

Regulatory Capability Review of WorkSafe Mines Safety

Final report

November 2022



Support available – sexual assault and sexual harassment

PwC acknowledges the subject of this report may be distressing for those who have experienced or are experiencing sexual harassment or sexual assault. If reading or hearing any of this content is distressing or you wish to report a sexual assault or sexual harassment, please contact the services listed below.

Sexual Assault Resource Centre (SARC) provides a range of free services to people affected by sexual violence



Call the 24 hour crisis line (08) 6458 1828 or free call 1800 199 888 to access counselling and medical services

Western Australian Police Force (WA Police) provides investigations and referrals to other support services



Report sexual assault matters to your local police station or call police on 131 444. Call the Sex Assault Squad on (08) 9428 1600

WorkSafe Mines Safety investigates workplaces to prevent or reduce the risk of workers being exposed to sexual assault and sexual harassment



Report sexual assault and sexual harassment matters on 1800 678 198

Equal Opportunity Commission investigates and conciliates sexual harassment complaints



Report sexual harassment through this online form or call (08) 9216 3900 or 1800 198 149 for further information.

1800RESPECT provides a national sexual assault, domestic family violence counselling service



Call the national telephone and online counselling and referral service 1800 737 732

Beyond Blue provides anxiety, depression and suicide prevention support



Call 1300 22 4636

Lifeline Australia provides crisis support



Call 13 11 14

Circle Green Community Legal provides specialist, community legal services in workplace and employment law. Circle Green has an information sheet on “What to do if you are being sexually harassed at work”



Call (08) 6148 3636

Terms used in this report

Affected person: The person who suffered harm from sexual assault and/or sexual harassment.

Complaint: where an individual such as an affected person or bystander raises concern over a health and safety matter with WorkSafe.

Department of Mining, Industry, Regulation and Safety (DMIRS): The Western Australian government department which supports industry regulation and consumer protection, resource and environmental regulation, safety regulation in mining and the energy policy of Western Australia.

Equal Opportunity Commission (EOC): Investigates and endeavours to conciliate allegations of discrimination based on one or more grounds of the *Equal Opportunity Act 1984* (WA).⁽¹⁾

Inquiry: The WA Parliament's Community Development and Justice Standing Committee's inquiry into sexual harassment against women in the FIFO mining industry.

Justice outcome: An outcome that is fair and commensurate with the behaviour. A justice outcome typically requires the substantiation of an incident, and usually results in safety and protection of the affected person and retributive and punitive consequences for perpetrators.

Mental Awareness, Respect and Safety (MARS) Program: A whole-of-Government initiative that aims to improve the health, safety and wellbeing of workers and others in the mining industry.

Mining industry: The sector dealing with mining, extraction, mineral processing and exploration in Western Australia.

Notifiable incident: Notifiable incidents are applicable to all duty holders under the jurisdiction of the *Work Health and Safety Act 2020* (WA). A 'notifiable incident' means the death of a person; or a serious injury or illness of a person; or a dangerous incident.

Person lodging a complaint: The party who makes a complaint of sexual assault and/or sexual harassment.

Psychosocial hazard: Anything that could cause psychological harm (e.g. harm someone's mental health). Common psychosocial hazards at work include: job demands, bullying, sexual harassment and violence.⁽²⁾

Sexual assault: Sexual assault refers to a broad range of sexual crimes committed against a person including sexual intercourse without consent and indecent assault.⁽³⁾

Sexual Assault Resource Centre (SARC): A free service located in Perth providing crisis services to people who have experienced a recent sexual assault (rape) in the last two weeks; and counselling for sexual assault or sexual abuse experienced recently or in the past.

Sexual harassment: Includes any form of sexually related behaviour that is unwelcome and that offends, humiliates or intimidates a person in circumstances where a reasonable person would have anticipated that the person harassed would be offended, humiliated or intimidated.⁽⁴⁾

Respondent: A person accused of perpetrating sexual assault or sexual harassment against another person.

Review: The Regulatory Capability Review of WorkSafe Mines Safety.

WorkSafe Commissioner: The person responsible for the administration of the *Work Health and Safety Act 2020* and any other laws relating to work health and safety.⁽⁵⁾

WorkSafe Mines Safety: The industry group within WorkSafe which administers work health and safety laws applicable to the mining, extraction, mineral processing and exploration industry.

WorkSafe: An agency within DMIRS, which is part of the State Government of Western Australia, and responsible for regulation and promotion of workplace health and safety including in general industry and the mining and petroleum industries.⁽⁶⁾

Western Australian Police Force (WA Police): The Police Force of Western Australia provided for by the *Police Act 1892* (WA).⁽⁷⁾

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This report is not intended to be used by anyone other than the Department of Mines, Industry Regulation and Safety (DMIRS). We prepared this report solely for DMIRS' use and benefit in accordance with and for the purpose set out in our engagement letter with DMIRS and the scope is section three "Background, scope and approach taken in this Review" of this report. In doing so, we acted exclusively for DMIRS and considered no-one else's interests.

We accept no responsibility, duty or liability:

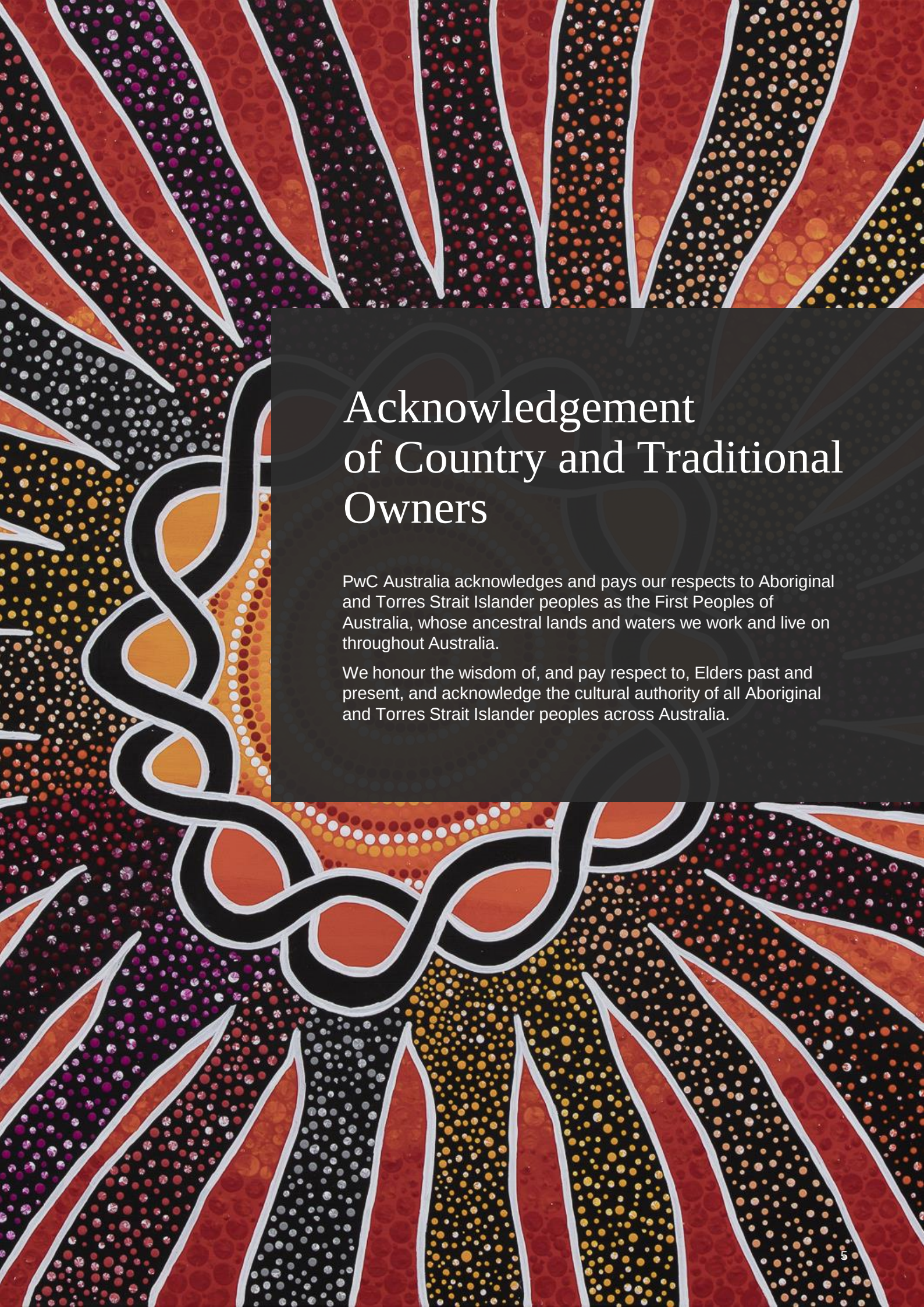
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- to DMIRS for the consequences of using or relying on it for a purpose other than that referred to above.

We make no representation concerning the appropriateness of this report for anyone other than DMIRS. If anyone other than DMIRS chooses to use or rely on it they do so at their own risk.

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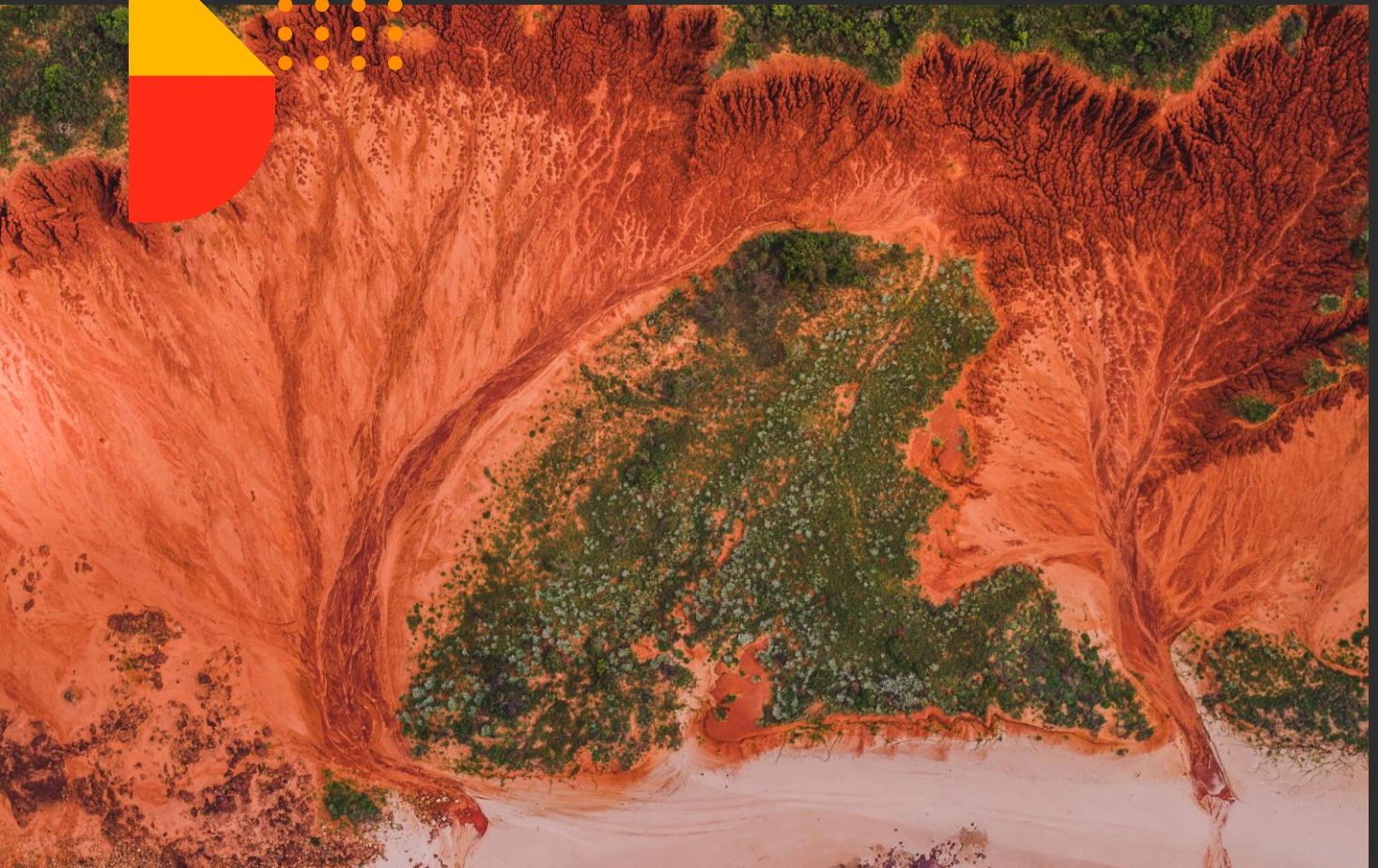
Acknowledgement of Country and Traditional Owners

PwC Australia acknowledges and pays our respects to Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia, whose ancestral lands and waters we work and live on throughout Australia.

We honour the wisdom of, and pay respect to, Elders past and present, and acknowledge the cultural authority of all Aboriginal and Torres Strait Islander peoples across Australia.



Executive summary



Background and approach to this Review

PwC were engaged by the Department of Mines, Industry, Regulation and Safety to undertake a regulatory capability review of WorkSafe Mines Safety in preventing and responding to sexual assault and sexual harassment in the Western Australian mining industry.

Background

Since the release of the Australian Human Rights Commission's *Respect@Work* report in 2020 on sexual harassment in the workplace, public scrutiny about sexual harassment and sexual assault at work has continued to grow.⁽⁸⁾ The Western Australian mining industry is now in focus. Recent inquiries and investigations have highlighted the urgent case for change, including Rio Tinto's Everyday Respect taskforce's *Report into Workplace Culture at Rio Tinto* in 2021⁽⁹⁾ and the Western Australian Parliament's Community Development and Justice Standing Committee's *Inquiry into sexual harassment against women in the fly in fly out mining industry* (Inquiry) during 2021-2022.⁽¹⁰⁾

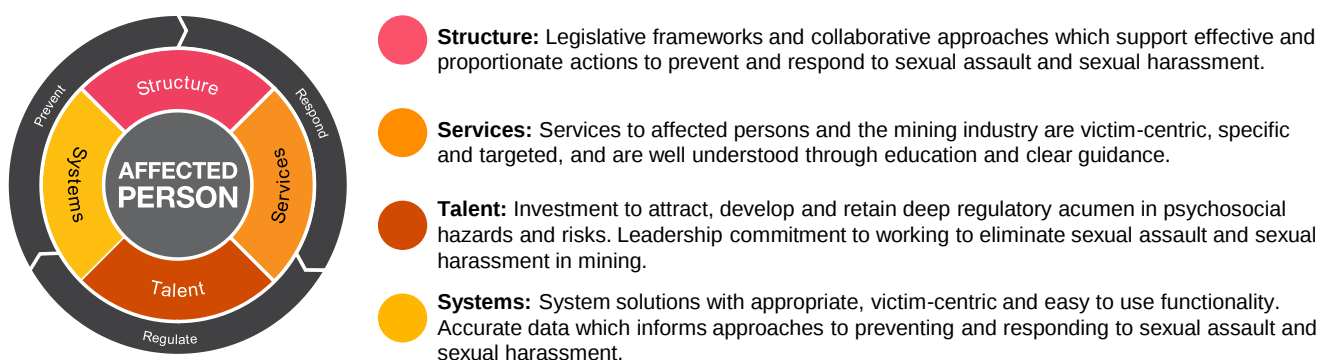
The Inquiry's report, *Enough is Enough*, uncovered the scale of these behaviours across the Western Australian mining industry and highlighted the workplace cultures that normalise and allow sexual assault and sexual harassment to continue unabated. The Inquiry called upon the Department of Mines, Industry Regulation and Safety (DMIRS) and WorkSafe to more effectively prevent and respond to sexual assault and sexual harassment in the mining industry. *Enough is Enough* found that the regulation of workplaces has not kept up with changing expectations by the community and recommended that DMIRS lead the:

- clear guidance to the mining industry on how to prevent and respond to sexual harassment in their workplaces (for example, development of comprehensive standards and guidelines);
- improvement of capability and capacity of DMIRS resourcing (for example, a fully resourced, culturally appropriate expert investigations group); and
- engagement and collaboration with the WA Government and mining industry to support prevention of sexual harassment (for example, development of training and resources for the mining industry).

On 22 June 2022, in response to the *Enough is Enough* report, the Minister, the Hon. Bill Johnston MLA, announced PwC had been engaged to undertake a *Regulatory Capability Review of WorkSafe Mines Safety* (Review). The purpose of this Review is to understand DMIRS' protocols for responding to sexual assault and sexual harassment in the mining industry. Since the Inquiry and over the course of this Review, significant progress has been made, indicating a shift in understanding of sexual assault and sexual harassment as a workplace health and safety issue within WorkSafe Mines Safety's responsibility.

Approach to this Review

This Review assessed findings and recommendations against an organisational capability framework with four domains. The ideal future state for each domain is as follows:



A four step methodology was undertaken to benchmark the current practice against the ideal future state practice:

1. examination of over 225 documents supplied by DMIRS (for example, policies, draft memorandums of understanding and legislation) and external literature and resources;
2. internal consultations with 17 stakeholder groups across DMIRS (for example, the Chief Inspector of Mines);
3. consultation with 42 stakeholder groups (for example mining organisations, unions and government agencies); and
4. comparative review of interstate and international jurisdiction approaches, documentation, online resources and legislation, and consultation with interstate Chiefs of Mines from Queensland, Victoria and New South Wales.

This approach has identified six overarching insights that are further detailed in the report with specific associated findings and recommendations.

Key insights from this Review

Outlined below are key areas of focus for WorkSafe Mines Safety to enhance their ability to prevent and respond to sexual assault and sexual harassment.



Proactive approaches are required to effectively prevent and respond to sexual assault and sexual harassment

The vast majority of sexual assault and sexual harassment in the mining industry is not reported, both in terms of affected persons not reporting to their employer, and their employers not reporting to WorkSafe Mines Safety. However, many of Work Safe Mines Safety's systems, policies and processes are designed to only take action in response to reports.

Some leaders in DMIRS and WorkSafe expressed a view that it was hard to take further action in the absence of more formal reports being made to WorkSafe Mines Safety.

An approach which relies on formal reports being made will miss opportunities to address significant workplace hazards and identify key risks and failures of controls.

To effectively prevent and respond to sexual assault and sexual harassment, a proactive approach is required. Examples of how DMIRS and WorkSafe could be more proactive include: prioritising proactive inspections, re-designing processes to promote proactive work and utilising data to develop targeted industry campaigns.



There is a need to increase appropriate capability and capacity

DMIRS and WorkSafe's understanding of their role in preventing and responding to sexual assault and sexual harassment has evolved over recent years. It is now seen as an area of priority. As priorities have shifted, so too have the requirements of WorkSafe Mines Safety's workforce. Two areas need to be addressed: capability and capacity.

Sexual assault and sexual harassment are different to other hazards that WorkSafe Mines Safety regulate. While specialised teams exist, new and enhanced skills and capability are required in order to understand the risks, how to apply appropriate enforcement mechanisms and how to ensure responses are victim-centric and trauma-informed.

More capacity is needed in inspection teams to undertake a proactive role and to respond to an anticipated increase in reporting.



DMIRS and WorkSafe need to lead by example in addressing relevant risk factors

There are a range of workplace factors that contribute to the risk of sexual assault and sexual harassment. Many of these workplace factors are present in the mining industry, including gender inequality, power imbalances and a culture that has accepted elements of inappropriate behaviour as "the way we do things here."⁽¹¹⁾

To lead the mining industry to effectively prevent and respond to these issues, DMIRS and WorkSafe would benefit from increased workforce diversity. Increased diversity in gender, cultural and professional backgrounds across the inspectorate will help bring new perspectives and constructive challenge in efforts to shift deeply entrenched culture across the mining industry.



Victim-centricity needs to inform how affected persons engage with WorkSafe

There are many and varied reasons why mining industry organisations and affected persons have not reported sexual assault and sexual harassment to WorkSafe Mines Safety. One common reason cited in this Review's consultations was a concern about the potential re-traumatisation of the affected person through their participation in another process.

In order to better support affected persons and build confidence in the reporting process, leading approaches to victim-centricity need to shape the way affected persons experience and interact with WorkSafe. This includes things like the information available on the website, the reporting options available (including anonymous reporting options), guidance on the reporting process and outcomes available to complaints, and the types of training those who are in contact with affected persons receive.



Considerable action is required to address underreporting

Timely and accurate reporting of sexual assault and sexual harassment to WorkSafe Mines Safety helps enable swift action to be taken to address risks and improve controls. However, as the Inquiry found, there is significant underreporting by the mining industry.

Considerable action needs to be taken by WorkSafe Mines Safety to address underreporting, in two main areas:

- addressing barriers to reporting, by clarifying and communicating reporting requirements, updating systems and processes, and addressing concerns about anonymity, confidentiality and victim-centricity; and
- taking stronger action in cases of deliberate or opportunistic non-compliance, including imposing penalties where appropriate.



Enhancing data collection and analysis is essential to risk-based regulation

In order for WorkSafe Mines Safety to undertake a 'risk-based regulation' approach to sexual assault and sexual harassment, it is critical to have a clear understanding of the risks and how they are presenting across the mining industry. Underreporting inhibits a more fulsome understanding of these issues. So do current systems (for example, WorkSafe Mines Safety's Safety Regulation System) which do not enable WorkSafe Mines Safety to undertake a timely analysis of data to help identify emerging risks and issues.

It is also important for WorkSafe Mines Safety to leverage the expertise and relevant data held by other government agencies (for example, WA Police, the Equal Opportunity Commission and the Sexual Assault Resource Centre) in order to obtain a more complete picture of sexual assault and sexual harassment in the mining industry.

More and better quality data should inform and enhance many of WorkSafe Mines Safety's activities (for example, the focus areas of proactive inspections, or the educational material provided to industry) ensuring they are timely, targeted and relevant.

Enablers for successful implementation of recommendations from this Review

As WorkSafe Mines Safety progress to implement recommendations from this Review, there are four critical enablers to help ensure that implementation drives meaningful and sustainable change.



Leadership

It takes bold leadership to drive change in mindsets and behaviours. As such, leaders across DMIRS and WorkSafe, including the WorkSafe Commissioner, must demonstrate a visible and authentic commitment to tackling sexual assault and sexual harassment within the mining industry.

Leadership commitment needs to take many forms, including championing the importance of this work, leading the implementation of these recommendations, prioritising proactive efforts, measuring progress and ensuring adequate resourcing and capability are in place.



Investment

Delivering on these recommendations will require investment across the capability framework in structure, services, talent and systems. Investments in resourcing, training, systems and industry guidance are central to the effectiveness of WorkSafe Mines Safety. It is critical that there is sufficient investment of time, resources, leadership and oversight to ensure that these recommendations are embedded in a holistic and sustainable way.



Engagement

Addressing sexual assault and sexual harassment in the mining industry will take a collaborative and integrated approach. DMIRS and WorkSafe Mines Safety engagement with the mining industry and key partner agencies on the topics of sexual assault and sexual harassment will need to increase to ensure that all key stakeholders understand the urgency to take action and what is expected when it comes to preventing, reporting and responding to sexual assault and sexual harassment.



Transparency

Transparency is critical to build confidence in WorkSafe Mines Safety's leadership in this area. DMIRS and WorkSafe Mines Safety should review their progress on implementing the recommendations from this Review at 12 months, including lessons learned, feedback from industry and any planned changes to the approach. Outcomes of this review should be made publicly available to increase transparency, accountability, and demonstrate DMIRS' commitment to addressing sexual assault and sexual harassment in the mining industry.





Introduction



The roles of the regulator, DMIRS, WorkSafe and WorkSafe Mines Safety

This report details the findings and recommendations of the *Regulatory Capability Review of WorkSafe Mines Safety* (Review). In reading this report, it is important to understand the roles and interactions of the WorkSafe Commissioner, Mining and Petroleum Advisory Committee (MAPAC) the Department of Mines, Industry Regulation and Safety (DMIRS), WorkSafe and WorkSafe Mines Safety. At present, these functions operate as follows.

The WorkSafe Commissioner

Under the *Work Health and Safety Act 2020* (WA) (WHS Act), the WorkSafe Commissioner is the regulator and is responsible to the Minister for Industrial Relations (Minister) for the administration of the WHS Act and any other legislation relating to work health and safety. According to the WHS Act, this includes both physical and mental health. The WorkSafe Commissioner is supported to fulfil these functions by the Chief Inspector of Mines, DMIRS and its officers. The regulator appoints DMIRS' officers as WorkSafe inspectors who are authorised to implement the investigative powers provided to them under the WHS Act.⁽¹²⁾ The regulator may also delegate their powers to any other person under the WHS Act.⁽¹³⁾

Mining and Petroleum Advisory Committee

MAPAC is a statutory body advising on matters relating to work health and safety in the mining and petroleum industries. The functions of MAPAC include assisting and providing advice to the Minister on work health and safety issues, adoptions of codes of practice, education, training and publication and inquiring into matters referred by the Minister.⁽¹⁴⁾

MAPAC is a peak tripartite consultation body encompassing government, industry and unions. It's members include the Chamber of Minerals and Energy of Western Australia, the Association of Mining and Exploration Companies, the Australian Petroleum Production and Exploration Association, the Australian Pipelines and Gas Association, and Unions WA.⁽¹⁴⁾

DMIRS

DMIRS was formed on 1 July 2017, as the result of merging the Department of Commerce and Department of Mines and Petroleum. DMIRS assists in the administration of workplace health and safety laws across industries, including reporting, inspection and regulation of health and safety issues within the mining industry.

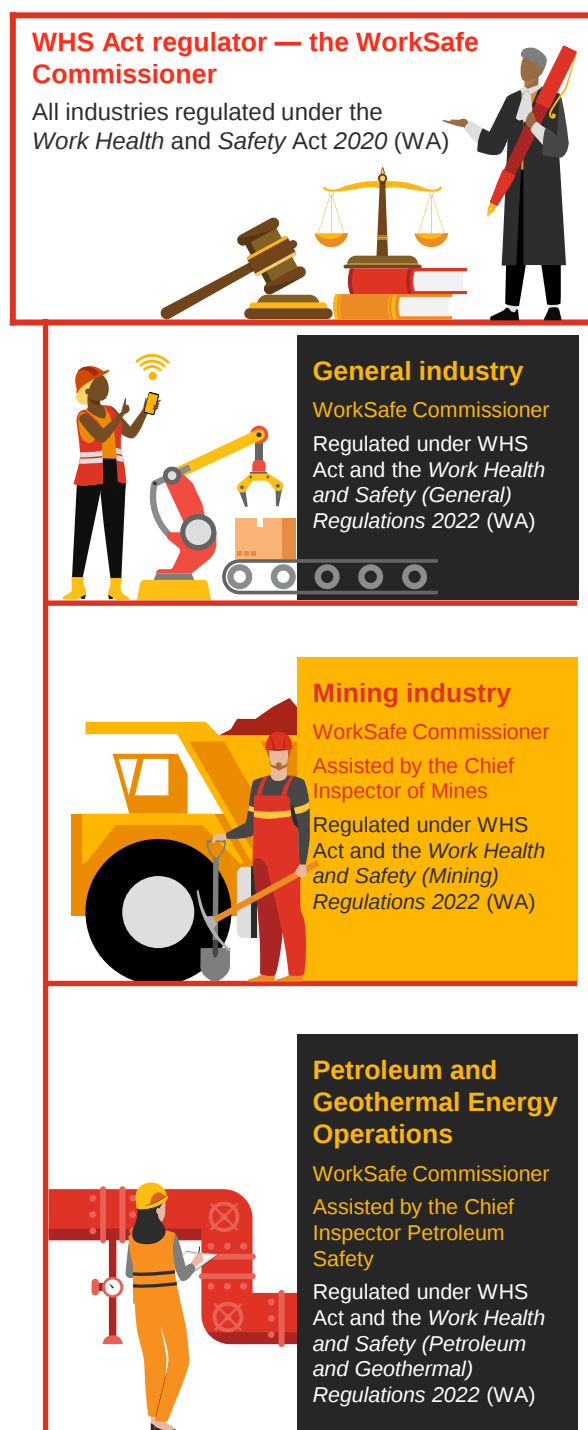
WorkSafe

WorkSafe is situated within DMIRS' Safety Regulation Group and provides the regulation and promotion of workplace health and safety. WorkSafe is responsible for providing a family support liaison, administering work health and safety legislation, targeting priority areas of health and safety through inspections, resolving health and safety issues, providing translation services and assisting the Work Health and Safety tribunal.⁽¹⁵⁾ The three subsets of WorkSafe are WorkSafe General Industry, WorkSafe Mines Safety and WorkSafe Petroleum and Geothermal Energy Operations.

WorkSafe Mines Safety

WorkSafe Mines Safety administers work health and safety laws applicable to the mining, extraction, mineral processing and exploration industry. Functions include occupational safety compliance services such as inspections, audits and investigations, promoting safety and health outcomes through education and information, and conducting technical assessment and review, including statutory approval processes. WorkSafe Mines Safety is led by the Chief Inspector of Mines who is able to receive delegated powers and functions of the WorkSafe Commissioner.⁽¹⁶⁾

Figure 1: WorkSafe Western Australia Commissioner jurisdictional arrangements



The Western Australian mining industry

The Western Australian (WA) mining industry is among the world's strongest and provides jobs and other economic benefits to communities across the state. In the 2021-22 financial year alone, the WA mining industry continued to drive the State and national economies, with record sales reported and the highest ever employment figures.⁽¹⁷⁾

The mining industry comprises many different business areas, from exploration, development, mining and closure. Throughout the sequence there are functions which support capital and operational activities. All of these activities may be performed by mining company employees and/or outsourced to contractors.

To deliver on this wide range of activities, the WA mining industry employs over 157,700 workers.⁽¹⁸⁾ This workforce is characterised as high income, and comprises a workforce that is predominantly men, with women making up 41% of the mining industry. However, it is important to note that majority of those women are in head office roles, not located on site.⁽¹⁹⁾

Non-resident workforces, such as fly-in-fly-out (FIFO) and drive-in-drive-out (DIDO), are common practices across the WA mining industry in order to meet the demands of remote mine sites. Where FIFO and DIDO are utilised, mining organisations are often responsible for the provision of transportation and accommodation for workers, leading to increased considerations of workplace health and safety risks, including risk factors for sexual assault and sexual harassment.



In any industry and any regulatory system, preventing and responding to incidents is a primary activity.

Enough is Enough

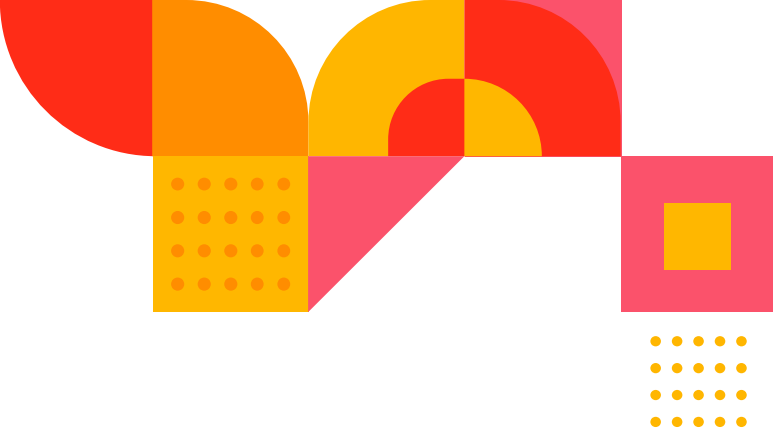
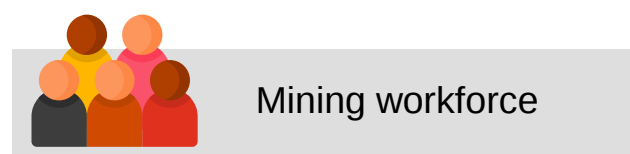
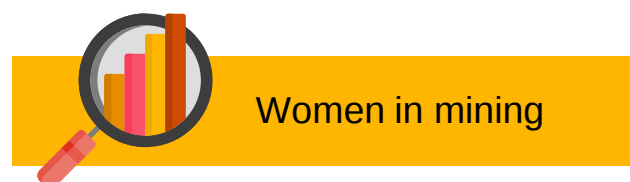


Figure 2: WA mining industry workforce participation



157,700

workers are employed in Western Australian mining in 2021-22 (WA Government 2022).



1 of 5

mining and resource workers are female (20.3%, CME 2019).

1 of 8

FIFO workers are female (12.8%) and 1 of 5 DIDO workers are female (17.5%, AMEC 2021).

1 of 5

leadership positions are held by females, including in head offices (17.1%, AMEC 2021).

1 of 20

FIFO leadership positions are held by females (4.7%, AMEC 2021).

Sources: the Chamber of Minerals and Energy and Association of Mining (CME) and Exploration Companies, 2021 (AMEC)

Sexual assault and sexual harassment in the WA mining industry

Sexual assault and sexual harassment are serious offences affecting the safety and wellbeing of employees in the Western Australian mining industry.

The mining industry has the fifth highest prevalence rate for sexual harassment in Australia,⁽²⁰⁾ and features several high-risk factors for sexual assault and sexual harassment. These factors include male-dominated workforces, hierarchical structures, a lack of women in senior leadership, remote and insecure work, work provided accommodation and the use of alcohol in work settings.⁽²¹⁾ Over the past two years there has been growing public scrutiny over the prevalence and response to sexual assault and sexual harassment in the mining industry (Figure 4).

In response, the WA Parliament's Community Development and Justice Standing Committee commenced an *Inquiry into sexual harassment against women in the FIFO mining industry* (Inquiry) in July 2021.⁽²¹⁾

The Inquiry's report *Enough is Enough*, released in June 2022, uncovered the extent of sexual assault and sexual harassment across the mining industry. Among the key findings of the Inquiry, *Enough is Enough* established that there is a:

- significant amount of sexual assault and sexual harassment underreported by the mining industry to WorkSafe Mines Safety;
- high levels of victimisation for those who speak up about sexual assault and sexual harassment within the mining industry;
- common practice of moving perpetrators between mine sites instead of addressing behaviours or holding people accountable;
- a need to improve training on prevention and response to sexual assault and sexual harassment across the mining industry; and
- a need to develop standards for accommodation facilities, including appropriate security and safety measures, across the mining industry.⁽²¹⁾

The Inquiry also emphasised the role of DMIRS and WorkSafe in more effectively preventing and responding to sexual assault and sexual harassment within the mining industry, using both their educative and enforcement powers. Some of the recommendations include to:

- develop more regular, anonymous and independently administered surveys and/or audits on the extent, impact, reporting of and responses to sexual assault and sexual harassment;
- explore options such as audits and surveys to conduct investigations which can better enable a complainants' anonymity;
- collaborate with peak bodies and mining organisations to inform investigation and training processes within the mining industry; and
- collaborate with peak bodies to develop education and training across the mining industry.⁽²¹⁾

Although this Review focuses on the context of the WA mining industry, it is important to note that sexual assault and sexual harassment in the mining industry, is not just a Western Australian issue. Nationally, 40% of workers, and 74% of women workers in the mining industry report being sexually harassed in the last five years.⁽²²⁾ Additionally, Rio Tinto's Everyday Respect taskforce's *Report into Workplace Culture at Rio Tinto* found 28.2% of women employees had experienced sexual harassment, while 21 women reported actual or attempted rape or sexual assault at work.⁽²³⁾

What is the role of the mining industry in addressing sexual assault and sexual harassment?

The mining industry has primary responsibility for driving prevention and response activities within their organisations, and working to address industry-wide challenges such as accommodation standards, practices of victimisation and a lack of accountability for perpetrators.

What is WorkSafe Mines Safety's role in addressing sexual assault and sexual harassment?

WorkSafe Mines Safety focuses on:

- workplace risk factors that may increase the likelihood of workers being exposed to hazards and risk of harm; and
- ensuring controls are in place to prevent or reduce the risk of workers being exposed to these hazards.

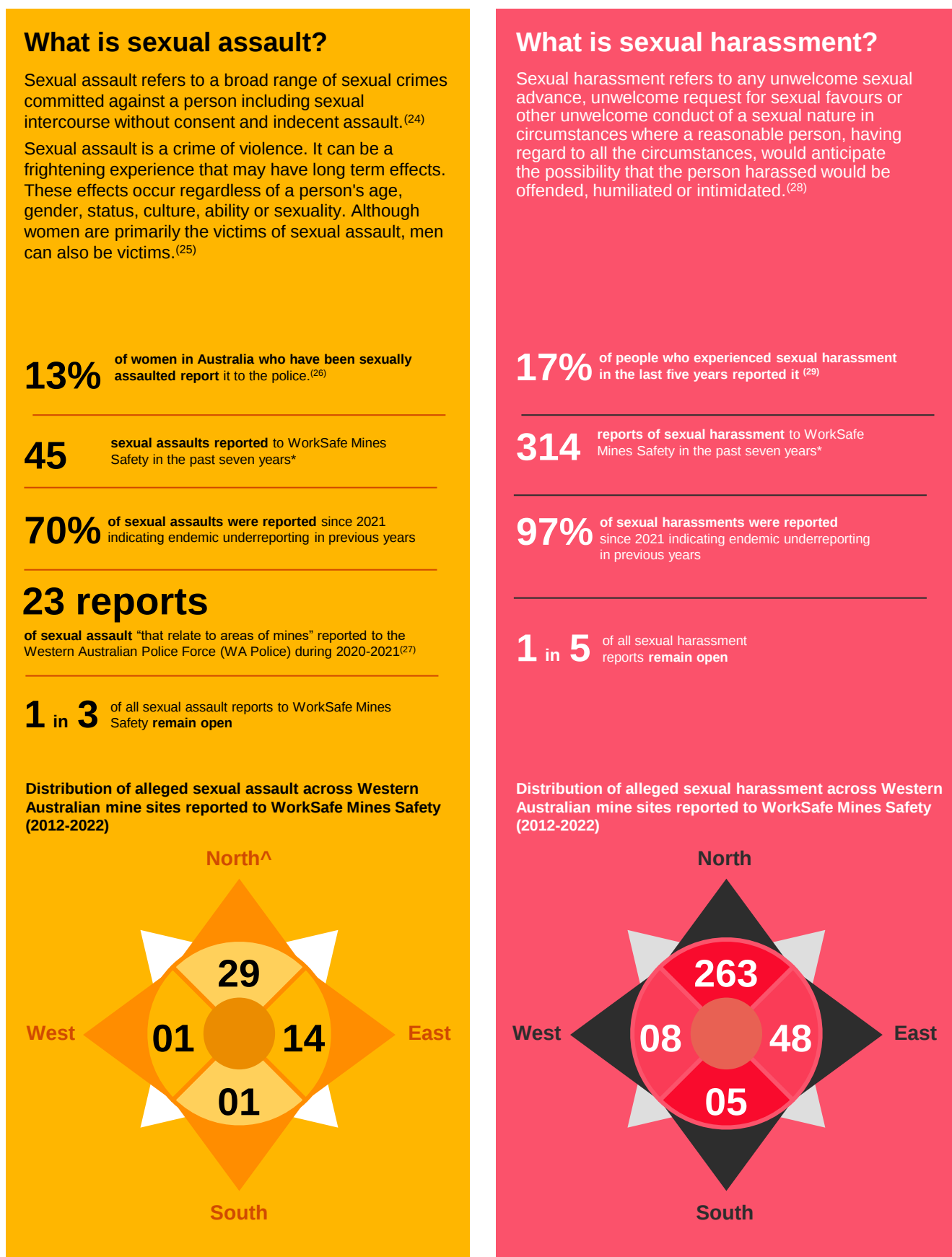
WorkSafe Mines Safety does not have a role in:

- substantiating whether or not a specific behaviour has occurred;
- mediating and providing support during meetings; or
- organising workers compensation.

In most cases, WorkSafe is unable to provide a justice outcome for affected persons (for example, holding a perpetrator to account) as they cannot dismiss or issue disciplinary action to a perpetrator or direct an employer to do so.

For most workplace behaviour complaints received, the most common outcome is the issuing of an improvement notice. The notice will direct the employer to address hazards in the workplace that the inspector considers increases the risk of a safety incident or harm.

Figure 3: Sexual assault and sexual harassment in the Western Australian mining industry



Source: WorkSafe Mines Safety 2022*

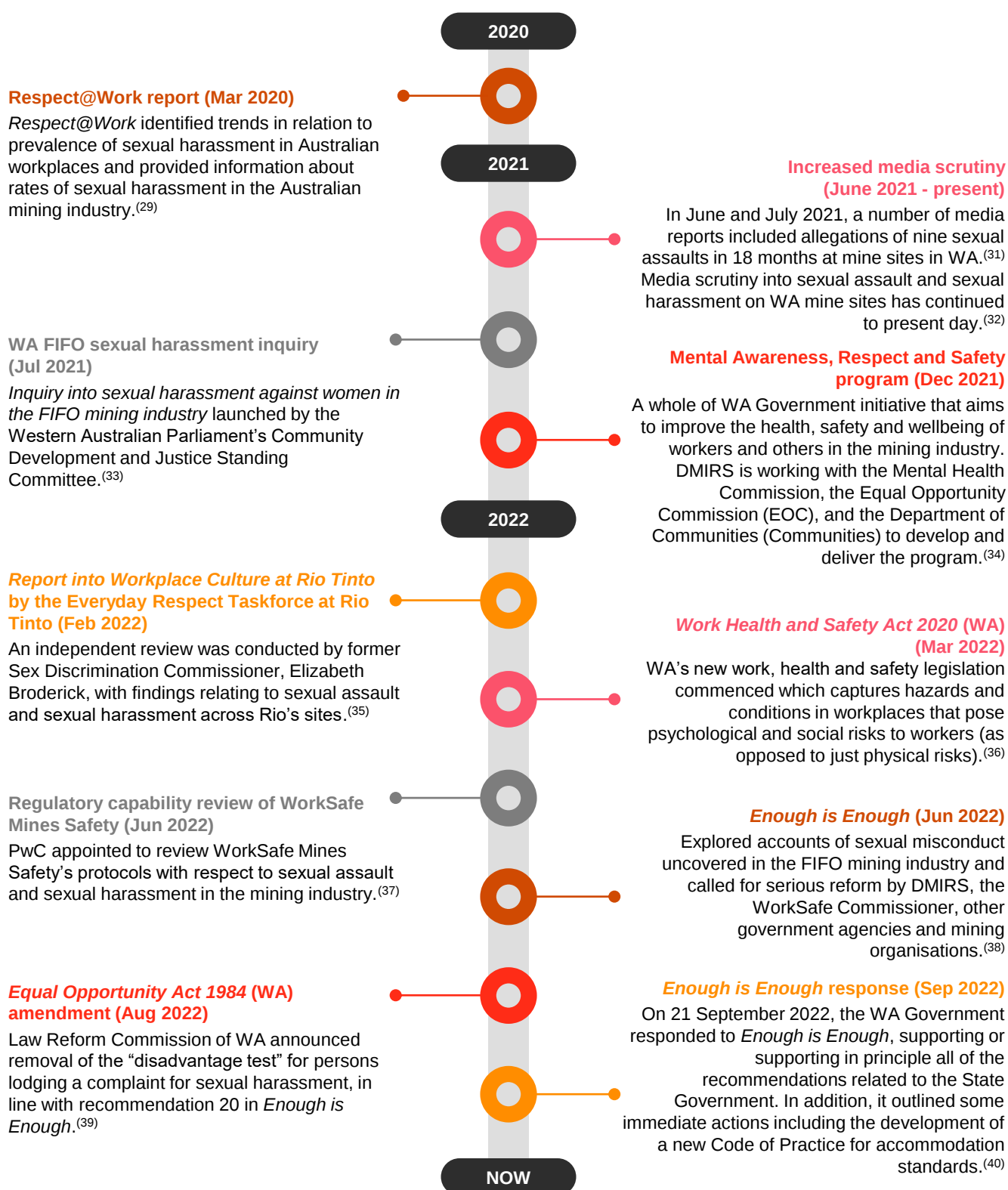
*WorkSafe Mines Safety 2022 data is higher than the figure of 22 sexual assault and ten of sexual harassment reports submitted by DMIRS to the Inquiry due to historical reporting by some mining organisations since the Inquiry.

^The North, South, East and West allocations are based on the DMIRS regional inspectorate boundaries described online.⁽³⁰⁾

Timeline of key events

Following the release of the landmark Respect@Work report, there has been increased awareness of the drivers, risks and prevalence of sexual harassment in the workplace, leading to important legislative reform. In WA, the mining industry has been the focus of targeted programs and independent reviews following multiple sexual assaults and systemic sexual harassment reported in 2021.

Figure 4: Key events highlighting sexual assault and sexual harassment in the Western Australian mining industry



Background, scope and approach taken in this Review

The focus of this Review was to examine WorkSafe Mines Safety's capability in responding to both sexual assault and sexual harassment within the mining industry. Outlined below is the background, scope and approach taken.



Background

In response to increased public scrutiny about sexual assault and sexual harassment in the mining industry, on 7 July 2021, the WA Parliament's Community Development and Justice Standing Committee launched the Inquiry. Among its many findings, the Inquiry called upon DMIRS and WorkSafe to more effectively prevent and respond to sexual assault and sexual harassment across the mining industry.

In response to the Inquiry, on 22 June 2022 the Minister, the Hon. Bill Johnston MLA, announced PwC had been engaged to conduct this Review to understand DMIRS' protocols for responding to sexual assault and sexual harassment in the mining industry.

Over the course of this Review, WorkSafe Mines Safety has implemented a number of changes as a priority following the Inquiry. Findings and recommendations acknowledge work underway and where appropriate, recommend how such work can be strengthened and improved upon.



Limitations

In conducting the review, the Review team identified the following limitations:

- As part of this Review, PwC requested to review a representative sample of de-identified case files to understand how policies and processes are applied by WorkSafe Mines Safety in practice. Two de-identified examples of sexual assault investigations were provided by WorkSafe Mines Safety, and while these provided some insight into the application of processes, the small sample size was not sufficient to draw broader conclusions.
- The Review team was advised it could not consult with any persons who had previously lodged a complaint with WorkSafe Mines Safety due to confidentiality protocols and risk of potential re-traumatisation. As a result this has limited the Review's understanding of the firsthand experience of affected persons when engaging with WorkSafe Mines Safety.



Scope

The Review's objectives were to:

- understand the current state of WorkSafe Mines Safety's enforcement model, organisational capabilities and regulatory response to sexual assault and sexual harassment on mine sites;
- identify areas for improvement through comparative analysis with other jurisdictions and leading practice; and
- develop practical recommendations to address areas for improvement.

The scope of this Review included the remit of WorkSafe Mines Safety as the responsible party for responding to health and safety incidents and events, including sexual assault and sexual harassment, in the WA mining industry. Other health and safety incidents and events were not within scope of this Review.

The Review also examined the relationship between WorkSafe Mines Safety and the WorkSafe Commissioner as the person responsible for the regulation of workplace health and safety matters, including sexual assault and sexual harassment, in the WA mining industry.

Approach

Organisations are complex systems. To understand and assess the capability of an organisation, a holistic and systematic approach is required. To complete this Review, PwC identified a capability framework of four key regulatory organisational domains through which to understand WorkSafe Mines Safety's capability to prevent and respond to sexual assault and sexual harassment in the mining industry. This framework has been used across the Review to identify examples of emerging practice, assess the current state and to guide the development of recommendations. Further information on the capability framework is explained in *Capability framework and emerging practices* (see page 18).

Four methods were utilised to assess WorkSafe Mines Safety's capability across the four key domains

Desktop reviews

An extensive review of DMIRS' and WorkSafe's documents was conducted to understand WorkSafe Mines Safety's current approach to preventing and responding to workplace health and safety matters, specifically with regards to sexual assault and sexual harassment. Over **225 documents** were examined as part of this Review.

Documents included:

- relevant policies and procedures;
- training materials;
- industry guidance;
- de-identified case studies;
- strategies and organisation reviews; and
- minutes from relevant meetings.

Internal consultations

Internal consultations were used to understand how teams within DMIRS, WorkSafe, and specifically within WorkSafe Mines Safety, work together to prevent and respond to sexual assault and sexual harassment in the mining industry, as well as understand comparative practice from other industries. As part of this Review, **17 stakeholder groups** were consulted from across DMIRS and WorkSafe.

Internal stakeholders consulted with included:

- Deputy Director General – Safety Regulation Group;
- Chief Inspector of Mines;
- WorkSafe Commissioner;
- WorkSafe Mines Safety Mental Health and Wellbeing (MHW) inspection team; and
- WorkSafe Investigations team.

A full list of stakeholders consulted with can be found in Appendix E.

External consultations

External consultations were conducted with stakeholders from other government agencies, peak bodies, unions and the mining industry. These were used to understand external perceptions of engaging with WorkSafe Mines Safety to prevent and respond to sexual assault and sexual harassment in the mining industry. External stakeholder groups consulted with included:

- WA Police;
- Sexual Assault Resource Centre (SARC);
- The EOC;
- The Chamber of Minerals and Energy Western Australia (CME);
- Association of Mining and Exploration Companies (AMEC); and
- Unions WA.

A full list of stakeholders consulted with can be found in Appendix E.

Comparative analysis

A literature and emerging practice review was conducted to understand how WorkSafe Mines Safety compared with other safety regulators locally and internationally with regards to the prevention of and response to sexual assault and sexual harassment. This comparative analysis also supported in identifying opportunities for DMIRS and WorkSafe to enhance its performance in line with good practice. In addition to research, three safety regulators from other Australian jurisdictions were also interviewed as part of this Review:

- WorkSafe Queensland (QLD);
- WorkSafe Victoria (VIC); and
- Safe Work New South Wales (NSW).

A full list of stakeholders consulted with can be found in Appendix E. Literature references can be found in Appendix D.

225+

documents, laws, data reports and literature reviewed



17

consultations across DMIRS' teams and leadership

38

mining industry organisations consulted



Four unions, **three** interstate Chief of Mines, AMEC, CME, WAPOL, EOC and SARC consulted

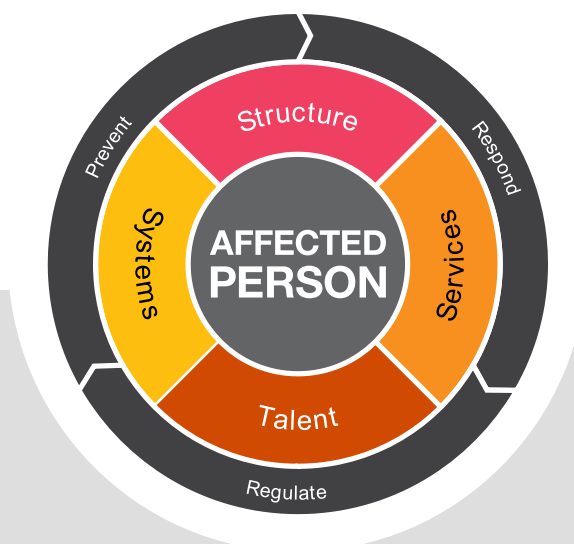


Capability framework and emerging practices



Overview of the capability framework

There are four key domains to strengthening WorkSafe Mines Safety's response to sexual assault and sexual harassment in the mining industry: structure, services, talent, and systems. The four domains are based on leading practice and are the basis of assessing the capability of WorkSafe Mines Safety throughout this review.



Organisational domains	Structure	Services	Talent	Systems
What this covers	Structure considers the relevant legislative and regulatory framework, the enforcement strategy and collaborative arrangements WorkSafe Mines Safety operates within.	Services considers both prevention (guidance and education to the mining industry) and response (investigations and the effect this has on affected persons).	Talent considers both the capacity and the capability of the WorkSafe Mines Safety team and leaders to effectively prevent and respond to sexual assault and sexual harassment in the mining industry.	Systems considers the technology and information that WorkSafe Mines Safety uses in fulfilling its role of keeping mining workplaces safe from hazards, specifically sexual assault and sexual harassment.
Ideal future state	Legislative frameworks and collaborative approaches which support effective and proportionate actions to prevent and respond to sexual assault and sexual harassment.	Services to affected persons and the mining industry are victim-centric, specific and targeted. Services are well understood through education and clear guidance.	Investment to attract, develop and retain strong regulatory acumen in psychosocial hazards and risks. Leadership commitment to working to eliminate sexual assault and sexual harassment in mining.	System solutions with appropriate, victim-centric and easy to use functionality. Accurate data is used to inform decisions and approaches to prevent and respond to sexual assault and sexual harassment.
Indicator areas	- Legislative framework - Enforcement measures - Collaboration	- Industry guidance - Investigation process - Confidentiality and anonymity - Experience of affected persons	- Resourcing and capacity - Training and capability	- System functionality - Data and reporting

Indicators of what good looks like

To determine WorkSafe Mines Safety's ideal future state, a number of indicators have been developed to identify what leading practice looks like in terms of preventing and responding to sexual assault and sexual harassment in the mining industry.

Structure	Services	Talent	Systems
Legislative framework - A fit for purpose legislative framework with clearly defined terms, duties, rights and reporting obligations with respect to sexual assault and sexual harassment. - Affected persons have a robust understanding of their rights and protections under the legislative framework. - Mining organisations have a robust understanding of their duties and obligations under the legislative framework. Enforcement measures - A suite of appropriate enforcement measures which are capable of ensuring compliance with respect to preventing, responding to and reporting sexual assault and sexual harassment. - An enforcement approach which is proportionate to the prevalence and nature of sexual assault and sexual harassment. - Use of appropriate enforcement measures to limit ongoing, deliberate underreporting of sexual assault and sexual harassment. Collaboration - Consistent information sharing and learning across stakeholders, including government agencies, mining industry, support services and other WHS regulators. - Transparency of collaborative efforts to help build confidence. - Leveraging good practice from across industry and other jurisdictions to drive change.	Industry guidance - An educational compliance approach which provides clear and targeted guidance to the mining industry on its obligations to prevent, respond and report sexual assault and sexual harassment. - Feedback mechanisms to identify gaps in the educational compliance approach. Investigations process - Streamlined victim-centric reporting and investigation processes. Confidentiality and anonymity - Confidential reporting processes which protect the identity of the affected person and person making a complaint. - Collection of sufficient levels of information in confidential reports to support an investigative process. Experience of affected persons - Targeted guidance and advice on the rights, protections, support services and outcomes written for an affected person audience. - Protections in place to prevent and prosecute acts of victimisation of affected persons and persons making complaints.	Resourcing and capacity - Inspectorate teams are adequately resourced to balance proactive and reactive inspection case loads. - Inspectorate teams are culturally and gender diverse, and from diverse professional backgrounds. Training and capability - Leaders leverage a range of data sources to identify trends and areas of focus. - Leaders and staff are aligned on organisation mission and vision to drive meaningful change. - Relevant teams are trained in the prevention and response of sexual assault and sexual harassment. - Relevant teams are trained in victim-centricity and provided vicarious trauma support, as needed. - Teams which support or lead the investigative process hold appropriate qualifications such as a psychology degree and are supported to maintain professional registrations and development (where required). - Psychosocial competencies are measurable through an organisational competency framework or plan. - Investment is made in regular learning and development to ensure skills are current, and leading practices are applied.	System functionality - An effective safety incident and event reporting system for the mining industry which supports reporting of data and trend analysis. - A user-friendly systemised pathway for reporting for affected persons and bystanders. - Appropriate levels of confidentiality are maintained across all system reporting pathways. - Clear guidance to system users on reporting sexual assault and sexual harassment. Data and reporting - Data used to inform decisions, training and guidance meets the data quality standards within the <i>Australian Bureau of Statistics' Data Quality Framework</i> (ABS DQF). - Established cadences for sharing data trends, insights and analysis with the mining industry.

Emerging practices for prevention and response to sexual assault and sexual harassment

A literature and comparative practice review was undertaken to understand practices emerging across both local and international jurisdictions. This Review focused on sexual assault and sexual harassment, but also encompassed innovation across regulators that could be applied to this context. The emerging practices are reflective of the indicators that can transform WorkSafe Mines Safety from their current to future state.

Clarity in role and purpose

Effective regulators have a clearly defined role and purpose. This is understood both internally by regulator employees and externally by stakeholders. Clarity is important for building (and at times, rebuilding) trust - a key focus for regulators of all types.⁽⁴¹⁾ Clarity of role and purpose should be embedded within organisational values and culture, regulatory posture and communications.

Regulators must target information to their stakeholder groups, be it companies, employees, citizens or other agencies. These groups require varying levels of information in order to understand the functions of the regulator and their own obligations.⁽⁴²⁾

A targeted information approach has been observed in non-mining industries. For example, the Australian Securities and Investments Commission outlines information and resources for businesses, finance professionals and consumers on their website. This ensures each group may understand their rights and obligations. A similar approach would strengthen understanding for employers, employees and affected persons in relation to sexual assault and sexual harassment within WHS regulators.

Legislation that names gendered violence

Effective regulation of psychosocial hazards such as sexual assault and sexual harassment requires clear, enabling legislation. The International Labour Organisation (ILO) *Convention No. 190* (2019) requires governments to integrate a gender responsive lens to prevent and respond to gendered violence and harassment at work.⁽⁴³⁾ Australia is yet to ratify this convention, which was a recommendation of *Respect@Work*.⁽⁴⁴⁾ The principles embedded within the ILO Convention can help guide approaches.

Updating legislation and/or associated regulations takes sustained time and effort. This time and effort does bring benefits though. Specifically, the benefits of clearly defined terms and requirements of employers, which enables employers to grow their levels of understanding, awareness and capability in relation to preventing and responding to sexual assault and sexual harassment. Figure 5 highlights some countries who have already taken steps towards embedding gendered violence within relevant work health and safety, or labour legislation.

Figure 5: Global examples of WHS and Labor legislation which address sexual assault and sexual harassment

Belgium's Act on the wellbeing of workers includes "special provisions regarding the prevention of psychological risks at work, including stress, violence, harassment and sexual harassment at work." This includes a robust definition of psychological risks. It also requires employers to undertake a risk assessment and implement prevention measures to minimise exposure.⁽⁴⁵⁾

Canada's OHS regulations require organisations to develop and post in a common and accessible place, a policy on violence prevention. The policy should include the obligations of the employer which are: to provide a healthy and violence free work place, to dedicate sufficient attention, resources and time to address factors that contribute to workplace violence and to prevent it, to communicate information about contributing factors to workplace violence and assist employees who have been exposed. Employers are also required to identify all factors that contribute to workplace violence and assess the risk regularly.⁽⁴⁶⁾

Sweden's Violence and Menaces in the Working Environment Ordinance of the National Board of Occupational Safety and Health requires employees to investigate risks of violence or threat of violence within the workplace and take appropriate measures to minimise exposure. It also stipulates that employees require sufficient training and that support and guidance is provided to minimise physical and mental injury. In addition, the Swedish Work Environment Authority proposed regulations (adopted in 2016), which updated the Authority's remit to include that its activities are conducted so as to "promote diversity and gender equality and a work environment free from victimisation".⁽⁴⁷⁾

Norway's Petroleum Safety Authority regulations provide specific requirements for psychosocial wellbeing at work. This includes that an employer consider "conditions that can influence the employees' health, safety and welfare. Special emphasis shall be accorded the interaction between requirements for work performance, the employees' perception of control over their own work and social support in the working environment." The regulations also provide clear examples of what hazards might look like including: workload, resources, lack of opportunities for career development, climate for handling disagreements at work, among others.⁽⁴⁸⁾

Clear requirements for reporting to enable compliance

Underreporting of sexual assault and sexual harassment is common. For example, a survey by the Australian Human Rights Commission (AHRC) found that just 17% of people who had experienced sexual harassment reported it. There are many barriers that prohibit speaking up including fear of retaliation, fear of not being believed, and being unsure of the pathways for reporting.⁽⁴⁹⁾

Lack of clarity in reporting requirements for sexual assault and sexual harassment to WHS regulators also drives underreporting. Two examples of reporting requirements from global and jurisdictional regulators include:

- **Employment and Social Development**

Canada requires employers to keep records on every occurrence of harassment and violence in the workplace, and report annually to the Labour Program. Reporting requirements include the number of occurrences of sexual harassment and violence, how each was resolved, the relationships between the involved parties and where the occurrences took place.⁽⁵⁰⁾

- **WorkSafe Victoria** provides a range of information on sexual harassment on their website, however guidance remains ambiguous as to whether sexual assault or sexual harassment needs to be reported as a notifiable incident. However, Victoria has recently announced a proposal for a new set of regulations that intend to provide clearer guidance to employers on how to identify and control risks to protect workers from mental injury and psychosocial hazards. Additional requirements or clarifications around reporting sexual assault and/or sexual harassment may be included in these updates.⁽⁵¹⁾

Enforcement mechanisms which grow understanding

In Australia, model WHS laws by Safe Work Australia follow a responsive enforcement approach. This supports regulators to use a mix of positive motivators, compliance monitoring and deterrents to encourage the highest possible levels of compliance. In doing so, there is a need to balance a number of considerations, including:

- the community's expectation that businesses and undertakings will be monitored and held accountable if they fail to comply;
- the need to support workplace parties and stakeholders to build capability to achieve compliance; and
- the need to work with industry, workplaces and stakeholders to continue to promote innovation and continuous improvements in health and safety standards.

An important feature of responsive enforcement is the ability to leverage a wide range of tools to encourage and assist compliance. This includes a key focus on building capability and understanding within workplaces, stakeholders and employees. This approach is also emphasised as best practice from the Organisation for Economic Co-operation and Development (OECD).⁽⁵²⁾





Regular guidance and engagement with industry

A regulator's enforcement role is about promoting compliance. To this end, it is not just about proving and punishing breaches, but also about providing guidance to enable compliance with the law and increase understanding among regulatory actors. Under WHS laws, duty holders are accountable for ensuring the safety and health of workers and others as far as reasonably practicable. Therefore work health and safety (WHS) agencies play a critical role in providing "practical, accessible and authoritative guidance on how to fulfil this duty", including as it relates to sexual assault and sexual harassment.⁽⁵³⁾ This involves providing clarification around what is reasonably practicable for different industries, workplaces and hazards to enable compliance.⁽⁵⁴⁾

Industry guidance also plays another important role as Ministerial approved *Codes of Practice* are "automatically admissible as evidence in court proceedings under the WHS act."⁽⁵⁵⁾ Courts may have regard to a *Code of Practice* as evidence of what is known about a hazard, risk or control, and may rely on the code in determining what is reasonably practicable.

Industry guidance related to sexual assault and sexual harassment has been delivered by WHS Agencies in a number of ways:

- **WorkSafe Victoria's** WorkWell toolkit provides practical guides and suggestions to help employers of different sizes create safe and mentally healthy workplaces. The toolkit contains a dedicated section on preventing and managing work related gendered violence.⁽⁵⁶⁾ This guide provides plain language information about gendered violence. It also provides a step by step guide of activities organisations should undergo to minimise the risk of sexual assault and sexual harassment in the workplace. The guide is accompanied by resources from relevant external organisations such as Our Watch and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).
- **Safe Work Australia** has issued infographics on a number of sexual harassment topics including "your WHS duties" and "steps to prevent workplace sexual harassment".⁽⁵⁷⁾ These infographics present key information for employers to quickly and easily understand the critical components of their role with regards to sexual harassment in the workplace.
- **Employment and Social Development Canada** released a series of guidance for employers on updated requirements for preventing and responding to violence and harassment in their workplaces, following legislation change. Of note in particular, Employment and Social Development Canada issued sample materials including a training syllabus, user guide and policy, a workplace risk assessment and a step by step guide for employers to resolve complaints of workplace harassment or violence.⁽⁵⁸⁾

Clear communication with affected persons

Globally, a majority of jurisdictions do not manage sexual assault and sexual harassment under WHS laws. For many countries, these remain the responsibility of Labour Departments or local Human Rights Commissions, which provide reporting avenues and guidance for affected persons.

Australia is at the forefront of the change of viewing sexual harassment as a WHS issue and managing it as such. Since the release of Safe Work Australia's model WHS laws, WorkSafe jurisdictions across Australia have released guidance for employees on sexual harassment or gendered violence in the workplace at varying levels of maturity.

WorkSafe Victoria has online resources targeted at employees which outline their rights and responsibilities related to sexual assault and sexual harassment in the workplace. These webpages also include the various options to report, including to bodies other than WorkSafe Victoria.⁽⁵⁹⁾ The *Sexual harassment regulation map* highlights the different legislation covering sexual harassment in Victoria and the regulators that can be reported to, what happens when they are reported to and the outcomes they can provide.⁽⁶⁰⁾ Information on gendered violence is also provided in seven languages other than English.

WorkSafe Queensland doesn't have its own resources for affected persons on sexual harassment in the workplace but in lieu of these, provides easily accessible links on its websites to resources from Safe Work Australia on topics such as "What is sexual harassment?" "Workplace sexual harassment – advice for workers" and "What to do if you are sexually harassed at work."⁽⁶¹⁾

WorkSafe Tasmania's webpage on What WorkSafe can and can't do clearly outlines in plain language what the powers of the regulator are, what the regulator expects from a potential person making a complaint and what happens after submitting a complaint to WorkSafe about bullying.⁽⁶²⁾ This guidance does not cover sexual assault and sexual harassment, however, provides a good example of clearly communicating to a potential person making a complaint upfront to manage expectations.

SafeWork New South Wales developed a number of materials that "speak to workers" using their language. This has included:

- leveraging Safe Work Australia Codes of Practice and translating them into more everyday language to help people understand what they can do;
- using videos in plain language that are played at the start of shifts to communicate directly to workers, giving the message as intended direct to the workforce; and
- a pocket sized handbook for employees to have on hand at all times which they can refer to for guidance.

A number of these guidance materials have been used for other safety topics with future development for psychosocial hazards including sexual assault and sexual harassment planned.

Additionally, SARC provides clear service offerings across agencies. SARC provide online guidance on both Police and SARC service offerings for a sexual assault including a criminal proceedings flowchart which sets out the process a person can expect to go through to access a justice outcome.⁽⁶³⁾



Handling complaints anonymously and/or confidentially

It is critical that employees and affected persons are provided with an anonymous reporting option as part of a victim-centric response. Challenges around anonymous complaints such as not being able to follow up with the person making a complaint for further information can be mitigated by using tools which provide an anonymous and secure two way communication channel to continue engaging with the person making a complaint after a report has been received.

VEOHRC⁽⁶⁴⁾ and the Champions of Change Coalition⁽⁶⁵⁾ outline a number of steps employers can take in response to receiving an anonymous report without identifying the person making a complaint, respondent or particular incident. A number of these steps can be applied to WorkSafe Mines Safety regulation including:

- recording the report in a de-identified way while ensuring the confidentiality of the person making a complaint;
- speaking with members of the organisation, including the respondent's team to understand if there are wider cultural issues or patterns of conduct;
- recommending new procedures or work systems that reduce the likelihood or opportunity for further harassment; or
- using anonymous staff surveys to understand broader cultural issues in the workplace.

Embedding victim-centric approaches

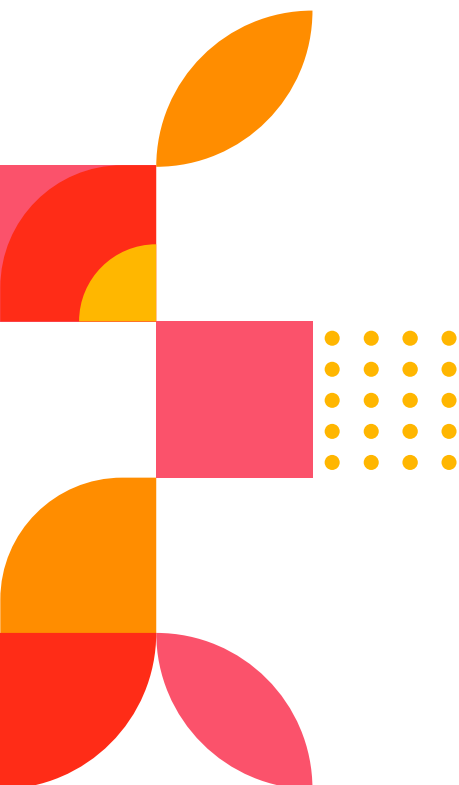
A victim-centric approach is important as it makes it easier for those who experience sexual harassment to report it, when historically a number of factors have made it difficult or distressing for the person making a complaint to report. Approaches that do not consider the wishes or wellbeing of the person making a complaint can cause substantial distress, and in some cases be more damaging than the harassment itself.

A victim-centric approach should:

- prioritise the safety, wellbeing and wishes of affected persons in determining what actions are taken and how;
- give the person making a complaint a say in the process, ensuring they are properly supported and not penalised for making a complaint;
- involve responding with compassion in a non judgmental manner;
- seek to minimise any re-traumatisation; and
- be utilised while also providing procedural fairness to all parties.

How this is applied practically can look different across industries, though the principles remain the same. **Universities Australia** in collaboration with **OurWatch** provides practical guidance for the higher education sector.⁽⁶⁶⁾ Key considerations from this guide that apply to WorkSafe Mines Safety include:

- affected persons are explained the options for reporting, including to Police or other external bodies, and are connected to appropriate support services;
- affected persons are supported to feel in control and make decisions about how to deal with the violence, including whether, when and whom to report to;
- confidentiality and privacy is protected and any information sharing requirements are made clear to them from the outset;
- formal reporting and investigation procedures minimise the number of times affected persons need to recount their experience, clearly explain their rights and options, allow support people, and operate in a timely manner that keeps affected persons aware of developments; and
- data collection mechanisms are in place to capture de-identified disclosures and formal reports to assist in tracking progress and continual improvement.





Proactive mitigation for vicarious trauma

Working with and listening to traumatic accounts of sexual violence can cause a significant emotional stress and vicarious trauma. This puts these individuals at risk of vicarious trauma which can cause a number of effects including post traumatic stress disorder (PTSD) symptoms, feelings of guilt or overwhelm and problems managing personal boundaries.⁽⁶⁷⁾ Research has shown an association between a high caseload of trauma victims and an increased risk of the symptoms of vicarious trauma.⁽⁶⁸⁾

The Psychiatric Times proposes a number of strategies to help protect from vicarious trauma. These include:

- integrating training on vicarious trauma recognition, risk identification and mitigation into curriculums;
- conducting screening to monitor the emergence of negative mental health outcomes and offer coaching, stress management and related programs in response;
- enhancing personal and professional supports such as consultation with colleagues and peers, which has been shown to reduce feelings of isolation;
- managers using one on one supervision to provide support for challenging cases and manage caseload, and assist in the development and implementation of self care plans; and
- aligning organisational values with an individual's goals and values by incorporating wellbeing in the organisation's culture to promote resilience in the workplace.⁽⁶⁹⁾

An example of this in practice is the **U.S. Department of Justice's Office for Victims of Crime**, which has released *The Vicarious Trauma Toolkit* which provides practical guidance for organisations in victim services, emergency services and other allied professionals to help them protect their workers from vicarious trauma.⁽⁷⁰⁾

Impact driven roles, guiding employee choices

The future of work is an evolving landscape and employers of all types, including regulators, must continue to adapt and enhance to attract and retain talent. The COVID-19 pandemic has heightened employee voice, their personal purpose, and their non negotiables for work. Increasingly employees are demanding more. More meaningful and flexible work, more workplaces where they feel empowered and trusted, included and safe, and more work where they can forge open and trusting relationships with a diverse group of peers. While competitive pay and job security remain important, money isn't enough by itself to retain employees, with factors such as fulfilling work and being able to be oneself at work ranking almost as important to employees.⁽⁷¹⁾

One talent attraction strategy to capitalise on these trends, is embedding the impact that a potential applicant can drive through the role. For example, **WorkSafe Victoria** focus on communicating the impact of their roles in their job ads for psychosocial advisors by using strong and emotive language such as “Our passion for safety and wellbeing is what unites us” and then following up with clear language around the impact the role can drive such as “reducing workplace harm”, “improving outcomes for injured workers” and “aspire to be a world leader in return to work after injury.”

Independent, capable and trusted employees

Effective regulation relies upon strong relationships between regulatory actors and the regulator. The capability of staff, especially those facing into industry and other stakeholders, is central to building these trusted relationships.⁽⁷²⁾ While understanding of the regulated industry is important, independence from the industry (e.g. staff with backgrounds from other sectors) is crucial for allowing inspectors to see the bigger picture and better see hazards that may be normalised to those from within that particular industry.

For example:

- **WorkSafe Australian Capital Territory (ACT)** state on their position descriptions for psychosocial inspectors that they are “interested in hearing from people with a background or focus on health and safety within various industry sectors such as health services, human rights, industrial relations, social services, occupational rehabilitation, and allied health” as a way to attract a broader talent pool.
- **WorkSafe Victoria** include clear language about the diversity of their staff in psychosocial roles, by stating “Agile and curious, our people come from a wide range of professions and with no two days being the same, diverse thinking comes naturally to us”.

Continual investment in staff capability

To be a best practice regulator, investment in staff to continuously build their knowledge and capability is central. Capability building needs to balance a focus on specialised skills sets, industry understanding and the general regulatory capability to enable employees to drive impact and performance. For example, **Better Regulation Victoria** have recently partnered with Monash University to develop the “Leadership in Regulation” course which combines practical “hands on” training and with obtaining accreditation, with the view to invest in and build key talent across different regulators.⁽⁷³⁾

Investment in training and development not only enhances knowledge and capability but is a clear way to demonstrate to employees that both they and their work are valued. It acknowledges that employees are in fact the greatest asset for the regulator, and their important role in building trust and confidence.

New Zealand’s Government Regulatory Practice Initiative (G-REG initiative), was established following a Productivity Commission report highlighting the need to professionalise the regulatory workforce.⁽⁷⁴⁾ One of its unique features is connecting local and central government together to learn, share and improve across the regulatory workforce. G-REG leads the development and delivery of regulatory qualifications, partnering with a training organisation to do so. With five courses available ranging from Level three (core knowledge) designed for everyone who works in, wants to work in, or is closely associated with a regulatory compliance organisation through to a Post Graduate Certificate in Public Management.

G-REG believes that a commonality of qualifications enhances the ability for agencies to work together, and that shared qualification and skills will help build expectations of stakeholders of what to expect, helping to build trust.⁽⁷⁵⁾



Incident and event management systems and data that protect confidentiality and are user friendly

As the workplace health and safety landscape changes to better incorporate psychosocial hazards, regulators need to consider additional requirements for their incident and event management systems. Systems must be user friendly while maintaining appropriate levels of confidentiality and security. Key considerations include:



Security and privacy

- Information segmentation using permissions to ensure content is only accessible to those who need to see it.
- Anonymous reporting of incidents and events, including consideration of mandatory response boxes to capture ensure required contextual information (e.g. location).



Reporting and trends

- Robust reporting features to enable clear analysis of incidents and events. This is critical to enable ongoing trend analysis, determine risk-based interventions and communicate emerging hazards to industry.
- Ability to provide personalised data and insights to regulated entities on their individual performance, including potential for benchmark comparator data.



User experience

- A simple, intuitive and engaging user interface to enable reporting.
- Consistent data collation (e.g. prefilled data and drop down menus) to enable quick and easy reporting of incidents and events, and ease of review and analysis.
- Real time nudges based on analytics and risk models to prompt the person conducting the business to review and revise their information to minimise errors.



Back end functionality

- Automatic notifications to critical internal stakeholders for example receipt of a report, allocation to inspector, nudges to inspectors to remind them to provide support services or check in on an affected person.
- Continuous improvement through shared learnings and trend analysis. The system should be regularly reviewed and have the ability to be scalable so that it can grow as the organisation's needs do.⁽⁷⁶⁾

Innovative technology solutions have been employed by regulators in other industries, such as the **Dairy Food Safety Victoria (DFS)**, the authority for regulating the Victorian dairy industry. DFSV implemented *Dairy RegTech* in 2021, which uses technology to “deidentify, analyse, trend, benchmark and present” food safety data in an individualised password protected dashboard available on the DFSV portal.⁽⁷⁷⁾ DFSV auditors regularly examine this data, allowing them to provide regulatory oversight based on individual business performance.

Consideration of similar innovative approaches to monitor data and trends related to sexual assault and sexual harassment (with important focus on confidentiality and victim-centricity) enables understanding the extent of the behaviours and provision of tailored support, guidance and enforcement to grow compliance and increase safety.

Anonymous support and reporting tools

Across the globe, innovation in reporting tools provides individuals with safe, secure and anonymous options to gain more information and support, as well as report incidents and events in a way that allows the receiver to keep the dialogue open to gain further information. Some examples of where these tools are being used today include:

- The **Safe2Say Something** Program is a youth violence protection program run by the Pennsylvania Office of Attorney General.⁽⁷⁸⁾ The Safe2Say Something app allows students to report an anonymous tip, have a conversation with a crisis centre to provide more detail, and directs the report to the right authorities including law enforcement and the relevant school. It generally takes between 1-3 minutes if all the required information is provided for a tip to be sent to the appropriate authorities. The minimum information required is what the event/concern is, who is involved, and their address/present location.
- A person making a complaint to the **Norwegian Labour Inspection Authority** remains anonymous while using their reporting tool.⁽⁷⁹⁾ A person making a complaint can access the “anonymous digital dialogue platform” when reporting and are able to have an anonymous dialogue with the Authority after the report has been submitted. The person making a complaint is also able to see their report and add information. The platform is accessed using an identification number provided when the report is submitted and a password set by the person making a complaint.
- The **VEOHRC** provides *the Sexual harassment support and response tool* which is free and anonymous and enables users to understand their options for reporting sexual harassment.⁽⁸⁰⁾ The chat tool provides advice on what behaviours cross the line for sexual harassment, advice on how to respond and a directory of support services. The tool does not collect or store any data and is not a reporting channel.
- Several **mining jurisdictions in Australia** have adopted a combination of general and specific online reporting pathways for affected persons, bystanders and third parties to report sexual assault and sexual harassment:
 - A specific sexual assault and sexual harassment form (.pdf format) available online to report complaints to WorkSafe QLD. Data is then manually input into Microsoft Forms by WorkSafe QLD team members;⁽⁸¹⁾
 - a general online form to report complaints to WorkSafe VIC;⁽⁸²⁾
 - a general online form, called “Speak Up”, to report safety complaints to SafeWork NSW;⁽⁸³⁾ and
 - a general ‘contact us’ online form to lodge an enquiry with SafeWork South Australia.⁽⁸⁴⁾



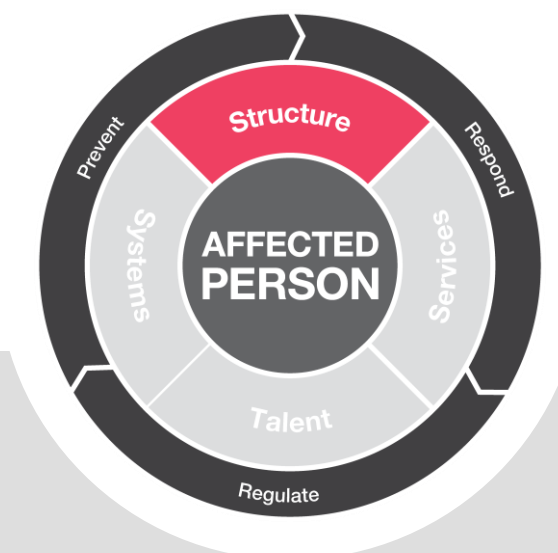
Findings and recommendations





Structure

Structure



What this covers Structure considers the relevant legislative and regulatory framework, the enforcement strategy and collaborative arrangements WorkSafe Mines Safety operates within.

Ideal future state Legislative frameworks and collaborative approaches which support effective and proportionate actions to prevent and respond to sexual assault and sexual harassment.

Indicators **Legislative framework**

- A fit for purpose legislative framework with clearly defined terms, duties, rights and reporting obligations with respect to sexual assault and sexual harassment.
- Affected persons have a robust understanding of their rights and protections under the legislative framework.
- Mining organisations have a robust understanding of their duties and obligations under the legislative framework.

Enforcement measures

- A suite of appropriate enforcement measures which are capable of ensuring compliance with respect to preventing, responding to and reporting sexual assault and sexual harassment.
- An enforcement approach which is proportionate to the prevalence and nature of sexual assault and sexual harassment.
- Use of appropriate enforcement measures to limit ongoing, deliberate underreporting of sexual assault and sexual harassment.

Collaboration

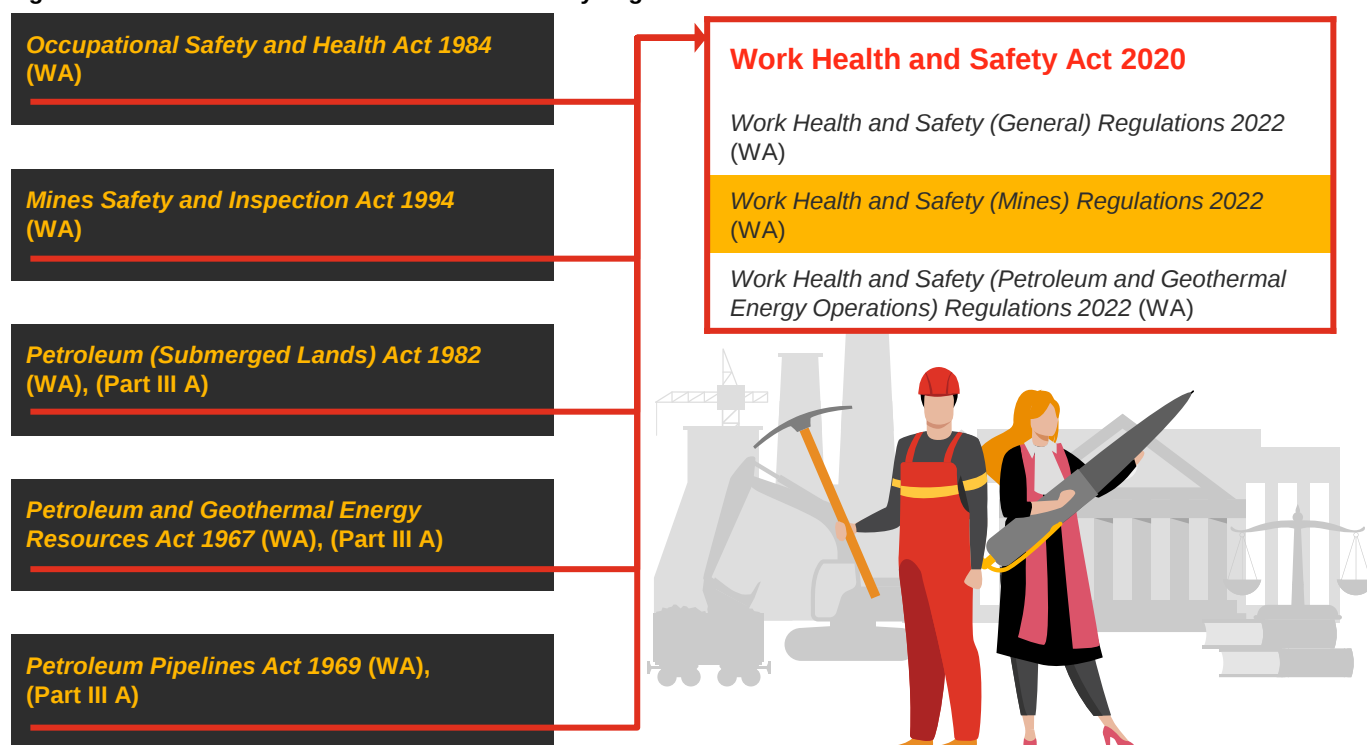
- Consistent information sharing and learning across stakeholders, including government agencies, mining industry, support services and other WHS regulators.
- Transparency of collaborative efforts to help build confidence.
- Leveraging good practice from across industry and other jurisdictions to drive change.

Legislative framework

Current state observations:

- The new WHS Act and associated *Work Health and Safety (Mines) Regulations 2022* (WA) (WHS Mines Regulations) commenced in March 2022.⁽⁸⁵⁾
- The WHS Act and WHS Mines Regulations are based upon the model WHS laws which were developed in 2011 and provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces.⁽⁸⁶⁾
- WorkSafe Mines Safety have been working with the mining industry to increase awareness and understanding of the WHS Act and WHS Mines Regulations across all aspects of health and safety.
- The meaning of “health” was updated in the WHS Act to expressly include psychological and physical risks. Despite this, the Boland Report found the model WHS laws, fails to provide PCBU with sufficient guidance on how to address psychosocial hazards in and associated with the workplace.⁽⁸⁷⁾
- The *Sex Discrimination Act 1984* (Cth) contains the most generally accepted definition of sexual harassment which refers to any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature in circumstances where a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person harassed would be offended, humiliated or intimidated.⁽⁸⁸⁾
- WA Police define sexual assault as a broad range of sexual crimes committed against a person, including sexual intercourse without consent and indecent assault and other offences within the *Criminal Code Act Compilation Act 1913* (WA).⁽⁸⁹⁾
- The two pathways requiring a person conducting a business or undertaking (PCBU) to report sexual assault and sexual harassment under the WHS Act and WHS Mines Regulations are:
 - notifiable incidents, which include death, serious injury or illness and dangerous incidents; and⁽⁹⁰⁾
 - reportable incidents, which are incidents that result in injury or illness that requires medical treatment, where the severity is not sufficient to make it a notifiable incident or could have caused serious injury or harm to a person, plant or structure.⁽⁹¹⁾
- Draft changes to notification provisions have been proposed by Safe Work Australia as part of a review of the model WHS laws. Several updates remain in progress, including a review of incident notification provisions to provide for a notification requirement for psychological injuries.⁽⁹²⁾
- In its response to *Enough is Enough*, the Western Australian Government committed to amending the WHS Act and WHS Mines Regulations to effect changes made to the notification provisions of the model WHS laws.⁽⁹³⁾

Figure 6: Western Australia Work Health and Safety Legislation Framework



The *Dangerous Goods Safety Act 2004* (WA) and associated regulations will be considered for inclusion in the WHS Act two years after the WHS Act comes into effect

Finding 1: Notification requirements are not fit for purpose for sexual assault and sexual harassment

The notification requirements within the WHS Act and WHS Mines Regulations are designed for reporting of physical health and safety incidents and events, which limits the application for sexual assault and sexual harassment unless they present in the same manner. Further, some injuries, such as “serious harm”, are not defined which has created confusion between WorkSafe Mines Safety and the mining industry on how this applies to sexual assault and sexual harassment.

Notifiable incidents

The most applicable notifiable incident for a sexual assault is a serious injury or illness of a person (s 36(1)) as in a majority of cases a sexual assault won't give rise to a death (s 35(a)) or dangerous incident (s 37).⁽⁹⁴⁾

Sexual assault falls under the duty to notify for notifiable incidents if it constitutes serious injury or illness. There are few categories of serious injury or illness that are contained in section 36 of the WHS Act that may apply:

1. where the sexual assault requires “the person to have immediate treatment as an in-patient in a hospital” (s 36(1)(a));
2. where a sexual assault “occurs in a remote location and requires urgent transfer to a medical facility” (s 36(1)(d)); and
3. where in the opinion of a doctor, the sexual assault results in ten days time off after the day the sexual assault occurs (s 36(1)(e)).⁽⁹⁵⁾

However, each of these categories has limited application. For example, categories one and two may not extend to sexual assaults where affected persons delay medical treatment. Additionally, the ten day threshold in category three may have limited application where an organisation has not been advised that the reason for an affected person's ten or more days off from work is for a sexual assault injury, or where time taken off from work is delayed due to impacts of trauma that often uncover over time.

The remaining categories of serious injury or illness do not apply to sexual assault as they focus on the physical consequences of an injury as opposed to the event itself.

The focus on physical injuries as opposed to psychological injuries precludes application of notifiable incident requirements to sexual harassment. In most instances, sexual harassment won't give rise to a notifiable incident as it is unlikely to meet the requirements of a serious injury or illness of a person, death or dangerous incident.

Reportable incidents

The most applicable reportable incidents for sexual assault are:

1. illness or injury that requires medical treatment (r. 5(a));
2. where a person attempts suicide at a mine or associated site (r. 5(q)); and
3. a workplace incident that could have caused serious harm to a person, plant or structure (r. 5(r)).⁽⁹⁶⁾

Figure 7: Guidance on sexual assault and sexual harassment notifications provided by WorkSafe

Guidance	Notifiable incident	Reportable incident
 Who needs to report?	All persons who conduct a business or undertaking in mining including the mine operator	All persons who conduct a business or undertaking in mining including the mine operator
 When does it need to be reported?	Immediately after becoming aware of the incident.	As soon as possible after becoming aware of the incident.
 What needs to be reported?	When the incident has resulted in a psychosocial or physical injury or illness that: • requires the person to have immediate treatment as an in-patient at a hospital; • occurred in a remote location and requires the person to be transferred urgently to a medical facility for treatment; or • in the opinion of a medical practitioner is likely to prevent the person from being able to perform their normal work for 10 days or more.	An incident where: • it results in an injury or illness that requires medical treatment; • a person attempts suicide at a mine or place associated with a mine e.g. worker accommodation; and • the incident could have caused serious harm to a person (includes trauma and stress related disorders, anxiety disorders, depression, other psychological conditions).
 How to report?	Safety Reporting System WorkSafe notifiable incident hotline 1800 678 198	Safety Reporting System WorkSafe general hotline 1300 307 877 or WorkSafe notifiable incident 1800 678 198
 Where can you find out more?	• Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety information sheet • Gendered violence: Sexual harassment information sheet • Gendered violence: Sexual assault	

Despite this, each reportable incident category has limited application for sexual assault. For example:

- the first reportable incident category may not extend where a person delays or does not seek medical treatment;
- the second reportable incident will only apply in very specific circumstances of sexual assault; and
- the third reportable incident category relies upon interpretive positions of what satisfies “serious harm”. In the absence of a consistent and clear definition of this term, its application is limited.

WorkSafe Mines Safety have provided public guidance on incidents that could have caused serious harm to a person.⁽⁹⁷⁾ However, it became clear during this Review that there are variations in interpretive positions between WorkSafe Mines Safety and the mining industry. Serious harm is defined for the purpose of offences and penalties (Part 2 of the WHS Act) only and includes harm to mental health.⁽⁹⁸⁾ While not defined for the purpose of reportable incidents, it is helpful to understand the intent of serious harm and how it operates elsewhere in the WHS Act.

There is likely one applicable reportable incident for sexual harassment - a workplace incident that could have caused serious harm to a person, plant or structure (r. 5(r)) which has the same limitations with respect to the absence of a definition of serious harm, as discussed above.⁽⁹⁹⁾

In 2018, Safe Work Australia commenced a review of the model WHS laws and an action to include a notification requirement for mental injuries is currently underway.⁽¹⁰⁰⁾

Draft changes to the notification provisions are not publicly available and were unable to be evaluated for their appropriateness for sexual assault and sexual harassment by this Review. The WA Government has committed to amending the WHS Act and WHS Mines Regulations to effect changes made to the notification provisions within the model WHS laws.⁽¹⁰¹⁾

Finding 2: Sexual assault and sexual harassment are not defined in the WHS Act and WHS Mines Regulations

The WHS Act and WHS Mines Regulations do not define sexual assault and sexual harassment which can limit understanding and applicability of the legislation. To provide better clarity to the mining industry, WorkSafe Mines Safety have developed information sheets for sexual assault⁽¹⁰²⁾ and sexual harassment⁽¹⁰³⁾ which include summarised information about the applicability of the WHS Act and WHS Mines Regulations to sexual assault and sexual harassment. Despite this guidance, there is still widespread misuse of terms, with confusion around what kinds of behaviours fall within these definitions and a common practice of conflation of the two terms.

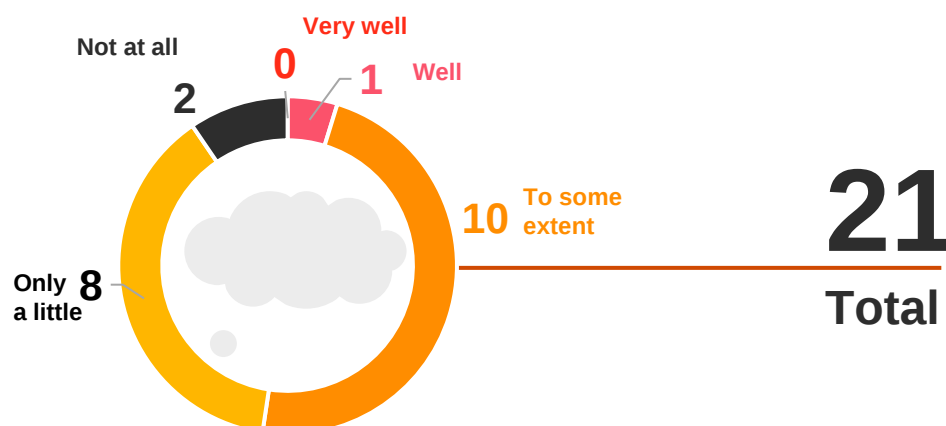
Enough is Enough also highlighted that inclusion of a definition of sexual harassment within the WHS Act provided opportunity for improved clarity, to make the definition of sexual harassment more immediately understandable, to help prevent sexual harassment and simplify resolutions.⁽¹⁰⁴⁾



We currently don't have any psychosocial regulations, we only have WHS laws which constantly have to be nuanced. We're having to fit square pegs into round holes by applying physical laws into a psychosocial realm.

Figure 8: Mining organisations' self reported understanding of reporting obligations to WorkSafe Mines Safety around sexual assault and sexual harassment

How well do mining organisations understand their reporting obligations to WorkSafe around sexual harassment and sexual assault?



Source: Poll undertaken by PwC at a mining industry workshop as part of this Review (2022).

Finding 3: There is a low level of understanding on how the WHS Act and WHS Mines Regulations apply to sexual assault and sexual harassment

There is a lack of understanding by the mining industry of how WHS Act and WHS Mines Regulations apply to sexual assault and sexual harassment. Critical, relevant changes brought about by the WHS Act and WHS Mines Regulations which are not clearly understood include:

- a duty of care for PCBUs to ensure a healthy working environment for both physical and psychological health;
- requirements for PCBUs to consider and assess psychological hazards in the same way as they would physical hazards;
- obligations on mining organisations to report psychosocial incidents and events which meet the thresholds for notifiable and reportable incidents, (noting these are mostly not fit for purpose and rely upon interpretive positions - see Finding 1); and
- work camps accommodation formally defined as workplaces for the regulation of work health and safety.

Guidance information on DMIRS' "Introduction to WHS Laws" website, including a *Work Health and Safety (Mines) Regulations 2022 comparison table*, does not explain how changes within the WHS Act or WHS Mines Regulations impact upon duties, rights and obligations with respect to sexual assault and sexual harassment.⁽¹⁰⁵⁾

Additionally, WorkSafe Mines Safety have developed information sheets on sexual harassment⁽¹⁰⁶⁾ and sexual assault⁽¹⁰⁷⁾ which describe the duties and reporting obligations for each. The information sheets are not currently shared on the relevant "introduction to WHS laws" website, which means those looking to understand changes to WHS Act and WHS Mines Regulations are less likely to access this information unless they specifically search for it elsewhere on the website.

WorkSafe Mines Safety have also produced guidance on *Notifications of sexual harassment and/or assault to WorkSafe*, however feedback during consultations highlighted that this guide is not well known amongst the mining industry.⁽¹⁰⁸⁾

Consultation with the mining industry revealed that few mining organisations felt confident they understood their reporting obligations. The main areas of ambiguity were around the meaning of serious harm (r. 5(r))⁽¹⁰⁹⁾ and discrepancies in interpretive positions between mining organisations and WorkSafe Mines Safety on reporting obligations. One example shared by a mining organisation was that they were advised by WorkSafe Mines Safety to report any sexual harassment which results in a termination. However, at times this can be viewed as an overextension of reporting obligations, as there are instances where a low level sexual harassment results in termination because it had occurred in addition to previous and/or other instances of poor performance or behaviour.



Legislative framework

Recommendation 1: Progress amendments to the notification provisions within the WHS Act and WHS Mines Regulations.

WorkSafe Mines Safety should progress amendment of the notification provisions within the WHS Act and WHS Mines Regulations by:

- Enacting amendments made to model WHS laws by Safe Work Australia; or
- Advocating to the Minister of Industrial Relations on amendments needed to WHS Act and WHS Mines Regulations notification provisions.

Where the changes to the model WHS laws made by Safe Work are fit for purpose for sexual assault and sexual harassment, WorkSafe Mines Safety should work with the Minister of Industrial Relations to enact these within the WHS Act and WHS Mines Regulations. While Safe Work Australia's review is underway, WorkSafe Mines Safety should provide feedback in consultation with unions and mining organisations to Safe Work Australia to ensure findings from *Enough is Enough* and this Review are considered in the drafting of Model WHS changes.

Where changes to the model WHS laws are not fit for purpose for sexual assault and sexual harassment, WorkSafe Mines Safety should advocate to the Minister for Industrial Relations to amend the WHS Act and WHS Mines Regulations to include notification requirements which are designed for sexual assault and sexual harassment.

Recommendation 2: Progress amendments to the WHS Act and WHS Mines Regulations to include a definition of sexual assault and sexual harassment.

WorkSafe Mines Safety should advocate to the Minister of Industrial Relations to amend the WHS Act and WHS Mines Regulations to include definitions of sexual assault and sexual harassment.

WorkSafe Mines Safety should also provide this feedback to Safe Work Australia to be considered as part of the national review effort of the model WHS laws and to ensure a harmonised approach across WHS jurisdictions nationally.



Enforcement measures

Current state observations:

- The refreshed WHS Act and WHS Mines Regulations provide for several new enforcement mechanisms and remedies to increase compliance.
- The new enforcement measures and remedies include remedial actions, non-disturbance notices and enforceable undertakings (WHS undertakings). Given the recency of the legislative changes, there has been limited application of new enforcement measures with respect to sexual harassment or sexual assault.
- WorkSafe Mines Safety view the applicability of the new enforcement measures to psychosocial hazards, especially sexual assault and sexual harassment, as limited.
- There have been no prosecutions commenced for any offence relating to sexual assault and sexual harassment under the WHS Act and it should be noted there were also no prosecutions under previous legislation.
- A previous unsuccessful prosecution against the Australian Nursing Federation (ANF) in 2007 for workplace bullying is the only time that prosecution for a psychosocial harm has been undertaken. This case was cited by WorkSafe leaders as an example of the difficulties in prosecuting workplaces for psychosocial harms. The media reported ANF were issued notices by WorkSafe in 2022 for bullying by the same alleged perpetrator.⁽¹¹⁰⁾
- A prosecution has commenced in South Australia, pursuant to section 32 of the *Work Health and Safety Act 2012* (SA) where a worker was sexually assaulted while providing support services to a client. Although not within mining, this will likely provide insights into prosecution for offences relating to sexual assault and sexual harassment at work under model WHS legislation.⁽¹¹¹⁾

Finding 4: A stronger regulatory response is required to address issues of underreporting

Widespread underreporting of sexual assault and sexual harassment incidents to WorkSafe Mines Safety has been evidenced by the Inquiry and the subsequent historical reports received by WorkSafe Mines Safety.

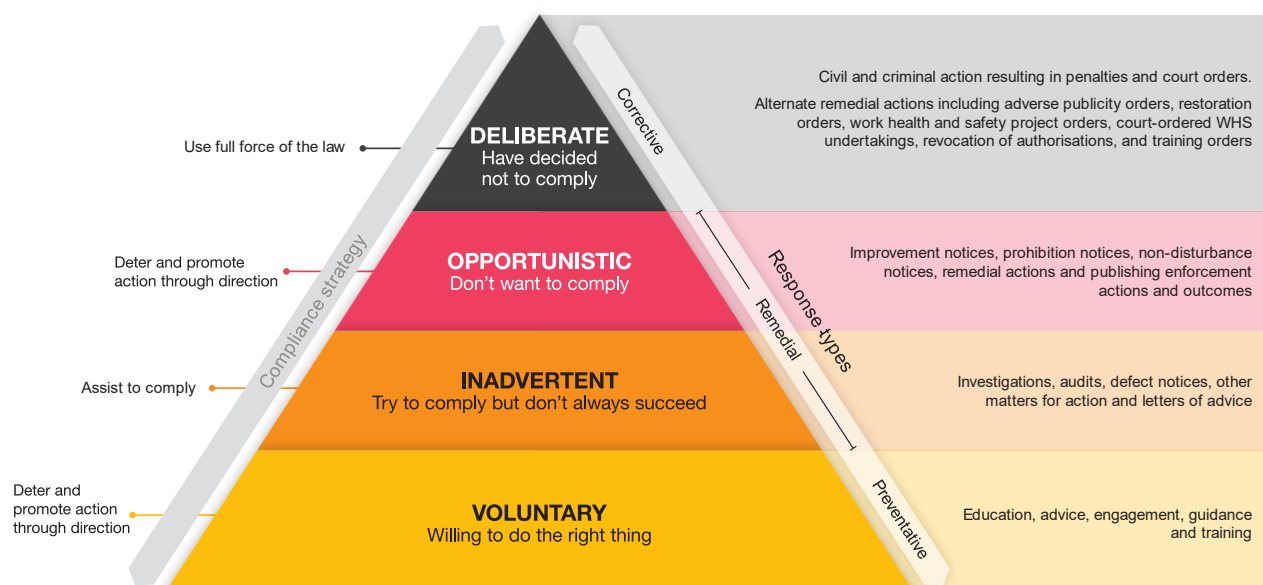
The extent of underreporting is significant, for example:

- WorkSafe Mines Safety reported to the Inquiry that it had received 22 reports of sexual assault in seven years (2015-2021), a substantially lower number than the 23 reports WA Police had investigated on mine sites in just two years (2020-2021);⁽¹¹²⁾
- WorkSafe Mines Safety received ten reports of sexual harassment in seven years (2015-2021), compared with a sample of four mining organisations which received 231 reports over the previous three years or less;⁽¹¹³⁾ and
- since the Inquiry, WorkSafe Mines Safety have received an additional 23 historical reports of sexual assault, doubling the reports received and an additional 304 reports of sexual harassment, bringing the total up to 314 reports since 2012.⁽¹¹⁴⁾

There have been no WHS undertakings or penalties imposed for underreporting of sexual assault or sexual harassment under the WHS Act. WorkSafe has provided advice to the mining industry that failing to report a notifiable or reportable incident is an offence.⁽¹¹⁵⁾

There are instances of opportunistic and deliberate breaches of duties to notify WorkSafe Mines Safety of sexual assault and sexual harassment, with some duty holders demonstrating ongoing non-compliance. This Review was informed by WorkSafe leaders that some mining organisations are refusing to comply with their duties to notify of sexual assault and sexual harassment despite a number of educative measures, letters and notices being employed. A stronger enforcement response is needed given the extent of the non-compliance.

Figure 9: Model demonstrating the enforcement approach of WorkSafe



Finding 5: Improvement notices are the main enforcement measure utilised for sexual assault and sexual harassment

Improvement notices are generally the legislative enforcement mechanism applied by WorkSafe Mines Safety to address non-compliance with respect to sexual assault and sexual harassment.⁽¹¹⁶⁾ There are questions around the applicability of other enforcement measures available under the WHS Act to workplace factors relating to sexual assault and sexual harassment, including prohibition notices and remedial actions.

Improvement notices are issued by WorkSafe Mines Safety inspectors where non-compliance is detected that does not involve an immediate risk to health and safety and requires the issue to be remedied within a period specified in the notice.⁽¹¹⁷⁾

Examples of grounds for improvement notices which relate to sexual assault and sexual harassment have been provided to this Review and include:

- workers experiencing and witnessing sexual harassment;
- sexually explicit pictures displayed in a workshop;
- alcohol consumption at 80-100% more than the Federal Government's health advice;⁽¹¹⁸⁾ and
- a risk register lacking appropriate controls to prevent sexual harassment.⁽¹¹⁹⁾

Examples of directions to remedy contraventions contained in these improvement notices have been provided to this Review and include:

- reporting a sexual assault that was uncovered during a site visit;
- referral to read the WorkSafe's Codes of Practice on Workplace Behaviours and on Psychosocial Hazards in the Workplace; and
- review of the control measures in place to prevent psychosocial harm including training and information on standards of behaviour, leadership training, support services available for affected persons and operational capacity to respond to sexual assault and sexual harassment.⁽¹²⁰⁾

It is important to note the under use of other legislative enforcement measures could be due to the recency of the WHS Act which introduced remedial actions and non-disturbance orders. The WHS Act also amended the test for prohibition orders which restricts applicability for sexual assault and sexual harassment, discussed further in Finding 7.

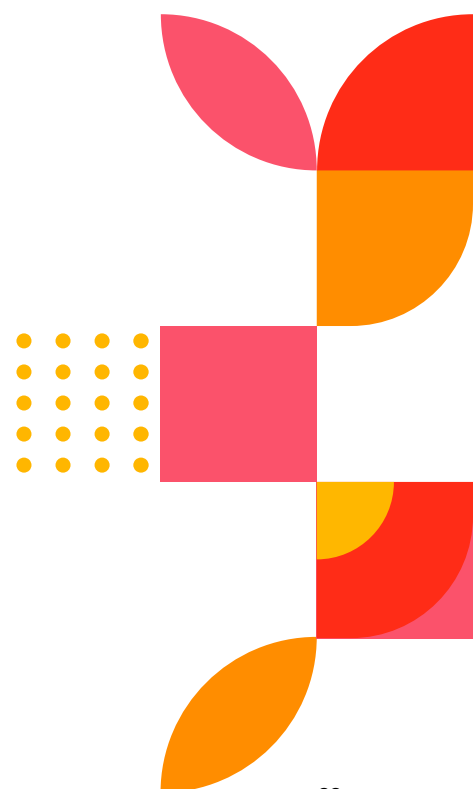
Finding 6: Improvement notices are underutilised for non-compliance relating to sexual assault and sexual harassment

The low number of improvement notices issued for non-compliance related to sexual assault and sexual harassment is not commensurate with the number of occurrences within the mining industry. Just 25 improvement notices have been issued in the past five years despite the number of occurrences far exceeding this.⁽¹²¹⁾

Current reported figures of 314 sexual harassments and 45 sexual assaults over seven years suggests that non-compliance with duties and notification obligations under the WHS Act was more extensive than those addressed through improvement notices.⁽¹²²⁾ This means that in most circumstances of sexual assault and sexual harassment, WorkSafe Mines Safety did not identify areas for improvement within the relevant mining organisation.

Notification of historical sexual assault and sexual harassment data following the Inquiry suggests a much higher rate of non-compliance than is being addressed though the limited improvement notices applied by WorkSafe Mines Safety.⁽¹²³⁾

WorkSafe Mines Safety currently use a number of enforcement measures, including education, audits and a small number of improvement notices. However, instances of deliberate or opportunistic non-compliance warrant the use of stronger enforcement measures (for example, improvement notices).



Finding 7: The test for applying a prohibition notice is difficult to apply to sexual assault and sexual harassment

The WHS Act introduced changes to the elements for issuing a prohibition notice which limit its application to sexual assault and sexual harassment. Prohibition notices are intended to stop a workplace activity that involves a serious risk to a person's health or safety until a WorkSafe inspector is satisfied that the risk has been remedied.⁽¹²⁴⁾

To use a prohibition notice, a WorkSafe inspector must reasonably believe that an activity is occurring or may occur and involves or will involve a serious risk to health or safety from an "immediate or imminent" exposure to a hazard.⁽¹²⁵⁾

The model WHS laws' *explanatory memorandum (2011)* articulates an intention that prohibition notices apply to psychosocial incidents and events, stating the test "has the advantage of being effective to deal with ... circumstances of psychological threat or other similar conditions."⁽¹²⁶⁾

However, WorkSafe Mines Safety have provided feedback they are often unable to reasonably conclude that any activity on a mine site will involve an immediate or imminent exposure to sexual assault and sexual harassment (for example, the absence of a lock on a donga door will not always result in a sexual assault and therefore can not be reasonably concluded).

WorkSafe Mines Safety have provided feedback it has not encountered any scenarios where a prohibition notice would have been useful in prevention of a sexual assault or sexual harassment.

The inability to utilise prohibition notices for sexual assault and sexual harassment may mean limiting the most appropriate enforcement responses in some scenarios.

Finding 8: There are no specific examples of the application of enforcement measures to sexual assault and sexual harassment in training materials

The training materials for enforcement measures presented to WorkSafe Mines Safety inspectors, titled *Final DRAFT Investigating psychosocial hazards- WHS Inspector training*, do not expressly contain targeted and clear advice on how to utilise enforcement measures for sexual assault and sexual harassment.⁽¹²⁷⁾

While training materials do provide examples of application to other psychosocial incidents and events, such as bullying, there is little written and practical support available for WorkSafe Mines Safety inspectors to apply this learning to sexual assault and sexual harassment.

WorkSafe Mines Safety inspectors identified that guidance in the following areas would be beneficial:

- detailed examples of where enforcement measures had been applied to sexual assault and sexual harassment in the past;
- practical considerations of how enforcement measures may be applied to sexual assault and sexual harassment within a mining environment; and
- support for how to apply an enforcement measure such as an improvement notice without opening unnecessary opportunity for legal challenge.

A lack of understanding on how to utilise enforcement measures may inhibit the full range of regulatory powers being utilised to prevent sexual assault and sexual harassment.





Enforcement measures

Recommendation 3: Utilise stronger, existing enforcement measures and impose penalties for breaches of duties to notify sexual assault and sexual harassment

WorkSafe Mines Safety should utilise appropriate enforcement measures needed to eliminate breaches of duties to notify sexual assault and sexual harassment. Some breaches (for example, deliberate or opportunistic non-compliance) will call for a stronger regulatory response than has been used to date. In such situations, WHS undertakings and the imposition of penalties may be necessary to address systematic underreporting across the mining industry.

Recommendation 4: Support reviewing the current test to apply a prohibition notice to include psychosocial elements

The amendment of the model WHS laws by Safe Work Australia presents an opportunity to provide feedback to Safe Work Australia and to the Minister for Industrial Relations on the applicability of prohibition notices.

This process presents an opportunity to provide feedback to the Minister for Industrial Relations and Safe Work Australia on the applicability of prohibition notices to sexual assault and sexual harassment. This feedback should include reviewing the test for “immediate or imminent” exposure which is incongruent with exposure to sexual assault and sexual harassment.

Recommendation 5: Update WorkSafe inspector training materials to provide practical guidance on how different enforcement measures apply to sexual assault and sexual harassment

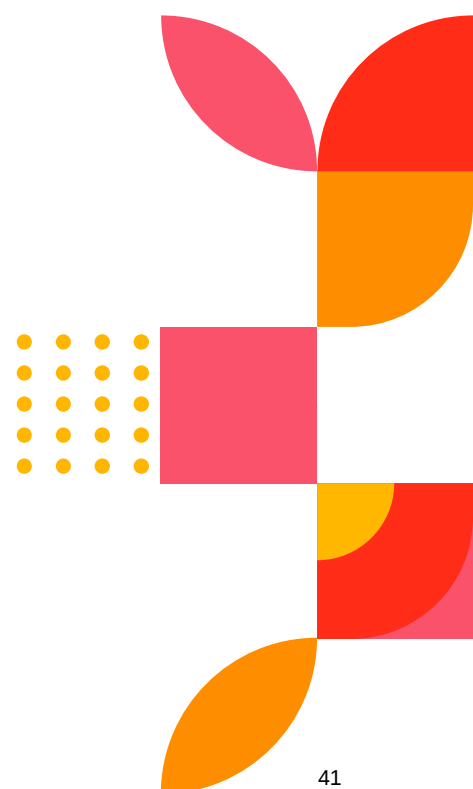
WorkSafe Mines Safety should enhance its WorkSafe inspector psychosocial training materials to explain how enforcement measures apply to sexual assault and sexual harassment and instances of systematic underreporting.

The updates should include clear, practical examples of where measures have been successfully applied in the past, and key considerations when using different enforcement measures for contraventions of the WHS Act relating to sexual assault and sexual harassment.

Collaboration

Current state observations:

- The Mining and Petroleum Advisory Committee (MAPAC) is the Minister's primary engagement mechanism with the mining industry. MAPAC was established under the WHS Act⁽¹²⁸⁾ and will support DMIRS to fulfil a range of duties including:
 - advising the Minister on matters that relate to work health and safety issues relating to the mining industry, including by making recommendations in relation to those issues;
 - advising on the adoption of codes of practice referred to in section 274 of the Act, or other guidelines, policies or other documents in relation to work health and safety issues relating to the mining industry;
 - inquiring into, and reporting to the Minister on, a matter relating to the mining industry that is referred to it by the Minister; and
 - advising on education, training and publications in relation to work health and safety issues relating to the mining industry.⁽¹²⁹⁾
- MAPAC is an essential partner of the WA Government in fulfilling its commitment to implementing recommendations from *Enough is Enough*. For example, MAPAC was delegated responsibility to review key actions such as reducing risks associated with labour hire and sub contracting.⁽¹³⁰⁾
- Less formal engagement with other mining industry groups such as AMEC and CME occurs across WorkSafe.
- The Chief Inspector of Mines has representation on a number of collaborative bodies, including an annual conference with other jurisdictions.
- Individual WorkSafe inspectors, and/or WorkSafe teams engage regularly with the mining industry, including participating in industry events and speaking on panels.
- The WorkSafe Mines Safety MHW inspection team actively build relationships with their counterparts in other Australian jurisdictions, through participation in Communities of Practice such as the Heads of Workplace Safety Authorities' Psychological Health Community of Practice.
- Communities of Practice are used by the WorkSafe Mines Safety MHW inspection team to share lessons and knowledge and continue to improve practices. The three WorkSafe Codes of Practice related to psychosocial hazards were shared within the Communities of Practice forum to support other jurisdictions as they continue to enhance their own approaches to preventing and responding to sexual assault and sexual harassment.
- WorkSafe and WA Police are currently renewing their collaboration terms for sexual assault and sexual harassment. A draft updated Memorandum Of Understanding (MOU) is currently in its final stages of approval.
- WorkSafe is working with SARC and WA Police to rollout the site early evidence kit (SEEK) and develop a supporting eLearning package for implementation across the mining industry. This important collaboration will better support the preservation of sites and evidence following a sexual assault.
- The Mental Awareness, Respect and Safety (MARS) program was established to improve the health, safety and wellbeing of workers and others in the mining industry. This program is managed in partnership with the Mental Health Commission, the EOC, Communities, and the Minister for Women's Interests. Some examples of this collaboration include:
 - The Respect in Mining Program in partnership with Communities; and
 - The Thrive at Work in Mining Masterclass series in partnership with the Mental Health Commission.



Finding 9: DMIRS and WorkSafe are renewing their agreements with key agencies to strengthen collaboration

Cross agency collaboration is a priority for DMIRS and WorkSafe as they continue to expand their capability in preventing and responding to sexual assault and sexual harassment in the mining industry. This includes renewing and defining ways of working with WA Police.

This Review sighted an extract of the draft MOU between DMIRS, WorkSafe and WA Police which sets out the how the parties will collaborate on sexual assault and sexual harassment across all workplaces, including within the mining industry.⁽¹³¹⁾ The extract captures key terms around notification of sexual harassment between the parties, conduct of investigations and a quarterly reporting cadence. Importantly, the MOU extract expresses an intent that in cases of sexual assault and sexual harassment, the wellbeing and wishes of the victim are to be treated as paramount. Information shared by WA Police under the MOU will provide helpful datasets to monitor and enhance WorkSafe's understanding of the prevalence and nature of sexual assault and sexual harassment in mining.

Additionally, this Review sighted a draft MOU between the Respect@Work Council which established cross agency cooperation and de-identified data sharing arrangements to build consistent and evidence-based responses to workplace sexual harassment.⁽¹³²⁾ The Council, established following *Respect@Work*, works with agencies that handle workplace sexual harassment matters to:

- collect agreed de-identified data relating to workplace sexual harassment enquiries, complaints, claims and settlement outcomes to contribute to a coordinated system of annual reporting; and
- establish formal arrangements for information sharing and data exchange on enquiries, complaint and claims relating to workplace sexual harassment.

Although DMIRS and WorkSafe are also collaborating with other agencies such as the EOC and SARC, there are currently no formal arrangements (for example, MOU) in place to guide these relationships, which can limit the ability to share information, especially data.

Finding 10: A lack of transparency about collaboration creates confusion over roles and responsibilities

There is limited publicly available information about the extent of collaboration between DMIRS, WorkSafe and other key agencies, and the role of each party when responding to sexual assault and sexual harassment. For example, there is no information that outlines how each party may be involved in responding to sexual assault and sexual harassment in the mining industry, the outcomes and/or support they may be able to offer or how information may be shared between these parties. In comparison, WorkSafe Victoria provides a copy of its MOU with Victoria Police⁽¹³³⁾ on its website, has clear guidance on regulator roles across different agencies,⁽¹³⁴⁾ and has established "warm referral" arrangements with other key agencies such as the VEOHRC.⁽¹³⁵⁾

Consultations revealed that across government agencies, unions and the mining industry, the role of WorkSafe in responding to sexual assault and sexual harassment was not clear. Additionally, there was appetite for greater transparency, including publicly sharing MOUs to help increase understanding and collaboration efforts.

Finding 11: There are opportunities to improve consistency through enhanced collaboration as “One WorkSafe”

Throughout this Review, it was clear that while internal collaboration as “One WorkSafe” was still being established, collaboration and ways of working had been improving. There were many examples of the positive impacts of this enhanced collaboration such as the recent implementation of psychosocial hazards training for the WorkSafe inspectorate, which was developed and delivered by inspectors focused on psychosocial hazards across WorkSafe.

Increased staff movement between teams has also opened new channels of engagement and opportunities to work together in new ways (for example, staff moving from WorkSafe General Industries Human Factors and Ergonomics teams to WorkSafe Mines Safety and WorkSafe Mines Safety team members leading the Triage team).

While there were clear positive improvements on internal collaboration, this Review heard of the challenges of the “siloe” work style, and of “serving two bosses” (both DMIRS and the WorkSafe Commissioner). One of the key challenges raised in relation to the siloe work, was a lack of visibility of information of where workplaces may be covered by more than one WorkSafe industry area. For example, should sexual assault or sexual harassment occur both on a mining site (WorkSafe Mines Safety) and in their head office (WorkSafe General Industries), neither would have visibility of the other, to draw holistic insight into the controls and organisational factors. Similarly, the use of two different reporting systems also creates a challenge in collaborating and sharing sexual assault and sexual harassment data. This fractured approach to systems and reporting across WorkSafe is further discussed in Systems (page 79).

Finding 12: Annual conference of Chief Inspector of Mines is a key opportunity to share leading practices to prevent and respond to sexual assault and sexual harassment

The Chief Inspector of Mines across each jurisdiction in Australia meet formally for a conference each year. This conference focuses on key emerging areas of focus and knowledge sharing across the regions.

Psychosocial hazards have been on the agenda for these meetings previously. When speaking with Chief Mining Inspectors across Australia, this Review heard strong commitment towards discussing sexual assault and sexual harassment in mining, in particular, at the next conference.

However, due to COVID-19, this conference has not been held in its usual format. Instead, Chief Inspectors of Mines have met online to discuss key emerging issues, such as the Inquiry.

Outside of this annual conference, Chief Inspectors of Mines also engage informally, and it was clear from this Review that other jurisdictions are eager to learn from WorkSafe’s emerging focus on sexual assault and sexual harassment in mining and share their own practices.

With the harmonisation of workplace health and safety legislation across all jurisdictions except Victoria, this forum holds potential to exchange learnings around the application of the model WHS laws to sexual assault and sexual harassment.

Finding 13: The mining industry is eager for greater collaboration with DMIRS and WorkSafe Mines Safety, especially on addressing sexual assault and sexual harassment

While the mining industry acknowledged the formal engagement bodies that exist (for example MAPAC), there is strong appetite for greater and closer collaboration – especially on the prevention of and response to sexual assault and sexual harassment in the mining industry.

The mining industry expressed a wide range of opportunities to engage more closely, with the key themes including:

- increased collaboration for creating practical and widely used resources;
- ability to better leverage expertise housed within the mining industry to support the development of policies, processes and training, especially regarding prevention and response to sexual assault and sexual harassment;
- greater and more regular opportunities to provide feedback to DMIRS and WorkSafe to support continuous improvement of the regulator; and
- increased opportunities for consultation and engagement on the application of the WHS legislation as it relates to sexual assault and sexual harassment.



One WorkSafe in name, but in practice it’s very hard.

Collaboration

Recommendation 6: Strengthen working arrangements with key agencies

To continue to improve data collection, trend identification and better understand the prevalence of incidences of sexual assault and sexual harassment across the mining industry, DMIRS and WorkSafe should seek to formalise and strengthen its collaboration with agencies beyond WA Police, including the potential to share data, with key organisations such as SARC, the EOC, WorkCover WA and the Fair Work Commission.

Access to data relating to sexual assault and sexual harassment in mining, and understanding the interaction that these organisations have with the mining industry, would strengthen DMIRS and WorkSafe's ability to provide targeted and relevant support to the mining industry about key trends and risks.

Recommendation 7: Map and communicate the roles and responsibilities of WorkSafe and other key parties in sexual assault and sexual harassment

Proactively engage with the mining industry and other key agencies (for example, WA Police, SARC, the EOC) to determine and map roles and responsibilities of each party related to sexual assault and sexual harassment. This should include consideration and agreement of collaboration terms through MOUs, or other arrangements (see Recommendation 6) to identify how parties will work together, share information and identify trends to prevent and respond to sexual assault and sexual harassment in mining.

The clear roles and responsibilities should be communicated internally and externally to ensure all parties and stakeholders understand the different roles each plays, and potential outcomes from engaging with each. This could include:

- publishing MOUs on the DMIRS website;
- publishing clear and simple information about collaboration efforts with key agencies on the DMIRS website; and
- developing a high level visual map to help people understand the roles and remits of each party, and when to contact each.

Recommendation 8: Continue to enhance ways of working and collaboration across WorkSafe

While work is underway to enhance collaboration, especially through informal channels between the WorkSafe Mines Safety MHW inspector team and other WorkSafe psychosocial hazards inspectors, there remains opportunities to strengthen and formalise these to enhance capability and efficiency across WorkSafe. Some key considerations include:

- aligning processes and procedures for responding to sexual assault and sexual harassment, for example, a consistently applied triage approach, consistent engagement with the WorkSafe inspectorate, consistent approach to informed consent and limitations with outcomes WorkSafe can provide to an affected person;
- knowledge and data sharing across WorkSafe to support trend identification and the development of resources; and
- upskilling and capacity building across teams e.g. emerging good practice, key insights from recent inspections, guidance on managing vicarious trauma etc.

Recommendation 9: Develop and provide collaborative resources on preventing and responding to sexual assault and sexual harassment to the mining industry through WorkSafe channels, for example the MARS program.

WorkSafe should collaboratively develop shared sexual assault and sexual harassment resources with bodies such as WA Police, the EOC, SARC, the AHRC and the Fair Work Commission which include:

- the relevant legislations related to sexual assault and sexual harassment;
- options to report to each agency;
- possible outcomes each agency can provide;
- organisations/hotlines that can provide immediate crisis support to those who may be experiencing distress;
- guidance for employees on how to be active bystanders;
- guidance for employers on preventing and effectively responding to sexual assault and sexual harassment; and
- specific guidance on managing sexual assault and sexual harassment in remote and FIFO mining environments.

Separate documents for sexual assault and sexual harassment should be created given the different reporting pathways and additional considerations relating to sexual assault as a criminal offence. Additionally, separate documents should be created for PCBUs and employees.

Where relevant, WorkSafe should also promote and provide access to existing resources from key agencies.



Recommendation 10: Strengthen engagement with the mining industry to address sexual assault and sexual harassment, for example through a targeted and regular engagement plan to address the issues identified in this Review

To support efforts to increase understanding within the mining industry about sexual assault and sexual harassment, including reporting requirements and prevention activities, WorkSafe Mines Safety should strengthen its engagement with the mining industry. This could be through the form of a targeted and regular engagement plan which:

- seeks to leverage existing collaboration bodies (for example, MAPAC), a wide range of actors across the mining industry (e.g. unions, contractor organisations, operators) and relevant supporting agencies (for example, SARC);
- utilises a range of engagement channels (for example, Webinars, newsletters, events etc.);
- embeds regular feedback loops from the mining industry to WorkSafe Mines Safety; and
- shares examples of good practices across the mining industry.

Recommendation 11: Collaborate with Communities to establish a Community of Practice for sexual assault and sexual harassment

To drive sustainable and meaningful change in creating safer, more respectful mining workplaces industry, DMIRS should seek to collaborate with Communities to bring together the wide range of stakeholders and expertise from across Government, the mining industry and unions through a Community of Practice.

While there are some industry groups who are currently operating in this space, the opportunity for government to coordinate efforts and collaboratively drive change.

A Community of Practice focused on sexual assault and sexual harassment would enable DMIRS to:

- leverage expertise from a wide range of stakeholders;
- increase collaboration between the mining industry and Government;
- increase collaboration across the mining industry;
- share data insights and trends across the mining industry and Government to support the development of guidance, resources and other supports;
- promote diversity and inclusivity of gender, culture and language, Aboriginal and Torres Strait Islander people, age, thought and professional background through its membership; and
- understand good practices and challenges across the mining industry in order to better target guidance and resources.



Services

Services



What this covers

Services considers both prevention (guidance and education to the mining industry) and response (investigations and the effect this has on affected persons).

Ideal future state

Services to affected persons and the mining industry are victim-centric, specific and targeted. Services are well understood through education and clear guidance.

Indicators

Industry guidance

- An educational compliance approach which provides clear and targeted guidance to industry on its obligations to prevent, respond and report sexual assault and sexual harassment.
- Feedback mechanisms to identify gaps in the educational compliance approach.

Investigation process

- Streamlined victim-centric reporting and investigation processes.

Confidentiality and anonymity

- Confidential reporting processes which protect the anonymity of the affected person and the person making a complaint.
- Collection of sufficient levels of information in confidential reports to support an investigative process.

Experience of affected persons

- Targeted guidance and advice on the rights, protections, support services and outcomes written for an affected person audience.
- Streamlined victim-centric reporting and investigation processes.
- Protections in place to prevent and prosecute acts of victimisation of affected persons and persons making complaints.

Industry guidance

Current state observations:

- WorkSafe Mines Safety has largely focused engagement efforts on psychosocial hazards in the area of mental health and wellbeing.
- WorkSafe Mines Safety have engaged with the mining industry across a range of channels, including:
 - **Annual Registered Managers Forums** covering topics such as “Health and Safety Culture” and “Mental Health and Wellbeing”;
 - **Annual Mines Safety Roadshows** which encourage engagement around current mining industry risks. Previous topics include ‘mentally healthy workplaces’ (2018 and 2019) and ‘the relationship between gender and safety’ (2010). A two hour workshop on sexual harassment and safety was covered in 2010;
 - **ThinkSafe Magazine** articles covering topics such as sexual harassment and assault (September 2021)⁽¹³⁶⁾ and mental health and wellbeing (April 2019) in the *Commissioner’s Corner*;⁽¹³⁷⁾ and
 - The **Mentally Healthy Workplaces Hub** which provides guidance for managers and workers around developing and maintaining mentally healthy workplaces.⁽¹³⁸⁾ This does not refer to sexual assault or sexual harassment.
- WorkSafe established their own theme for SafeWork Month in 2022 focusing specifically on psychosocial hazards.
- Health and safety committees are an effective way that PCBU’s can engage and consult with workers on health and safety management across the workplace – including sexual assault and sexual harassment. There is limited evidence of WorkSafe Mines Safety sharing this avenue through industry guidance and materials to support industry to prevent and respond to sexual assault and sexual harassment.
- One of the main methods WorkSafe Mines Safety uses to engage with the mining industry is guidance and reference materials via their website.
- WorkSafe has issued three *Codes of Practice* related to psychosocial hazards, applicable across all industries. Sexual assault and sexual harassment is covered to varying degrees across these three documents:
 - **Violence and aggression at work** – a definition of sexual harassment is provided;⁽¹³⁹⁾
 - **Workplace behaviour** – includes a definition of sexual harassment with examples and some brief guidance on when it needs to be reported to WorkSafe. It does not explicitly state that sexual assault must also be reported to WorkSafe;⁽¹⁴⁰⁾ and
 - **Psychosocial hazards in the workplace** – covers sexual assault and sexual harassment as examples of the psychosocial hazard “inappropriate and unreasonable behaviour.”⁽¹⁴¹⁾
- WorkSafe Mines Safety developed an additional Code of Practice on *Mentally healthy workplaces for fly-in fly-out workers in the resources and construction sectors* (FIFO Code).⁽¹⁴²⁾ The FIFO Code refers to “harassment” as an example of inappropriate behaviour which constitutes a psychosocial hazard, but does not specifically mention sexual harassment or sexual assault.

- In June 2022, WorkSafe Mines Safety issued three additional information sheets related to sexual assault⁽¹⁴³⁾ and sexual harassment.⁽¹⁴⁴⁾ These information sheets are targeted at PCBU’s and provide guidance on behaviours, contributing factors that can lead to these behaviours, how to identify hazards and respond, and when they should report to WorkSafe.
- This Review heard of a common practice of ‘motelling’ across industry. This practice, where women are routinely placed in different and random room allocations, rather than a consistent room allocation, has led to increased exposure to sexual assault and sexual harassment.
- Practices such as ‘motelling’ demonstrate the variability of accommodation standards across industry, and highlight the need for a standard approach to accommodation which applies a strong gender-safety lens.
- As part of its response to the Enough is Enough report, DMIRS have confirmed it will work with MAPAC to develop a new Code of Practice for accommodation standards.

Finding 14: WorkSafe engages with the mining industry prior to releasing guidance, but does not re-engage to seek feedback on materials

WorkSafe makes an effort to engage with the mining industry in the development of guidance materials. They have done this by:

- engaging with the mining industry via survey during Safe Work month to understand what safety topics they would like to see more information on. In 2021, some of the top suggestions were “psychosocial hazards, risks and safety” and “violence, aggression and bullying at the workplace”; and
- sharing draft *Codes of Practice* for consultation with the mining industry. For example, the *FIFO Code* was shared via a Resources Safety announcement in February 2018 with feedback submissions closing in April 2018. If substantive changes are made to the *Codes of Practice*, another round of consultation is conducted prior to finalisation.

However, once documents have been released, WorkSafe does not have a process to re-engage with the mining industry to seek feedback on the utility of the materials. While most guidance documents referenced in this section were re-released earlier this year in line with the WHS Act, there is no process for regular refreshing of guidance. Some documents such as the *FIFO Code* have not yet been updated in line with the new WHS Act and documents that have been superseded are still easily accessible via the website or via links in other guidance materials.

This leads to concerns that materials and guidance may be out of date and not reflect leading approaches. In areas such as sexual assault and sexual harassment where leading practice responses are evolving, regular refreshing of guidance and materials is critical.

Finding 15: Guidance on reporting requirements for sexual assault and sexual harassment is unclear

While guidance materials have been issued, consultation with the mining industry revealed that there was still a lack of clarity on the role WorkSafe plays in relation to sexual assault and sexual harassment. The key challenge cited was the reporting requirements for sexual assault and sexual harassment.

The *Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety* guidance material states that “gendered violence that results in a notifiable or reportable injury or illness must be reported to WorkSafe Mines Safety. Failing to report a notifiable incident or reportable incident is an offence”.⁽¹⁴⁵⁾ However, it does not explain what types of behaviours related to sexual assault and sexual harassment would be considered a notifiable incident, reportable incident or neither. The guidance is subjective where clear guidance is critical due to it directly affecting whether PCBU are meeting their legislative requirements.

WorkSafe Mines Safety attempted to clarify sexual assault and sexual harassment reporting requirements in July 2021 when they issued two letters to mining industry Chief Executive Officers (CEOs) and registered managers. These letters “reminded” managers and CEOs that it is a requirement by law that all injuries and occurrences, including psychological, that “meet the definitions provided” in relevant sections of the WHS Act are notified to WorkSafe, and that failure to report constitutes a breach. As above, this guidance referred employers to the relevant legislation and did not provide further clarification.

Finding 16: Feedback from the mining industry suggests that the materials provided by WorkSafe Mines Safety are a good starting point, but need improvement

Despite the availability of guidance documents, the information provided by WorkSafe Mines Safety and WorkSafe more broadly is high level and does not include examples or case studies to provide clarity for users. Therefore, interpretation of much of the guidance is subjective.

For many operators, detailed guidance is sought from other providers (such as mining industry peak bodies) as the WorkSafe Mines Safety content is not seen as meeting their needs. This guidance provided by peak bodies is more targeted at the mining industry and offers practical tools and benchmarks for improvement.

Mining industry representatives shared that guidance from WorkSafe Mines Safety around sexual assault and sexual harassment would be more useful if:

- it was clearly written in plain language, as current guidance is difficult to digest;
- case studies or examples of behaviours were provided to illustrate what this hazard looks like for the mining industry;
- mining industry data and trends were shared to help identify areas for intervention;
- all materials were up to date with current legislation as some materials are currently out of date;
- tools such as templates for policies, processes, risk assessments and audits were provided to assist operators that lack organisational capacity practically improve their performance; and
- it was structured and accessible via the website intuitively, as the current website is difficult to navigate.

Industry guidance

Recommendation 12: Work with MAPAC to update the psychosocial hazards and FIFO codes of practice

While sexual assault and sexual harassment are outlined in the *Violence and aggression* and *Workplace behaviour Code*, there is a gap in the *FIFO Code* and *Psychosocial Code*. These codes would benefit from explicitly outlining sexual assault and sexual harassment and providing examples or case studies of these behaviours.

Any updates should clearly articulate the difference between sexual assault and sexual harassment and avoid conflation of these terms. The *FIFO Code* should also be updated in line with the updated WHS Act, and links in all associated documents should be updated to ensure these reflect the latest available guidance.

Recommendation 13: Clarify and provide specific guidance around reporting requirements for sexual assault and sexual harassment under the WHS Act and Mines Regulations

WorkSafe should update guidance to the mining industry to clearly outline:

- the critical changes to the WHS Act which relate to sexual assault and sexual harassment;
- the thresholds for reporting, especially for incidences of sexual harassment where behaviours occur on a spectrum;
- at what point an organisation should report to WorkSafe (for example, before an internal investigation to substantiate the complaint); and
- the connection between sexual assault and sexual harassment to periods of sick leave as lost time injuries to better catch incidences within reporting guidance.

Importantly, this guidance should be communicated proactively through multiple channels and modes of engagement.

Recommendation 14: Update the WorkSafe website for ease of use and clarity on sexual assault and sexual harassment

WorkSafe should review website content to ensure it is intuitive and easily navigable and that information on the topics of sexual assault and sexual harassment is accessible and up to date. As part of this, WorkSafe should develop a specific section of the website dedicated to psychosocial hazards, including sexual assault and sexual harassment which constitutes a 'single source of truth' on WorkSafe's role, reporting requirements and support options.

Recommendation 15: Enhance sexual assault and sexual harassment guidance materials for simplicity, practicality and relevancy

WorkSafe Mines Safety should enhance current guidance and ensure future guidance on sexual assault and sexual harassment meets the needs of users. This will involve:

- writing guidance clearly in simple language;
- providing case studies and examples;
- leveraging infographics to visually highlight key pieces of information;
- providing tools such as templates for policies, processes, risk assessments and audits; and
- targeting guidance to specific audiences (for example, one for PCBUS, one for employees, one for WHS teams etc.).

Additionally, practical guidance based on data and trends will help increase awareness and understanding of how sexual assault and sexual harassment is presenting in the mining industry. To ensure that guidance is useful for industry, it should:

- draw on the latest data and trends from across a range of agencies working on this issue (for example, WorkSafe, the EOC, WA Police, SARC);
- include case studies based on emerging trends from sexual assault and sexual harassment reports to WorkSafe Mines Safety (for example, stalking); and
- provide advice based on gaps that WorkSafe Mines Safety identifies through reporting from the mining industry.

These materials should be regularly reviewed and updated to reflect emerging risks, and align with leading practice. To enable this, WorkSafe Mines Safety should enhance methods for gathering mining industry feedback and measuring the effectiveness of their resources. This could be done through:

- issuing surveys in newsletters and other communications; and
- having greater engagement through stakeholders such as MAPAC, AMEC, CME and unions.



Recommendation 16: Run a dedicated roadshow and future annual campaigns, as part of the ongoing education program, focussed on sexual assault and sexual harassment

The recent Inquiry and media spotlight which has highlighted the severity and prevalence of sexual assault and sexual harassment in the mining industry warrants a dedicated roadshow and annual communications campaigns in relation to sexual assault and sexual harassment.

The roadshow should have a specific focus on gendered violence, rather than focusing on psychosocial hazards more broadly. Content should include:

- an overview of the role and remit of WorkSafe Mines Safety in preventing and responding to sexual assault and sexual harassment;
- case studies and practical scenarios;
- leading practice prevention approaches;
- hazard management and response strategies for sexual assault and sexual harassment;
- information on bystander action; and
- information about the potential enforcement measures available.

In addition, the roadshow should consider:

- how best to capture cohorts that have not been effectively engaged to date (for example, contractor workforces);
- virtual options to engage people who cannot attend in person;
- incorporating two way conversations to strengthen engagement with workers; and
- making content available online after the roadshow and cascading this through communication channels including mining industry bodies to expand audience and outreach.

Following the dedicated roadshow, there should be an annual campaign on preventing and responding to sexual assault and sexual harassment which could align with an important date in the annual calendar, such as Sexual Assault Awareness Month in April. Future campaigns on related topics (psychosocial hazards, bullying and mental health) should seek to incorporate raising awareness on preventing and responding to sexual assault and sexual harassment.

Investigation process

Current state observations:

- WorkSafe Mines Safety is in the process of updating many of its policies and processes related to sexual assault and sexual harassment.
- Many documents provided to this Review, and the processes discussed through consultations, are draft or pilot initiatives.
- There are five avenues in which a PCBU may notify WorkSafe of a sexual assault or sexual harassment: the WorkSafe Mines Safety duty line, the Contact Centre, the after hours Call Centre, the Safety Regulation System (SRS) or direct to a specific WorkSafe Mines Safety inspector that the PCBU has an established relationship with.
- In contrast, there are two main methods an affected person or other interested party can report or make a complaint to WorkSafe Mines Safety. These are via the WorkSafe Contact Centre or the after hours Call Centre in emergencies. They can report via phone call or email.
- On rare occasions an affected person may be referred to WorkSafe Mines Safety by the Minister. In this case, they would be directly referred to the Regional Inspector/team leader of the WorkSafe Mines Safety MHW inspection team.
- Once a report is received through one of the main channels, it is categorised by the Triage team and allocated to the WorkSafe Mines Safety MHW inspection team.
- WorkSafe Mines Safety recently established a standalone Triage team and developed an associated Triage Tool. The Triage team is responsible for categorising all reports submitted to WorkSafe. The Triage Tool is in draft. It includes a section specifically for psychosocial hazards, including whether actual or attempted sexual assault or sexual harassment is involved, with behaviours weighted according to severity.
- Considerations such as whether a matter is “politically sensitive” or if a “similar incident [has] been the subject of media coverage” can also inform the categorisation, consistent with the approach undertaken across WorkSafe for other types of events.
- The process for responding to a report differs depending on whether the report is made by a PCBU or affected person (see Figure 11).

Finding 17: Sexual assault is always allocated for investigation while sexual harassment depends on severity

In line with the risk-based approach that WorkSafe applies more broadly, sexual assault and sexual harassment are triaged based on their severity. Categories of triage range from minor injuries through to more serious incidents causing death.

Inspection teams across WorkSafe and the Triage team shared that:

- sexual assault is generally triaged at a more serious level. These incidents will be immediately notified to the Regional Inspector and allocated for investigation; and
- sexual harassment is generally triaged at a less urgent level depending on the particular behaviour/s in question. These cases will be either be allocated to a WorkSafe Mines Safety inspector for investigation or noted on SRS and closed by the triage team, depending on their seriousness, and the ability of WorkSafe to investigate.

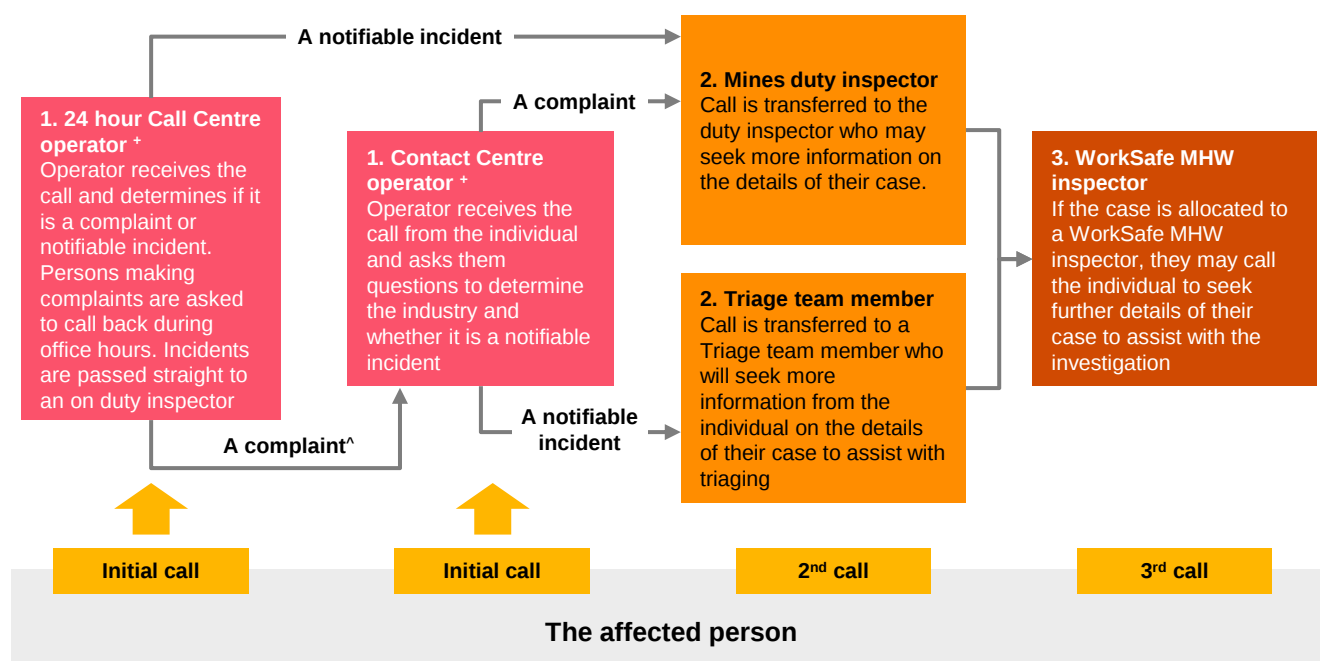
Consultation across WorkSafe stakeholders indicated that the pilot triage process had strengthened WorkSafe’s capability to effectively respond to reports. However, it was shared that this team is limited by capacity and are challenged by the high volumes of reports received.

For detail on the impact of investigation processes see the sections on *Confidentiality and anonymity* (page 57) and *Experience of affected persons* (page 60).

Finding 18: An affected person reporting to WorkSafe may need to share their story multiple times before reaching someone who will take ownership of their complaint

Further traumatisation of affected persons is a risk in the current WorkSafe process, as an affected person calling WorkSafe to report a sexual harassment and sexual assault* on a mine site will need to speak to multiple people prior to reaching someone who can help them.

Figure 10: The multiple touchpoints for an affected person calling to raise a complaint with WorkSafe Mines Safety



*While sexual assault is able to be reported by calling WorkSafe, this Review was informed there have been no sexual assault reported to WorkSafe via the Contact Centre to date.

^This process includes both notifiable incidents as discussed in other sections of this Review along with 'complaints' which encompasses all other reports or enquiries which may be submitted by an affected person.

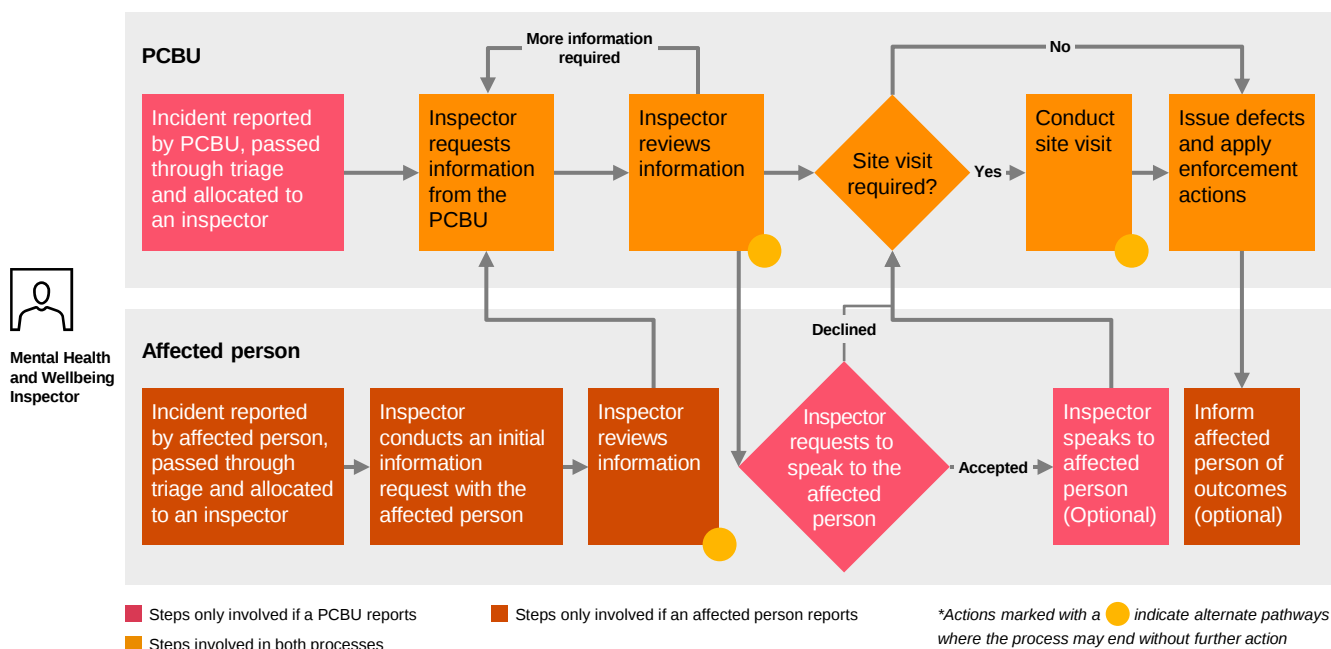
*The 24 hour Call Centre and Contact Centre are the same phone number, however depending on when a person calls, their experience may vary. After hours this phone line is staffed by an external provider.

If the sexual assault or sexual harassment is to be investigated, the case will be allocated to a WorkSafe Mines Safety MHW inspector who will contact the original caller for more information in order to investigate. It is at this point the affected person is most likely to receive information on what to expect from the complaints process.

While WorkSafe is currently in the process of updating and clarifying this procedure, the updated process will still involve multiple contact points where the affected person may have to share information about their experience, prior to being able to speak to someone who can help them.

The below map outlines the process WorkSafe Mines Safety uses to investigate sexual assault and sexual harassment and how this differs depending on the origin of the report. The map only represents incidents that are investigated through to the issuing of enforcement action. The map does not represent the process for managing reports that are triaged out or are chosen not to be actively investigated at any point in the process.

Figure 11: WorkSafe investigation process for psychosocial hazards including sexual assault and sexual harassment



Finding 19: Not all psychosocial hazard investigations (including sexual harassment) will include a site visit

A psychosocial incident or event that is to be investigated will be recorded in SRS and the investigation will commence as outlined above with an initial document request. If the report came from an affected person this may include information in their possession such as incident reports, photos and witness details.

Once reviewing this evidence, the inspector may commence enquiries with the PCBU. Evidence that may be requested from the PCBU could include:

- reports of worker surveys and focus groups;
- hazard and incident reports; and
- HR data such as exit interviews and turnover.

If the report has been provided anonymously, the request will start broad (for example, requesting all case files for sexual harassment reported between a certain date range) before narrowing down on specific incidents and events as described in Finding 27.

Information provided is used to assess workplace risk factors and whether appropriate controls to manage hazards have been implemented rather than seeking to substantiate the report. If sufficient evidence of a breach is found through the response to these enquiries, enforcement action may be taken without an inspector undertaking a site visit.

Finding 20: Reports of sexual assault will always result in a site visit

The Regional Inspector (WorkSafe Mines Safety MHW inspection team leader), Chief Inspector of Mines and Investigations team are immediately notified of reports of sexual assault when they are received. The ownership of an investigation into a sexual assault on a mine site or associated accommodation will generally remain with the WorkSafe Mines Safety MHW inspection team, with the Investigations team consulted during the process. The process above will be employed and, according to inspection teams, a site visit will always be conducted for reported sexual assaults.

Information requested from PCBU as part of these investigations can include:

- a description of the incident;
- records of any investigations undertaken by the Mining Company in relation to the alleged assault;
- details of the alleged perpetrator;
- contact details of the alleged perpetrator's employer who is familiar with the incident;
- details of the support available to all parties, including first responders;
- a copy of the mine site accommodation risk register; and
- the affected person's contact details.

After concluding the site visit, inspection defects and/or enforcement notices will be issued if breaches are identified.

Finding 21: Site visits for sexual assault or sexual harassment must focus on contributing factors

Site visits to investigate sexual assault and sexual harassment are conducted in line with standard processes for investigating psychosocial hazards. As these hazards are often more difficult to observe compared to physical hazards, these processes differ from those used for physical incidents. For psychosocial hazards, WorkSafe Mines Safety inspectors need to look at contextual contributing factors that could increase the likelihood of these hazards occurring and that appropriate controls are in place to manage this. For sexual assault and sexual harassment, controls that WorkSafe may look for during a visit include:

- the existence of appropriate policies and procedures;
- training provided to workers;
- adequate lighting and security around accommodation; and
- the responsible service of alcohol.

If a site visit is already scheduled for the worksite in question, the WorkSafe Mines Safety MHW inspector may request the visiting WorkSafe Mines Safety inspector to follow up on details related to their open case rather than conducting an additional visit.

Finding 22: Necessary prioritisation of WA Police investigations can result in delays to completing a WorkSafe inspection

WA Police has the primary role in investigating sexual assaults. For this reason, WorkSafe has provided feedback that any investigation of a sexual assault by them must not jeopardise criminal proceedings underway. As WorkSafe is concerned with the overall systems of work as opposed to the Police's interest in the specific sexual assault, WorkSafe may look for different evidence following a sexual assault compared to the Police.

If a PCBU reports to WorkSafe first, WorkSafe may issue a non-disturbance notice or "freeze" the site. This is done to assist WA Police with their investigation.

So as to not contaminate evidence, WorkSafe inspection teams will wait until after WA Police have conducted their site investigation to commence their own site visit. In an example case study provided as part of this Review, an inspection and Mentally Healthy Workplaces Audit (MHW Audit) was conducted approximately a month after an alleged sexual assault and WA Police attending the site.

Finding 23: When an affected person has not reported to the PCBU, WorkSafe can take limited action

When receiving a complaint, the WorkSafe Mines Safety inspector will do initial follow-up with the person making a complaint to:

- explain what they can expect throughout the process;
- provide suggestions of where they can access support (for example, employee assistance program (EAP) or their general practitioner (GP));
- provide guidance on other agencies that can offer recourse, for example, WA Police; and
- encourage the person to report to their workplace prior to formally reporting to WorkSafe if they have not already done so.

As WorkSafe's role is to assess the worksite's controls in place to prevent and respond to hazards, if the sexual assault or sexual harassment has not been reported to their workplace, WorkSafe is only able to evaluate a small subset of available controls. As the PCBU has not been given the opportunity to respond, they will not be able to be evaluated on the application of policies and procedures, the effectiveness of investigation and resolution processes, or support services provided.

For this reason it makes it difficult for WorkSafe to take action by identifying defects or issuing notices in response to sexual assault or sexual harassment if it has not first been reported to the PCBU.

On occasion, WorkSafe will still investigate the sexual assault or sexual harassment if the WorkSafe Mines Safety inspector determines it is not appropriate for the affected person to report to the PCBU.



Investigations process

Recommendation 17: Develop specialised sexual assault and sexual harassment reporting pathways

If WorkSafe better communicates the opportunity for people to report sexual assault and sexual harassment in the mining industry to WorkSafe, it is foreseeable there may be an increase in such reports as a result.

To better manage these reports, WorkSafe should establish specific and tailored reporting pathways specifically for sexual assault and sexual harassment. This could include:

- a secure and confidential online reporting form;
- a specific menu item on the general line for reporting sexual assault and sexual harassment direct to a WorkSafe Mines Safety MHW inspector; or
- a specific sexual assault and sexual harassment hotline, staffed by members of the human factors and WorkSafe Mines Safety MHW inspector team who are on call to respond.

Importantly, each of these avenues should be victim-centric, ensuring the affected individual will not have to repeat their story multiple times.

Note: The findings and recommendation 17 within this section, *Investigations process*, should be considered in conjunction with recommendations within the following two sections: *Confidentiality and anonymity* and *The experience of affected persons*. In particular:

- **Recommendation 20: Standardise processes for communicating circumstances where anonymity cannot be maintained** which addresses findings 17, 19, 20 and 23.
- **Recommendation 25: Provide the opportunity for affected persons to give feedback on their experience with WorkSafe Mines Safety investigations** which addresses findings 18, 19, 20, 22 and 23.
- **Recommendation 26: Review and update all policies and processes for victim-centricity** which addresses all findings in this section.

Confidentiality and anonymity

Current state observations:

- *Enough is Enough* reported that:
 - DMIRS cannot guarantee the anonymity of affected persons or person making a complaint;
 - DMIRS is unable to effectively investigate anonymous complaints; and
 - the inability of DMIRS to provide anonymity may impact on the preparedness of some victims to make complaints.⁽¹⁴⁶⁾

These factors lead to incomplete data on the nature and prevalence of sexual assault and sexual harassment in the mining industry.

- The SRS used to receive and manage reports from mining industry PCBU has limited functionality to enable anonymity and confidentiality. For more information see the section on *Systems functionality* (page 81).

Finding 24: WorkSafe is not able to guarantee the anonymity of a person making a complaint

WorkSafe states that they are unable to guarantee the anonymity of persons lodging a complaint with them for three main reasons:

- according to the principles of natural justice, the PCBU must be given the opportunity to understand what issues have been raised so that they can respond accordingly. For this reason, even if the WorkSafe Mines Safety inspector does not reveal that a worker has raised a complaint, the workplace may infer that a specific worker has done so;
- any enforcement action taken by a WorkSafe Mines Safety inspector may be reviewed. These matters may be escalated to the Work Health and Safety Tribunal, in which the affected person or witnesses may be identified and called upon to provide evidence; and
- documents retrieved throughout investigations may be subject to applications through the *Freedom of Information Act 1992 (WA)*.⁽¹⁴⁷⁾

Finding 25: The limitations on anonymity are not communicated upfront

WorkSafe Mines Safety includes guidance in their inspector materials to inform the affected person and/or person making a complaint of the limitations to anonymity when they are first engaged. Information on what a person making a complaint can expect, including the limitations on anonymity, is not communicated on the WorkSafe website, preventing the person making a complaint from making an informed decision about their reporting options prior to contacting WorkSafe.

Finding 26: WorkSafe has limited options for anonymous reporting

Even with the limitations on anonymity that they communicate, WorkSafe still receives a number of anonymous complaints across all sexual assault or sexual harassment types.

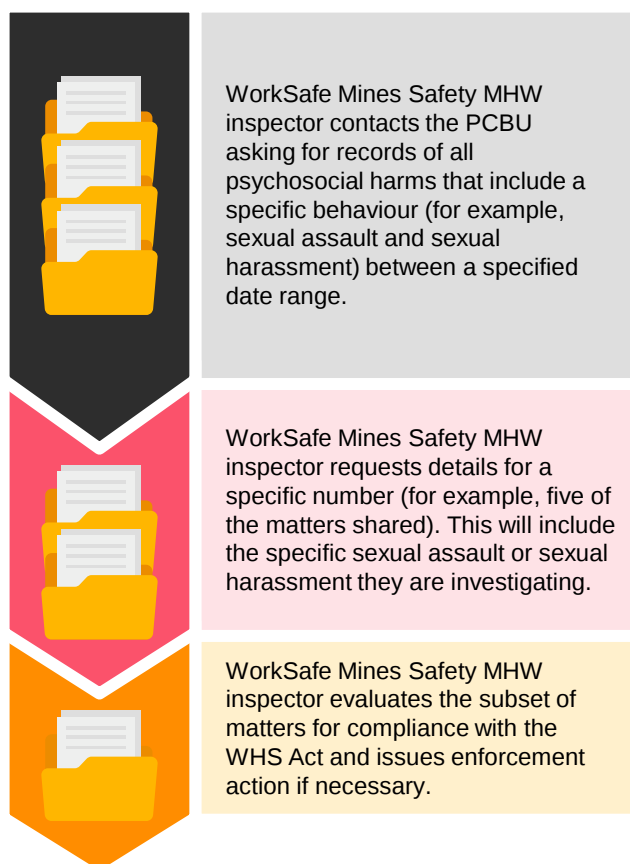
WorkSafe has limited online reporting options. For example, they only provide a phone number and an email address on their website rather than providing an online form.⁽¹⁴⁸⁾ Consultations with team members responsible for receiving and managing these reports indicated that this may be intentional and preferred, particularly with regards to anonymous complaints. By being able to speak to the person making a complaint and make them more comfortable, WorkSafe can often draw out additional information to help them with investigating the report, even if the person making a complaint still does not wish to be identified.

The disadvantage to this approach is that it may deter others from reporting who do not feel confident that their anonymity can be maintained through these reporting options.

Finding 27: If sufficient information is provided, WorkSafe may investigate anonymous complaints through an amended process

If enough critical information is provided in the anonymous report and the sexual assault or sexual harassment passes the triaging threshold, WorkSafe may investigate the anonymous report. The process in WorkSafe Mines Safety for investigating both anonymous complaints and complaints where the affected person has requested anonymity is conducted as per the process in Figure 12.

Figure 12: The investigation approach for anonymous psychosocial reports



This process is intended to protect the identity of the person making a complaint by not directly revealing that a complaint has been brought to WorkSafe or narrowing down the investigation to a single incident. In addition, WorkSafe takes steps to protect anonymity as much as possible. These include:

- agreeing with the affected person their preferred confidential communication methods e.g. calls to a personal number outside of work hours;
- recording this agreement in SRS to ensure that anonymity is maintained if the case is reassigned; and
- referring to an “affected person” in SRS and only recording names in the running sheet which is only accessible to WorkSafe Mines Safety.

In cases where the affected person does not want their sexual assault or sexual harassment directly investigated at all, WorkSafe Mines Safety may put in place a plan for a proactive audit, survey or make a note to enquire about related incidents during an upcoming inspection.

Finding 28: Anonymous complaints of sexual harassment may go uninvestigated where there is insufficient information or it is triaged at a low level

If an anonymous report of any incident type does not provide enough critical information, it is challenging to investigate. An example was shared of an anonymous report where the person making a complaint refused to share the location of the incident or the organisation involved. If the decision is made to investigate an anonymous report with limited information such as this, the process can be resource-heavy due to the additional steps WorkSafe inspectors must take.

These factors may still not prevent an anonymous report from being investigated, however all reports are triaged to identify priority incidents for investigation. Anonymous complaints which lack sufficient detail to investigate may be a lower priority than incidents which have more information provided to support an investigation or those which have been triaged at a higher level.

However, it is important to note that multiple teams across industries shared that all sexual assaults, whether anonymous or not, are investigated as a priority by WorkSafe.

Finding 29: Uninvestigated reports are recorded in SRS for follow up during the next site visit

All reports and enquiries that come through to WorkSafe Mines Safety are recorded on SRS. Prior to a site visit, it is standard procedure that a WorkSafe Mines Safety MHW inspector check the site record on SRS to inform their enquiries onsite. When they are aware of a site visit that is going to be taking place, the WorkSafe Mines Safety MHW inspector will request that the visiting WorkSafe Mines Safety inspector enquire about particular hazards that have been reported to them, which may include anonymous reports of a lower triage level which are not being actively investigated.

Confidentiality and anonymity

Recommendation 18: Communicate availability of anonymous complaints with guidance on required information to investigate

WorkSafe should develop clear guidance on the website, potentially in an employee focused section (see recommendation 21) to potential persons lodging a complaint. This guidance should include:

- that anyone is able to report anonymously through WorkSafe channels;
- what critical information is required to enable an investigation such as location/site and date of the sexual assault or sexual harassment;
- the limitations of reporting anonymously;
- what they can expect to happen;
- how their complaint may be handled or investigated; and
- how they can keep in touch on progress if they would like to.

Recommendation 19: Develop and circulate minimum required information to investigate anonymous complaints to internal stakeholders

The inspection team requires a minimum level of information in order to effectively investigate and respond to anonymous reports. To ensure that the right information is captured, WorkSafe should incorporate appropriate questions into the triaging process and other relevant process documentation. This should be accompanied with standard language to explain why the information is required and the limitations on actions that can be taken if this information is not provided. Questions could include:

- What site(s) did the sexual assault or sexual harassment take place on?
- What date(s) did the sexual assault or sexual harassment take place?
- Did you report the sexual assault or sexual harassment to your employer?

Recommendation 20: Standardise processes for communicating circumstances where anonymity cannot be maintained

To ensure a consistent experience for affected persons across WorkSafe, we recommend standardising the process for communicating circumstances where anonymity and confidentiality cannot be maintained.

In addition, WorkSafe should include information on these circumstances on the website where reporting options are listed and ensure that this is reiterated when a person lodges a complaint.

Note: The section on *Systems functionality* (page 81) considers options for confidential and anonymous reporting. Recommendations captured here should be considered in conjunction with findings and recommendations in that section.

Experience of affected persons

Current state observations:

- WorkSafe Mines Safety currently receives limited reports on sexual assault directly from affected persons, as opposed to sexual harassment.
- Generally reports of sexual assault are made by PCBU's under their reporting obligations, as opposed to affected persons.
- Reports of sexual assault are often provided from PCBU's directly to a WorkSafe Mines Safety inspector they trust, rather than through other channels such as the Contact Centre.
- WorkSafe has an interpreting and translation phone service, available in 22 languages, that can be contacted for interpretation support.
- As part of this Review, the team were unable to consult with affected persons who have engaged with WorkSafe Mines Safety previously, or review case files to verify support or communications provided. However, different examples were provided by WorkSafe Mines Safety inspectors, the mining industry and other agencies to illustrate the experience of affected persons.
- The Review heard that support people for affected persons have been unable to receive information on the progress of a complaint (where consent has been given) which limits their capacity to provide meaningful support. Some support people, e.g. Union representatives, have utilised FOI processes to understand progress in the past.



Sometimes the affected person thinks we're the Police and we're not. We can't prosecute and we can't substantiate. Sometimes they get angry that we can't give them enough.

Finding 30: WorkSafe Mines Safety is not able to provide affected persons with a justice outcome

WorkSafe Mines Safety does not substantiate reports of sexual assault and sexual harassment and is limited by the WHS Act in the types of outcomes that they are able to provide. WorkSafe Mines Safety is not able to provide justice outcomes and can only respond by issuing notices to control hazards in the workplace. The most common outcome in response to a sexual assault or sexual harassment is an improvement notice (see Finding 5).

For this reason, WorkSafe Mines Safety will likely not be the preferred option for a person who has experienced sexual harassment or sexual assault and is seeking outcomes such as a perpetrator's termination of employment or consequences through the criminal justice system.

Finding 31: WorkSafe's website does not effectively communicate to affected persons, which may limit understanding and confidence to report

WorkSafe Mines Safety has shared that it is possible for anyone to report to them about a workplace health and safety concern, including sexual assault and sexual harassment. Despite this, communications on the WorkSafe website are only targeted at PCBU's.

From the perspective of an affected person, it is difficult to understand where or how to report to WorkSafe about inappropriate behaviour. The *Complaints about bullying, sexual assault or harassment* webpage states to contact WorkSafe via phone or email to make a complaint about these behaviours.⁽¹⁴⁹⁾ There is no clarification as to who can make a report via this channel.

Additionally, no information is provided on what happens after WorkSafe receives a complaint or report including:

- how long it may take WorkSafe to respond;
- how WorkSafe can provide support;
- the outcomes they can deliver;
- the availability of anonymous reporting; and
- the limitations on anonymous reporting if an individual chooses this option.

WorkSafe provides internal guidance for WorkSafe Mines Safety inspectors to manage the affected person's expectations around outcomes. However, this information is provided only after an affected person has contacted WorkSafe. This lack of upfront communication puts the individual at risk of re-traumatisation and WorkSafe Mines Safety inspectors at risk of vicarious trauma. WorkSafe Mines Safety inspection teams have reported challenges with affected persons becoming aggressive or abusive towards WorkSafe Mines Safety inspectors, in part due to the affected person's misunderstanding of WorkSafe's role and WorkSafe Mines Safety being unable to meet the individual's expected outcomes.

Finding 32: There are no resources in languages other than English or culturally specific resources for sexual assault and sexual harassment

While WorkSafe provides guidance materials on certain topics in a number of different languages, there is no guidance on sexual assault or sexual harassment provided on the website in languages other than English.

Reports such as *Respect@Work* highlight that people from culturally and linguistically diverse backgrounds are at a higher risk of experiencing sexual harassment.⁽¹⁵⁰⁾ Additionally, many of these workers are often not aware of their rights and the concept of sexual harassment is “nuanced and better explained in the person's preferred language”.⁽¹⁵¹⁾

Respect@Work also highlighted that Aboriginal and Torres Strait Islander people are more likely to have experienced workplace sexual harassment than people who are non-Indigenous. Few Aboriginal and Torres Strait Islander people report sexual assault and sexual harassment due to systemic and cultural barriers, and a lack of understanding of complaint processes.⁽¹⁵²⁾ There are currently no resources on reporting sexual assault and sexual harassment to WorkSafe Mines Safety and the investigations process which have been specifically designed for Aboriginal and Torres Strait Islander people.

In contrast, for example, SARC has specifically designed online resources for Aboriginal and Torres Strait Islander people, communities and professionals which are culturally appropriate and consider the specific barriers faced by Aboriginal people when reporting sexual assault.⁽¹⁵³⁾

Finding 33: Key initial points of contact that an affected person may speak to are not equipped to provide trauma-informed care

The initial people an affected person will speak to at WorkSafe when making a report may not have the capability or support to prevent re-traumatisation. It was shared that both the Contact Centre and Triage team, like other areas of WorkSafe, are under resourced and receive limited training on trauma-informed care or vicarious trauma. Contact Centre team members are described as having customer service skills and their function is to transfer the caller as soon as possible. While this means their contact with an affected person is limited, skills in trauma-informed support would be helpful.

In comparison, the Triage function was set up this year as a trial and is temporarily staffed by WorkSafe inspectors from across industries. The position was described as “taxing”, but as the team has only been established for a short amount of time, support for these team members has not been made a priority. It is noted that since consultations, two members of this team have participated in the *Potential Trauma Event Response Support (PTERS)* pilot program and provided feedback to support its enhancement going forward.

The first person that an affected person may speak to who could be expected to provide trauma-informed care would be a member of the WorkSafe Mines Safety MHW inspector team. However, this team has also only received limited training and support. While they have access to EAP, the team relies heavily on each other and their manager to get the support they need to manage difficult conversations.

Due to the limited training and support available on trauma-informed responses and vicarious trauma for all points of contact, but particularly the Contact Centre and the Triage team, WorkSafe is at risk of further traumatising affected persons, and of exposing their people to vicarious trauma.

Finding 34: WorkSafe only actively refers affected persons to support options in some circumstances

WorkSafe's *Managing reports of workplace sexual assault policy* states that they will “as far as practicable, assign the investigation of reported sexual assaults to specialist inspectors such as those with a background in mental health and/or those who have had professional development in relation to understanding the effects of trauma”.⁽¹⁵⁴⁾ In WorkSafe Mines Safety, these inspectors generally sit in the WorkSafe Mines Safety MHW team. When first engaging with the affected person, the WorkSafe Mines Safety MHW inspector will explain the available support options. Most of these are external supports such as their EAP or GP or occasionally SARC.

In some circumstances when the individual is distressed and immediate or ongoing support is required, there are two active referral options that WorkSafe is able to provide:

- the *Mental Health Emergency Response Line* run by the WA East Metropolitan Health Service, which is a 24-hour line staffed by trained mental health clinicians. Distressed callers are able to be transferred directly to this line without ending the call; or
- WorkSafe's Family Liaison Support Officer (FLSO). The FLSO supports families of partners or relatives who have suffered a fatality at work, through WorkSafe's investigation and legal processes. The support is also available in some cases for seriously injured workers, including those who have experienced sexual assault. The FLSO acts as the primary contact person and is not a counsellor.

Finding 35: There is misalignment between WorkSafe teams on engaging with affected persons throughout an investigation

When a PCBU reports a sexual assault or sexual harassment, WorkSafe Mines Safety inspectors are not hearing directly from the worker about their experience. The inability to speak to the affected person directly is seen as a major barrier by the inspection team in conducting their investigations for sexual assault and sexual harassment.

As a result, the inspection team stated that they always invite an affected person to speak to them. In sexual assault or sexual harassment investigations they either do this by issuing a letter to the mine site, or via text message if they have the individual's phone number. If the affected person is anonymous, the invitation is issued in a letter via the PCBU with the WorkSafe Mines Safety inspector relying on the worksite to share the information. In an example case provided, the affected person was emailed by the WorkSafe Mines Safety inspector, and followed up with a text a week later when they had not responded. The individual agreed to speak to the WorkSafe Mines Safety inspector after receiving the text message.

Throughout the investigation process, the WorkSafe Mines Safety inspector may also provide the affected person with updates, and will generally contact them to share the general outcome at the close of a case. Reporting back to the affected person is done inconsistently and is not required by law or in a documented process.

There are differing opinions at WorkSafe on how best to engage with affected persons. For cases of sexual assault, the investigations team were concerned that engaging directly may re-traumatise the affected person and create a risk that they provide WorkSafe with an inconsistent statement to their statement to police, potentially jeopardising the criminal investigation.

An inconsistent approach to engaging affected persons increases the risk of re-traumatisation throughout the process and also risks missing valuable sources of information.

“

When a site writes something in SRS we are not hearing directly from the worker. When it's sexual assault or sexual harassment related we always invite the affected person to speak to us.



Finding 36: There is a lack of trust from the mining industry that WorkSafe Mines Safety will handle sexual assault and sexual harassment in a victim-centric way

Multiple representatives from the mining industry expressed concern about the lack of victim-centricity in WorkSafe's engagement with affected persons. As WorkSafe's role is not to substantiate complaints or offer justice outcomes, it was not seen as necessary for WorkSafe to speak to the affected person to investigate hazard controls, especially when it created the risk of re-traumatisation. This point was reinforced for sexual assault where WorkSafe may be trying to speak to the affected person when they are already communicating with other agencies such as the Police and internal investigators.

A number of mining industry representatives shared experiences where WorkSafe Mines Safety inspectors had previously overstepped boundaries around the affected person's privacy including:

- requesting an affected person's confidential medical treatment records or the personal treating doctor's notes as part of their investigation; and
- contacting affected persons inviting them to speak to WorkSafe Mines Safety through letters to their personal residence. The particular case cited did not adequately consider the cultural identity of the individual and potential backlash they would have been exposed to if family members were made aware of the occurrence.

Mining industry representatives did note that feedback was provided to WorkSafe Mines Safety which was taken onboard. However, they still shared concerns about the impact a WorkSafe Mines Safety investigation would have on affected persons and cited it as a key reason for their hesitancy to report to WorkSafe Mines Safety when it wasn't absolutely necessary.

Finding 37: The requirement to display notices creates a risk of victimisation

The requirement within the WHS Act to display enforcement notices in cases of sexual assault and sexual harassment can increase the risk of victimisation by unintentionally identifying a person making a complaint.⁽¹⁵⁵⁾

While it is noted that WorkSafe Mines Safety inspectors are trained not to include identifying information on notices, given the low rates of female workers and the often small-town nature of many mine sites, it can be easy for affected persons to be identified.

Publicising sexual assault and sexual harassment has a different impact to publicising physical safety incidents on mine sites. The Inquiry documented the culture of victimisation in the mining industry, with affected persons reporting negative impacts upon their relationships, reputation and job security.⁽¹⁵⁶⁾ This culture of victimisation and retribution was found to be a core reason for hesitancy in reporting.⁽¹⁵⁷⁾

“

[Our union receives] at least one sexual assault or sexual harassment complaint from WA mining workers each week.

Finding 38: WorkSafe is not able to protect an affected person from victimisation and does not provide guidance or referrals to agencies that can provide recourse

If an affected person's identity is revealed as a result of a WorkSafe investigation, WorkSafe is unable to do anything to protect them from victimisation or hold an employer accountable for victimising a person making a complaint.

Issuing penalties for victimisation does not fall under the scope of powers afforded to WorkSafe under the WHS Act. Grievances of this nature are likely to be more appropriately handled by other agencies such as the EOC or the AHRC.

Despite WorkSafe having clear guidance for WorkSafe Mines Safety inspectors to explain the limitations on confidentiality, limited guidance is provided on the support available to affected persons or person making a complaint should their confidentiality be compromised as a result of a WorkSafe investigation. The *Inspector Technical Guide: Investigating Psychosocial Hazards, including notifications, enquiries, complaints, incidents and occurrences* (Technical Guide) suggests that publicly available information about the EOC should be provided to an affected person "for issues of unlawful discrimination".⁽¹⁵⁸⁾ Apart from this, no additional guidance around victimisation was sighted or referred to in any documents or consultation. There is also no information publicly available on the website. As collaboration with the EOC is still in development, it is also likely that "warm" referrals have not yet occurred.

While no challenges around victimisation were raised by WorkSafe Mines Safety, as reporting of sexual assault and sexual harassment increases, risk of this behaviour occurring increases. There is no visible guidance or plans on how to respond to victimisation that may occur as a result of a WorkSafe Mines Safety investigation.

Experience of affected persons

Recommendation 21: Establish an employee-focused section of the WorkSafe website

To enhance engagement with employees, WorkSafe should create an employee-focused section of the website which contains information including:

- employee rights under the WHS Act, including specific focus on psychosocial hazards;
- what is considered to be inappropriate behaviour that can be reported to WorkSafe;
- how to be an active bystander and what to do if you witness inappropriate behaviour;
- WorkSafe's role in workplace safety, their powers for responding to sexual assault and sexual harassment and the outcomes they can deliver;
- who can report sexual assault or sexual harassment to WorkSafe;
- how to report to WorkSafe, including the channels available and options for anonymous reporting;
- clear guidance on how WorkSafe works to protect confidentiality, and circumstances where confidentiality may not be possible (for example, WHS Tribunal, prosecution);
- guidance on what WorkSafe can do when a sexual assault or sexual harassment has not been reported to the PCBU;
- support available for those who are experiencing distress after sexual assault or sexual harassment;
- clear guidance on alternative agencies who can provide different outcomes and how to contact them; and
- guidance on victimisation and the options an affected person has if they are being victimised by their employer due to their involvement with a WorkSafe investigation.

In addition, WorkSafe should encourage the mining industry to include links to the employee-focused section of the WorkSafe website within their own internal, organisational websites.

Recommendation 22: Translate important materials around sexual assault and sexual harassment into other languages

WorkSafe should consult with the WorkSafe Mines Safety inspectorate to understand what cultural backgrounds are represented on mining sites, especially among women. Based on this information WorkSafe should develop targeted information sheets on psychosocial hazards, including a specific section on sexual assault and sexual harassment translated into the major first languages of mine site employees. Information should then be shared with employers and the inspectorate to ensure that the message is cascaded to those employees who might need to access it.

Recommendation 23: Design culturally specific materials for Aboriginal and Torres Strait Islander people on reporting pathways, rights and protections with respect to sexual assault and sexual harassment

WorkSafe Mines Safety should consult with Aboriginal and Torres Strait Islander people which may include community members, a cultural authority and/or its Aboriginal Empowerment Unit to design important materials on the reporting and the investigation process for sexual assault and sexual harassment which is culturally appropriate for Aboriginal and Torres Strait Islander people. In addition, WorkSafe Mines Safety should ensure that support services have culturally appropriate options available.

Recommendation 24: Consider options to engage directly with FIFO workers

WorkSafe Mines Safety should leverage additional communication channels to engage directly with employees in the mining industry. Options WorkSafe Mines Safety could consider based on tools used in other jurisdictions include:

- An employee pocket guide – WorkSafe Mines Safety could create and distribute a pocket guide on psychosocial hazards with a dedicated section on sexual assault and sexual harassment which highlights inappropriate behaviours, hazards to look out for and how to speak up; and
- Direct to site messaging – WorkSafe Mines Safety could create a direct to site message channel e.g. through the televisions in break rooms which display WorkSafe safety messages. This removes the reliance on employers as the intermediary to relay the messages WorkSafe Mines Safety is trying to convey.

Recommendation 25: Provide the opportunity for affected persons to give feedback on their experience with WorkSafe Mines Safety investigations

WorkSafe Mines Safety should engage with affected persons who have previously been involved with investigations related to sexual assault or sexual harassment to understand lived experience and inform improvements to processes.

This should form part of a broader focus on continuous improvement, informed by stakeholder feedback and the lived experiences of those who have reported sexual assault and sexual harassment to WorkSafe Mines Safety. A key focus area should be feedback on the how affected persons are supported, communicated with and engaged with throughout the process. Learnings should be used to review current approaches and update processes to ensure they are victim-centric.

Consultation with affected persons should be carefully considered and communicated in order to protect confidentiality and avoid potential re-traumatisation. Options may include an open invitation for consultation or feedback advertised on the WorkSafe website after the public release of this report and its recommendations.

Recommendation 26: Review and update all policies and processes for victim-centricity

Victim-centricity of reporting processes is important for ensuring the wellbeing of the affected person, as well as building trust in reporting to WorkSafe Mines Safety. This Review found that many policies and processes are currently being reviewed and/or developed for sexual assault and sexual harassment within WorkSafe Mines Safety (and across WorkSafe more broadly). Before finalising the policies and processes, WorkSafe Mines Safety should undertake a review to ensure they are victim-centred, and that supporting guidance and training is provided to WorkSafe Mines Safety inspectors to ensure they are victim-centred in practice.

Victim-centric processes should prioritise the safety, wellbeing and wishes of affected persons throughout the process. For WorkSafe Mines Safety, some practical considerations include:

- options for reporting, including to Police or other external bodies, and potential outcomes are explained upfront;
- appropriate support services are provided;
- confidentiality is protected and information sharing requirements are made clear from the outset;
- investigation processes minimise the number of times affected persons need to recount their experience; and
- the affected person is supported to feel in control and given choice throughout the process.

For more information on good practice victim-centric approaches to inform policy and process changes, see *Embedding victim-centric approaches* (page 25).

Recommendation 27: Review the use of referral and support services

WorkSafe Mines Safety should undertake an audit of support options available for affected persons, specifically those affected by sexual assault and sexual harassment. Consideration should be made of the appropriateness of different support options according to severity and types of sexual assault or sexual harassment and how WorkSafe Mines Safety can facilitate a warm referral to these providers. Additionally, culturally sensitive support options should be identified, including appropriate options for Aboriginal and Torres Strait Islander peoples.

Due to their specialisation with sexual assault, referrals to SARC for support with any experiences involving sexual assault should be considered and consistently applied.

Recommendation 28: Communicate how affected persons and persons making a complaint can seek remediation for victimisation

Clear steps should be built into sexual assault and sexual harassment investigations processes to communicate to the person making a complaint (including both affected persons and bystanders) upfront:

- that if an individual is feeling victimised due to an allegation of sexual assault or sexual harassment or due to their involvement or the belief that they were involved with a complaint under the Equal Opportunity Act 1984 (WA), they are able to contact the EOC ⁽¹⁵⁹⁾;
- the outcomes that EOC can deliver in response to victimisation; and
- how a person making a complaint can report to this body – either through WorkSafe Mines Safety or directly.

This information should also be made publicly available on the website and communicated to employers so that it is clear that victimisation for complaints submitted to WorkSafe Mines Safety will not be tolerated.

Recommendation 29: Consider supporting changes on the requirement to display notices for sexual assault and sexual harassment

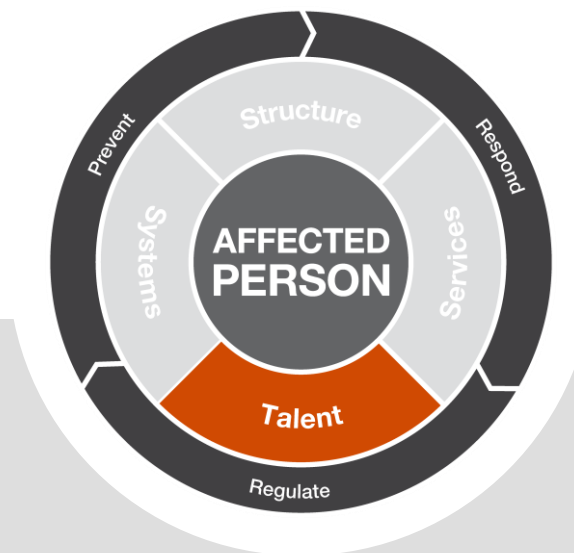
WorkSafe Mines Safety should consider providing supporting changes and providing feedback to the Minister and SafeWork Australia on introducing an exception to the requirement to publish notices for sexual assault and sexual harassment.

In the interim, WorkSafe Mines Safety should update its enforcement measures training materials to include clear guidance which ensures notices being displayed are sufficiently generalised as to not be able to identify an affected person.



Talent

Talent



What this covers

Talent considers both the capacity and the capability of the WorkSafe Mines Safety team and leaders to effectively prevent and respond to sexual assault and sexual harassment in the mining industry.

Ideal future state

Investment to attract, develop and retain strong regulatory acumen in psychosocial hazards and risks. Leadership commitment to working to eliminate sexual assault and sexual harassment in mining.

Indicators

Resourcing and capacity

- Inspectorate teams are adequately resourced to balance proactive and reactive inspection case loads.
- Inspectorate teams are culturally and gender diverse, and from diverse professional backgrounds.

Training and capability

- Leaders leverage a range of data sources to identify trends and areas of focus.
- Leaders and staff are aligned on organisation mission and vision to drive meaningful change.
- Relevant teams are trained in the prevention and response of sexual assault and sexual harassment.
- Relevant teams are trained in victim-centricity and provided vicarious trauma support, as needed.
- Teams which support or lead the investigative process hold appropriate qualifications such as a psychology degree and are supported to maintain professional registrations and development (where required).
- Psychosocial competencies are measurable through an organisational competency framework or plan.
- Investment is made in regular learning and development to ensure skills are current, and leading practices are applied.

Resourcing and capacity

Current state observations:

- The WorkSafe Mines Safety MHW inspection team is a specialised team, dedicated to psychosocial hazards including sexual assault and sexual harassment.
- Many inspectors in the WorkSafe Mines Safety MHW inspection team have backgrounds in relevant fields such as psychology, which equip team members with the tools to handle cases sensitively.
- The team is currently made up of six members – one Regional Inspector, two Specified Calling Level (SCL) 4 Inspectors, one SCL 3 inspector, one SCL 2 inspector and one SCL Officer.
- At the time of undertaking this Review, some positions had been recently created, and as such were unfilled. Additionally, there was an unfilled role whose substantial owner is on parental leave.
- The creation of this specialist team has improved the consistency of response for stakeholders and has been positive in driving change in the way WorkSafe Mines Safety responds to sexual assault and sexual harassment. Some of these key improvements include:
 - improved processes related to sexual assault and sexual harassment;
 - standardised approaches to handling psychosocial hazards, especially sexual assault and sexual harassment within WorkSafe Mines Safety;
 - increased the broader understanding across WorkSafe Mines Safety about sexual assault and sexual harassment; and
 - increased collaboration on matters related to sexual assault and sexual harassment by engaging with other critical teams (for example, Investigations), and supporting the broader WorkSafe inspectorate through joint inspections.
- DMIRS' *Diversity and Inclusion Plan 2018-2023*⁽¹⁶⁰⁾ outlines commitments towards attracting and retaining diverse talent, and DMIRS' progress on increasing women in leadership within DMIRS.
- At the time of this Review, there were 12 substantially vacant positions across WorkSafe Mines Safety alone.

Finding 39: The high volume of cases in the Mental Health and Wellbeing team means that some less severe sexual harassment cases wait months to be investigated

It is important to note that there are duties to notify for reportable incidents within the WHS Mines Regulations. These additional notification duties mean that the overall volume of cases – both related to sexual assault and sexual harassment and more broadly – being reported to WorkSafe Mines Safety should be higher than other WorkSafe industry areas.

The typical case load for each WorkSafe Mines Safety MHW inspector sits at approximately 25-30 active cases at any given time. The sustained high volume of active cases places pressure on the already limited resources within this team.

Similarly across WorkSafe, Team Leaders typically do not carry an active case load, with their role focusing on managing the workflow of their teams and supporting on more complex cases where required. In contrast, the Team Leader of the WorkSafe Mines Safety MHW team is managing a large active case load, while also fulfilling a range of other duties including driving significant changes to policies and processes related to sexual assault and sexual harassment and managing the collation of historical sexual assault and sexual harassment data.

All WorkSafe teams use a risk-based prioritisation system to help manage workflow and prioritise cases. As the majority of cases investigated by the WorkSafe Mines Safety MHW team meet a higher severity threshold, some less severe cases of sexual harassment are reportedly waiting months to be investigated.



Psychosocial cases aren't competing with any other type of cases, they're all going to a dedicated team... the only thing that affects how we treat them is the lack of resources.



The people in this organisation genuinely do their best with the limited resources. People have a genuine connection to the values of the organisation.

Finding 40: Proactive Mentally Healthy Workplace Audits are unable to be completed due to capacity

The WorkSafe Mines Safety MHW inspection team aims to conduct a number of proactive inspections and audits each year in order to increase PCBU understanding and awareness, and address issues of non-compliance before a sexual assault or sexual harassment occurs. Proactive inspections are scheduled in advance on a six monthly basis, informed by historical data.

One of the main methods used by the team is the *MHW Audit*. The *MHW Audit* supports the *FIFO Code* and evaluates performance against the Code to assist organisations in creating action plans for continued improvement. Sexual assault and sexual harassment are covered in the audit tool under items 2.11 “processes for identifying inappropriate gendered behaviours” and 2.12 “action plan/controls for inappropriate gendered behaviours.”⁽¹⁶¹⁾ When conducting these audits, WorkSafe Mines Safety MHW inspectors are partnered with another inspector to provide upskilling on psychosocial hazards.

Between 2020 and 2021, 28 *MHW Audits* were conducted, however these have not been as regular of late. Data provided from WorkSafe indicated that just six “planned inspections or audits” were scheduled for the period of July – December 2022, and as of August 2022, only one *MHW Audit* was scheduled for the remainder of the calendar year. Due to the volume of reactive cases the team is managing. While further MHW Audits are scheduled for 2023, the sustained volume of reactive cases means that not all of these may proceed as planned.

Finding 41: Capability uplifts on preventing and responding to sexual assault and sexual harassment are led by the WorkSafe Mines Safety Mental Health and Wellbeing team

The scope of role for a WorkSafe Mines Safety MHW inspector is large and covers not only completing inspections and investigations, but also:

- building capacity across WorkSafe through the development and delivery of training;
- developing policies and processes for psychosocial hazards, including sexual assault and sexual harassment;
- participating in steering committees and other collaboration bodies relevant to psychosocial hazards;
- developing guidance for the mining industry; and
- participating in mining industry events and activities.

These are noted requirements of the role per the job description forms (JDFs), and as subject matter experts, it is important that these inspectors are involved in these processes. However, the broad scope, and leadership role the MHW team plays in driving these initiatives can contribute to resourcing challenges experienced within the team.

Finding 42: WorkSafe is competing for key talent with the mining industry who are often able to offer more compensation

Attracting and retaining talent across a range of roles, but especially as they relate to focus areas such as sexual assault and sexual harassment, is front of mind for leaders across WorkSafe and DMIRS. Of key concern is the inability to compete with the mining industry for similar roles as they cannot offer the same attractive compensation or benefits.

To begin to address these challenges, DMIRS undertook a refresh of its approach to recruitment and job advertisements in July 2022. The changes include updating job advertisements to include focusing on what the applicant gains through working for WorkSafe, providing specifics on who they will be working with and the location of the work, tailoring the job advertisement to the Safety Regulation Group and distributing through Safety Magazines and mining industry sites.

Finding 43: WorkSafe risks missing out on the benefits of workforce diversity

Diverse and inclusive workplaces drive performance and business outcomes including:

- greater productivity;
- higher employee satisfaction;
- reduced employee turnover; and
- increased innovation and creativity.⁽¹⁶²⁾

In line with mining industry trends, WorkSafe is a male-dominated workforce (80.7% men, 19.3% women). It is important to note, however, that within the WorkSafe Mines Safety MHW inspection team (as well as psychosocial-focused teams in other WorkSafe industry areas) the representation of women was much higher.

Similarly, cultural and linguistic diversity both within DMIRS more broadly and within WorkSafe Mines Safety is also limited. Just 16% of DMIRS' total workforce are from a culturally and linguistically diverse background, and while specific data regarding the cultural and linguistic diversity of inspectors within WorkSafe Mines Safety was unavailable to this Review, the lack of culturally diverse inspectors was raised anecdotally throughout consultations.⁽¹⁶³⁾

In additional, concerns were raised in consultations that the culture in the mining industry was replicate in WorkSafe Mines Safety due to the number of people with mining industry backgrounds. Culture in the mining industry and an acceptance of "the way we do things around here" was outlined as a key issue in *Enough in Enough*.⁽¹⁶⁴⁾

Finding 44: Resourcing constraints across WorkSafe and DMIRS are contributing to a perception that more strategic activities are de-prioritised, reducing capacity and capability in the longer term

Both within WorkSafe Mines Safety and across WorkSafe and DMIRS more broadly there is a sense of teams being over capacity and under resourced. This impacts the timely delivery of different projects, and also upon morale. This has had varied impacts across teams including:

- a view that training and development had to be de-prioritised to meet work demands (see Finding 48);
- a perception that due to the volume of employees acting in roles (for example, due to leave or vacancies) there is a hesitancy to be bold, make decisions or disrupt the status quo;
- a concern that resources won't be increased to match the anticipated increase in workload as heightened awareness leads to increased reporting following the Inquiry and the historical data collection;
- a lack of capacity impacting on the ability to conduct proactive inspections and audits; and
- a view that JDFs do not accurately reflect the work of teams focused on psychosocial hazards, and consequently limits the ability to attract the right talent to these roles.

Figure 13: Gender breakdown of WorkSafe Mines Safety



Source: WorkSafe Mines Safety 2022

Resourcing and capacity

Recommendation 30: Develop a strategic workforce plan for WorkSafe Mines Safety

To future proof the workforce while also responding to an anticipated increase in the volume of reported sexual assault and sexual harassment, a targeted and strategic workforce plan should be developed for WorkSafe Mines Safety. This plan should:

- leverage data to identify trends in psychosocial hazards, including sexual assault and sexual harassment now and into the future, and develop resource models to match expected demand;
- identify key forms of recognition (formal and informal) that can be offered to improve the attraction and retention of staff;
- focus on upskilling and reskilling team members to be deployed into roles with increased demand into the future; and
- consider targeted marketing to comparable industries and skillsets to build a pipeline of talent e.g. health services, industrial relations, social services and other allied health professions.

Recommendation 31: Develop employee value proposition and review other role related documents to increase ability to attract and retain key talent

To support the ongoing attraction and retention of key talent, WorkSafe Mines Safety should undertake a thorough review of its employee value proposition. This should include:

- reviewing and updating employee benefits to remain competitive with the mining industry; and
- ensuring that training and development pathways are strategic, clear and available to all employees on a regular basis (see Recommendation 37).

In addition, WorkSafe Mines Safety should review role related documents (for example, JDFs) to ensure they reflect the employee value proposition, and target a wide talent pool. This should include:

- reviewing language used in job description forms to highlight the purpose and impact that can be achieved through roles;
- reviewing and implementing clearly identified roles and responsibilities, and defined core competencies to increase clarity of potential talent;
- ensuring there is clear information on flexible work options available;
- removing requirements and preferences for mining industry experience for roles where this is not a core role requirement; and
- updating role descriptions and reviewing the critical skills required to increase attraction of talent from other industries.

Recommendation 32: Increase the number of specialist inspectors in the WorkSafe Mines Safety Mental Health and Wellbeing team and develop approaches to create surge capacity as needed

Given the focus on sexual assault and sexual harassment in the mining industry, it is likely that the volume of sexual assault or sexual harassment reports to the WorkSafe Mines Safety team will increase.

To address the capacity constraints within the WorkSafe Mines Safety MHW inspection team, focus needs to be on increasing the resourcing within the team. This includes filling vacant roles as a key priority, and seeking to recruit additional talent to ensure both proactive and reactive work can be undertaken.

In addition, WorkSafe Mines Safety should explore different mechanisms to create surge capacity to better manage workload peaks. This could include, for example, looking at flexibility across teams, upskilling and reskilling WorkSafe inspectors, and the potential to reassign administrative or similar workloads to enable greater capacity for responding to the volume of reports.

Critically, consideration needs to be given to ensuring that opportunities to create surge capacity align with capability, and that appropriate support and training (e.g. on victim-centricity, responding to disclosures etc.) is provided, especially where roles may be interacting with affected persons.

Recommendation 33: Introduce key enabling roles to help increase capacity of Mental Health and Wellbeing team

To support the WorkSafe Mines Safety MHW inspection team and increase capacity, WorkSafe should consider expanding the team structure to include enabling roles. These enabling roles, such as a policy officer or a training officer, for example, would provide dedicated resources to drive progress on the important, ongoing work of updating policies and processes, updating and delivering training and developing resources and materials, while decreasing demands on the WorkSafe Mines Safety MHW inspectors to enable greater focus on both proactive and reactive inspections.

Recommendation 34: Increase the diversity of WorkSafe Mines Safety inspectors including:

- a. increasing the representation of women;**
- b. increasing the representation of culturally and linguistically diverse people; and**
- c. ensuring a breadth of industry backgrounds.**

In support of actions outlined in its *Diversity and Inclusion Plan 2018-2023*, DMIRS should review its recruitment and retention strategies including:

- reviewing JDFs and other role descriptions to remove information such as requirements and preferences for mining industry experience, and ensuring options for flexible work are clearly communicated;
- promoting open roles and career opportunities widely, including through targeted recruitment channels for women, culturally and linguistically diverse populations and Aboriginal and Torres Strait Islander people;
- seeking to engage relevant professionals from related industries such as health services, industrial relations, social services and other allied health professions to broaden diversity of professional background across the organisation;
- adopting a values-based recruitment approach to recruit employees whose personal values, behaviour and beliefs align with the values of WorkSafe Mines Safety (for example, incorporate questions on values within interviews); and
- considering setting targets for women, culturally and linguistically diverse, and Aboriginal and Torres Strait Islander applicants for shortlists, interviews and awarded opportunities.⁽¹⁶⁴⁾



Training and capability

Current state observations:

- The Safety and Regulation Group (SRG) Training and Development team has recently been established to increase focus on capability building and professional development across WorkSafe, including WorkSafe Mines Safety.
- There are several planned improvements to training and capability, including a refreshed Learning Management System, an enhanced onboarding program for WorkSafe inspectors and continual adaption to online and virtual learning opportunities (where relevant).
- Significant training has been delivered over the past year in preparation for the launch of the new WHS Act. This training has focused on upskilling WorkSafe inspectors on the new legislation.
- The WorkSafe Mines Safety MHW inspection team are responsible for building capability to prevent and respond to sexual assault and sexual harassment across the broader WorkSafe inspectorate.
- The *Investigating complaints, incidents and occurrences of psychosocial hazards* mandatory inspector training which is currently being rolled out across WorkSafe is the main training available to WorkSafe Mines Safety inspectors on psychosocial hazards.⁽¹⁶⁶⁾
- Other training activities focused on psychosocial hazards, including sexual assault and sexual harassment, that have been delivered in the past include:
 - a *Workplace Behaviours* as a *safety issue* session at the WHS Inspectors Forum in 2021 for WorkSafe Mines Safety and Petroleum Safety inspectors;
 - a *Handling alleged bullying incidents as an inspector* session for WorkSafe Mines Safety Inspectors in 2015; and
 - ad hoc training on psychosocial hazard topics such as 'sexual violence and harassment' and 'bullying and harassment'.
- WorkSafe Mines Safety inspectors have previously been paired with a MHW inspector to conduct a MHW Audit in order to provide further upskilling.
- In undertaking consultations as part of this Review, it was heard that the WorkSafe inspector competency framework did not include focus on psychosocial hazards. However, during the course of this review, the *SRG Foundation Program Curriculum* was updated (dated 23 September 2022), and includes a session on psychosocial hazards for future implementation of the training.⁽¹⁶⁷⁾
- The *Technical Guide* forms the basis of the processes for identifying and responding to psychosocial hazards, and includes specific focus on the different processes relevant to sexual assault and sexual harassment.⁽¹⁶⁸⁾
- While the *Technical Guide* itself contains limited information about sexual assault and sexual harassment, it provides links to relevant policies and procedures to support WorkSafe Mines Safety inspectors to build their capability.
- The *Technical Guide* will be used as a "central source of truth" from which to continue to upskill and refresh capability, both within the MHW team, and the broader WorkSafe inspectorate.
- Teams with the most contact with affected persons such as the WorkSafe Mines Safety MHW inspection team, and the investigations team, appeared to have greater understanding and familiarity with the principles of victim-centricity, and responding with compassion.
- WorkSafe's *Risk Management Framework* contemplates physical harm to WorkSafe employees (for example, medical treatment is a risk consequence). It does not contemplate the psychological harms which are typically associated with sexual assault and sexual harassment.⁽¹⁶⁹⁾

Finding 45: WorkSafe and DMIRS have been reactive rather than proactive in their response to sexual harassment and sexual assault

Leaders across WorkSafe and DMIRS have been caught off-guard by the prevalence of sexual assault and sexual harassment across the mining industry. Many leaders raised the underreporting of sexual assault and sexual harassment as a key challenge limiting their ability to take action.

Given the extent of coverage that workplace sexual harassment in particular has received over the past five years, leaders in the area of safety regulation need to be aware of the challenges across the mining industry. For example, the mining industry was identified as the industry with the fifth highest prevalence rate of sexual harassment (at 40%) by the AHRC in 2018.⁽¹⁷⁰⁾ This prevalence rate is also higher than the national average of 33%.⁽¹⁷¹⁾

Sexual assault and sexual harassment are widely known to be underreported. For example, just 17% of those who experience sexual harassment, report it⁽¹⁷²⁾ and 13% of those who experience sexual assault report it to police.⁽¹⁷³⁾ A proper understanding of the nature of sexual assault and sexual harassment should have prompted a review of WorkSafe's approach to these hazards at a much earlier date. It is clear that an approach which relies on formal reporting before action is taken is insufficient for sexual assault and sexual harassment.

As a safety regulator, it is imperative that WorkSafe is able to identify appropriate approaches and anticipate changes in the WHS landscape, and dedicate sufficient resources to address critical risks.

Finding 46: There is no capability or competency framework specific to psychosocial hazards

Despite there being specialist teams who focus on psychosocial hazards including sexual assault and sexual harassment across WorkSafe Mines Safety, there is no framework to assess competency against these areas.

WorkSafe Mines Safety MHW inspectors are subject to the same competency framework as the broader WorkSafe inspectorate in order to be signed off as inspectors under the WHS Act. However, there is no framework to ensure that inspectors have the capability to recognise and respond to psychosocial hazards, even for psychosocial inspector teams.

As a consequence, there is a heavy reliance on the qualifications and prior experience of individual staff (e.g. psychology backgrounds) to coach and train newer inspectors. This can result in an inconsistent and varied approach to identifying and responding to sexual assault and sexual harassment.

While it is noted that the *SRG Foundation Program Curriculum* (dated 23 September 2022) includes a session on psychosocial hazards which all incoming WorkSafe Mines Safety inspectors will undertake, this is intended to be an overview, rather than focus on achieving specific competencies.⁽¹⁷⁴⁾

Finding 47: Inspectors are not equipped with skills on victim-centricity and vicarious trauma management

While many teams perform processes related to sexual assault and sexual harassment, there is limited evidence of teams undergoing capability uplifts in areas such as victim-centricity or responding to disclosures with compassion, in any formalised way. While it is noted that the WorkSafe Mines Safety MHW inspection team independently sought “Responding with compassion” training through SARC, and provided opportunity for the broader WorkSafe inspectorate to participate, this appears to have been a one-off session, rather than an integrated and regular feature of capability uplifts.

Additionally, WorkSafe Mines Safety inspectors across all specialisations are routinely exposed to vicarious trauma. DMIRS and WorkSafe developed resources for inspectors, with the development of the *PTERS framework* in 2020, and a pilot of this program is currently in progress.

While the *PTERS framework* is a positive step, it does not consider proactive actions to help mitigate risk, but rather focuses on steps following exposure, limiting its effectiveness. Equipping WorkSafe Mines Safety inspectors with the tools to proactively manage exposure to trauma and vicarious trauma risks is imperative for the wellbeing of WorkSafe Mines Safety inspectors, and can help support retention within DMIRS.

It is noted that in the final documentation provided to this Review by DMIRS, the *SRG Foundation Program Curriculum* (dated 23 September, 2022) includes optional sessions on “managing traumatic situations” but no further information on providers or the implementation timeframe was provided.⁽¹⁷⁵⁾

Finding 48: Training and development opportunities are often de-prioritised due to high work demands

De-prioritisation of training and development opportunities was a common experience cited in consultations within WorkSafe and DMIRS as part of this Review. The key reason provided was a lack of resources and the sustained high volume of work which allowed little time for professional development.

Additionally, there was a shared view that the onus was on individuals to source professional development opportunities relevant to their area of work, and the approval process for professional development opportunities was cited as a barrier.

It is noted that DMIRS has a professional development framework “*My PD*”, and that there have been several opportunities to participate in conferences and webinars recently (including those listed below). However there is a consistent sentiment that targeted opportunities need to be prioritised to enable WorkSafe Mines Safety inspectors to grow in key areas of their roles.

Lack of opportunity and support for training and development is a key risk for DMIRS in regard to critical capability. Training and development is also important in retaining talent to engage employees and also manage risks around departure (for example, due to burn-out or vicarious trauma).

Examples of external learning and development opportunities provided to WorkSafe Mines Safety inspectors in the past include:

- AusIMM Minesafe International Conference (May 2022);
- Minesafe International Webinar: How culture, wellbeing and safety play a part in addressing sexual harassment in the resources workforce (April 2022);
- ComCare Workplace Sexual Harassment National Forum (November 2021); and
- Thomson Reuters Workplace Sexual Harassment Conference (October 2021).

Finding 49: There is a perception that specialist qualifications and professional registrations relevant to roles are not valued by DMIRS

The specialist, technical skills of the WorkSafe Mines Safety MHW inspection team, and those of other psychosocial inspectors, are leveraged extensively to the benefit of the DMIRS and WorkSafe teams, particularly in their prevention and response to sexual assault and sexual harassment.

Specialist inspectors are relied upon to provide upskilling and coaching to the broader WorkSafe inspectorate and new specialist inspectors alike, and to do so are expected to keep up to date with the latest trends and approaches in their specialist area. In order to maintain these skills, it was heard across teams consulted with that specialists were often required to self-fund and complete relevant professional development requirements in their own time.

While the *Professional Association Membership Policy* outlines that individual memberships and registrations will only be funded where there is “a legal requirement” for the membership to be held, this position overlooks the substantial benefit that DMIRS and WorkSafe receives through the professional registrations held by these teams.⁽¹⁷⁶⁾ This is particularly relevant in the current period where significant focus has been on developing policies and processes to manage and respond to sexual assault and sexual harassment in victim-centred and trauma-informed ways.

It is noted that DMIRS provided feedback that SCL roles typically include a higher income that they anticipate supports the regular maintenance of professional development and registrations. However, embedding this within roles and providing funding support appropriately recognises the value of these qualifications to this work.

Finding 50: Industry views WorkSafe Mines Safety inspector capability as varied and inconsistent

Despite ongoing efforts across WorkSafe Mines Safety to build capability on psychosocial hazards, consultations across the mining industry found the experience of companies was inconsistent and largely related to which WorkSafe Mines Safety inspector they were working with on a particular issue.

This was also evident through a review of past stakeholder feedback (for example, past *Stakeholder Surveys*) for WorkSafe more broadly, as well as in WorkSafe Mines Safety. Feedback on the impact of this variability included lack of clarity over reporting requirements, inconsistency in information required for different inspections, a view that legislation was applied differently by different WorkSafe Mines Safety inspectors and that thresholds for demonstrating compliance was variable.

Training and capability

Recommendation 35: Improve internal understanding of WorkSafe's role in preventing and responding to sexual assault and sexual harassment

Create a clear terms of reference document which clarifies WorkSafe's role, with a special focus on sexual assault and sexual harassment, including in:

- preventing and responding to sexual assault and sexual harassment;
- achieving outcomes or issuing enforcement action; and
- the role of any other parties involved (for example, WA Police).

WorkSafe and DMIRS leadership should actively support this by:

- proactively communicating and demonstrating a strong commitment to prevention; and
- hosting an internal two-way conversation with all WorkSafe inspectors to provide opportunity to ask questions, and increase understanding of their individual and collective roles.

Recommendation 36: Develop a clear, relevant competency framework for WorkSafe psychosocial inspectors

WorkSafe should develop a clear, relevant competency framework specifically for WorkSafe psychosocial hazard inspectors. This competency framework should consider the unique skills and competencies that WorkSafe psychosocial inspectors need to be able to demonstrate including identifying hazards for sexual assault and sexual harassment, victim-centred response and vicarious trauma management.

Recommendation 37: Include psychosocial hazards (including relevant refreshers) within the WorkSafe inspector curriculum, including specific examples and advice on dealing with sexual assault and sexual harassment

While the updated SRG Foundation Program Curriculum (dated 23 September 2022) includes a session on psychosocial hazards, it is not clear what this covers and the depth of information provided about sexual assault and sexual harassment.

To continue to build capability, and ensure all WorkSafe inspectors are able to identify and respond to sexual assault and sexual harassment, this session should include:

- clear, specific examples of hazards related to sexual assault and sexual harassment relevant to industry, including how to identify hazards and key things to look out for on site;
- guidance on responding to sexual assault and sexual harassment;
- information on how to engage with the WorkSafe Mines Safety MHW inspection team (and equivalent teams in other WorkSafe jurisdictions) and where to seek additional support;
- trauma-informed approaches to responding to disclosures and victim-centricity; and
- proactive and clear guidance on managing vicarious trauma.

To support WorkSafe inspectors to stay across emerging trends and updated practices and to refresh their skills, WorkSafe Mines Safety should develop a schedule of refresher trainings. These should be strategically embedded, and provide regular touchpoints to keep WorkSafe Mines Safety inspector capability up to date.

In addition, WorkSafe Mines Safety should embed training on both responding to disclosures, and managing vicarious trauma within annual professional development framework for all WorkSafe inspectors, and/or within the SRG Foundation Program Curriculum. These training sessions should be delivered by a qualified and experienced provider.

Recommendation 38: Provide training in victim-centricity to key support staff as a priority

To deliver better support to affected persons, WorkSafe should train key support staff including Contact Centre, Triage and WorkSafe psychosocial hazard inspectors in leading practice victim-centric approaches. This training could take the form of a workshop with an external provider such as SARC and should be supported on an ongoing basis.

Recommendation 39: Review Professional Association Membership Policy

WorkSafe Mines Safety relies heavily on the specialist skills of the MHW team to prevent and respond to sexual assault and sexual harassment.

DMIRS should review the Professional Association Membership Policy through the lens of what qualifications and professional registrations provide meaningful support within day to day activities.

Following the review, any updates should be widely communicated, especially to teams who may be impacted.





Systems

Systems



What this covers

Systems considers the technology and information that WorkSafe Mines Safety uses in fulfilling its role of keeping mining workplaces safe from hazards, specifically sexual assault and sexual harassment.

Ideal future state

System solutions with appropriate, victim-centric and easy to use functionality. Accurate data is used to inform decisions and approaches to prevent and respond to sexual assault and sexual harassment.

Indicators

System functionality

- An effective safety incident and event reporting system for the mining industry which supports reporting of data and trend analysis.
- A user-friendly systemised pathway for reporting for affected persons and bystanders.
- Appropriate levels of confidentiality are maintained across all system reporting pathways.
- Clear guidance to system users on reporting sexual assault and sexual harassment.

Data and reporting

- Data used to inform decisions, training and guidance meets the data quality standards within the *ABS DQF*.
- Established cadences for sharing data trends, insights and analysis with the mining industry.

System functionality

Current state observations:

- WorkSafe Mines Safety use SRS to record and manage workplace safety incidents and events.
- SRS has limited functionality for reporting sexual assault and sexual harassment, relying upon free text fields and manual system workarounds to ensure incident and injury reports are kept confidential.
- WorkSafe Mines Safety have made a number of enhancements to SRS to reflect changes brought about by the WHS Act and WHS Mines Regulations, however, these enhancements did not include changes to the current functionality for sexual assault and sexual harassment.
- Data collected through the *Notifiable Incident Report Form* (NIRF) and *Injury Report Form* (IRF) in SRS is used to compile injury statistics, analyse trends and provide information and guidance to the mining industry. *NIRF* data is also used to assist in investigations.⁽¹⁷⁷⁾
- There is no guidance provided to the mining industry to facilitate a consistent approach to inputting sexual assault and sexual harassment into SRS (for example, agreed free text terms to describe an occurrence).
- SRS reporting functionality is limited to principal mining organisations which hold a mining tenement only and there is no clear direct system reporting pathway for affected persons, bystanders and third parties to report sexual assault and sexual harassment.
- WorkSafe have commenced a safety systems renewal project this year which intends to replace the SRS over the next four years.

Finding 51: The SRS is not fit for purpose for reporting sexual assault and sexual harassment

Reporting fields of the *NIRF* and *IRF* within the SRS are not fit for purpose for the reporting of sexual assault and sexual harassment. Gaps in *NIRF* functionality have been identified through high-level review of SRS help guides on DMIRS' website ⁽¹⁷⁸⁾, and include:

- Step 3 "Location and Activity Specifics" – the field to enter the detailed location where the sexual assault and sexual harassment occurred is restricted to a single location. There should be the ability to select multiple options as sexual assault and sexual harassment can occur across a number of locations;
- Step 4 "Description and Impact" – the field to enter details about the occurrence and its impact does not include an appropriate list item for sexual assault and sexual harassment;
- Step 5 "Injury/Illness/Death Details" – surname and first name of the affected person are mandatory fields;

- There are no fields to report data on details of the perpetrator, including their name, company and role. This means there is no accurate way to identify repeat perpetrators; and
- There are no fields to report data on contributing factors (for example, the presence of alcohol) which limits the ability to identify trends and insights on what is causing or contributing to sexual assault and sexual harassment.

Gaps in *IRF* functionality have been identified through high-level review of SRS help guides on DMIRS' website ⁽¹⁷⁹⁾, and include:

- Step 3 "Accident Details" – the title is unsuitable, as sexual assault and sexual harassment are not "accidents." Additionally, the 'Nature of Injury Code' options omits a number of physical and psychological injuries often caused by sexual assault and sexual harassment. Finally, the 'Type of Accident Code' does not include any appropriate events which would result in sexual assault and sexual harassment; and
- Step 4 "Location and Activity Specifics" – similar to step 3 of the *NIRF*, the field to enter detailed location where the behaviours occurred is restricted to a single location.

It became clear during this Review the mining industry finds SRS unclear and non-intuitive with respect to reporting sexual harassment and sexual assault with feedback stating WorkSafe Mines Safety "do not have a system for reporting" as "SRS is unworkable" needing to be "updated or overhauled."

Gaps between system requirements for sexual assault and sexual harassment and current SRS functionality perpetuates a lack of understanding around notification obligations and decreases the quality of data. This impacts upon understanding the extent of sexual assault and sexual harassment and the ability to perform trend analysis to better understand risks and develop targeted campaigns.



Finding 52: The Safety Reporting System does not provide adequate confidentiality

SRS does not provide adequate confidentiality and also presents data security risks due to the work arounds that have been adopted. SRS functionality does not allow duty holders to appropriately control the level of confidentiality for sexual assault and sexual harassment and can put affected persons at risk of victimisation.

NIRF and *IRF* entries are visible to large numbers of a mine site workforce who hold Company Administrator, Company Representative and ex-user accounts. This results in potentially hundreds of team members at each mine site being able to see all details in a *NIRF* and *IRF* relating to a sexual assault or sexual harassment.

Informal system work arounds have been set up including inputting “Jane Doe” and dummy sexual assault and sexual harassment data in the *NIRF* and *IRF* within the system portal accessed by mining organisations. This review heard examples of mining organisations emailing WorkSafe Mines Safety investigators with the name of the affected person (where it was not an anonymous report) and the details of the sexual assault or sexual harassment. Such approach creates additional confidentiality and data security risks.

Data is then input within the system portal by WorkSafe Mines Safety investigators. By actioning through this method WorkSafe Mines Safety are able to implement controlled access, which is not possible if reported directly by a PCBU. It should be noted WorkSafe Mines Safety state there is no evidence of this being current practice.

Finding 53: There are no clear and reliable direct system reporting pathways for affected persons and bystanders

System reporting pathways are critical for preventing and responding to sexual assault and sexual harassment as they enable features such as secure and anonymous reporting, progress tracking, transparency and workflow tracking of actions and outcomes, file uploads to cases and linking of information to the system user (for example, links to WA Police and SARC resources). It also enables a pathway where a person does not need to speak to another person about their sexual assault or sexual harassment to report it.

SRS reporting functionality is limited to principal mining organisations which hold a mining tenement only. This limitation on access means that many affected persons, bystanders and third parties on mine sites (such as contractors) need to report through the principal miner to be able to access a suitable system reporting pathway. The requirement to report through the principal miner is a potential barrier to reporting, due to the fear of retaliation or impact on job security and future contracting opportunities.

WorkSafe informed this Review that the portal for dangerous incidents and serious injuries and illnesses for General Industry may be used to report sexual assault and sexual harassment in the mining industry. However, DMIRS website lists this as a General Industry reporting pathway only.⁽¹⁸⁰⁾ Feedback from WorkSafe further suggests that data from WorkSafe Information Systems Environment (WISE) is inconsistently migrated to SRS.

While it is important to note that direct telephone and email reporting pathways exist, they do not offer the same level of functionality as a system pathway.

Systems functionality

Recommendation 40: Maintain as a priority the safety system renewal project as a priority and implement interim enhancements to the SRS to support sexual assault and sexual harassment reporting

WorkSafe should seek to accelerate the safety system renewal project and prioritise addressing limitations in functionality for sexual assault and sexual harassment which give rise to confidentiality and data quality risks.

WorkSafe Mines Safety should undertake detailed requirements mapping for sexual assault and sexual harassment as part of its program of work for the safety system renewal project. This includes mapping of confidentiality reporting requirements (for example, access for select users to be determined at an individual NIRF and IRF level).

System requirement mapping should also include broader psychosocial requirements to ensure data demonstrates interactions across psychosocial hazards and associated risk factors.

The program of work should include a jurisdictional scan of systems currently being used by interstate government agencies for sexual assault and sexual harassment reporting.

WorkSafe Mines Safety should enhance SRS functionality as an interim measure while the accelerated system renewal project is underway. Any enhancements to SRS should be accompanied by clear guidance to effectively communicate changes to the mining industry. Guidance should be published within the SRS guidance section on WorkSafe's website and clearly articulate:

- sexual assault and sexual harassment is capable of being reporting via SRS;
- who can report sexual assault and sexual harassment via SRS;
- how to complete NIRF and IRF fields for sexual assault and sexual harassment; and
- examples of completed reports using dummy or deidentified information and frequently asked questions.

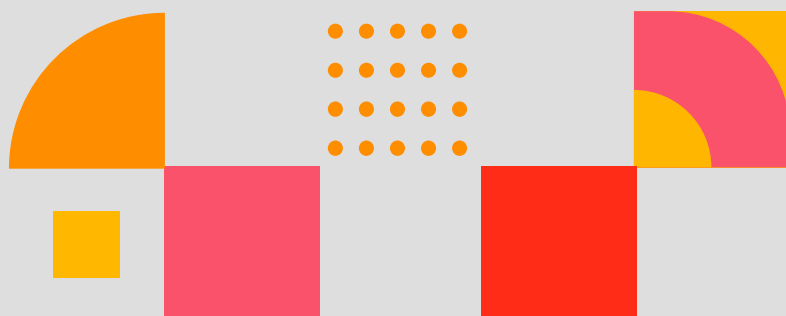
Where enhancements to SRS are not implemented in a timely manner, WorkSafe Mines Safety should develop interim public guidance for standardised free text reporting within the SRS guidance section on WorkSafe's website.

Recommendation 41: Review SRS access or develop a direct system reporting solution for affected persons, bystanders and third parties

To enable a direct system reporting pathway for affected persons, bystanders and other third parties, WorkSafe Mines Safety should review the ability to:

- urgently enhance SRS to extend access as an interim solution and provide access within the future system solution as a longer term solution; or
- urgently establish an alternate system solution, such as an online form.

This work should consider functionality to enable anonymous reporting while ensuring enough information has been received to investigate a report. An example is an anonymous two-way reporting functionality which enables two-way communication after a person making a complaint has submitted a report. This tool can continue to be used by the WorkSafe Mines Safety inspector throughout the investigation process to gather more information and keep the person making a complaint up to date as necessary.



Data and reporting

Current state observations:

- Data collected by WorkSafe Mines Safety about sexual assault and sexual harassment is limited and of low quality when assessed within the ABS DQF.⁽¹⁸¹⁾
- Data analysis related to sexual assault and sexual harassment is limited by the inconsistent terms used by the mining industry to describe sexual assault and sexual harassment within SRS.
- WorkSafe Mines Safety have commenced a collection of historical data related to sexual assault and sexual harassment to address the underreporting uncovered through the Inquiry.⁽¹⁸²⁾
- This historical data collection is largely a manual process being undertaken by the WorkSafe Mines Safety Regional Inspector/MHW inspection team leader.
- Prior to the Inquiry, WorkSafe Mines Safety were using limited sexual assault and sexual harassment data from other agencies to validate their understanding of the prevalence across the mining industry.
- The exchange of de-identified data to better inform understanding of prevalence, and strengthen both prevention and response, is a feature of several developing collaborations including with WA Police (see Finding 9).
- The WorkSafe Commissioner has relevant reporting and information sharing functions including:
 - collecting, analysing and publishing statistics relating to work health and safety; and
 - engaging in, promoting and coordinating the sharing of information to achieve the object of the WHS Act, including the sharing of information with other work health and safety regulators.⁽¹⁸³⁾
- Under the MARS program, the Centre for Transformative Work Design (CTWD) is undertaking a Landmark Study to obtain baseline data related to sexual assault and sexual harassment (among other topics), provide information on the current state of the mining industry and existing initiatives.⁽¹⁸⁴⁾
- The Landmark Study will be completed over a four year period; with preliminary findings due in late 2022.

Finding 54: Sexual assault and sexual harassment data from the mining industry is low quality

Sexual assault and sexual harassment data held by DMIRS is of low quality. The ABS DQF provides a standard for assessing and reporting on the quality of statistical information. It consists of seven data quality domains.

Five domains of the ABS DQF are of relevance to this Review, including institutional environment, timeliness, accuracy, coherence and accessibility:

- **Institutional environment** – the mining industry has underreported sexual harassment data. Furthermore the mining industry has reported not being assured that data will remain confidential;
- **Timeliness** – sexual assault and sexual harassment data received by WorkSafe Mines Safety is not timely. For example 97% of reports of sexual harassment and 70% of reports of sexual assault were historic. This historical data is manually input into SRS;
- **Accuracy** – reporting of sexual assault and sexual harassment relies upon free text terms which have not been standardised across WorkSafe or the mining industry;
- **Coherence** – data on sexual assault and sexual harassment data does not align with data from other organisations such as WA Police; and
- **Accessibility** – data on sexual assault and sexual harassment is not made readily available to the mining industry.

Low quality data negatively impacts WorkSafe Mines Safety's ability to understand the prevalence of sexual assault and sexual harassment across the mining industry, and trends the data may reveal. This impacts WorkSafe Mines Safety's ability to better prevent and respond to such incidences within the mining industry.

Finding 55: WorkSafe Mines Safety are starting to use external sources to inform understanding of sexual assault and sexual harassment

Data and analytics is integral to informing monitoring and compliance activities, including the use of inspection powers, carrying out proactive or reactive enforcement activities, license holder and assessor compliance assessments, and investigations.

Up until the Inquiry, WorkSafe Mines Safety were only using WorkCover data as an external data source to validate their understanding of the occurrence of sexual assault and sexual harassment through inconsistencies with lost time injury measurements. This data was specifically used to validate discrepancies between sexual assault and sexual harassment reported to WorkSafe Mines Safety and WorkCover. Data sharing from other agencies such as WA Police, the Fair Work Commission or the EOC has recently commenced to further support the understanding of prevalence rates across the mining industry.

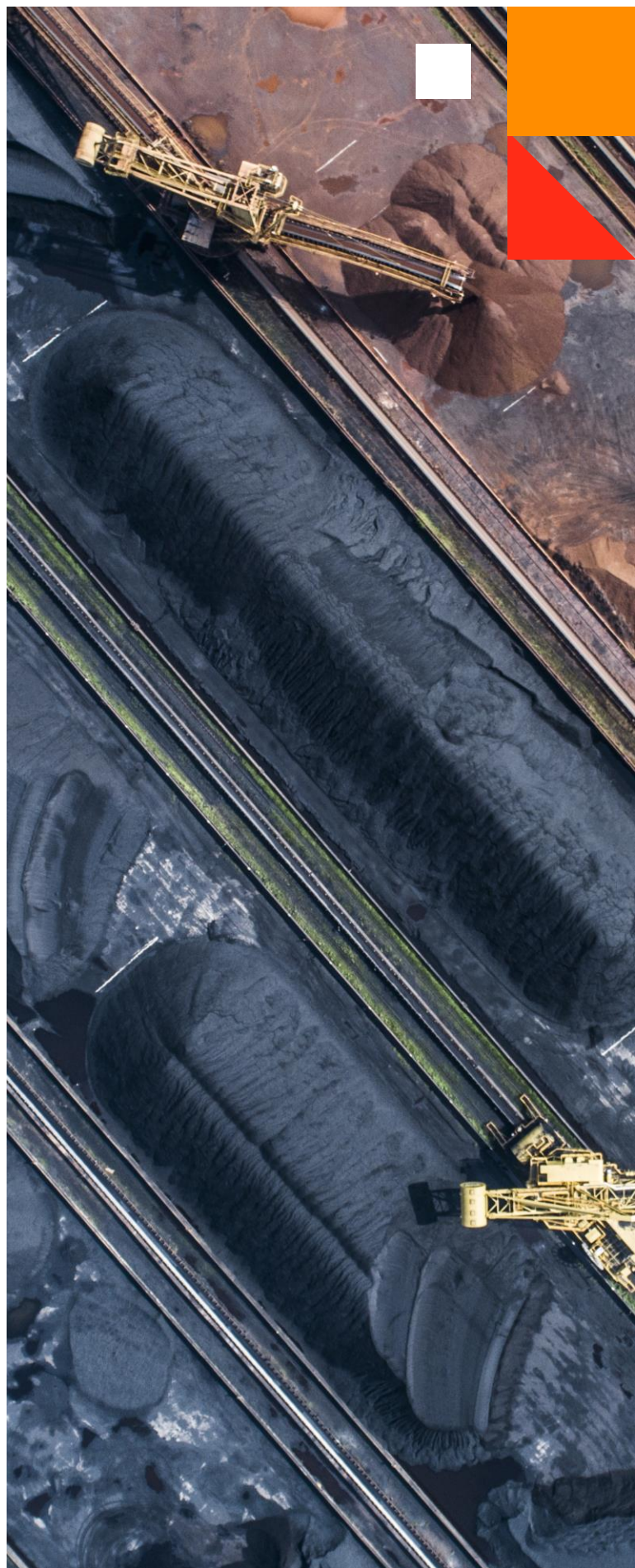
The exchange of data between external sources is critical for WorkSafe Mines Safety to build a more complete picture of sexual assault and sexual harassment in the mining industry and analyse trends.

Finding 56: Trends and risks based on sexual assault and sexual harassment data are not being shared with the mining industry

WorkSafe Mines Safety do not currently share comprehensive insights and trends in sexual assault and sexual harassment with the mining industry. Data shared in the *Safety Performance in the Western Australian mineral industry 2020-2021* report does not include any data on sexual assault or sexual harassment.⁽¹⁸⁵⁾

Sharing of trend data assists in informing preventative and response strategies led by the mining industry. An example of a recent trend shared with this Review is heightened instances of stalking presenting as sexual harassment. Sharing this information would inform the mining industry on what to look out for to identify stalking and how to put barriers in place to prevent stalking.

The *Landmark Study*, undertaken as part of the MARS program presents an opportunity for critical data to be shared with the mining industry to inform their approach to sexual assault and sexual harassment.⁽¹⁸⁶⁾ There is an opportunity for WorkSafe Mines Safety to make a public commitment to the sharing of the data outputs of the *Landmark Study* with the mining industry.



Data and reporting

Recommendation 42: Share appropriate sexual assault and sexual harassment data with the mining industry

WorkSafe Mines Safety should establish regular cadences for reporting sexual assault and sexual harassment data, trends and analysis to the mining industry, and relevant unions. Examples of data include:

- instances and nature of sexual assault and sexual harassment in the mining industry (for example, upward trends in stalking cases);
- locations of sexual assault and sexual harassment in Western Australia and specifically where they are occurring on mining and exploration sites (for example, accommodation areas);
- contributing factors (for example, alcohol);
- demographics of affected persons and perpetrators (gender, age, employment type, position and role at mine site); and
- case studies of reports and outcomes.

WorkSafe Mines Safety should commit to sharing the work being undertaken by the CTWD as part of the MARS program with the mining industry, and unions.

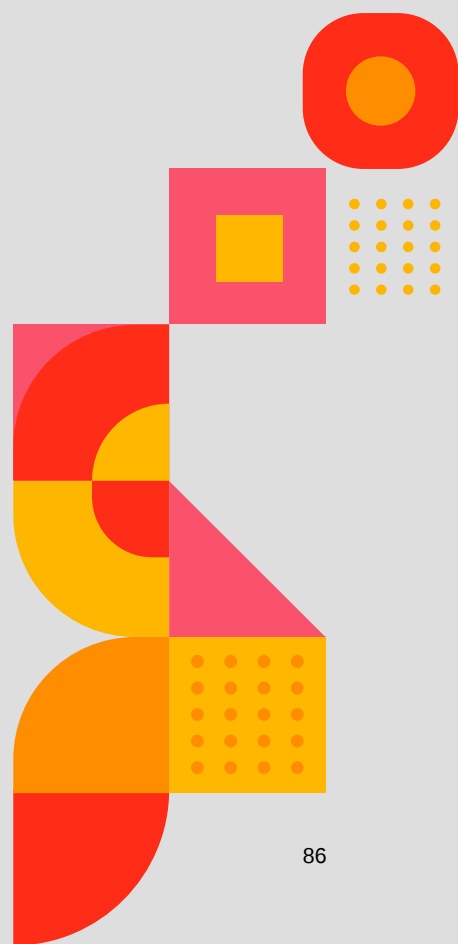
WorkSafe Mines Safety should ensure that no confidential information is being shared as part of this process to ensure the safety and privacy of affected persons and the person making a complaint.

Sharing of data should adopt a victim-centric approach which involves compassionate and sensitive delivery of both qualitative and quantitative data. It should also acknowledge the widespread underreporting and encourage recipients of the data to take proactive approaches to preventing and responding to sexual assault and sexual harassment.

Recommendation 43: Develop a common reporting framework between external sources and the SRS

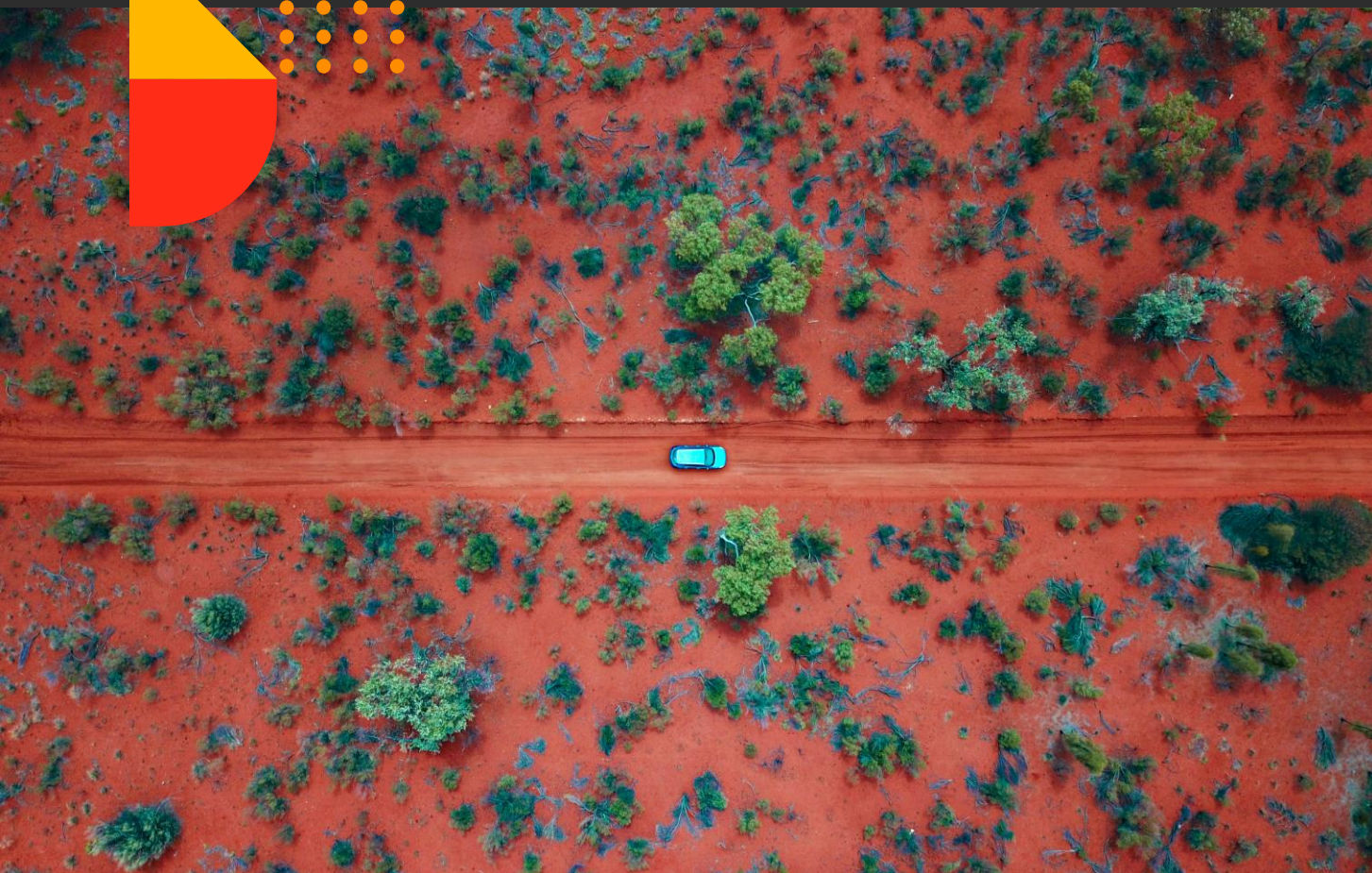
A common reporting framework would be the single standard for the collection, reporting and exchange of sexual assault and sexual harassment data between SRS and external sources (for example, significant data collection from the mining industry as well as historical reports of sexual assault and sexual harassment). This would allow automatic uploading of data into SRS instead of the manual inputting currently being performed. A common reporting framework would need to agree the data parameters, headings and free text usage.

DMIRS should ensure the safety system renewal program of work considers the level of integration that may be required for historical reporting and existing government systems.





Enablers for successful implementation





Enablers for successful implementation of recommendations from this Review

Recommendations within this report have been laid out across four domains within an organisational capability framework. DMIRS, WorkSafe and the WorkSafe Mines Safety teams cannot embed these recommendations overnight. These recommendations will require ongoing effort and collaboration with the mining industry and key partners.

A focus on key enablers will increase the effectiveness and sustainability of the initiatives that have been recommended. These enablers are leadership, investment, engagement and transparency.



Leadership

It takes bold leadership to drive change in mindsets and behaviours. As such, leaders across DMIRS and WorkSafe, including the WorkSafe Commissioner, must demonstrate a visible and authentic commitment to tackling sexual assault and sexual harassment within the mining industry.

Leadership commitment needs to take many forms, including championing the importance of this work, leading the implementation of these recommendations, prioritising proactive efforts, measuring progress and ensuring adequate resourcing and capability are in place. This commitment also needs to be clearly communicated including an enhanced focus on prevention, the required changes, what this means for their people and why this is important.



Engagement

Addressing sexual assault and sexual harassment in the mining industry will take a collaborative and integrated approach. DMIRS and WorkSafe Mines Safety engagement with the mining industry and key partner agencies on the topics of sexual assault and sexual harassment will need to increase to ensure that all key stakeholders understand the urgency to take action and what is expected when it comes to preventing, reporting and responding to sexual assault and sexual harassment.



Investment

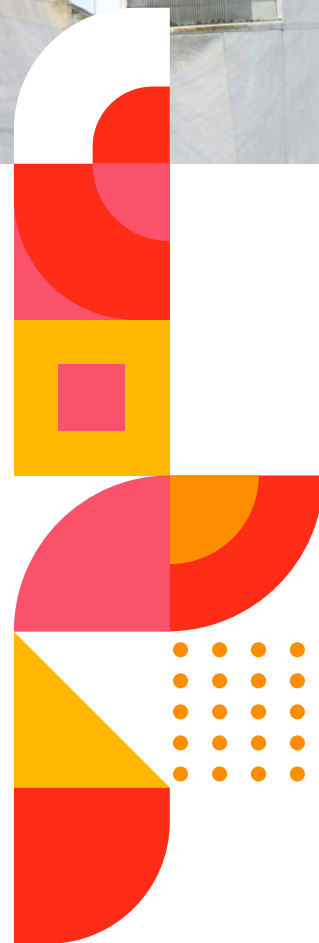
Delivering on these recommendations will require investment across the capability framework in structure, services, talent and systems. Investments in resourcing, training, systems and industry guidance are central to the effectiveness of WorkSafe Mines Safety.

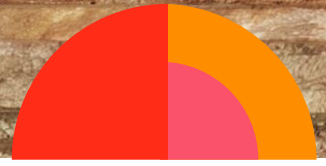
It is critical that there is sufficient investment in time, resources, leadership and oversight to ensure that these recommendations are embedded in a holistic and sustainable way.



Transparency

Transparency is critical to build confidence in WorkSafe Mines Safety's leadership in this area. DMIRS and WorkSafe Mines Safety should review their progress on implementing the recommendations from this Review at 12 months, including lessons learned, feedback from industry and any planned changes to the approach. Outcomes of this review should be made publicly available to increase transparency, accountability, and demonstrate DMIRS' commitment to addressing sexual assault and sexual harassment in the mining industry.





The key to change is embedding a workplace culture in all mining workforces that does not tolerate sexual assault or abuse.

Enough is Enough



Appendices



Appendix A. Consolidated findings

A total of 56 findings were made over the course of the review across the 11 themes.

Domain	Theme	No.	Finding	Page
Structure	Legislative framework	F.1	Notification requirements are not fit for purpose for sexual assault and sexual harassment	33
		F.2	Sexual assault and sexual harassment are not defined in the WHS Act and WHS Mines Regulations	34
		F.3	There is a low level of understanding on how the WHS Act and WHS Mines Regulations apply to sexual assault and sexual harassment	35
	Enforcement measures	F.4	A stronger regulatory response is required to address issues of underreporting	37
		F.5	Improvement notices are the main enforcement measure utilised for sexual assault and sexual harassment	38
		F.6	Improvement notices are underutilised for non-compliance relating to sexual assault and sexual harassment	38
		F.7	The test for applying a prohibition notice is difficult to apply to sexual assault and sexual harassment	39
		F.8	There are no specific examples of the application of enforcement measures to sexual assault and sexual harassment in training materials	39
	Collaboration	F.9	DMIRS and WorkSafe are renewing their agreements with key agencies to strengthen collaboration	42
		F.10	A lack of transparency about collaboration creates confusion over roles and responsibilities	42
		F.11	There are opportunities to improve consistency through enhanced collaboration as "One WorkSafe"	43
		F.12	Annual conference of Chief Inspector of Mines is a key opportunity to share leading practices to prevent and respond to sexual assault and sexual harassment	43
		F.13	The mining industry is eager for greater collaboration with DMIRS and WorkSafe Mines Safety, especially on addressing sexual assault and sexual harassment	43



Domain	Theme	No.	Finding	Page
Services	Industry guidance	F.14	WorkSafe engages with the mining industry prior to releasing guidance, but does not re-engage to seek feedback on materials	48
		F.15	Guidance on reporting requirements for sexual assault and sexual harassment is unclear	49
		F.16	Feedback from the mining industry suggests that the materials provided by WorkSafe Mines Safety are a good starting point, but need improvement	49
	Investigation process	F.17	Sexual assault is always allocated for investigation while sexual harassment depends on severity	52
		F.18	An affected person reporting to WorkSafe may need to share their story multiple times before reaching someone who will take ownership of their complaint	53
		F.19	Not all psychosocial hazard investigations (including sexual harassment) will include a site visit	54
		F.20	Reports of sexual assault will always result in a site visit	54
		F.21	Site visits for sexual assault or sexual harassment must focus on contributing factors	55
		F.22	Necessary prioritisation of WA Police investigations can result in delays to completing a WorkSafe inspection	55
		F.23	When an affected person has not reported to the PCBU, WorkSafe can take limited action	55
	Confidentiality and anonymity	F.24	WorkSafe is not able to guarantee anonymity of a person making a complaint	57
		F.25	The limitations on anonymity are not communicated upfront	57
		F.26	WorkSafe has limited options for anonymous reporting	57
		F.27	If sufficient information is provided, WorkSafe may investigate anonymous complaints through an amended process	58
		F.28	Anonymous complaints of sexual harassment may go uninvestigated where there is insufficient information or it is triaged at a low level	58
		F.29	Uninvestigated reports are recorded in SRS for follow up during the next site visit	58
	Experience of affected persons	F.30	WorkSafe Mines Safety is not able to provide affected persons with a justice outcome	60
		F.31	WorkSafe's website does not effectively communicate to affected persons, which may limit understanding and confidence to report	60
		F.32	There are no resources in languages other than English or culturally specific resources for sexual assault and sexual harassment	61
		F.33	Key initial points of contact that an affected person may speak to are not equipped to provide trauma-informed care	61
		F.34	WorkSafe only actively refers affected persons to support options in some circumstances	61
		F.35	There is misalignment between WorkSafe teams on engaging with affected persons throughout an investigation	62
		F.36	There is a lack of trust from the mining industry that WorkSafe Mines Safety will handle sexual assault and sexual harassment in a victim-centric way	63
		F.37	The requirement to display notices creates a risk of victimisation	63
		F.38	WorkSafe is not able to protect an affected person from victimisation and does not provide guidance or referrals to agencies that can provide recourse	64



Domain	Theme	No.	Finding	Page
Talent	Resourcing and capacity	F.39	The high volume of cases in the Mental Health and Wellbeing team means that some less severe sexual harassment cases wait months to be investigated	69
		F.40	Proactive Mentally Healthy Workplace Audits are unable to be completed due to capacity	70
		F.41	Capability uplifts on preventing and responding to sexual assault and sexual harassment are led by the WorkSafe Mines Safety Mental Health and Wellbeing team	70
		F.42	WorkSafe is competing for key talent with the mining industry who are often able to offer more compensation	71
		F.43	WorkSafe risks missing out on the benefits of workforce diversity	71
		F.44	Resourcing constraints across WorkSafe and DMIRS are contributing to a perception that more strategic activities are de-prioritised reducing capacity and capability in the longer term	71
	Training and capability	F.45	WorkSafe and DMIRS have been reactive rather than proactive in their response to sexual harassment and sexual assault	74
		F.46	There is no capability or competency framework specific to psychosocial hazards	75
		F.47	Inspectors are not equipped with skills on victim-centricity and vicarious trauma management	75
		F.48	Training and development opportunities are often de-prioritised due to high work demands	75
		F.49	There is a perception that specialist qualifications and professional registrations relevant to roles are not valued by DMIRS	76
		F.50	Industry views WorkSafe Mines Safety inspector capability as varied and inconsistent	76
Systems	System functionality	F.51	The SRS is not fit for purpose for reporting sexual assault and sexual harassment	81
		F.52	The Safety Reporting System does not provide adequate confidentiality	82
		F.53	There are no clear and reliable direct system reporting pathways for affected persons and bystanders	82
	Data and reporting	F.54	Sexual assault and sexual harassment data from the mining industry is low quality	84
		F.55	WorkSafe Mines Safety are starting to use external sources to inform understanding of sexual assault and sexual harassment	84
		F.56	Trends and risks based on sexual assault and sexual harassment data are not being shared with the mining industry	85



Appendix B. Consolidated recommendations

A total of 43 recommendations were made over the course of the review across the 11 themes.

Domain	Theme	No.	Finding	Page
Structure	Legislative framework	R.1	Progress amendments to the notification provisions within the WHS Act and WHS Mines Regulations.	36
		R.2	Progress amendments to the WHS Act and WHS Mines Regulations to include a definition of sexual assault and sexual harassment.	36
	Enforcement measures	R.3	Utilise stronger, existing enforcement measures and impose penalties for breaches of duties to notify sexual assault and sexual harassment	40
		R.4	Support reviewing the current test to apply a prohibition notice to include psychosocial elements	40
		R.5	Update WorkSafe inspector training materials to provide practical guidance on how different enforcement measures apply to sexual assault and sexual harassment	40
	Collaboration	R.6	Strengthen working arrangements with key agencies	44
		R.7	Map and communicate the roles and responsibilities of WorkSafe and other key parties in sexual assault and sexual harassment	44
		R.8	Continue to enhance ways of working and collaboration across WorkSafe	44
		R.9	Develop and provide collaborative resources on preventing and responding to sexual assault and sexual harassment to the mining industry through WorkSafe channels, for example the MARS program.	44
		R.10	Strengthen engagement with the mining industry to address sexual assault and sexual harassment, for example through a targeted and regular engagement plan to address the issues identified in this Review	45
		R.11	Collaborate with Communities to establish a Community of Practice for sexual assault and sexual harassment	45



Domain	Theme	No.	Finding	Page
Services	Industry guidance	R.12	Work with MAPAC to update the psychosocial hazards and FIFO codes of practice	50
		R.13	Clarify and provide specific guidance around reporting requirements for sexual assault and sexual harassment under the WHS Act and Mines Regulations	50
		R.14	Update the WorkSafe website for ease of use and clarity on sexual assault and sexual harassment	50
		R.15	Enhance sexual assault and sexual harassment guidance materials for simplicity, practicality and relevancy	50
		R.16	Run a dedicated roadshow and future annual campaigns, as part of the ongoing education program, focussed on sexual assault and sexual harassment	51
	The investigations process	R.17	Develop specialised sexual assault and sexual harassment reporting pathways	56
	Confidentiality and anonymity	R.18	Communicate availability of anonymous complaints with guidance on required information to investigate	59
		R.19	Develop and circulate minimum required information to investigate anonymous complaints to internal stakeholders	59
		R.20	Standardise processes for communicating circumstances where anonymity cannot be maintained	59
	Experience of affected persons	R.21	Establish an employee-focused section of the WorkSafe website	65
		R.22	Translate important materials around sexual assault and sexual harassment into other languages	65
		R.23	Design culturally specific materials for Aboriginal and Torres Strait Islander people on reporting pathways, rights and protections with respect to sexual assault and sexual harassment	65
		R.24	Consider options to engage directly with FIFO workers	65
		R.25	Provide the opportunity for affected persons to give feedback on their experience with WorkSafe Mines Safety investigations	66
		R.26	Review and update all policies and processes for victim-centricity	66
		R.27	Review the use of referral and support services	66
		R.28	Communicate how affected persons and persons making a complaint can seek remediation for victimisation	66
		R.29	Consider supporting changes on the requirement to display notices for sexual assault and sexual harassment	66



Domain	Theme	No.	Finding	Page
Talent	Resourcing and capacity	R.30	Develop a strategic workforce plan for WorkSafe Mines Safety	72
		R.31	Develop employee value proposition and review other role related documents to increase ability to attract and retain key talent	72
		R.32	Increase the number of specialist inspectors in the WorkSafe Mines Safety Mental Health and Wellbeing team and develop approaches to create surge capacity as needed	72
		R.33	Introduce key enabling roles to help increase capacity of Mental Health and Wellbeing team	72
		R.34	Increase the diversity of WorkSafe Mines Safety inspectors including: a) Increasing the representation of women; b) Increasing the representation of culturally and linguistically diverse inspectors; and c) Ensuring a breadth of industry backgrounds.	73
	Training and capability	R.35	Improve internal understanding of WorkSafe's role in preventing and responding to sexual assault and sexual harassment	77
		R.36	Develop a clear, relevant competency framework for WorkSafe psychosocial inspectors	77
		R.37	Include psychosocial hazards (including relevant refreshers) within the WorkSafe inspector curriculum, including specific examples and advice on dealing with sexual assault and sexual harassment	77
		R.38	Provide training in victim- centricity to key support staff as a priority	78
		R.39	Review Professional Association Membership Policy	78
Systems	System functionality	R.40	Maintain as a priority the safety system renewal project as a priority and implement interim enhancements to the SRS to support sexual assault and sexual harassment reporting	83
		R.41	Review SRS access or develop a direct system reporting solution for affected persons, bystanders and third parties	83
	Data and reporting	R.42	Share appropriate sexual assault and sexual harassment data with the mining industry	86
		R.43	Develop a common reporting framework between external sources and the SRS	86



Appendix C. Abbreviations and acronyms

Acronym	Description
ABS DQF	Australian Bureau of Statistics Data Quality Framework
AHRC	Australian Human Right Commission
AMEC	Association of Mining and Exploration Companies
CEO	Chief Executive Officer
CME	Chamber of Minerals and Energy
Communities	Department of Communities (WA)
CTWD	Centre for Transformative Work Design
DFSV	Dairy Food Safety Victoria
DIDO	Drive In Drive Out
DMIRS	Department of Mines, Industry Regulation and Safety
EAP	Employee Assistance Program
Enough is Enough	Enough is Enough – Sexual harassment against women in the FIFO mining industry.
EOC	Equal Opportunity Commission
FIFO	Fly In Fly Out
FIFO Code	WorkSafe Mines Safety developed an additional Code of Practice on <i>Mentally healthy workplaces for fly-in fly-out workers in the resources and construction sectors</i>
FLSO	Family Liaison Support Officer
GP	General Practitioner
ILO	International Labour Organisation
Inquiry	Western Australian Parliament's Community Development and Justice Standing Committee's inquiry into sexual harassment against women in the fly in fly out (FIFO) mining industry
IRF	Injury Report Form
JDFs	Job description forms
MAPAC	Mining and Petroleum Advisory Committee
MARS	Mental Awareness, Respect and Safety
MHW	Mental health and wellbeing
MHW Audit	Mental health and wellbeing audit
Minister	Minister for Mines and Petroleum; Energy; Corrective Services; Industrial Relations
MOU	Memorandum of Understanding
NIRF	Notifiable Incident Report Form
PCBU	Person conducting a business or undertaking



Acronym	Description
PTERS	Potential Trauma Event Response Support
PTSD	Post Traumatic Stress Disorder
Report into Workplace Culture at Rio Tinto	External review of Rio Tinto's workplace culture, published in 2022.
<i>Respect@Work</i>	Sexual Harassment National Inquiry Report published in 2020 by the Australian Human Rights Commission
Review	Regulatory capability review of WorkSafe Mines Safety
SARC	Sexual Assault Resource Centre
SCL	Specialised Calling Level
SEEK	Site Early Evidence Kit
SRG	Safety Regulation Group
SRS	Safety Regulation System
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
WA Police	Western Australia Police Force
WHS	Workplace health and safety
WHS Act	<i>Work Health and Safety Act 2020</i> (WA)
WHS Mines Regulations	<i>Work Health and Safety (Mines) Regulations 2022</i> (WA)
WHS Tribunal	Work Health and Safety Tribunal
WHS undertakings	Enforceable WHS undertakings
WISE	WorkSafe Information Systems Environment
WorkSafe Commissioner	WorkSafe Western Australian Commissioner



Appendix D. Reference list

Terms used

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
1	WA Government	<i>Equal Opportunity Act 1984 (WA)</i>	1984	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41630.pdf/\$FILE/Equal%20Opportunity%20Act%201984%20-%20%5B07-f0-02%5D.pdf?OpenElement
2	Safe Work Australia	Psychosocial hazards	n.d.	Webpage	https://www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/mental-health/psychosocial-hazards
3	WA Government	<i>Criminal Code Act Compilation Act 1913 (WA)</i>	1913	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45011.pdf/\$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913%20-%20%5B19-u0-00%5D.pdf?OpenElement
4	Parliament of Australia	<i>Sex Discrimination Act 1984 (Cth) s 28A</i>	1984	Legislation	https://www.legislation.gov.au/Details/C2014C00002
5	WA Government	<i>Work Health and Safety Act 2020</i>	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
6	DMIRS	WorkSafe	n.d.	Webpage	https://www.commerce.wa.gov.au/worksafe/
7	WA Government	<i>Police Act 1892 (WA)</i>	1892	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44518.pdf/\$FILE/POLICE%20ACT%201892%20-%20%5B14-m0-00%5D.pdf?OpenElement

Executive summary

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
8	Australian Human Rights Commission	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
9	Rio Tinto	Report into Workplace Culture at Rio Tinto	2022	Report	https://www.riotinto.com/-/media/Content/Documents/Sustainability/People/RT-Everyday-respect-report.pdf
10	WA Parliament	An inquiry into sexual harassment against women in the FIFO mining industry	2021	Inquiry	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/E5F7ABD1C551FEEC4825870A0027A60E
11	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf

Introduction

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
12	WA Government	<i>Work Health and Safety Act 2020 (WA)</i> s 156	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
13	WA Government	<i>Work Health and Safety Act 2020 (WA)</i> s 154	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
14	WA Government	<i>Work Health and Safety (Mines) Regulations 2022 (WA)</i> r 698O	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement
15	WA Government	About WorkSafe	2022	Webpage	https://www.commerce.wa.gov.au/worksafe/about-worksafe
16	WA Government	<i>Work Health and Safety Act 2020 (WA)</i> s 379	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
17	WA Government	Western Australia remains the national economic powerhouse	2022	Media statement	https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/10/Western-Australia-remains-the-national-economic-powerhouse.aspx#:~:text=Comments%20attributed%20to%20Premier%20and%20Treasurer%20Mark%20McGowan%3A&text=%22Our%20unrivalled%20economic%20management%20and,backbone%20of%20our%20nation's%20economy.%22
18	WA Government	Western Australia remains the national economic powerhouse	2022	Media statement	https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/10/Western-Australia-remains-the-national-economic-powerhouse.aspx#:~:text=Comments%20attributed%20to%20Premier%20and%20Treasurer%20Mark%20McGowan%3A&text=%22Our%20unrivalled%20economic%20management%20and,backbone%20of%20our%20nation's%20economy.%22
19	AMEC	AMEC submission to the Inquiry into sexual harassment against women in the FIFO mining industry	2021	Parliamentary submission	https://secureservercdn.net/198.71.233.82/0h5.0cf.myftpupload.com/wp-content/uploads/2021/08/0817-Submission-to-WA-Parliamentary-Inquiry-into-sexual-harassment-against-women-in-the-FIFO-mining-industry.pdf
20	AHRC	Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)	2018	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual
21	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf

Introduction (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
21	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
22	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
23	Rio Tinto	Report into Workplace Culture at Rio Tinto	2022	Report	https://www.riotinto.com/-/media/Content/Documents/Sustainability/People/RT-Everyday-respect-report.pdf
24	WA Government	<i>Criminal Code Act Compilation Act 1913 (WA)</i> s 323, 325	1913	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37141.pdf/\$FILE/Criminal%20Code%20Act%20Compilation%20Act%201913%20-%20%5B19-a0-00%5D.pdf?OpenElement
25	WA Police	Sexual Assault	2022	Webpage	https://www.police.wa.gov.au/Your-Safety/Sexual-assault
26	AIHW	Sexual assault in Australia	2020	Information sheet	https://www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true
27	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
28	WA Government	<i>Sex Discrimination Act 1984 (Cth)</i> s 28A	1984	Legislation	https://www.legislation.gov.au/Details/C2014C00002
29	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
30	WA Government	Regional inspectorate boundaries for mining operations	n.d.	Webpage	https://www.dmp.wa.gov.au/Safety/Regional-inspectorate-boundaries-9872.aspx

Introduction (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
31	Heather McNeill and Peter de Kruijff, Sydney Morning Herald	Nine reported sexual assaults in 18 months on WA mine sites	2021	News Article	https://www.smh.com.au/business/workplace/nine-reported-sexual-assaults-in-18-months-on-wa-mine-sites-20210702-p586h2.html
32	Caitlyn Rintoul, Danielle Le Messurier	Various articles in the West Australian between 2021-2022	2021-2022	News Article	Examples of media coverage: https://thewest.com.au/business/mining/wa-mining-sector-sexual-misconduct-landmark-inquiry-finds-industry-has-failed-to-protect-women--c-7257763 https://thewest.com.au/news/crime/fifo-sex-assault-inquiry-female-mine-worker-details-horrific-history-of-sexual-harassment-at-mines-ng-b882008667z https://thewest.com.au/business/mining/fifo-inquiry-mining-union-warns-government-not-to-miss-opportunity-to-clean-up-fifo-sex-misconduct-c-8310619
33	WA Parliament	An inquiry into sexual harassment against women in the FIFO mining industry	2021	Inquiry	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/E5F7ABD1C551FEEC4825870A0027A60E
34	WA Government	Mental Awareness, Respect and Safety (MARS) Program	2021	Webpage	https://www.wa.gov.au/organisation/departments-of-mines-industry-regulation-and-safety/mental-awareness-respect-and-safety-mars-program
35	Rio Tinto	Report into Workplace Culture at Rio Tinto	2022	Report	https://www.riotinto.com/-/media/Content/Documents/Sustainability/People/RT-Everyday-respect-report.pdf
36	Parliament of Western Australia	<i>Work Health and Safety Act 2020</i> (WA) s 154.	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
37	WA Government	Major boost for workplace mental health and mines safety	2022	Media Statement	https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/06/Major-boost-for-workplace-mental-health-and-mines-safety.aspx
38	Western Australia Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
39	WA Government	WA's anti-discrimination laws set for overhaul	2022	Media Statement	https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/08/WAs-anti-discrimination-laws-set-for-overhaul.aspx
40	WA Government	Western Australian Government response to the Community Development and Justice Standing Committee Report 2: 'Enough is Enough' Sexual harassment against women in the FIFO mining industry	2022	Parliamentary response	https://dmirs.wa.gov.au/enough-is-enough

Capability framework and emerging practices

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
41	OECD	OECD Regulatory Policy Outlook 2021	2021	Report	https://www.oecd-ilibrary.org/sites/38b0fdb1-en/index.html?itemId=/content/publication/38b0fdb1-en
42	Department of Treasury WA	Better Regulation Program	2020	Information Paper	https://www.wa.gov.au/system/files/2020-03/agency-information-paper-better-regulation-program.pdf
43	ILO	C190 – Violence and Harassment Convention	2019	Article	https://www.ilo.org/dyn/normlex/en/f?p=NO_RMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190
44	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
45	Government of Belgium	Act of 4 August 1996 on Wellbeing of Workers in the Performance of their Work	1996	Gazette	https://employment.belgium.be/sites/default/files/content/documents/Welzijn%20op%20het%20werk/EN/Act%20of%204%20August%201996%20on%20well-being%20of%20workers%20in%20the%20performance%20of%20their%20work.pdf
46	Government of Canada	<i>Canada Occupational Health and Safety Regulations</i> (SOR/86-304)	2022	Regulations	https://laws-lois.justice.gc.ca/PDF/SOR-86-304.pdf
47	Swedish National Board of Occupational Safety and Health	Violence and Menaces in the Working Environment	1993	Regulations	https://www.av.se/globalassets/filer/publikationer/foreskrifter/engelska/violence-and-menaces-in-the-working-environment-provisions-afs1993-2.pdf
48	Petroleum Safety Authority Norway	Working Environment Regulations	2013	Regulations	https://www.ptil.no/en/regulations/all-acts/?forskrift=14371
49	AHRC	Everyone's business: Fourth national survey on sexual harassment in Australian workplaces	2018	Survey	https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual
50	Government of Canada	<i>Work Place Harassment and Violence Prevention Regulations</i>	2020	Regulations	https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-130/page-1.html
51	WorkSafe VIC	Addressing sexual harassment in Victorian workplaces	2022	Website	https://engage.vic.gov.au/addressing-sexual-harassment-victorian-workplaces
52	OECD	OECD Regulatory Enforcement and Inspections Toolkit	2018	Report	https://doi.org/10.1787/9789264303959-en

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Ref	Author	Title	Publication date	Publication type	Link (where relevant)
53	Smith, Belinda; et al.	Preventing Sexual Harassment in Work: Exploring the Promise of Work Health and Safety Laws	2019	Literature article	https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3299784
54	Smith, Belinda; et al.	Preventing Sexual Harassment in Work: Exploring the Promise of Work Health and Safety Laws	2019	Literature article	https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3299784
55	WA Government	<i>Work Health and Safety Act 2020 (WA)</i>	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
56	WorkSafe VIC	WorkWell Toolkit: Gendered violence including sexual harassment	2022	Guidelines	https://www.worksafe.vic.gov.au/workwell-toolkit-prevent-and-manage-work-related-gendered-violence-your-medium-or-large-business
57	SafeWork Australia	Codes of Practice and Guidance Material	2021	Information Sheet	https://www.safeworkaustralia.gov.au/law-and-regulation/codes-practice
58	Employment and Social Development Canada	Requirements for employers to prevent harassment and violence in federally regulated workplaces	2021	Webpage	https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention.html
59	WorkSafe VIC	Report an incident: Criteria for notifiable incidents	2022	Webpage	https://www.worksafe.vic.gov.au/report-incident-criteria-notifiable-incidents
60	SARC	Sexual harassment regulation map	2020	Online Resource	https://www.humanrights.vic.gov.au/static/5459f61422de365de156f775344066fb/Resource-Sexual_harassment_regulation_map-Aug20.pdf
61	Safe Work Australia	Workplace sexual harassment	2022	Guidelines	https://www.safeworkaustralia.gov.au/safety-topic/hazards/workplace-sexual-harassment
62	WorkSafe TAS	What WorkSafe Can and Can't Do	2022	Online Resource	https://worksafe.tas.gov.au/topics/Health-and-Safety/health-and-wellbeing/wellbeing-a-z/bullying/what-worksafe-can-and-cant-do
63	SARC	Options after a sexual assault: Police and SARC	2022	Information Sheet	https://www.kemh.health.wa.gov.au/Other-Services/SARC/Resources/Police
64	VEOHRC	Preventing and responding to workplace sexual harassment	2020	Guideline	https://www.humanrights.vic.gov.au/static/8070e6b04cd51969490ccdecddff0c00/Resource-Guidelines-Workplace_sexual_harassment-Aug20.pdf
65	Champions of Change Coalition	Disrupting the System – Preventing and responding to sexual harassment in the workplace	2020	Report	https://championsofchangecoalition.org/wp-content/uploads/2020/09/Disrupting-the-System_Preventing-and-responding-to-sexual-harassment-in-the-workplace_CCI_web-FINAL.pdf
66	Universities Australia & OurWatch	Practice guidance: A victim/survivor-centred approach to responding to violence	2021	Guideline	https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2021/03/19124201/1.4-Victim-centred-approach-1.pdf
67	VEOHRC	Preventing and responding to workplace sexual harassment	2020	Guideline	https://www.humanrights.vic.gov.au/static/8070e6b04cd51969490ccdecddff0c00/Resource-Guidelines-Workplace_sexual_harassment-Aug20.pdf

Capability framework and emerging practices (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
68	Sexual Violence Research Initiative	Guidelines for the prevention and management of vicarious trauma among researchers of sexual and intimate partner violence	2015	Guideline	https://www.svri.org/sites/default/files/attachments/2016-06-02/SVRIVTguidelines.pdf
69	Quitangon, Gertie MD	Vicarious trauma in clinicians: Fostering resilience and preventing burnout	2019	Article, Psychiatric Times	https://www.psychiatrictimes.com/view/vicarious-trauma-clinicians-fostering-resilience-and-preventing-burnout
70	Office for Victims of Crime, U.S. Department of Justice	The Vicarious Trauma Toolkit	n.d.	Guideline	https://ovc.ojp.gov/program/vtt/introduction
71	Sexual Violence Research Initiative	Guidelines for the prevention and management of vicarious trauma among researchers of sexual and intimate partner violence	2015	Guideline	https://www.svri.org/sites/default/files/attachments/2016-06-02/SVRIVTguidelines.pdf
72	Quitangon, Gertie MD	Vicarious trauma in clinicians: Fostering resilience and preventing burnout	J26 July 2019	Article, Psychiatric Times	https://www.psychiatrictimes.com/view/vicarious-trauma-clinicians-fostering-resilience-and-preventing-burnout
73	PwC	The Leadership Agenda: Hopes and Fears Survey	2022	Website	https://www.pwc.com/gx/en/issues/workforce/hopes-and-fears-2022.html
74	Department of Prime Minister and Cabinet	Conversations with Anna Cronin: What makes regulator performance "best practice"?	2022	Online resource	https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/library/conversations-anna-cronin-what-makes
75	New Zealand Government: Ministry of Business, Innovation and Employment	New Zealand's Government Regulatory Practice Initiative (G-REG initiative)	2022	Online resource	https://www.mbie.govt.nz/cross-government-functions/government-regulatory-practice-initiative/
76	Australian Department of the Prime Minister and Cabinet	Using data to support compliance and better client experiences	n.d.	Webpage	https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/library/using-data-support-compliance-and-better
77	Australian Department of the Prime Minister and Cabinet	Dairy RegTech – DFSV's new service delivery model	n.d.	Webpage	https://deregulation.pmc.gov.au/priorities/regulator-best-practice-and-performance/library/dairy-regtech-dfsvs-new-service-delivery
78	VEOHRC	Sexual harassment support and response tool	n.d.	Chat tool	https://www.humanrights.vic.gov.au/resources/respond-to-sexual-harassment/
79	Norwegian Labour Inspection Authority	Report a health and safety issue	n.d.	Webpage	https://www.arbeidstilsynet.no/en/contact/report/

Capability framework and emerging practices (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
80	Safe2Say Something	Safe2SaySomething	2022	Webpage	https://www.safe2saypa.org/
81	Resources Safety & Health QLD	RSHQ sexual assault or sexual harassment complaint form	n.d.	Document	https://www.rshq.qld.gov.au/__data/assets/pdf_file/0017/1637000/RSHQ_Online-complaint-form.pdf
82	WorkSafe VIC	Online Complaint Form	n.d.	Online form	https://www1.worksafe.vic.gov.au/vwa/vwa029-005.nsf/xpOnlineComplaint.xsp
83	SafeWork NSW	Speak Up	n.d.	Webpage	https://speakup.safework.nsw.gov.au/
84	SafeWork SA	Contact us	n.d.	Online form	https://www.safework.sa.gov.au/about-us/contact-us/contact-us

Structure

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Legislative framework					
85	WA Government	<i>Work Health and Safety Act 2020</i> (WA)	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
86	Safe Work Australia	Model WHS laws	2022	Webpage	https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws
87	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 5	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
88	Australian Parliament	<i>Sex Discrimination Act 1984</i> (Cth) s 28A	1984	Legislation	https://www.legislation.gov.au/Details/C2014C00002
89	WA Government	<i>Criminal Code Act Compilation Act 1913</i> (WA) s 323, 325	1913	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37141.pdf/\$FILE/Criminal%20Code%20Act%20Compil%20Act%201913%20-%20%5B19-a0-00%5D.pdf?OpenElement
90	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 35	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
91	WA Government	<i>Work Health and Safety (Mines) Regulations 2022</i> (WA) r 675V	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement
92	Safe Work Australia	Amendments to the model WHS laws	2022	Webpage	https://www.safeworkaustralia.gov.au/media-centre/news/amendments-model-whs-laws
93	WA Government	Western Australian Government response to the Community Development and Justice Standing Committee Report 2: 'Enough is Enough' Sexual harassment against women in the FIFO mining industry	2022	Parliamentary response	https://dmirs.wa.gov.au/enough-is-enough
94	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 36(1), s35(a), s37	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
95	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 36(1)(a), 36(1)(d), 36(1)(e)	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
96	WA Government	<i>Work Health and Safety (Mines) Regulations 2022</i> r 5(a), 5(q), 5(r)	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement
97	DMIRS	Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety	2022	Information sheet	http://www.dmp.wa.gov.au/Documents/Safety/MSH_IS_Notify_S3xualHarassment.pdf

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Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Legislative framework					
98	WA Government	<i>Work Health and Safety Act 2020 (WA)</i> s 30	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
99	WA Government	<i>Work Health and Safety (Mines) Regulations 2022 r 5(r)</i>	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement
100	Safe Work Australia	Amendments to the model WHS laws	2022	Webpage	https://www.safeworkaustralia.gov.au/media-centre/news/amendments-model-whs-laws
101	WA Government	Western Australian Government response to the Community Development and Justice Standing Committee Report 2: 'Enough is Enough' Sexual harassment against women in the FIFO mining industry	2022	Parliamentary response	https://dmirs.wa.gov.au/enough-is-enough
102	DMIRS	Gendered violence: Sexual assault	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170a_br_sexualassault_final.pdf
103	DMIRS	Gendered violence: Sexual harassment	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170b_br_sexualharassment_final.pdf
104	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
105	DMIRS	Work Health and Safety (Mines) Regulations 2022 comparison table	2022	Information sheet	https://www.dmirs.wa.gov.au/sites/default/files/atoms/files/whsmsia.pdf
106	DMIRS	Gendered violence: Sexual assault	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170a_br_sexualassault_final.pdf
107	DMIRS	Gendered violence: Sexual harassment	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170b_br_sexualharassment_final.pdf
108	DMIRS	Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety	2022	Information sheet	http://www.dmp.wa.gov.au/Documents/Safety/MSH_IS_Notify_S3xualHarassment.pdf
109	WA Government	<i>Work Health and Safety (Mines) Regulations 2022 r 5(r)</i>	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement

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Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Enforcement measures					
110	Annabel Hennessy, The West Australian	Australian Nursing Federation ordered to act on bullying after whistleblower alleged inappropriate behaviour	2022	News article	https://thewest.com.au/business/workplace-matters/australian-nursing-federation-ordered-to-act-on-bullying-after-whistleblower-alleged-inappropriate-behaviour-c-5857363
111	Isabel Dayman, ABC News	NDIS provider accused of failing to protect support worker from sexual assault by client	2022	News Article	https://www.abc.net.au/news/2022-08-16/workplace-watchdog-to-take-legal-action/101335974
112	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
113	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
114	WorkSafe Mines Safety	MSD Incident data including regulatory actions	2022	Data report	WorkSafe Mines Safety internal document.
115	DMIRS	Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety	2022	Information sheet	http://www.dmp.wa.gov.au/Documents/Safety/MSH_IS_Notify_S3xualHarassment.pdf
116	WorkSafe Mines Safety	Internal document	2022	Data report	WorkSafe Mines Safety internal document.
117	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 191	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
118	WorkSafe Mines Safety	Internal document	2022	Data report	WorkSafe Mines Safety internal document.
119	Australian Government, Department of Health and Aged Care	How much alcohol is safe to drink?	2022	Webpage	https://www.health.gov.au/health-topics/alcohol/about-alcohol/how-much-alcohol-is-safe-to-drink#:~:text=To%20reduce%20the%20risk%20of,drinks%20on%20any%20one%20day.
120	WorkSafe Mines Safety	Internal document	2022	Data report	WorkSafe Mines Safety internal document.
121	WorkSafe Mines Safety	Internal document	2022	Data report	WorkSafe Mines Safety internal document.
122	Western Australia Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf

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Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Enforcement measures					
123	WorkSafe Mines Safety	Internal document	2022	Data report	WorkSafe Mines Safety internal document.
124	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 195(2)	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
125	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 195(1)	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
126	Safe Work Australia	Model Work Health and Safety Act - explanatory memorandum	2020	Webpage	https://www.safeworkaustralia.gov.au/doc/model-work-health-and-safety-act-explanatory-memorandum
127	DMIRS	Internal document	2022	PowerPoint Presentation	DMIRS internal document.



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Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Collaboration					
128	WA Government	<i>Work Health and Safety Act 2020</i> (WA) schedule 1, cl 23	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
129	WA Government	<i>Work Health and Safety (Mines) Regulations 2022</i> (WA) r 698O	2022	Regulations	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44753.pdf/\$FILE/Work%20Health%20and%20Safety%20(Mines)%20Regulations%202022%20-%20%5B00-a0-01%5D.pdf?OpenElement
130	WA Government	Western Australian Government response to the Community Development and Justice Standing Committee Report 2: 'Enough is Enough' Sexual harassment against women in the FIFO mining industry	2022	Parliamentary response	https://dmirs.wa.gov.au/enough-is-enough
131	DMIRS and WA Police	Extract of draft MOU between WA Police and DMIRS	2022	MOU	Confidential draft document
132	DMIRS and Respect@Work Council	Memorandum of Understanding Respect@Work Report Recommendation 3	2022	MOU	Confidential document
133	WorkSafe VIC	Memorandum of Understanding: Victoria Police	2020	MOU	https://www.worksafe.vic.gov.au/resources/memorandum-understanding-worksafe-victoria-and-victoria-police
134	WorkSafe VIC	Work-related sexual harassment: Know your rights	2022	Webpage	https://www.worksafe.vic.gov.au/work-related-sexual-harassment-know-your-rights
135	WorkSafe VIC	Memorandum of Understanding: Victorian Equal Opportunity and Human Rights Commission	2020	MOU	https://www.worksafe.vic.gov.au/resources/memorandum-understanding-worksafe-victoria-and-victorian-equal-opportunity-and-human

Services

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Industry guidance					
136	Darren Kavanagh, WorkSafe Commissioner, ThinkSafe Magazine	Commissioner's corner	2019	Article	https://issuu.com/dmirs_wa/docs/191018_nl_thinksafe_apr19/s/92592
137	Darren Kavanagh, WorkSafe Commissioner, ThinkSafe Magazine	Commissioner's corner	2021	Article	https://issuu.com/dmirs_wa/docs/211108_nl_thinksafe_sep21/s/13329287
138	DMIRS	Mentally healthy workplaces	2022	Webpage	https://www.dmp.wa.gov.au/Safety/Mentally-healthy-workplaces-25121.aspx
139	DMIRS	Code of practice: Violence and aggression at work	2022	Document	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221156_cp_violenceaggression.pdf
140	DMIRS	Code of practice: Workplace behaviour	2022	Document	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221155_cp_workplacebehaviour.pdf
141	DMIRS	Code of practice: Psychosocial hazards in the workplace	2022	Document	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221154_cp_psychosocialhazards.pdf
142	DMIRS	Code of practice: Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors	2022	Document	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/fifo_cop.pdf
143	DMIRS	Gendered violence: Sexual assault	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170a_br_sexualassault_final.pdf
144	DMIRS	Gendered violence: Sexual harassment	2022	Information sheet	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/221170b_br_sexualharassment_final.pdf
145	DMIRS	Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety	2022	Information sheet	http://www.dmp.wa.gov.au/Documents/Safety/MSH_IS_Notify_S3xualHarassment.pdf
Confidentiality and anonymity					
146	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
147	WA Government	<i>Freedom of Information Act 1992 (WA)</i>	1992	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44917.pdf/\$FILE/Freedom%20of%20Information%20Act%201992%20-%20%5B07-e0-00%5D.pdf?OpenElement
148	DMIRS	Contact information	2022	Webpage	https://www.dmirs.wa.gov.au/content/contact-information

Services (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Experience of affected persons					
149	DMIRS	Complaints about bullying, sexual assault or harassment	2022	Webpage	https://www.commerce.wa.gov.au/worksafe/complaints-about-bullying-sexual-assault-or-harassment
150	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
151	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
152	McCalman et al.	Responding to Indigenous Australian Sexual Assault: A Systematic Review of the Literature	2014	Article	https://journals.sagepub.com/doi/pdf/10.1177/2158244013518931
153	SARC	Resources for Aboriginal people and community	2022	Webpage	https://www.kemh.health.wa.gov.au/Other-Services/SARC/Resources/aboriginal
154	WorkSafe	Internal document	2022	Policy	Internal WorkSafe document
155	WA Government	<i>Work Health and Safety Act 2020</i> (WA) s 210	2020	Legislation	https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43434.pdf/\$FILE/Work%20Health%20and%20Safety%20Act%202020%20-%20%5B00-00-02%5D.pdf?OpenElement
156	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
157	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
158	WorkSafe	Internal document	2022	Presentation	Internal WorkSafe document
159	WA Government	<i>Equal Opportunity Act 1984</i> (WA)	1984	Legislation	https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_305_homepage.html

Talent

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Resourcing and capacity					
160	DMIRS	Diversity and Inclusion Plan 2018-2023	2018	Report	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/diveristyplan-2019-2023.pdf
161	WorkSafe Mines Safety	Mentally healthy workplaces – audit tool	2020	Tool	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/audittool_mentallyhealthworkplaces.docx
162	Diversity Council Australia	Business Case for Diversity & Inclusion	n.d.	Webpage	https://www.dca.org.au/di-planning/getting-started-di/business-case-diversity-inclusion#:~:text=Greater%20employee%20satisfaction%20leads%20to,perspectives%20increases%20creativity%20and%20innovation.
163	DMIRS	Annual Report 2021-2022	2022	Report	https://www.dmir.wa.gov.au/sites/default/files/atoms/files/annual_report_2021-22-web.pdf
164	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
165	DMIRS	Diversity and Inclusion Plan 2018-2023	2018	Report	https://www.commerce.wa.gov.au/sites/default/files/atoms/files/diveristyplan-2019-2023.pdf

Talent (continued)

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
Training and capability					
166	DMIRS	Internal document	2022	PowerPoint Presentation	DMIRS internal document
167	WorkSafe	Internal document	2022	Document	WorkSafe internal document
168	WorkSafe	Internal document	2022	Present	WorkSafe internal document
169	DMIRS	Internal document	2022	Document	DMIRS internal document
170	AHRC	Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)	2018	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual
171	AHRC	Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)	2018	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual
172	AHRC	Respect@Work: Sexual Harassment National Inquiry Report (2020)	2020	Report	https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020
173	AIHW	Sexual assault in Australia	2020	Information sheet	https://www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true
174	WorkSafe	Internal document	2022	Document	WorkSafe internal document
175	WorkSafe	Internal document	2022	Document	WorkSafe internal document
176	DMIRS	Internal document	n.d.	Document	DMIRS internal document



Systems

Ref	Author	Title	Publication date	Publication type	Link (where relevant)
System functionality					
177	WorkSafe Mines Safety	Internal document	n.d.	System user guide	WorkSafe internal document
178	WorkSafe Mines Safety	Internal document	n.d.	System user guide	WorkSafe internal document
179	WorkSafe Mines Safety	Internal document	n.d.	System user guide	WorkSafe internal document
180	DMIRS	Contact information	n.d.	Webpage	https://www.dmirs.wa.gov.au/content/contact-information

Data and reporting					
181	Australian Bureau of Statistics	The ABS Data Quality Framework	n.d.	Webpage	https://www.abs.gov.au/websitedbs/D331014.nsf/home/Quality:+The+ABS+data+quality+framework
182	WA Legislative Assembly	Enough is Enough – Sexual harassment against women in the FIFO mining industry	2022	Report	https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/EF1DF1A3F5DF74A848258869000E6B32/\$file/20220621%20-Report%20No%202.pdf
183	WA Government	WorkSafe Commissioner	n.d.	Webpage	https://www.wa.gov.au/organisation/worksafe-commissioner
184	WA Government	Mental Awareness, Respect and Safety (MARS) Program	n.d.	Information sheet	https://www.wa.gov.au/system/files/2022-09/MARS_Program_A4_leaflet.pdf
185	DMIRS	Safety Performance in the Western Australian mineral industry 2020-2021	2021	Report	https://www.dmp.wa.gov.au/Documents/Safety/Safety%20performance%20in%20the%20Western%20Australian%20mineral%20industry%202020-21%20-%20report.pdf
186	WA Government	Mental Awareness, Respect and Safety (MARS) Program	n.d.	Information sheet	https://www.wa.gov.au/system/files/2022-09/MARS_Program_A4_leaflet.pdf

Appendix E. Stakeholders consulted

73 stakeholder groups including DMIRS employees, mining industry representatives, unions and collaborative agency representatives were consulted as part of this review. Please note that consultation does not equate to endorsement of the findings contained in this report.

Stakeholder group	Name	Mechanism
Interstate government agencies	SafeWork New South Wales	Focus group
	WorkSafe Queensland	Focus group
	WorkSafe Victoria	Focus group
Western Australian government agencies	Equal Opportunity Commission	Focus group
	Sexual Assault Resource Centre	Focus group
	Western Australian Police	Focus group
Western Australian unions	Australian Manufacturing Workers' Union (AMWU)	1-1 interview
	Construction, Forestry, Mining and Energy Union (CFMEU)	1-1 interview
	Mining and Energy Union	1-1 interview
	Unions WA	1-1 interview
Mining industry	The Chamber of Minerals and Energy of Western Australia (30 organisations)	Workshops and/or follow up interviews
	The Chamber of Minerals and Energy of Western Australia (30 organisations)	
	Association of Mining and Exploration Companies (8 organisations)	
DMIRS	Call Centre team	Focus group
	Deputy Director General - Resource and Environmental Regulation Group	1-1 interview
	Deputy Director General - Safety Regulation Group	1-1 interview
	Director WorkSafe Mines Safety	1-1 interview
	Human Factors and Ergonomics Inspector team – WorkSafe General Industries	Focus group
	Mental Health And Wellbeing Inspector team – WorkSafe Mines Safety	Focus group
	WorkSafe Mines Safety Directorate Inspector team	Focus group
	WorkSafe Petroleum and Geothermal Energy Operations Safety Inspector team	Focus group
	Project Manager Safety System Renewal	1-1 interview
	Regional Inspector of Mines	1-1 interview
	Regional Inspectors	Focus group
	Regulation And Safety team	Focus group
	Safety Group Regulation Training team	Focus group
	Training and Business Services team	Focus group
	WorkSafe Commissioner	1-1 interview
	WorkSafe Investigations team	Focus group
	WorkSafe Triage Notifications	Focus group





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