au/topic/workplace-sexual-harassment>

¹⁵ <https://www.legislation.gov.au/Details/C2014C00002>, S28A

Recommendation 1:

Terminology used across the industry and Government is standardised for consistency and aligns with existing legislation.

The sexual harassment policies of multiple companies were assessed in the preparation of this submission, many of which are publicly available. All have a clarity that the Government's definitions lack, including a range of disciplinary measures that extend through to dismissal. Companies have established policy frameworks that clearly spell out expectations and the consequences of breaching those expectations. How these policies translate through the ranks of the organisational structure, is determined by a combination of factors including the company's culture, resourcing level, and scale.

Do existing workplace characteristics and practices – including but not limited to workplace cultures, rosters, drug and alcohol policies and recruitment practices – adequately protect against sexual harassment?

The shape of the mining and mineral exploration workplace is largely determined by geology. Mines are constructed where there are economically recoverable deposits. As a result, many sites are located in extremely remote locations far from supporting economic and social infrastructure. Due to the remoteness of these sites, a daily commute from a suburban hub is not feasible, leading to the creation of FIFO workcamps.

Workers are rostered onto shifts referred to as 'swings', and depending on the size of the operation, those on mine sites often have access to full amenities including dorms, recreational facilities, on-site sporting and entertainment. Smaller exploration operations will generally have small "fly camps".

Each company and site will have its own specific induction process and standard operating procedures. Embedded into many of these inductions, are education on company codes of conduct, whistle-blower policies, and policies relating to WHS and discrimination, harassment, and bullying.

How these policies and requirements are then understood by the workforce, is difficult to quantify.

Sexual harassment policies in the workplace

As outlined above, 72% of AMEC's survey respondents have company policies that specifically address sexual harassment, while 59% of respondents had WHS and sexual harassment policies which extend beyond the primary workplace, to other areas, for example work related events, travel, and rest periods.

Over 80% of respondent companies maintain records of reports of sexual harassment.

Relationships between workers

A key point of Industry discussions has been the difficulty in separating workplace incidents in the primary place of employment, from incidents involving employees outside of the workplace and work hours. Many workers socialise with colleagues beyond their typical work rosters. On a FIFO camp where crews work together for long stretches and have limited direct access to their external support networks, it was highlighted that the familiarity gained with those on the same swing (roster), could quickly highlight if any allegations of misconduct were made within the group, due to the close bonds formed.

However, contrastingly, it was also raised that in the event of a close-knit work crew, alleged victims may be less likely to come forward due to fear of judgement or disbelief and the close proximity in which they work with their alleged respondent.

Another grey area highlighted, has been consensual relationships between workers. It is not uncommon for consensual relations to occur, but when behaviour is inappropriate between these workers, it can create complexities in the management and handling of potential incidents.

Alcohol and illicit drug policies

Alcohol consumption on FIFO camps generates contention both within the sector, and externally in the media. While alcohol is a contributing factor to worker safety, it would not be prudent to attribute all workplace sexual harassment to alcohol alone. The vast majority of the workforce responsibly and respectfully consumes alcohol, within their permitted areas, and within their employee contractual obligations. Similarly, the vast majority of workplaces comply with the legally enforceable Responsible Service of Alcohol requirements.

Furthermore, unlike most Australian workplaces, all FIFO mining operations have stringent blood alcohol concentration (BAC) testing requirements. Employees are required to return a zero reading prior to the start of every shift, and face disciplinary action in the event a positive reading is returned. Across the sector, a zero-tolerance approach to illicit drug use is maintained and enforced.

As a respondent to AMEC's survey elaborated:

"The company is committed to providing a safe workplace for all its Employees and contractors. Fitness for work (FFW) is an integral part of this process. The company applies a zero tolerance for breach of FFW. Any breach of the FFW policy (including alcohol) is viewed as a "Serious Offence" and may lead to a First and Final Written Warning or termination of employment (with a notice period) depending on the severity / circumstances of the incident. Breath Alcohol Concentration (BAC) test prior to the beginning of every shift. Employees are not permitted to take their own alcohol to any company site but are allowed to consume alcohol in the Company's licenced premises according to Liquor Licensing laws."

The enforcing of dry (alcohol-free) camps for all FIFO operations encounters pragmatic difficulties. While some companies have dry camps, others do not. The effectiveness of the communications of a company's culture is a more proactive measure to encourage the responsible consumption of alcohol, and the discouragement of alcohol stockpiling.

Areas of heightened risk within the industry

There are certain roles and types of work within Industry where it is considered there may be a higher risk for sexual harassment to occur. We have received, through this Inquiry process, anecdotal feedback that underground mines are one such area which could face a higher risk. In a fully manufactured, dark environment, the type of mining work that occurs underground usually dictates that workers are one-on-one with another worker, for an extended period of time. This can exacerbate power disparities, heightened due to the close proximity of the workers. While some feedback has been received that the smaller crews in this environment are more tight-knit, with the health and safety of each worker reliant on their crew members, others have indicated this could create a

'protectionism' culture, where members are unwilling to call out unacceptable behaviour within their team, primarily for fear of a 'he-said-she-said' discussion across the team. The lack of granularity in available statistics makes it difficult to quantify these anecdotal assertions.

Some companies have explored the use of communications and tracking systems designed for underground applications to increase WHS in their underground operations. These can include software installed into equipment underground workers are required to have with them at all times, for specific and general safety purposes, allowing real-time and continuous tracking of people and assets. There are a range of technological advancements being explored in this area. The tracking software can serve as a preventative measure for sexual harassment in this setting, and also as a genuine safety improvement, to reduce the feeling of isolation that some underground mining workers have experienced, encouraging increased health and safety of workers and workplaces.

Another area of heightened risk can be mineral exploration sites, which typically consist of small groups travelling together to remote locations. The sites will often not have the same fixtures and established accommodation and support facilities of a producing mine, with primary accommodation often in dongas, swags or camping. The limited communications, transport, and facilities available to these smaller groups could present heightened risks, similar to those identified in underground mines. While potential measures companies can adopt to maintain safety in these areas of heightened risk will vary dependent on the size and scale of the operation, the more awareness and education there is across Industry as a whole, the more we can discourage unacceptable behaviour and increase safety across the sector.

Recommendation 2:

Government works with Industry to identify measures which can address the risk to safety of workers in underground mining and mineral exploration operations.

Reporting of sexual harassment

Many investigations and inquiries into the reporting of sexual harassment and assaults find that victims can be hesitant to report incidents for a number of reasons. They fear the impact that complaints may have on their reputation, career prospects and relationships, or a lack of subsequent actions can discourage reporting¹⁶. While some reasons would be outside the control of the workplace alone, a common finding that can be adequately addressed, is the ability to lodge reports anonymously. Victims of sexual harassment have identified a lack of anonymous reporting systems as a contributing reason to their allegations not being reported. Of the survey AMEC conducted to understand the prevalence of these unacceptable events in our industry, 36% of respondents did not have an anonymous reporting system in place. Of those that did, some considered they were under-utilised because people may be wary about the actual anonymity of the systems, which offer confidentiality rather than anonymity. Some have expressed concerns that a victim may still be identifiable as a source of a complaint or allegation due to the report's context regardless of how the confidentiality of the data was handled.

¹⁶ <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020#fn2>

A possible avenue to ensure not just confidentiality but anonymity, is the introduction of an anonymous integrity reporting platform (IRP) such as “Safe2Say”, developed by Crime Stoppers WA (CSWA).

CSWA is an independent, not-for-profit community organisation which works in partnership with the Western Australian Police Force (WAPF). An Impact Report into the effectiveness of CSWA found that 30% of people would not provide information to anyone if CSWA was not there. While many companies have internal systems which are said to be anonymous, the lack of reporting at a company level aligns with the global trend that workers have a lack of trust in internal company systems, and are hesitant to report instances of misconduct for fear of being traced and subject to retaliation.

CSWA have developed a platform which assures anonymity and confidentiality via a two-way IRP system, which for an annual fee of \$6,000 to a company, can provide those who wish to report alleged sexual harassment or assault incidents the ability to do so via a third-party. Safe2Say builds on CSWA experience and expertise to enhance employee wellbeing by providing an external, safe platform, operated by a trusted external third-party organisation, to report misconduct or inappropriate behaviour, beyond that of sexual harassment. Workers can anonymously report incidents and may choose to provide their details should they wish to be identified. Alternatively, they can choose to report selected information and withhold their identity. The organisation or their legal representative (if the company elects to have the platform externally managed) will receive a notification of a report and can offer support to the worker making the report (if they have chosen to identify themselves). The organisation can also ask for more information relating to the report through the platform, while still maintaining the anonymity of the reporter, including the option of real-time anonymous chat features, and can then take appropriate action and respond to the reporter. Safe2Say aligns with whistle-blower legislation and is a clear indication to workers that the organisation takes matters of misconduct seriously. We believe Safe2Say offers a solution to perceived concerns of anonymity which prevent misconduct being reported via existing frameworks.

Position 1:

Support the introduction of an anonymous integrity reporting platform (IRP), such as Crime Stoppers WA (CSWA)’s “Safe2Say” platform, or comparable platforms.

Recruitment practices

As identified by the recent Western Australian Premier’s Skills summit, Western Australia is facing not just a skills shortage, but a labour shortage across all industries. The realities of COVID-19 related border controls, both Federal and interstate, mean it is extremely difficult to find employees who are willing to work FIFO, particularly across much needed skill sets.

Given the heightened demand for workers and significant skills shortage experienced across all industries in Western Australia, the ability for those who are dismissed from one workplace, to enter another workplace instantly, is high.

However, due to privacy and security laws, companies are unable to supply details of dismissal or internal investigations. This means that perpetrators of unacceptable behaviour are able to move between workplaces.

The turnover across companies is higher than normal due to employees being able to secure higher wages across certain commodities. This lack of staff and recruitment urgency to continue operations can often lead to compromises on the assessment of a person's background. Given the transient nature of the roles and type of work available, Police checks should identify to companies, individuals who would not be suited to the company's roles and expectations. We note that this will not include incidents which are subject to ongoing investigations or intersect with other legislative requirements, but it can present an avenue by which employers can make informed recruitment decisions.

A mandatory Police check for workers will provide an additional element of oversight beyond what is currently in place for most roles in our sector by ensuring criminal matters are highlighted in pre-employment, and individuals with records which are unsuitable for the nature of FIFO work, are not inadvertently placed into avoidable situations. Given the number of workers across Industry in WA, both full time employees (FTE) and contactors working in and for the industry, we acknowledge this will place a significant burden on companies and Police.

Recommendation 3:

Government works with Industry to consider the practicalities and effectiveness of introducing mandatory Police checks for all Industry workers.

Recommendation 4:

The Inquiry considers how incidents of sexual harassment can be reported on to future employers.

Are current legislation, regulations, policies, and practices adequate for FIFO workplaces in Western Australia?

WHS laws are intended to eliminate or minimise risks to the health and safety of workers. Sexual harassment is not defined as a specific workplace health and safety risk, but falls within the legal requirements pertaining to WHS, and under the application of psychosocial hazards.

SWA defines psychosocial hazards or factors as "anything in the design or management of work that increases the risk of work-related stress.¹⁷". DMIRS stipulates that sexual harassment and associated injuries fall under the category of psychosocial hazard for reporting purposes. To protect confidentiality, sexual harassment incidents can be reported as psychosocial hazard exposure, and if chosen, can be discussed with DMIRS privately. 80% of AMEC's survey respondents recognised sexual harassment in the workplace as a psychosocial factor.

Mines Safety and Inspection Act 1994 (MSI Act) obligations

The MSI Act legislates that employers with employees at mining operations must, so far as practicable, provide and maintain work environments, where workers are not exposed to hazards. The obligations include minimising the risk of exposure to psychosocial hazards at the mine site, and meeting statutory internal and external reporting requirements.

¹⁷ https://www.safeworkaustralia.gov.au/system/files/documents/1911/work-related_psychological_health_and_safety_a_systematic_approach_to_meeting_your_duties.pdf pg 9

In accordance with definitions provided in sections 76, 78 and 79 of the MSI Act, all injuries, accidents, and occurrences, including psychological injuries and psychosocial hazard exposures, are notified to the District Inspector.

Section 11 of the MSI Act requires all potentially serious occurrences and hazards identified to be reported to the Registered Manager or their designated person, and the Registered Manager must investigate all reports, determine actions to be taken in response, and provide feedback to the reporting person, as per section 11A.

Section 77 requires any accident at a mine to be entered into the accident logbook, which must be kept open at all reasonable times to the inspection of an inspector, health and safety representative at a mine, and a representative of any trade union of any employee at the mine. This poses a significant risk to confidentiality.

Failure to meet these obligations is an offence. However, the majority of injuries arising from sexual harassment related circumstances are not visible, thus are difficult to assess or evidence. This also makes it challenging for a Registered Manager to determine the course of action to take, dependent on the injury, which is often not physical, but psychological, and the level of impact will vary dependent on the circumstances of the individual and the situation.

WA's new WHS Regulatory Framework

Western Australia is currently undergoing work to transition to the Model WHS legislation, the *Work Health and Safety Act 2020* (WHS Act) to replace the current *Occupational Safety and Health Act 1984* (OSH Act), and the Work Health and Safety Regulations, set for commencement on 1 January 2022. This work is being led by DMIRS, with input from Industry via the Mining Industry Advisory Committee (MIAC), of which AMEC and other peak bodies are members and active participants. Under the model WHS laws, persons conducting a business or undertaking (PCBUs) are required to ensure workers and others are not exposed to risks to their health and safety; these risks include sexual harassment.

The new legislation, associated codes of practice and guidance materials will coincide with the MSI Act, the *Safety Levies Amendment Act 2020* (Levies Act) (amends the MSI Act), and the Model WHS General Regulations. Other legislative frameworks not directly related to the Industry, but that must be complied with, include Criminal laws such as the *Criminal Code 1913*, anti-discrimination laws, Sex Discrimination Act, *Fair Work Act 2009*, *Privacy Act 1998* (Cwlth).

The new WHS framework provides a comprehensive and modern way of regulating WHS in Western Australia. We would caution against introducing additional legislative amendments beyond those currently underway, given the complexity and overlap already experienced between existing frameworks. We consider the development and education of more non-statutory guidance materials to be a more effective and pragmatic approach.

Persons conducting a business or undertaking (PCBU) duties

As legislated, a PCBU, or an employer, has the primary duty to ensure, so far as is reasonably practicable, workers and other people are not exposed to psychological health and safety risks arising

from the business or undertaking. This duty requires risk management, via eliminating and / or minimising exposure to psychosocial hazards so far as is reasonably practicable¹⁸.

An officer of a PCBU, has the duty to exercise due diligence to ensure the PCBU is compliant with their duties, including ensuring the business or undertaking has and uses appropriate resources and processes to eliminate or minimise risks to psychological health. Workers have a duty to take reasonable care for their own health and safety, and to not adversely affect the health and safety of others. They must comply with reasonable instructions as far as reasonably able, and cooperate with reasonable health and safety policies and procedures that have been notified to workers. The interpretation of 'reasonable' is an important one; reasonable isn't a one size fits all approach, it requires the demonstration of proactive steps particular to the size and nature of the operation.

Reporting of incidents

Notifiable incidents will be reported under the WHS Act, extending to a psychosocial injury if the person is required to have immediate treatment as an in-patient in a hospital, is required to be transferred from a remote location to a medical facility for urgent treatment, and in the opinion of the medical practitioner, the person will be prevented from undertaking their normal work for at least 10 days after the day on which the injury or illness occurs.

The pending WHS Regulations detailing mining workplace specific notifiable injuries and incidents are yet to be seen but are expected imminently. They should promote the reporting of psychosocial injuries in a more robust manner than is currently required under the MSI Act. The WHS Act defines workplaces to include work adjacent settings, which includes accommodation sites as part of the workplace. These changes will present a more robust reporting system, but still leave a large area of duplication and grey-area interpretation questions unanswered.

WHS reporting – how is sexual harassment acknowledged?

Acknowledging sexual harassment as a WHS issue, subject to similar language used in terms of 'near misses', 'risks' and 'incidents', will encourage the view across the sector, that sexual harassment constitutes a WHS risk, therefore should be treated with the same level of seriousness as a workplace safety risk.

Industry already has stringent WHS reporting requirements which are complied with. The actions of companies in addressing these requirements leads to our industry's consideration as a leading WHS sector. However, acknowledgement of the seriousness of risks sexual harassment poses to workers, teams, and workplaces as a whole, through the provision of more guidance materials, can be an effective preventative measure implemented across Industry, to align with legislative requirements.

¹⁸ https://www.safeworkaustralia.gov.au/system/files/documents/1911/work-related_psychological_health_and_safety_a_systematic_approach_to_meeting_your_duties.pdf

Recommendation 5:

Development of non-statutory guidance material by SWA and DMIRS, in consultation with Industry, to support Industry with sexual harassment incident response process templates. These should be incorporated into the induction and training of all workers.

Improved definitions of sexual harassment and harassment on the ground of sex

One of the Respect@Work recommendations was to introduce 'harassment on the ground of sex' to address behaviours that do not currently fit within existing harassment and / or discrimination frameworks. AMEC considers that with more guidance material to improve sector-wide awareness of what constitutes acceptable behaviour and what could be considered harassment on the ground of sex, what this behaviour actually constitutes will become more transparent. The introduction of such a clause to the Commonwealth Sex Discrimination Act could be a potential avenue for this legislative addition to fit within an existing Act, and the development of non-statutory guidance could provide a more consistent understanding of what this behaviour entails.

Another Respect@Work recommendation to introduce protections for employers if sexual harassment is considered a valid reason for dismissal, where due process is followed, is also broadly supported by AMEC. These changes should provide employers across Industry with confidence that they are protected by legal frameworks for undertaking disciplinary action in response to sexual harassment, to reinforce the Industry's zero tolerance approach to sexual harassment.

Recommendation 6

Development of non-statutory guidance on Commonwealth harassment on the ground of sex legislation, if introduced.

Whistle-blower legislation

Under the Commonwealth Government's *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Whistle-blower Act) and the *Corporations Act 2001* (Corporations Act), administered by the Australian Securities Investment Commission (ASIC), employers have a duty to provide whistle-blower policies and protections. All public companies must have a whistle-blower policy, which is a positive proactive legislative provision to enable whistle-blowers to identify and report misconduct and harm.

Whistle-blowers have legal rights and protections as legislated under these Acts, to handle the whistle-blower report correctly. Many companies have designated "Whistle-blower Protection Officer/s" to enable investigation of the report while protecting the confidentiality of the whistle-blower. Whistle-blower protections include criminal offences and civil penalties for a person causing or threatening to cause detriment to a whistle-blower, or breaching a whistle-blower's confidentiality, including during investigations into the whistle-blower's claims¹⁹. These policies should be available to all employees at any time and are typically informed of during the induction process. It is important that all employees are able to easily access policy frameworks they can refer to and utilise, beyond their initial induction.

¹⁹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>

The importance of leadership

The importance of training for supervisors and management position holders to receive, respond to, address, and maintain unbiased yet supportive leadership, cannot be understated. These position holders have legislated duties, but beyond that, are often leaders within the organisation, and should be well equipped to have difficult conversations with staff, other leaders, and regulatory bodies.

However, a lot of this skillset comes down to previous experience, values, and the culture of the organisation in regard to training and development. There are many external course providers who facilitate people management training, mental health first aid courses, and leadership courses. Many of these recognise the importance of effective communication and different management styles.

There are no WA Government preferred or mandatory courses for Industry leaders to undertake, nor courses that are preferred for managing and responding to workplace sexual harassment. This could be an avenue where DMIRS and SWA could identify or provide training via workshops, briefing sessions and regular Industry forums, to equip supervisors with methods to deal with these important issues, which have the potential to severely impact their workers and workplaces. It is important this knowledge is then conveyed to the wider workforce through regular training, cultural awareness programs, and induction processes.

Recommendation 7:

DMIRS and SWA facilitates leadership training with a specific focus on sexual harassment, in consultation with industry.

Standalone policy for sexual harassment

AMEC's survey found that of respondents, almost 72% of companies have a specific 'sexual harassment and / or sexual assault in the workplace policy', but 28% do not. For these companies it is covered under other policies. Awareness is critically important. While many have heard of sexual harassment, their understanding of the issue, and of their company's stance on the issue, needs to be given attention. Currently, companies that don't already have standalone policies include sexual harassment in their code of conduct, as part of the broader suite of workplace policies (including bullying and harassment policies) or are working towards developing such policies.

Companies have a willingness to incorporate standalone policies and complaints procedures but would benefit from templates and resources to develop these tools, being readily available.

AMEC would support specific policies ruling out workplace sexual harassment being created across Industry to provide more visibility of the importance of maintaining safe workplaces, with a baseline standard template being provided by DMIRS / SWA. This should be supported by a proper reporting framework outside of the MSI Act. This policy should be clearly communicated to all levels of employees, and they should be informed how to access policies and the support and tools available to them, should they be required.

Recommendation 8

DMIRS and SWA develops and publishes standalone sexual harassment policies and process templates, in consultation with Industry.

Steps that would be useful to include in a process template for companies include:

- Ensure sexual harassment policies and procedures are in place and discussed with employees
- Correctly identify the claim as a sexual harassment claim
- Take all reasonable steps to protect the claimant and immediately investigate the claim
- Make detailed notes throughout the investigation, and document all correspondence and communications
- Offer support to all affected parties, particularly the claimant and the respondent
- Ensure procedural fairness throughout the process, and provide opportunities to the respondent to respond to the claim(s)
- Protect the interests of all parties by maintaining confidentiality to the extent that is possible

What actions are being taken by Industry and Government to improve the situation and are there any examples of good practice?

SWA has developed and recently updated its guidance materials on workplace sexual harassment, extending to the provision of advice for smaller businesses in meeting their WHS duties. When updated, this information was distributed to AMEC’s Safety Committee, a standing committee comprised of member companies who have nominated to be involved, as an identification of Government-developed resources to improve the health and safety of our industry’s workplaces. Through these materials, a recommended approach to managing and / or eliminating risks posed by sexual harassment in the workplace was a 4-step methodology, involving:

1. Identifying hazards
2. assessing risks, if necessary
3. controlling risks
4. reviewing hazards and control measures to ensure they are working as planned.

AMEC considers that a broader implementation of SWA’s Workplace sexual harassment suite of information, from general distribution to companies, and advice on how companies can effectively implement and monitor the effectiveness of these resources, would be a positive next step from the Inquiry. The resources are an excellent starting point, published by a reputable, independent body, acknowledging but distinguishing from the role of the regulator.

Additionally, the 1800RESPECT²⁰ phone service is Australia’s national sexual assault, domestic and family violence counselling service. Callers can access confidential information, counselling, and support, available 24/7, to support people impacted by sexual assault, domestic or family violence and abuse. Funded by the Commonwealth Government’s Department of Social Services, the phone line is intended to be used by people experiencing, or at risk of experiencing sexual assault, domestic or family violence, their friends and family, and workers and professionals supporting someone experiencing, or at risk of experiencing any of these. There is existing support available, but Industry’s awareness of such services may currently be limited.

²⁰ <https://www.1800respect.org.au/>

Position 2

Awareness raised across the Industry of access to support systems, including the 1800RESPECT phone service.

Company culture – policy implementation from the top-down

Through our discussions about general WHS issues and those directly focussed on the Inquiry, AMEC has received consistent feedback across Industry that frontline leadership is the biggest contributor to a company's culture, and ultimately, the adoption of its policies and procedures. Leaders who are approachable and supportive, encourage workers to report potential issues.

The more open and transparent conversations that can be had between workers and leaders, and when workers can see actions resulting from these conversations, the higher the likelihood that incidents will be reported. Policies and procedures exist for many WHS issues across all companies, but their level of understanding, implementation and how they work in practice, varies.

There needs to be a collaborative acceptance of company values and culture, rather than one that is top-down and dissipates through the organisational structure. It is through effective leadership we see positive and collaborative company cultures, where workers experience more of a sense of community, and there can be a shared understanding of what is acceptable behaviour and what is not.

Despite effective leadership and trusted points of contact who complaints can be made to, there will always be a need for anonymous reporting systems in place, as some workers, regardless of the company culture, will want to protect their identity and notify workplaces of incidents, without having to identify themselves. Leaders will still play an important role when these frameworks exist, by informing staff of the support systems available to them, and consistently reinforcing this knowledge and the availability of support.

Identifying key personnel reports can be made to

Due to the variety of policies and frameworks that already exist or are being amended, it is difficult to determine best practice in terms of reporting frameworks. Having specific position holders identified as the key internal personnel alleged incidents or complaints should be reported to would be a suitable solution for a larger company. The availability of male and female leaders within the organisation to be established trusted points of contact (contact officers) is likely to offer a sense of comfort to those who are in the distressed state of needing to make a complaint, or formally / informally discuss a potential incident. The training of these position holders to know how to respond to complaints, is imperative.

For smaller teams such as those of FIFO mineral exploration companies, this can be more challenging as the resourcing does not always allow for the structures and formal position holders that traditional mining operators would have. In terms of contractors, it is important that they are well informed as to who they should speak to, whether it is their contract service provider company, or the management of the company they are contracted to work at. This broader training can be addressed through guidance materials.

Position 3:

Companies identify internal personnel (both male and female) to become dedicated contact officers, reports of sexual harassment can be made to.

Physical measures companies can implement to increase onsite security

Crime Prevention through Environmental Design²¹ applies architectural design and management of built and natural environments to prevent crime. These architectural principles have underpinned the deliberative planning designs of companies who have recently constructed FIFO mine sites with on-site accommodation facilities. The design improvements include increased floodlighting to accommodation and shared facilities, separated female gyms from male gyms, ensuring high-quality locks are installed onto each accommodation room's door, and security monitoring. The presence of increased lighting, surveillance cameras and more on-site security (liaison officers), are considered to be deterrents to sexual harassment. These proactive measures can be readily implemented at all sites, who are identified to not have adequate lighting already in place, to meet a baseline requirement. In order to identify physical security measures which could be introduced, FIFO accommodation facilities should undergo a sexual harassment risk assessment at regular intervals.

Position 4

FIFO accommodation facilities undergo a risk assessment for sexual harassment, as a baseline, ensuring there is adequate lighting and high-quality locks installed on each accommodation door..

Employee Assistance Programs (EAP)

The availability of EAPs provide a welcome, confidential form of support to the workforce. Some companies provide access to these services, typically communicated to staff during the induction process, and information can be accessed via HR teams, supervisors, online resources, or are advertised via displays in the workplace. The availability of third-party support via an EAP is a progressive measure more companies could adopt, to ensure their staff can access support without having to alert the workplace, should they require confidentiality.

The EAP is also an important support for victims and respondents to sexual harassment claims. Ensuring fair treatment of all parties involved is a difficult, but important aspect of management. An EAP is a tool that exists to assist in this area, and can provide a welcome, external form of support that comes at no cost to employees. Importantly, it is another avenue of support for employees who do not wish to report their encounters but should have support accessible to them that they are aware of, and can confidentially access.

Position 5:

All companies with a FIFO mining workforce should provide access to an external EAP for employees.

²¹ <https://www.cpted.net/>

Incident Response Framework

Queensland's resources sector has introduced the Trigger Action Response Plans (TARPs) framework as an integral part of Principal Hazard Management Plans and emergency response preparedness. TARPS are predetermined actions tied to specific trigger levels or events²². They utilise the traffic light system, with the associated response measures dependent on the scale of the incident.

The availability of a similar framework, developed by Industry and the regulator, in conjunction with SWA, could provide companies, workers and officials with a specific plan to follow in the event of an alleged incident. While some companies would already have plans in place, not all of them would. This could be an important inclusion in non-statutory guidance resources available to the industry, that would encourage carefully considered actions be undertaken, in line with regulatory requirements. The scale could accommodate incidents that wish to be formally reported, those that are not formally reported, or those that are anonymously lodged.

Investigation outcomes

Industry has indicated that the sharing of outcomes from reports and investigations would be welcome to improve performance, both within the Company and with DMIRS. However, there is acknowledgement that maintaining the requested confidentiality and anonymity of involved parties and complying with the requirements of existing legislation relating to reporting and investigations of such incidents must be a priority. The sharing of outcomes and investigation findings will reinforce to workers and regulators, behaviours the Company finds unacceptable, so as to discourage them from occurring again, due to increased informal training and awareness.

The reporting of "near misses", (unplanned events, that do not result in an injury or damage but could potentially have done so), is a common practice in the WA mining and mineral exploration sector. It is encouraged as a method of ensuring Industry can learn from each other. Reporting of near misses of sexual harassment incidents in a similar manner as is done for WHS risks, will not only elevate the consideration of sexual harassment as a WHS concern, but can also facilitate the addressing of risks.

Final comment

Eliminating sexual harassment incidents in Western Australia's FIFO mining industry is a priority for the mining and mineral exploration sector. The journey we are on to eliminate and prevent workplace sexual harassment is not a new one, nor one that is unique to the FIFO mining industry in WA.

As we have previously noted, AMEC considers that sexual harassment, discrimination, harassment, and bullying are unacceptable in any workplace. The majority of our member companies have already undertaken proactive steps to address the safety of their workers and workplaces that exceed legislative requirements, subject to periodic review, acknowledging the large impact sexual

²² https://www.resources.qld.gov.au/_data/assets/pdf_file/0020/240374/recognised-standard-08.pdf

harassment can have on individuals, teams, and a company's culture. Preventive measures are inherently important, but support for all parties involved in an alleged incident is equally important.

Our submission details a number of recommendations and positions which can be implemented across Industry, with flexibility to suit the different scales and nature of operations of the large variety of companies operating in and for our mineral exploration industry. Aligning with the recommendations of the Australian Human Rights Commission's Respect@Work Report, and the Australian Government's roadmap response, these recommendations are specific to our industry, but can be more broadly implemented.

AMEC also supports the submissions of the Australian Petroleum Production & Exploration Association (APPEA) and the Chamber of Minerals and Energy (CME) respectively.

AMEC would welcome opportunities to work together, with Industry, other Industry associations, and the Government, to ensure we are well equipped to ensure the safety of our workers and workplaces, by introducing pragmatic, effective measures to prevent future incidents of sexual harassment.

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