



*An inquiry into sexual harassment against  
women in the FIFO mining industry*

Submission to the  
Community Development and Justice Standing Committee

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## About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia (WA). CME is funded by member companies responsible for more than 88 per cent of the State's mineral and energy workforce employment.<sup>1</sup>

In 2020, the WA mineral and petroleum industry reported a record value of \$174 billion.<sup>2</sup> Iron ore is currently the State's most valuable commodity at \$116 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at \$27 billion, with gold third at an all-time high of \$17 billion.

The value of royalties received from the sector totalled \$9.3 billion in 2019-20,<sup>3</sup> accounting for 28.8 per cent of general government revenue.<sup>4</sup> Now accounting for 47 per cent of the State's total industry Gross Value Added,<sup>5</sup> the sector is a significant contributor to local, State and Australian economies.

## Introduction

Ensuring the health and safety of people working in the resource sector is the utmost priority for CME and our member companies. The resources industry is committed to actively engaging and participating fully in the Parliamentary Inquiry announced into sexual harassment against women in the FIFO mining industry (the Inquiry).

The issue of workplace sexual harassment in our industry has been brought into sharper focus over the past 18 months further to the release of the Australian Human Rights Commission's [Respect@Work: Sexual Harassment National Inquiry Report 2020](#) (the Respect@Work report), and more recently, the extremely concerning reports published in the WA media.<sup>6</sup>

Rape and other forms of sexual assault, and sexual harassment are extremely serious and totally unacceptable in any context. They are unlawful and have a profound impact on those affected. The sector takes our role in addressing these issues very seriously, and is committed to eliminating these behaviours from our workplaces and ensuring all workers are kept safe from harm.

Our industry has long been recognised for our risk management approach and ability to respond rapidly and effectively to work health and safety risks. As outlined in the below submission, in parallel to the Inquiry, CME and its member companies are undertaking our own efforts to implement specific further measures to protect the safety of our people. This includes industry activities through CME's Safe and Respectful Behaviours Working Group involving senior work health and safety and diversity and inclusion representatives from a range of member companies, with the ongoing support of the CME Advisory Board. Key short-term initiatives include the adoption of the Minerals Council of Australia (MCA) Industry Code on Eliminating Sexual Harassment<sup>7</sup> and the development of a supporting Implementation Framework and Industry Standards to set clear standards of behaviour across industry and assist companies to implement a wide range of safety controls specific to these risks.

CME is committed to actively engaging and participating fully in the Inquiry which will be integral in continuing to sharpen the focus on this important issue to the sector and the wider community. Industry welcomes evidence-based and practical recommendations from the Inquiry to assist the sector to enhance risk mitigation strategies and achieve safer outcomes.

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<sup>1</sup> Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, 2020 *Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 1 April 2021.

<sup>2</sup> Government of Western Australia, *Latest statistics release: Mineral and petroleum review 2020*, Department of Mines, Industry Regulation and Safety, 1 April 2021.

<sup>3</sup> Government of Western Australia, 2019-20 *Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

<sup>4</sup> Government of Western Australia, 2019-20 *Annual report on State finances*, Department of Treasury, 25 September 2020.

<sup>5</sup> Cassells, R. *et al*, *BCEC Quarterly economic commentary*, Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

<sup>6</sup> Australian Human Rights Commission, 2020. [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#). Sydney: Australian Human Rights Commission.

<sup>7</sup> Minerals Council of Australia, [Industry Code on Eliminating Sexual Harassment](#), Canberra, ACT, March 2021.

## Summary of positions and recommendations

A summary of recommendations and positions is included below, with further supporting detail outlined in this submission.

- Industry welcomes evidence-based and practical recommendations from the Inquiry to assist the sector to enhance risk mitigation strategies and achieve safer outcomes.
- The sector is committed to diversity and inclusion and the health and safety (both physical and psychological) of our people and continues to actively engage in these policy areas and invest significantly in workplace initiatives. Recent developments such as the Respect@Work Report and concerning reports have highlighted the need for a sharpened focus as it relates to workplace sexual harassment.
- It is acknowledged that the sector has a further way to go in eliminating these behaviours. With the support of industry associations, the sector is taking specific steps to meaningfully address these issues and collectively lift the standard through industry-wide initiatives. These include the adoption of a national Code of Conduct, and supporting industry implementation framework and standards.
- Acknowledging the evidence-base on successful safe and respectful workplace initiatives is evolving, CME is aware of a wide-range of good practice initiatives currently in place or being developed by specific companies. A range of these are included in the submission.
- CME supports a holistic, coordinated and risk-based approach to managing risks associated with workplace sexual harassment.
- CME recommends the Committee recognise the importance of a skilled WHS inspectorate with adequate resources to manage the increasing focus on this area, balanced across their compliance and enforcement and education regulatory functions.
- The legislative framework, taking into account imminent legislative changes, is appropriate. However, there is a lack of clarity on reporting obligations across jurisdictions. Industry would benefit from regulator guidance across jurisdictions to provide greater clarity and consistency on reporting requirements.
- CME considers there is an increasing understanding of the prevalence of sexual harassment in the sector. Ongoing work is needed to continue to foster positive reporting cultures.
- CME recommends the Committee recognise workplace gender diversity is a protective factor against workplace sexual harassment.
- The resource sector is committed to addressing cultural challenges in our sector associated with sexual harassment.
- All CME member companies have alcohol policies in place to set boundaries on the use of alcohol on their operations. These are regularly reviewed in the context of the latest evidence and information.
- CME is not aware of evidence-based links between roster length and sexual harassment reports and would not support added prescription regarding roster lengths or patterns in response to this Inquiry.

## Context

For several decades, but particularly over the past 20 years, the WA resources sector has invested significantly in developing a more inclusive and diverse work environment. Since 2011, CME has conducted a biennial diversity survey and reported these results through the WA Resources Sector Diversity Report (the Diversity Report). The 2019 Diversity Report found women's representation to be 20.3%, with the greatest number of women working in professional roles (at 38%). Indigenous participation rates also increased in that reporting year to 4.7%, well above the overall state average of 1.9%.<sup>8</sup>

The health and safety of our people is the number one priority of the WA resources sector. The WA resources sector is recognised as a world leader in health and safety management. Companies strive to achieve their "zero harm" ambition every single day, which drives the sector's continuous improvement approach to health and safety. This approach has seen significant improvements in safety incidents over time. The sector takes a risk-based approach to managing work health and safety (WHS) hazards. Our comprehensive and effective response to managing health risks associated with the recent COVID-19 global pandemic is a good example of the effectiveness of this approach.

In more recent times, consideration of WHS risk management has shifted from a focus on managing more 'traditional' physical safety hazards to recognise and respond to wider health-based hazards, particularly with respect to psychosocial hazards. Our commitment to ensure psychological safety is driven from the level of CME's Advisory Board down, who continue to recognise mental health and wellbeing in particular as a high-priority policy area.

CME formed the Mental Health Working Group (MHWG) in 2013 to lead related responses to psychosocial health and wellbeing and share best practices in the area. In 2015, CME released the Blueprint for Mental Health and Wellbeing, a continuous improvement framework for promoting wellbeing and reducing the risks and impacts of mental illness. The 2015 Parliamentary Inquiry into the mental health of FIFO workers was also significant in guiding focus on mental health in the workplace in our sector. CME is actively involved in relevant ongoing projects through groups such as the Mining Industry Advisory Committee (MIAC) and Commission for Occupational Safety and Health (COSH), including the significant WHS legislative reforms of the new Work Health and Safety Act 2020 (WHS Act) and supporting regulations, likely to commence from January 2022.

Both groups play key roles in projects specific to psychosocial health, including the development of the [Code of Practice – Mentally Healthy Workplaces for fly-in fly-out \(FIFO\) workers in the resources and construction sectors](#) (the FIFO Code). More recently, CME has contributed through these groups to the draft [Code of Practice – Workplace Behaviours](#), which as of the time of this submission, is out for public comment. Following on from the work of the FIFO Code, a similar draft Code designed to apply to general industries under the Occupational Safety and Health Act 1984 ([Psychosocial Hazards in the Workplace](#)) was released for public consultation this on 11 August 2021.

The resource sector continues to take a proactive approach to mental health and wellbeing based on the latest evidence and information in this evolving area. For example, in response to the 2018 Curtin Research project [Impacts of FIFO work arrangements on the mental health and wellbeing of FIFO workers](#), CME engaged in a proactive partnership with Lifeline WA (Lifeline) to consolidate and develop a suite of industry-specific tools to support organisations as they continue to improve their strategies. The work of this partnership includes the [Resourceful Life](#) series developed during the COVID-19 pandemic to share information on best practices and supports. Most recently, CME has worked with Lifeline to develop [Resourceful Mind](#), a peer-support program designed specifically for the resources sector.

The Respect@Work report was released on 5 March 2020, just prior to workplaces (and society) being unprecedentedly impacted as a result of the COVID-19 pandemic. As outlined in the report, sexual harassment is unlawful in the employment context under both State equal opportunity and Federal anti-discrimination legislation. The federal Sex Discrimination Act 1984 and WA Equal Opportunity Act 1964 defines sexual harassment as unlawful. It is also commonly addressed by workplace policies. The report also found that because WHS law imposes a duty to eliminate or manage hazards and defines risks to a worker's health to include psychosocial health, this also applies to sexual harassment.

Concerningly, the report found workplace harassment was prevalent and pervasive: occurring "in every industry, in every location and at every level in Australia workplaces". The 2018 National Survey revealed almost two in five women (39%) and just over one in four men (26%) reported experiencing sexual harassment in the workplace in the previous five years. While sexual harassment is not specifically a women's issue, rather

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<sup>8</sup> The Chamber of Minerals and Energy of WA (CME), [Diversity in the Western Australian Resources Sector 2019 Report](#).

it is a societal issue, the report found that women along with other social groups are more likely to experience harassment than other workers. These vulnerable groups include young workers, LGBTQI workers, Aboriginal or Torres Strait Islander workers, workers with disabilities, workers from culturally and linguistically diverse backgrounds, migrant workers and people working in arrangements described as ‘precarious’ or ‘insecure’.

Our sector was identified in the report as being at higher risk of recording incidents of sexual harassment. The Respect@Work report found that workplace settings where there is a higher risk of experiencing sexual harassment include industries dominated by men (through gender ratio, representation in leadership, the nature of the work being considered traditionally masculine or of a masculine culture); where there is high contact with third parties (such as customers); and where there is a significant structural authority or a hierarchical organisational structure. Further, the report notes particular risks in rural, regional and remote areas that arise from lower population density. At the core of the report’s findings is nexus of power disparity resulting from inequality as being a key driver of harassment, discrimination and disadvantage. In total, the report made 55 recommendations, including continued focus, prevention strategies, changes to the legal and regulatory framework, improvement of response, and providing support and advocacy.

The Commonwealth Government has released its response to the Report and already progressed a number of recommendations. As the first step, legislative amendments to strengthen the national anti-discrimination framework and enhance protections for complainants have been tabled in the Australian Parliament. The *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* was referred to the Education and Employment Legislation Committee (Senate Inquiry) in July with a report tabled on 6 August. The Committee has recommended the passage of the legislation<sup>9</sup>. Safe Work Australia (SWA) has also released a suite of guidance.

**The sector is committed to diversity and inclusion and the health and safety (both physical and psychological) of our people and continues to actively engage in these policy areas and invest significantly in workplace initiatives. Recent developments such as the Respect@Work Report and concerning reports have highlighted the need for a sharpened focus as it relates to workplace sexual harassment.**

## Inquiry Terms of Reference

A summary of CME’s response against the Inquiry’s Terms of Reference is included below, with further supporting detail outlined in the following submission.

Terms of reference	Summary CME response
i. Is there a clear understanding of the prevalence, nature, outcomes and reporting of sexual harassment in FIFO workplaces?	<p>There is an increasing understanding of the prevalence and nature of sexual harassment in FIFO workplaces in WA.</p> <p>Since the Respect@Work report was published, member companies have taken steps to seek to gain a greater appreciation of the prevalence and nature of sexual harassment through engaging in active consultation with their FIFO workers.</p> <p>CME otherwise supports the recommendations made in the Respect@Work report, particularly recommendations 2 and 3, which would assist with deepening the industry’s understanding of these matters, including outcomes and reporting.</p>
ii. 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?	<p>CME and its member companies recognise that, as set out in the Respect@Work report, there are heightened risk factors for sexual harassment within mining workplaces, such as workplace gender ratio, atypical jobs performed by women and remote locations.</p> <p>CME and its member companies also recognise that factors such as alcohol use and the residential nature of FIFO work are risk factors that must be managed.</p> <p>The management of these risk factors is multi-faceted. It can be complex, involving implementing a broad range of controls from visible leadership through to workplace policies, education and training and enforcement of standards.</p>

<sup>9</sup> The Senate, Education and Employment Legislation Committee, [Sex Discrimination and Fair Work \(Respect at Work\) Amendment Bill 2021- Committee Report](#), August 2021

<p>iii. Are current legislation, regulations, policies and practices adequate for FIFO workplaces in Western Australia?</p>	<p>CME considers the modernised WHS framework that will prospectively apply from January 2022 with the commencement of the new WHS Act, is appropriate and more explicit than the current MSIA regarding workplace sexual harassment.</p> <p>CME considers the increased focus on the issue as a WHS matter has the potential to result in improved outcomes provided a victim-centric and risk-based approach is taken.</p> <p>CME also notes the report of the Federal Senate Inquiry. The Senate Inquiry considered the adequacy of the changes proposed to the Fair Work Act 2009 (Cth) and the Sex Discrimination Act 1984 (Cth) (SDA) in response to the Respect@Work report.</p> <p>To the extent that one of the outcomes following the Federal Senate Inquiry is ultimately to amend the SDA to include a positive duty to require employers to take reasonable and proportionate measures to eliminate sexual harassment, CME supports this outcome.</p> <p>CME members support greater focus in the area of regulatory reform, however recommends that any work following the report of the Federal Senate Inquiry should be completed, and any other nationally applicable legislation, before WA itself makes changes in the sector or more generally.</p> <p>CME notes that in the most serious of cases, there is no positive obligation imposed on companies or individuals to report such matters to the Police (this being at the discretion of the victim). In these circumstances, escalating the matter to an external party, such as DMIRS, may be contrary to the victim's strong wishes and has the considerable consequence of exposing the worker to a risk to their psychological health and safety.</p> <p>CME considers industry could benefit from clear guidance on WHS reporting requirements that take into account both legislative requirements and the real human factors that persist in this area such as the wishes of victims and principles of fairness where matters are not yet substantiated.</p>
<p>iv. What actions are being taken by industry and the government to improve the situation and are there any examples of good practice.</p>	<p>There are many examples of good practices being taken by industry to further minimise the risks to workers at FIFO workplaces. These are set out in the below submission.</p>

## Terms of Reference (iv) Steps Industry is taking and examples of good practice

Industry as a whole has been taking active steps to address sexual harassment, and safe and respectful behaviours more broadly, in the workplace for some time. The response to the release of the Respect@Work, more recent media reports and this Inquiry, have been brought these issues into sharper focus for all employers and employees.

As part of canvassing industry feedback in response to the Inquiry, CME's member companies provided a range of information on initiatives and best practice approaches both currently underway or being planned within their organisations.

This information is discussed in the below section of the submission.

### Role of industry associations

Despite the examples provided later in this section, it is acknowledged that the sector has a further way to go in eliminating these behaviours. CME considers industry associations have a role to play in supporting members to drive collaboration and best practice management of sexual harassment.

CME, through our WHS Committee, has long had a strategic objective to share information on best practice health and safety initiatives recognising an organisation's ability to improve what they do is dependent on learning lessons from the past and others. The sector's response to the COVID-19 global pandemic is a

relevant example of collaboration and sharing of best practice initiatives in response to an emerging, serious health and safety risk. This approach to openly sharing learnings is forming a key part of the industry response to sexual harassment in our workplaces.

At a national level, the MCA formed a Respect@Work Taskforce to assist the Australian mining sector in responding to the recommendations of the national Respect@Work report. Through this group, the MCA has developed and released an industry Code of Conduct, Policy, and Position Statement. CME has provided support to this work through its membership in MCA's National Health and Safety Working Group.

As part of CME's annual planning process, in early 2021 CME's WHS Committee identified the need for greater focus in the specific area of sexual assault and respectful behaviours, in line with industry's long-term commitment to address psychological safety factors. As part of industry's increased focus, in June 2021 CME hosted an industry sharing and lessons learnt forum on *Addressing Sexual Harassment in the Workplace* (the forum). The forum included industry case studies, expert presentations from law firms, and a presentation from DMIRS detailing regulator expectations and advice on approaching workplace behaviours from a WHS perspective. Around 100 attendees participated in the forum, which culminated in a facilitated discussion at on challenges and opportunities to take forward. A key opportunity highlighted at the time was for the industry to create a joint approach to managing the risk of sexual harassment in the workplace through the sharing of good practice, meaningful consultation with the workforce and regulators, and the development of industry standards on key areas.

Upon review of the challenges and opportunities raised at the forum, CME's Advisory Board and Executive Council proposed to immediately form a cross-portfolio Safe and Respectful Behaviours working group (SARB) to complement the national work led by MCA and to assist in 'operationalising' their national-level documents in the context of WA. Priority initiatives of SARB include an industry standard for employee behaviours in work-adjacent settings (such as conferences and work events) and an implementation framework, including a wide-range of possible safety controls drawn from sector experience. Recognising that the issue is complex and involves cross-disciplinary expertise, SARB has been deliberated established as a cross-portfolio working group with industry representatives from human resource, diversity and inclusion, WHS, and legal departments.

**It is acknowledged that the sector has a further way to go in eliminating these behaviours. With the support of industry associations, the sector is taking specific steps to meaningfully address these issues and collectively lift the standard through industry-wide initiatives. These include the adoption of a national Code of Conduct, and supporting industry implementation framework and standards.**

## A holistic approach

It is important to acknowledge the complexities of managing the risks of workplace sexual harassment and the need to take a coordinated and holistic response to meaningfully improve outcomes. CME cautions against a linear, one-size-fits-all response to these complex issues, particularly when one considers that in relation to this particular risk, each individual affected has a different, deeply personal response, including about how the information they share about what has occurred to them, ought to be managed.

Rather, CME advocates for the consideration of the complex nature of sexual harassment in the context of the diverse nature of job types, conditions, modes, and incumbents in the sector. For efficacy, solutions should be scalable, multi-disciplinary, evidence-based, and consider prevention, intervention, support and response. This necessitates a flexible approach that is not 'one-size-fits-all'. Figure 1 below, sourced from the Respect@Work report, illustrates the multifaceted approach across prevention and response controls that is required.





**Figure 1: Workplace prevention and response framework to address sexual harassment<sup>10</sup>**

Companies contributing to this submission employ people who work in Perth, on site or remote/mobile work settings across residential-based, FIFO and DIDO workforce arrangements. Work environments range from traditional offices, on site semi-industrial offices, working from home arrangements, plants and heavy industry, exploration and surveying, amongst others. Work localities vary from city, suburban, regional and remote areas, as dictated by the diverse nature of the resource sector. Health, hygiene, safety and geological features necessitate commodity, exploration, extraction and processing is generally conducted away from populous areas. With Australia's majority population located in coastal urban and suburban locals, and most asset recovery occurring in regional, rural and remote areas, significant worker commuting is a natural consequence. FIFO arrangements enable safe and large-scale transport of workers to these areas and therefore represent a significant proportion of the WA resources sector people engagement model. Extrapolating from member survey data we received last year, CME estimates there is more than 50,000 employees and contractors whom FIFO predominately from within the state, with a smaller proportion of interstate or overseas mobility (in non-impacted COVID times).

CME notes that while the resources sector is a significant user of the FIFO workforce model, a number of other sectors also rely on long distance commute arrangements. Given Perth's position as the most isolated capital city in the world, it is unsurprising that FIFO remains a consistent presence in the WA economy. This workforce delivery model supports the provision of services across vast distances whilst avoiding the establishment of temporary infrastructure at prohibitive cost. Like organisations in the resources sector, government agencies, construction firms and other employers encounter challenges in meeting the demand for skilled labour in regional Western Australia and deliver services utilising FIFO rosters. This, for example, occurs in large-scale Government infrastructure projects, such as roads, where a large workforce is required for a relatively short period of time. Using a combination of residential and FIFO delivery models enables the resources sector to attract and retain the skilled workforce necessary to continue to operate in a safe and competitive manner.

**CME supports a holistic, coordinated and risk-based approach to managing risks associated with workplace sexual harassment.**

## Examples of good practice

Examples of current good practice initiatives being adopted by CME member companies are summarised in the below section of the submission. These are provided to demonstrate examples of good work underway in the sector, while acknowledging there is not a one-size-fits all approach to workplace initiatives in this space, for reasons outlined above.

As part of CME's role in facilitating collaboration and best practice sharing across our industry, CME's Implementation Framework and industry standards (discussed above) will seek to drive the adoption of relevant best practice in this area.

<sup>10</sup> Australian Human Rights Commission, 2020. [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#). Sydney: Australian Human Rights Commission. pp. 622.

- **Leadership:** CME members understand that a positive safety culture and cultural change more broadly starts from the top. Leaders reinforce their organisation's behavioural requirements and expectations of all employees. Research indicates that instances of sexual harassment increase in workplaces where a role model (such as a supervisor) behaves in a harassing way towards a female.<sup>11</sup>
  - **Training and setting expectations:** One member organisation describes how all senior leaders in the organisation are interviewed for their technical competence and alignment to core values. Leaders are required to complete Leadership Essential e-learning modules as part of their onboarding. The modules cover a variety of topics, including Company Induction, Supervisor Accountability, Critical Risk Controls, Organisation Values, and Key Policies. In addition to the e-learning modules, the company has a comprehensive program of leadership development that continues to provide critical education in the management of gender-based risks. The company has established targets for women in senior leadership roles that have been endorsed by the Board.
  - **Stopping the job:** When derogatory gender-based comments were reported on one company's residential sites, site leadership elected to have a 'stop work' meeting similar to a safety pause to address both gender-based and other inappropriate behaviours. A presentation was prepared and delivered by the senior leader on site across all crews. Responding to this report in this way demonstrated that the company placed the same level of importance on this report as it would a significant physical safety risk. This both acted to reinforce the seriousness of the company's stance on the matter and sought to prevent escalation of the behaviour.
  - **Mentoring:** A range of companies have established mentoring relationships with supervisors or senior leaders, where employees can meet and discuss a range of work-related matters. These mentoring discussions develop over time, whereby mutual trust is developed, and women feel comfortable approaching others confidentially with issues and incidents relating to sexual harassment or other disrespectful behaviours. Their mentors can help to facilitate a resolution, be it through a formal or informal process.
  - **Availability of leadership:** Members understand that some individuals may find different leaders more approachable than others. Noting this, some provide rosters that allow employees to crossover with two different higher line managers provide staff with more than one person to speak with if they wish to escalate a concern.
- **Education:** CME members have extensive education programs for their workers on sexual and other forms of harassment in the workplace. Set out below are some educational initiatives that members have reported relating to workplace behaviours.
  - **Awareness raising:** Having a perpetrator tell their story to an audience of colleagues has been very effective in raising awareness at one of our member's workplaces. This member comments that this approach is only practicable if the perpetrator shows genuine remorse and acknowledges their behaviour whilst also wanting to share the experience to educate others. For example, they reinforce their ignorance of the hurt they were causing, or they acknowledge that they felt (incorrectly) that the behaviour was 'OK' because it was intended as a joke or they say they had never questioned or reflected on their own choice of words.
  - **Regular training on behavioural expectations:** Sustained training assigned to all staff and contractors. For example, a compulsory workplace behaviour expectations module that must be completed within the first three months of employment and yearly thereafter. Supplementary modules assigned across the workforce can include 'ally', 'bystander', and 'colluder' analogy. Ongoing training is designed to increase awareness of the issues encourage reporting or speaking up as a victim or bystander.
  - **Fostering a "Speak up" culture:** A "Speak Up" culture is promoted in various ways within several member companies, including workplace communications (such as posters and email updates, a "Speak Up" page on the intranet), formal training and is expressly referenced in procedures and Codes of Conduct. Speaking up is also part of some company values and employees are expected to live these values and demonstrate this in their activities each day. In at least one member company, employees who have demonstrated

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<sup>11</sup> Dekker, I. and Barling, J., 1998. Personal and organizational predictors of workplace sexual harassment of women by men. *Journal of Occupational Health Psychology*, 3(1), pp.7-18.

that they have lived the values and acted with integrity are recognised by receiving an award at the end of the year. That a person has received an award and the reasons why they have received it are communicated throughout the whole business. This is to incentivise and encourage employees to act with integrity, including by speaking up.

- **Reframing as a WHS issue:** Together with businesses across all sectors and the government, our industry is engaging in conversations to reframe the risk factors associated with sexual harassment through a WHS lens. When it comes to physical safety, our industry maintains an unequivocal 'zero harm' objective and treats near misses with the same degree of seriousness as actual incidents. Industry has been moving to consider psychosocial incidents in the same way.
  - **Safety language:** Industry is supporting managers and front-line leaders to use well understood WHS language when discussing sexual harassment risk. By communicating sexual harassment to the general workforce in a safety context, it encourages open discussion about the issue, questions, and proactively reporting.
  - **Applying WHS risk assessment to sexual harassment:** Organisations can complete a specific Sexual Harassment and Assault Risk Assessment to identify risk factors for sexual harassment in the workplace, current controls and further controls where they may be required. For example, a member company is developing a personal risk assessment to identify an individual's inherent risk of being a victim of sexual harassment or assault, based on the contributing factors identified in the Respect@Work report. This tool can be used to further aid managers in identifying and implementing plans to manage the risk where required.
  - **Gendered safety audits:** A member company completes gendered safety audits for their worksites. These audits incorporate surveys, safety walks, interviews, and group discussions on safety factors specifically related to gender. Audits can assess the availability of separate changing facilities and bath-houses, review of on-site lighting and laundry facilities, and if gender-specific personal protective equipment is made available to employees. Each year, the audit identifies risks and targeted actions for each operation.
- **Increasing dialogue about prevalence:** As referred to above, many member companies are increasing the dialogue on sexual harassment within their businesses to deepen their understanding of its prevalence, including through undertaking cultural reviews, specific surveys on the prevalence of sexual harassment, targeted questions in employee engagement surveys, targeted employee feedback sessions, and messaging via senior manager updates.
- **Encouraging reporting:** Member companies are seeking to encourage reporting of these behaviours in a victim supported way. Many companies provide multiple reporting pathways for victims, with the option for concerns to be raised either in name or anonymously. These can include reporting via phone line or internet portal, or both formal and informal in-person reporting avenues. With a variety of reporting options, companies provide the victim with the agency to determine the reporting pathway with which they are most comfortable.
  - **Anonymous reporting:** An example of the application of anonymous reporting systems is where employees have the option to can provide either anonymous or identified reports through an online reporting tool. This tool is accessible via the phone, company intranet, or public internet. A reporting platform is also located on an independent third-party website and employees are given the option to raise issues anonymously in the knowledge that the IP address of the notifying party cannot be traced.
  - **Continuous improvement:** Company reporting systems are an effective and efficient way to capture data on how many allegations of sexual harassment are formally reported and what the outcomes are. Online reporting systems can also indicate if there are issues at one site or with one team. This allows an organisation to pinpoint opportunities for further training or education.
- **Ensuring support:** Appropriate support for victims is identified by members as of critical importance. One member describes implementing a dedicated support service for the victims of sexual assault and harassment and also for others who may have been impacted like leaders, witnesses and first responders. This service means that anyone impacted by sexual assault and harassment can connect with a dedicated case coordinator who can stay by their side throughout the process and guide them through the options available for their wellbeing support, practical support and resolution. This service is

also available to anyone who seeks guidance on what support is available and to anyone who has questions or concerns. It is also important to ensure accessing support is not dependent on a report being made.

- **Identified on-site support:** A member company has created a dedicated Sexual Harassment Officer position. This employee is someone who individuals can feel safe in approaching in an informal manner, but also has the training and seniority within the organisation to facilitate resolutions and provide advice on ways to manage workplace sexual harassment. Another company maintains a non-denominational chaplaincy service that is available to all employees, contractors, and members of their families.
- **Peer-support:** Peer-support initiatives can form part of companies broader and coordinated range of mental health and wellbeing supports. Noting a person's co-workers are often the ones first approached about mental health and other psychosocial challenges, these programs seek to equip people with the skills to have safe conversations and link them with appropriate supports (external and internal). CME and Lifeline's *Resourceful Mind* currently being worked on is one example and aims to encourage and support help-seeking in on-site communities. Trained employees will be able to share available support systems for if an employee requires further assistance (for example, EAP, Lifeline, company bullying policy). CME and Lifeline are currently developing a specialist skills training session on the topic of workplace sexual harassment, which will apply the peer-support model.
- **Employee assistance programs:** 96% of CME member companies surveys have an employee assistance program (EAP) in place to support employee's emotional and psychological well-being.<sup>12</sup> Those companies who reported not having an EAP in place were small project development companies with less than a dozen employees. EAPs are generally available 24/7 for confidential support.
- **Post-investigation support:** provide victim support is provided once the investigation has been concluded and an outcome delivered to ensure delivering the outcome to the perpetrator is not viewed as "closing" the matter,
- **Reconsidering the approach to confidentiality:** Consistent with discussions occurring in the broader Australian business community, some members now avoid the use of non-disclosure agreements that concern allegations of sexual harassment unless specifically requested by a victim. Another member has reported that it seeks to share outcomes, where possible and respectful of privacy. That is, for example, where an employee's employment has been terminated, the broad reasons for the dismissal are sought to be shared with wider work crews to emphasise what is not acceptable, raise awareness and highlight the consequences.
- **Alcohol Standards on site:** All member companies have alcohol policies on site. These are reviewed as part of ongoing continuous improvement efforts. Examples of recently implemented initiatives include:
  - **Serving of alcohol:** beverage limits over a day or 24-hour period, takeaway limitations, beverage limits management via the confirmation of the purchaser (for example, site ID or swipe card), and site policies including the responsible service of alcohol.
  - **Site management:** banning of 'stockpiling' in employee accommodation, prohibition of bringing full-strength alcohol onto site accommodation, and the utilisation of breathalyser testing for people arriving on-site and prior to commencing shift.
  - **Ask for Angela:** The popular Ask for Angela initiative encourages people to ask bar staff for 'Angela' or to order an 'angel shot' if they find themselves uncomfortable or in a situation that they believe is unsafe or threatening. In response, bar staff will discreetly escort the person to safety and then address the inappropriate behaviour. This initiative was introduced in licensed venues across Australia, and some companies have implemented in at village taverns.
- **Social activities:** Members recognise the importance of providing options within camps other than the bar to promote employees' mental, social and physical wellbeing. This is relevant when designing new camps and upgrading camps given it may include redesign of what activities are available at camp for example theatre rooms, sports facilities, gaming facilities, music rooms, and metal work/woodwork sheds.

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<sup>12</sup> CME, 2012. [The WA Resources Sector: Navigating through COVID-19 and recovery.](#)

- **Community building:** Many companies adopt programs that build a sense of on-site community, while also giving consideration to FIFO / DIDO / BIBO and residential roles. For example, one company has established a lifestyle leisure and recreation committee that includes employee families where possible. Example activities that have been engaged in include movie screenings, ice skating, mine family days, and family induction packages.
- **Security and room allocation:** Accepting that there will remain some risk of inappropriate behaviour regardless of existing and enhanced implementation of higher order risk controls, consideration is also being given to risk factors in the location of rooms for female workers and how those risk factors may be eliminated or minimised through changes in room location. Female accommodation blocks are equipped with double locks and peep holes in the doors.
  - **Room allocation:** Companies have explored opportunities where they can improve the check-in process for female employees. One member has updated the employee check-in procedure to include that room numbers are provided to employees via a written slip (as opposed to verbally communicated). This minor change provides female employees with increased confidentiality on their room location. Another member has established female-only blocks within the site accommodation.
  - **On-site security:** Work sites generally have a variety of comprehensive security systems in place. For example, the use of CCTV and security guards (with the assignment of patrolling designated areas of the site more regularly). Some companies have implemented a Walk to Room service, where, if employees are uncomfortable in walking alone to their rooms, they can request a member of security to accompany them.
- **Diversity and Inclusion:** Members recognised the critical role that diversity and a more equitable balance of women and men in the composition of the sector's workforce would play in addressing power imbalances, gendered biases, and sexual harassment. Some of the key themes our members are targeting include:
  - **Parental Leave** – the resources sectors has some of Australia's most generous parental leave offerings. These include gender neutral parental leave policies, expanding the period of paid leave for both primary and secondary carers, and continuation of superannuation payments during periods of unpaid leave. A leading policy includes access to 26 weeks paid leave for primary carers (which can be taken at half pay for 52 weeks), access to part time (80%) return to work for full-time pay over a period of 4 weeks, and a lump sum top up to their superannuation fund of AUD\$1,000 upon return to work. Secondary carers have access to 4 weeks paid leave (at the time of birth or adoption), plus the option to access a further 14 weeks of paid leave to undertake primary care duties should the primary carer return to work within 12 months of birth or adoption. These practices aim to increase the proportion of men (usually secondary carers) who undertake parental leave.
  - **Child Care** – Childcare remains a challenging barrier for enticing more women into the workforce, particularly in regional areas like the Pilbara and Goldfields. Larger member companies have been able to support creative solutions and provide on-site facilities. A leading example made possible by the large scale of the employer includes (location dependant) on-site creche facilities, child friendly workspaces and has avenues for emergency care when plans change.
  - **Flexible Work** – the resources sector has been making inroads into making work – even in the presence of operational challenges – towards greater flexibility. A leading example involves taking the perspective of assuming all roles can be made flexible in some way. One way in which this has been executed is in job share arrangements for operational roles. Rather than one individual working 8 days on site, 6 days at home, two individuals can share one role working 'back-to-back' with each working 4 days on site, then 10 days at home. This enables part time options in rostered crews where flexibility is typically hard to achieve.

## WHS Inspectorate approach

It has long been recognised that WHS regulators with competent personnel are critical to effectively monitor compliance, provide direction and assistance to companies to manage health and safety risks and support continuous improvement efforts. The importance of specialist skills within regulators has consistently been

recognised. For example, one of the key findings into the Pike River Coal Mine tragedy in 2010 was that an underlying cause of the accident was the 'inadequately resourced and skilled inspectorate'<sup>13</sup>.

CME has long expressed support for a dedicated and specialised mines safety inspectorate within DMIRS. In response to the 2015 FIFO Parliamentary Inquiry, DMIRS has in recent years broadened their WHS inspectorate team to include registered psychologists as Mental Health and Wellbeing Inspectors. This has been a welcome development.

The Respect@Work report highlighted the challenges for WHS regulators in possessing the appropriate skills to investigate sexual harassment complaints in the context of WHS legislation. In this regard, CME notes the Federal Government's commitment to fund training for Comcare Inspectors, as the relevant WHS regulator of the Commonwealth Work Health and Safety Act. CME considers DMIRS should be appropriately resourced to manage the increasing focus under the incoming WHS legislation on psychosocial hazards - including workplace sexual harassment.

CME acknowledges WHS regulators play an important role in enforcing and monitoring compliance with WHS legislation. WHS regulators also have a critical educational role in working with industry to offer guidance in the management of risks. CME considers that adequately balancing these roles in response to this issue will be critical.

Multiple regulators or agencies may be involved where there are allegations of sexual harassment, including WHS regulators, as well as human rights and anti-discrimination agencies such as the AHRC and Equal Opportunity Commission. The potential involvement of different regulators means that different approaches may be taken to address an incident of sexual harassment.

Some regulators defer to the other's experience; for example, in their submission to the Respect@Work inquiry, WorkSafe WA submitted that "as a safety regulator, WorkSafe is not sufficiently resourced and does not have the expertise to adequately address sexual harassment matters. Therefore, these matters are appropriate to remain in the jurisdictional control of the [Equal Opportunity Commission]".

In some instances, a victim may also choose to report an incident of sexual harassment to the Police. In these circumstances, the Police may also have a role in addition to the role of the relevant WHS regulator and/or human rights and anti-discrimination agencies. The Respect@Work report recognises that Police responses are particularly important because this contact is usually a victim's point of entry to the criminal justice system. In turn, the way that Police respond to reported allegations can have a significant impact on an individual's willingness to proceed with a report and their satisfaction with the criminal justice response as demonstrated in the Respect@Work report.

CME and its member organisations recognise, in light of the multiplicity of potential jurisdictions, the importance of taking an intersectional approach to sexual harassment and recognising the respective roles of the victim, each regulator, and the Police in the process.

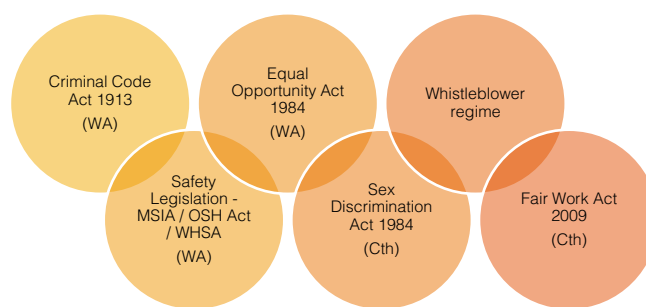
**CME recommends the Committee recognise the importance of a skilled WHS inspectorate with adequate resources to manage the increasing focus on this area, balanced across their compliance and enforcement and education regulatory functions.**

## Term of Reference (iii) Legislative framework

The legislative framework that applies to mining workplaces in WA is complex, involving multiple jurisdictions and pieces of legislation including but not limited to the *Equal Opportunity Act 1984* (WA) (EO Act); the *Fair Work Act 2009* (Cth) (FW Act); the SDA; *Mines Safety and Inspection Act 1984* (WA) (MSIA) and the *Criminal Code Act Compilation Act 1913* (WA) (Criminal Code). Figure 2 below illustrates this complex and interacting landscape.

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<sup>13</sup> Government of New Zealand, Royal Commission on the Pike River Coal Mine Tragedy, 2012, [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/\\$file/ReportVol2-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/$file/ReportVol2-whole.pdf)



**Figure 2: Legislative Landscape relating to sexual harassment**

In summary, the current legislative environment is complex and at times challenging to navigate. However, CME and its member companies consider that the regulatory framework as it applies, together with the modernised WHS framework that will prospectively apply from January 2022 with the commencement of the new Work Health and Safety Act 2020 (WA) (WHSA), is appropriate.

The Respect@Work report acknowledged that the model WHS law imposes a duty to eliminate or minimise hazards and risks to a worker’s health includes psychosocial health, and therefore sexual harassment. CME supports this and considers the increased focus on the issue as a WHS matter has the potential to result in improved outcomes provided a victim-centric and risk-based approach is taken.

CME also notes the report of the Senate Inquiry which considered the adequacy of the changes proposed to be made to the FWA and the SDA in response to the Respect@Work report. To the extent that one of the outcomes following the Senate Inquiry is ultimately to amend the SDA to include a positive duty to require employers to take reasonable and proportionate measures to eliminate sexual harassment, CME supports this outcome.

Currently in WA, the MSIA and supporting regulations apply only to the mining industry. WA is currently undertaking steps to harmonise its WHS laws with the national model, with the WHSA passing WA Parliament in November 2020.<sup>14</sup> With finalisation of accompanying regulations well underway, the new regime is expected to be implemented by January 2022. CME considers the current MSIA is not as well designed as a regulatory framework for the reporting of sexual harassment, compared to the WHSA. While the WHSA presents a clearer reporting framework than the MSIA, CME considers industry would benefit from guidance to support and clarify the legislative reporting requirements, which takes into account some of the complexities and concerns arising in relation to the reporting of sexual assault and sexual harassment incidents, such as those raised below.

	Summary of relevant provision	CME commentary
MSIA	<p>Section 76(1) of the MSIA requires reporting to DMIRS if “a person suffers injury in an accident at a mine”.<sup>[1]</sup></p> <p>Section 79(1) of the MSIA requires reporting to DMIRS if there is an “occurrence at the mine which in the manager’s opinion had the potential to cause serious injury or harm to health”.<sup>[2]</sup></p> <p>Section 77(1) of the MSIA provides that a registered manager for a mine “must cause to be kept at the mine a book...called the accident log book”.<sup>[3]</sup> It also provides that any accident at a mine must be entered in the accident log book, and it is to be “kept open at all reasonable times to the examination of an inspector, a safety and health representative for the mine, a representative of a trade union any member of which is employed at the mine,</p>	<p>In relation to the requirement to report “accidents” under section 76 of the MSI Act, human interactions such as sexual assault and sexual harassment do not fit the dictionary’s definition of an accident and “accident” is not defined in the MSI Act. In this context, what interactions are considered to be “accidents” for the purposes of these requirements?</p> <p>While injury or harm can be both physical and psychosocial, what factors ought a registered manager consider when forming an opinion about whether an occurrence has the potential to cause serious psychosocial injury or harm?</p> <p>How do companies balance the requirement to record events in the accident logbook and allow third party access rights while ensuring that privacy and whistleblowing requirements are observed, and sensitive information is not disclosed widely. For example, current regulatory guidance asks for, ‘the names of employees who have been injured</p>

<sup>14</sup> [Work Health and Safety Act 2020 \(WA\)](#)

<sup>[1]</sup> [Mines Safety and Inspection Act 1994](#), s 76.

<sup>[2]</sup> [Mines Safety and Inspection Act 1994](#), s 79.

<sup>[3]</sup> [Mines Safety and Inspection Act 1994](#), s 77.

	and any other person authorised by the State mining engineer”	in previous months and are still off work”, which could disclose the identities of impacted persons, and details about the duration of their injury and absence from work.
WHSA	<p>The definition of ‘health’ in the WHS Act is explicit in its inclusion of psychological health, compared to the MSI Act, which is not.</p> <p>Under Part 3 (Incident Notification) of the WHS Act a “notifiable incident” must be reported. An incident will be a notifiable one if:</p> <ul style="list-style-type: none"> <li>o <i>It requires the person to have immediate treatment as an in-patient in a hospital [s36(1)(a)];</i></li> <li>o <i>It occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment [s36(1)(d)]; or</i></li> <li>o <i>In the opinion of a medical practitioner, it is likely to prevent the person from being able to do the person’s normal work for at least 10 days after the day on which the injury or illness occurs [s36(1)(e)]</i></li> </ul>	<p>In comparison with the MSIA, these definitions are better designed for reporting psychosocial injury or harm because their parameters are objective and measurable.</p> <p>However, similar issues arise as those concerning the MSIA in relation to reporting requirements where an allegation of sexual assault or sexual harassment has been made but is not yet investigated or substantiated, or has been investigated and found not to have been substantiated. Further, whilst some serious incidents require immediate reporting and assume immediate knowledge of the anticipated period of time away from work, this does not always allow for the nature of psychological harm, where injury may take some time to manifest, where a diagnosis may take some time, or where the connection between the event and the injury or harm may be difficult to prove.</p>

CME supports continued focus in the area of regulatory reform to reflect modern standards, however, recommends that the work currently underway (state WHS reforms, the Federal Senate Inquiry and corresponding changes to the FWA and SDA) should be completed, before WA itself makes changes in the sector, or more generally.

The Respect@Work report concluded that WHS regulators adopted inconsistent approaches to workplace sexual harassment matters. CME notes that the broad objective of harmonising WHS laws to a national model is to resolve such inconsistencies, where possible. Additional guidance may assist in clarifying that the existing duty under the WHS laws includes prevention of sexual harassment rather than creating new obligations.

SafeWork Australia has published general guidance material on the model WHS laws, including a guide to the model WHSA and accompanying regulations. CME notes there is also guidance material canvassing key concepts under the model WHS laws, such as the duties of a person conducting a business or undertaking (PCBU) and its officers and the WHS reporting requirements. However, there is an absence of guidance material on the application of WHS reporting requirements in the specific context of sexual harassment. CME considers industry could benefit from clear focused guidance. For example, through online resources, fact sheets or safety bulletins on WHS reporting requirements that take into account both legislative requirements and the real human factors that persist in this area, such as the wishes of victims and principles of fairness where matters are not yet substantiated.

There exists a fundamental tension between respecting a victim’s (often strongly held) wishes in relation to conduct engaged against them, the desire of a company to investigate an issue and expectations expressed by DMIRS about the reporting of conduct to DMIRS. Further, there are complications in the requirements to comply with privacy and whistleblowing laws given information provided to DMIRS may also be subject to freedom of information requests, and made public.

When reports are made often confidentiality is a concern for victims. A supportive, confidential and (where desired) anonymous reporting process is critical to encourage women to come forward, to feel safe and respected in doing so and to retain those women during and after the handling of any concern raised.

In this context, CME notes that in the most serious of cases, there is no positive obligation imposed on companies or individuals to report such matters to the Police (this being at the discretion of the victim). In these circumstances, escalating the matter to an external party (i.e. outside the company’s internal processes) may be contrary to the victim’s strong wishes and has the considerable consequence of exposing the worker to a risk to their psychological health and safety.



The legislative framework, taking into account imminent legislative changes, is appropriate. However, there is a lack of clarity on reporting obligations across jurisdictions. Industry would benefit from regulator guidance across jurisdictions to provide greater clarity and consistency on reporting requirements.

## Terms of Reference (i) Prevalence

Terms of Reference (i.) considers whether there “*is a clear understanding of the prevalence, nature, outcomes and reporting of sexual harassment in FIFO workplaces?*”. CME considers there is an increasing understanding of the prevalence and nature of sexual harassment in FIFO workplaces in WA.

CME acknowledges findings of the AHRC’s 2018 Fourth national survey on sexual harassment in Australian workplaces (the AHRC survey) with respect to the reporting of sexual harassment. The findings of the AHRC survey indicated that only 17% of victims surveyed made a formal report or complaint. Industry acknowledges that this number is a very concerning indicator. Many women do not report their experiences of sexual harassment, and very few report the most serious incidents to their hierarchy at work or to a responsible authority. In addition, there is lack of reporting by complainants to authorities. This presents challenges in that little data is available to base determinations on prevalence.

Since the Respect@Work report was published, CME member companies have taken steps to seek to gain a greater appreciation of the prevalence and nature of sexual harassment in their organisations, including in active consultation with their workforce and analysing data and learnings in relation to reported conduct.

The sector seeks to encourage reporting through training and education campaigns, as highlighted earlier in this submission. Additionally, industry is exploring opportunities to improve how our workforce are consulted to ensure meaningful and ‘safe to speak up’ environments. For example, informal consultation can occur through toolbox talks and pre-starts, as is common in other areas of WHS. CME recognises that consultation not only helps develop required systems but also in fact breaks down stigma and provides the workforce with further understanding of the support and investigation systems that the organisation has in place.

Societal stigma and general fear of repercussions from reporting or coming forward have been identified as a significant challenge surrounding the workplace culture of reporting. Employees may perceive that they will be discriminated against by their colleagues if concerns are disclosed, reinforcing a culture of taboo. Observers may have concerns of breaching victim confidentiality or engaging with workplace gossip in reporting cases of sexual harassment. Industry has responded to these matters for example through the implementation of reporting systems that allow for employees to remain confidential if preferred. In most situations, individuals raise concerns because they want an immediate end to the inappropriate behaviours, however the fear of a report being escalated to a formal response may prevent them from coming forward.

In this regard, CME otherwise supports the recommendations made in the Respect@Work report, particularly recommendations 2 and 3 (included below), which would assist with deepening industry’s understanding of these matters, including outcomes and reporting.

*Recommendation 2: The Commission conduct a nationally representative survey every four years, funded by the Australian Government, that:*

- a) provides data on sexual harassment, including the prevalence, nature, reporting, impacts of and responses to sexual harassment in the workplace, and identifies trends over time*
- b) provides detailed industry data which allows analysis across and within industries*
- c) is accessible and adequately captures experiences of sexual harassment across all population groups, including people of culturally and linguistically diverse backgrounds.*

*Recommendation 3: Agencies that handle workplace sexual harassment matters work with the Workplace Sexual Harassment Council (as recommended in Recommendation 14) to:*

- a) collect an agreed de-identified data set relating to workplace sexual harassment enquiries, complaints, claims and settlement outcomes to contribute to a coordinated system of annual reporting on workplace sexual harassment metrics*
- b) establish formal arrangements for information sharing and data exchange on enquiries, complaints and claims relating to workplace sexual harassment matters.*

CME considers there is an increasing understanding of the prevalence of sexual harassment in the sector. Ongoing work is needed to continue to foster positive reporting cultures.

## Terms of Reference (ii) Workplace Characteristics

Terms of Reference (ii.) considers whether “*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?*”.

CME and its member companies recognise that some heightened risk factors for sexual harassment exist within mining workplaces, such as workplace gender ratio, atypical jobs performed by women and remote locations. These factors are reinforced in the Respect@Work report.

CME also recognises that other factors such as alcohol use and the residential nature of FIFO work are risk factors that must be managed. Remote resource sector sites are unique and vary in size (from small 50 person operations to large sites employing multiple thousands) and nature (exploration versus construction versus operations). Naturally, the characteristics of these workplaces differ from a residential or city-based role. The work and non-work life demarcation is considerably less apparent where the provision of transport, accommodation and leisure facilities are provided by an employer, within a shared location.

The management of risk factors is multi-faceted and can be complex, involving the implementation of a broad range of controls from visible leadership through to workplace policies, education and training and enforcement of standards.

The sector has previously been criticised for remote sites being too controlling of employees when they are off-shift and residing in accommodation facilities. For example, the FIFO Inquiry questioned whether the high levels of ‘control’ applied to workers when off-shift in accommodation facilities were necessary, as it can impact an employee’s sense of agency.<sup>15</sup> CME has previously commented that the controls applied at resource sector operations and accommodation facilities are implemented to ensure the safety and wellbeing of employees, manage associated risks and ensure compliance with duty of care obligations.<sup>16</sup> The sector is asked to balance duties under legislation and the need to provide autonomy to employees as much as is reasonable in these environments.

## Diversity

The WA resources sector operates in a highly competitive market and is cognisant of the critical need to attract, develop and retain an experienced and diverse workforce. The sector has invested significant effort to diversify the demographic profile of its workforce, with a particular focus on increasing the representation of women in the past twenty years and recognises it will take continued investment, effort and time to grow participation. The business case for investing in diversity and inclusion is well understood.<sup>17</sup> Additionally The Respect@Work report identifies that:

*“to prevent sexual harassment, primary prevention initiatives must not only address the drivers of sexual harassment in a workplace but also in society more broadly” and that “the actions that will prevent violence against women involve challenging gender inequality (for example, challenging gender stereotypes) and promoting and normalising gender equality in public and private life”.*

The biennial CME Diversity in the Western Australian Resources Sector Survey (Diversity Survey) has been conducted since 2011. CME has committed and continues to champion gender equity as part of our overarching commitment to diversity and inclusion. Our 2019 Diversity Report found 20.3% of the WA Resources sector was comprised of women, compared to 46% in the total workforce. Although this participation level is comparatively low, it is 4.4% higher than the national resources sector rate of 15.9% and an increase of 2.3% from 2017. CME notes that the representation of women across regions within WA is not consistent and will also vary from site to site. Of those women employed the sector in 2019 for example 50% worked out of Perth, 26.4% worked in Pilbara and 5.8% worked in the South West. It should be noted this was based on an indicative sample representing 50% of the resource sector workforce. Our 2019 Diversity Report also notes factors contributing to this disparity are likely to be the types of roles available as well as lack of availability of services in some regional areas.

It has been established that there are barriers to the participation of women (and other marginalised people) in the resources sector, that participation of women in the WA resources sector is low (compared to overall

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<sup>15</sup> Parliament of Western Australia, Education and Health Standing Committee, 2015. [The impact of FIFO work practices on mental health: Final Report.](#)

<sup>16</sup> CME, 2015. [Shining a Light on FIFO Mental Health Discussion Paper – Submission.](#)

<sup>17</sup> Toohey, T., Colosimo, D., and Boak, A., 2009. Goldman and Sachs & JWBere. [Australia’s hidden resource: the economic case for increasing Female Participation](#)

employment rates in WA), that women are less likely to be represented in remote and regional areas. As the Respect@Work report also highlighted, sexual harassment is more prevalent in workplaces where there is greater gender disparity and is complicated by isolation.

Identified barriers to achieving greater gender representation in the resource sector workforce include:

- **Parental leave entitlements** - A primary lever to reduce gender inequality in the workplace, is to create a more equitable division of unpaid work, including parental leave. According to 2019-2020 Workplace Gender Equality Agency (WGEA) data, women account for 93.5% of all primary carer's leave utilised, and men account for just 6.5%. However, in households where men take parental leave, there is a more equitable distribution of unpaid work and changes in traditional gender norms<sup>18</sup>, enabling women to participate in the workplace more fully. More directly, in the workplace, equal uptake of parental leave between men and women can moderate discrimination in hiring<sup>19</sup> by interrupting stereotypes about caring responsibilities.
- **Child Care** - Options for parents to return to work are naturally influenced by access to childcare. Finding accessible and affordable childcare options is a known barrier to women's participation in the workforce across Australia<sup>20</sup>. This is exacerbated in regional and remote communities. In the WA Department of Communities 2019 Women's report card, most women (57%) cited poor access to childcare as an issue.
- **Flexibility** – Flexibility is recognised a key enabler of gender equality.<sup>21</sup> Access to flexible working has been linked to improved organisational productivity, greater attraction and retention of diverse employees, improved well-being and a greater proportion of women – particularly in leadership.<sup>22</sup> The resources sector has historically faced greater challenges in implementing flexible work practices due to the rostered, operational nature of work and where work is remote or requires a FIFO or DIDO commute.
- **Awareness** – Perceptions of the sector are influenced by social forces, including growing criticism of the extraction of fossil fuels amongst emerging generations, despite the evidence that green energy may well intensify the world's need for material resources<sup>23</sup>. The Minerals Council of Australia has identified a significant need for mining engineers, reporting that mining engineering enrolments across Australia are at an all-time low. With overall perceptions and awareness of the roles and benefits available. In a career in mining, the small percentage of women in these fields doesn't represent a sufficiently high numerator to significantly increase the percentage of women in the sector. Activities such as the Inspiring Girls Forum delivered by the CME – introducing high school aged girls to mining careers – play an important role in shaping understanding in emerging talent pools.

CME is committed to working with our member companies to identify and share information on best practice workplace strategies to address barriers and promote diversity and inclusion in the workplace. Several of our members have shared bold public targets towards an internal representation of people aligned to the communities in which they operate, including for the percentage of women in leadership and in the workforce overall. CME actively supports this work through our Diversity and Inclusion Reference Group, which connects industry professionals with a focus on improving diversity, equity, and inclusion to collaborate and share lessons multiple times each year. Further work (supported by legislative changes and appropriate investment) to address the barriers to women's participation (such as inaccessible childcare and the inequitable division of caring) is needed to make more rapid progress towards gender equity and reduced sexual harassment. A number of examples of good practice to support greater gender diversity were discussed in the Examples of Best Practice section of this report.

CME welcomes the \$5.1 million commitment by the McGowan Government to improve access to childcare in the regions and recommends the government also consider additional measures to address affordable and quality childcare access and increase workforce participation. CME recommends the State Government work alongside industry to advocate to the Commonwealth Government to extend the current exemption on fringe

<sup>18</sup> Karu, M, and Tremblay, D. (2018), "Fathers on Parental Leave: An Analysis of Rights and Take-up in 29 Countries." *Community, Work & Family*, 21.3: 344-362

<sup>19</sup> Porter, M et al. (2015), "Combating Gender Inequality at Home and at Work: Why the International Labour Organization Should Provide for Mandatory Paid Paternity Leave." *HeinOnline*, 48: 2015-2016: 203

<sup>20</sup> Workplace Gender Equality Agency, (2018), "Removing the Motherhood Penalty"

<sup>21</sup> Catalyst. (2017), "[How Workplace Flexibility Can Promote Inclusion and Prioritize Talent.](#)"

<sup>22</sup> Workplace Gender Equality Agency, (2018), "[Flexible Work Improves Bottom Line](#)".

<sup>23</sup> Arrobas, D., Hund, K., McCormick, M., et al., (2017), "[The Growing Role of Minerals for a Low Carbon Future.](#)" World Bank Group.

benefits tax to include off-premises childcare services provided by employers. This extension would enable our members to provide childcare assistance at significant benefit to employees within the communities where they live and without the highest marginal tax rate as a discouragement.

**CME recommends the Committee recognise workplace gender diversity is a protective factor against workplace sexual harassment.**

## Culture

Similar to the culture surrounding reporting, CME considers organisational culture to be a critical aspect in managing workplace behaviours. We know that creating diverse, safe, respectful, and inclusive workplaces wherein Boards and senior leaders set a clear tone of zero tolerance is the bedrock of an industry which prevents, responds to and eliminates sexual harassment.<sup>24</sup> Workplace cultures which normalise, tolerate and excuse disrespectful behaviours can enable a continuum of behaviours CME considers unacceptable; bullying, discrimination and sexual harassment.

The sector has a long history of setting a tone of respect and non-tolerance of inappropriate behaviours through organisational Codes of Conduct. The resources sector has also demonstrated strong support for continuous improvement and 'safe to speak up' conditions in support of operation-critical productivity and safety targets. These embedded attitudes of 'the standard we walk past is the standard we accept' have the potential to drive the behavioural changes which support continuous improvement of interpersonal behaviours and proactive sexual harassment reporting habits. This capability will also enable efforts to address and eliminate gender-based harassment and discrimination, and non-victimisation of those who report instances of unacceptable behaviour. An expectation of reporting aligned to that of the industry's well engrained WHS standards and behaviours has the potential to increase reporting and visibility of sexual harassment and other unacceptable behaviours. CME notes that an increase in apparent rates of unacceptable behaviour may appear in response to a positive reporting culture, and that leaders and the Committee should regard this as a positive step in the short term.

Company boards and senior leaders in the sector (and indeed across all sectors in Australia) are experiencing a growing expectation that they are informed and active in the prevalence, prevention, and response to sexual harassment as a component of wider cultural status. Boards are facing increasing scrutiny as the figureheads responsible for cultural conditions which either enable or prevent unethical and/or illegal behaviours. For this expectation to be reasonably delivered, Boards rely on information provided by management, the quality and content of which may vary significantly. Employers within the sector typically support this need with employee surveys including Employee Perception Surveys (EPS) which typically include a measure of engagement, as well as a range of employee experience questions determined by the organisation. The industry relies on third party providers to measure and benchmark perceptions as an indicator of the cultural health of the organisation. This measure of cultural status is sufficiently prevalent to enable an industry benchmark for comparison, however the link to preventing and measuring conditions directly related to sexual harassment is an emerging trend. While these surveys can be an effective measurement tool for cultural health, they represent a lagging indicator and a challenge to balance the need for timely and accurate information with anonymity and psychological safety.

Culture is reputedly stubborn. The perception of 'how things are done around here' is experienced viscerally, representing a significant challenge for the sector to influence in a timely manner. We know that significant cultural change takes significant time and investment and that patience to stamp out a long-term societal problem such as sexual discrimination and harassment is required. CME has clearly stated – with full member support – that all forms of bullying, harassment and discrimination are unacceptable. The sector has demonstrated through its safety culture that significant cultural change is possible.

**The resource sector is committed to addressing cultural challenges in our sector associated with sexual harassment.**

## Alcohol

Alcohol was clearly identified as a sexual harassment risk factor risk factor in the Respect@Work report. Some WA mine sites serve alcohol to employees and contractors while onsite but off-shift. This coupled with camp living and social interactions after work hours may create situations where there are increased risks of sexual harassment to occur. Alcohol is the most commonly used legal drug in Australia. The misuse of alcohol may

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<sup>24</sup> Champions of Change Coalition, (2020), "[Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace.](#)"

impair a worker's ability to exercise judgement, maintain coordination and motor control, concentrate, and stay alert. The report, [Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers](#), released in 2018, indicate that while the frequency of alcohol intake between FIFO workers and a benchmark group is similar, the quantity of alcohol consumption by FIFO workers is higher.<sup>25</sup> Furthermore, the FIFO Report found a link between mentally-ill health and alcohol consumption.<sup>26</sup> With consideration to these combined factors, alcohol onsite continues to remain an issue.

Traditionally, alcohol use in camp and 'off-shift' has been seen beyond the purview of the employer. This approach is similar to that of an employer to a Perth-based employee attending a public bar after work. As such, alcohol policies and management practices have focused on employees while 'on-shift' (for example, through beverage limits at accommodation facilities after work and daily breathalyser testing prior to commencing shift to confirm 0.00 blood alcohol). The implementation of beverage limits as a risk control is supported both by the findings that many FIFO employees consume more than two standard drinks a day, and health guidance from the National Health and Medical Research Council.<sup>27, 28</sup> Research has found harassment and discrimination in the workplace is associated with negative mental health and excess alcohol consumption.<sup>29</sup>

The changing legislation and communication of community expectations has informed employers that that employee behaviour while 'off-shift' may have negative impacts on the community and workplace. In response, the resources sector has put in place a variety of additional practices to manage the risks associated with alcohol impairment and consumption at accommodation facilities. Some of these practices are referred to earlier in the submission and can range from site management (for example, a ban of alcohol 'stockpiling' in employee accommodation and the prohibition of full-strength alcohol on site) and bar management (for example, decreased beverage limits over a 24-hour period and takeaway limitations).

The period where employees move from day shift to night shift has been identified by employers as high-risk for excess alcohol consumption. During this 'shift-change' period, employees can sleep later due to the late start the following day when commencing nightshift. Due to this, employees generally use this time to sleep later and socialise with their colleagues.

**All CME member companies have alcohol policies in place to set boundaries on the use of alcohol on their operations. These are regularly reviewed in the context of the latest evidence and information.**

## Rosters

As previously mentioned in this submission, FIFO arrangements represent a significant proportion of the WA resources sector, with the remainder of employees being employed on other commute arrangements including residential or Drive-in Drive-out (DIDO). There are a variety of roster lengths used by industry, driven by the need to provide greater flexibility to the workforce and respond to dynamic operational needs. Common rosters in the WA mining sector are 2 weeks on site, 1 week off site, 8 days on and 6 days off and 9 days on site, 5 days off. Companies are also embracing flexible work practices within the available roster patterns on-site for example to job share a single roster across multiple employees.

In the context of regulatory guidance, the Code of practice *Working Hours* has been developed to assist employers in meeting their duty of care obligation to ensure, as far as reasonably practicable, employees are not exposed to hazards and risks that could arise from their working hour arrangements, and to address them through a systematic risk management process. This code of practice was developed with significant contribution by the resources sector, with feedback communicated through both COSH and MIAC.

The FIFO Code also includes information on roster length. While the risk-based Code appropriately does not set specific requirements in relation to rosters, it does suggest considering shorter and even time rosters as part of the psychosocial risk management process. This suggestion was included due to findings from the 2018 FIFO Mental Health Project. CME has previously expressed concern with this aspect of the Code given the strength of this particular finding. The research study did not find a causal link between longer or uneven

<sup>25</sup> Centre for Transformative Work Design, Curtin University. 2018. [Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers](#).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> [Australian Guidelines to Reduce Health Risks from Drinking Alcohol](#). National Health and Medical Research Council, Australian Research Council and Universities Australia. Commonwealth of Australia, Canberra

<sup>29</sup> Rospenda, K. et al. 2009. Prevalence and Mental Health Correlates of Harassment and Discrimination in the Workplace: Results from a National Study. *Journal of Interpersonal Violence*, 24 (5), pp. 839.

time rosters and the level of psychological distress. Further, the limited analysis whereby mean distress values were compared across different rosters, did not control for other variable factors likely to have an impact on these values such as job role and education level.

Looking more broadly, scientific research on roster length is conflicting. Just one example of this is a 2018 study by which found workers on 1 week on, 1 week off (even time) or 2 weeks on, 1 week off swings had about twice the risk of moderate psychological distress of those who worked 4 weeks on, 1 week off (longer, uneven roster).<sup>30</sup>

When looking more specifically at sexual harassment as a psychosocial hazard, CME is not aware of any academic research or evidence-base which suggests a link between roster length and sexual harassment.

Taking into account Curtin's analysis, and the conflicting nature of the more recent research in this space, it would be fundamentally unjustified to mandate limits on roster types or length. Such a requirement could have significant unintended impacts such as reduced earning capacity and lack of variety of roster types to suit individual preference, which could in themselves impact mental health outcomes.

The WA resources sector ensures that all rosters on sites are driven by best practice fatigue management protocols, operational requirements and the employee value proposition of friendly work-life balance rosters. CME members continue to engage with regulators and academics to maintain abreast of best practice protocols for their workforce rosters.

**CME is not aware of evidence-based links between roster length and sexual harassment reports and would not support added prescription regarding roster lengths or patterns in response to this Inquiry.**

## Conclusion

The WA resources sector places the highest priority on ensuring the safety and health of its workforce. The sector is committed to continuous improvement in all areas of health and safety.

Any instances of rape, and other forms of sexual assault and sexual harassment, is totally unacceptable in any context. CME appreciates the opportunity to provide feedback as part of this Inquiry which will be integral in further sharpening the focus on this critically important issue.

As outlined in the above submission, the sector takes our role in addressing these issues very seriously and is committed to eliminating these behaviours from our workplaces. In parallel to the Inquiry, CME and its member companies are undertaking our own efforts to implement specific further measures to protect the safety of our people including a number of industry activities through CME's Safe and Respectful Behaviours Working Group.

If you have any further queries regarding the above matters, please contact Ms Elysha Millard, Manager – Safety, Health and Wellbeing at [E.Millard@cmewa.com](mailto:E.Millard@cmewa.com).

Authorised by	Position	Date	Signed
Paul Everingham	Chief Executive	13/8/2021	
Document reference			

<sup>30</sup> Bowers J., Lo, J., Miller, P. Mawren, D. & Jones, B. (2018). Psychological distress in remote mining and construction workers in Australia. Medical Journal of Australia, 209 (9), 391-397.