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Community Development and Justice Standing Committee  
Legislative Assembly  
Parliament House  
4 Harvest Terrace  
West Perth WA 6005

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To Whom it May Concern

## **AN INQUIRY INTO SEXUAL HARASSMENT AGAINST WOMEN IN THE FIFO MINING INDUSTRY – INDUSTRY UPDATE**

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 89 per cent of the State's mineral and energy workforce employment,<sup>1</sup> ranging from mining (mineral and petroleum commodities), manufacturing (alumina, basic inorganic chemicals and explosives) and supporting services.

### **Context**

The health and safety of our people, including their physical and psychological safety, is the number one priority for the WA resources sector. Industry has been clear in our commitment to continue to work hard to eliminate any instance of sexual assault, sexual harassment or other behaviours that threaten people's personal and psychological safety at work.

The public reports of sexual assault on remote mining operations last year that culminated in the current WA Parliamentary Inquiry into sexual harassment of women in the current FIFO mining industry (the Inquiry) by the Community Development and Justice Standing Committee (the Committee) were extremely concerning to CME and our member companies.

CME remains committed to actively engaging and participating fully in the Inquiry. To date, CME has lodged an [industry submission](#) to the Committee (August 2021) and appeared to give oral evidence in the Inquiry's public hearing (October 2021). Given the Committee is due to table a final report in April 2022, CME is writing to provide a status update on industry activities completed to date or that are currently underway.

CME also notes a number of themes have arisen through the Inquiry since CME lodged its initial submission, for example public hearings and media coverage have called for further discussion on the formation of a standalone industry regulator or the creations of an industry register. CME wishes to take the opportunity to provide additional and relevant comment on these areas for the Committee's consideration while finalising their report. A summary of CME's recommendations is provided below, which are further expanded on in the following submission. CME:

- supports a holistic, coordinated and risk-based approach to managing risks associated with workplace sexual harassment and is opposed to a linear, one-size-fits-all response.
- considers that introducing an additional independent body to receive and investigate complaints of sexual assault and harassment would add further complexity to an already complex environment and may result in the duplication or overlap of functions across regulators or agencies making the system harder to access and navigate for victims of sexual harassment.
- supports the promotion and improvement of existing independent avenues for reporting sexual harassment.

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<sup>1</sup> Government of Western Australia, [2020-21 Economic indicators resources data](#), onsite employment under State legislation, Department of Mines, Industry Regulation and Safety, 10 October 2021.

- supports a collaborative approach between existing regulators and stakeholders and considers the establishment of the Workplace Sexual Harassment Council a positive development to ensure existing systems are working optimally and to drive improvements.
- welcomes the work undertaken by DMIRS to provide industry with further guidance on managing the risks associated with sexual harassment and greater clarity on reporting requirements. The implementation of the WA's modernised WHS Act will provide further clarity in this regard.
- requests that the Committee considers the practical challenges and legal consequences posed in creating an Industry Register set out in this submission.

In preparing this letter, CME has also sought feedback from member companies on initiatives and activities that may have been further considered and/or deployed since appearing before the Committee or providing their respective submissions to the Inquiry. This, and the activities of CME's Safe and Respectful Behaviours working group, are included in the below submission.

## 1. Industry activities – progress update

The resources sector has maintained sharp focus on this important issue, both prior to and since the commence of the Inquiry. CME recognises there will always be more work to be done and is focused on lifting standard across the industry as a whole. The below section of the submission outlines actions CME has taken on behalf of our members to ensure a collective response across industry.

The information is provided as a status update on key actions to date and CME's Safe and Respectful Behaviours Working Group (SARB Working Group) continues to meet monthly to review priorities and identify potential new areas requiring industry initiatives.

### a. Senior Leadership engagement

Ensuring the continued collective engagement of senior industry leaders remains a priority. CME's Advisory Board (the Board) has introduced a standing item on workplace sexual harassment on their Board agenda papers. This paper includes reports on actions being taken at CME and through the Safe and Respectful Behaviours Working Group, as well as ongoing updates on the Inquiry process. Through the Board, CME members have also endorsed the Mineral Council of Australia's (MCA) [Industry Code on Eliminating Sexual Harassment](#) (the Industry Code).

In endorsing the Industry Code, CME members have set clear expectations on industry to develop a culture of respect while improving support for workers. Clear preventative and response measures are outlined in the Industry Code, providing industry with support in implementing the [mining industry's commitment to eliminating sexual harassment](#).

The Board has also actively invited external experts to help inform the direction of industry. In August, Kate Jenkins (Sex Discrimination Commissioner, Australian Human Rights Commission) attended a Board meeting to discuss further insights from her Respect@Work report process as it relates to the resources sector. The briefing reinforced the commitment from our Board members to eliminate the issue from our sector and the importance of taking a multifaceted and holistic approach to addressing the issues.

### b. Safe and Respectful Behaviours Working Group

As the Committee knows, in June 2021 CME formed the cross-portfolio SARB Working Group to share knowledge between industry members, and lead policy development on a number of high-priority projects in addressing this issue.

Noting the findings of the Respect@Work Report and following discussions at CME's Sharing Safety Lessons Learnt Forum in June 2021, industry agreed to take a joint approach across workplace health and safety (WHS) and people functions to address sexual harassment in the workplace. The membership of the SARB Working Group reflects this joint approach and ensures the issue is not 'siloed'.

The SARB Working Group continues to meet on a regular monthly basis. A summary of the key projects, and briefings given at the working group, are addressed in further detail below in this submission. A key focus of the working group is sharing information on initiatives that have either been rolled out or are being developed. This has helped companies learn quickly from each other in an informal setting allowing companies to review and update their own practices as relevant to their operations.

Further, through the SARB Working Group, CME is engaging with a number of relevant stakeholders for their advice and guidance on how to appropriately address this issue. This includes stakeholders such as regulators and third-party experts as well as exploring lessons from learnings from other sectors.

### c. Implementation Framework

The management of workplace behaviours is a complex and multifaceted area, requiring a suite of controls to be implemented. The varying size and nature of resources sector operations, spanning exploration, construction, production, and closure, mean that there is no 'one-size-fits-all' approach to workplace behaviours. With consideration to this, the Board tasked the SARB Working Group with developing an implementation framework to assist the WA resources sector in 'operationalising' the Industry Code in the context of WA and prioritising those initiatives that will have the most meaningful impact for their operating context (ie 'quality over quantity').

Informed by the SARB Working Group, CME created the [Implementation Framework: Eliminating Sexual Harassment in the WA Resources Sector](#) (the Implementation Framework). Taking a safety approach, the Implementation Framework includes a set of practical tools on WHS controls, including considerations across prevention, risk mitigation, response, and recovery to drive the adoption of best practice management of workplace behaviour-related hazards and risks.

The Implementation Framework includes a variety of outcome-focused initiatives, each with a member-provided example of good practice in the sector. For example, under the section of 'Identified Company Support', the Implementation Framework provides examples of how companies may ensure that employees are provided with relevant support services, followed by a member's case example of creating a Sexual Harassment Officer. Where CME members may seek further information or guidance on an example initiative in the Implementation Framework, they can connect with the relevant representative through the SARB Working Group. With consideration to feedback from their workforce and guidance from the Implementation Framework, industry has significantly invested financially to address this issue and ensure employee's safety in the workplace.

While the Implementation Framework has been developed with regard to providing a supporting framework for managing sexual harassment (including assault) risks in the resources sector, it is acknowledged that many considerations of the Framework may also be relevant to managing a broader range of workplace behaviours, for example, bullying and violence and aggression.

The Implementation Framework is a live document and will be updated on an ongoing basis as new information and evidence becomes available.

### d. Engagement with other industry associations

A number of industry associations are undertaking leading work to support their members in this area for example the work at a national level through the Minerals Council of Australia's (MCA) Respect@Work Taskforce.

As outlined in our initial submission, CME remains actively engaged with other industry associations to ensure a coordinated approach. For example, CME is a member of the MCA Respect@Work Taskforce and the MCA Health and Safety Working Group. To support the implementation of the [minerals industry commitment to eliminating sexual harassment](#), the Respect@Work Taskforce has developed a nationally-focused [Respect@Work Industry Toolkit](#) (the Industry Toolkit). The Industry Toolkit includes fact sheets, guidance material, checklists, and templates to support the sector in responding and preventing sexual harassment in the workplace. The material has been developed through consultation with industry and with subject matter experts, for example the Champions of Change Coalition. All material in the Industry Toolkit has been developed to be adaptable and modifiable to suit company management practices. Example material includes practical guidance on [responding to historical complaints](#), and information on [supporting persons affected by sexual harassment \(trauma informed care\)](#).

CME is also engaged with the Australian Mines and Metals Association (AMMA). In November 2021 CME presented to AMMA's *Resources and Energy National Industry Forum on Workplace Sexual Harassment* on the work undertaken through the SARB Working Group to date. This forum was attended by senior HR, workforce leaders and managers representing 75 companies.

CME recognises the important role industry associations can play in supporting our members and considers continued collaboration is critical in ensuring a coordinated approach.

#### e. Alcohol standard

Alcohol use has remained a theme throughout the current Inquiry. This has been reflected in the work of the Working Group. While CME member companies have alcohol policies and standards in place on their sites, and address this matter as a risk factor, these policies and standards historically focus on “on-shift” risk management. There is recognition these need to be reviewed in the context of “off-shift” alcohol consumption. The SARB Working Group is well progressed in the development of an industry standard.

CME is acutely aware that this is a critical project to get right. Given the complexities of this issue and noting the varied nature of workplaces, the SARB Working Group recently requested CME seek independent third-party advice to inform the finalisation of this industry standard. Through its SARB Working Group, CME has engaged an independent third-party subject matter expert to provide a briefing to member representatives and to develop a guidance document. This guidance document will include compiled literature supporting key considerations and recommendations about best practice in relation to key areas that support responsible use of alcohol, including the discussion of drink limits and how work-adjacent locations may be considered. CME anticipates that this guidance will be finalised by April 2022 with final alcohol standard to be available soon after. In the interim, outside of the work on the industry alcohol standard, the Implementation Framework provides members with guidance and examples of good practices in relation to alcohol consumption.

Once finalised, CME will actively work with our membership to implement the standard across the sector.

#### f. Peer Support training

CME and Lifeline WA (Lifeline) have updated our successful peer support program, *Resourceful Mind*, to contain information around sexual assault and harassment.

CME entered into a strategic partnership with Lifeline following the 2018 research undertaken as a recommendation of the Inquiry into mental health impacts of FIFO work arrangements ([Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers](#)). As a mental health subject matter expert, Lifeline has provided CME with guidance on how to best approach the management of employee mental health and wellbeing. The partnership has most recently piloted the *Resourceful Mind* program, a peer-support training program delivered by Lifeline telephone crisis supporters and specifically developed for the WA resources sector.

*Resourceful Mind* aims to encourage and support help-seeking in on-site communities. Trained employees are able to share available support systems if an employee requires further assistance. As a participant of the *Resourceful Mind* program, employees are provided with ongoing learning and development. This includes facilitated skills development sessions that are available following their completion of the core training model.

Following the announcement of the Inquiry, CME and Lifeline have incorporated two specialist skills training sessions on the topics of workplace sexual harassment and sexual assault. These apply the peer-support model. The first webinar, “Helpful Responses to Sexual Assault” is a targeted one-hour session delivered via videoconference. The webinar has been developed to provide peer support providers with information and tools that may be used when supporting someone that discloses an experience of sexual assault. Noting the importance of providing training that provides information which is both relevant and practical while still using language which is respectful of those with lived experiences, Lifeline has partnered with the Sexual Assault Resource Centre (SARC) to develop a custom session.

Lifeline has delivered 11 sessions on the topic of “Helpful Responses to Sexual Assault” with positive feedback provided by attendees, rating the session 4.74 stars out of 5. *Resourceful Mind* seeks feedback from participants as part of its continuous improvement, with a number of attendees requesting that the webinar be extended due to the amount of content that is covered. Following the initial success of the first webinar, some CME member companies have engaged with Lifeline, seeking to deliver the session to their wider workforce. For example, to their leadership team, first responders, and human resources personnel.

#### g. Other planned and ongoing initiatives

In addition to the industry wide initiatives set out above, there is ongoing implementation of good practice initiatives by resource sector companies.

The WA resources sector has been clear in its strong commitment to address the serious issues of sexual assault and harassment in workplaces in our sector. The financial investment in initiatives from companies has been significant and reflected this commitment with hundreds of millions of dollars committed by

companies to new initiatives in this area. Examples of this investment and specific initiatives are provided throughout the submission and include specific training programs, accommodation upgrades, and community building initiatives. For example:

- **Enhanced systematic background checks:** Enhanced recruitment screening processes for prospective employees, and the implementation of a pre-employment due diligence questionnaire, which asks prospective employees to disclose if they have been the subject of any allegations, investigations or prosecutions involving, amongst other things, sexual assault or sexual harassment. Industry members are continuing to work together and explore ways to enhance their screening processes for prospective employees, including a structured reference checking process between industry participants.
- **Accommodation upgrades:** A number of CME members have continued to invest in accommodation upgrades to ensure that residents are safe and secure at all times while addressing their physical, social and emotional needs. Security upgrades include improved CCTV, windows, doors, screens, door latches and/or locks. For example, companies to consider moving towards a swipe card access or lock replacement program. Physical, social and emotional upgrades include women's only gyms, theatre rooms, and gaming facilities.
- **Wet Mess:** Review of tavern processes, following significant discussions surrounding the serving of alcohol at employee accommodation, and the subsequent roll-out of technology upgrades for the serving of alcohol, improving existing drink limit technology. The provision of 0% alcohol beverages at no charge, which led to a decrease of alcoholic beverages consumed by employees.
- **Accessible and inclusive work events:** Children-friendly spaces provided during workplace sundowner events, with a creche set up to provide parents with the option to attend the event with their children
- **State-wide 'Stop Work':** Hosting a state-wide 'stop work' meeting to acknowledge sexual harassment and assault as an issue in the sector. This meeting was led by senior leadership and delivered via videoconference to ensure that all employees were able to join the meeting and provide feedback.
- **Independent review of workplace:** An independent expert review involving an organisation-wide survey and investigation into workplace culture, including as it relates to bullying, sexual harassment and discrimination. The full report was shared with the company's workforce and present at CME's SARB Working Group, allowing for the continued collaboration and sharing of lessons learnt across industry.
- **Internal review of workplace:** An internal review, in partnership with a third-party of their workforce under the lens of promoting a safe and respectful workplace. This review has the aim of being provided with tangible recommendations of improvements they are able to make as an organisation. Consultation includes online surveys and focus group discussions across operational sites.
- **Transparency:** The provision to employees of a year-end, high-level report on complaints that had been made in 2021, and how the employer responded to them. CME considers this increased level of transparency as a positive step forward, increasing the visibility of the issue and allowing employees to see that their reports are being investigated and responded to.
- **Risk assessments:** Acknowledging the feedback provided in the Respect@Work Report to view the sexual harassment as a work health and safety risk, a number of CME members have reviewed their risk assessment processes to include specific risk factors that may contribute to inappropriate workplace behaviours and to implement further controls to eliminate or (where elimination is not reasonably practicable) minimise sexual harassment at work.
- **Ongoing training and development:** Identification of development opportunities for frequent sharing of information about sexual harassment and being a good bystander. For example, through pre-start meetings and site notices.
- **'Upstander' programs:** A "Be an Upstander" program, designed to create a movement from individuals being a bystander to an upstander, who is someone who we identify as courageous, supportive and a willingness to act to address or prevent offensive, inappropriate or discriminatory behaviours. Some of the feedback provided through consultation and the Inquiry involved the importance of empowering people to speak up instead of being bystander to inappropriate behaviours.



- **Policy updates and improvements:** Implementation of a stand-alone social media policy and review of existing policies. For example, Equal Opportunity and Discrimination policies.
- **Reporting processes:** Through collaboration with the MCA Respect@Work toolkit, the [investigation report template](#) has been developed with input from existing member investigation reports. The investigation report template can be adapted to suite company practices. Some CME members have updated their reporting framework to guide internal and external reporting of psychosocial incidents.
- **Reporting technology:** The implementation of anonymous reporting systems. Following their appearance at the Inquiry public hearing, CME invited Safe2Say to present to the SARB Working Group. Use of third-party confidential reporting systems can provide de-identified data based on sites, providing the employer with the opportunity to conduct a deeper review of locations with increased reports.
- **Safety share:** Following the example of WHS meetings, every SARB Working Group meeting includes a member-led safety share. This is a 5-10 minute presentation which can include lessons learnt, examples of best practice or areas where technology has been used.

**CME supports a holistic, coordinated and risk-based approach to managing risks associated with workplace sexual harassment and is opposed to a linear, one-size-fits-all response.**

## 2. Reporting

During the Inquiry's public hearings, many attendees were asked about whether the introduction of an independent regulator/organisation to receive and investigate complaints of sexual harassment in the FIFO mining industry would help. CME's comments on this are outlined below.

### a. Regulatory body

CME strongly supports the introduction of measures that will assist in eliminating sexual assault and harassment occurring at FIFO mining workplaces and improve access to support for victims of sexual assault and harassment. However, in the context of an already complex regulatory environment, CME and its members has some concerns about whether establishing another independent body will deliver on these objectives.

Regulatory bodies are involved because the victim, or someone on their behalf, seeks their involvement and/or support, or in the case of DMIRS, because of statutory functions that it considers it needs to discharge, regardless of whether a victim has sought its support/involvement. In practice, this regularly leads to the same circumstances being reviewed by several parties, each of whom are considering the circumstances from a different perspective and with a different purpose.

The Respect@Work Report also recognised the complex regulatory environment, noting that a consistent theme that emerged from submissions and consultations to the AHRC was that the current system for addressing workplace sexual harassment in Australia is complex and confusing for victims and employers to understand and navigate. As such, the focus of the Respect@Work Report recommendations was to maximise and improve existing legislative frameworks, and leverage, rather than duplicate, the expertise of existing regulators. In this context, it did not recommend the introduction of an additional independent regulator/organisation to receive and investigate complaints of sexual harassment in Australia or in any specific industry.

Additionally, CME would be concerned about introducing an additional independent body. In practice, it is unclear what improved outcomes this could deliver for victims, if victims were required to report their experience to that independent body in addition to existing reporting channels (for example, the victim's employer, the Police, DMIRS). This may expose a victim to a risk to their psychological health and safety through re-trauma. Whilst the focus of the Inquiry is appropriately on victims of assault and harassment, CME notes that by introducing an additional body, this may also subject alleged perpetrators of assault and harassment to multiple inquiries which could detrimentally affect their health and safety.

**CME considers that introducing an additional independent body to receive and investigate complaints of sexual assault and harassment would add further complexity to an already complex environment and may result in the duplication or overlap of functions across regulators or agencies making the system harder to access and navigate for victims of sexual harassment.**

**CME supports the promotion and improvement of existing independent avenues for reporting sexual harassment.**

Although the Respect@Work Report did not recommend the introduction of an additional independent regulator/organisation, relatedly the Respect@Work Report also recommended the establishment of a Workplace Sexual Harassment Council (the Council) to provide a coordinated mechanism for existing policy and regulatory bodies with responsibility for sexual harassment to work together collaboratively. The Federal Government has since endorsed to this recommendation, and has committed \$2.1 million over three years, through the 2020 Women's Economic Security Statement to fund the establishment of the Council. The Council's participants include the Heads of Workplace Safety Authorities and held its inaugural meeting on 19 May 2021.

**CME supports a collaborative approach between existing regulators and stakeholders and considers the establishment of the Workplace Sexual Harassment Council a positive development to ensure existing systems are working optimally and to drive improvements.**

## **b. Regulator Activities**

CME recognises there have been a number of regulatory developments since the public hearings.

Part of a recommendation from the Respect@Work Report was for the development of a Code of Practice on sexual harassment.<sup>2</sup> Since late 2020, CME and its members have contributed to the development of three Codes of Practice covering inappropriate workplace behaviours through CME's involvement on the Mining Industry Advisory Committee (MIAC) and Commission for Occupational Safety and Health (COSH). CME welcomed the recent launch of the three psychosocial Codes of Practice:

- [Workplace Behaviour](#)
- [Psychosocial Hazards in the Workplace](#)
- [Violence and Aggression at Work](#)

CME notes that the *Code of Practice – Workplace Behaviour* specifically addresses sexual harassment as a workplace behaviour that can constitute a risk and increase the risk of harm to worker health and utilises the definition of sexual harassment in accordance with the *Sex Discrimination Act 1984*, as recommended by the Respect@Work Report.

CME also notes the proclamation commencement of WA's Work Health and Safety Act 2020 (WHS Act), following publishing in the [WA Government Gazette](#). Confirmation that the new WHS laws will come into operation from 31 March 2022 provides a vital foundation for the modern management of psychosocial and related harassment in workplace. As previously provided in CME's 2019 submission to the Inquiry, the WHS Act, a 'person conducting a business or undertaking' has primary duty to face to ensure, so far as is reasonably practicable, the physical and psychological health and safety of workers. Therefore, employers have a duty of care to prevent sexual harassment as a risk to a worker's psychological health and safety.

The Inquiry previously heard evidence about the reporting of workplace sexual harassment to DMIRS. Both industry and DMIRS acknowledged this as an area which required improvement, calling for increased clarity on the reporting processes that employers were to follow in the event of a workplace sexual harassment or sexual assault.

DMIRS have also developed an information sheet on the topic of [Gendered Violence – Notification of sexual harassment and/or assault to Mines Safety \(the Information Sheet\)](#). This Information Sheet is designed to provide employers with guidance on reporting incidents of gendered violence, including sexual harassment and/or assault to DMIRS.

**CME welcomes the work undertaken by DMIRS to provide industry with further guidance on managing the risks associated with sexual harassment and greater clarity on reporting requirements. The implementation of the WA's modernised WHS Act will provide further clarity in this regard.**

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<sup>2</sup> Recommendation 35: WHS ministers agree to amend the model WHS Regulation to deal with psychological health, as recommended by the Boland Review, and develop guidelines on sexual harassment with a view to informing the development of a Code of Practice on sexual harassment. Sexual harassment should be defined in accordance with the Sex Discrimination Act.

### 3. Potential challenges with an Industry Register

Throughout the Inquiry consultation and oral hearings, CME and its members acknowledged the risk that workers, whose employment is terminated due to inappropriate behaviour, could move and repeat that inappropriate behaviour at other FIFO mine sites with different employers. CME supports the consideration of options to mitigate this risk. One of the possible options that has been discussed throughout the Inquiry is the introduction and application of a register of offenders (the Industry Register).

CME has been clear in our commitment to meaningfully consider any recommendation from the Inquiry. While we would be happy to support further consideration of this option if recommended, we consider there are some practical and issues and potential legal consequences which, in CME's view, would need to be addressed for any register to operate effectively and fairly. For example, the scope and review of the Industry Register, as well as procedural fairness and potential for employee discrimination. These issues are provided in further detail in the below section of this submission.

The Respect@Work Report called attention to cases where persons found to have engaged in sexual harassment were simply moved to different worksites or dismissed, without any attempts to address or alter their behaviour, and continued to engage in sexual harassment with impunity. Therefore, in addition to sanctioning wrongdoing, industry acknowledge that corrective action to alter behaviour wherever possible, plays a significant role in preventing recurrence of sexual assault and harassment.

#### a. Practical Considerations

As identified in the Respect@Work Report, sexual harassment may present in a variety of forms, including verbal forms of sexual harassment, sexually explicit pictures, posters or gifts, intimidating or threatening behaviours, inappropriate physical contact, and sexual harassment involving the use of technology.

With consideration to the above, CME asks the Committee to consider the following practical issues that would arise in the creation on an Industry Register:

- **Scope:** Given the fluid nature of our workforces and the current shortage of workers across various industries, workers whose employment has been terminated for inappropriate behaviour in the FIFO mining industry may change industries and/or occupations, or locations. If the intent of the Industry Register is to prevent workers from repeating inappropriate behaviour, a worker's ability to change location, industries, and/or occupations raises questions about the utility of the Industry Register, and the appropriate scope. For example, a state-specific or industry-specific register. In addition, close consideration should be given to the utility of excluding an offender from the FIFO mining industry, when they may pose the same or greater threat in a different industry.
- **Standard of proof:** The proof that must be applied before a person can be added to the Industry Register. For example, a report being made, incident investigation, or an employee leaving the organisation mid-investigation.
- **Criteria:** Industry acknowledges that sexual assault and harassment is unacceptable, in *any* form. The WA resources sector is seeking to adopt a risk-based approach to sexual assault and harassment and, in this context, industry does not treat the various forms of sexual assault and harassment differently. However, in order for an Industry Register to be effective, specific criteria would need to be adopted. In setting such criteria and making a determination about what conduct is sufficiently serious for a worker's name to be added to the list, there is a potential 'moral dilemma' consequence whereby certain conduct is perceived to be "condoned" if it does not meet the criteria to make it onto the Industry Register. This consequence is undesirable for industry, regulators and, most importantly, victims.
- **Consistency:** For an Industry Register to be effective there must be consistency in decision making across organisations ensuring that similar types of conduct across industry are being treated the same way.
- **Length of Listing:** The practicalities of a time period with how long a person would be listed for, with consideration to additional factors. For example, worker rehabilitation, training, or the inappropriate behaviour reported.
- **Regulation:** The Industry Register will likely contain information for companies across the resource sector, raising the question of the party responsible for the regulation and verification of the register, and the protection of confidential information.



## b. Legal Consequences

As previously stated in this submission, the introduction of a register of offenders in the FIFO mining industry may also have unintended legal consequences:

- **Discrimination:** Under federal anti-discrimination laws, an employee may lodge a complaint of unlawful discrimination to the AHRC on the basis that they have been discriminated against by a prospective employer because of their criminal record. If an employer declines to employ someone due to information obtained on the Industry Register, this could give rise to a discrimination complaint against the prospective new employer. Depending on the form of the Industry Register, it may be possible for prospective employees to argue that the register itself is a form of "criminal record", and the prospective employee may seek to make a complaint of unlawful discrimination on that basis.
- **Privacy:** Unless required by law, or with employee consent, there will be privacy law restrictions on employers sharing information about a worker obtained during the course of that worker's employment with other employers. Additionally, the sensitivity of the information being stored on the Industry Register raises questions about the appropriate database to store the register, who has access to that database and mechanisms to protect the information on the register.
- **Procedural fairness:** In an employment context, typically concepts of procedural fairness arise. If it is proposed that a worker's name would be included on a register after their employment has been terminated for inappropriate conduct without giving the worker an opportunity to respond to or appeal the decision to list them on the register, this risks denying the respondent procedural fairness. Further, if respondents are not afforded this opportunity, it is possible that names could be listed on the Industry Register in error.
- **Defamation:** Following on from the above point, if a person is listed on the Industry Register in error, there would be potential for legal action against the employer.

## c. Potential alternatives to a register

The challenges set out above in establishing an effective register have led CME and its members to consider alternative ways to reduce the risk of repeat offenders moving between organisations. Industry is continuing to collaboratively to explore ways to enhance their screening processes for prospective employees, including a more structured reference checking process between industry participants. This enhanced background check process includes updates such as police clearances, increased detail on reference checks, and due diligence questionnaires.

There are a number of further approaches worth considering to address this issue, for example:

- employers collating to a centralised point within their organisation when workers have been found to have engaged in sexual assault and harassment at their workplaces;
- employers nominating approved referees who have access to this centralised collection point and sharing this information within industry;
- prospective employees being required to state the last two organisations at which they worked on their applications for work;
- the prospective employer being required to contact one of the approved referees for each organisation;

**CME requests that the Committee considers the practical challenges and legal consequences posed in creating an Industry Register set out in this submission.**

## Conclusion

Ensuring the health and safety of all people working in the resource sector is the utmost priority for CME and our member companies. Any instances of rape, sexual assault and other forms sexual harassment is totally unacceptable. The WA resources sector is committed to eliminating these behaviours from our workplaces.

CME appreciates the opportunity to provide a progress update and further feedback to the Inquiry and welcomes continued work in addressing this critically important issue through a safety lens. The management of workplace behaviours is a complex and multi-faceted area, and the WA resources sector remains committed to implementing best practice risk management and promotion of safe workplace behaviours of

its workforce. In this regard, WA's modernised WHS regime provide a timely and appropriate framework to drive best practice regulation in the state.

Should you have questions regarding this submission, please contact Elysha Millard, Manager – Health, Safety and People at [E.Millard@cmewa.com](mailto:E.Millard@cmewa.com).

Yours sincerely,



**Paul Everingham**  
Chief Executive (Officer)

Enclosed:  
CME Implementation Framework