

Government of Western Australia WorkSafe Commissioner

Community Development and Justice Standing Committee:

'Enough is Enough': Sexual harassment against women in the FIFO mining industry

Final progress report prepared for the Hon. Simone McGurk MLA, Minister for Industrial Relations.





Contents

Introduction	2
Summary of recommendations for Government	4
Summary of recommendations for industry	6
Recommendations for Government	8
Recommendation 1	8
Recommendation 10	9
Recommendation 11	10
Recommendation 12	11
Recommendation 13	12
Recommendation 14	13
Recommendation 15	14
Recommendation 17	16
Recommendation 18	17
Recommendation 19	18
Recommendation 20	19
Recommendation 21	20
Recommendation 22	21
Recommendation 23	24
Recommendation 24	26
Recommendations for industry	27

Introduction

In June 2022, the Community Development and Justice Standing Committee (the Committee) report into sexual harassment and assault against women in the fly-in fly-out (FIFO) mining industry was tabled in the Western Australian Parliament. The inquiry placed a focus on the extent, nature and reporting of sexual harassment in FIFO workplaces and the workplace culture across the mining industry.

The inquiry found that sexual harassment and assault were not being appropriately managed through failure of companies to report known incidents, fear of repercussions on those reporting incidents, limited or ineffective training across industry, and a significant gender imbalance across the mining sector workforce.

A spotlight was placed on the adequacy of existing workplace practices and policies in protecting workers against harassment, assault and other psychosocial risks.

The Committee's final report, *Enough is Enough: Sexual harassment against women in the FIFO mining industry* (Enough is Enough report) presented 79 findings and 24 recommendations.

The recommendations set out a range of actions to improve workplace outcomes in relation to sexual assault and harassment to:

- protect the anonymity of victims and witnesses
- raise the profile of the issue through education, training, and guidance
- better monitor and respond to incidents through data and system enhancements
- strengthen the regulatory framework and capability to respond to reports and incidents.

The Government responded to the Enough is Enough report in September 2022, providing its support, or in principle support, to all 15 recommendations within its responsibility to implement.

Progress on the Government's response to the Enough is Enough report recommendations was presented to Parliament in November 2022 and in the Department of Mines, Industry Regulation and Safety's¹ 2022–23 Annual Report in September 2023.

Since then, the Government has delivered a range of initiatives, including establishing support services, promoting awareness, strengthening internal regulatory capabilities and providing education and guidance to support workplaces to eliminate inappropriate behaviours. A number of these initiatives have been supported by the Mental Awareness, Respect and Safety (MARS) Program which commenced in 2022 to address mental health, workplace culture and safety issues in the Western Australian mining industry.

It is now two years since the release of the Enough is Enough report and the Government's achievements in response to the recommendations are now either complete, in advanced stages of completion, or integrated into usual business and operating practices. Given the above, this report presents the final progress update from the WorkSafe Group (WorkSafe) of the Department of Energy, Mines, Industry Regulation and Safety.

¹ Department of Mines, Industry Regulation and Safety was renamed the Department of Energy, Mines, Industry Regulation and Safety on 1 December 2023.

While this is WorkSafe's final progress report on the recommendations, many of the programs and practices put in place are ongoing, seeking to drive positive change to address sexual harassment and assault in the workplace.

It is recognised that while the Enough is Enough report recommendations focus on removing gender-based risks in the mining industry, unacceptable behaviours and attitudes continue to present risks to workers in all industry sectors and the broader community. These risks are reflected in one in six Australian women having experienced physical and/or sexual violence by a current or previous partner since the age of 15, and 37 per cent of homicide and related offences in Western Australia were family and domestic violence related in 2022². These figures indicate the widespread harm of gender-based violence in the community.

Reducing the risks and driving societal change will require the continued commitment and engagement of government, industry, employers, employees, and the broader community, working together to drive cultural change and respect across all workplaces.

The Departments of Communities, Health and Justice are currently developing Western Australia's first Sexual Violence Prevention and Response Strategy, recognising that a wholeof-government approach is needed to prevent and address the impact of sexual violence in the community. The strategy is being developed in conjunction with two other projects examining sexual offending laws and criminal justice processes and will complement *Path to Safety: Western Australia's Strategy to Reduce Family and Domestic Violence*.

WorkSafe, on behalf of the Government, remains committed to continuing to support workplaces and the broader community to drive long lasting change to provide safe and healthy workplaces for all in Western Australia.

Sally North WorkSafe Commissioner

^{2 16} Days in WA – Stop Violence Against Women, Department of Communities

Summary of recommendations for Government

	Recommendation	Government response	Status
1	The Government consider establishing a forum to hear, document and acknowledge the experiences of victims of historical workplace sexual harassment. Part of this process could include exploring opportunities for redress, such as formal apologies from companies and/or perpetrators and appropriate compensation.	Supported in principle	Implemented
10	The Minister for Mines* to instruct DMIRS to work with WorkSafe WA and mining bodies to prepare regular, anonymous, independently administered surveys and/or audits to gauge the extent, impacts, reporting of, and responses to, sexual harassment and assault in the workplace (including in accommodation camps). The Minister should then ensure that regular updates on industry trends are made public.	Supported in principle	Implemented
11	The Minister for Mines*, the Minister for Industrial Relations and the Minister for Women's Interests should work with relevant agencies and stakeholders to determine the best-placed entity to become the central coordinator and record-keeper for reports of sexual harassment in the workplace.	Supported	Implemented
12	The Minister for Mines* should direct DMIRS to further explore options such as audits and surveys to conduct investigations which do not compromise any complainant's anonymity.	Supported	Implemented
13	WorkSafe WA use its industry influence to inform workplace investigation and training requirements. It should also utilise anonymised reports from other agencies such as Crime Stoppers for this purpose. To enable this, the Minister for Mines* should ensure appropriate information sharing arrangements are included in any new Memorandum of Understanding between DMIRS/WorkSafe WA and the WA Police Force.	Supported in principle	In progress
14	The Minister for Mines* instruct DMIRS to work with industry bodies to explore options for industry-funded widespread rollout of consistent, all- hours, third-party anonymous reporting platforms to complement existing company systems. In doing so, consideration must be given to promoting and building trust in potential users, including education sessions, culturally-sensitive reporting options and evidence-driven wraparound support services.	Supported in principle	Implemented
15	The Minister for Mines* instruct DMIRS to work with mining peak bodies to develop appropriate education and training across the industry for bystanders on when and how to report incidents of sexual harassment and make this a key component of cultural change in the industry.	Supported	Implemented
17	The Minister for Mines* instruct DMIRS to work with industry bodies to investigate and monitor recent and current use of non-disclosure agreements and private settlements relating to allegations of sexual harassment and assault and explore options for issuing formal guidance to the industry to inhibit their future use.	Supported	In progress
18	The Minister for Mines* ensure that DMIRS has an effective and comprehensive data management system that is adequate to the needs of monitoring and reporting on sexual harassment.	Supported	In progress
19	The Minister for Mines* provide public status updates of the formal information sharing arrangement between the WA Police Force and DMIRS/WorkSafe WA, including how it will cover incidents relating to workplace sexual harassment and assault, and how and when it will be reviewed.	Supported	In progress

20	The relevant Government agencies coordinate to ensure timely implementation of the recommendations of the Law Reform Commission review into the <i>Equal Opportunity Act 1984</i> , with a focus on reversing the onus of proof on victims of sexual harassment, to remove the 'disadvantage' test, and make it consistent with recent anti-discrimination law from other jurisdictions, including the Victorian <i>Equal Opportunity Act 2010</i> .	Supported	In progress
21	The Minister for Mines, in cooperation with the Minister for Industrial Relations and the Minister for Women's Interests, review the WA regulatory framework to ensure that there is a consistent and comprehensive definition of 'sexual harassment' across all the relevant components of the system.	Supported	In progress
22	 The Minister for Mines* provide regular updates on the progress and outcomes of: the DMIRS review of historical assault cases; the delivery of the Mental Awareness, Respect and Safety Program, including the progress of the four-year research project to gather and evaluate data on sexual assault, harassment, mental health, drug and alcohol use, and emerging mine safety issues; and the review of DMIRS' enforcement model. 	Supported	In progress
23	 The Minister for Mines* and the Minister for Industrial Relations work with relevant stakeholders, including the WorkSafe Commissioner, to develop comprehensive standards and guidelines to lead the integration of sexual harassment into work health and safety practice. This should include: clear guides to what constitutes sexual harassment, gender harassment and other dangerous behaviours; guidelines for dealing with identified incidents; definitions of thresholds for various types of identified behaviour/ incidents, recognising that 'days off work' is not a reasonable measure for these matters; and expectations for reporting to the regulator and by the regulator of the prevalence and progress in dealing with incidents. This material and these processes should so far as possible remove all ambiguity for mining and other companies, and include allowance for anonymous reporting by individuals. Acknowledging that this will involve a substantial body of work, the relevant Minister/s should report by the end of 2022 and six-monthly thereafter on progress to achieving these outcomes. 	Supported	Implemented
24	The Minister for Mines* instruct DMIRS to work with WorkSafe WA, the mining industry, relevant unions, and other stakeholders to establish a fully resourced, culturally-appropriate expert group within WorkSafe WA with specialist expertise, experience and training to investigate, assess and deal with reports of sexual harassment and assault and related offences in the mining industry. This should include consideration of the approach currently taken by WorkSafe Victoria. The Minister report progress on this to Parliament by the end of 2022's sitting period.	Supported	Implemented

* The Enough is Enough report refers to the Minister for Mines as being responsible, however actions fall under the portfolio responsibilities of the Minister for Industrial Relations.

Summary of recommendations for industry

	Recommendation	Government response	Status
2	Mining and other resources companies need to ensure that there are serious repercussions, including dismissal, for any person who has attempted to seek sexual favours for advantage and that all proper legal actions will be taken against them.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
3	 The industry must explore ways to prevent perpetrators of serious sexual harassment simply finding reemployment on other sites and in other companies. This should involve: thorough exploration of an industry-wide workers' register or other mechanism such as industry-wide accreditation, taking into account natural justice considerations and perhaps modelled on the Working With Children Card; and ensuring probity checks across the industry include consideration of harmful sexual behaviours particularly for smaller companies and sub-contractors. 	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
4	Mining companies must as a minimum implement moderate drinking standards for all FIFO accommodation sites.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
5	While merely 'adding more women' to the mix is not enough to remedy cultural problems, mining companies need to improve the gender balance in their workplaces. Part of this must include greater effort to increase female workforce participation, with specific focus on site-level supervisor and management positions.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
6	 The mining and resources sector actively work to reduce the risks which are exacerbated by high rates of labour-hire and subcontracting. To ensure sexual harassment is addressed, safety management plans should: consider the appropriate proportion of labour-hire and contracted workforce; review monitoring and information sharing arrangements with all levels of contract partners; and establish clear requirements and guidelines for all contractors, which directly address issues of sexual harassment. 	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee

7	Acknowledging the wide range of company size and capability, the large mining companies and representative bodies should develop a template/framework to assist all companies to review their workplace culture, processes, and work and living conditions to identify factors which allow sexual harassment to persist.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
8	The mining and resources industry must establish acceptable standards for accommodation facilities, including security and other safety measures (including lighting, locks, CCTV, public area layouts).	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
9	The industry should ensure that sexual harassment and assault training is accredited, fit for-purpose, and delivered by suitable practitioners. Training should be mandatory and ongoing for all employees. There should be additional specialist training for people who must formally respond to incidents.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee
16	Mining companies establish a number of internal and external options for reporting and obtaining support for incidents of sexual harassment and assault. All employees must be informed of these options.	Noted	Implementation by industry peak bodies in consultation with the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee

Recommendations for Government

Recommendation 1

The Government consider establishing a forum to hear, document and acknowledge the experiences of victims of historical workplace sexual harassment. Part of this process could include exploring opportunities for redress, such as formal apologies from companies and/or perpetrators and appropriate compensation.

Government response: Supported in principle

Status: Implemented

The extent of sexual harassment in Australian workplaces, including historical accounts from affected persons, was highlighted during the Australian Human Rights Commission's (AHRC) *Respect@Work: National inquiry into sexual harassment in Australian workplaces* in 2020.

The AHRC inquiry recommended establishing a national non-identifiable data-share agreement for workplace sexual harassment. The Respect@Work Agreement between the AHRC and 22 government agencies across Australia, including WorkSafe, was finalised in April 2023.

Guidance published by the Respect@Work Council is promoted and accessible via WorkSafe's *Complaints about bullying, sexual assault or harassment* web page.

The hearing and acknowledging of the experiences of persons affected by sexual assault and harassment in the Western Australian mining industry is being supported by \$335,000 in Government funding to Circle Green Community Legal to deliver the <u>Mining Industry</u> <u>Respect Infoline</u>.

This independent confidential service was established in January 2023 to offer a phone (1800 929 250) and online enquiry service to provide advice and referrals to survivors, support persons, bystanders and whistle-blowers. Persons wishing to report an incident are referred to WorkSafe and WA Police Force.

Research and evaluation of mental health, sexual harassment and emerging mine safety issues in the workplace is being undertaken as part of the Centre for Transformative Work Design Landmark Study funded through the Government's Mental Awareness, Respect and Safety (MARS) Program. The final synthesis and findings are due to be released in early 2026. See Recommendation 22.

Workplace sexual harassment is prohibited under the *Fair Work Act 2009* from 6 March 2023 for those businesses covered by the national workplace relations system. The Fair Work Commission can make orders for compensation, lost pay, or for a person to take certain steps such as change of behaviour or to provide training.

The Minister for Mines to instruct DMIRS to work with WorkSafe WA and mining bodies to prepare regular, anonymous, independently administered surveys and/or audits to gauge the extent, impacts, reporting of, and responses to, sexual harassment and assault in the workplace (including in accommodation camps). The Minister should then ensure that regular updates on industry trends are made public.

Government response: Supported in principle

Status: Implemented

In March 2022, the 'People@Work' surveys commenced at Western Australian mine sites, prior to the release of the Enough is Enough report recommendations. The surveys are administered by WorkSafe and are jointly funded by the Australian Government and participating states and territories.

These anonymous surveys provide inspectors with the opportunity to consult with workers about their experiences at the site and the factors which protect or threaten their psychosocial health and safety. The surveys include a free psychosocial risk assessment tool to enable onsite personnel to respond and contribute to psychosocial risk assessments. These surveys assist to identify common psychosocial hazards and factors affecting personnel at the site.

Adoption of the 'People@Work' surveys has been the result of WorkSafe engaging with mining companies across Western Australia to establish trust and enable information gathering to gauge the extent of sexual harassment and assault at mine sites. Use of the surveys has been integrated into WorkSafe's usual business processes.

The surveys have been well received, with around 3,000 responses across 26 mine sites from August 2021 to June 2024. The positive voluntary uptake by mine site personnel and improved communication between WorkSafe and mines sites has enabled persons conducting a business or undertaking (PCBUs) and workers to better understand and adopt psychosocial compliance requirements and reporting measures into workplace culture and operations.

Updates on the use of the surveys were reported as part of the Government's progress update to Parliament on the Enough is Enough recommendations in November 2022 and the Department of Mines, Industry Regulation and Safety's³ 2022–23 Annual Report.

Establishment of baseline data on mental health, sexual harassment and assault is being progressed as part of the mining-industry focused Landmark Study by the Centre for Transformative Work Design, part of the Future of Work Institute at Curtin University. The study is also examining emerging mine safety issues and related workplace initiatives, including the use of surveys and audits. See Recommendations 1 and 22.

³ Department of Mines, Industry Regulation and Safety was renamed the Department of Energy, Mines, Industry Regulation and Safety on 1 December 2023.

The Minister for Mines, the Minister for Industrial Relations, and the Minister for Women's interests should work with relevant agencies and stakeholders to determine the best-placed entity to become the central coordinator and record-keeper for reports of sexual harassment in the workplace.

Government response: Supported

Status: Implemented

As the work health and safety authority in Western Australia, WorkSafe is the central coordinator and record-keeper of reported incidents of sexual harassment in the workplace. See Recommendations 13, 18 and 22.

The Minister for Mines should direct DMIRS to further explore options such as audits and surveys to conduct investigations which do not compromise any complainant's anonymity.

Government response: Supported

Status: Implemented

Anonymous surveys and audits assist to identify specific issues at mines sites and have been incorporated into WorkSafe's business processes. See Recommendation 10.

WorkSafe has established reporting and investigation processes to protect the anonymity of persons reporting an incident or lodging a complaint. Notifications and complaints about workplace sexual harassment received by WorkSafe are managed in accordance with WorkSafe's *Compliance and enforcement policy*.

Initial reports or notifications made through the WorkSafe 24/7 telephone line may be made anonymously. Calls and reports are handled by call centre staff trained in vicarious trauma, mental health first aid and how to communicate with victims of sexual assault and those considering suicide.

Procedures are in place to ensure information captured in the WorkSafe Safety Regulation System provides appropriate protections around anonymity of psychosocial reports. See Recommendations 10 and 18.

WorkSafe WA use its industry influence to inform workplace investigation and training requirements. It should also utilise anonymised reports from other agencies such as Crime Stoppers for this purpose.

To enable this, the Minister for Mines should ensure appropriate information sharing arrangements are included in any new Memorandum of Understanding between DMIRS/ WorkSafe WA and the WA Police Force.

Government response: Supported in principle

Status: In progress

The Work Health and Safety (WHS) Foundation and the Australian Institute of Health and Safety, have developed and delivered the training program, *'Response, Investigation and Management of Sexual Harassment in the Workplace'*. The program, funded through the Government's MARS Program, is supported by the University of Western Australia, and facilitated by PerMentis Pty Ltd (FIFO Focus).

Tailored for the Western Australian mining industry, the four-day accredited program aims to build industry capabilities to respond, investigate and manage sexual harassment in the workplace. Directed at executive and operational management, human resource professionals, employee representatives and first responders, it provides training in psychosocial hazard identification, assessment and risk mitigation in the workplace. The objective of the training is to alleviate risks in a systematic and sustainable way.

FIFO Focus is also working towards converting the program to Nationally Recognised training. This will allow participants to receive a Certificate of Attainment for this Unit of Competency.

Arrangements for the sharing of sensitive information related to workplace sexual harassment and assault is being facilitated through a Memorandum of Understanding (MoU) between WorkSafe and the WA Police Force. See Recommendation 19.

Anonymised data sharing between agencies is also being facilitated through the AHRC Respect@Work Agreement. See Recommendation 1.

The Minister for Mines instruct DMIRS to work with industry bodies to explore options for industry-funded widespread rollout of consistent, all-hours, third-party anonymous reporting platforms to complement existing company systems. In doing so, consideration must be given to promoting and building trust in potential users, including education sessions, culturally-sensitive reporting options and evidence-driven wraparound support services.

Government response: Supported in principle

Status: Implemented

The Government allocated \$500,000 in 2023–24 to support the WorkSafe 'Speak up. Report it.' awareness campaign as part of WorkSafe's Sexual harassment awareness reporting engagement (SHare) strategy.

The 'Speak up. Report it.' campaign was launched at the *Mining Industry Summit: Driving Respect* in August 2023, progressively targeted at individual affected persons, witnesses, bystanders, PCBUs and senior mine site personnel. See Recommendation 23.

The campaign promoted the WorkSafe 24/7 telephone line to report sexual harassment through media releases, digital and traditional media, press advertising, billboards, buses and trains, major mining airports, and other publications. See Recommendation 12.

The campaign actively raised the profile of sexual harassment in the mining sector, resulting in consequent increased awareness and reporting across industry sectors. The reporting platforms and guidance may be accessed by all industry sectors workers, including witnesses and bystanders.

Engagement with industry has indicated support for the WorkSafe 24/7 telephone line to lodge a complaint about workplace sexual harassment. WorkSafe is independent from PCBUs in the mining sector and using this reporting line provides enquirers with an opportunity to consider their options and the actions they want to see to resolve their situation.

Further options to raise and discuss concerns are available through the Government-funded Circle Green advice line. This trauma informed, critical service acts as a confidential referral source to relevant service providers, including industrial relations legal services through Legal Aid and the WorkSafe 24/7 telephone line. See Recommendation 1.

The Minister for Mines instruct DMIRS to work with mining peak bodies to develop appropriate education and training across the industry for bystanders on when and how to report incidents of sexual harassment and make this a key component of cultural change in the industry.

Government response: Supported

Status: Implemented

The Government is working with industry to develop and deliver education and training on sexual harassment, sexual assault, sex-based bullying, empowering bystanders, and general gender-based violence and reporting processes.

Information to assist bystander reporting was promoted during the 2023 WorkSafe Mines Safety Roadshow "How tough are we now"⁴. The roadshow encouraged better understanding of sexual harassment to improve mine site culture. Existing practices for managing psychosocial risks in the mining industry were explored and the roadshow generated recommendations for mining companies and WorkSafe as part of continual improvement for dealing with psychosocial hazards.

WorkSafe has published information to support bystanders, including:

- · Information sheet: Information for bystanders of sexual harassment
- Poster: How to take action as a bystander witnessing sexual harassment

The 2023 Roadshow was the progression of a previous roadshow undertaken in 2010 that focused on how "toughness" stereotypes were affecting the way people behaved on mine sites. Further projects on gendered violence and LGBTIQA+ and indigenous groups, and male to male violence in the mining industry are planned in the second half of 2024.

WorkSafe has engaged with the University of Western Australia's McCusker Centre for Citizenship to develop the online, self-paced, trauma informed 'sexual harassment evaluation tool for mine sites for affected persons and bystanders. The tool provides users with information about the investigation process, protections around anonymity, and what is required by responding agencies when a report is made. Since its release in August 2023 to June 2024, the tool has been accessed 2,662 times. The tool is available through the DEMIRS website and will soon be available through the WorkSafe SafetyLine Hub (under construction).

Bystander training is being funded through the Government's MARS Program. See Recommendation 13.

The Government's Mentally Healthy Workplaces Grant Program provides funding for mining industry initiatives to address work-related psychosocial hazards and associated risks and promote positive practices that support worker mental health and wellbeing.

⁴ WorkSafe Mines Safety Roadshow - How Tough Are We Now?: Report for WorkSafe Mines Safety 2023, Factive 2023

The Mentally Healthy Workplaces program includes three annual grants of \$175,000 over the 2022–25 grant period, funded under the MARS Program:

- Suicide Prevention and Support: MATES in Mining site-based training and education to manage mental health and suicide prevention efforts within the workforce.
- *Psychosocial Risk Management Program:* FIFO Focus and Australian Institute of Health and Safety four-day accredited program on workplace psychosocial hazard assessment and risk mitigation. See Recommendation 13.
- *Resourceful Mind:* Lifeline and Chamber of Minerals and Energy WA peer support training program to reduce the stigma surrounding mental health and support the mental health and wellbeing of individuals in the resources sector.

WorkSafe industry guidance

Codes of practice are being progressively updated to reflect the *Work Health and Safety Act 2020* and regulations which commenced in 2022.

The WorkSafe *Complaints about bullying, sexual assault or harassment* web page provides information to the community about making complaints about workplace bullying, sexual assault or harassment. Users can access information on the role of WorkSafe when responding to workplace behaviours, external resources, and links to specific guidance materials, including:

- Information sheet: Guidance for individuals when making a complaint about gendered violence.
- Information sheet: Gendered violence: Sexual harassment.
- Information sheet: Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety.
- Information sheet: Information for bystanders of sexual harassment.
- Information sheet: Sexual harassment at work.
- Poster: How to take action as a bystander witnessing sexual harassment.

The Minister for Mines instruct DMIRS to work with industry bodies to investigate and monitor recent and current use of non-disclosure agreements and private settlements relating to allegations of sexual harassment and assault and explore options for issuing formal guidance to the industry to inhibit their future use.

Government response: Supported

Status: In progress

Principles to guide the consideration of the use of a confidentiality clause in a settlement agreement concerning a workplace sexual harassment claim are set out in the AHRC *Guidelines on the use of confidentiality clauses in the resolution of workplace sexual harassment complaints 2022.* The guidelines assist persons making an allegation of sexual harassment, as well as employers, alleged perpetrators, unions, lawyers, or anyone involved in resolving a workplace sexual harassment complaint.

The AHRC guidelines are applied in Western Australia to specifically address the use of nondisclosure agreements.

The guidelines are being adapted for Western Australia, with accessibility improved through development of concise guidance directed at workers.

The Victorian Government's response to recommendations of its <u>Ministerial Taskforce</u> on <u>Workplace Sexual Harassment</u> are being monitored by WorkSafe. Specifically, observing the approach of the Victorian Government's in-principle support for Taskforce Recommendation 10 which proposes changes based on legislative reforms currently before the Irish Parliament to restrict the use of non-disclosure agreements in relation to workplace sexual harassment cases.

The Minister for Mines ensure that DMIRS has an effective and comprehensive data management system that is adequate to the needs of monitoring and reporting on sexual harassment.

Government response: Supported

Status: In progress

The collection of data on incidents of sexual harassment and assault forms an important part of WorkSafe's ongoing compliance responsibilities, its ability to assess the effectiveness of education and awareness campaigns, and to continually improve proactive and reactive investigation and response capabilities.

As required under the work health and safety laws, incidents of sexual harassment on a mine site must be reported to WorkSafe if there is a risk of serious harm to a person. Mining industry PCBUs report incidents through the WorkSafe Safety Regulation System. WorkSafe has communicated to PCBUs that psychosocial reports may be entered into the Safety Regulation System without the names of those involved. Mine-related reports received via the WorkSafe 24/7 telephone line, by email or online are also recorded in the WorkSafe Safety Regulation System in an appropriate format, to inform ongoing monitoring, compliance, and enforcement activities.

While the security of data and access through the existing Safety Regulation System is continually monitored and refined, long term improvements to WorkSafe's data management capabilities will be made with the introduction of the new Compliance and Regulation System (CARS). CARS will replace the current WorkSafe work health and safety compliance platforms and include improved systems for data analysis related to reports of sexual harassment in the workplace.

Enhanced data analysis capabilities for sexual harassment reporting through CARS will further support de-identified data sharing with relevant government agencies, such as through the Respect@Work MoU or the WA Police Force MoU. See Recommendation 1.

CARS is scheduled to be rolled out from 2025 in a staged approach.

The Minister for Mines provide public status updates of the formal information sharing arrangement between the WA Police Force and DMIRS/WorkSafe WA, including how it will cover incidents relating to workplace sexual harassment and assault, and how and when it will be reviewed.

Government response: Supported

Status: In progress

WorkSafe is currently working with the WA Police Force to finalise a revised MoU between the parties, which will include provision for sharing information on workplace sexual harassment or assault where permitted by law. The MoU will also cover a range of other circumstances where WorkSafe and WA Police Force work together.

The MoU is to establish effective ongoing communication and coordination between the parties to ensure investigations into breaches of the *Criminal Code Compilation Act 1913* and the *Work Health and Safety Act 2020* progress without compromising either entity.

Enhancements of WorkSafe's data management capabilities will support data and information arrangements agreed as part of the MoU between WorkSafe and the WA Police Force. See Recommendation 18.

Negotiations between WorkSafe, the State Coroner, and WA Police Force are continuing to ensure the MoU supports the obligations and operational considerations of all agencies. It is expected that the MoU will be finalised towards the end of 2024.

Information on WorkSafe's MoUs and their status will be published on WorkSafe's new website due in late 2024.

The relevant Government agencies coordinate to ensure timely implementation of the recommendations of the Law Reform Commission review into the *Equal Opportunity Act 1984*, with a focus on reversing the onus of proof on victims of sexual harassment, to remove the 'disadvantage' test, and make it consistent with recent anti-discrimination law from other jurisdictions, including the *Victorian Equal Opportunity Act 2010*.

Government response: Supported

Status: In progress

The Law Reform Commission of Western Australia (LRCWA) *Review of the Equal Opportunity Act 1984 (WA), May 2022*, was tabled in the Western Australian Parliament on 16 August 2022. The review provided advice and recommendations on possible amendments to the Equal Opportunity Act to update and enhance its functions.

The review resulted in 163 recommendations, including:

- removing the outdated disadvantage test for sexual harassment complaints.
- strengthening equal opportunity protections for LGBTIQA+ staff and students in religious schools.
- providing anti-discrimination protections to those who are trans, gender-diverse or non-binary.
- extending the prohibition against sexual and racial harassment to members of parliament and staff.
- protecting family and domestic violence survivors from discrimination.
- introducing anti-vilification laws
- strengthening victimisation provisions.

The Government broadly accepted most of the recommendations and several key reforms, including the removal of the disadvantage test for sexual harassment complaints (LRCWA recommendation 98) and adoption of the *Sex Discrimination Act 1984* (Cwlth) definition of sexual harassment (LRCWA Recommendation 99) to broadly align Western Australia with other Australian states and territories, including Victoria.

Drafting of a new Equal Opportunity Act is underway.

The Minister for Mines, in cooperation with the Minister for Industrial Relations and the Minister for Women's Interests, review the WA regulatory framework to ensure that there is a consistent and comprehensive definition of 'sexual harassment' across all the relevant components of the system.

Government response: Supported

Status: In progress

Codes of practice, guidance, information sheets, and other information published on the DEMIRS website will be progressively updated to define sexual harassment in accordance with the *Sex Discrimination Act 1984* (Cwlth).

Changes to the WHS (General) Regulations 2022 and WHS (Mines) Regulations 2022 (the WHS regulations) to include psychosocial risks came into effect on 24 December 2022. The WHS regulations now require a PCBU to eliminate psychosocial risks, or to minimise them so far as is reasonably practicable. The duty places psychosocial hazards on the same footing as other significant hazards.

Codes of practice, guidance, information sheets, and other information published on the DEMIRS website been updated to reflect inclusion of psychosocial hazards.

The Minister for Mines provide regular updates on the progress and outcomes of:

- the DMIRS review of historical assault cases;
- the delivery of the Mental Awareness, Respect and Safety program, including the progress of the four-year research project to gather and evaluate data on sexual assault, harassment, mental health, drug and alcohol use, and emerging mine safety issues; and
- the review of DMIRS' enforcement model.

Government response: Supported

Status: In progress

Historical cases review

Since 2022, WorkSafe has received a significant number of reports of sexual harassment or assault. These include a combination of contemporaneous reports and historical reports.

WorkSafe's process includes triaging these reports on the basis of risk, while considering the statute of limitations and focusing on identifying whether the PCBU has safe systems of work in place.

While WorkSafe primarily focuses on systems of work and risk controls rather than specific incidents, if an affected person raises concerns about a case, the specific incident may be examined.

The risk-based response to reports, both contemporaneous and historical, is embedded in WorkSafe's standard procedures for the specialist team.

Further information on reporting sexual harassment or assault incidents is outlined in the *Information sheet: Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety.*

Landmark Study

Research and evaluation of mental health, sexual harassment, emerging mine safety issues in the workplace is being undertaken as part of the \$1.1 million Government-funded Landmark Study. Outcomes of the four-year study by the Centre for Transformative Work Design at Curtin University, will be used to improve mental health and wellbeing, workplace safety, culture, and respect.

The project has established baseline data on mental health, sexual harassment, and assault, emerging mine safety issues and related workplace initiatives.

Findings and recommendations of the study are being made available through the Centre for Transformative Work Design <u>MARS Landmark Study</u> webpage. The final findings are due to be released in early 2026 and will indicate the level of cultural change in the mining sector over this time.

Ahead of the release of the final Landmark Survey report, DEMIRS is utilising results as they become available to provide updates to industry and inform content development and review of publications. This includes DEMIRS event presentations, benchmark data to assess and track worker perceptions, assist the implementation of good work design, and address psychosocial risks, inform, and improve PCBU capabilities and leadership, and improve worker capabilities to engage in positive self-help strategies.

Review of enforcement model

The Enough is Enough report highlighted the importance of the capacity and capability of the regulator to respond to workplace psychosocial hazards and incidents. In response, PricewaterhouseCoopers (PwC) was commissioned to conduct a regulatory review of the WorkSafe Mines Safety Directorate's capabilities⁵ to respond to sexual assault and sexual harassment in the Western Australian mining industry. PwC completed its review in 2022, presenting 42 recommendations.

WorkSafe has directed significant attention to the review's recommendations to improve its enforcement structure, services, workforce development, and systems to address sexual harassment and assault as a workplace issue within its regulatory responsibilities.

WorkSafe has identified and delivered: specialised staffing and training; improved current state data and analysis while planning for better system technologies; engaged experts to conduct detailed assessment of WorkSafe processes for useability, trauma sensitivity, currency, and accuracy; and reviewed the regulatory environment for better outcomes.

WorkSafe strengthened its capacity to appropriately respond to reports and incidents of sexual harassment through the establishment of a dedicated well-being team of psychosocial specialists with its Mines Safety Directorate.

The team investigates reports of workplace sexual harassment and provides advice and education to mining industry workplaces to ensure psychosocial risks are appropriately managed. The implementation of CARS, scheduled to begin in 2025, will further support the team.

WorkSafe responds to incidents of sexual harassment and assault in the mining industry in accordance with its *Compliance and enforcement policy*.

⁵ Regulatory Capability Review of WorkSafe Mines Safety, November 2022.

Respect in Mining

The Respect in Mining Program⁶ is built on the principles of Respectful Relationships Approaches⁷; these are primary prevention programs which focus on promoting respectful relationships and gender equality. Respect in Mining has been developed for the Western Australian mining industry and seeks to build workers' relationships that are characterised by non-violence, equality, mutual respect and trust. It is designed to increase awareness and knowledge of the gendered drivers of violence, the impact of gender inequality on women's safety and economic security, and the impact of gendered drivision in leadership and decision making.

Respect in Mining offers a suite of tools and resources⁸, available free of charge since October 2023, for any organisation to access. The tools and resources outline how to set clear standards, policies, and procedures for expectations of behaviour, and how to identify and appropriately respond to incidents of sexual harassment and sexual assault in the workplace. A supporting Implementation Guide⁹ provides directions on how to implement the tools and resources and monitor the overall shift in workplace culture to improve practice.

The Respect in Mining Program strategically aligns with the outcomes of Stronger Together: WA's Plan for Gender Equality¹⁰, WA's first plan to support a gender equal community. Stronger Together provides a framework for coordinated action by Government, business, organisations and individuals with practical steps to advance gender equality over the next 10 years.

⁶ Respect in Mining (www.wa.gov.au)

⁷ Respectful Relationships Approaches (www.wa.gov.au)

⁸ Respect in Mining Program - Tools and Resources (www.wa.gov.au)

⁹ Respect in Mining Program - Implementation Guide (www.wa.gov.au)

¹⁰ Stronger Together - WA's Plan for Gender Equality (www.wa.gov.au)

The Minister for Mines and the Minister for Industrial Relations work with relevant stakeholders, including the WorkSafe Commissioner, to develop comprehensive standards and guidelines to lead the integration of sexual harassment into work health and safety practice. This should include:

- clear guides to what constitutes sexual harassment, gender harassment and other dangerous behaviours;
- guidelines for dealing with identified incidents;
- definitions of thresholds for various types of identified behaviour/incidents, recognising that 'days off work' is not a reasonable measure for these matters; and
- expectations for reporting to the regulator and by the regulator of the prevalence and progress in dealing with incidents.

This material and these processes should so far as possible remove all ambiguity for mining and other companies, and include allowance for anonymous reporting by individuals.

Acknowledging that this will involve a substantial body of work, the relevant Minister/s should report by the end of 2022 and six-monthly thereafter on progress to achieving these outcomes.

Government response: Supported

Status: Implemented

Guidance materials on gendered violence, including the notification of sexual harassment and assault to WorkSafe, are available via the DEMIRS website. This information, including the 'sexual harassment evaluation tool', assists and supports workers and PCBUs address behaviours associated with, and incidents of, sexual harassment and assault in the workplace. Materials include:

- Code of practice: Psychosocial hazards in the workplace
- Code of practice: Mentally healthy workplaces for FIFO workers in the resources and construction sectors
- Code of practice: Workplace behaviour
- Gendered violence: Notification of sexual harassment and/or assault to WorkSafe
 Mines Safety
- Guidance for individuals when making a complaint about gendered violence
- · Information sheet: Gendered violence: Sexual assault
- Information sheet: Gendered violence: Sexual harassment
- · Information sheet: Information for bystanders of sexual harassment
- Poster: How to take action as a bystander witnessing sexual harassment.

The Work Health and Safety Commission is also progressing the process to approve the national model *Code of practice: Sexual and gender-based harassment* for application in Western Australia. This will ensure the approach to this issue is nationally harmonised.

WorkSafe has a transparent process in the development and review for all codes of practice and guidance material. Codes of practice are developed through the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee. Further, all codes are subject to public consultation. All guidance materials are made available on the DEMIRS website, with stakeholders notified through industry representative committees and external communication channels.

Anonymous reporting of workplace sexual harassment is available and is communicated through the online self-assessment tool, *Sexual harassment evaluation tool for mine sites*. Also see Recommendation 12.

In August 2023, the Government hosted the Mining Industry Summit: Driving Respect at Optus Stadium which sought to foster meaningful action towards preventing and responding to sexual harassment and drive the cultural change needed to establish respectful workplaces in the mining industry. The summit was attended by over 1,200 delegates from Government, industry, and community, including CEOs, senior executives, mine management, supervisors, health and safety representatives and safety professionals.

The summit drew positive engagement and feedback, with the previous Minister for Industrial Relations approving a second summit to be held in 2026.

The Minister for Mines instruct DMIRS to work with WorkSafe WA, the mining industry, relevant unions, and other stakeholders to establish a fully resourced, culturally-appropriate expert group within WorkSafe WA with specialist expertise, experience and training to investigate, assess and deal with reports of sexual harassment and assault and related offences in the mining industry. This should include consideration of the approach currently taken by WorkSafe Victoria.

The Minister report progress on this to Parliament by the end of 2022's sitting period.

Government response: Supported

Status: Implemented

WorkSafe is committed to ensuring a good practice regulatory response to incidents of sexual harassment and assault. Accordingly, it has supported and implemented most of the changes recommended in the PwC Regulatory Capability Review of WorkSafe Mines Safety. These include changes to improve processes, procedures, skill sets, systems and training to ensure WorkSafe Mines Safety Directorate delivers a high quality regulatory response to psychosocial hazards including reports of sexual harassment or assault.

Within the WorkSafe Mines Safety Directorate, WorkSafe has established a specialist team to appropriately respond to reports and incidents of workplace sexual harassment. See Recommendation 22.

All WorkSafe Mines Safety inspectors undertake ongoing training to ensure they are capable of responding to and recording workplace incidents of sexual harassment and assault that occur in the mining industry.

Recommendations for industry

Recommendations 2 to 9 and 16 are considerations for industry bodies. The development of measures to address these recommendations are being considered by industry, both individually within organisations and as part of collaborative inter-agency groups, such as the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee (MAPAC).

To support the recommendations, industry bodies are working with Government as part of initiatives, such as the MARS Program and MAPAC, to collaborate and address serious mental health, workplace culture, and safety concerns in the Western Australian mining industry.



Department of Energy, Mines, Industry Regulation and Safety

WorkSafe Western Australia 303 Sevenoaks Street Whadjuk Noongar Country CANNINGTON WA 6107

Telephone:1300 307 877NRS:13 36 77Email:wscallcentre@demirs.wa.gov.auWebsite:www.worksafe.wa.gov.au