

41ST PARLIAMENT



Community Development and Justice Standing Committee

Report 2

'ENOUGH IS ENOUGH'

Sexual harassment against women in the FIFO mining industry

Presented by
Ms L. Mettam, MLA

June 2022

Committee Members

Chair	Ms L. Mettam, MLA Member for Vasse
Deputy Chair	Mr M.J. Folkard, MLA Member for Burns Beach
Members	Ms K.E. Giddens, MLA Member for Bateman
	Ms D.G. D'Anna, MLA Member for Kimberley
	Ms J.L. Hanns, MLA Member for Collie-Preston

Committee Staff

Principal Research Officer	Dr Alan Charlton
Research Officers	Dr Sam Hutchinson
	Ms Franchesca Walker (January - February 2022)
	Ms Marie Martin (April - May 2022)

Legislative Assembly
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Tel: (08) 9222 7494
Email: lacdjsc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au/cdjsc

Published and printed by the authority of the Community Development and Justice
Standing Committee of the Legislative Assembly of Western Australia.

June 2022

ISBN: 978-1-925759-03-0

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Community Development and Justice Standing Committee, Report 2)

**Community Development and Justice Standing
Committee**

‘Enough is enough’

**Sexual harassment against women in the FIFO
mining industry**

Report No. 2

Presented by

Ms L. Mettam, MLA

Laid on the Table of the Legislative Assembly on 23 June 2022

Inquiry Terms of Reference

The Community Development and Justice Standing Committee will inquire into and report on the sexual harassment against women in the FIFO mining industry.

In particular, the Committee will consider:

- i. Is there a clear understanding of the prevalence, nature, outcomes and reporting of sexual harassment in FIFO workplaces?
- ii. Do existing workplace characteristics and practices – including but not limited to workplace cultures, rosters, drug and alcohol policies and recruitment practices – adequately protect against sexual harassment?
- iii. Are current legislation, regulations, policies and practices adequate for FIFO workplaces in Western Australia?
- iv. What actions are being taken by industry and government to improve the situation and are there any examples of good practice?

Chair's Foreword

When we commenced this Parliamentary inquiry into sexual harassment in the mining and resources industries workplaces, I knew horrific stories would be brought forward. But I was shocked and appalled well beyond expectation by the size and depth of the problem.

We were told how sexual harassment is generally accepted or overlooked, of the abuse of positions of power, of serious breaches of codes of conduct and the culture of cover-up. To hear the lived reality of the taunts, attacks and targeted violence, the devastation and despair the victims experienced, the threats to or loss of their livelihood that resulted was shattering and completely inexcusable. And simply shocking that this could be taking place in the 21st century in one of the State's most lucrative industry sectors. This represents a failure of the industry to protect its workers and raises real questions about why Government was not better across this safety issue. The only effective way to address this abhorrent behaviour is to bring it to the surface, to talk about it, point it out, expose it, rail against it, prosecute it and punish it.

I want to sincerely thank the brave women who came forward to lift the lid on this abhorrent and systemic pattern of workplace behaviour. With their permission I give you a small sample of the many horror stories we heard:

- A woman while working for a contractor had a near-miss incident with a haul truck she was driving. She informed us the site supervisor told her he would make the safety investigation 'go-away' if she had sex with him. This same woman says she was told she would have to 'get on her knees' if she wanted to get 'her shirt' – this meant a permanent job with the mining company.
- One woman told how she was knocked unconscious in her donga and awoke to find her jeans and underpants around her ankles. 'I felt sick, ashamed, violated, dirty and very confused', she said.
- Another told that a man forced his hand down her top numerous times in front of other workers and no one did anything.
- One woman told of a supervisor telling her of sexual jokes and comments being made about her by others. She became upset and the supervisor's response was to force himself on her, kissing and hugging her.

There were stories of sex dolls put in front of women's dongas, and sex toys hung on their doors. Stories of unsolicited and unwelcome sexual attention, stalking, texting of explicit and lewd material, and horrifying stories of sexual assault. We heard details of unwanted touching, sexual comments, provocative photo requests and grooming. We heard of power-play behaviour known as 'shovelling' where iron ore would be dumped on the cab of trucks operated by women if they didn't comply with sexual requests.

These stories and the others we heard illustrate the full range of behaviours that make up sexual harassment and sexual assault as well providing examples of general incivility – which is well-recognised as a precursor to worse behaviour. That someone was at last listening,

taking their stories seriously, was I believe, an important step in breaking the cycle of abuse and gave many women the courage to come forward for themselves and others. Again, thank you to all these courageous women who trusted our process and made submissions.

Now it is up to the mining industry and Government to seriously address the recommendations in this Report. It is time to come together to make the cultural, system and legislative changes required to equip, prepare and educate the workforce. To move the culture of mining workplaces to one where understanding, preventing and appropriately dealing with incidents of workplace sexual harassment is the practiced norm. Where lifting the lid on sexual harassment is considered everyone's business and taken seriously as a responsibility.

As part of the normal business of the inquiry and to help us understand the many factors that enable sexual harassment to thrive in the workplace, we received submissions and heard evidence from a wide range of people and organisations. Mining companies were generally forthcoming and open in their approach to the Inquiry, as was the Chamber of Minerals and Energy. Still, they expressed shock at the size of the problem and recognised the need to urgently address cultural change. As a Committee we were shocked by the facts, but also surprised that companies could be this surprised. Some pointed to matters they were beginning to address, such as improving physical security in camps and introducing new policies to limit alcohol consumption on site. They admitted there could be a reluctance to report sexual harassment in the workplace although most felt this was changing, evidenced by the increased number of incidents reported in recent times. They also expressed the need for clear definitions and guidance from the regulator on reporting requirements and thresholds.

There were many concerns raised on the matter of reporting sexual harassment. We heard of the distrust and lack of confidence many employees had in existing hierarchical management structures – a lack of trust is an obvious barrier to reporting of these issues. Anonymous reporting systems had been provided through external employee support agencies by some companies and this was helping identify pockets of abuse and victimisation. Overall, the inquiry found that because of the embedded nature of sexual harassment a number of reporting options were required. This includes internal options as well as external options such as anonymous support services, unions and the Equal Opportunity Commission.

Mining companies pointed to incidents where they had taken decisive action including dismissal for workplace sexual offences. Individuals, however, pointed to incidents where perpetrators had merely changed worksites or were reemployed in the industry with a different company. We considered the value of establishing a register of offenders that could be accessed as part of the employment process – something like the Safety White Card or the Working with Children Card. Of course, we understand the concept of a register of sexual harassment offenders raises matters of confidentiality and challenges of natural justice as well as the threshold for inclusion. We have recommended that Government explore options which could operate effectively and fairly to prevent habitual sexual harassment offenders continuing to be re-employed in the mining workplace. This is an

important matter that could be effective as a deterrent as well as adding to site safety by the permanent removal of perpetrators.

The Department of Mines, Industry, Regulation and Safety (DMIRS) provided submissions to the inquiry as did Worksafe WA, and the Minister for Mines appeared before us as well as submitting written information. We also had a briefing from the Sex Discrimination Commissioner, Kate Jenkins and we heard from the Commissioner for Equal Opportunity, Dr John Byrne.

The submissions from DMIRS and Worksafe referred generally to the now superseded *Occupational Health and Safety Act* regime, including the *Mines Safety Inspection Act*. We are pleased the regulator now operates with the new *Work Health and Safety (WHS) Act* that specifically covers psychological injury at work, even if it does not contain a comprehensive definition of sexual harassment. Also, we are concerned that the system still views cases of sexual harassment through the prism of physical workplace safety, where a 10-day lost time injury is required before reporting becomes compulsory. This adds to the concerns we shared as a committee about the regulator's poor level of knowledge, with the low number of sexual harassment reports being made to DMIRS over the last 7 years under this same threshold.

More broadly, it was hard to obtain accurate or consistent figures on the extent of sexual harassment and sexual assault to enable industry wide analysis. The figures provided by mining companies varied widely and while the WA Police Force informed us they had investigated 23 reports of sexual assaults on mine sites over the last 2 years, DMIRS reported it had only received 22 reports over the previous seven years. We have made some recommendations to improve this. It is difficult to believe the regulator could have accepted this level of reporting as reflecting the true situation on the ground.

We are pleased that since we commenced this inquiry, Worksafe WA has issued a new code of conduct that names sexual harassment as unacceptable behaviour and has taken steps to enhance its data collection. This is a welcome addition but would be more effective with the introduction of a consistent and contemporary definition of sexual harassment in the WHS legislation or regulations. The *Equal Opportunity Act 1984* is also outdated, placing the onus of proof on sexual harassment victims, and I am pleased there is broad support from stakeholders for a uniform and contemporary definition in the WHS Act as well as the Equal Opportunity Act.

At the most senior levels of all organisations who we spoke to, there was a determination to tackle the gender inequalities and social norms that enable sexual violence and harassment to occur and to implement effective measures in their workplaces or regulatory regimes. As one example of that effort, during the inquiry Rio Tinto conducted a comprehensive confidential survey of all its worksites and made the resulting report public. This was a ground-breaking move providing a strong baseline for measurement and a framework for action. We commend Rio Tinto for beginning the reform journey and encourage other companies to invest in a similarly strong foundation for change.

There are well-documented frameworks for addressing sexual harassment, from the United Nations through its UN Women organisation and International Labour Organization, to the Australian Human Rights Commission's *Respect@Work* Report. In making recommendations, we considered these frameworks and are confident all our recommendations are consistent with best practice.

We immediately hope to see transformative prevention actions in the workplace. I am pleased that there is evidence the industry and Government have already started to move since the inquiry was launched, demonstrating motivation and commitment to stamp out sexual harassment.

Our recommendations cover many areas, including establishing industry standards for accommodation facilities, CCTV, lighting, and other safety measures as well as more moderate drinking standards. We also ask the sector to actively work to reduce the risks exacerbated by high rates of sub-contracting, ensuring that the obligations and health and safety standards are consistent across all workplaces.

It is important the mining sector is proactive in addressing leadership within the workplace and that managers and employees are supported with effective human resource policies, procedures and practices. Clear guidelines and codes of practice must be developed by the companies and DMIRS removing any ambiguity in what constitutes unacceptable behaviour, providing clarity on appropriate support mechanisms for victims and clear guidance for reporting incidents.

It was clear that there was a gap in the required expertise, experience and training to deal with reports of sexual harassment and assault. We call on Government to work with all stakeholders to establish a fully resourced, culturally appropriate expert group to investigate complaints of sexual harassment and related offences in the mining industry.

Allied to this we have recommended more and better training for supervisors and employees – training that must be detailed, specific and accredited. Mining companies and DMIRS should look to raise the qualification and capacity of their specialist resources to deal with incidents of sexual harassment. We also expect DMIRS to work with the industry sector on bystander training on reporting incidents.

All mining companies need to establish victim-centric procedures for dealing with incidents of sexual harassment. Victims must be able to maintain control of the process and decision making within it. This victim-centric focus must also be maintained by any external parties brought into the complaint process.

In any industry and any regulatory system, preventing and responding to incidents is a primary activity, knowing what is happening and how well things are being dealt with are central to good management and good regulation. Getting that knowledge requires good reporting systems, and good analysis of the information. We were surprised how many of the people who made submissions to us were ignorant of available reporting systems or clearly mistrusted them. For this reason, many of our recommendations are targeted at gathering more reliable information on the prevalence of sexual harassment and using this

information to drive workforce education and change. It is clear there needs to be several reporting options available to victims of harassment, both internal and external, including anonymous reporting options which can trigger HR responses or Worksafe responses.

Many of the women who made submissions to the inquiry said this was the first time they had told of their experience to anyone. We are glad the inquiry process was trusted and acknowledge their courage in being prepared to share their experiences in the hope it would improve the situation for others. Other inquiries and truth engagement processes have demonstrated that there is a positive healing power for victims of trauma if their experiences are heard in a safe and supportive formal complaint handling process. Building on this, perhaps one of our most important recommendations is for Government to consider establishing a process to hear, document and acknowledge the experiences of victims of historical sexual harassment including exploring opportunities for redress with a view to promoting recovery.

The key to change is imbedding a workplace culture in all mining workforces that does not tolerate sexual assault or abuse, empowering bystanders, like the culture change programs that have addressed physical safety with such success. This is a large task that will require commitment and change in all levels of mining companies themselves and considerable resources. It is important that the Parliament, Government and the broader public become aware of the magnitude of the horrendous violence and abuse women are exposed to while going about their work and I present this Report to them on behalf of my Committee, seeking swift and urgent action.

Thank you to my fellow members of the Community Development and Justice Standing Committee: Deputy Chair Member for Burns Beach, the Member for Bateman, Member for Collie and the Member for Kimberley.

I would also like to extend special thanks to the Committee staff: Principal Research Officer Dr Alan Charlton and Research Officer Dr Sam Hutchinson for their considerable work in developing this Report.



MS L. METTAM, MLA
CHAIR

Contents

Inquiry Terms of Reference	ii
Chair’s Foreword	iii
Executive Summary	xiii
Ministerial Response	xvii
Findings and Recommendations	xix
1 Introduction	1
<hr/>	
Context of the inquiry	2
Committee approach	3
Employment in mining and resources	4
Definitions used in this report	5
Content of the report	6
2 Women in mining live with the reality of sexual harassment and assault	9
<hr/>	
Introduction	9
Many people shared their stories of harassment and assault	10
We heard about a staggering range of abuse, harassment and assault	11
National research shows that sexual harassment is very common, and more so in the mining industry	16
3 Industry has perpetuated a culture that fails to protect women	21
<hr/>	
Introduction	21
The FIFO industry embodies the main risks to sexual harassment	22
The culture of mining life has perpetuated poor behaviour	23
Alcohol is well acknowledged as an issue in the resources sector	27
There is continuing gender imbalance in the sector	31
There is a clear power imbalance in the mining and resources sector	34
4 Industry has begun working to remedy its failings but must do much more	41
<hr/>	
Introduction	41

There are some agreed approaches to improving workplaces	41
Companies and industry representatives acknowledged they had a serious problem	43
Some industry-wide action began in 2021	47
Mining companies have made efforts to better understand the issue	48
Companies have committed significant resources to improve physical security in camps	51
There is a disconnect between strong high level pronouncements and policies and what happens on the ground	55
Industry had high level policies that addressed safety	59
Training of managers and staff was not effective	60
There was little evidence of adequate support for victims	62
5 Industry understanding of sexual harassment is poor and underreporting is endemic	65
<hr/>	
There are no clear numbers about the prevalence of harassment	66
There is endemic underreporting of incidents	67
Options to analyse the impact of harassment are being overlooked	71
Mining companies have formal reporting systems in place	73
Many witnesses had negative experiences reporting incidents or were too afraid to report	76
Anonymous reporting is not always available	82
Government agencies	83
Industry	85
Third-party and bystander reporting is vital to understanding and improving culture	87
The use of NDAs inhibits the proper capture of all information	89
DMIRS is not receiving relevant reports from mining companies	92
Employers lack adequate guidance on reporting sexual harassment, but have failed to report appropriately	96
6 Regulation of workplaces has not kept up with changing expectations	103
<hr/>	
Introduction	103
The regulatory framework for sexual harassment is complex	104
Commonwealth law	104
State law	107
WHS frameworks	107

WA legislation inconsistently and inadequately defines and deals with workplace sexual harassment as an issue	111
It is unclear if recent changes to regulations, codes, policies and practices are adequate	115
Sexual harassment is best considered primarily as a work, health and safety issue, not simply an HR matter	118
DMIRS and WorkSafe are underprepared to deal with sexual harassment	125
FIFO work camps and accommodation are part of work sites	131
 Appendices	 133
<hr/>	
1 Committee's functions and powers	133
2 Submissions received	135
3 Hearings and briefings	139
4 Glossary	143

Executive Summary

The mining industry is an enormous part of the West Australian (WA) economy, as well as a large part of all aspects of life in the State. It brings in hundreds of billions of dollars to the State every year. The industry, including minerals, oil and gas, involves companies ranging from single operators to some of the biggest multi-national companies on the planet, and employs many thousands of people across many sites.

It is no secret that mining is a tough industry, exacerbated by the practice of ‘fly-in-fly-out’ (FIFO) common across the industry. People have for decades been required to work and live in remote places, where the difference between work and recreation is blurred, and where companies have an unusually high level of control over what people do. It is a profitable business for the mining companies, for individuals working in the industry and a major contributor to the finances of the State.

This inquiry was triggered following a series of public reports of sexual assault and harassment in FIFO workplaces. At a time when the prevalence of sexual harassment across industries and sectors was becoming increasingly apparent, this Committee decided to look at the particulars in this central WA industry.

During the inquiry we considered a wide range of evidence. We received 87 written submissions, 55 of which came from people with personal experience of the issue. We heard testimony from 44 people representing companies, organisations or providing professional testimony, as well as several brave individuals who told us their personal experience of sexual harassment in the sector. Members of the Committee also travelled to four sites, including town-based accommodation and remote mine sites.

Our first line of questioning was to establish how prevalent sexual harassment is across the sector. The shocking conclusion we had to draw was that sexual harassment has long been and continues to be prevalent across the industry. This was in line with what the Australian Human Rights Commission identified in 2020 – that mining was one of the worst five performing industries. What we were not prepared for, and what we only learned because so many brave individuals shared their stories with us, was the appalling range of behaviours that women have endured in this industry.

Our second line of inquiry was to understand whether the workplace characteristics and practices in mining and resources industries provided adequate protection against sexual harassment. The resounding lesson we learned was that the resources industry in general, and the fly-in-fly-out part of the industry in particular, embodied all the main risks to sexual harassment. Longstanding academic and other research has identified poor culture, gender inequality, and power imbalance in the workplace as the major risks, and all of them were evident in the sector. There are many aspects to ‘poor culture’ but we found several key issues. First, there was a sense of accepting ‘the way we do things here’ that permitted behaviour that would not be tolerated elsewhere. We heard that misuse of alcohol was rife.

Gender imbalance is a historical reality in the resources sector, and while there are efforts to change this, women remain a minority, and a small minority 'in the field'. Most problematic, perhaps, was the question of power imbalance. Mining is a particularly hierarchical industry, and this has enabled appalling behaviour to continue, up to and including managers and supervisors seeking sexual favours from employees in return for promotion or security of employment. We also learned that there was little expectation that bad behaviour would lead to any consequences. People were more likely to be moved on to another site than punished.

Having identified the scale of the problem, we wanted to learn what steps the industry had taken in response. While we acknowledge that the senior industry players are now taking the matter very seriously, we admit to being shocked that they seemed so surprised by the breadth of the problem. All industry representatives we heard from spoke out against these behaviours. The major companies are already making major commitments to improve the physical security of their workplaces and accommodation sites, which we applaud. And many have begun to seriously look at their own culture and investigate what they need to do. But much remains to be done, and we believe the failure to recognise what was happening in their workplaces is a sign of corporate failure that companies and the industry cannot avoid or downplay.

Beyond establishing the reality of the situation, we wanted to know how well it was currently understood by those in power. A vital part of any strong management or regulatory system is monitoring and responding to issues, and then learning from the experience. Rather than a mature system, we found that there is a very poor set of information across the board, which is incomplete, unclear and inconsistent. Companies do not have a good understanding of the problem, and the State, through its key regulators, has a similar issue. Companies relied on internal reporting systems, but as we learned, people in those companies do not trust them. They underreport their issues, and do not believe they will be taken seriously if they do report. In part this is due to the difficulties people face in reporting anonymously, or that companies and government agencies face in acting on anonymous reports.

Similarly, regulators and other government agencies have very limited understanding of the prevalence, extent and nature of sexual harassment and sexual assault in workplaces. The key regulators were not receiving comprehensive information from companies, and had limited systems to deal with that information it did receive. Companies believed they had unclear guidance on what information they needed to pass on to regulators. We also found that the formal reporting and information sharing arrangements between regulators and WA Police were not working as well as they should.

Finally, we turned our attention to the regulatory framework. Sexual harassment in the workplace sits within a complex legislative framework, involving Commonwealth employment and sex discrimination law as well as WA equal opportunity and workplace safety regulation. We found that there have been recent changes to the WA system, which bring psychosocial harm and by extension sexual harassment within the work health and safety regime. We welcome these changes, and believe the WorkSafe regime is the most

appropriate place to ensure there is effective oversight of workplaces and industries. However, there is much work remaining to bring the same level of guidance, regulation, and practice to matters of sexual harassment as those that already exist for matters of more traditional workplace safety. Part of this will require the regulator increasing its expertise in monitoring and investigating cases of sexual harassment, and in providing consistent and comprehensive guidance to workplaces. We recognise that the new legislative and regulatory changes have not had time to bed in fully, but we believe more effort will be required to give them the best chance to ensure workers are safe in their workplaces.

Ultimately, companies are responsible for what happens in workplaces, and for setting standards of acceptable behaviour. Individuals must be held to account for their behaviour, and we have heard too many examples of unconscionable personal conduct in this industry. The recommendations in this report are targeted at exposing the behaviours and directing change at company, industry, regulatory and legislative levels. Changing culture is never easy to achieve and extremely difficult to mandate. But this is a case where some of the richest and most powerful companies in Australia must move beyond careful statements of intent, and make their workplaces and their workers free from harm. To quote one woman who shared her story with us, *'enough is enough'*.

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Community Development and Justice Standing Committee directs that the Minister for Mines report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Chapter 2 – Women in mining live with the reality of sexual harassment and assault

Finding 1 **Page 9**
Women in the mining industry frequently have to deal with sexual harassment and sexual assault.

Finding 2 **Page 9**
During the course of our inquiry we heard confronting, shocking and compelling stories, brought to us by strong and brave women who have lived these experiences. We found women often felt intimidated and fearful and this would be constant throughout their workplace stay. Some suffered severe trauma and long term adverse impacts from their experience.

Finding 3 **Page 10**
There is no single ‘type’ of sexual harassment. The experiences we heard about covered a huge range of actions, places, times and repercussions.

Finding 4 **Page 14**
We heard a broad range of unlawful and criminal behaviour much of which has been ignored or overlooked by employers.

Finding 5 **Page 14**
The evidence we heard illustrates the various sorts of behaviour that make up sexual assault, sexual harassment, including different kinds of ‘incivility’, which can be a precursor to worse behaviour.

Recommendation 1 **Page 15**
The Government consider establishing a forum to hear, document and acknowledge the experiences of victims of historical workplace sexual harassment. Part of this process could include exploring opportunities for redress, such as formal apologies from companies and/or perpetrators and appropriate compensation.

Finding 6 **Page 17**
Sexual harassment is a result of complex societal issues, and manifests across the entire workforce. The Australian Human Rights Commission found in 2020 that 31 per cent of women had been sexually harassed in the workplace in the last five years.

Finding 7 **Page 20**
Mining was one of the five worst industries identified by the Australian Human Rights Commission. Forty per cent of workers, and 74 per cent of women workers in the industry reported being sexually harassed in the last five years.

Chapter 3 – Industry has perpetuated a culture that fails to protect women

Finding 8**Page 22**

Mining in general, and FIFO in particular, has long had most if not all of the major risk factors for sexual harassment in the workplace. They include:

- Poor culture – including the general ‘tone’ of a workplace, especially where incivility is common and accepted as ‘the way we do things here’; acceptance by leaders of poor behaviours; protection of ‘high value’ workers above others; and the misuse of alcohol and drugs;
- Gender inequality – including rigid roles and stereotypical relations, aggressive male-male peer relationships; disrespect for women generally; and
- Power disparity in the workplace – where managers and supervisors have relatively unfettered power over dismissal, promotion or reward.

Finding 9**Page 25**

We were appalled by evidence of managers and supervisors seeking sexual favours from women to gain promotions or permanent employment.

Finding 10**Page 25**

A survey of Western Mine Workers’ Alliance members found that 32 per cent of women had received requests for sexual favours, and that 22 per cent of women had such requests linked to their working conditions or career advancement.

Recommendation 2**Page 25**

Mining and other resources companies need to ensure that there are serious repercussions, including dismissal, for any person who has attempted to seek sexual favours for advantage and that all proper legal actions will be taken against them.

Finding 11**Page 27**

Even when people are found to have behaved unacceptably, there has been a practice of ‘moving them on’ rather than dismissing them, allowing them to continue in the industry.

Recommendation 3**Page 27**

The industry must explore ways to prevent perpetrators of serious sexual harassment simply finding reemployment on other sites and in other companies. This should involve:

- thorough exploration of an industry-wide workers’ register or other mechanism such as industry-wide accreditation, taking into account natural justice considerations and perhaps modelled on the Working With Children Card; and
- ensuring probity checks across the industry include consideration of harmful sexual behaviours particularly for smaller companies and sub-contractors.

Finding 12**Page 28**

Professional and health organisations universally told us that they were concerned by the risks to increased sexual harassment posed by excessive alcohol consumption.

Finding 13 **Page 29**

A survey by the Western Mine Workers' Alliance showed that women were three times as likely as men to see a connection between alcohol and sexual harassment.

Recommendation 4 **Page 30**

Mining companies must as a minimum implement moderate drinking standards for all FIFO accommodation sites.

Finding 14 **Page 32**

Women are underrepresented in the mining industry, making up 19.1 per cent of the total workforce. This figure has remained largely unchanged since 2008.

Finding 15 **Page 33**

FIFO is a huge part of the mining and resources sector. For example:

- there are more than 60,000 FIFO workers in WA;
- BHP employs more than 13,500 people in WA;
- Rio Tinto accommodates more than 11,000 people each night; and
- Fortescue employs about 11,000 people in FIFO.

Finding 16 **Page 33**

Women are underrepresented across the industry, but especially so in site supervision and management roles. We heard anecdotal evidence that this increased the risk of incivility and harassment for the few women in those roles, in particular because some people perceived them to be 'token' position.

Recommendation 5 **Page 34**

While merely 'adding more women' to the mix is not enough to remedy cultural problems, mining companies need to improve the gender balance in their workplaces. Part of this must include greater effort to increase female workforce participation, with specific focus on site-level supervisor and management positions.

Finding 17 **Page 37**

The operation of FIFO is more all-encompassing than most industries, with impacts on people's time, living arrangements and non-work activities. This increases an already unequal power relationship between employers and workers. In some regards, FIFO is more like a 'total institution' than a normal workplace.

Finding 18 **Page 40**

The high rates of labour-hire, contracting and sub-contracting companies on sites contributes to:

- diluted lines of responsibility between contracting companies, operating companies and employees;

- increased power of line managers and supervisors with regard to career certainty including ongoing or permanent employment ('getting their shirt'); and
- problems establishing clear chains of reporting for harassment and bullying.

This could also lead to less resources being available in smaller companies for monitoring and addressing on-site incidents.

Recommendation 6

Page 40

The mining and resources sector actively work to reduce the risks which are exacerbated by high rates of labour-hire and sub-contracting. To ensure sexual harassment is addressed, safety management plans should:

- consider the appropriate proportion of labour-hire and contracted workforce;
- review monitoring and information sharing arrangements with all levels of contract partners; and
- establish clear requirements and guidelines for all contractors, which directly address issues of sexual harassment.

Chapter 4 – Industry has begun working to remedy its failings but must do much more

Finding 19

Page 43

There is a broadly consistent set of recognised and evidenced-based principles, practices and reforms that organisations and industries can use to improve how they prevent and respond to sexual harassment.

Finding 20

Page 44

All companies that appeared before the Committee stated that sexual harassment was unacceptably prevalent in the industry.

Finding 21

Page 44

Company statements of regret were sincere but limited, and rarely included accepting responsibility for allowing the situations to arise.

Finding 22

Page 44

The failure of companies to understand what was happening in their workplaces must be seen as a sign of corporate failure.

Finding 23

Page 47

All companies told us that staff safety was their highest priority. The level of sexual harassment in their companies indicates that this was not the case.

Finding 24

Page 48

National and WA industry representative groups have produced high level policy and response frameworks to assist industry members prevent and respond to sexual harassment in their workplaces.

Finding 25 **Page 48**

Companies told us of a range of actions they had taken to mitigate the risk of sexual harassment. This included conducting ‘audits’ and surveys and efforts to meet with staff to better learn the truth on the ground.

Finding 26 **Page 50**

We commend Rio Tinto for publishing its *Report into Workplace Culture at Rio Tinto*, in February 2022. The report was not flattering to the company, finding among other things that sexual harassment was common, an open secret, and that employees did not believe the company was ‘psychologically safe’ for people who had been harassed.

Recommendation 7 **Page 51**

Acknowledging the wide range of company size and capability, the large mining companies and representative bodies should develop a template/framework to assist all companies to review their workplace culture, processes, and work and living conditions to identify factors which allow sexual harassment to persist.

Finding 27 **Page 51**

The Rio Tinto *Report into Workplace Culture at Rio Tinto* was supported by a strong framework for action, which matched the key areas outlined in other frameworks.

Finding 28 **Page 53**

Some companies have begun investing significant funds to improve the physical safety and security of accommodation and lighting in camps. BHP, for example, was planning to spend \$130 million across its camps.

Finding 29 **Page 54**

The major programs to improve door security, camp lighting, and safety in laundries are a valuable first step, and will make life better for people in mining camps. But the need for such programs is also evidence of deep cultural failures by companies and the industry, and of insufficient historical effort to protect people in their workplace.

Finding 30 **Page 55**

Companies have made changes to their alcohol policies in camps, generally limiting consumption to four standard drinks per day. While these moves are broadly positive, they must be accompanied by changing the culture of mining sites, which will be more important in the long run.

Recommendation 8 **Page 55**

The mining and resources industry must establish acceptable standards for accommodation facilities, including security and other safety measures (including lighting, locks, CCTV, public area layouts).

Finding 31**Page 57**

The size and arrangements at a site or in a company will influence how things play out on the ground and how that company or site responds. The key challenge is for companies and sites to understand their strengths and risks in each situation.

Finding 32**Page 60**

Industry generally had formalised policies that set out high-level principles for addressing safety issues.

Finding 33**Page 62**

There appears to have been effort to implement some degree of training about sexual harassment across the industry. But it has not always been effective or taken seriously.

Recommendation 9**Page 62**

The industry should ensure that sexual harassment and assault training is accredited, fit-for-purpose, and delivered by suitable practitioners. Training should be mandatory and ongoing for all employees. There should be additional specialist training for people who must formally respond to incidents.

Finding 34**Page 63**

Companies told us that their processes for dealing with cases of sexual harassment were victim-centric, but we heard evidence from individuals to the contrary. It was clear that company processes were often ineffective; a more honest reading could suggest they were more focused on protecting companies and their reputations than serving the best interests of people who had been harassed.

Chapter 5 – Industry understanding of sexual harassment is poor and underreporting is endemic

Finding 35**Page 67**

Recorded data of sexual harassment across WA mining is unclear, incomplete, inconsistent and inadequate as a basis for industry-wide analysis. However, it is sufficient to demonstrate the seriousness of the issue.

Finding 36**Page 69**

The mining industry acknowledges the systemic underreporting of sexual harassment in the workplace.

Finding 37**Page 71**

Insecure, contract and labour-hire work exacerbates some people's distrust of company reporting systems.

Finding 38**Page 71**

There are inadequate culturally safe and sensitive options to report incidents of sexual harassment or assault.

Finding 39**Page 73**

Like mining companies, the key government agencies have not regularly captured adequate data relating to sexual harassment in the industry.

Recommendation 10**Page 73**

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

Recommendation 11**Page 73**

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

Finding 40**Page 76**

Major mining companies have a range of reporting options in place. However, it is too soon to tell if these will bring fundamental change.

Finding 41**Page 80**

Individuals who reported incidents were too often:

- Given inappropriate, insufficient, or non-existent guidance or support;
- Confused or deeply frustrated by the experience;
- Re-traumatised;
- Left without satisfactory resolution;
- Left fearful of potential repercussions;
- Blamed or told to 'get over it';
- Left not wanting to repeat the experience; and/or
- Dismissed or suffered other detriment at work.

Finding 42**Page 82**

The fear of negative repercussions from reporting incidents of sexual harassment and assault is well known within the FIFO workforce and is a deterrent to victims reporting.

Finding 43**Page 83**

DMIRS cannot guarantee anonymity to complainants during investigations, or effectively investigate anonymous reports. This leads to incomplete data on the nature and scale of sexual harassment and assault in the FIFO mining industry.

Recommendation 12**Page 84**

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

Finding 44**Page 84**

The Equal Opportunity Commission cannot work to resolve anonymous complaints under its enabling legislation.

Recommendation 13**Page 84**

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

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

Finding 45**Page 85**

Smaller businesses, with fewer resources to invest and smaller workforces, face barriers in providing appropriate and effective in-house reporting systems.

Finding 46**Page 86**

There are affordable third-party reporting platforms that companies could use to enable anonymous reporting.

Recommendation 14**Page 86**

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

Finding 47**Page 87**

We saw no compelling evidence that the mining industry is adequately capturing data on third-party or bystander reporting.

Recommendation 15**Page 87**

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

Finding 48**Page 89**

The remote nature of many the FIFO mining sites mean workers did not have the same access to support networks. We heard evidence from some individuals and union bodies that limitations to third party access meant that people did not always have access to the widest range of support options and information on employment rights when dealing with sexual harassment.

Recommendation 16**Page 89**

Mining companies establish a number of internal and external options for reporting and obtaining support for incidents of sexual harassment and assault. All employees must be informed of these options.

Finding 49**Page 91**

The use of non-disclosure agreements inhibits the proper capture of all information, and can indicate a power imbalance that limits the free choice of victims.

Finding 50**Page 91**

Non-disclosure agreements and related legal instruments have been used by companies in the past, though the nature, scale and extent of their use across the industry is unclear.

Finding 51**Page 91**

The provision in the Industry Code on Eliminating Sexual Harassment to avoid using non-disclosure agreements relating to sexual harassment shows the positive intent of the industry.

Recommendation 17**Page 92**

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

Finding 52**Page 94**

DMIRS' Safety Regulation System and its processes for capturing data specific to sexual harassment are outdated and not fit for purpose.

Recommendation 18**Page 94**

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

Finding 53**Page 95**

DMIRS reported that between 2015-2021 it received only 10 reports specifically relating to incidents of sexual harassment, while it received 22 reports of the more serious issue of sexual assault, 10 of which were in 2021. The Committee is surprised that the key

regulator of this enormous industry could appear to be satisfied that these figures represented a realistic picture of the problem.

Finding 54

Page 95

DMIRS has made recent improvements to its approach to addressing reports of sexual harassment and assault in the FIFO mining industry, but these improvements are belated and insufficient to address the scale of the problem.

Finding 55

Page 99

Mining companies admitted they have often not reported incidents of sexual harassment and assault that have occurred in their operations and on their sites to DMIRS.

Finding 56

Page 100

The WA Police Force has the primary role in investigating criminal aspects of sexual assault on mines sites, but the responsibility for ensuring a safe workplace – including being free from sexual harassment and assault – sits with mining companies and the safety regulator.

Finding 57

Page 101

Current formal information sharing arrangements between the WA Police Force and WorkSafe WA are out of date, but new and updated arrangements are expected.

Recommendation 19

Page 101

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

Chapter 6 – Regulation of workplaces has not kept up with changing expectations

Finding 58

Page 106

Commonwealth legislation providing frameworks for anti-discrimination and employment processes has been amended to strengthen and clarify definitions and strengthen protections from sexual harassment.

Finding 59

Page 106

Most Australian States and Territories follow Safe Work Australia's *Model Work Health and Safety Act 2011* framework, which imposes a duty to minimise hazards to workers' health which covers sexual harassment.

Finding 60

Page 106

The Australian Human Rights Commission's *Respect@Work* report recommended that the Commonwealth *Sex Discrimination Act 1984* be amended to include a positive duty

requiring employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation.

Finding 61

Page 107

The main WA anti-discrimination legislation is the *Equal Opportunity Act 1984* which establishes WA's Equal Opportunity Commission, whose key role is to conciliate complaints.

Finding 62

Page 110

WA's work, health and safety regime is complex, and until recently, the mining industry was covered by separate legislation.

Finding 63

Page 110

Since the commencement of the *Work Health and Safety Act 2020*, the WorkSafe WA Commissioner is the WHS regulator of all workplaces, and is supported by DMIRS in administering the Act.

Finding 64

Page 110

The new Work Health and Safety laws are likely to reduce legal complexity and improve on approaches to addressing sexual harassment in the workplace.

Finding 65

Page 114

There are inconsistent legal definitions of sexual harassment in different pieces of legislation applicable to addressing sexual harassment in WA workplaces.

Finding 66

Page 114

The Commonwealth *Sexual Discrimination Act 1984* contains the most satisfactory definition of sexual harassment in current legislation.

Finding 67

Page 114

WA legislation placing the onus of proof on sexual harassment victims is outdated.

Recommendation 20

Page 114

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

Finding 68

Page 115

The failure to define sexual harassment in the *Work Health Safety Act 2020* and regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.

Recommendation 21**Page 115**

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

Finding 69**Page 118**

Recent Codes of Practice and Conduct explicitly address sexual harassment, and a number of other measures are being taken to address workplace sexual harassment in the mining industry. But it is too soon to tell what difference these will make or if they are sufficient.

Recommendation 22**Page 118**

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

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

Finding 70**Page 120**

The mining industry has historically treated sexual harassment as a human resources issue. But it is primarily a workplace health and safety issue, and must be treated accordingly.

Finding 71**Page 123**

It remains unclear how the updated Work Health and Safety framework will deal with incidents of sexual harassment as reportable injuries or 'accidents' in practice.

Finding 72**Page 123**

The current reporting threshold for sexual harassment is not fit for purpose. The *Work Health and Safety Act 2020* currently requires that DMIRS must be notified of an instance of sexual harassment if it causes an injury that is likely to prevent a person from doing their normal work for at least 10 days after the day on which the incident occurs.

Recommendation 23**Page 123**

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

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

- expectations for reporting to the regulator and by the regulator of the prevalence and progress in dealing with incidents.

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

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

Finding 73

Page 124

Other jurisdictions have developed or are recruiting inspectors or teams of inspectors with specialist expertise in matters relating to psychosocial health.

Finding 74

Page 127

DMIRS currently does not investigate all complaints of sexual harassment.

Finding 75

Page 127

DMIRS has issued 13 improvement notices relating to sexual harassment or assault over the last 10 years, and has taken an ‘educational approach’ to recent cases reported in the media. This shows the Department’s reactive approach, and does not reflect a realistic effort to regulate poor behaviour and meet their obligations across a significant economic sector.

Finding 76

Page 129

At April 2022 there were 60 FTE Mines Safety inspectors in the DMIRS Safety Regulation Group. Of these, 10 were women, and only four of the 60 were specialists in mental health.

Finding 77

Page 129

Government funding has been allocated for further inspectors and investigators to improve workplace safety and health outcomes in WA.

Finding 78

Page 130

Regulators of workplace health and safety must have the required specialist expertise, experience and training to investigate, assess and deal with reports of sexual harassment and assault.

Finding 79

Page 131

DMIRS and WorkSafe WA have recently improved their capacity and capability to deal with the risk of psychosocial safety in the workplace, but as organisations they remain underprepared to deal with sexual harassment as a work health and safety issue.

Recommendation 24

Page 131

The Minister for Mines instruct DMIRS to work with WorkSafe WA, the mining industry, relevant unions, and other stakeholders to establish a fully resourced, culturally-

appropriate expert group within WorkSafe WA with specialist expertise, experience and training to investigate, assess and deal with reports of sexual harassment and assault and related offences in the mining industry. This should include consideration of the approach currently taken by WorkSafe Victoria.

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

Chapter 1

Introduction

The truth is that we are not yet in that post-harassment, post-sexist era. By not candidly recognizing that and taking affirmative corrective measures, we are letting harassers and their employers get away with harassment and continue to hurt women in the workplace.

Pat K. Chew¹

- 1.1 This report deals with the sexual harassment of women in the mining industry. Although some there have long been laws prohibiting such behaviour, and although common decency should inhibit its existence, the matter remains an important one, and one which has not received the comprehensive attention it deserves.
- 1.2 We want to start by recognising the bravery of the women who told their stories to the inquiry and commend them for their resilience and strength. We absolutely accept that gender-based incivility, sexual harassment and, in the worst instances, sexual assault has and sadly continues to be common in the mining industry. We believe a massive cultural shift must take place to rectify the existing situation, and that this should involve a renewed approach to defining, monitoring, responding to and reporting workplace safety.
- 1.3 Given that we accept that the matter has for too long been ignored, we cannot expect immediate universal turnarounds in procedure and culture. But we do expect to see immediate and substantial effort on the part of companies, unions and government agencies to bring about change. We acknowledge action for change is already in train in some areas, but we also believe that there is a long way to go across a broad spectrum of activity and we make several recommendations to that end.
- 1.4 This inquiry began as a response to what seemed to be almost daily revelations of terrible stories of sexual harassment and assault in the mining industry. Most of these focused on remote mine sites and mining camps. In July 2021 we initiated the inquiry and sought public submissions. We not surprisingly received submissions from major mining companies and representative organisations, unions, health bodies and what we might term allied technical bodies and professionals. These submissions are listed in Appendix 2. In total we received 87 formal submissions. Of these, 32 came from government agencies, companies, professionals or professional organisations, representative bodies (both industry and worker-based) and two politicians. We heard from 15 of these organisations in public hearings. We also took closed evidence from two academics and the Minister for Mines. More importantly, we received submissions from 55 people who had lived experience of the mining industry, including 47 women who told us of their own experiences of sexual harassment. Seven of these individuals also appeared in hearings to give personal testimony to the Committee. To

1 Pat K. Chew, 'Hiding Sexual Harassment: Myths and Realities', *Nevada Law Journal*, vol. 21, no. 3, Spring 2021, p. 1224.

all these individuals and their supporters, we can only give our thanks. We know there is a self-selection challenge in dealing with these issues – some people who choose to tell their stories to an inquiry such as this are likely to have issues they feel are unresolved. But, again, given how challenging it is for people to make these stories known, we do not believe that is any reason to exclude their conclusions. We believe that while we have empowered some people to come forward, many more will not have done so.

- 1.5 In recent years there has been considerable work worldwide exploring and casting light on the breadth and depth of sexual harassment in workplaces. Perhaps the most publicly impactful was the #MeToo movement, or at least the groundswell of exposing and investigating stories in many industries following the very public detailing of events in the film and television world. This has increased the broad range of efforts to identify this type of behaviour and led to focused investigations in many industries and professions.
- 1.6 The most wide-ranging piece of work in Australia was undertaken by the Australian Human Rights Commission (AHRC). In 2020 the AHRC released its report into sexual harassment in the workplace, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work)*. That report was built on a massive survey of people across the nation and the economy, and it informed much of the work we undertook in our inquiry.

Context of the inquiry

- 1.7 The nature of an inquiry into workplaces in Western Australia includes some technical issues which are worth covering before we move onto the detail of activity. This Committee is a creation of the Legislative Assembly, with broad terms of reference (which are included at the front of this report). Our core responsibility is to report to the West Australian Parliament on the actions of the West Australian Government. As a standing committee of the Legislative Assembly we have inherent limitations on our powers. While we can take evidence from any source, we cannot enforce action on any entity. Parliamentary processes ensure that the relevant ministers are required to respond to our recommendations, but we have no enforcement power. While we can and did take evidence from a wide range of entities, both in public and in closed sessions, we have no mechanism for demanding change of the Commonwealth or private companies. Our focus must be and is on what the State Government has done and can do. And as we will show, we think that notwithstanding the complexities of Commonwealth-State responsibilities in regulating workplaces, there is a special onus on the State to work with industry to ensure that the behaviour this report identifies is driven out of the mining and resources sector.
- 1.8 Even though we focus on government and regulation, the key part of this story rests in private work places. Regulators can influence and respond to activity, but companies and the industry have the principal responsibility for providing safe and supportive workplaces. In this light this report makes significant findings about the experience of life in FIFO sites, and in the industry more broadly. We cannot formally require the industry to respond, but we expect that they will take full ownership of the significant problems we identify. The events we outline have happened on their sites, on their watch, and we expect them to

acknowledge the weaknesses that still exist, and to take responsibility for making the changes that will minimise the risk to women and others in their industry.

- 1.9 A further challenge to this inquiry comes from our core responsibilities to Parliament. This Committee does not have a mandate simply to examine matters of industrial relations. We are charged with a responsibility to report to the Parliament on 21 portfolio areas, covering a vast array of government activity. Some of these deal with single entities if huge areas, like Police. Most deal with areas of activity that might involve more than one government body, and often many. And areas like Police, Justice, Aboriginal Affairs, and the Environment, for example, involve, effect and include many individuals and organisations in private, corporate and collective spheres. And looking at the impacts and influences on any of those areas could obviously include other government functions than simply the named or key department or other government organisations.
- 1.10 For this inquiry, the particular portfolio in question is that of women's interests. And while there is ministerial responsibility for women's interests, there is no single entity that controls, manages or otherwise deals with all issues that might fall within that portfolio. It necessarily and properly involves almost all parts of economic, social and governmental activity. Accordingly, this inquiry and this report look outside the narrow confines of 'women's interests' to the areas of policy and practice that most impact on women in the workplace. That means looking at the regulation of worker safety, and the regulation of the mining and resources sector in WA. In turn that means making recommendations to parts of Government not overtly focused on women's interests, but which have enormous input into the wellbeing of women in the workplace. We have therefore generally made recommendations that will require input from the Minister for Mines and the Minister for Industrial Relations on many practical aspects of regulation. The Minister for Women's Interests is addressed on some broader policy fronts and some recommendations may require other Ministerial input, depending on how Government chooses to deal with the issues raised.

Committee approach

- 1.11 During the conduct of the inquiry it became apparent that everyone, except the victims of sexual harassment, was shocked at the scale and depth of the problem. While companies, unions and regulators admitted at one level they were aware it was happening in the workplace, it was clear that firm and concerted action to eradicate it had not often been undertaken. Before us, the AHRC had found that workplace sexual harassment was widespread and endemic at a national level. We note that the Western Mine Workers' Alliance (WMWA) and Rio Tinto conducted surveys in response to this inquiry provided further evidence of its prevalence. Given the nature of these findings and their general acceptance, we decided not to follow an individual inquisitorial approach to prove sexual harassment but rather take a high-level position seeking to identify systemic weaknesses and the changes required to make meaningful change.
- 1.12 Another point that factored into our approach to this report is that although we have called out the weaknesses and shortcomings in FIFO employment as the situation currently stands and where major changes need to occur, we have not always sought to dictate the specifics

of these change or the precise detail of who might best implement or monitor them. Much of this detail still needs to be determined through broad industry consultation.

1.13 Throughout this inquiry, the Committee has been concerned to offer the greatest protection possible to people providing personal evidence. Except in a few instances where people specifically requested their material be made public, the Committee has kept the information they provided and their personal details private. Where quotes from individual submitters have been included, the person was offered the opportunity to not have them made public. We also removed all details which might identify people, including names, sites and companies (except where they were generic or very large companies).

1.14 We also recognise that there is a fair question to be asked about the potential to generalise from our inquiry into other industry sectors. While mining is in many ways unique, it also shares common features with industry generally. Much of what we learned about sexual harassment in the mining industry will be relevant to workforces in other parts of the economy and reflect what has happened to other people. While the observations and recommendations we make will in the first instance be focused on mining workplaces and regulation, we hope they might offer more general opportunities in the broader oversight of workplace safety.

Employment in mining and resources

1.15 This is an enormous sector, and incredibly important to the WA economy. In 2020-21, the Department for Mines, Industry Regulation and Safety (DMIRS) reported:

- the sector generated \$208 billion in export income, making up 94 per cent of State merchandise exports;²
- the iron ore sector generated \$155 billion in sales;³
- the sector employed 149, 469 individuals in 119,502 full-time equivalent positions;⁴
- the State received \$11 billion in royalties from the sector, of which 89 per cent came from iron ore;⁵ and
- \$21 billion was invested across the sector.⁶

1.16 The Chamber of Minerals and Energy WA (CME), a key industry representative body, reported that another 280,000 jobs in WA were indirectly created by mining activity, which represented more than one quarter of all jobs in the State.⁷

1.17 While noting the size and reach of the mining industry, it must also be recognised it is built on private enterprise. As such, much of the employment regulation falls to the

² DMIRS, *Western Australian Mineral and Petroleum Statistics Digest 2020–21*, 2021, p. 15.

³ *ibid*, p. 3.

⁴ *ibid*, p. 6.

⁵ *ibid*, p. 14.

⁶ *ibid*, p. 9.

⁷ Chamber of Minerals and Energy WA (CMEWA), *WA Economics Fact Sheet*, accessed 5/4/2022, <https://www.cmewa.com.au/media/economic-contribution-factsheets/>.

Commonwealth rather than the State. We deal with this at some length in Chapter 6, but suffice it to say that many of the obligations imposed on employers are covered under the Commonwealth *Fair Work Act 2009*, and administered through the Fair Work Commission. These obviously are outside the remit of this Committee.

- 1.18 There are similar challenges in dealing with the regulation of human rights and its concomitant parts, which include sexual discrimination and equality. The key piece of legislation dealing with these matters of harassment and assault is the Commonwealth *Sex Discrimination Act 1984*, with a key role undertaken by the Sex Discrimination Commissioner. This situation is similarly outside the Committee's sphere, although as we note below, the Commonwealth Sex Discrimination Commissioner had an important role in bringing the question of sexual harassment in the workplace into public view. The WA *Equal Opportunity Act 1984* is also relevant.
- 1.19 Our key focus in State government has been the workplace safety infrastructure. One of our key observations is that occupational health and safety regimes in general, and the WA system in particular, have been slow to recognise the place of sexual harassment in the workforce. Recent changes brought about in the *Work Health and Safety Act 2020* and the strengthening of the reporting and accountability structure it provides have begun to remedy that failing, for which the Government should be applauded. But the regulator's capacity to oversee and implement the changes is not yet completely adequate and will require considered and concerted application to address psycho-social harms in general, and the matter of sexual harassment in particular.

Definitions used in this report

- 1.20 Our terms of reference set the subject of this inquiry as 'sexual harassment'. As we discuss throughout the report, that phrase is not easy to categorically define. In some areas the absence of a definition has become a matter of debate, and we make some comments about that fact. More generally, our intent was not to let the definition of the phrase become unnecessarily limiting to what evidence we could take, or what conclusions we could reach. We acknowledge that there is a great difference between someone telling inappropriate jokes in a lunchroom and someone physically and sexually assaulting a person in their donga. But part of this story is to understand how that complexity and breadth of behaviour can play out in the real world, and to acknowledge the challenges in reducing its prevalence. However, we do believe appropriate definitions of sexual harassment in legislation and regulations assist in driving change and recommend this.
- 1.21 We have taken a similar approach to dealing with what constitutes the 'FIFO mining industry'. Throughout this report, we use the term 'mining' in a broad sense. We acknowledge that there is a technical differentiation between mineral extraction, oil and gas extraction, and their affiliated processing arrangements. We also accept that there are different legislative and regulatory approaches to some of these parts of the broader sector, which we canvass in Chapter 6. We know that sexual harassment is not limited to FIFO sites, and that it is difficult sometimes to define where FIFO begins and ends (for example where someone flies in and out of a town-based village). But given the huge place FIFO

arrangements have in the WA resources sector, and that people easily understand that it is a broad concept, we were happy to leave the title as it is.

Content of the report

- 1.22 In Chapter 2 we explore the realities of sexual harassment, with a special focus on the lived experience of people in the industry. We start by stating that we accept that it is undeniable that women in the mining industry have to deal with sexual harassment and assault regularly and often. The evidence provided by the strong and brave women who made submissions to us was at times horrifying and almost hard to believe. But we did believe it, and we thank them for sharing their experience with us. We also explore the place of mining and sexual harassment in the national context, with reference to the *Respect@Work* report, and identify some of the key attributes of sexual harassment.
- 1.23 Chapter 3 deals with the problematic historical culture of the mining industry, and how it has created almost the perfect site for sexual harassment to flourish. We show that the industry includes all the key risk factors for sexual harassment in the workplace; poor culture, including the misuse of alcohol, embedded gender inequality and structural and localised power imbalances.
- 1.24 Chapter 4 looks at how industry has reacted to the revelations about the problems it has with sexual harassment, and the steps companies and the broader industry have begun making to improve the situation. It also describes how industry has made efforts to better understand the reality on the ground, is moving to improve basic physical infrastructure in camps, and has started to limit access to alcohol on site. We then make some observations about the disconnect between high level policies and on-ground realities and the evident weaknesses in training for managers and support for victims.
- 1.25 Chapter 5 covers the processes for reporting on sexual harassment, both inside the industry, and through the regulatory system. It finds that there is no comprehensive information on the prevalence of sexual harassment and assault in the industry, and that there has concurrently been a significant underreporting of incidents. We show that individuals have been disinclined to report to companies about incidents for numerous reasons. We also find that, even given the weak information, there has been little effort to truly understand the realities on the ground, or the impact of policies and procedures. While there are company reporting systems there is little way to report anonymously, and the practice of imposing non-disclosure agreements has limited people's access to resolution. We also find that DMIRS has not received all the information it requires from companies. At the same time the industry shared its view that the department has not provided the best guidance to companies. Finally, we note weaknesses in the provision and sharing of information between companies, DMIRS and the WA Police Force.
- 1.26 Chapter 6 outlines the regulatory framework. It refers to Commonwealth and State legislation, with a particular focus on workplace health and safety arrangements. It finds that, although there have been recent important changes, WA's workplace safety regulatory system has not kept up with changing expectations. It is an admittedly complex area that involves State and Commonwealth legislation, and deals with the areas of employment,

equality and workplace safety. While sexual harassment is now clearly brought within workplace safety law, there is not enough detail on reporting thresholds that will be imperative to good practice across the industry and the regulator. And we found that DMIRS and WorkSafe WA were underprepared to lead the administration of this newly introduced matter.

Chapter 2

Women in mining live with the reality of sexual harassment and assault

...it made me feel like I was a piece of meat, sexually, on the mine site.

Personal evidence

I have been to about half a dozen sites, and I can truthfully state that I have been sexually harassed at every single one of them.

Personal evidence

Many women in the mining industry are put in a position that they have no other choice other than to accept the sexual harassment and involuntarily perform the sexual acts or otherwise lose their job.

Personal evidence

They quite often had a coffee table to the side that you could put your bag and that on. Every night I would pull that in front of my door, so at least if anyone did get into my room, they would fall over and it would give me an opportunity. I look back now and it was so normal, and I am just astounded.

Personal evidence

Introduction

- 2.1 Having set the scene in the Introduction, it is important to start the body of our report as we mean to go on. And we start from this primary position: women in the mining industry have to deal with sexual harassment of all kinds regularly and often. In this chapter we catalogue some of the confronting, shocking and compelling stories we heard during the course of our inquiry, stories brought to us by strong and brave people, primarily women who have lived these experiences. This evidence was at times horrifying and almost hard to believe, and we sincerely thank all those who shared their experience with us.

Finding 1

Women in the mining industry frequently have to deal with sexual harassment and sexual assault.

Finding 2

During the course of our inquiry we heard confronting, shocking and compelling stories, brought to us by strong and brave women who have lived these experiences. We found women often felt intimidated and fearful and this would be constant throughout their

workplace stay. Some suffered severe trauma and long term adverse impacts from their experience.

- 2.2 The stories we heard cover a range of behaviour, from casual and almost unconscious sexism and misogyny to calculated and sustained harassment and assault. We take no pleasure in detailing the kinds of behaviour displayed across the industry, but consider that outlining the problem in some detail is important to making known the breadth of unacceptable behaviour. In turn, we believe that doing so will give strength to wide-ranging recommendations to help minimise the likelihood of this situation continuing.
- 2.3 In this Chapter we begin by surveying the experience of women in mining. We then look at the situation nationally, in general and with a mining focus. Here we note that mining is not unique in having a problem with sexual harassment, but that it does have a significant problem compared to most industries.

Many people shared their stories of harassment and assault

- 2.4 We received submissions and testimony from 55 individuals. Forty-seven of them were women. Practically all of them referred to personal experiences of sexual harassment or worse in mining situations. But those people also told us about things that happened to other people. Some told us only of particular incidents, while some had views on broader issues. And a very few submitters told us that they had never encountered sexual harassment, even after long careers in mining.
- 2.5 Throughout this inquiry, we learned that there was no single ‘type’ of experience. The stories we heard covered a huge range of actions, places, times and repercussions. The incidents and experiences ranged from what some writers have called ‘incivility’, which is seen as a precursor to worse behaviour,⁸ through to what can only be seen as serious criminal acts. Some happened very recently, and some occurred many years ago. Some were one-offs, and some involved repeat offenders and multiple incidents. Some were clearly the acts of individuals, but some involved two or more people. Some might be called ‘peer-to-peer’ incidents, but some involved people in positions of power, and the use of power as coercion. Finally, many of the incidents and experiences we heard about had long-term consequences for the victims. Some women had to leave the industry because of their treatment. Some had to seek medical and professional/psychological help; some have long-term issues.

Finding 3

There is no single ‘type’ of sexual harassment. The experiences we heard about covered a huge range of actions, places, times and repercussions.

8 See Kim A. Young, Shahidul Hassan, Deneen M. Hatmaker, ‘Towards understanding workplace incivility: gender, ethical leadership and personal control’, *Public Management Review*, 2019, <https://doi.org/10.1080/14719037.2019.1665701> ; Stefano Bambi, Andrea Guazzini, Christian De Felippis, Alberto Lucchini, Laura, ‘Preventing workplace incivility, lateral violence and bullying between nurses. A narrative literature review’, *ACTA Biomed for Health Professions*, vol. 88, no. 5, 2017, pp. 39-47; Meg A. Warren, Scott I. Donaldson, Joon Young Lee, Stewart I. Donaldson, ‘Reinvigorating Research on Gender in the Workplace Using a Positive Work and Organizations Perspective’, *International Journal of Management review*, vol. 00, 2019, pp. 1-21.

We heard about a staggering range of abuse, harassment and assault

- 2.6 There is no best way to begin an account of incidents and experiences like the ones that follow, so we will not try to impose one. They are each exactly what happened to a person and what they chose to tell us. So we will simply quote some of the things that people told us, in the order that we received them.⁹
- 2.7 The language in some of these extracts is confronting, but not nearly so confronting as the behaviours and events being described. Readers who are concerned about the impact of these stories might choose to skip this section.

[S]he was indecently assaulted in the wet mess ... in front of witnesses and on CCTV.¹⁰

I eventually was targeted when one of the leadership personnel raised false allegations against me, and I was bullied out of the business.¹¹

I have been asked how many men I've slept with, do I shave, have I ever slept with another women and if so how many?¹²

An employee walked into the receipting area and made the comment about a new girl who was starting that week his comment was 'I hope I can get some sticky fingers when she starts' fellow work mates on the crew laughed, I objected and said to be careful I was then warned not to be a pussy.¹³

Sleeping in my donger, woken by a workman opening my door to do 'cleaning/repairs'. Very common for everyone on site but far from appropriate and is predatory.¹⁴

When I was on site, I often received comments like 'what is your room number', I would receive text messages from married men on my crew asking me to go to their room and give them a massage, I would get men knocking on my door in the middle of the night, and hear stories that men will take your underwear from the washing machine.¹⁵

I raised the issue of how females were spoken about/to in the workplace and my concerns with it. One of the men, who was my onsite supervisor, said to me 'I think the real issue is, you just want to fuck [name deleted]'.¹⁶

9 As noted in the introduction, this inquiry has never been an exercise to judge individual cases, but an attempt to understand the broad picture, and to make systemic recommendations. To that end, in this report we have removed all personal, company and site names, and any other identifying information, from the quotes and examples provided by individuals.

10 Personal evidence.

11 Personal evidence.

12 Personal evidence.

13 Personal evidence.

14 Personal evidence.

15 Personal evidence.

16 Personal evidence.

I experienced sexual assault at camp ... in 2012.¹⁷

I had men come in to my camp room and push me on to my bed and kiss me, I was lucky that it stopped there, it didn't for some girls and guys. I came home to my camp room on some occasions to find men passed out in my bed and others going through my underwear drawer.¹⁸

While in a work office with a few colleagues present, a colleague of mine made a comment about the size of my breasts. I was very embarrassed and tried to laugh it off but still think about it to this day. I felt objectified and belittled. I have seen this colleague make these types of comments about other people we work with and nobody says anything. He still works with the company and everyone shrugs it off as if it is just his personality.¹⁹

I have been to about half a dozen sites, and I can truthfully state that I have been sexually harassed at every single one of them. The degree to which has varied, from inappropriate comments and innuendo, to salacious rumours, being touched without my consent, and being cornered in a laundry and being genuinely fearful I was about to be assaulted.²⁰

The hypocrisy and differing standards between men and women who don't act like men in the mining industry is stark. I have escalated women's laundry being stolen from camp laundry rooms to be met with comments of 'what do you want us to do about it', 'That happens just get used to it' but then have the same manager send out a general alert saying that it's unacceptable to steal people's tools.²¹

I ALWAYS moderate what I wear on a mine site because of the sheer number of powerful and intimidating men who work on these sites. At this particular mine site, I experienced men leering, men regularly making sexually suggestive comments in conversation about women and thinking they were hilarious jokes, and wolf whistling at me as I walked past. There was a common culture of demeaning women.²²

I am used to the staring at the gym, the dry and wet mess and on the site. I am not particularly sensitive and am quite forthright and quick-witted. But it is very exhausting being on a FIFO operation.²³

I had a man force his hands down my top numerous times in front of other workers and no one did anything. I had another man knock on my door in the early hours of the morning. The IT dude used his access to personnel documents and files to obtain my number and text me explicit things.²⁴

17 Personal evidence.

18 Personal evidence.

19 Personal evidence.

20 Personal evidence.

21 Personal evidence.

22 Personal evidence.

23 Personal evidence.

24 Personal evidence.

I was knocked unconscious in my donga after returning from the laundry one evening. When I awoke my jeans and underpants were around my ankles, I felt sick, ashamed violated, dirty and very confused.²⁵

[Name deleted] stalked a female ... at the workers village to the point she had a complete mental and physical breakdown and required weeks off work, then eventually transferred to a different site.²⁶

...from my experience and what I have witnessed, sexual harassment of women for the first few years, up to approximately 10 years of their career is likely to be experienced as unwelcome or unsolicited sexual attention. As soon as women become more competent and confident in their jobs, promoted to more senior positions on the mine site, the sexual harassment turns more subtle than obvious sexual advances, however the behaviour definitely becomes more hostile and aggressive and still equally damaging. My personal experience of this hostility has been far worse than any unwanted sexual attention experienced earlier in my career.²⁷

Unwanted advances – verbally and electronically. Vile texts sent to my mobile – the male in question held a senior position and was dismissed. Pictures and videos of a sexual nature sent to me and other females. Security guards caught filming myself and other females in their showers showering. Used condoms placed on door handles and furniture outside mine and other females dongas. Further sexual assaults where police attended. A woman beaten so severely she has permanent brain damage. Posters of centrefolds in various stages of undress with my head superimposed placed in communal laundries – this was common, and I was not the only female subjected to this. Removal of bras and underwear from washing machines in communal laundries. Sex toys hanging from donga (room) door handles, including a blow-up doll sitting on a chair outside my room. Lewd comments regularly.²⁸

Not long after that I had one of the step up supervisors on shift change tell me that my supervisor had been making fun of me and putting me down and making fun of me behind my back. I was so upset and went to my room. He followed me and then after hugging me forced himself on me and kissed me twice. He said he would stay and keep me company for the night and I told him to get out and had to push him out of the room.²⁹

...he would frequently grab my bum, putting his fat gut into the small of my back as if though he would try to 'ride me', he would laugh when he did it, and he did it often in front of others present. He would often grab my hips from behind and pretend to sexually penetrate. He would often request that I bend over a pick up things in front of him and others that he would deliberately drop, for example my bin liners. I would need to pick them up, but would do so in a way that I would not

25 Personal evidence.

26 Personal evidence.

27 Personal evidence.

28 Personal evidence.

29 Personal evidence.

bend over. Even so, he would make crude and sexual comments in front of other guys when I would need to pick something up off the floor.³⁰

[Those] men never physically assaulted me but their behaviour was predatory and they continued to pursue me even when I mentioned several times their actions made me uncomfortable.³¹

I have been sexual harassed on site ... by my (boss) supervisor, who inappropriately laid his hands on my bottom on numerous occasions.³²

I could never even hang my underwear on the line or put it in the washing machine. I had to wash it in my room because it went missing.³³

I have had guys in trucks pull their penis out and say, 'You need to get on your knees.'³⁴

I have been locked in laundries. I have been pushed into rooms. I had sexual rumours going around about me, to the point where people were knocking on the door ... asking for a fuck.³⁵

There was another conversation, which involved the registered manager, which discussed me and my husband's sex life in a public forum, which I did not think was appropriate either. Then at the end, I got sent these text messages...³⁶

I was not physically touched or physically assaulted. It is kind of insidious what happened to me. It is that bullying, that sexism, that is so casual but so poignant and it just beats you down and beats you down and beats you down so it just gradually wears away at you.³⁷

Finding 4

We heard a broad range of unlawful and criminal behaviour much of which has been ignored or overlooked by employers.

Finding 5

The evidence we heard illustrates the various sorts of behaviour that make up sexual assault, sexual harassment, including different kinds of 'incivility', which can be a precursor to worse behaviour.

2.8 While we have not investigated the details of individual cases, we believe that the people who have endured this harassment and assault should have some opportunity to explore ways to have their stories formally heard. We believe that, in line with the recommendations from *Respect@Work*, the Government should create a process and forum so that victims of

30 Personal evidence.
31 Personal evidence.
32 Personal evidence.
33 Personal evidence.
34 Personal evidence.
35 Personal evidence.
36 Personal evidence.
37 Personal evidence.

historical workplace harassment can have their stories heard and documented, properly acknowledged, and which can help them explore options for appropriate compensation.

Recommendation 1

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

- 2.9 The stories we heard also fundamentally match the various sorts of behaviour commonly described as defining sexual harassment or assault. For instance, *Respect@Work* outlined the following types of behaviour as being 'likely to constitute sexual harassment under the Commonwealth *Sex Discrimination Act 1984*':
- unwelcome touching, hugging, cornering or kissing;
 - inappropriate staring or leering that made you feel intimidated;
 - sexual gestures, indecent exposure or inappropriate display of the body;
 - sexually suggestive comments or jokes that made you feel offended;
 - sexually explicit pictures, posters or gifts that made you feel offended;
 - repeated or inappropriate invitations to go out on dates;
 - intrusive questions about your private life or physical appearance that made you feel offended;
 - inappropriate physical contact;
 - being followed or watched or having someone loitering nearby;
 - requests or pressure for sex or other sexual acts;
 - actual or attempted rape or sexual assault;
 - indecent phone calls, including someone leaving a sexually explicit message on voicemail or an answering machine;
 - sexually explicit comments made in emails, SMS messages or on social media;
 - repeated or inappropriate advances on email, social networking websites or internet chat rooms;
 - sharing or threatening to share intimate images or film of you without your consent; and
 - any other unwelcome conduct of a sexual nature that occurred online or via some form of technology.³⁸
- 2.10 Importantly, we could have cited many more examples. Some people told us of many instances of harassment or assault. Some people asked specifically that we did not quote

38 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 104.

them, and we were happy to agree. Some stories were so specific they might be identifiable and therefore we have not included them.

2.11 There was another group of submissions which we have not included because they related to events from many years ago, or to events in other States or Territories. We recognise, however, that those events still mattered enough for people to submit their stories to us.

2.12 While we acknowledge the many terrible stories we heard, we also acknowledge, and we were told many times, that perpetrators of serious sexual harassment and assault are a small minority. In telling their stories, some individuals mentioned colleagues who had come to their aid or supported them in times of need. One person told us that

only men ... have stood up for me when these incidents happen. I found most men regardless of appearance (ie corporate clean shave or bearded with tattoos and earrings) don't tolerate harassment and bullying of others.³⁹

2.13 And not all sites or areas on site are the same. As one person told us: 'The atmosphere in the camp where I am now is totally different from where I was before. I actually feel safe now where I am'.⁴⁰ Another person told us their current workplace was 'fantastic' and 'very supportive'.⁴¹ And another person believed that things had improved over time:

Many things have changed in the industry and my experience is that sexual harassment has decreased greatly compared to when I first began. This isn't to say it doesn't exist, but in my experience, it's so uncommon I would even go as far as to say it's much less prevalent than most other industries.⁴²

2.14 Other people told us that they had not witnessed sexual harassment. One individual told us that in 12 years in the industry he had 'never witnessed nor heard of any incident of sexual harassment against any gender or sexual preference'.⁴³ This position is not unusual. In preparing for this inquiry, the Western Mine Workers' Alliance surveyed its members, and noted that '[m]any male workers claim they've never seen sexual harassment in their years in the industry'.⁴⁴ Some women who made submissions had similar views.

2.15 We would like to make some comment about these last responses. First, we accept some people have not witnessed bad behaviour. But there is a difference between not seeing something and that thing not happening. These are questions we explore in the following chapters.

National research shows that sexual harassment is very common, and more so in the mining industry

2.16 This inquiry did not set out to quantify the level of harassment in mining, or to rank that industry within the broader workforce. However, there has been significant research which

39 Private evidence.

40 Private evidence.

41 Private evidence.

42 Private evidence.

43 Private evidence.

44 Submission No. 50, WMWA, p.6.

does exactly that work. Our review of the literature and recent research shows that the submissions to this inquiry conform with the established picture, and that the mining industry has a special problem with sexual harassment.

Finding 6

Sexual harassment is a result of complex societal issues, and manifests across the entire workforce. The Australian Human Rights Commission found in 2020 that 31 per cent of women had been sexually harassed in the workplace in the last five years.

- 2.17 The major work in this field was carried out by the AHRC. In January 2020 the AHRC presented its report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work)*. The report was the result of an inquiry initiated in June 2018. That inquiry, which involved hundreds of submissions, hearings and consultations, built on the results of a *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, in which more than 10,000 people took part.⁴⁵
- 2.18 At its heart, *Respect@Work* found that the reported incidence of sexual harassment was alarmingly high. The survey asked many questions, giving people many options and ways of explaining their history. This means that there is no simple figure to answer the question of how often this kind of harassment occurs. But the headline figures are startling: 43 per cent of respondents in the *Respect@Work* survey said they had experienced sexual harassment in their lifetime, 'based on a simple legal definition.' However, when the same respondents were asked if they had experienced any of a range of specific behaviours (all of which amount to differently described sexual harassment) the figure was 71 per cent.⁴⁶ As the timescale shortened, figures became smaller but stayed high. The report found that one third of people 'had experienced sexual harassment at work in the last five years.'⁴⁷
- 2.19 Not only was the problem widespread, the response rate appeared to be significantly higher in 2018 than it had in previous surveys.⁴⁸ As the AHRC wrote elsewhere, these 'shocking' figures show that this behaviour was 'pervasive' across workplaces in Australia.⁴⁹ Three legal academics said that this data showed that '[d]espite a growing public consensus in Australia that sexual harassment is wrong, it continues to be remarkably prevalent'.⁵⁰ This was similar to international research, which showed that 'two in five women in their careers have experienced sexual harassment'.⁵¹
- 2.20 The issue was also predominantly gender-based. As noted in international research on the matter, 'women are more likely to experience gender harassment than men, and that

45 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, pp. 13, 58.

46 *ibid*, p. 105.

47 *ibid*, p. 96

48 *ibid*, pp. 97-8

49 *ibid*, pp. 3, 18.

50 Belinda Smith, Melanie Schleiger and Liam Elphick, 'Preventing Sexual harassment at Work: Exploring the Promise of Work Health and Safety Laws', *Australian Journal of Labour Law* vol. 32, 2019, p. 1.

51 Pat K. Chew, 'Hiding Sexual Harassment: Myths and Realities', *Nevada Law Journal*, 21: 3, 2021, p. 1235.

gender harassment frequently intersects with other forms of harassment, including that targeting race or sexual orientation'.⁵²

2.21 *Respect@Work* said that the overall figures were underpinned by

an equally shocking reflection of the gendered and intersectional nature of workplace sexual harassment. As the 2018 National Survey revealed, almost two in five women (39%) and just over one in four men (26%) have experienced sexual harassment in the workplace in the past five years.⁵³

2.22 Other people also noted the impact of gender inequality and strongly gendered workplaces. The Commissioner for Equal Opportunity spoke in general terms of the impact of the gendered nature of the mining industry and the issue of sexual harassment. As he told us:

There are many female-dominated organisations: primary schools, aged care, child care. Female-dominated organisations do not generate sexual harassment complaints. It just does not occur in those types of organisations. It occurs in male-dominated organisations. Reducing the proportion of males and increasing the proportion of females will be important to addressing that.⁵⁴

2.23 There is a line of academic work that expands the idea of 'sexual' harassment to include 'gender' harassment, which in part informs our inquiry. In summary, this work argues:

that common understandings of sexual harassment do not represent the full range — or even the majority — of harassing behaviours, and that conceptualizations of harassment should be expanded to include other actions and behaviours that are motivated by hostility towards (rather than sexual desire for) individuals because of their sex or gender.⁵⁵

2.24 Further, they write that

gender harassment is more common and pervasive than sexual harassment, that women are more likely to experience gender harassment than men, and that gender harassment frequently intersects with other forms of harassment, including that targeting race or sexual orientation.⁵⁶

2.25 An Australian organisation of CEOs and company heads, the Champions of Change Coalition, also noted the ubiquity of the experience:

52 Meraiah Foley, Sara Oxenbridge, Rae Cooper, Marian Bird, "'I'll never be one of the boys": Gender harassment of women working as pilots and automotive tradespeople', *Gender, Work and Organization*, 2020, 1, p. 4.

53 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces: Community Guide*, 2020, p. 3.

54 Dr John Byrne, Equal Opportunity Commission (EOC), *Transcript of Evidence*, 13/10/2021, p. 11.

55 Meraiah Foley, Sara Oxenbridge, Rae Cooper, Marian Bird, "'I'll never be one of the boys": Gender harassment of women working as pilots and automotive tradespeople', *Gender, Work and Organization*, vol. 1, 2020, p. 3.

56 *ibid*, p. 4.

Most employees can describe sexual harassment in the workplace through experience or observation. For many people, dealing with sexual harassment is an accepted part of navigating workplace dynamics.⁵⁷

2.26 We will deal with complaints and how they are handled in detail in Chapter 5, but for now we note that women made about 70 per cent of sexual harassment complaints handled by Commonwealth, State and Territory equal opportunity or similar authorities in 2018.⁵⁸

2.27 As *Respect@Work* identified, sexual harassment is common in the Australian workplace. However, the situation is not the same in all workplaces, and not in all industries. Mining was one of the worst performing industry sectors as outlined in *Respect@Work*.

2.28 The Western Mining Workers' Alliance (WMWA) is formed from the key mine-specific parts of major unions in the mining industry. It provided testimony and a submission to the inquiry, drawn in part from its own survey of workers. The WMWA found a similar situation as that outlined in *Respect@Work*:

WMWA's survey shows that a significant proportion of workers are subject to a range of behaviours ranging from physical assault to unwanted sexual advances and inappropriate conversation or behaviour.

Of survey participants, 36% of women and 10% of men said they had experienced some form of sexual harassment within the last 12 months.

It is of great concern that nearly one in four female survey participants reported that they had experienced physical acts of sexual assault and two-thirds had experienced verbal sexual harassment while working in the FIFO mining industry.⁵⁹

2.29 Analysis by the AHRC showed the five sectors with the highest rates of harassment were:

- Information, media and telecommunications, at 81 per cent of the workforce;
- Arts and recreational services (49%);
- Electricity, gas, water and waste services (47%);
- Retail trade (42%); and
- Mining (40%).⁶⁰

2.30 Further, in 2022 Rio Tinto published findings from a review of its workplace culture (discussed further below), drawing on testimony of thousands of employees across its global operations. It uncovered a range of common and systemic harmful behaviours within the organisation, including 'unacceptable rates' of sexual harassment and casual sexism.⁶¹

57 Champions of Change Coalition, 'Disrupting the System: Preventing and responding to sexual harassment in the workplace', 2020, p. 17.

58 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, Table 3.1, p. 111.

59 Submission 50, WMWA, p.5.

60 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 222.

61 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 3.

Especially concerning for our inquiry, women in FIFO and DIDO worksites were at particular risk of experiencing sexual harassment.⁶²

2.31 We will not comment on the factors surrounding the other industry sectors except to note that the figures show that this is not uniquely a mining problem. However, the data alone shows how serious the problem is. The 40 per cent figure is already comparatively bad, but it is based on the whole workforce, which is predominantly male. When the question of gender is brought into the picture, things are even worse. This is an industry where in 2018-19 women made up 16 per cent of the workforce.⁶³ And, according to *Respect@Work*, men in the industry reported harassment at around the national average, 32 per cent. So harassment of one sixth of the workforce accounts for the additional nine percentage points. In practice this must mean that women face a much higher harassment rate than men. The figure for women stated in *Respect@Work* was 74 per cent.

Finding 7

Mining was one of the five worst industries identified by the Australian Human Rights Commission. Forty per cent of workers, and 74 per cent of women workers in the industry reported being sexually harassed in the last five years.

2.32 As a final note on numerical matters, the numerical data is drawn from the national survey in *Respect@Work*. As the AHRC report itself notes, and as many commentators have agreed, the national survey is the best and most widely drawn evidence base dealing with sexual harassment in the workplace. The total survey included 2,585 responses, which gives a strong sense of the overall picture, and allows for some confidence in making extrapolations. The dataset for mining was much smaller, but the figures are consistent with those drawn from later surveys.

2.33 It is important to note that resource industry players accepted that the issue was real, and that they were responsible for improving the situation.⁶⁴ That said, a number of submissions admitted the importance of the issue without commenting on whether or not it had occurred on their sites; seeing, as one submitter did, that they were 'not immune' to such incidents.⁶⁵ We deal with these responses and the detail of industry acknowledgement in Chapter 4.

62 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 5.

63 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 228.

64 E.g. Submission 56, CME, p.4; Submission 20, AMWU, *passim*; Submission 36, Minerals Council of Australia (MCA), p. 3.

65 E.g. Submission 18, Woodside Energy; direct quote: Submission 34, Australian Petroleum Production and Exploration Association, p. 2.

Chapter 3

Industry has perpetuated a culture that fails to protect women

We have heard detailed reports from members about supervisors and managers pressuring female workers into sexual activity in order to access training and job opportunities and there is a widespread perception that such activity takes place.

Western Mine Workers' Alliance

What frightens me is that I understand that [named removed] is still working in the mining industry.

Personal evidence

What young, impressionable girl would want to work on a mine site thinking she is going to be sexually harassed or assaulted?

Mr Paul Everingham, CME

Introduction

- 3.1 In Chapter 2 we explored the various experiences of women working in the mining industry, and the range of harassment and abuse they have had to deal with over time. In this chapter we turn our attention to the industry itself. In particular, we explore whether there are particular aspects of industry culture that might uniquely predisposition it towards sexual harassment and assault, or whether there are particular ways the industry operates that heighten the risk of harassment and assault. We then look at some of the key issues that were raised in evidence before us, and make some recommendations.
- 3.2 Our first observation is that there is nothing inherent in the activity of extracting resources that can be seen as 'naturally' conducive to sexual harassment. Digging holes and then moving and refining extracted materials do not lead to harassment, or offer special opportunities to harass. Unfortunately, it has become clear that the same cannot be said of the way mining business has been done over the years. This may not have been done deliberately, or even consciously, but in many respects mining life has been like an exercise in building the perfect environment for sexual harassment.
- 3.3 The chapter begins by establishing a framework for analysing what we might call the 'habits of behaviour' that have become prevalent in the mining industry and how these have influenced and reflected behaviour. It might be tempting to call these things the 'nature' of the resources sector, but a key point we want to make is that there is nothing 'natural' about any of this. These behaviours might be industry habits, but they are not inevitable or irreversible.

- 3.4 Having set the parameters that we will use to assess the qualities in the industry and workplace that promote incivility and sexual harassment, we then take them in order. First, we look at questions about ‘culture’ and practice in the industry. These include the acceptance of poor behaviour, the easy movement of people from place to place, and even horrific cases of people using power to seek sexual favours. As a particular focus we look at the place of alcohol in the workplace in the mining industry. Next we consider the question of gender in the sector. Finally, we look at the imbalance in power within the industry, and how that plays out at the grassroots.
- 3.5 This chapter lays out the issues as we found them but does not discuss the responses taken to deal with them. Those responses, and our views on them, are the subject of the next chapter.

The FIFO industry embodies the main risks to sexual harassment

- 3.6 There is considerable public agreement on the main risks factors that enable or promote incivility, sexual harassment and assault. Mining in general, and FIFO employment in particular, have long had most if not all of these risk factors. There is an almost infinite way to describe these influences and factors, and they obviously cannot be completely delineated. Some practices and behaviours can reflect more than one of these characteristics, as we shall see below. But for now we will revert to those covered by *Respect@Work*, which described the key factors as:
- Poor culture – including the general ‘tone’ of a workplace, especially where incivility is common and accepted as ‘the way we do things here’; acceptance by leaders of poor behaviours; protection of ‘high value’ workers above others; and the misuse of alcohol.
 - Gender inequality – including rigid roles and stereotypical relations, aggressive male-male peer relationships; disrespect for women generally.
 - Power disparity in the workplace – where managers and overseers have increased power of dismissal, promotion, reward and the like.⁶⁶

Finding 8

Mining in general, and FIFO in particular, has long had most if not all of the major risk factors for sexual harassment in the workplace. They include:

- Poor culture – including the general ‘tone’ of a workplace, especially where incivility is common and accepted as ‘the way we do things here’; acceptance by leaders of poor behaviours; protection of ‘high value’ workers above others; and the misuse of alcohol and drugs;
- Gender inequality – including rigid roles and stereotypical relations, aggressive male-male peer relationships; disrespect for women generally; and
- Power disparity in the workplace – where managers and supervisors have relatively unfettered power over dismissal, promotion or reward.

66 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, pp. 138-160.

The culture of mining life has perpetuated poor behaviour

3.7 One of the key challenges of working in this space deals with the issue of 'culture'. It is notoriously difficult to describe culture in the abstract, and even harder to tie down in specifics. Nor is it necessarily helpful to make a comprehensive list of the components of culture and the test them against a standardised set of criteria. But too many people who spoke to us raised the matter for us to simply dismiss the concept. The simplest description might be that culture equals the things that people do in a place or a situation that might broadly be considered explicitly or implicitly condoned or permissible. Used in this sense, the evidence we heard was of behaviours that characterise unhealthy workplace cultures, and that have enabled ongoing and common sexual harassment in mining sites and companies. To put it differently: would similar behaviours be promoted or accepted if they were widespread in other industries? It is our position that they would not.

3.8 While there is no single definition, the literature clearly recognises the impact of culture in an employment or organisational setting:

The organisational climate is 'informed by the social norms that exist in a particular workplace ("the way we do things around here").' Studies have found that the climate of an organisation is an important 'antecedent' (or cause) of sexual harassment. In other words, in workplaces that are perceived to be more tolerant or permissive of sexual harassment, people are more likely to experience sexual harassment.⁶⁷

3.9 We received much evidence that supported this idea. Some people were specifically concerned with sexual harassment, some with more general matters. But the clear picture was that the 'way things were done' in the industry was an issue in itself:

This is a culture on a mine site; it is normal. You walk in and you know what you are getting yourself into, you just do not realise how bad it is, that these guys in a lot of ways are grooming these young girls. We are talking young apprentices, young wannabe digger operators, stuff like that. They are being groomed and if you want to get anywhere, you have got to be in a relationship. Then people like me are used as an example: 'You go and do what she's going to do; that's where you'll end up and that is where you'll stay.' It is a hard one.⁶⁸

The nature of FIFO can, at some mine sites, promote a culture of 'what happens at camp, stays at camp'. This, coupled with heavy drinking, is a recipe for harassment. Potentially workplaces could encourage more family interaction at the sites through family days and build the connection between home and site would be a major benefit. Also, sites which have alternatives to drinking through organised sports etc are better at building a culture based on respect.⁶⁹

Many on site supervisors simply ignore the procedures and run their own 'show' according to their own personal code of conduct. These situations are often not

67 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 154.

68 Personal evidence.

69 Personal evidence.

even uncovered as workers simply ‘toe the line’ and don’t question the decisions of supervisors.⁷⁰

Many FIFO workplaces have only male management, which makes it extremely hard as a woman to raise issues of sexual harassment. Again, it felt like any woman who may raise an issue would be branded as a trouble maker, and many managers would take the view that women are the problem on site.⁷¹

3.10 We heard and saw examples of companies acknowledging the broad cultural issues they face (and we cover company responses in detail in the next chapter). For now, we will note that Rio Tinto has recently completed an extensive and independent investigation and report on sexual harassment in its workplaces, in a process headed by the former Sex Discrimination Commissioner. We were encouraged by this work and the evident importance and urgency they gave to the issue. Even more, we commend their choice to make the report public in the interests of transparency. This *Report into Workplace Culture at Rio Tinto* accepted that there was a real problem. It told of women in the company’s experience of ‘everyday sexism, a corrosive and demeaning phenomenon which, when allowed to flourish, can be fertile ground for more serious sexual misconduct to occur.’⁷²

3.11 Beyond general discussions of culture and practice, we took some very distressing evidence about the kinds of appalling behaviours that appeared to be tolerated on mine sites. One person told us that there were sites where prostitutes were regular attendants, even if their presence was ‘a lot more discrete’ now than it had been in the past.⁷³ Another individual told us that there was ‘an expectation that the few woman [i.e. other workers] that these men encounter on remote exploration sites will be available to have sex with them.’⁷⁴ One witness compared the situation to ‘witnessing bloodhounds on the trail.’⁷⁵

3.12 Worst of all, we heard that of men using their position to seek sexual favours from women:

I was sexually harassed or ‘groomed’ in my first mining job by my supervisor, he would ask me to do tasks that weren’t part of my job and make creepy comments about being special and getting special jobs.⁷⁶

People do not believe it until you actually are in that experience where you are being told, ‘Well, if such and such wants to make a career here then she’s just going to have get down on their knees.’ You know, you say that flippantly, but that is, genuinely, what is said on-site.⁷⁷

3.13 Another person told us of an instance where a direct supervisor demanded that she perform sexual acts to ‘get her shirt’, meaning moving from hire company to being directly hired by

70 Personal evidence.

71 Personal evidence.

72 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 38.

73 Personal evidence.

74 Personal evidence.

75 Personal evidence.

76 Personal evidence.

77 Personal evidence.

the mining company.⁷⁸ These stories were not only provided by individuals. The WMWA told us that they 'heard detailed reports from members about supervisors and managers pressuring female workers into sexual activity in order to access training and job opportunities and there is a widespread perception that such activity takes place.'⁷⁹ In their survey of members, the WMWA reported that 32 per cent of women had received requests for sexual favours, and 22 per cent had these request either explicitly or explicitly linked to promises of better conditions or career advancement.⁸⁰

Finding 9

We were appalled by evidence of managers and supervisors seeking sexual favours from women to gain promotions or permanent employment.

Finding 10

A survey of Western Mine Workers' Alliance members found that 32 per cent of women had received requests for sexual favours, and that 22 per cent of women had such requests linked to their working conditions or career advancement.

Recommendation 2

Mining and other resources companies need to ensure that there are serious repercussions, including dismissal, for any person who has attempted to seek sexual favours for advantage and that all proper legal actions will be taken against them.

3.14 As we have already noted in this report, we did not take an inquisitorial approach to these stories – we did not attempt to prove the case, or to identify individuals who might have carried out acts of harassment or assault. But we heard enough to have no doubt that the practices did occur. We also heard that alleged perpetrators were often treated better than victims. Rather than being overtly punished, we heard that people were often 'moved on'. For example, we heard that:

The supervisor eventually got promoted and I was blacklisted from the company⁸¹

the employer of the perpetrator, transferred him to another mine site the day after the incident after other employees reported the incident.⁸²

The male co-worker directly involved resigned immediately after the mining company gave him a formal written warning for his behaviour towards me. But, I was forced to resign after he was re-employed by the same company 6 weeks later.⁸³

...back on site after 3 months and was back doing his job.⁸⁴

78 Personal evidence.

79 Submission 50, WMWA, p. 7.

80 *ibid*, p. 5.

81 Personal evidence.

82 Personal evidence.

83 Personal evidence.

84 Personal evidence.

I have seen this colleague make these types of comments about other people we work with and nobody says anything. He still works with the company and everyone shrugs it off as if it is just his personality.⁸⁵

This is the catch 22; we just move people around but we do not change the culture.⁸⁶

- 3.15 Even when people were dismissed, there was a good chance they would appear in some other company on some other site. This is difficult to trace. At a local level, individuals might have some knowledge of a problematic worker's history. But we were surprised to learn that police checks on employees were not standard across the industry. Mr Pearce from the Association of Mining and Exploration Companies (AMEC) told us that many companies used police checks but many did not.⁸⁷ BHP told us that it had just introduced a pilot scheme to conduct police checks for all employees in its iron ore business.⁸⁸
- 3.16 Throughout this inquiry people raised the notion of an industry-wide register of people who have sexually harassed other people. In our initial hearings most of the large companies and representative bodies had at least considered the idea, as did some individuals.
- 3.17 For example, Mr Finnegan from Macmahon thought that 'having something like that would help and, to be honest, I think it would ultimately act as a deterrent if people knew it was there. But I know it is a sensitive issue in terms of how you would put that together legally.'⁸⁹ Mr Trott from Rio Tinto expressed similar views.⁹⁰ And a number of individual witnesses told us they thought that people might act differently if they thought that their behaviour might be noted in some formal record. The idea was sometimes compared to the White Card already in place (dealing with safety accreditation) or the Working With Children Card, where people working with children must have their criminal records assessed to ensure they have no relevant convictions or ongoing matters.
- 3.18 While the idea has some merit, it has many challenges. As the Commissioner for Equal Opportunity noted, it might be done regarding criminal matters, and we believe that this should be part of any recruitment process. However, as Dr Byrne went on to say, when the matters covered are at a lower threshold things become much more difficult. Specifically, he worried about who would assess the information, how would it be recorded, and how long the information might be held. In his view the only fair way to operate such a system would require a whole-of-industry registration system, with information about reported sexual harassment being only one field.⁹¹ DMIRS told us that it would be constrained from sharing any details about any incidents reported directly to it because of anonymity restrictions.⁹² Mr Gandy from the WMWA raised another concern when he said that '[h]aving a register

85 Personal evidence.

86 Personal evidence.

87 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 2.

88 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2021, p. 6.

89 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 12.

90 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 7.

91 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 10.

92 Mr Andrew Chaplyn, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 11.

with names on it and people blacklisted and all that, again, might help part of that, but it is papering over the cracks a little bit.⁹³

- 3.19 In the end, we are not convinced that the matter is the best solution, but we think the issue is important enough that it warrants detailed investigation. There may be many challenges, but until companies can work through it, the risk of people moving through the industry unscathed is hard to minimise. We accept the challenges to protecting individual rights, and that it might only be possible as something like a whole-of-industry register.

Finding 11

Even when people are found to have behaved unacceptably, there has been a practice of ‘moving them on’ rather than dismissing them, allowing them to continue in the industry.

Recommendation 3

The industry must explore ways to prevent perpetrators of serious sexual harassment simply finding reemployment on other sites and in other companies. This should involve:

- thorough exploration of an industry-wide workers’ register or other mechanism such as industry-wide accreditation, taking into account natural justice considerations and perhaps modelled on the Working With Children Card; and
- ensuring probity checks across the industry include consideration of harmful sexual behaviours particularly for smaller companies and sub-contractors.

Alcohol is well acknowledged as an issue in the resources sector

- 3.20 Another risk factor outlined by the AHRC, and one substantiated by witnesses to this inquiry, is the misuse of alcohol. Again, it will come as no surprise to most readers that the resources sector has a reputation for extensive and excessive consumption of alcohol. The evidence we received agreed with the position put by the AHRC, that high alcohol use increased the risk of sexual harassment and assault. We also heard from many individuals about the various risks involved at a personal level with alcohol-affected people.

- 3.21 At the most general level we received many comments on the broad risks that come from excessive use of alcohol. And as with much in this area, *Respect@Work* laid the ground clearly:

Alcohol can disinhibit social controls on behaviour. Change the Story has identified the ‘harmful use of alcohol’ as a factor that can interact with the gendered drivers of violence against women ... to increase the probability and severity of such violence.

Research has suggested that alcohol does not, in and of itself, cause violence against women. Rather, the significance of alcohol use and violence against women lies in the interaction between social norms relating to alcohol and social norms relating to gender (especially norms concerning masculinity and masculine peer-group behaviour). The research found that this interaction ‘can increase the

93 Mr Bradley Gandy, WMWA, *Transcript of Evidence*, 8/9/2021, p. 6.

likelihood, frequency or severity of violence against women', rather than the consumption of alcohol itself.

While excessive consumption of alcohol is a potential risk factor for sexual assault, research has indicated the increased risk is primarily among men who are already predisposed to sexual aggression. Similarly, while the use of alcohol may be a factor in some cases of workplace sexual harassment, not all people who use alcohol engage in sexual harassment at work, while other people who do not use alcohol can be harassers.⁹⁴

- 3.22 We received several submissions from several health organisations who raised the matter directly. Some, such as the alcohol and drug consultancy 360 Edge, discussed the matter in general terms:

Most sexual harassment and bullying is associated with alcohol use. Alcohol and other drug use can cause disinhibition and lead to poor decision making, which makes poor behaviour more likely.

However, it is too simplistic to view this as the root cause of gendered abuse. Alcohol and other drugs can increase risk of sexual harassment, but the cause of it is ultimately the attitudes towards women and workplace cultures that enable inappropriate conduct.⁹⁵

- 3.23 The Australian Medical Association made a similar point, although noted the absence of much detailed research on the case that particularly focuses on mining and FIFO situations:

While there is limited academic research directly linking alcohol consumption to sexual harassment on FIFO mine sites, alcohol is shown to be a risk factor for sexual violence in the broader community. Anecdotal evidence and media reports suggest that unsafe drinking habits may contribute to an undesirable culture onsite.⁹⁶

- 3.24 Even the Cancer Council of WA felt concerned enough to discuss the issue with us, and believed that there was evidence of worryingly high use in the mining sector:

FIFO workers are significantly more likely to drink alcohol at risk of harm (short and long-term) and to score in the risky or hazardous category of the Alcohol Use Disorders Identification Test, and that perceived masculinity roles, stigma, loneliness, home-work life conflict and difficulty with psychological transitioning to and from work were associated with riskier drinking patterns.⁹⁷

Finding 12

Professional and health organisations universally told us that they were concerned by the risks to increased sexual harassment posed by excessive alcohol consumption.

94 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 159.

95 Submission 26, 360 Edge, p. 2.

96 Submission 23, AMA WA, p. 1.

97 Submission 32, Cancer Council of WA, p. 3.

3.25 But, as we heard several times, the use of alcohol itself does not ‘cause’ sexual harassment or sexual assault. As one individual put it to use, ‘The problems in the industry aren’t just due to alcohol consumption. This is an aggravating factor but not the cause.’⁹⁸ Unions WA was similarly cautious of sheeting the story home to one issue: ‘The source of these problems is not reducible to a single cause, such as the availability and consumption of alcohol.’⁹⁹ And circling back to the broader theme of this chapter, another individual told us that ‘I do not think alcohol makes the situation better, I think the real issue is with the culture.’¹⁰⁰

3.26 As we have seen in other parts of this inquiry, not everyone agreed that alcohol was a contributing factor to harassment. The WMWA’s submission included results from a survey of its members, which was on the face of it equivocal about the matter:

Among survey respondents, there were mixed views about the link between illicit drug use or excessive alcohol consumption in FIFO camps and sexual harassment. Overall, 60% of respondents said there was no link, 21% said there was a link and 19% were unsure. However among women, 33% said there was a link.¹⁰¹

3.27 We do not question the results of this survey, and we think the WMWA should be congratulated for making the effort to survey its members. However, one aspect of this particular result is worth commenting on, as it provides an example of a more general trend. The quote demonstrates a broad difference between the ways women and men see the issue. In this case, women were more than three times as likely as men to see a connection between alcohol and sexual harassment.¹⁰² We note a similar effect in Rio Tinto’s substantial review of its practices which was released earlier this year. When asked how confident they were that the company ‘will make a meaningful difference in relation to sexual harassment’, men were much more confident than women.¹⁰³

Finding 13

A survey by the Western Mine Workers’ Alliance showed that women were three times as likely as men to see a connection between alcohol and sexual harassment.

3.28 There is a difficult balance to make in this area between personal freedom, corporate responsibility, and limiting access for the greater good. The Minerals Council of Australia (MCA) covered most of this ground when it told us that

All mining workers have a duty to take care of their own health and safety and ensure they do not adversely affect other workers. This means they must be fit and well to do their job, not be under the influence of alcohol or drugs, or use alcohol or illegal drugs while at work. When not working, individuals must also not

98 Personal evidence.

99 Submission 44, Unions WA, p. 1.

100 Personal evidence.

101 Submission 50, WMWA, p. 12.

102 Presuming a 50/50 split between women and men in the survey. If one fifth of respondents saw a link (21%), and one third of women saw a link (33%), then that implies the figure was less than one tenth of men (approximately 9%).

103 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, Figure 4, p. 29.

undertake behaviours that are unacceptable or prevent them from being fit for work at their next shift.

For example, a sexual harassment risk arises where workers live at camps and in their down time are able to access alcoholic beverages at bars or wet messes. The Australian Human Rights Commission observed that the use of alcohol was commonly raised during the inquiry through submissions and consultation as a cultural and systemic factor contributing to sexual harassment.

A number of companies have recently adopted the Australian Health Guidelines on alcohol consumption of no more than four standard drinks on any one day.¹⁰⁴

- 3.29 We will have more to say on current and changing alcohol policies in the next chapter. For now, we merely note that many people and organisations were clearly behind the need to limit access to alcohol on mining sites. The CME even noted that there were some ‘dry’ camps, where no alcohol was permitted.¹⁰⁵

Recommendation 4

Mining companies must as a minimum implement moderate drinking standards for all FIFO accommodation sites.

- 3.30 It was clear from most submissions and testimony that the risks presented by alcohol misuse were real, and recognised as such. DMIRS, for instance, told us that most reported cases of sexual harassment were linked to alcohol use.¹⁰⁶ The operators of the Port Hedland airport told us that they had to deal with 3-5 incidents weekly of alcohol-fuelled bad behaviour, and that extra security had been employed to deal with it.¹⁰⁷ Other groups to raise the matter included the Centre for Women’s Safety, Engineers Australia, as well as an experienced accommodation professional.¹⁰⁸

- 3.31 Mining companies also recognised there was a link. BHP, for example, told us:

We did a lot of work and went back through the case history of all events that have happened in BHP. We tried to line up how many events had alcohol as a contributing factor or risk factor to those events. When we did that work, it became quite clear to us that the abuse of alcohol, and in particular being intoxicated, is a very significant risk factor for then further very poor behaviour.¹⁰⁹

- 3.32 The CME similarly saw

... alcohol as one risk factor in this space and it has been a critical focus for our membership. Our industry has long had alcohol policies in place. I would say that

104 Submission 36, MCA, p. 12.

105 Ms Elysha Millard, CME, *Transcript of Evidence*, 20/10/2021, p. 10.

106 Submission 69, DMIRS, p. 5.

107 Submission 82, Port Hedland International Airport, pp. 1-2.

108 See Submission 73, The Centre for Women’s Safety and Wellbeing, Stopping Family Violence and the WA Network of Alcohol and other Drug Agencies; Submission 72, Engineers Australia; Personal evidence.

109 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2021, p. 13.

every organisation is very familiar with having an alcohol standard. Traditionally, that has focused on managing alcohol impairment on shift – daily breathalysers and those sorts of things – and we fully recognise that we need to revisit those policies and consider how they apply to off-shift behaviour in our villages.¹¹⁰

- 3.33 The approach to ‘managing alcohol impairment in shift’ was noted by several individuals, but it was not clear that people had any confidence that this approach would limit much at all. As one person told us:

There was no limits on drinking, apart from that you had to blow zero in the morning before your shift started, so that was every night. But it just encouraged people to go hard early. It was like ‘10 before 10’ I think was the comment. Have 10 before 10 and you will be okay.¹¹¹

- 3.34 Others told us that the amount of alcohol being consumed on site was, in the words of one individual, ‘crazy’.¹¹² As we discuss in the next chapter, the industry has begun taking steps to hopefully moderate the influence of alcohol on mine sites.

There is continuing gender imbalance in the sector

- 3.35 A gender imbalance in an organisation means that women are more likely to face disproportionate challenges to counter negative stereotypes or effectively deter or resist harassment.¹¹³ In fact, women working in male-dominated industries say they have to work twice as hard to receive half as much respect.¹¹⁴ These ideas are so well-entrenched that the Australian Defence Force noted them in a supplement to its 2019-20 Annual report: ‘This can result from institutional and social climates that are “chilly” towards women, stemming from open sexism and institutionalised unconscious bias.’¹¹⁵

- 3.36 Some academic research argues that gender-based harassment and sexual harassment can both ‘be understood as expressions of hostility toward individuals on account of their sex or gender. Thus, many scholars have argued that both forms of harassment fall under the single category of ‘sex-based harassment’.¹¹⁶ Other researchers have argued that even towns centred near to mine sites can be problematic, let alone the camps (or ‘villages’, as companies now prefer to call them) purpose built to accommodate mining workers. One paper noted that:

Mining towns, largely because of their itinerant and fluctuating populations have been considered as having less social capital than settled agricultural communities. The large

110 Ms Elysha Millard, CME, *Transcript of Evidence*, 20/10/2021, p. 10.

111 Personal evidence.

112 Personal evidence.

113 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, Sydney, 2020, p229.

114 Sarah Oxenbridge, Rae Cooper and Marian Baird, ‘“One of the boys’?: The work and career experiences of Australian women working in automotive trades occupations’, Sydney, April 2019, pp. 25, 36.

115 Australian Defence Force, *Women in the ADF Report 2019-2020: A supplement to the Defence Annual Report 2019-2020*, 2020, p. 58.

116 Meraiah Foley, Sarah Oxenbridge, Rae Copper, Marian Bird, ‘“I’ll never be one of the boys’: Gender harassment of women working as pilots and automotive tradespeople’, *Gender, Work & Organization*, 2020, 1, p. 2.

numbers of relatively young men involved in mining also provide a link to crime and social disorder.¹¹⁷

3.37 As one individual with experience in the sector told us:

Sexual harassment is the step that follows from allowing women to be treated in disrespectful ways every day, by making it seem we are not important, we are not seen, we are not heard.¹¹⁸

3.38 All the companies and sector representatives that engaged with the inquiry were keen to point out that they were seeking to change the gender balance in their industry. However, many of the statistics suggest there has been little progress since 2008. The mining workforce is predominantly male. National employment statistics show that 132,800 people were employed in mining and resources in WA in November 2021. Of these, 78,000 were employed in the metal ore sector. And 19.1 per cent of those employed were women.¹¹⁹ This figure had not changed fundamentally since an 2008. One writer noted that the number of women working on mine sites is much lower.¹²⁰

3.39 Nor is it news that FIFO work is big business in WA. The Australian Manufacturing Workers' Union (AMWU) told us that there were more than 60,000 FIFO workers in WA.¹²¹ The figures given by operators supports this figure. Fortescue told us that they had more than 11,000 workers who were engaged in FIFO.¹²² Roy Hill had 2,800 employees, most of whom were FIFO.¹²³ BHP had about 13,500 employees in WA.¹²⁴ Rio Tinto told us that had more than 16,000 employees, which figure grew to 30,000 when contractors were included. It calculated that 59 per cent were in FIFO arrangements.¹²⁵ For Rio this required providing 'more than 17,000 rooms and, on average, 11,000 people are accommodated each night.'¹²⁶ For such a large part of such a large industry, we were surprised to learn that until recently there had been 'almost no research published on the effects of human or social service delivery through FIFO-DIDO'.¹²⁷

Finding 14

Women are underrepresented in the mining industry, making up 19.1 per cent of the total workforce. This figure has remained largely unchanged since 2008.

117 John Scott, Catherine MacPhail and Victor Minichiello, 'Bang and Bust: Almost Everything You Wanted to Know About Sex in the Mining Boom (but were afraid to ask)' *Preview*, 2012, 160, p. 26.

118 Personal evidence.

119 Australian Government, Labour Market Information Portal, <https://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/Mining> and <https://public.tableau.com/app/profile/occupation.and.industry.analysis/viz/IndustryOccupationquarterlyemploymentupdate/CoverPage> accessed 8/3/2022.

120 Julie Pirotta, 'An Exploration of the Experiences of Women who FIFO', *The Australian Community Psychologist*, 21, 2020, p. 37.

121 Submission 20, AMWU, (n.p.) [p. 4.]

122 Submission 55, FMG, p. 3.

123 Submission 58, Roy Hill, p. 2.

124 Submission 71, BHP, p. 2.

125 Submission 63, Rio Tinto, p. 3.

126 *ibid*, p. 4.

127 Pauline Guerin, Bernard Guerin, 'Social Effects of Fly-in-Fly-out and Drive-in-Drive-out Services for Remote Indigenous Communities', *The Australian Community Psychologist*, 21, 2009, p. 7.

Finding 15

FIFO is a huge part of the mining and resources sector. For example:

- there are more than 60,000 FIFO workers in WA;
- BHP employs more than 13,500 people in WA;
- Rio Tinto accommodates more than 11,000 people each night; and
- Fortescue employs about 11,000 people in FIFO.

3.40 It is important to recognise that the industry has recognised the gender situation, and we are pleased that companies publicly state their intention to reduce the imbalance. We are also pleased that, if the imbalance is reduced, this might give more women more opportunities to explore employment in the industry. But it is clear that merely introducing more women to the equation cannot be the whole solution. As one witness put it:

the ‘add women and stir’ approach is not a panacea for solving these problems. Even when we have equal proportions of men and women in a workplace, a highly masculinised workplace milieu and a chilly climate for women can prevail.¹²⁸

3.41 Changing the demographics of the industry will obviously, if slowly, help change how the industry works. But it is important that women are not made unreasonably to be responsible for this ‘cure’. This is especially the case given that there is already a history of victim-blaming about sexual harassment in the industry, at least at the local level. Other factors must be considered as well. The need to make an industry more gender balanced cannot be simply mathematical. The pressures outside the mining industry must also be recognised. As another academic put it:

Parts of the industry anticipate that more women in mining will improve the industry by introducing diversity and a more cooperative culture. Despite this trend, significant barriers to women’s participation are not being addressed, which leads to many women leaving the industry prematurely, to either enter other fields, or to start families. There is growing evidence to suggest that women face strong pressures within the industry and that being employed on a FIFO basis exacerbates these pressures. Research on the effects of the FIFO lifestyle on men has identified a number of stressors and negative effects on both male workers and their families, in addition to the benefits of the employment choice. FIFO women face the combined challenges of working FIFO, of working in a male dominated culture, and, if they are mothers, of raising a family.¹²⁹

Finding 16

Women are underrepresented across the industry, but especially so in site supervision and management roles. We heard anecdotal evidence that this increased the risk of incivility and harassment for the few women in those roles, in particular because some people perceived them to be ‘token’ position.

128 Professor Paula McDonald, *Transcript of Evidence*, 6/4/2022, p. 2.

129 Julie Pirotta, ‘An Exploration of the Experiences of Women who FIFO’, *The Australian Community Psychologist*, vol. 21, 2020, p. 39.

Recommendation 5

While merely ‘adding more women’ to the mix is not enough to remedy cultural problems, mining companies need to improve the gender balance in their workplaces. Part of this must include greater effort to increase female workforce participation, with specific focus on site-level supervisor and management positions.

3.42 While mining companies assumed FIFO was inevitable, and it might be practically impossible to work without it in at least the short term, not all witnesses agreed it was a positive. Union witnesses were less convinced of its benefits:

FIFO work has been part of Western Australia’s economy for over fifty years, but it has grown exponentially in the 21st century. FIFO camps were established as an alternative to the creation of mining towns and are cheaper. Shorter mine life cycles and problems associated with decommissioning towns after deposits are exhausted have been cited as reasons business favours the FIFO system. With the strong encouragement of resource companies, FIFO has now become the default labour force model for Australian resource development, especially in Western Australia.¹³⁰

There is a clear power imbalance in the mining and resources sector

3.43 Before we explore the question of the power imbalance in mining workplaces in more detail, we must recognise that practically all formal employment involves some degree of imbalance between individual workers and their employer. Perhaps only in a properly established cooperative enterprise might this risk be completely minimised. Given that mining and resource extraction includes some of the largest and most powerful corporate entities in the world, it is not surprising that there will be some degree of imbalance. As with most things, understanding the effects of particular organisational structures, and reducing any potential harm they might create, is the key issue. And while some degree of imbalance in power relations might be unavoidable the risk this presents for potential sexual harassment is greater in some types of work environments than others. We have arrived at the view that certain shared characteristics and structural features of the resources sector, including the widespread reliance on contractors and labour hire, increases rather than mitigates the harmful effects of this imbalance.

3.44 On a somewhat superficial front, the power relationship in mining in some ways reflects that most unequal type of workplace power relationship, the military. There has always been, and to some extent still exists, an almost a military aspect to life in the mines. Food is served at a ‘mess’ for example. Even the layout of camp accommodation has historically looked like a military facility. Accommodation is managed centrally; travel is arranged according to company need. While all of these things make sense to the business operating a mine, and at some level must happen in activities on the scale of many mining site and companies, none of them suggest an equal sharing of power.

130 Submission 20, AMWU, [p. 3].

3.45 Some people have likened the situation to an even more unequal arrangement. As one group of academics has written:

The FIFO workplace environment, which typically is similar to a total institution, might be also be associated with the high rate of bullying found in this study. Most Australian resource workplaces in isolated regions consist of camps, which often contain hundreds of identical dongas (temporary, typically transportable building with a single room) structured in grid format, enclosed by barbed wire fences. Not only do most FIFO workplaces resemble prison camps, they also operate in an institutionalized manner. FIFO workers note that excessive regulations and highly regimented structures strip them of control over their work and personal time, which is a significant source of distress that is further compounded by separation from loved ones. In the case of total institutions, such loss of autonomy and separation from loved ones results in substantial psychological trauma. In self-preservation, people create subcultures based on ultra-masculinity and dominance, and engage in maladaptive behavior[sic] like bullying, as a means to exert control over their situation.

The highly regulated nature of FIFO workplaces may also reflect an authoritarian management style, which is a predictor of bullying. Authoritarian management approaches are thought to promote bullying in two primary ways. First, authoritarianism may create a fearful atmosphere, in which employees may believe that criticism is not tolerated and complaints will not be acted upon. Second, authoritarian management leads to abusive supervision, whereby supervisors use an aggressive style to influence control over employees.¹³¹

3.46 The idea that FIFO life is unusual was almost universally agreed. For example, we heard much the same message from such disparate sources as the Commissioner for Equal Opportunity, AMEC, the CME and the AMWU:

In most industries employees are generally not in contact outside of working hours, apart from attending workplace social functions. However, in the mining industry, FIFO work obliges employees to live with each other outside of working hours and places a greater responsibility on the employer, as the provider of accommodation, for the afterhours behaviour of employees.¹³²

FIFO is a unique situation. You work there, but you also live there. When you are off shift, we need to make sure there is an environment that is supportive. We have been going through that over the last several years around mentally healthy workplaces and what that means for mental health on site, particularly for people away from their families and away from their support networks.¹³³

The sector has previously been criticised for remote sites being too controlling of employees when they are off-shift and residing in accommodation facilities. For example, the FIFO Inquiry questioned whether the high levels of 'control' applied to workers when

131 Peta Miller, Libby Brook, Norman Stomski, Graeme Ditchburn, Paul Morrison, 'Bullying in Fly-In-Fly-Out employees in the Australian resources sector: A cross-sectional study', *PLOS One*, vol. 15, no. 3, 2020, p. 10, accessed 10/05/2022, <http://researchrepository.murdoch.edu.au/id/eprint/55340>.

132 Submission 54, EOC, p. 5.

133 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 8.

off-shift in accommodation facilities were necessary, as it can impact an employee's sense of agency.¹³⁴

The overarching problems with FIFO workplaces are contributing factors for sexual harassment. These workplaces remain poorly regulated. Living conditions are often treated as a bargaining chip for employers, rather than with minimum standards. Reliance on casuals means workers are unlikely to speak up, and even if they are keen to there are few channels to report. Union access is restricted. An undermining of community means workers don't know each other. All of this continues to contribute to why a gender imbalance exists, as women are warned off the industry.¹³⁵

3.47 Private individuals made similar observations. There was a thread of comments implying that the situation was somehow unique. We have already noted that there is a quasi-military sense to FIFO life, and believe that other command and control organisations, including police bodies, might provide helpful comparisons. One individual saw both uniqueness and a perhaps surprising correlation:

I think FIFO in mining is a unique industry to research into regarding sexual harassment issues because it's a very different dynamic, the closest similarity I can come up with is boarding school.¹³⁶

3.48 The final line of evidence we will raise here concerned expectations arising from the 'total control' nature of FIFO life. Put simply, the idea involves asking whether it is reasonable to expect normal behaviour from people in abnormal situations. One person asked, perhaps rhetorically:

Who ... would believe that he or she could live in a highly regulated prison type environment, travel to home at the whim of the management and expect that the sexual activities of the travellers are normal?¹³⁷

3.49 As we have noted already, union representatives provided critical comments about workplace and administrative practice, and the effects they can have on workers in the industry. The AMWU told us that:

Camp practices such as 'motelling', where workers change dongas at each swing, dissolve the community fabric that exists with more permanent arrangements and undermine camp cohesiveness. FIFO camps should be run as the communities they are and having continuity of neighbours is more likely to result in mutually supportive support camp relationships. In our experience, the stability non-motelling camps results in higher likelihood of peers identifying mental and physical changes in workmates and more openness in discussing accompanying issues. Knowing your neighbours also provides a level of comfort to vulnerable workers during long swings away from regular support networks. Additionally, we submit that the insidious practice of 'hot bedding' where one worker leaves a bed

134 Submission 56, CME, p. 16.

135 Submission 20, AMWU, [p. 3].

136 Personal evidence.

137 Personal evidence.

for his shift only to have it filled during his absence is the worst possible scenario for comfort, privacy, and security and should be banned outright.¹³⁸

3.50 Further, the WMWA noted that, like all parts of society, COVID-19 had impacted people's lives. They went further than most, perhaps and claimed these challenges might have made the situation worse:

Many of the risks of FIFO work have unfortunately been exacerbated during the COVID-19 pandemic, as travel restrictions have required long quarantine periods and separated many workers from their families. Longer periods of work can mean that workers are forced to remain in difficult environments, including working and living with a perpetrator of sexual harassment. This can arguably reinforce the expectations placed on victims to 'shrug off' repeated sexual harassment.¹³⁹

3.51 We accept that FIFO life can be difficult, and that it can put unusual pressures on people. We also know that the last two years have made life more difficult for people in the industry. For example, we heard that rosters have been sometimes extended to cover isolation concerns, and uncertainty has made life difficult for workers and companies alike. But, again, there is nothing inherent in the practice of working in the resources sector that makes sexual harassment inevitable or acceptable.

Finding 17

The operation of FIFO is more all-encompassing than most industries, with impacts on people's time, living arrangements and non-work activities. This increases an already unequal power relationship between employers and workers. In some regards, FIFO is more like a 'total institution' than a normal workplace.

3.52 More importantly, and as we heard many times, the risk of losing one's position, or of not being made a permanent employee, was a major factor in people's lives. The risk of upsetting people in direct management positions was so great that it influenced decisions about reporting or not reporting incidents, which we discuss further in Chapter 5. This is perhaps the most straightforward presentation of the power imbalance evident in the mining and resources sector. As one person described the problem:

This is how you get sacked in mining...[they] revoke the accommodation, which means that you do not have accommodation to stay, or the client did not approve your flights. It does not matter if you are full time or casual or whatever, that is how you get sacked. It is so easy.¹⁴⁰

3.53 As we have already seen, and will see again in Chapter 5, 'getting your shirt' could depend on many things, some merely uncivil, some clearly sexual harassment, and some which seem to be something like attempted sexual assault. No matter the details, for now the point is that this imbalance clears the way for increased sexual harassment. As one write has

138 Submission 20, AMWU, p. [5].

139 Submission 50, WMWA, p. 10.

140 Personal evidence.

explained the situation, ‘Many women in Australian mining report facing pressure in their workplaces by virtue of being in the minority and feeling that they must ‘blend in’.¹⁴¹

3.54 While the power relationships are clearly unequal, gender inequality is probably more pernicious and relevant in the case of mining. *Respect@Work* noted that ‘gender inequality was the key power disparity that drives sexual harassment.’¹⁴² That report went further:

There is strong evidence that gender inequality is a ‘root cause’ of violence against women and that sexual harassment shares the same underlying gendered drivers as other types of violence against women.¹⁴³

3.55 Finally, we believe that the prevalence of short-term contracts and sub-contracting has a negative impact on the power balance in the industry, and exacerbates the risk of sexual harassment. Unions WA was particularly worried about the scale and implications of this type of labour force. It told us that BHP globally employs more than half its workers through contractors or labour hire, and that figure for Rio Tinto is more than two-thirds. In 2017 we heard the Rio Tinto announced its WA iron ore operation would only use contract hires; in the two years to 2019 88 per cent of BHP new hires were of this type.¹⁴⁴ The most glaring version of this came in the examples we discussed earlier, where people were in effect blackmailed to ‘get their shirt’. Where onsite managers have a direct influence over the move from contractor to full employee, there is an obvious risk of the misuse of power.

3.56 Another potential challenge comes through the health and safety regime. Unions WA, for example, was concerned that the convoluted labour hire/employment relationships could make it more possible for companies to ‘essentially wash their hands’ of responsibilities.¹⁴⁵ The Construction, Forestry, Maritime, Mining and Energy Union (CFMEU) also raised the broad point that there can be a ‘pyramid’ effect to contracting, where one contractor can sub-contract work to another, who might sub-contract again;¹⁴⁶ the AMWU referred to this as ‘cascading’ contracts.¹⁴⁷ This has a number of potential effects. It certainly makes the lines of responsibility and accountability more complicated. It is also likely that the ‘lower level’ contracting companies will be smaller, and possibly less well-resourced to manage and monitor incidents. And finally, it puts individual workers in a weaker position. Should they want to raise a concern, it is not clear that they would necessarily know the best way or the best people to deal with. The AMWU explained the risks that come from this proliferation of contracting and short-term employment:

- Distrust in the system: many AMWU members have the perception that their employer does not care, nor will act appropriately in response to a report of harassment. This is related to the fact that there is a cascading system of responsibility – a worker may be contracted by labour hire, living in a site

141 Julie Pirotta, ‘An Exploration of the Experiences of Women who FIFO’, *The Australian Community Psychologist*, 21, 2020, p. 37.

142 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 18.

143 *ibid*, p. 299.

144 Mr Owen Whittle, Unions WA, *Transcript of Evidence*, 24/11/2021, p. 2.

145 *ibid*, p. 11.

146 Submission 60, CFMEU, p. 8.

147 Submission 20, AMWU, [p. 2].

managed by accommodation management, in a workplace managed by a prime employer. Where does the chain of responsibility lie?

- Lack of avenues for reporting: Practical WHS on the job has a clear chain of reporting, thanks to the work of the union movement. But there is often no indication of where an employer should go to report an 'interpersonal' issue, or any other concern. We have had instances where workers have called the police directly in the absence of any reporting avenue.
- Fear of recrimination: Many FIFO workers are on casual contracts in insecure work. There is a pervasive fear that if you speak up about any issue you can be replaced by someone who won't complain. This is borne out in reality, and we have had instances of members being sacked and booked on the first flight out for complaints. This is the 'window seat' mentality – i.e., you will get the first window seat out for speaking up. When the AMWU ran a comprehensive survey of FIFO members in 2015, 57.5% of 236 respondents listed the fear of negative effects on future employment.
- Loss of shifts: In the rare instances when a complaint is made against another worker onsite, it is noted as 'personal conflict' and the complainant is stood down rather than the respondent during the time of investigation. This is a financial and reputational disincentive to ever make a complaint.¹⁴⁸

3.57 There are other effects as well. AMEC, representing smaller exploration and mining companies, noted that short-term contracts tend to go hand-in-hand with an itinerant workforce.¹⁴⁹ In addition, the AMWU believed that the employment status of individuals could be reflected in different housing and accommodation standards, and that contractors received less attractive accommodations.¹⁵⁰ And one individual told us that after she made a complaint about sexual assault she was offered a short-term contract instead a permanent position.¹⁵¹

3.58 To make a point that we reiterate through this report, we do not believe that there is anything inherent in sub-contracting per se that directly causes sexual harassment. And we note the statements by various companies that they hold their contractors to account for the behaviour of their employees (and we presume that contracting companies would make the same assertions about their sub-contractors). For now, we merely note that the increased imbalance in power that is part of a fluid and heavily sub-contracted workforce can only increase the risk of sexual harassment for the reasons we have set out above. As such, we believe that the industry should make concerted effort to decrease these risks, whether by better monitoring of and information sharing with all levels of contractors, or by reducing its reliance on this kind of employment arrangement.

148 Submission 20, AMWU, [p. 4].

149 Submission 70, AMEC, p. 5.

150 Submission 20 AMWU, [p. 5].

151 Personal evidence.

Finding 18

The high rates of labour-hire, contracting and sub-contracting companies on sites contributes to:

- diluted lines of responsibility between contracting companies, operating companies and employees;
- increased power of line managers and supervisors with regard to career certainty including ongoing or permanent employment ('getting their shirt'); and
- problems establishing clear chains of reporting for harassment and bullying.

This could also lead to less resources being available in smaller companies for monitoring and addressing on-site incidents.

Recommendation 6

The mining and resources sector actively work to reduce the risks which are exacerbated by high rates of labour-hire and sub-contracting. To ensure sexual harassment is addressed, safety management plans should:

- consider the appropriate proportion of labour-hire and contracted workforce;
- review monitoring and information sharing arrangements with all levels of contract partners; and
- establish clear requirements and guidelines for all contractors, which directly address issues of sexual harassment.

Chapter 4

Industry has begun working to remedy its failings but must do much more

Have we failed as an industry? Absolutely.

Mr Paul Everingham, CME

I am appalled and sickened by the stories I have heard and the things that I have read about people's experience in our business and in the industry.

Mr Simon Trott, Rio Tinto

Introduction

- 4.1 A key part of this inquiry has been our desire to give voice to people who have personal experience of sexual harassment in the FIFO industry. We have also been focused on understanding any weaknesses and failings in the way business and regulation has been conducted in this area. But we are also keen to recognise where issues have been identified, and where changes are being made.
- 4.2 We have noted the previous work done by the AHRC in raising sexual harassment in the public mind, and the publicity surrounding several incidents in the mining and resources industry in WA. So, it is no surprise that the industry has responded to this new focus and begun the journey to a better workplace. This chapter looks in some detail at the response from companies and the industry. We start by expanding a little on the timeline of events we described in the Introduction, looking at industry's public responses before this inquiry began taking evidence. We then look at some of the practical changes that industry has made to workplaces and living arrangements. Finally, we look at the underlying challenges remaining to making major cultural change in an industry where male dominance has been the historical mainstay, and make some recommendations about ways to consolidate improvements already made, and ways to further improve the situation.

There are some agreed approaches to improving workplaces

- 4.3 We have seen that there is a shared understanding of the risk factors to sexual harassment in the workplace. Not surprisingly, there is also a reasonably consistent set of actions and reforms that are understood to assist organisations improve the situation, which we will now outline before we move on to describing the practical changes and responses from mining companies.
- 4.4 At one level, these change areas are straightforward. As with most matters of cultural change, the challenge is to make them relevant to the particular entity, and to ensure that structural or policy changes are followed through and made real in the workplace.

- 4.5 At the global level, the United Nations through its UN Women organisation worked with the International Labour Organization[sic] to create the 2019 *Handbook: Addressing violence and harassment against women in the world of work*. This covers a wide range of situations and political and cultural expectations, and lays out nine areas to drive transformation:
- Tackling gender inequalities, discrimination and social norms that underpin violence and harassment;
 - Transformative prevention activities in the workplace;
 - Effective human resource policies, procedures and practices;
 - Effective complaints procedures;
 - Remedies and support for victims;
 - Perpetrator accountability;
 - Raising awareness: training, information, campaigns, tools and guidance;
 - Gender-responsive public services;
 - Safe public spaces.¹⁵²
- 4.6 At the national level, the international aid organisation CARE Australia set out the high level requirements as:
- Leadership commitment;
 - Policies, planning and strategies;
 - Workplace practices and norms; and
 - Training, learning and capacity.¹⁵³
- 4.7 *Respect@Work* provided guidance on action, with two main focuses – preventing and responding to sexual harassment. The report started from the premise that ‘improving workplace prevention and responses requires a new and more holistic approach that looks beyond policies, training and complaint handling procedures.’¹⁵⁴ Successful and meaningful change, it said, must be: victim-centred; practical; adaptable for businesses of all sizes; and designed to minimise harm to workers.¹⁵⁵ This framework was fleshed out by seven ‘domains’:
- Preventing
 - Leadership – developing and displaying leadership to contribute to improved culture.
 - Risk assessment and transparency – identifying and assessing risk, learning from the past, to mitigate those risks and improve understanding.
 - Culture – building cultures of trust and respect, including policies and HR practices to set culture.

152 UN Women, *Handbook: Addressing violence and harassment against women in the world of work*, 2019, accessed 28/4/22, <https://www.unwomen.org/en/digital-library/publications/2019/03/handbook-addressing-violence-and-harassment-against-women-in-the-world-of-work> . See especially p. 52 ff.

153 CARE Australia, *What Works? Preventing and Responding to Sexual Harassment in the Workplace: A Rapid Review of Evidence*, p. 39.

154 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, p. 702.

155 *ibid.*

Industry has begun working to remedy its failings but must do much more

- Knowledge – including education and training to show leadership commitment and develop collective understanding of expected behaviours and processes.
- Responding
 - Support – prioritising worker wellbeing; supporting people before and after they report, and during any formal processes.
 - Reporting – increasing options for workers to report; making new ways for employers to respond without formal investigations; making investigations victim-centric.
 - Measuring – collecting data at workplace and industry level to better understand scope and nature of problem; including assessing the effectiveness of responses.¹⁵⁶

Finding 19

There is a broadly consistent set of recognised and evidenced-based principles, practices and reforms that organisations and industries can use to improve how they prevent and respond to sexual harassment.

Companies and industry representatives acknowledged they had a serious problem

4.8 Since the beginning of this inquiry, companies and representative groups have consistently recognised that sexual harassment is a serious issue in the mining and resources industry. We received submissions from seven resource companies, five industry representative organisations and four union groups. All accepted that this behaviour was unacceptably prevalent.

4.9 The corporate and representative bodies also variously described the need to respond to the situation, and to remedy it. Many industry figures made apologies as opening statements when giving evidence.

I would like to share that on behalf of BHP, we offer again our unreserved apology to those women and men who have experienced sexual assault and sexual harassment in our workplaces. These cases are unacceptable, unlawful and deeply traumatic to all of those involved.¹⁵⁷

I would like to start by personally apologising on behalf of the entire Fortescue family to any team members who may have experienced sexual harassment of any kind across our operations. I would also like to acknowledge the experience of the people whose stories have led to the establishment of this inquiry. We recognise that the circumstances that have been described will have been deeply distressing and disturbing.¹⁵⁸

156 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 702.

157 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2021, p. 1.

158 Ms Elizabeth Gaines, FMG, *Transcript of Evidence*, 27/10/2021, p. 1.

We acknowledge that, regrettably, sexual harassment does occur in the FIFO mining industry and this is totally unacceptable and contrary to our values.¹⁵⁹

I am appalled and sickened by the stories I have heard and the things that I have read about people's experience in our business and in the industry.¹⁶⁰

Finding 20

All companies that appeared before the Committee stated that sexual harassment was unacceptably prevalent in the industry.

4.10 We do not doubt the sincerity of the comments from the companies and representative bodies that gave evidence to us. The sense of shock and concern was palpable when witnesses spoke to us. But two central points came from those opening statements and the various submissions made to the inquiry.

4.11 First is a point that might be seemingly more semantic than practical, but language is incredibly important in this area, especially where the risk of legal responsibility resides. We do not think the apologies provided by companies were as fulsome or clear-cut as they might have been. In all cases the companies apologised to those individuals who had been effected, as is proper. But we heard no real apology for any failure to act by the companies. It was as if, somehow, these incidents existed somewhere outside the remit of the company, rather than happening seemingly routinely inside operations they had carefully built over many years.

4.12 Second, we were concerned by the level of surprise exhibited by the companies and the industry representatives. Again, we accept that the people who appeared before us were appalled by the events on their sites. But the evident ignorance of company executives about significant problems that their employees were enduring indicates a corporate failure. These failings will inescapably detract from public confidence in any steps companies make to improve the situations in their workplaces. Companies will have to work diligently and openly, and for a long time, to regain this lost confidence.

Finding 21

Company statements of regret were sincere but limited, and rarely included accepting responsibility for allowing the situations to arise.

Finding 22

The failure of companies to understand what was happening in their workplaces must be seen as a sign of corporate failure.

4.13 Beyond the risk to public confidence, it is worth noting that there is also a clear business risk from the exposure of this problem. The Australasian Centre for Corporate Responsibility, writing specifically about the WA experience, noted that 'sexual harassment reveals

159 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 2.

160 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/ 2021, p. 1.

significant future problems for companies in terms of profitability, labour costs, and stock performance',¹⁶¹ a point we return to in Chapter 5. The head of the CME made a similar point at his hearing with the Committee:

Our member companies are taking this very seriously. They are being asked by their boards why they are not doing more. If they are not doing enough, what are they doing and how are they going to make sure this does not happen again? Nearly all of our members are public companies. They are open to shareholder scrutiny and their boards are under constant scrutiny around their licences to operate.¹⁶²

4.14 The head of the CME was the most categorical in his recognition of the cost to the industry and member companies:

Have we failed as an industry? Absolutely. Any single incident is not acceptable and it is a failure on our behalf, particularly and especially since the focus since probably March 2020 when the *Respect@Work* report came out with such damning figures around incidents on sites.¹⁶³

4.15 The CME 'acknowledged that the sector has a further way to go in eliminating these behaviours.'¹⁶⁴ AMEC told us that the

recent reports we have seen about unacceptable behaviours in the sector, specifically relating to sexual harassment and sexual assault, are extremely concerning, unacceptable and must be addressed.¹⁶⁵

4.16 Unions took a slightly different approach, and tended to focus on the safety of their members and workers more generally. The AMWU put it succinctly: 'Sexual harassment is a scourge of our society, and AMWU members, like all people, deserve protection from this risk and the right to be safe and supported at work.'¹⁶⁶ The WMWA believed that in the current situation 'workers' physical and mental health [is] being put at considerable risk'.¹⁶⁷

4.17 Perhaps the most compelling description came not in direct testimony or submission, but from an article published by a national organisation, the Champions of Change Coalition. They were not speaking specifically to FIFO or mining, but to the Australian world of work in general:

We have come to a junction where we have choices. We can bury our heads in the sand and hope that others will lead. Or, we can reflect on our own past. We can acknowledge, apologise and make amends for unacceptable behaviour; share what we have learned through experience; and commit to leading the cultural change

161 Daisy Gardener, 'Sexual harassment as material risk: An investor briefing paper', <https://www.accr.org.au/research/investor-briefing-sexual-harassment-as-material-risk/>, p.4, accessed 14/03/2022.

162 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 1.

163 *ibid*, p. 5.

164 Submission 56, CME, p. 6.

165 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 1.

166 Submission 20, AMWU, [p. 1.]

167 Submission 50, WMWA, p. 3.

that will be essential in advancing gender equality. The same goes for how we respond to new issues that may surface about our teams, colleagues and employees. We must demonstrate and require accountability, empathy and compassionate leadership.

We must provide respect and support for people who experience sexual harassment. This means ensuring their wishes are listened to and prioritised and that they retain the right to share their stories if and how they want to, rather than be silenced in the interests of legal and reputation risk management.

The real risk to organisations is the human cost of not preventing sexual harassment or not addressing it in the right way. The actions you take as a leader say everything about what you and your organisation values – especially if you prioritise power and past achievements over the well-being of employees.¹⁶⁸

4.18 Not everyone was convinced that these admissions of care and concern showed that the necessary changes had been made. The peak union body in WA put it most bluntly when they said it was ‘a great disappointment to us that little seems to have changed in the industry.’¹⁶⁹

4.19 Having accepted that there was a significant issue, all industry representatives were keen to tell us how important their workforce was to them. In no particular order, we were told that:

The Australian mining industry’s core value and commitment is the safety, health and psychological wellbeing of its workforce...¹⁷⁰

Ensuring the health and safety of people working in the resource sector is the utmost priority for CME and our member companies.¹⁷¹

The health and safety of our people is our top priority.¹⁷²

At Fortescue Metals Group Ltd (Fortescue), safety is our first priority. This means keeping all of our team members physically and psychologically safe while they are at work and in situations connected with their employment.¹⁷³

APPEA member companies have a high focus on health and safety of people...¹⁷⁴

Ultimately, the safety of our workers and workplaces is our highest priority...¹⁷⁵

168 Champions of Change Coalition, ‘Disrupting the System: Preventing and responding to sexual harassment in the workplace’, accessed 14/03/2022, <https://championsofchangecoalition.org/resource/preventing-and-responding-to-sexual-harassment-resources/>.

169 Mr Owen Whittle, Unions WA, *Transcript of Evidence*, 24/11/2021, p. 2.

170 Submission 36, MCA, p. 3.

171 Submission 56, CME, p. 1.

172 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 1.

173 Submission 55, FMG, p. 1.

174 Submission 34, APPEA, p. 2.

175 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 2.

Industry has begun working to remedy its failings but must do much more

We talk safety in our business before we do anything else, and we stop any activity if there is any risk to the health and safety of any person.¹⁷⁶

4.20 Again, we accept that companies were concerned for their workers. However, there is an undeniable degree of hyperbole here. If this type of safety was really the ‘highest priority’ of companies, more would have been done. Alternatively, if this really was the highest priority, we can only say their performance was spectacularly unsuccessful.

Finding 23

All companies told us that staff safety was their highest priority. The level of sexual harassment in their companies indicates that this was not the case.

Some industry-wide action began in 2021

4.21 Following the release of *Respect@Work*, there was a first wave of industry reaction. The MCA released a suite of documents starting in January 2021 with a policy on Safe, Healthy and Respectful Workplaces. This did not refer to sexual harassment, but did include ‘psychological wellbeing.’¹⁷⁷ The Council committed to developing ‘an industry response that recognises and prevents sexual harassment and empowers people to speak up and take action where behaviours do not meet expected standards.’¹⁷⁸ On 7 July 2021, coincidentally the same day that this inquiry was formally initiated, the MCA delivered an industry code, which outlined the sorts of actions that would need to be taken through the two lenses of prevention (awareness and education; cultural and governance frameworks; leadership; and work environment) and response measures (support and protect; investigating; consequences; and communication).¹⁷⁹ It followed up with a ‘*Respect@Work Toolkit*’, which included guidance documents, fact sheets and some templates for companies to use.¹⁸⁰

4.22 In WA, the CME announced on 29 June 2021 that it was establishing a ‘cross-portfolio Safe and Respectful Behaviours Working Group’. Its aim was to develop:

- A code of conduct for employees of member companies focused on behaviour at external events, after hours on site ..., and social media activities. This will include considerations for contractors and third parties.
- Implementation of a wide range of safety controls for the sector – including prevention of unacceptable behaviour, best practice risk mitigation and

176 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2021, p. 13.

177 MCA, *Safe, Healthy and Respectful Workplaces*, January 2021, accessed 29/4/22, <https://www.minerals.org.au/sites/default/files/MCA%20Policy%20-%20Safe%2C%20healthy%20and%20respectful%20workplaces%202021.pdf>.

178 MCA, *Commitment*, accessed 29/4/22, <https://www.minerals.org.au/sites/default/files/Australian%20minerals%20industry%20commitment%20to%20eliminating%20sexual%20harassment%202021.pdf>.

179 MCA, *National industry Code*, accessed 29/4/22, <https://www.minerals.org.au/sites/default/files/Sexual%20Harassment%20Industry%20Code%20of%20Conduct%20March%202021.pdf>.

180 MCA, *Respect@Work Toolkit*, accessed 29/4/22, <https://www.minerals.org.au/respectwork-toolkit>.

considerations of how operations respond to allegations and instances of unacceptable behaviour.¹⁸¹

- 4.23 The CME endorsed the MCA Code, and in October 2021 it released an *Implementation Framework: Eliminating Sexual Harassment in the WA Resources Sector*. The framework includes objectives (with some guidance and exemplars) and covers similar ground to the other frameworks we have described: Leadership; Training & Education; Diversity; Security and Accommodation; Work-adjacent settings; Alcohol; Reporting; Employee support; and Investigations.¹⁸²

Finding 24

National and WA industry representative groups have produced high level policy and response frameworks to assist industry members prevent and respond to sexual harassment in their workplaces.

Mining companies have made efforts to better understand the issue

- 4.24 We have noted that industry representatives were willing to accept that sexual harassment and assault was a significant issue in their workplaces. In concert with that acceptance, companies and representative bodies told us of the steps they had taken to mitigate these risks, and hopefully to reduce the danger to women on their sites. There was a range of responses, some of which were based on improving companies' thus-far limited understanding of the issue.

Finding 25

Companies told us of a range of actions they had taken to mitigate the risk of sexual harassment. This included conducting 'audits' and surveys and efforts to meet with staff to better learn the truth on the ground.

- 4.25 Given the level of organisational shock surrounding the scale of the matter, we were unsurprised to learn that many parties had taken action to learn better what was happening. Some organisations told us they or their members had conducted 'audits' or surveys (see Chapter 5). Others told us that senior staff had met with people on the ground.

...pretty much every single member of the CME, which is about 80 resource companies and energy companies across WA, have done company and site-wide audits of safety, both on site and within camps, dining halls and messes.¹⁸³

We have made inroads in physical safety over the last decades and we will apply this same systematic approach. We are working to change the culture of our

181 CME, *CME forms Safe and Respectful Behaviours Working Group*, 29 June 2021, accessed 29/4/22, <https://www.cmewa.com.au/discovery/cme-forms-safe-and-respectful-behaviours-working-group/>.

182 CME, *Implementation Framework: eliminating Sexual Harassment in the WA Resources Sector*, 2021, accessed 29/4/22, <https://www.cmewa.com.au/wp-content/uploads/2022/02/CME-Implementation-Framework-Workplace-Sexual-Assault-and-Harassment-WA-v5.pdf>.

183 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 2.

organisation and to make safety and respect the lived reality for all of our people.¹⁸⁴

- 4.26 Individual companies also told us of the importance of getting ‘out and about’ to understand the problem at hand:

In March this year, Rio Tinto established the Everyday Respect Taskforce to improve how we prevent and respond to sexual harassment, racism and bullying, and to ensure that the silent voices become the loudest.¹⁸⁵

- 4.27 Another company told us that

We did not just want to sit in Perth and assume we had all the answers; we wanted to understand the issue as it applies to our people and our workplaces and to receive their ideas for change. Our workplace integrity review included an online survey, which received close to 2 000 responses; 28 focus group discussions with our team members; leadership walks across each of our sites to identify safety issues; independently reviewing and assessing our current village security and safety measures; and hosting a contractor forum with 20 key contracting partners. Through this process, we have gained valuable information and we have heard about lived experiences directly from our team members.¹⁸⁶

- 4.28 Some witnesses specifically noted, and we expect other companies might take a similar line, that the newfound energy in reviewing the situation was not an admission that the current circumstances were dangerous. As Fortescue told us:

I do not think those measures indicate that they are unsafe. We are actually currently conducting a review of all of those measures to see where we can further enhance them, whether that means more lighting, more CCTV, looking at door locks—technology has advanced, whether we can further enhance. That is part of an ongoing process. We regularly assess our villages and we upgrade our villages as well. I do not think that means that villages are unsafe, but everybody has an expectation of a certain level of security if you are staying in a room at a village.¹⁸⁷

- 4.29 The most visible response to these attempts to understand the situation came when Rio Tinto published its *Report into Workplace Culture at Rio Tinto*. This reports follows an inquiry conducted for Rio Tinto by a former Sex Discrimination Commissioner, and was published in February 2022. The report was based on a survey of more than 10,000 of Rio Tinto’s multi-national workforce, more than 109 group ‘listening sessions’ across 20 locations worldwide, 85 confidential sessions, and 138 written submissions.¹⁸⁸ The report provides a compelling picture of how widespread the problem is in its operations. It made many dramatic key findings, and covered various forms of bullying and bad behaviour beyond matters of sexual harassment, but we include them all here:

184 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 1.

185 *ibid*, p. 2.

186 Ms Elizabeth Gaines, FMG, *Transcript of Evidence*, 27/10/2021, p. 2.

187 *ibid*, p.9.

188 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p.3.

- Bullying is systemic, experienced by almost half of the survey respondents.
- Sexual harassment and everyday sexism occur at unacceptable rates.
- Racism is common across a number of areas.
- Employees do not believe that the organisation is psychologically safe which impacts on their trust in the reporting systems.
- Harmful behaviour occurs by and between employees, managers, and leaders, including senior leaders.
- Unique workplace features, such as the hierarchical, male dominated culture, create risk factors.
- A capability gap in leading and managing people exists across many levels of the organisation particularly on the frontline.
- People, policies and systems are not properly embedded or ‘lived’ across the organisation.
- Harmful behaviour is often tolerated or normalised.
- Harmful behaviour by serial perpetrators is often an open secret.
- Employees believe that there is little accountability, particularly for senior leaders and so called ‘high performers’, who are perceived to avoid significant consequences for harmful behaviour.¹⁸⁹

4.30 The report provided similar response rates to those included in *Respect@Work*. Again, FIFO sites performed worst, with 43 per cent of women having experienced sexual harassment. Residential sites were better but still unacceptable, at 31 per cent.

4.31 Again, while these figures are not acceptable, we applaud Rio Tinto for conducting the work, and for making it public. We hope that other major companies will take similar actions, and equally make their results publicly available. We acknowledge that the industry is competitive by nature, and that sharing information about what works best might be challenging. But as AMEC put it to us, safety is one part of business that is ‘non-competitive’.¹⁹⁰ There is no competitive advantage in this area – this is an industry-wide problem, and sharing information and ideas is the best way to work towards solving the problem.

Finding 26

We commend Rio Tinto for publishing its *Report into Workplace Culture at Rio Tinto*, in February 2022. The report was not flattering to the company, finding among other things that sexual harassment was common, an open secret, and that employees did not believe the company was ‘psychologically safe’ for people who had been harassed.

189 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 4.

190 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 6.

Recommendation 7

Acknowledging the wide range of company size and capability, the large mining companies and representative bodies should develop a template/framework to assist all companies to review their workplace culture, processes, and work and living conditions to identify factors which allow sexual harassment to persist.

4.32 The Rio Tinto report also included a five part 'framework for action'. This framework was strong, matched the key areas outlined in other frameworks, and if implemented, should work well to make the company a stronger and safer place for people to work. Its key action areas were supported by quite detailed rationales and recommendations, and focused on:

- Caring, courageous and curious leadership
- Creating a positive onus to prevent bullying, sexual harassment, racism and all forms of discrimination
- A caring and human centred response to disrespect and harmful behaviour
- Ensuring appropriate facilities for all as a precursor to dignity and safety at work
- Embedding, sustaining, monitoring and evaluating progress of cultural reform.¹⁹¹

Finding 27

The Rio Tinto *Report into Workplace Culture at Rio Tinto* was supported by a strong framework for action, which matched the key areas outlined in other frameworks.

Companies have committed significant resources to improve physical security in camps

4.33 We were pleased to see that, having worked to understand more about the prevalence of sexual harassment, and grasped the imperative to improve the situation, companies were making efforts to do so. One of the first areas being dealt with was physical security in camps and villages. As we shall see, this involved considerable cost. But as we note throughout this report, the scale of commitment to improving site safety also implies a degree of accepted failure in the quality control of the sites in the first place. This is more the case when even the most modern sites need substantial refits to bring them up to acceptable safety levels.

4.34 Members of the Committee travelled to some of what we might call the 'biggest and best' camps and villages in the Pilbara. We spent time at BHP's Mulla Mulla Village and Fortescue's Eliwana camp. These are remote FIFO camps, with dedicated airfields. We also visited Chevron's Wheatstone Project village just outside Onslow, and Rio Tinto's Wickham Lodge in Wickham. These sites were in many ways extremely impressive. All had generous

191 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, pp. 74-84.

social and leisure equipment and pleasant eating facilities. They had impressive recreational setups, including swimming pools, indoor and outdoor cinemas, music studios, professional cookery training kitchens, multiple gyms and outdoor sports areas, and even in one case indoor/virtual golf courses. The town sites were working hard to build connections with local communities, by making their facilities available to locals.

4.35 But, as impressive as they were, both physically and in the level of investment they reflect, it is important to recognise and acknowledge what some witnesses put to us, that not all camps and villages are the same. We did not visit a large number of camps and sites, and we only visited those operated by major companies. Smaller and older camps are not going to be as impressive as these prime examples.¹⁹² And with so many sites operating, and so many operators, the range of utility, comfort and facilities available must be wide.

4.36 The major players all told us a similar story: there needed to be an enormous expenditure in time, effort and cost to bring camps up to scratch, even in some of the most advanced camps we visited. As we outlined in Chapter 2, simple room security was problematic. It is worth restating our shock at the stories we heard about the distrust in simple matters like door locks. Every individual we spoke to told us that either they or people they knew had resorted to putting improvised barriers in place so that they might feel safe at night in their donga.

4.37 While it is distressing that so fundamental a matter as properly locking doors was still an issue, at least companies were acting on this. BHP, for instance, told us that they were ‘going to invest \$300 million into improving safety and security across our facilities.’¹⁹³ This was going to include replacing the doors to practically every donga in their system, so that they were key-card enabled, self-closing, and with secure screens. This collection of improvements is worth expanding on.

4.38 Key card systems are an important step forward. As anyone who has stayed in a modern hotel will know, key card door passes are commonplace. They work for users, but are also helpful for security reasons. They can be traced and disabled from central locations. Key cards make it easier, we were told, to track unusual use – for example a door being opened at unusual times. And if they are not being tracked in real time, they at least provide a logged sequence which can be interrogated after the event. As experienced travellers will also know, door keys can be accidentally lost or taken away when a traveller leaves. With a key card system, those cards can be disabled and a new one initiated, without presenting a security risk to the room occupant. Physical key systems are much more difficult and expensive to change. If a physical key is lost or removed, the only safe option is to replace the lock, which is both time-consuming and expensive. During the Committee’s site visits we were told that the savings in replacement costs would go some way to offsetting the installation of the new key card system.

4.39 The self-closing aspect of doors is an obvious safety measure and needs no detailed commentary. The last matter, of secure in-door screens, is linked to the self-closing doors,

192 Submission 50, WMWA, p. 13.

193 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2021, p. 14.

and important for people's comfort as well as safety. Security screen doors were not universally in place in the camps, but something that people want – having access to fresh air leaving doors open is obviously something people should be able to do, and do while being safe from intrusion. Having the screens securely built in to the doors makes them more secure and more robust.

4.40 On our visit to BHP's Mulla Mulla camp, we were told that the doors and locks program would cost about \$130 million across WA. The other companies whose sites we visited told us they were doing similar things. And 'security' was acknowledged to go beyond adequate locks and doors. For instance, Rio Tinto told us

We know that the quality of and the facilities available in those camps contributes to respectful behaviours, so we have got a program of work over the next few years to improve the camps. We are taking action straightaway ... around additional security, lighting and improving the amenity of those camps.¹⁹⁴

4.41 There was broad agreement that better lighting, especially on paths around accommodation units, needed work. Similarly, companies were considering or planning to improve CCTV arrangements, especially in laundries. As we noted earlier, many people were concerned about the inherent danger of being isolated in laundries, and some of the factors being considered were panic buttons and more complete CCTV coverage. As with all of these actions, it is hard to argue they are not necessary. But it is also hard to argue they are evidence of anything other than deep cultural failures and insufficient historical effort to protect people in their workplace. Better lighting and more secure rooms are obviously good things. But they cannot be enough; nor can improving them be seen as guilt-free. As representatives from the WMWA told us:

These types of measures should not need to be implemented as a response to a high-profile incident – they should be provided as standard.¹⁹⁵

4.42 During the Committee's visits to camps and villages we noticed a general absence of signage relating to sexual harassment and other unacceptable behaviour, in distinct contrast to signage about more traditional 'safety' matters. In the messes and other public spaces, and in rooms and dongas, we saw signs exhorting people to report safety issues, and providing numbers to call to do so. We saw minimal comparable guidance that specifically related to what to do if someone was being sexually harassed, or that reminded everyone of their responsibility to act appropriately. A set of signs and contact information will not solve the problem, but we see no reason why one aspect of site safety should be represented while another equally important aspect is not.

Finding 28

Some companies have begun investing significant funds to improve the physical safety and security of accommodation and lighting in camps. BHP, for example, was planning to spend \$130 million across its camps.

194 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, pp. 10-11.

195 Submission 50, WMWA, p. 8.

Finding 29

The major programs to improve door security, camp lighting, and safety in laundries are a valuable first step, and will make life better for people in mining camps. But the need for such programs is also evidence of deep cultural failures by companies and the industry, and of insufficient historical effort to protect people in their workplace.

- 4.43 One aspect of eliminating poor behaviour before it manifests that companies almost uniformly referred to was the regulation of alcohol in camps and villages. As we discussed in the previous chapter, there is a long-standing and widely held view that misuse of alcohol has a major part to play in the lack of safety for women in general and in the mining industry. Each of the companies we spoke to told us of changes they had made to their alcohol policies.
- 4.44 We agree with the observation from the Cancer Council of WA that, while addressing issues around alcohol availability and use on mining sites cannot be seen as ‘a silver bullet’, it is an ‘important contributing factor to consider given the close intersection of sexual harassment, alcohol, masculinity norms, and mental health’¹⁹⁶ that warrants action. But acting on this is in many ways an example of dealing with what could be called ‘low-hanging fruit’. It is also, we must recognise, a way to impose unusual limits on workers living on mine sites.
- 4.45 The MCA told us that many ‘companies have recently adopted the Australian Health Guidelines on alcohol consumption of no more than four standard drinks on any one day.’¹⁹⁷ Certainly this position was increasingly being adopted during the period of this inquiry. Rio Tinto had introduced these same limits.¹⁹⁸ On our visit to BHP’s site we experienced the process they had introduced. This involved only providing opened mid-strength alcoholic drinks, with sales limited to four mid-strength drinks per person per day. The transactions were completed through a camp-based swipe card to record transactions. Of course, in a town setting there is no way to practically limit people’s consumption off-site, but these controls can be imposed on closed sites. And we have to recognise that these controls cannot be perfect. It might be more difficult to share drinks with people under these rules, but it is not impossible.
- 4.46 While limiting access to alcohol is on balance a reasonable approach to dealing with the issue, it might be more properly said that the companies have imposed those guidelines on their workforce. Taking a broader perspective, we welcome measures taken to provide an acceptable standard of security, protection and prevention against sexual harassment. And while we accept that changes to physical safety in camps and on sites were required, changes to alcohol consumption are reasonable, and better CCTV monitoring of laundries and walkways are helpful, they do not amount to solutions. This the minimum required if resources companies are to retain their social licence. More needs to be done, because the problems that surround alcohol use and physical safety are indicative of broader cultural

196 Submission 32, Cancer Council WA, p. 2.

197 Submission 36, MCA, p. 12.

198 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 2.

issues that must be addressed. As someone experienced in camp design and management put it to us:

I'm not sure that extreme preventative measures such as significantly increasing security guard numbers or giving females the option to be escorted to their rooms is the answer. If we have to rely on those options, we are essentially saying that camps are inherently unsafe for females. Perhaps the focus should be on eliminating this behaviour in the first place.¹⁹⁹

Finding 30

Companies have made changes to their alcohol policies in camps, generally limiting consumption to four standard drinks per day. While these moves are broadly positive, they must be accompanied by changing the culture of mining sites, which will be more important in the long run.

Recommendation 8

The mining and resources industry must establish acceptable standards for accommodation facilities, including security and other safety measures (including lighting, locks, CCTV, public area layouts).

There is a disconnect between strong high level pronouncements and policies and what happens on the ground

4.47 We noted above that companies and industry representatives were keen to tell us that they were deeply concerned with the safety of their workers. Similarly, they were keen to tell us that they had no tolerance for sexual harassment and assault. Again, we do not doubt the sincerity of those who gave evidence to us, but the disconnect between their views and what we heard from people who had faced the realities of harassment could not be more stark. Companies and representatives told us that

Sexual harassment or assault in the workplace or linked to the workplace is unacceptable and APPEA members have a zero-tolerance approach to such behaviour.²⁰⁰

The industry is committed to eliminating fatalities, injuries and occupational illnesses, with a strong focus on building and sustaining respectful workplaces.²⁰¹

We are determined to change and ensure our workplace is safe from sexual harassment, racism, bullying and psychosocial harm.²⁰²

MCA members will be required to confirm their commitment to eliminating sexual harassment and adopt the national industry code.²⁰³

199 Personal evidence.

200 Submission 34, APPEA, p. 2.

201 Submission 36, MCA, p. 3.

202 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 1

203 Submission 36, MCA, p. 8.

Chevron has no tolerance for sexual harassment or assault.²⁰⁴

Ultimately, sexual harassment is unlawful and it is not tolerated in any way, shape or form at Macmahon.²⁰⁵

Essentially, until every last mine site is safe, we have not done our job.²⁰⁶

Sexual harassment is unlawful. It is not tolerated at Fortescue and we are committed to eliminating it from our operations.²⁰⁷

4.48 It is important to deal with the general notion of ‘zero tolerance’. It is perhaps too simple to claim that an activity will be met with ‘zero tolerance’, rather than to explain what it will mean in practice, especially in a complex and variable matter like sexual harassment. We heard from a specialist academic from Queensland who told us that this matter was particularly complex. For example, justice for lower-level offending could involve any or all of:

- ensuring that the behaviour does not continue;
- identifying organisation or site-level issues through anonymous reporting (which we discuss further in the next chapter); and
- addressing poor behaviour through education across the whole of the workplace.

Taken together, these factors will be critical to lifting overall standards of an organisation or industry.

4.49 The very idea of ‘zero tolerance’ as a crime prevention strategy, based on supposed success stories in New York policing, are much more fragile than proponents would like to believe. Amongst other issues, there is a risk that framing the matter in terms of ‘zero tolerance’ can have what one witness called a ‘chilling effect’ – that it can turn people away from reporting or identifying unacceptable or problematic behaviour.²⁰⁸ We appreciate the strong stand and the wish to stamp out poor behaviour, but implementing zero tolerance policies without due caution and in the absence of clear and well-designed supports might lead to unintended consequences, and could in some cases be counter-productive.

4.50 As we discussed in the previous chapter it is clear that in some places, at some levels of authority and at some times, mining companies have indeed tolerated these behaviours. But once they had recognised that more needs to be done, we were pleased to see that at least some of the major companies have responded to the issue. Beyond the physical ‘hard’ safety matters discussed above, companies and industry bodies told us that they were engaged in a wide range of reviews, repositionings, recalibrations and rethinking about the way they deal with these issues. A big part of that response involved seeking more information from their own people, and looking beyond the high level policy position.

204 Submission 48, Chevron Australia, n.p. [cover letter].

205 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 3.

206 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p.5.

207 Ms Elizabeth Gaines, FMG, *Transcript of Evidence*, 27/10/2021, p. 2.

208 Professor Paula McDonald, *Transcript of Evidence*, 6/04/2022, p. 10.

- 4.51 We have to reiterate that the situation is never the same for all companies, or for all sites. The impact of the size of a company or a site was noted by several witnesses, although there was no agreement on what that impact might be. Some people thought that smaller sites and companies might find it easier to understand and respond to incidents or cultural issues. Other people thought that the resources available to large companies might allow for better processes and more skilled staff. We do not believe there is a single optimal arrangement for all organisations, but recognise that the size and arrangements in a company or site will influence both how things play out on the ground and how that company or site responds to them. The first key challenge is for companies and sites to understand the strengths and risks of their situation.

Finding 31

The size and arrangements at a site or in a company will influence how things play out on the ground and how that company or site responds. The key challenge is for companies and sites to understand their strengths and risks in each situation.

- 4.52 AMEC gave perhaps the best overview of the two ways of interpreting the issue:

...the smaller mines have smaller camps, so you have a smaller numbers of people on site. You might have 200 or 300 people on a FIFO camp for a smaller or a mid-tier mine. Now, that means, with a long-term employee base, you may be able to get to know most of those people or at the very least be familiar with most of those people. That brings a sense of community and an element of greater protection. Whereas, on a large site, they might have 2 500 or 3 000 people, so the chances of you knowing most of the people or even half of the people is very low, and so consequently you introduce other factors that potentially make that a more heightened level of risk. But equally, smaller camps with smaller operations mean that it is probably easier to operationalise procedures. You have got a smaller number of people to communicate to. It usually means that senior leadership on site is easier to interact with.²⁰⁹

- 4.53 For some, there was a place for bigger, better resourced companies to lead the way. As the CME put it:

some of our medium-sized companies have smaller balance sheets and smaller cash flows. As an advocacy organisation, we typically seek to get our members together to get them to collaborate and then typically use our bigger members to show what best practice looks like and then roll best practice out across every single one of our members.²¹⁰

- 4.54 Another witness agreed, telling us that

...it looks like they [larger companies] are responding and they probably have the capabilities to have more people involved to create teams to handle this, I guess. It

209 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 20/11/2021, p. 8.

210 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 4.

is probably the juniors and mid-range companies which do not have the capacity.

211

4.55 As the industry reacted to the growing realisation of the scale of the problem, the regulators have also moved. We recognise that it will be a challenging and ongoing transition to make this kind of safety as well defined and monitored as more traditional matters. Part of the process has been the introduction of the new *Work Health and Safety Act 2020* (WHS Act) and regulations. Another important piece of work involved the introduction of codes of practice dealing with Workplace Behaviour, Violence and Aggression in the Workplace, and Psychosocial Hazards in the Workplace. As we discuss in Chapter 5, these refer specifically to sexual harassment and assault. These codes of practice are a positive step in bringing the regulatory framework more into line with contemporary practice in this area. But we have to note that, like so many aspects of this issue, they have come very late to the field, with two of them released during the term of this inquiry.²¹² Unions WA spoke positively of these codes, but also noted that until DMIRS developed the FIFO code of Practice:

not enough action had been taken about culture in accommodation camps and the facilities and supports that are available to workers in that accommodation camp. I would say that would still be the case, but we have seen some baby steps taken after the development of that code.²¹³

4.56 These high level actions will no doubt help build a better framework, and hopefully provoke and promote cultural change in the industry. Nevertheless, the key regulator seemed not to have taken the lead in responding to the need for change, as we discuss in Chapter 6.

4.57 The key national industry representative told us of a more comprehensive approach:

the MCA is developing an industry response that recognises and prevents sexual harassment, empowers people to speak up and take action where behaviours do not meet expected standards, and that ensures appropriate responses to sexual harassment incidents, including support for impacted persons. The industry is using its successful approach to managing safety and health and engaging with a broad range of stakeholders to encourage this essential cultural change across its business partners and within the communities in which the industry operates. To date, the mining industry has broadened its safety and health policy to specifically reference the risks of psychological harm and disrespectful behaviours in the workplace.²¹⁴

4.58 Again we observe that the need to better understand the issue can only imply that the companies recognised that they did not understand the facts on the ground, and note that we cover this in more detail in Chapter 5.

211 Personal evidence.

212 The Workplace Behaviour and Violence and Aggression in the Workplace codes of practice were both released in 2022. See <https://www.commerce.wa.gov.au/worksafe/mentally-healthy-workplaces-codes-practice> accessed 23/3/2022.

213 Mr Owen Whittle, Unions WA, *Transcript of Evidence*, 24/11/2021, p. 10.

214 Submission 36, MCA, p. 3.

Industry had high level policies that addressed safety

4.59 We saw, heard and observed that companies, their leaders and industry representatives all had strong high level policy intentions in this area. In response to *Respect@Work*, an industry response group had been formed, which was tracking its way through the recommendations of the AHRC report. As part of this effort, the MCA, the lead national industry representative body, had released a national code of conduct and a Safe, Healthy and Respectful Workplaces Policy. This policy included sexual harassment, and was a strong step forward a fundamental part of the safety system in a workplace:

MCA member companies commit to an approach based on the following principles:

- All fatalities, injuries and occupational illnesses are preventable
- No task is so important that it cannot be done safely and respectfully
- All hazards can be identified, and risks eliminated or controlled
- All instances of harassment and disrespectful behaviours in the workplace can be prevented.²¹⁵

4.60 The Australian Petroleum Production and Exploration Association (APPEA), told us that ‘Company policies, procedures and communications are in place to lessen the risk of such behaviour and outcomes.’²¹⁶

4.61 Beyond these collective responses, individual companies had their own corporate culture and safety frameworks. As expected with the mainly very large companies who made submissions to us, they cover many areas. We will not describe each in detail, but include the following excerpts by way of example.

4.62 Chevron Australia told us that it based its corporate practice on what it called the ‘Chevron Way’, which ‘explicitly values diversity and encourages an inclusive work environment that enables everyone to fully participate and contribute to our work environment’.²¹⁷ In particular:

We recognise that a range of policies and measures are required to support safety and inclusivity on a sustained basis, including:

- Preventing sexual and any other kind of harassment, bullying or discrimination
- Ensuring that any incidence of harassment or other misconduct can be reported and addressed with safety and fairness at the forefront of action taken.²¹⁸

215 MCA, ‘Safe, Healthy and Respectful Workplaces Policy’, <https://www.minerals.org.au/sites/default/files/MCA%20Policy%20-%20Safe%2C%20healthy%20and%20respectful%20workplaces%202021.pdf> accessed 29/3/2022.

216 Submission 34, APPEA, p. 2.

217 Submission 48, Chevron Australia, p. 3.

218 *ibid.*

4.63 Fortescue told us its business was founded on 10 ‘Fortescue Values’. These were: safety; family; empowerment; frugality; stretch targets; integrity; enthusiasm; courage and determination; generating ideas; and humility.²¹⁹

4.64 Rio Tinto said they had

an established framework, which is called the consequence management framework, and in that there is a description of the spectrum of behaviour of misconduct from the less serious, minor transgressions that perhaps have a minor impact on people or the business, right through to the serious misconduct that has a significant impact on people and also the business. That framework puts against each of those behaviours a consequence, and there is a range of consequences depending on the seriousness of the matter. At the very top end – the serious misconduct – there is only one consequence listed in the framework, which is termination. At the lighter end there is a range, starting from counselling and retraining up to termination.²²⁰

4.65 In addition to these high level policies, companies all had reporting systems in place, whether technical, procedural or some combination of the two. We cover these in Chapter 5.

Finding 32

Industry generally had formalised policies that set out high-level principles for addressing safety issues.

Training of managers and staff was not effective

4.66 One of the key processes for improving culture or practical safety is training. We heard from many people that while there might be high level training about sexual harassment, it was not universally applied. Where it was in place, it seems too often to have not been taken as meaningful or relevant. And it was not clear that what training did exist was built to assist everyone who needed it. In particular, what we might call middle-level leaders and managers, especially in the field, seemed not to be well trained, or well supported in delivering training for their workers.

4.67 The lack of support will probably be recognised by many middle-managers. The Commissioner for Equal Opportunity laid out the challenge well:

I think the issue there is that supervisors have a huge range of responsibilities and they are not going to be skilled in all of them. You need to train supervisors to seek help and seek assistance in areas they are not familiar with.²²¹

The Commissioner also provided a crystal clear analogy about the importance of properly trained people:

219 Submission 55, FMG, p. 6.

220 Mrs Laura Thomas, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 6.

221 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 8.

There is a very high level of success when you have a skilled practitioner there. Basically, if your car breaks down, you do not fix it yourself. If your mining truck breaks down, you get the mechanic in, a specialist in.²²²

4.68 This challenge was recognised by one of our individual witnesses, who told us that

There are a lot of people in positions where they are extremely intelligent but they are not necessarily 'people' people. They may know how to do all the paperwork side of it and everything like that, but obviously a big part of those sorts of roles is managing people and they do not know how to even talk to people and have a conversation. There were some superintendents there that were amazing and they were the sort of people who, even if they walked past and you said hi, would say hi back, and then there were others and you would say hi and they would look at you and give you a dirty look and then keep walking. It is not hard just to have some basic people skills.²²³

4.69 The companies told us about programs and approaches they had in place. BHP told us that they dealt with this matter

through our mandatory code of conduct training. Every single contractor, every single permanent BHP employee, has to go through mandatory code of conduct training. That training calls out, effectively, who to ask for help if you are in this type of situation. That is mandatory for every single person who walks through the gate in our business.²²⁴

4.70 Macmahon said that they had 'various training modules that our employees must undertake both when they start and also through compliance and refresher courses'.²²⁵ AMEC told us that 'nearly three-quarters did actually specifically identify sexual harassment and similar behaviours in their inductions, in their processes and in their training.'²²⁶ There were broader strategies in place as well. FMG told us that they had been made 'white ribbon' accredited, relating to their 'trauma-centric training' on family and domestic violence.²²⁷

4.71 However, it was not clear that this training always reached the intended target. As AMEC said:

I think we also recognise that there is a significant need for greater awareness raising and training across all our workers, but particularly for leadership roles and what their responsibilities are in regard to bringing about that cultural shift.²²⁸

4.72 Individuals, as ever, gave a different view of things. One person told us outright that they did not 'recall any sexual harassment modules in inductions.'²²⁹ Another noted that 'Sometimes you have it in your inductions, but not all the time.' The same person noted weaknesses in

222 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 6.

223 Personal evidence.

224 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2011, p. 9.

225 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 2.

226 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 7.

227 Ms Linda O'Farrell, FMG, *Transcript of Evidence*, 27 October, p. 8.

228 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 7.

229 Personal evidence.

the content, that it might only be ‘a page, a slideshow, of sexual harassment. It is not talked about.’²³⁰ One witness told us that they thought:

the training was seen as a joke by the guys on site. It was not taken very seriously. At that time, it was facilitated by an outsider, and I think the examples used were like, ‘Don’t have porn on your screen. If someone walks into your office and they see that, then that is harassment.’ You know, like real base level stuff. But nobody wants to get into more the nitty-gritty details.²³¹

4.73 This person went on to note the challenge that many technical organisations face:

In terms of becoming a registered manager, you just need to have the technical background. You are a metallurgist or an engineer, normally, or sometimes a geologist. It is because of their amount of experience and whatnot that they take the position of statutory responsibility. I do not think there is any requirement for any training in terms of management and things like that.²³²

4.74 Rio Tinto perhaps summarised the challenges best, when asked about the support provided to site supervisors dealing with challenging behaviours:

It is a really good question and it is something that we have certainly been reflecting on. We want everyone who comes to work to be safe so we need to do better—I think training and development of our people so that they are able to have what can be quite uncomfortable conversations. Part of that is normalising those conversations, so that when there are incidents, making sure that when they are sharing and bystanders stepping forward, for example. I think that will help in the training as well because people will become more equipped to have those conversations. But it is certainly an area, I think, we have a way to go to improve.²³³

Finding 33

There appears to have been effort to implement some degree of training about sexual harassment across the industry. But it has not always been effective or taken seriously.

Recommendation 9

The industry should ensure that sexual harassment and assault training is accredited, fit-for-purpose, and delivered by suitable practitioners. Training should be mandatory and ongoing for all employees. There should be additional specialist training for people who must formally respond to incidents.

There was little evidence of adequate support for victims

4.75 As we have said from the outset, this inquiry has aimed to provide a high-level overview of sexual harassment in the mining and resources sector. We have not set out to determine the facts of particular cases. Nor have we tried to follow company complaint systems and

230 Personal evidence.

231 Personal evidence.

232 Personal evidence.

233 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, pp. 11-12.

determine their efficacy. But the evidence provided to us consistently showed that the processes in place to deal with sexual harassment were inadequate and did not support the individuals nearly well enough.

4.76 We know that a successful process must be ‘victim-centric’. That is, it will take the needs of the person who has complained as being central to resolving the matter. Companies were keen to tell us that they understood this approach, and worked to employ it. Macmahon, as one example, told us that ‘[b]efore we start or commence any investigation, the safety of that person is first and foremost.’²³⁴ Rio Tinto told us that ‘for our investigation approach our first principle is making sure that there is care for the individual who has been impacted.’²³⁵ BHP thought that their ‘approaches really focus on putting the victim at the centre’.²³⁶

4.77 Unfortunately, the evidence we took from individuals did not match these corporate expectations. Put simply, we did not hear a single instance where people told us they were effectively supported through the process, and we deal with this in more detail in Chapter 5. Rather than being victim-centric, the evidence we received suggested that companies were more focused on protecting their own wellbeing and reputation than serving the best interests of people who had been harassed.

4.78 Some people clearly distrusted the entire process: ‘The whole system is not set up to help the person that makes the complaint.’²³⁷ Some felt exhausted or demoralised by the process. As one person told us, ‘It would be hard to recommend it as a path, because it nearly broke me’.²³⁸ Others felt that their careers had been destroyed by the response to harassment as much as from the harassment itself. One person told us they had ‘sealed their fate’ by refusing to keep silent about her experiences.²³⁹

Finding 34

Companies told us that their processes for dealing with cases of sexual harassment were victim-centric, but we heard evidence from individuals to the contrary. It was clear that company processes were often ineffective; a more honest reading could suggest they were more focused on protecting companies and their reputations than serving the best interests of people who had been harassed.

234 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 7.

235 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 12.

236 Mr Brandon Craig, BHP, *Transcript of Evidence*, 20/10/2011, p. 3.

237 Personal evidence.

238 Personal evidence.

239 Personal evidence.

Chapter 5

Industry understanding of sexual harassment is poor and underreporting is endemic

No one ever wants to hear a story on sexual harassment

Personal evidence

Reporting of sexual harassment from the mining industry to DMIRS has been ad hoc and inconsistent.

DMIRS

Introduction

- 5.1 In any industry, and in any regulatory process, preventing and responding to incidents are primary activities. Knowing what is happening and how well things are being dealt with are central to good management, and to good regulation. Getting that knowledge requires trusted reporting systems, and good analysis of the information.
- 5.2 It is apparent that neither the mines safety regulator nor mining companies know the full extent and nature of sexual harassment and assault in their enterprises or industry. If the overall situation is to change – and it must – then both the regulator and the industry must have a clear picture of the problem. Currently this is far from the case. There was broad agreement among witnesses that most incidents of sexual harassment went unreported. Though underreporting is endemic across industries and around the nation, the nature of FIFO work creates specific barriers. We believe it is vital that workers can access a range of effective, appropriate, and trustworthy reporting options, with guidance and support. Yet we heard of workers not knowing what reporting options existed, how to access or use them, whether they were confidential or anonymous, or who received the reports. Victims and bystanders both must be empowered and encouraged to speak up, in a method of their choosing, and receive the necessary support at all points along the process.
- 5.3 This chapter focuses on the reporting experiences of individuals, including why they choose to not report, and the reporting options currently in place. It also looks at how and why major mining companies have themselves neglected to report serious incidents to their regulator, potentially in breach of their legal obligations.
- 5.4 As we discuss below, DMIRS said they received just 10 reports of sexual harassment from mining companies over the last seven years. This represents an unacceptably small fraction of the incidents understood to have occurred across the industry. At a regulatory level this illustrates a system that has not been working cohesively. More fundamentally, we found it surprising that the regulator of such a massive industry appeared to be satisfied that this number truly reflected the situation on the ground.

- 5.5 We heard that the number of sexual harassment reports has risen across the industry in the last couple of years. There are several possible reasons for these increasing numbers. They might reflect the greater attention these matters have recently received. They also might reflect better education on reporting options, or show there is greater confidence in making reports within mining companies. As such, these increases should not automatically be seen as a sign of failure. Indeed, as companies improve their reporting systems and workers gain trust in the available options, industry can expect to see numbers continue to rise. However, in the absence of trustworthy data, we cannot discount the possibility that the numbers simply reflect an increase in the amount of sexual harassment. Whatever the cause, the rise in reports shows that company reporting systems can function well, but they ultimately require a culture that builds and sustains the trust needed to use these systems to full effect.

There are no clear numbers about the prevalence of harassment

- 5.6 Industry witnesses presented various figures on the prevalence of harassment in their workplaces. While this data gave some indication of what was happening, we make three immediate points. First, whatever numbers we heard, they only represented reported incidents, which, by all accounts, vastly underrepresented the harassment actually occurring. Second, we were only able to gain reporting figures from a small number of companies operating in the industry—albeit from some of the major players. Third, even for the figures we did receive, no clear picture emerged.
- 5.7 Ultimately, it was clear that current practices for gathering data relating to reports of sexual harassment and assault could be vastly improved in two areas:
- the consistency with which the industry captures, categorises, and records the relevant information; and
 - the disaggregation of data to improve the picture on what type of employee or worker is accused doing what; in which type of work environment and geographical location; across what timeframes; under what circumstances; and with what frequency.
- 5.8 Ideally, a reliable and comparative picture should be available at regular intervals to allow the regulator and industry bodies to know what is going on in their industry. Bearing the above caveats in mind, and stating again that our goal is to improve systemic failures, whatever the specific numbers, the evidence we received shows that there were at least 250 incidents of sexual harassment or worse across the sector in the last five years. In particular:
- BHP, from 1 July 2019 to 30 June 2021, recorded 91 reports of alleged sexual harassment or assault, 79 of which were ‘substantiated’. These included two incidents of ‘non-consensual sexual penetration, one report of attempted non-consensual sexual penetration and three reports containing allegations of non-consensual kissing or touching of breasts’, as well as 73 incidents of other forms of sexual harassment.²⁴⁰
 - Rio Tinto, from 1 January 2020 to August 2021 received 51 complaints of sexual harassment or assault in FIFO operations, including one ‘substantiated’ report of sexual assault and 29 ‘substantiated’ reports of sexual harassment.²⁴¹ Later information

240 Submission 7, BHP, pp. 8-9.

241 Submission 63, Rio Tinto, p. 6.

suggested that between 1 January 2017 and 19 October 2021, it received approximately 95 sexual harassment reports.²⁴²

- Woodside, at 15 November 2021, had five ‘substantiated’ incidents of sexual harassment attributed to FIFO workers, and across its entire global business had 16 ‘substantiated incidents’ of sexual harassment in the previous five years.²⁴³
- Fortescue, from 2017 to 25 November 2021, had recorded 71 reports relating to sexual harassment, including six that were either ‘unsubstantiated’ or still being investigated.²⁴⁴
- Chevron received 22 reports from 2016 to 17 December 2021, nine of which were ‘substantiated’.²⁴⁵
- Macmahon received 18 complaints from 2017 to 10 November 2021.²⁴⁶

5.9 In addition to these industry figures, we also heard:

- DMIRS received 22 reports of alleged sexual assault from 2015 to 2021 and 142 alleged bullying incidents. Of the 142 bullying allegations, ten ‘involved sexual harassment (i.e. name calling, sending pornographic material, sexist comments and threats of rape).’²⁴⁷
- The WA Police Force at November 2021 had recorded 23 reports of sexual assault over the previous two years ‘that relate to areas of mines’.²⁴⁸

Finding 35

Recorded data of sexual harassment across WA mining is unclear, incomplete, inconsistent and inadequate as a basis for industry-wide analysis. However, it is sufficient to demonstrate the seriousness of the issue.

There is endemic underreporting of incidents

5.10 The impacts of sexual harassment are of course primarily felt by those subjected to it, and those impacts can be personally devastating. This fact, not to mention the impact of such incidents on the victim’s family, social circle and co-workers, is more than sufficient for any industry – especially an enormously profitable one that regularly states that its people are its top priority – to take every reasonable step to prevent and respond to these incidents. A key part of this effort rests on proper and comprehensive reporting of incidents. As we shall see, this involves employers, regulators and other agencies. But at its heart it requires strong systems that victims have confidence in.

242 Mr Simon Trott, Rio Tinto, Questions taken on notice and further questions, 12/11/2021, p. 2. Rio Tinto said ‘Between 1 January 2017 and 19 October 2021, approximately 19% of reported cases of sexual harassment or assault were logged by bystanders (18 cases in total).’ This suggests a total of 95 cases.

243 Ms Fiona Hick, Woodside, *Transcript of Evidence*, 15/11/2021, p. 2.

244 Ms Elizabeth Gaines, FMG, Questions taken on notice and further questions, 25/11/2021, p. 1.

245 Mr Chris Watts, Chevron Australia, Questions taken on notice and further questions, 17/12/ 2021, pp. 1-2.

246 Mr Michael Finnegan, Macmahon Holdings, Questions taken on notice and further questions, 26/11/2021, p. 1.

247 Submission 69, DMIRS, p.4. See also Richard Sellers, DMIRS and Darren Kavanagh, WorkSafe WA, Questions taken on notice and further questions, 11/10/2021, pp. 5-6.

248 Mr Colin Blanch, WA Police, *Transcript of Evidence*, 15/11/2021, p. 2.

- 5.11 Perhaps the most glaring weakness in how the industry deals with this issue is the fact that most victims of sexual harassment or assault simply do not make formal reports. DMIRS acknowledged that ‘significant under-reporting of sexual harassment incidents’ resulted in ‘insufficient data to provide detailed reports of the prevalence, nature, outcomes and reporting of workplace sexual harassment in the mining industry.’²⁴⁹ This reflects the research into reporting trends for all industries. *Respect@Work*, among other reports, shows that underreporting of such incidents is endemic across the nation. It found that ‘fewer than one in five people (17%) said they made a formal complaint in relation to sexual harassment.’²⁵⁰
- 5.12 More recently, Rio Tinto’s report on its global operations revealed ‘Only 1 in 8 (12.8%) Rio Tinto employees who have experienced sexual harassment in the last 5 years reported the most recent incident.’ As with most aspects of this issue, the picture was worse for women than men: ‘Women were more likely not to report the most recent incidence of sexual harassment (83%), compared to men (75.9%).’²⁵¹ The report also said ‘just 1.9% of men and 4.7% of women who reported sexual harassment’ used official reporting channels, reflecting ‘very low confidence in these formal reporting channels for these types of issues.’²⁵²
- 5.13 The Western Mine Workers’ Alliance (WMWA), drawing on a large survey of their members, found that 48 per cent of women believed workers were not encouraged to report sexual harassment (with 11 per cent unsure); and only 24 per cent said they believed they were supported through the reporting process.²⁵³ The WMWA said these kind of results ‘reinforce the massive and important task facing mining companies of winning workers’ confidence and trust to report incidents of sexual assault.’²⁵⁴
- 5.14 There are well documented reasons for the prevalence of underreporting. These include:
- the sheer psychological or emotional impact of experiencing sexual harassment;
 - fear of negative impacts on personal reputations and relationships;
 - fear of being victimised or labelled ‘trouble makers’;
 - fears for loss of immediate shifts and income, as well as longer-term career options;
 - a workplace culture that normalises sexual harassment;
 - a male-dominated workplace;
 - managerial structures;
 - close-proximity living arrangements of FIFO work;
 - a belief that complaints will be mismanaged or have no satisfactory outcome;
 - a lack of secure employment, especially for contracted or labour hire workers;
 - a lack of awareness of reporting options or trust in the reporting system; and

249 Submission 69, DMIRS, p. 3.

250 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 70.

251 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 65.

252 *ibid*, p. 68.

253 Submission 50, WMWA, p. 7.

254 *ibid*.

Industry understanding of sexual harassment is poor and underreporting is endemic

- inadequate management or leadership in an organisation.²⁵⁵

Finding 36

The mining industry acknowledges the systemic underreporting of sexual harassment in the workplace.

5.15 Other industry bodies acknowledged the problem in the WA mining industry. Engineers Australia, informed by survey results of their WA members, said it ‘believes women are deterred from reporting sexual harassment to their organisations for fear of not being believed, not being credible (he said/she said) and/or potential retribution.’²⁵⁶ Fortescue emphasised that

the complexities of interpersonal relationships in the workplace, and a living environment that is shared with the same group of people as the working environment, mean that FIFO workers may feel reluctant to make a report of having experienced or observed sexual harassment in connection with their employment.²⁵⁷

5.16 None of this is a new development. As the WorkSafe WA Commissioner said: ‘under-reporting is absolutely clear and there are lots of reasons for that. ... I do not think there is any surprise in that, particularly for the general industry.’²⁵⁸ He said that as research showing underreporting is partly driven by mismanagement of complaints by agencies:

the challenge for safety regulators, is to provide that environment – that is all the regulators, all of the other agencies, the Equal Opportunity Commission at a federal and state level – that ensures that the matter is dealt with correctly.²⁵⁹

5.17 Whatever the immediate reason for an individual choosing not to report, a subject we discuss below, there is a more fundamental issue. As the Commissioner for Equal Opportunity put it, ‘a significant factor is that the onus is really on the person experiencing sexual harassment to take responsibility for having it resolved ... That, I think, is a very big disincentive to reporting it.’²⁶⁰ He went on to say ‘so much onus is put on the person experiencing sexual harassment and many others know that and have seen the experience of others and therefore they do not report it.’²⁶¹ He concluded that:

Quite often, the local culture makes it very difficult for a person experiencing discrimination or sexual harassment to report it at all. But a person in head office

255 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020; Submission 54, EOC, p. 4; Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, p. 69; Submission 20, AMWU, [p. 2]; Submission 70, AMEC, p. 16; Paula McDonald, Sara Charlesworth. *Academic Evidence on the Causes, Manifestations and Responses to Workplace Sexual Harassment: Initial Submission to the Australian Human Rights Commission’s National Inquiry into Sexual Harassment in Australian Workplaces*, RMIT University January 2019.

256 Submission 72, Engineers Australia, p. 5.

257 Submission 55, FMG, p. 2.

258 Mr Darren Kavanagh, WorkSafe WA, *Transcript of Evidence*, 8/9/2021, p. 6.

259 *ibid*, p. 11.

260 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 4.

261 *ibid*, p. 8.

who develops the confidence of the organisation in the way they work, that would be the solution, in my opinion.²⁶²

This is one model for organisations to address the matter; the WorkSafe line of responsibility is another. We cannot overstate the importance of treating this issue in an appropriate way, not merely as a matter to be resolved between two or more individuals, but as potentially unlawful activity occurring systemically inside mining workplaces. There are many ways to address reporting which we explored in this inquiry.

5.18 Some companies pointed to what they saw as encouraging signs of change. Rio Tinto told us there had been ‘an increase of about 122 per cent in reports’ between 2020 to 2021,²⁶³ and Woodside noted (in November 2021) ‘an increase in the last two years of reports coming through’ which they saw as reflecting broader societal shifts ‘in terms of the #MeToo movement [and] the prominence of this issue.’²⁶⁴ But the broader cultural issues remain. Macmahon said the key was ‘to drive cultural change to ensure that there is a greater comfort for people to report and for it to be tackled, and we have a range of measures in place already to try and ensure that we get the right culture.’²⁶⁵ Similarly, the CME said ‘We have to make it the norm that people can report without fear or favour.’²⁶⁶ We strongly agree, but are frustrated that this should not already be the case.

5.19 The reliance on contractors and labour hire work is a particular feature of the FIFO mining industry, as we have already stressed. We believe it is also an under-recognised driver of low levels of reporting. The EOC, for example, argued:

because there is such a multitude of people who are engaged on subcontract or through labour-hire relationships, we are probably not confident that they are aware of the policies and their access to different procedures. I also think when you are employed through those entities you are also seen to be a bit more vulnerable in terms of your employment ... you are probably prepared to put up with a lot not to lose that.²⁶⁷

5.20 Union representatives agreed. The AMWU told us:

Combined with an increase in the use of casual insecure work, an environment is created that even when a person on site wants to speak up about being assaulted, or witnessing assault, they do not know who they can turn to safely and with support and without ramifications for their job.²⁶⁸

5.21 The WMWA described a culture where workers worried that if they raised issues it ‘will jeopardise their future employment with the labour hire company, but also future

262 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 8.

263 Mrs Laura Thomas, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 3.

264 Mr Steven Pyle, Woodside Energy, *Transcript of Evidence*, 15/11/2021, p. 6.

265 Mr Greg Gettingby, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 10.

266 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 7.

267 Ms Diana MacTiernan, EOC, *Transcript of Evidence*, 13/10/2021, p. 4.

268 Submission 20, AMWU, [p. 2].

employment as a permanent employee.²⁶⁹ The two options most readily available in that case were to simply not 'rock the boat' or to quit.²⁷⁰ Similarly, the CFMEU said:

the worker must balance reporting an incident and/or their safety against the real prospect of their employment being terminated due to making a complaint. As a result, many workers who fall victim to sexual harassment in the mining industry do not report incidents, which undoubtedly distorts the accuracy of reporting and further exacerbates the problem.²⁷¹

As discussed below, these same concerns were raised by private individual witnesses.

Finding 37

Insecure, contract and labour-hire work exacerbates some people's distrust of company reporting systems.

5.22 There were also particular cultural factors to consider. Research by the Indigenous Women in Mining and Resources Australia (IWIMRA) showed confidence in reporting was at 22.7 per cent.²⁷² Similarly, *Respect@Work* noted cultural barriers to reporting, especially for Aboriginal and Torres Strait Islander women.²⁷³ These numbers reflect a lack of attention paid to providing an adequate range of options for the varied needs of the FIFO workforce. The provision of culturally safe options must be considered for reporting systems, going forward.

Finding 38

There are inadequate culturally safe and sensitive options to report incidents of sexual harassment or assault.

Options to analyse the impact of harassment are being overlooked

5.23 While the immediate and personal effects of incidents must always take priority, we expected to see companies, the wider industry and the regulator working to understand the broader picture of these behaviours. In a mature system, we would expect to see information and knowledge of the personal, financial, legal and productivity implications of these behaviours being used to focus preventative and regulatory effort.

5.24 At present this is simply not being done in any way commensurate to the problem. There is, for example, little company research into how employees are impacted by sexual harassment, especially compared to the emphasis placed on traditional types of physical injury. Similarly, there is a paucity of data being collected by WorkSafe WA and DMIRS, who should also have every reason to want this if they are to ensure worker safety. This is a

269 Mr Greg Busson, WMWA, *Transcript of Evidence*, 8/9/2021, p. 10.

270 Mr Brad Gandy, WMWA, *Transcript of Evidence*, 8/9/2021, p. 11.

271 Mr Mick Buchan, CFMEU WA, Responses to questions taken on notice and further questions, 7/12/2021, p. 2.

272 Submission 62, Indigenous Women In Mining and Resources Australia, p. 10.

273 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, pp. 172-173.

whole-of-industry problem requiring a coherent and coordinated approach to help solve it. The system currently lacks adequate benchmarks to test the success of any measures it takes.

- 5.25 Even setting aside the primary concern for the health and wellbeing of employees, there are other reasons for companies to better understand the harmful behaviours occurring in their companies. *Respect@Work* was clear that sexual harassment has serious impacts on workplace productivity and ‘imposes a significant economic cost to Australian society’:²⁷⁴

Sexual harassment also represents a cost to Australian employers through: lost productivity; staff turnover; negative impact on workplace culture; resources associated with responding to complaints, litigation and workers’ compensation; reputational damage.²⁷⁵

It also cited research which

estimated the total financial cost of workplace sexual harassment to the Australian economy as \$3.8 billion, noting that this was likely to be a ‘conservative estimate’. Lost productivity (\$2.6 billion) represented the largest component of the estimated economic cost of workplace sexual harassment, with the largest share of this borne by employers.²⁷⁶

- 5.26 We saw little evidence to suggest mining companies had properly assessed the data on such possibilities. Nor did we hear strong evidence on how and if concerns about sexual harassment were impacting recruitment of women into FIFO work – a concern we thought was obvious.
- 5.27 We took evidence on whether companies had analysed how treating sexual harassment as a WHS issue could result in something similar to the cost and impact calculations of lost-time injury when the victim had, say, broken their leg or strained their back. Mrs Offner of Chevron, for example, acknowledged that they lacked a system to understand the psychosocial and other impacts for victims:

What we need is a process of how to follow up. ... So we are going to have to do a bit of capability building within our workforce to say that if indeed you have a case like this, maybe it is not now, but in the future, if you are experiencing stress or needing time off, we need them to tell us so that we can connect those together.²⁷⁷

- 5.28 We are surprised this work was not already being done across the industry. A lack of longer-term follow-up monitoring and support processes for victims who bring complaints about traumatic incidents could impact negatively on workers’ career trajectories, potentially losing large numbers of employees, and large proportional numbers of women workers, from the industry, compounding the gender inequity that already exists. And yet to our

274 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 21.

275 *ibid*, pp. 21-22.

276 *ibid*, p. 22.

277 Mrs Stacey Offner, Chevron Australia, *Transcript of Evidence*, 24/11/2021, p. 10. See also Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, pp. 8-9; Ms Elysha Millard, CME, *Transcript of Evidence*, 20/10/2021, p. 10; Mr Robert Watson, FMG, *Transcript of Evidence*, 27/10/2021, p. 16.

knowledge there is no longitudinal research detailing how prevalent this is, or what the human costs are. Some companies advised us they have been or are undertaking surveys containing questions relating to this issue. This is a basic step the industry can take to begin to understand the problem it is dealing with.

- 5.29 It is not for this Committee to direct private companies. However, as the Government entities regulating compliance with the WHS Act, WorkSafe WA and DMIRS should be working closely with key industry stakeholders to build their knowledge of the issue. To our mind, an effective way to begin doing this is for DMIRS to facilitate regular, anonymous independently-administered surveys to assess the extent, nature and impacts of workplace sexual harassment and assault in the FIFO mining industry, and to better understand the level of concern of workers across the mining industry on this issue, if not more broadly. To the extent that confidentiality and anonymity allows, regular updates outlining the broad trends of these surveys – and based on industry-consistent metrics – should be made public.

Finding 39

Like mining companies, the key government agencies have not regularly captured adequate data relating to sexual harassment in the industry.

Recommendation 10

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

Recommendation 11

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

Mining companies have formal reporting systems in place

- 5.30 *Respect@Work* noted that 'good practice systems for reporting sexual harassment are characterised by supportive, victim-centred, flexible mechanisms that accommodate the needs of workers and offer workers a range of reporting options and multiple entry points.'²⁷⁸ Moreover, reporting options must be clearly explained to all concerned, and tailored for the workforce.²⁷⁹ The major mining and resource companies we heard from have some fairly advanced systems for employees to report different types of incidents. However, there is clearly something missing when underreporting remains so pervasive. As the CME told us, though companies are actively improving their reporting options, there was

278 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 696.

279 *ibid.*

‘clearly a deficiency in awareness within the workforce in some cases about what those structures are.’²⁸⁰

- 5.31 We do not wish to underplay the reporting systems currently in place, nor belittle the efforts of companies to implement them. Mining companies have obviously invested considerable resources and effort, but as the realities noted above make clear, managing the issue will require more than a technological silver bullet. There is a clear need for multiple internal and external, formal and informal, reporting avenues, which are set out in public policy documents to clarify expectations. We also know that those handling reports must be appropriately trained, and that responses be victim-led and trauma informed, with anonymous options always available.
- 5.32 Below, we briefly discuss some systems that companies use. These show attempts to address key issues – privacy of information, and mandating their use across the business. They were a combination of external third-party technologies, and in-house follow-up processes. They appear structurally sound, although we were not convinced that the difference between ‘confidentiality’ and ‘anonymity’ was understood or followed through as well as it should be. Company systems had many consistent characteristics. And as we explore in the next section, they have failed to gain the trust of their employees.
- 5.33 Rio Tinto’s recent report described various reporting options open to employees or contractors. These included reporting through their manager, HR, or the new *myVoice*, ‘a confidential whistle-blower programme’ which had replaced previous models. *myVoice* is overseen by Rio Tinto’s Business Conduct Office and could be used online or by phone, and includes an anonymous reporting option.²⁸¹ Rio Tinto claimed this as a breakthrough, saying the 2020-21 upswing in reports coincided with the new system.²⁸² However, their review of workplace culture noted that reporting of harmful behaviours through the formal channels is extremely low, and that this ‘suggests that Rio Tinto does not have a safe reporting culture in relation to highly sensitive interpersonal matters.’²⁸³
- 5.34 BHP, among other companies, used the third-party run commercial reporting tool, *EthicsPoint*, a product its parent company claims is used by 9,000 companies worldwide.²⁸⁴ BHP said the system was

available 24/7, in multiple languages, to all employees, contractors and the public, and allows concerns to be raised anonymously. The most serious allegations, including sexual harassment, are investigated by a specialised, centralised investigations team (Central Investigation Team) to seek to build confidence in the investigation process and improve the experience of those who raise concerns.²⁸⁵

280 Ms Elysha Millard, CME, Transcript of Evidence, 20/10/2021, p. 7.

281 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, pp. 64-65.

282 Mrs Laura Thomas, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 3.

283 Rio Tinto, *Report into Workplace Culture at Rio Tinto*, 2022, pp. 69-70.

284 Navex landing page, accessed 20/5/2022, <https://www.navex.com/en-us/products/navex-ethics-compliance/ethicspoint-hotline-incident-management/>.

285 Submission 71, BHP, p. 6.

- 5.35 Since October 2020 it has been mandatory for BHP employees to report ‘any serious allegation raised directly with BHP managers and leaders, including sexual harassment.’ Through that system BHP said they were now ‘capturing more cases in a single repository which provides greater ability to monitor trends.’ A case manager inquires whether the victim would prefer a traditional investigation or other mechanisms to respond to their claim.²⁸⁶ BHP said ‘a substantial portion of reports’ now came from ‘managers and leaders’,²⁸⁷ and it had imposed specific KPIs on senior leaders ‘to encourage greater reporting of sexual harassment.’²⁸⁸ Failure to report serious incidents is itself now considered a serious incident. Since 1 October 2020, BHP had removed one line leader (a contractor) from site for several reasons, including a failure to report a sexual harassment allegation.²⁸⁹
- 5.36 Woodside also used *EthicsPoint* as its externally managed whistle-blower hotline. It told us that allegations of harassment are ‘investigated under the supervision of a cross-functional steering group, with disciplinary action (up to and including termination of employment or engagement) taken where a contravention has been established.’²⁹⁰
- 5.37 Other companies had comparable systems in place. Chevron said its Hotline was a
direct formal avenue for reporting activities or behaviours that may violate the law or Chevron policies. This is managed by a third party for independence and is available to anyone who works on a Chevron site or office, regardless of employer. The receiving team ensures all reports are confidentially provided to the relevant role for appropriate investigation or action to be taken.²⁹¹
- 5.38 Chevron also ‘has employees located across all sites who have been trained as Contact Officers to provide confidential support and information on work related issues or concerns that may be covered by the Discrimination, Harassment and Bullying Policy.’²⁹² It also provides ‘Upstander training to further a culture where employees feel safe and empowered to speak up’ which is designed to train people
in how to identify, safely disrupt and report inappropriate behaviours. It is all about shifting more of our workforce from being bystanders to being ‘upstanders’, and treating psychological safety risks the same way that we consider other safety risks.²⁹³
- 5.39 Fortescue said its employees could ‘report matters of sexual harassment through a “Whistleblower Hotline” which is managed by an external provider, and people can remain anonymous and need not involve their leader.’²⁹⁴ It also had a ‘Speak Up’ programme, using

286 Submission 71, BHP, p. 7.

287 *ibid.*

288 *ibid.*

289 Mr Brandon Craig, BHP and Ms Jessica Farrell, BHP, Responses to questions on notice and further questions, 10/12/2021, p. 2.

290 Submission 18, Woodside, p. 1.

291 Submission 48, Chevron Australia, pp. 4-5.

292 *ibid.*, p. 5.

293 Mr Chris Watts, Chevron Australia, *Transcript of Evidence*, 24/11/2021, p. 2.

294 Submission 55, FMG, p. 4.

a telephone hotline and email address for complaints and misconduct, which could be used anonymously and without involving line management.²⁹⁵ They also

conduct an annual Fortescue Safety Excellence and Culture survey in which all of our team members can anonymously raise issues regarding inappropriate behaviour or other cultural or safety issues. We have also recently launched an additional survey as part of our Workplace Integrity Review, aimed at identifying any issues regarding inappropriate conduct, particularly sexual harassment.²⁹⁶

5.40 Roy Hill said their ‘multiple reporting options’ ranged from ‘direct reports to leaders or HR personnel, to confidential or anonymous reports if people prefer.’²⁹⁷ And Macmahon said its employees could raise complaints with a supervisor or HR representative; lodge a complaints form; or make a complaint through managers or a dedicated Whistleblower Hotline Policy on a ‘confidential and/or anonymous basis’.²⁹⁸

5.41 More broadly, CME stated in October 2021 that it supported the dual objective of establishing ‘accessible, confidential reporting systems that allow for employees to remain anonymous if preferred (for example, online reporting, phone line, QR codes)’ and making informal reporting channels ‘available for employees to raise issues confidentially.’²⁹⁹ We look forward to seeing the details of these initiatives as they roll out.

5.42 Industry is making positive changes. But as we show below, the experiences of individuals in reporting sexual harassment has been overwhelmingly negative. We support the adjustments taking place in the industry but it remains true that reporting is low and it is uncertain whether these current measures will see the fundamental shift in attitudes that is required.

Finding 40

Major mining companies have a range of reporting options in place. However, it is too soon to tell if these will bring fundamental change.

Many witnesses had negative experiences reporting incidents or were too afraid to report

5.43 One of the recurring themes of this inquiry was the disconnect between what companies perceived the case to be and what individuals told us. Perhaps the greatest disconnect involved the experiences of individuals with company reporting systems. Individuals almost exclusively told a negative story of using a company reporting system. Some were generally wary of the systems. Some had no confidence that reporting would achieve anything. More concerning, some were so fearful of potential repercussions that they would not risk reporting at all.

295 Submission 55, FMG, p. 4.

296 *ibid.*

297 Submission 58, Roy Hill, p. 4.

298 Submission 84, Macmahon Holdings, pp. 2-3.

299 Submission 56A, CME supplementary, p. 22.

5.44 Here is a selection of anonymous statements from witnesses who are or were employed by various companies, in various positions and types of employment, and almost all of whom are women.

It had become so mechanical in its application that there was a growing sense of hopelessness and personnel expressed that they had lost faith in the ... complaint system.³⁰⁰

I have made several complaints... regarding unsafe work culture ... One serious complaint ... was not investigated fully and I was never given any response or resolution.³⁰¹

I made a complaint and it was dismissed.³⁰²

I did report his behaviour to leaders at site, but this was just ignored.³⁰³

apparently when she reported his behaviour she was brushed off and told oh that's just [name removed] his [sic] just like that...³⁰⁴

Many of my supervisors refuse to officially record incidents...³⁰⁵

I was told it would be investigated. To my knowledge, no investigation took place by the HR department, or if it did, it was cursory at best.³⁰⁶

There are 'procedures' in place to handle sexual harassment, but they are not always followed on work sites. ... These situations are often not even uncovered as workers simply [...] don't question the decisions of supervisors.³⁰⁷

'Investigations' by sub-contractors, of any allegations of sexual harassment are ridiculously long, and appear to be prolonged in order to make the informants simply give up...³⁰⁸

Sub-contractors to the large mining companies will 'cover up' allegations of sexual harassment in order to not jeopardise their very lucrative contracts with the big mining companies.³⁰⁹

We [are] told to speak up and when we do they do everything to keep us quiet.³¹⁰

there is no easy way to report [bullying and harassment], whereas other safety statistics are so easy to capture and get the information.³¹¹

300 Personal evidence.

301 Personal evidence.

302 Personal evidence.

303 Personal evidence.

304 Personal evidence.

305 Personal evidence.

306 Personal evidence.

307 Personal evidence.

308 Personal evidence.

309 Personal evidence.

310 Personal evidence.

311 Personal evidence.

I unfortunately ... trusted in the company's HR team, I thought they were there to protect me. I would have been much better off elbowing the people in the face.³¹²

Even though I worked for {company name] we directly reported to external contractors, and when I raised serious safety concerns, they would not be recorded as incidents.³¹³

HR are more concerned with protecting the company's reputation than protecting people on site.³¹⁴

there is no question in my mind that these incidents are massively underreported due to fear of reprisal.³¹⁵

The best outcome I have ever achieved by reporting someone sexually harassing me has been an assurance that 'if it continues, we'll complain to his employer.' ... In this instance, I chose to end my employment as I was made so uncomfortable by this individual.³¹⁶

There are no consequences for those who have acted inappropriately that I have ever heard of, unless the issue becomes a police matter.³¹⁷

From intimidating behaviour, bullying, outright sexism, dismissal of complaints as lies or just non-belief of people of people reporting events to management over the years has led to more contempt for women in mining.³¹⁸

After [I] submitted my written statement, I was advised that I must have misunderstood the situation by the manager. ... I was then subjected to taunts about trying to get people sacked and lying to make a name for myself while I was trying to follow the safety processes.³¹⁹

No follow up of the outcomes of the incident ever came to my attention and as far as I'm aware no action was taken.³²⁰

Rarely was the HR process consistent and suitable.³²¹

I raised [a]... complaint ... and initially it just went back to my own leadership team. I felt this put me in jeopardy as then, the leadership team knew I did not trust them.³²²

312 Personal evidence.

313 Personal evidence

314 Personal evidence.

315 Personal evidence.

316 Personal evidence.

317 Personal evidence.

318 Personal evidence.

319 Personal evidence.

320 Personal evidence.

321 Personal evidence.

322 Personal evidence.

Management teams routinely protect the company by point blank lying to DMIRS and not reporting incidents and not managing bullying. Unfortunately, it is often managers who are the worst offenders.³²³

I reported this to the department Superintendent, no action was taken. I was advised to avoid being alone with him.³²⁴

I raised the issue with the superintendent, which was futile.³²⁵

The default for sexual harassment reporting is to hide behind a wall of 'privacy'. This protects the perpetrator, not the victim. I could not understand why the mine site could not be advised that there had been harassment incidents reported.³²⁶

I tried to speak to my supervisor and report it. He continued to brush me off and say he was too busy. I tried to speak to my superintendent who also kept avoiding me and would occasionally reply and point me back to my supervisor.³²⁷

I honestly gave up trying to fight and report the sexual harassment by this stage.³²⁸

I was assaulted ... after ongoing harassment I was experiencing. I was yelled at by my head office boss after ongoing reporting to HR and told that I had to put up with it.³²⁹

This incident was reported to HR with little or no out come on my behalf. [Company name]-targeted me, then I was subsequently dismissed.³³⁰

...it has never crossed my mind that I could have brought something up with [the safety regulator].³³¹

The procedures were that you had to speak to your supervisor. Every time I went to my supervisor he would be like, 'No, no—it's all in your head', or 'I'll have a chat to the guys.'³³²

There was only the [reporting system] stuff, which normally goes straight back to the same people that obviously we are reporting to. In the past, if you ever had anything go through there, they would then turn it back on you. It is basically a system that no-one in the workplace feels safe to use.³³³

323 Personal evidence.

324 Personal evidence.

325 Personal evidence.

326 Personal evidence.

327 Personal evidence.

328 Personal evidence.

329 Personal evidence.

330 Personal evidence.

331 Personal evidence.

332 Personal evidence.

333 Personal evidence.

There are a couple of site liaisons that you are supposed to be able to talk to, but of course most of the time, they are men, so you are not going to approach them.³³⁴

anyone who was raising [a]... complaint ... it was just getting sent straight back to the manager and it was just being rerouted continually. Basically everyone had lost faith in it and in the end, half of them did not even bother putting in complaints because it just goes straight back to the same person.³³⁵

Inherently, you are constrained by this idea that you have to go through a chain of command. This is more prevalent, I feel in my experience, in contracting companies. You are told from day one: 'Do not break that chain of command; do not break that chain of command.' You are not to go outside or talk to someone for advice or help unless they are your direct line manager – your shift boss, your supervisor. You do not go above them or around them to anybody else.³³⁶

5.45 These statements are, or should be, shocking. They reveal unique and diverse personal experiences, but they also highlight consistent themes. The people who shared their experiences in our inquiry and who had experienced sexual harassment and tried to report it were too often:

- Given inappropriate, insufficient, or non-existent guidance or support;
- Left without satisfactory resolution;
- Confused or deeply frustrated by the experience;
- Re-traumatized;
- Left fearful of potential repercussions;
- Blamed or told to 'get over it';
- Left not wanting to repeat the experience; and/or
- Dismissed or suffered other detriment at work.

Finding 41

Individuals who reported incidents were too often:

- Given inappropriate, insufficient, or non-existent guidance or support;
- Confused or deeply frustrated by the experience;
- Re-traumatized;
- Left without satisfactory resolution;
- Left fearful of potential repercussions;
- Blamed or told to 'get over it';
- Left not wanting to repeat the experience; and/or
- Dismissed or suffered other detriment at work.

5.46 Beyond general disappointments, frustrations, and resulting cynicism that attended some workers' experiences with reporting arrangements in mining companies, we also heard from

334 Personal evidence.

335 Personal evidence.

336 Personal evidence.

many who were simply too afraid to report, largely for fear of repercussions for their careers – and thus their incomes and quality of life – as well as their reputations and their mental health.

I never report. I know if I report I lose my job. So never report.³³⁷

A supervisor made inappropriate comments ... was not reported due to his position within the company and could make life difficult if you raise a complaint.³³⁸

I never reported sexual harassment as I didn't want to cause any issues, I didn't feel supported, I didn't think anything would happen, or I thought that I would be thought of as the 'trouble maker'.³³⁹

After the bias and isolation I experienced on site from other employees, who I feel, branded me a trouble maker for speaking out ... I gave my notice of resignation, as it became too stressful for me to deal with.³⁴⁰

he found out I had put in an [system] concern and ... that was the day I knew I had committed career suicide ...³⁴¹

I did not report [a sexual assault] because I was embarrassed, in shock and wasn't sure who I should report it to or how my report would be handled. I don't recall any sexual harassment modules in inductions.³⁴²

I was so scared that would be sacked in a matter of time after reporting ... if I got sacked I would lose my home I was extremely scared I cleaned out my savings...³⁴³

After reporting people ... I will always live-in fear of retribution from these people.³⁴⁴

Whether it was verbal, physical or visual it was common place and we were told that if we didn't like it, we should leave the industry. We didn't complain because it wasn't acceptable. ... The best way to describe it was that if you ever raised your head with something to say about the sexual harassment it would be chopped off, so you learned to stay silent.³⁴⁵

It is well known within the industry, that if you say something, then operators will refuse to allow you to do my job. If I get the men on these sites 'in trouble', then they will do everything in their power to be uncooperative, and prevent me from doing my job.³⁴⁶

337 Personal evidence.

338 Personal evidence.

339 Personal evidence.

340 Personal evidence.

341 Personal evidence.

342 Personal evidence.

343 Personal evidence.

344 Personal evidence.

345 Personal evidence.

346 Personal evidence.

... we do get told to report to our supervisors/managers but can be difficult for some girls as they're a bit nervous to, especially if there's only male managers.³⁴⁷

No one ever wants to hear a story on sexual harassment.³⁴⁸

I think there is a lot of fear. I know back then I felt very scared ... I guess it is that David and Goliath situation. You go up against someone like that – it is like you are talking about a massive mining company and they control so much.³⁴⁹

Even though you are doing it anonymously, they are going to know where that came from.³⁵⁰

I did not report it, because you do not report these things because you end up losing your job.³⁵¹

I do think there is a fear of reporting ... I still fear some kind of repercussions because the mining industry is just so small and you do not want to be seen to be a troublemaker.³⁵²

As the contracting company, you are really left to your own devices, in my opinion. It is: get the job done however you can get it done and we ask no questions and you tell us no lies.³⁵³

Finding 42

The fear of negative repercussions from reporting incidents of sexual harassment and assault is well known within the FIFO workforce and is a deterrent to victims reporting.

Anonymous reporting is not always available

5.47 The decision not to report incidents for fear of being publicly identified is entirely understandable. It is therefore obvious that anonymity must be an option for victims wishing to make a complaint. We believe there is great value in investing more in anonymous reporting systems. One key benefit, even in cases where details are withheld and victims do not wish to pursue investigations, is that it can provide real time data and patterns that can trigger practical responses in high risk areas. But there is a real difficulty in balancing the imperative to maintain privacy, confidentiality and anonymity with effective resolution of delicate situations and stamping out unacceptable behaviour. We also accept that securing anonymity in sexual harassment cases is difficult 'because of the idiosyncratic circumstances which surround them.'³⁵⁴

347 Personal evidence.

348 Personal evidence.

349 Personal evidence.

350 Personal evidence.

351 Personal evidence.

352 Personal evidence.

353 Personal evidence.

354 Professor Paula McDonald, *Transcript of Evidence*, 6/4/2022, p. 9.

5.48 In this section we focus first on issues relating to anonymous reporting in government or public entities, and then in mining companies. The key point is the need for a range of reporting options to accommodate different situations, circumstances, and individual needs and priorities. There will be no one-size-fits-all solution. Some viable options to consider are set out in Section 6 of *Respect@Work*, and we will not cover these in detail. Nor do we endorse any particular system.³⁵⁵ For now, it is enough to reiterate that workers lack trust in the current options, and there are tools that can be trialled which might improve the situation.

Government agencies

5.49 The key issue for government agencies is their inability to accept all relevant reports, thus limiting their ability to build an accurate picture of events. Resolving this will require weighing alternative strategies, and this is a task these agencies must set their mind to. For instance, we heard that

DMIRS cannot guarantee the anonymity of the complainant. That is, because of the nature of the issues involved it is not readily possible to investigate an incident without the identity of the complainant becoming directly or indirectly known. Similarly, DMIRS is unable to effectively investigate anonymous reports because the inspector is not able to: obtain further details from the person who is allegedly being bullied or witnessed the alleged bullying to gain a better understanding of the inappropriate and unreasonable behaviour at the workplace; determine the actions already undertaken; and conduct a procedurally fair investigation.³⁵⁶

5.50 Even though it believed it was limited, DMIRS also recognised that this situation did not give any comfort to complainants. It told us that ‘the inability to provide anonymity may impact on the preparedness of some victims of sexual assaults to make complaints’ and that ‘[o]n most occasions the person reporting the complaint requests anonymity.’ Further, it believed that this situation ‘compounds the issue with investigations unable to be progressed, leading to limited data on these matters that does not reveal the full extent of the problem.’³⁵⁷

Finding 43

DMIRS cannot guarantee anonymity to complainants during investigations, or effectively investigate anonymous reports. This leads to incomplete data on the nature and scale of sexual harassment and assault in the FIFO mining industry.

5.51 Asked about available options available to circumvent this problem, DMIRS was ‘aware of other jurisdictions using general inspections or enquiries in response to anonymous complaints and using of surveys to provide information on psychosocial hazard.’ However, it said ‘these have limitations in terms of being able to address specific issues as it can be

355 See AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, pp. 696-703.

356 Submission 69, DMIRS, p. 3.

357 *ibid*, p. 4.

difficult to obtain information required to undertake a procedurally fair investigation without compromising the anonymity of the complainant.³⁵⁸

5.52 Nonetheless, DMIRS had ‘considered and used’ options to get around the problem, including:

conducting a general inspection, making general enquiries or conducting a mentally healthy workplaces audit instead of investigating the specific incident. While, as noted above, this approach has clear limitations, it gives Mines Safety the best chance of identifying and addressing any potential issues or breaches of the MSI Act without compromising the identity of an anonymous complainant.³⁵⁹

5.53 We do not want to minimise the difficulties DMIRS faces in meeting its responsibilities. We simply note that within these limitations, DMIRS is not getting the information it needs to get, and it cannot fulfil its requirements until it does so. To this end, all options for undertaking procedurally fair investigations without compromising the complainant’s anonymity should be assessed.

Recommendation 12

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

5.54 We also heard that the Equal Opportunity Commission was similarly limited. The Commissioner for Equal Opportunity said the Commission ‘cannot in terms of the [Equal Opportunity Act] accept an anonymous complaint’.³⁶⁰ A complaint to the Commission would essentially be ‘alleging that there is a breach of the act, so it is a civil proceeding. We have to ensure procedural fairness. Therefore, ... the person has to be named.’³⁶¹ The Commissioner did say, however, that, as opposed to anonymity, he is bound by confidentiality, and the Commission cannot disclose any information about a complainant or respondent, and the Commission encourages the complainant and respondent to keep the process confidential.³⁶²

Finding 44

The Equal Opportunity Commission cannot work to resolve anonymous complaints under its enabling legislation.

Recommendation 13

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

358 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 4.

359 *ibid.*

360 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 9.

361 Ms Diana MacTiernan, EOC, *Transcript of Evidence*, 13/10/2021, p. 9.

362 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 9.

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

Industry

- 5.55 As with government agencies, confidentiality and anonymity in reporting systems raise complex questions for private companies. Moreover, they must not only find solutions to technological problems, but as we have noted, must also grapple with the fact that systems seen as connected to the company are not well trusted. While companies believe they have the sort of systems our witnesses appear to want, any system is ultimately effective only if people feel safe and empowered to use it.
- 5.56 We have not assessed the performance of the anonymity function in individual systems used by companies, and make no judgement on whether they technically work as well as companies say they do. Rather, we note there seem to be viable options available to companies that can be used immediately and which should help address concerns voiced by witnesses, several of whom cited effective anonymous reporting and data collection systems as among the most important short-term changes that can be made.
- 5.57 While the major miners often provided the option of anonymous reporting, AMEC said a survey of its members showed:
- 36% of respondents did not have an anonymous reporting system in place. Of those that did, some considered they were underutilised because people may be wary about the actual anonymity of the systems, which offer confidentiality rather than anonymity. Some have expressed concerns that a victim may still be identifiable as a source of a complaint or allegation due to the report's context regardless of how the confidentiality of the data was handled.³⁶³
- 5.58 This can be a particular problem for small operators. *Respect@Work* more broadly noted that the 'small nature of the workforce, the workspace and high degree of informal and personal interactions, can increase the risk of sexual harassment and create barriers to reporting. Small businesses often lack the resources and skills to handle complaints.'³⁶⁴ AMEC also said, 'For smaller teams such as those of FIFO mineral exploration companies, this can be more challenging as the resourcing does not always allow for the structures and formal position holders that traditional mining operators would have.'³⁶⁵

Finding 45

Smaller businesses, with fewer resources to invest and smaller workforces, face barriers in providing appropriate and effective in-house reporting systems.

- 5.59 Regardless of company size, there are available options to consider. We were presented with evidence of a third-party reporting platform – Safe2Say – developed by CrimeStoppers WA that guaranteed anonymity and allowed those using it to include all or some of their

363 Submission 70, AMEC, p. 16.

364 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 93.

365 Submission 70, AMEC, p. 24.

details if and when they chose to. It offered organisations information to manage cases, but this was tempered by the complainant being able to choose confidentiality and anonymity.³⁶⁶ Further, the system seems relatively inexpensive even for smaller companies, and can be used in addition to existing systems. As CME put it, ‘With a variety of reporting options, companies provide the victim with the agency to determine the reporting pathway with which they are most comfortable.’³⁶⁷ If there was a standardised system used by companies across industry, this would presumably make it easier for employees who changed companies, or contractors or labour hire switching between companies. We see no compelling reason for companies not to provide an additional option to their workers to complement existing systems. But again we stress that no system will solve this situation unless it is accompanied by widespread cultural change. Thus we suggest that any roll out should be accompanied by education sessions and support services to promote and build trust in its potential users.

5.60 AMEC strongly supported the introduction of Safe2Say as an anonymous third-party platform.³⁶⁸ Mr Pearce of AMEC was aware of companies with similar platforms, but said the difference was ‘the reputation and brand that comes with Crime Stoppers.’³⁶⁹ Mr Everingham of CME also recommended Safe2Say to all his member companies.³⁷⁰ Engineers Australia called for a comparable system.³⁷¹ When we asked Ms Gaines of Fortescue her thoughts on the platform, she said it was ‘very similar to our whistleblower program and that is anonymous. It is administered by a third party, so it is a very similar process.’³⁷² We have no cause to dispute this, but it misses the point – individuals distrust existing systems whether or not the companies themselves believe they have reason to. For a company the size of Fortescue, providing another option that might benefit victims surely imposes no unreasonable burden on it.

Finding 46

There are affordable third-party reporting platforms that companies could use to enable anonymous reporting.

Recommendation 14

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

366 Submission 16, Crime Stoppers WA, p. 5.

367 Submission 56, CME, p. 9.

368 Submission 70, AMEC, p. 17.

369 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, pp. 9-10.

370 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 4.

371 Submission 72, Engineers Australia, p. 7.

372 Ms Elizabeth Gaines, FMG, *Transcript of Evidence*, 27/10/2021, p. 6.

5.61 While workable anonymous incident reporting systems are one challenge, there is a more pressing concern about where those reports should be handled, and who should be responsible for collecting and collating information about their management. At present, negative perceptions of companies contribute to underreporting. Further, those who do receive reports often lack specialist training and experience. We explore options to deal with this in the next chapter.

Third-party and bystander reporting is vital to understanding and improving culture

5.62 It is our view that third-party reporting is a key indicator of cultural change and needs to be encouraged and normalised as part of all mining workplaces. Preferably, it would also be captured as data. Currently, mining companies are doing a poor job at this. *Respect@Work* said bystander interventions seek to encourage ‘workers to act when they see or hear about [sexual harassment] occurring in the workplace.’³⁷³ Further:

While employers ultimately bear the duty to create a safe and respectful work environment, studies have suggested that bystanders who do intervene when they witness or hear about workplace sexual harassment can effectively prevent and reduce harm to victims and contribute to a more respectful culture.³⁷⁴

5.63 The Equal Opportunity Commission also stressed the need to ‘Encourage by-standers to intervene’ and that ‘sexual harassment between colleagues at the same level is more common in the mining industry and there is often another person who observes the harassment.’³⁷⁵

5.64 Some companies had relevant figures to hand. Rio Tinto told us, for example, that from the start of 2017 to 19 October 2021, ‘approximately 19% of reported cases of sexual harassment or assault were logged by bystanders (18 cases in total).’³⁷⁶ Companies are certainly becoming more aware of the importance of this and are aiming to improve. But for reasons already outlined, we have little faith that the mining industry in general is adequately or accurately capturing this data. They must do so. There needs to be adequate training across the industry for bystanders on when and how to report. More importantly, we need to see cultural change to empower and embolden bystanders in this effort.

Finding 47

We saw no compelling evidence that the mining industry is adequately capturing data on third-party or bystander reporting.

Recommendation 15

The Minister for Mines instruct DMIRS to work with mining peak bodies to develop appropriate education and training across the industry for bystanders on when and how

373 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 691.

374 *ibid.*

375 Submission 54, EOC, pp. 7-8.

376 Mr Simon Trott, Rio Tinto, Responses to questions on notice and further questions, 12/11/2021, p. 2.

to report incidents of sexual harassment, and make this a key component of cultural change in the industry.

5.65 The question of bystanders leads to a more general point about access to third-party advice and support on mine sites. As we have detailed, people were often not comfortable reporting issues through company systems. We also heard that people rarely considered the idea of reporting incidents to DMIRS or to WorkSafe, or were even aware that they could. We also heard that:

complaints to equal opportunity and antidiscrimination commissions across Australia are the tip of the iceberg in terms of the prevalence of the problem... In any given year there are about seven formal legal determinations around workplace sexual harassment in Australia, and only about half of those are upheld.³⁷⁷

5.66 In this situation, and to give people the best chance of receiving appropriate support for their needs and circumstances, it is important that they have access to the widest possible range of options for raising concerns. This is especially true given the remoteness and isolation of much mining activity, which limits the access people have to their normal social and family networks.

5.67 There are currently no legislative barriers to union representatives accessing their members at work sites or camps with the new WHS legislation addressing any ambiguity between the two.

5.68 Some individuals told us of concerns about their access to union representatives. One person told us that union access was denied them as a contractor.³⁷⁸ Another told us that a colleague had been warned off bringing a union into a situation.³⁷⁹ Some people had been assisted by unions in dealing with harassment issues. Some had not got the kind of help they wanted, this is challenged where union representatives are supporting the perpetrator.

5.69 We agree with the representative from Unions WA who told us that '[t]hird party access is important but it is not a silver bullet'.³⁸⁰ But we also recognise, as *Respect@Work* did, that victims seek support and advocacy from many sources, including 'friends and family, unions, working women's centres, psychologists and other healthcare professionals'.³⁸¹ We also agree with the witness who told us how important it was to be able to deal with someone who is 'not your contract company, someone who is not the client, someone who is not a direct one up, someone who you can go outside of the organisation and you know that there is going to be action and that they are going to be receptive and nurturing.'³⁸² On these

377 Professor Paula McDonald, *Transcript of Evidence*, 6/4/2022, p.3.

378 Personal evidence.

379 Personal evidence.

380 Ms Lisa Judge, Unions WA, *Transcript of Evidence*, 24/11/2021, p. 7.

381 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 261.

382 Personal evidence.

grounds, we believe that no individual should be impeded from accessing support on site as required from third parties, including union representatives.

Finding 48

The remote nature of many the FIFO mining sites mean workers did not have the same access to support networks. We heard evidence from some individuals and union bodies that limitations to third party access meant that people did not always have access to the widest range of support options and information on employment rights when dealing with sexual harassment.

Recommendation 16

Mining companies establish a number of internal and external options for reporting and obtaining support for incidents of sexual harassment and assault. All employees must be informed of these options.

The use of NDAs inhibits the proper capture of all information

- 5.70 The use of non-disclosure agreements (NDAs) or similar legal instruments relating to sexual harassment or assault claims was raised a number of times during the inquiry, as they have been in other inquiries. *Respect@Work* called the use of NDAs relating to sexual harassment matters ‘a particularly topical and challenging issue’.³⁸³ While that report mentioned possible benefits of NDAs in protecting victims’ privacy, it had concerns over their use ‘to protect the reputation of the business or the harasser and contribute to a culture of silence.’³⁸⁴ We too hold these concerns.
- 5.71 More than simply inhibiting accurate data collection, which they certainly can do, NDAs risk contributing to a moral failing. They can facilitate the exploitation of unequal power relations, restraining the freedom of individuals to make the choices they feel are best for them, as well as limiting transparency and regulatory oversight. For these reasons the practice of companies using NDAs should end unless victims, knowing the range of options available to them, freely and explicitly request them. We received first-hand evidence of a small number of NDAs used in cases relating to sexual harassment or assault in the mining industry, and others reported being concerned by their actual or potential use. We respect these concerns and as far as this is the perception, companies need to take action to overcome it to build a culture of trust.
- 5.72 It is hard to be certain how many NDAs have been or are currently being used across the entire industry, including by contracting and labour hire companies, as part of the point of private settlement agreements is that such incidents are not publicly disclosed. To the extent they are used, accurate knowledge of what is happening in the industry suffers. Engineers Australia said it believed ‘the practice of requiring complainants to sign NDAs means that the

383 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 32.

384 *ibid.*

prevalence, nature, outcomes and reporting of sexual harassment in FIFO workplaces is not understood as it is not transparent.’³⁸⁵

- 5.73 On the evidence we received, we do not argue that NDAs are part of a strategy of industry cover-ups of incidents relating to sexual harassment and assault, a possibility raised in private evidence. But we also cannot say, given what we heard, that this idea is or was implausible. The key point is the need to receive firm, tracked and measurable assurances from industry that such settlements and agreements are not used in future unless explicitly requested. The recent Industry Code on Eliminating Sexual Harassment has stated the industry would ‘Avoid the use of non-disclosure clauses in any agreements with persons impacted by sexual harassment.’³⁸⁶ This is a positive step in ensuring that NDAs are eliminated from the industry. We look forward to the Department monitoring the mining industry and issuing formal guidance to see it complies with this. In doing so the Department should refer to the approaches discussed in Section 5.8 of *Respect@Work*, and to the examples of other jurisdictions. We note one example being the report by the U.S-based Women’s National Law Centre, which listed a number of different measures taken by some American States to ‘limit employer power to impose NDAs’.³⁸⁷
- 5.74 Companies themselves generally said they avoided the use of NDAs. The CME said ‘some’ of its members now avoid using NDAs relating to sexual harassment claims unless specifically requested by a victim.³⁸⁸ CME later confirmed that though it understood NDAs had been used in the past, they have not been used since their adoption of the Code and would not be used in future.³⁸⁹
- 5.75 BHP publicly stated in March 2019 that it stopped using NDAs ‘or confidentiality obligations in settlement agreements relating to sexual assault or sexual harassment ... and will not enforce any non-disclosure agreements or confidentiality obligations in historical agreements.’ Further, from early 2020 they would not allow their contractors and vendors to use or enforce NDAs.³⁹⁰ Following our hearing with them, BHP said in the past 5 years they had identified one settlement agreement, from 2018, ‘that related to a claim of sexual harassment that included a generic confidentiality clause as part of a broader settlement.’³⁹¹
- 5.76 Rio Tinto told us that in the past five years ‘it had not used non-disclosure agreements that would prevent victims of sexual harassment or sexual assault talking about their experience.’

385 Submission 72, Engineers Australia, p. 5.

386 Minerals Council of Australia, *Industry Code on Eliminating Sexual Harassment*, [www.minerals.org.au/sites/default/files/Sexual%20Harassment Industry%20Code%20of%20Conduct March%202021.pdf](http://www.minerals.org.au/sites/default/files/Sexual%20Harassment%20Industry%20Code%20of%20Conduct%20March%202021.pdf) [accessed 1/6/2022].

387 Andrea Johnson, Kathryn Menefee, and Ramya Sekaran, *Progress in advancing Me Too: Workplace Reforms in #20STATESBY2020*, National Women’s Law Centre, December 2019, p. 5. https://nwlc.org/wp-content/uploads/2019/07/final_2020States_Report-12.20.19-v2.pdf [accessed 1/6/2022].

388 Submission 56, CME, p. 10.

389 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 4. See also the Implementation Framework: Eliminating Sexual Harassment in the WA Resources Sector October 2021 in Submission 56A, Chamber of Minerals and Energy WA supplementary, pp. 24-5.

390 Submission 71, BHP, p. 8.

391 Mr Brandon Craig, BHP, and Ms Jessica, BHP, Responses to questions on notice and further questions, 10/12/2021, p. 6.

It then added that 'In certain circumstances (with mutual agreement) confidential provisions are applied to specific parts of an agreement such as financial settlements. There have been 3 cases in the last 5 years where such clauses have been used.'³⁹² During their hearing, Mr Trott's response to the question was categorical: 'We do not use non-disclosure agreements.'³⁹³

5.77 Woodside said that:

In the past five years, Woodside has entered into two separation deeds with former employees who were found to have engaged in sexual harassment. Those deeds contained standard confidentiality clauses regarding the terms of the deed and the employee's general obligations of confidentiality.

5.78 However, it also said:

Where there is a substantiation of sexual harassment by contractor personnel, the disciplinary outcome, including whether to enter into non-disclosure agreements or other comparable legal instruments, is the decision of the contracting company as employer, and as a result Woodside does not have visibility of this.³⁹⁴

5.79 AMEC said that when it inquired of its 150 member companies operating in WA of their use of NDAs, there were

a large number of responses, however, only one company reported the use of a non-disclosure agreement within the last five years. The company advised they had executed two 'settlement deeds' with previous employees in 2020, in relation to incidents that had occurred. It is understood that these deeds related to the removal of the alleged perpetrators from the workplace, as evidence gathered was not sufficient on its own.³⁹⁵

Finding 49

The use of non-disclosure agreements inhibits the proper capture of all information, and can indicate a power imbalance that limits the free choice of victims.

Finding 50

Non-disclosure agreements and related legal instruments have been used by companies in the past, though the nature, scale and extent of their use across the industry is unclear.

Finding 51

The provision in the Industry Code on Eliminating Sexual Harassment to avoid using non-disclosure agreements relating to sexual harassment shows the positive intent of the industry.

392 Mr Simon Trott, Rio Tinto, Responses to questions on notice and further questions, 12/11 2021, p. 2.

393 Mr Simon Trott, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 10.

394 Ms Fiona Hick, Woodside Energy, Responses to questions on notice and further questions, 26/11/2021, p. 1.

395 Mr Warren Pearce, AMEC, Responses to questions on notice and further questions, 9/12/2021, p. 1.

Recommendation 17

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

DMIRS is not receiving relevant reports from mining companies

- 5.80 So far we have largely focused on challenges individuals face in reporting sexual harassment. But we are equally troubled by evidence that mining companies are not informing the regulator of reports they did receive. Repeatedly, we heard alarming testimony from mining companies that despite receiving numerous complaints of sexual harassment and assault, of various gradations of severity, they had not felt compelled to tell DMIRS. We were particularly uneasy with the fact DMIRS had apparently learned of at least some allegations of sexual harassment and assault on mine sites through media reports, and through our own inquiry. As to why this should be, we were given two answers. DMIRS believed that companies were simply not fulfilling their role or, potentially, their statutory obligations. Companies believed that DMIRS had not provided adequate guidance on what and how exactly they were to report. While there is some substance to both views, we also believe that the industry and its regulator were pointing to one another for systemic shortcomings rather than taking ownership of them.
- 5.81 The WorkSafe Commissioner said the approach to improving things ‘will be an evolutionary process’ and noted ‘that sexual harassment and sexual assault was not a topic of conversation in the safety world going back five to 10 years; it was not a predominant conversation.’³⁹⁶ We discuss this further in the next chapter, but for now we state our concern with the antiquated way DMIRS captures invariably sensitive information relating to sexual harassment, such that the Department seems to have almost disarmed itself from understanding the problems afflicting the industry. We know DMIRS and WorkSafe face challenges, and appreciate their attempts to change with the changing times. We were pleased to hear of the Respect@Work Council, established to assess how information is gathered. But changes are simply not happening fast enough. We can judge a regulator by the outcomes seen in the industry being regulated, and what we see must be remedied. If this means more proactive, even punitive, actions then so be it.
- 5.82 DMIRS put the matter bluntly: ‘Reporting of sexual harassment from the mining industry to DMIRS has been ad hoc and inconsistent.’³⁹⁷ They recognised the absence of this information made ‘it difficult for us to respond in the appropriate fashion, even understanding to what extent perhaps education materials may be required.’³⁹⁸ DMIRS is therefore struggling to address the issue because they do not have adequate knowledge of it. Moreover, the Department conceded that several sexual harassment or assault allegations ‘have received media attention before they have been reported to DMIRS as the

396 Mr Darren Kavanagh, WorkSafe WA, *Transcript of Evidence*, 8/9/2021, p. 13.

397 Submission 69, DMIRS, p. 3.

398 Mr Ian Munns, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 4.

workplace safety regulator', a situation they described as 'particularly disturbing ... unacceptable and, in some instances, may represent contraventions of the MSI Act.'³⁹⁹ We agree entirely with the assessment but question why it was allowed to happen. We are, to be clear, talking about companies who publicly declared to us an evident pattern of what could be non-compliance with their legal obligations.

5.83 DMIRS stated clearly that, as we also discuss further in the next chapter, all injuries 'including psychological injuries and psychosocial hazard exposures' must be reported to the District Inspector.⁴⁰⁰ They also submitted, in mid-2021, that it is 'the role of DMIRS to ensure both employers and workers met their statutory obligations', and that its investigations were 'undertaken to determine whether the workplace has appropriate systems in place' and 'whether those responsible have responded appropriately to the concerns raised by the worker'.⁴⁰¹

5.84 The issue is complicated by companies' obligations to victims. CME identified 'a fundamental tension between respecting a victim's (often strongly held) wishes in relation to conduct engaged against them, the desire of a company to investigate an issue and expectations expressed by DMIRS about the reporting of conduct to DMIRS.'⁴⁰² They also noted that:

in the most serious of cases, there is no positive obligation imposed on companies or individuals to report such matters to the Police (this being at the discretion of the victim). In these circumstances, escalating the matter to an external party (i.e. outside the company's internal processes) may be contrary to the victim's strong wishes and has the considerable consequence of exposing the worker to a risk to their psychological health and safety.⁴⁰³

5.85 AMEC said the legislative requirement to enter mine site accidents into a logbook which must be open to a inspectors, health and safety representatives, and union representatives for mining employees poses 'a significant risk to confidentiality'.⁴⁰⁴

5.86 Given the evident hurdles to gathering relevant information we expected that there would be sound systems to ensure that material received is processed and recorded effectively and efficiently. Instead we were told:

The DMIRS' Safety Regulation System (SRS) and the processes for capturing data specific to sexual harassment is an area that could benefit from significant improvements. Furthermore, prior to 2015, information relating to sexual harassment was kept in hard copy files and as a result it extremely time consuming and inefficient to manually search for relevant data.⁴⁰⁵

5.87 When we followed up on how this system might be improved, DMIRS said:

399 Submission 69, DMIRS, p. 3.

400 *ibid*, p. 12.

401 *ibid*, p. 3.

402 Submission 56, CME, p. 14.

403 *ibid*.

404 Submission 70, AMEC, p. 19.

405 Submission 69, DMIRS, p. 4.

Currently, SRS does not have a field to identify if a matter relates to sexual harassment or sexual assault. Mines Safety relies upon text searches when searching SRS for data on sexual harassment matters, which can be unreliable as it solely depends on how a matter has been worded.⁴⁰⁶

5.88 However, it said it

has commenced consultation with the Office of Digital Government and Department of Treasury on the requirements and funding to procure a fit for purpose safety compliance system to be used by all relevant business areas in DMIRS. This request for additional funding will be considered as part of the State budgeting processes, with the recommendation a decision for Government in due course. In the interim, Mines Safety has commenced manually recording matters of this type on a spreadsheet.⁴⁰⁷

5.89 There is a surprising lack of urgency in this that we hope to see reversed. The state of the SRS system's capability, among other things, suggests that sexual harassment was simply not something the Department thought needed to be captured in health and safety data. They are now playing catch-up. For a self-proclaimed risk-based organisation, this suggests a failure to fully understand what risks it should be considering. As we have mentioned elsewhere in this report, in the time of #MeToo, there is no supportable case for not thinking about the implications of sexual harassment in the workplace.

Finding 52

DMIRS' Safety Regulation System and its processes for capturing data specific to sexual harassment are outdated and not fit for purpose.

Recommendation 18

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

5.90 DMIRS provided data on received reports but immediately qualified it – as we do now – by warning it 'may be incomplete' because of the deficiencies of the SRS system.⁴⁰⁸ To reiterate, the Mines regulator told us that between the calendar years of 2015-2021 it received just 10 reports relating to sexual harassment. Given what we and others have said on the extent of sexual harassment and assault in the industry, to say these numbers 'may be incomplete' is a serious understatement. Notwithstanding the technical problems in the DMIRS reporting system, we are surprised that the key regulator of this enormous industry appeared to be satisfied that these figures represented a realistic picture of the problem.

406 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 4.

407 *ibid.*

408 Submission 69, DMIRS, p. 4.

Finding 53

DMIRS reported that between 2015-2021 it received only 10 reports specifically relating to incidents of sexual harassment, while it received 22 reports of the more serious issue of sexual assault, 10 of which were in 2021. The Committee is surprised that the key regulator of this enormous industry could appear to be satisfied that these figures represented a realistic picture of the problem.

5.91 Further, in April 2022 DMIRS responded to the alarming number of reports uncovered by our inquiry that had not been forwarded on to DMIRS. They said:

Following the public hearings of the Committee, Mines Safety has been proactively working with mining companies to address the historical incidents of sexual harassment and assault shared with the Committee that had not been reported to DMIRS. This has included the sharing of information on incidents reported to the Committee, an overview of how the matters were managed by the companies and how to better report incidents hereafter. While this has increased the current workload of Mines Safety as the inspectors manage the backlog of incidents, it is anticipated that this will lead to more efficiency in the future as the engagement with companies will lead to improved reporting practices.⁴⁰⁹

5.92 We are pleased to hear that this is happening but again we are troubled that it apparently took a Parliamentary inquiry to uncover these historical incidents and to stimulate actions to help prevent them reoccurring. We also doubt this is merely a matter of improving the 'efficiency' of the reporting process. In any case, anticipation is not achievement, and we look forward to hearing regular public reports on real measurable gains made in this area.

5.93 DMIRS said it was working to clarify reporting requirements, such as sending correspondence to Registered Managers and Principal Employers to remind them of their obligations and to encourage 'improved outcomes regarding sexual harassment on mine sites'.⁴¹⁰ It was also 'drafting a bulletin to provide guidance regarding risk management, incident response, reporting requirements and the role of DMIRS in sexual harassment matters on mine sites.'⁴¹¹ DMIRS has also engaged industry to better understand what is happening on mine sites, reaching out to 'advisory bodies, such as the Mining Industry Advisory Committee, and also through key stakeholder groups to try to advance the cause of getting more information in to us as a regulator.'⁴¹² These are important actions, but are a reminder of how far behind the curve the regulators are in this important area.

Finding 54

DMIRS has made recent improvements to its approach to addressing reports of sexual harassment and assault in the FIFO mining industry, but these improvements are belated and insufficient to address the scale of the problem.

409 Mr Richard Sellers, Director DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 29/4/2022, p. 4.

410 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 11.

411 *ibid.*

412 Mr Ian Munns, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 4.

Employers lack adequate guidance on reporting sexual harassment, but have failed to report appropriately

5.94 Although we agree that DMIRS could provide more and better education and guidance, this is no excuse for companies dodging their own responsibilities, or not actively seeking this information. DMIRS said that as a regulator it ‘has a role to play in providing guidance for duty holders as to how to comply with their legislative obligations’ and ‘has taken action to clarify reporting requirements in relation to sexual harassment.’⁴¹³ But the evidence has highlighted a gap between what DMIRS said it provided, and what industry said it received. While industry generally conceded its collective and individual failure to report all incidents of sexual harassment to DMIRS, they largely attributed this to DMIRS’s lack of guidance. While legislation and regulations should define and clarify issues around dealing with sexual harassment, we cannot accept this as a sufficient reason for the lack of action taken. Sexual harassment and assault have long been unlawful, and companies have a duty to prevent and report incidents with the potential to endanger their workers’ health and safety. They should know how best to do this, and if they do not or have not acted to find out, they are no less legally bound. It seems that in claiming to not know exactly what needed to be reported, some major companies opted to report nothing. This is a clear case of neglecting their obligations to workers.

5.95 A related concern we have is that without explicit guidance on, among other things, who must report, when a report must be made, to whom, and what information must be provided, companies could be triaging incidents before deciding if they need to report them to DMIRS. This creates the temptation to argue that particular incidents do not meet a particular threshold, thus removing the burden to report. We reserve our judgement on whether companies have actively exploited this possibility, and we are sure they would deny doing so. We do say this possibility should not be open to them, and clarifying requirements will help close off any potential loophole.

5.96 The industry view that DMIRS needed to provide better guidance was most forcefully put by Chevron representatives. In explaining why they had not passed any of the 12 ‘substantiated’ reports of sexual harassment on to DMIRS, they told us that if these matters were to be treated the same as other types of personal safety they would ‘need to have the same level of guidance’. They added that, given this level of advice, they ‘would be more than happy to comply’.⁴¹⁴ When pressed on why they did not already treat psychological harm as they would physical harm, they said the decision to report to DMIRS remained an internal judgement call. Ms Offner said provisions in current legislation must be more explicit and offer guidance commensurate to that provided for cases of physical injury, contrasting the ‘thousands of pages of guidance on industrial safety and literally two

413 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 11.

414 Mrs Stacey Offner, Chevron Australia, *Transcript of Evidence*, 24/11/2021, p. 3.

sentences about bullying and sexual harassment.⁴¹⁵ Chevron representatives conceded this may not have been the right decision. And our concerns were hardly alleviated when they said 'I am afraid to say I do not know that we have had any conversations with [DMIRS or WorkSafe] related to sexual harassment.'⁴¹⁶

5.97 This seemed to be a common issue across the industry. In response to the question: 'How often have you reported such incidents to DMIRS/Worksafe?' BHP explained that 'the legislation related to reporting was not drafted with a focus on sexual harassment' which 'means that the legislation often does not require the reporting of sexual harassment.' It then assured us that 'We report sexual harassment to DMIRS/WorkSafe where we are required to do so under the legislation. We also report general safety incidents to DMIRS/WorkSafe in accordance with the legislative requirements.'⁴¹⁷ We can only assume from this that BHP either did not know the specific answer to the question asked, or chose not to provide a direct answer. Neither response is satisfactory.

5.98 Rio Tinto representatives hoped the WHS Act would 'strengthen the classification, the definition, the reporting and the requirements.' As Ms Thaxter explained, registered managers have had 'to make a judgement call' regarding the potential seriousness of incidents. She hoped the Act and its regulations would offer clarification and define its terms more specifically to enable regulation to be more effective.⁴¹⁸

5.99 Fortescue considered the regulatory obligations for reporting sexual harassment 'unclear and unsatisfactory' which caused 'confusion and uncertainty within the industry'.⁴¹⁹ Contributing to reporting difficulties, they said, was a tension between the short reporting timeframes required and the need to fully investigate allegations.⁴²⁰ Moreover, any requests for anonymity would limit the ability to report to the safety regulator.⁴²¹ Fortescue said the 1994 regulations did

not quite really cover alleged events or those of the nature of sexual harassment or sexual assault. We are then trying to retrofit that, working with DMIRS to report those things. [...] their systems probably are not designed to actually deal with the confidentiality and care for those individuals as we would like to care for them. It is unclear exactly what we have to report, so that does not quite work for us.⁴²²

5.100 AMEC noted the 'detailed procedures and processes and checklists for how you deal with these things' in other situations⁴²³ and suggested 'the development and education of more non-statutory guidance materials to be a more effective and pragmatic approach' than

415 Mrs Stacey Offner, Chevron Australia, *Transcript of Evidence*, 24/11/2021, p. 14; Submission 48, Chevron Australia, p. 12.

416 Mrs Stacey Offner, Chevron Australia, *Transcript of Evidence*, 24/11/2021, p. 9.

417 Mr Brandon Craig, BHP, and Ms Jessica Farrell, BHP, Responses to questions on notice and further questions, 10/21/2021, p. 3.

418 Ms Cecile Thaxter, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 10. See also Submission 63, Rio Tinto, p. 12.

419 Submission 55, FMG, pp. 12.

420 *ibid*, p. 13.

421 *ibid*.

422 Mr Robert Watson, FMG, *Transcript of Evidence*, 27/10/2021, p. 4.

423 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 7.

regulatory reform.⁴²⁴ Mr Pearce expected the new legislation to clarify the reporting requirements for industry, which will improve reporting overall.⁴²⁵ AMEC predicted the (then unreleased) regulations would deal with reporting psychosocial injuries more robustly. They said that while such changes would offer ‘a more robust reporting system’ they ‘still leave a large area of duplication and grey-area interpretation questions unanswered.’⁴²⁶

5.101 Similarly, CME noted general guidance material on the new laws provided by SafeWork Australia, but said there is ‘an absence of guidance material on the application of WHS reporting requirements in the specific context of sexual harassment’. It added that industry would benefit from clear, simple guidelines provided, for example, by ‘online resources, factsheets or bulletins on reporting requirements’ that account for the ‘human factors that persist in this area, such as the wishes of victims and principles of fairness where matters are not yet substantiated.’⁴²⁷ CME added that ‘working collaboratively with the department and all of our members ... would clear up a lot of the confusion with the four competing jurisdictional pieces of legislation and regulation.’⁴²⁸ Nationally, *Respect@Work* noted that

an independent review into the Model WHS laws, released in February 2019 (the Boland review), also recommended the development of additional regulations on how to identify psychosocial risks in the workplace and the appropriate control measures to manage those risks.⁴²⁹

5.102 In March 2022 we heard that the CME had moderated its view on the activities of the State regulator, and it welcomed ‘the work undertaken by DMIRS to provide industry with further guidance on managing the risks associated with sexual harassment and greater clarity on reporting requirements.’⁴³⁰ It noted the three recent Codes of Practice covering inappropriate workplace behaviours, and the introduction of the new WHS laws.⁴³¹ It also pointed us to a three-and-a-half page information sheet titled: *Gendered violence: Notification of sexual harassment and/or assault to Mines Safety* which sets out basic way requirements for reporting psychosocial injuries under Sections 76 and 79 of the (now superseded) *MSI Act*.⁴³² We are pleased the CME feels more positive about the guidelines, especially if this is representative of the industry. However, we reject the idea that mining companies could not have been expected to properly fulfil their legal reporting obligations in the absence of such documents.

424 Submission 70, AMEC, p. 19.

425 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p 12.

426 Submission 70, AMEC, p. 20.

427 Submission 56, CME, p. 14.

428 Mr Paul Everingham, CME, *Transcript of Evidence*, 20/10/2021, p. 2. See also Submission 34, APPEA, p. 5.

429 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 31.

430 Submission 56A, CME, p. 7.

431 *ibid.*

432 DMIRS and WorkSafe WA, Mines Safety, *Information Sheet - Gendered violence: Notification of sexual harassment and/or assault to Mines Safety* https://www.dmp.wa.gov.au/Documents/Safety/MSH_IS_Notify_S3xualHarassment.pdf [accessed 28/4/2022].

Finding 55

Mining companies admitted they have often not reported incidents of sexual harassment and assault that have occurred in their operations and on their sites to DMIRS.

There are gaps in communication on reporting sexual harassment and assault between the WA Police Force and DMIRS/WorkSafe

5.103 Finally, we deal with evidence we heard on the role of the WA Police Force (Police) in dealing with cases of sexual misconduct in the work environment. Police has the primary role in responding to reports of sexual assault on mine sites, and its sexual assault squad leads these investigations. It told us that it faces unique challenges in this, having ‘the largest land mass policing jurisdiction in the world’.⁴³³ This, it said, made timely Police attendance to remote locations difficult, especially for specialist squads.⁴³⁴ As such, mining companies were often first responders, despite not having Police’s expertise in dealing with matters of criminal assault.⁴³⁵ As standard practice, Police advises all assault victims to immediately inform them of any potential criminal activity, or if they choose not to formalise a complaint, to report anonymously.⁴³⁶ Its involvement necessarily occurs after the fact, and it has a limited role in preventing workplace criminality in the first instance. Crucially for this inquiry, responsibility for workplace sexual harassment more broadly, as opposed to criminal assault, sits with employers and with the safety regulator.⁴³⁷

5.104 Police told us that it was the employer’s obligation to design mine site and camps to:

reduce the prevalence of sex-type assaults, or at least interactions that maybe end up in sexual harassment. I think, really, workplace design is somewhere that I would focus on before I would put police somewhere, because we are sort of treating the symptom, or the outcome, rather than prevention.⁴³⁸

5.105 As DMIRS accepted, Police investigate criminal aspects of workplace sexual assault, but it is for the ‘safety regulator to determine if the employer has done what is reasonably practicable to provide safe systems of work and reduce the risk of assaults of this type.’⁴³⁹ Police certainly has a crucial role to play in responding to victims. *Respect@Work* stated that ‘Effective criminal justice responses are important not only for individual victims, but also to encourage reporting and prevention of criminal conduct in the future.’ Moreover, ‘Police responses are particularly important because contact with police is usually a victim’s point of entry to the criminal justice system.’⁴⁴⁰ Getting this response right by having the appropriate people, systems, and specialised training programs in place is essential. But ultimately, we

433 Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, p. 14.

434 *ibid*, p. 2-3.

435 *ibid*, p. 3.

436 *ibid*, pp 12-13.

437 Mr Bradley Royce, WA Police Force, *Transcript of Evidence*, 15/11/2021, pp. 6; Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, p. 14.

438 Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, p. 9.

439 Submission 69, DMIRS, p. 12.

440 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 580.

agree that the burden of responsibility for preventing sexual harassment and assault on mine sites, and for addressing broader issues, does not fall to Police.

Finding 56

The WA Police Force has the primary role in investigating criminal aspects of sexual assault on mine sites, but the responsibility for ensuring a safe workplace – including being free from sexual harassment and assault – sits with mining companies and the safety regulator.

- 5.106 In terms of data collection, our main concern was that inter-agency communication currently leaves gaps in knowledge of what is happening in the industry. Despite some information sharing arrangement and working groups, we see different reporting figures from different organisations. While we understand there can be legitimate reasons for this, there must be clarity that all relevant agencies have a full and accurate picture of events.
- 5.107 At 15 November 2021, Police had received 23 reports of sexual assault on mine sites over the previous two years. Four of these ‘resulted in an offender being processed, five are still under investigation, seven matters were withdrawn by the complainant, and seven had insufficient evidence.’⁴⁴¹ We heard that reports of different kinds enter different reporting streams: some go direct to Police and not to DMIRS, while others go direct to DMIRS, a process that leads to divergent figures for both departments.⁴⁴² DMIRS said it assesses report information and informs Police of reported assaults.⁴⁴³ But the discrepancy of numbers was striking. Where Police reported 23 sexual assault cases over two years, DMIRS said it received 22 over the previous seven.⁴⁴⁴ This obviously does not include the same quantum described by companies – and here we repeat our uneasiness at the possibility for companies to triage cases to privately determine what and when they report to Police.
- 5.108 Police said that while they did not routinely advise DMIRS of reports they received which were withdrawn or lacked sufficient evidence, they were ‘in regular dialogue with the department about how we can improve information sharing.’⁴⁴⁵ They referred to a memorandum of understanding (MOU) with WorkSafe WA which had formally lapsed but still provided a basis for operations.⁴⁴⁶ However, our review of the MOU shows that it did not specifically cover sexual harassment or assault in any case, but was more concerned with ensuring Police had access to information during investigations.
- 5.109 DMIRS later clarified that there was work toward a ‘new agreement between the WorkSafe Commissioner, the Coroner and [Police] to facilitate data sharing’ which will, among other things, ‘identify arrangements for information sharing and incident scene management under the new WHS laws for Western Australia.’ We were told that this would ‘formalise

441 Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, p. 2.

442 Mr Richard Sellers, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 6.

443 Mr Andrew Chaplyn, DMIRS *Transcript of Evidence*, 8/9/2021, p. 4.

444 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 6.

445 Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, pp. 2-3.

446 *ibid*, pp. 3, 13.

existing informal information reporting arrangements between WorkSafe and [Police].⁴⁴⁷ They also said that though the 'current information sharing arrangements are informal' they 'enable collaboration within the parameters of the existing legislation.'⁴⁴⁸ And we are encouraged by news that Police's sex crime division formed a working group in August 2021 with WorkSafe and Mines Safety directors and senior figures in the Sexual Assault Resource Centre 'to review the outcomes of this parliamentary inquiry.'⁴⁴⁹

5.110 However, it is imperative both that these arrangements are formalised without delay and that they appropriately cover all incidents relating to sexual harassment and assault occurring in the workplace. *Respect@Work* noted the importance of effective information sharing between agencies, and cited 'the MoU between WorkSafe Victoria and the Victorian Police requires each party to "notify the other about allegations of bullying which may fall within the other party's jurisdiction", immediately on becoming aware of them.'⁴⁵⁰ The report recommended the establishment of 'formal arrangements for information sharing and data exchange on enquiries, complaints and claims relating to workplace sexual harassment matters.'⁴⁵¹ We look forward to hearing updates on progress towards these goals in WA.

Finding 57

Current formal information sharing arrangements between the WA Police Force and WorkSafe WA are out of date, but new and updated arrangements are expected.

Recommendation 19

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

447 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 3.

448 *ibid.*

449 Mr Colin Blanch, WA Police Force, *Transcript of Evidence*, 15/11/2021, p. 5.

450 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 120.

451 *ibid.*, p. 122.

Chapter 6

Regulation of workplaces has not kept up with changing expectations

Laws alone do not eliminate discrimination, intolerance, and prejudice in our community.

Equal Opportunity
Commission⁴⁵²

You cannot just legislate away these problems, but I think there is a responsibility to create frameworks that help them to be addressed.

Unions WA⁴⁵³

Introduction

- 6.1 This report has thus far largely focused on people’s experiences in the workplace, and on the culture and systems in place in those workplaces. In this final chapter, we turn to the legislative and regulatory framework that sets out the legal responsibilities of mining companies, and the role of government entities in monitoring and enforcing these responsibilities. The legislative framework covering sexual harassment in the WA FIFO mining industry is complex, and comprises multiple State and Commonwealth acts and regulations. We recognise that the issues raised in this inquiry are not resolvable through regulatory action alone, which can be a blunt tool in enforcing cultural change within an industry. We also know that negotiating legal and governance structures across different jurisdictions can involve practical difficulties. But laws and regulations must be fit for purpose, and have the appropriate coverage, clarity, and cohesion to adequately address the substantive issues they were created to address.
- 6.2 This chapter focuses chiefly on regulation at the State level, and the salient features of the legal framework with the greatest direct impact on protecting women against sexual harassment on FIFO mine sites, although we necessarily look at Commonwealth legislation. At a general level, we found that recent changes have improved the situation in WA. But it is still true that, as a 2015 Committee report into FIFO mental health found, the legal framework for overseeing mine worker safety is complicated and lacks clarity on points of responsibility and accountability.⁴⁵⁴ In other words, although sexual harassment is prohibited under the law, there remains uncertainty over what obligations should apply where, to whom, and how. Specifically:
- sexual harassment is defined differently in Commonwealth and State anti-discrimination legislation, creating confusion for employers and employees;

452 Submission 54, EOC, p. 2.

453 Mr Owen Whittle, Unions WA, *Transcript of Evidence*, 24/11/2021, p. 11.

454 Education and Health Standing Committee, *The impact of FIFO work practices on mental health*, June 2015, p. 41.

- work health and safety legislation has no explicit definition of sexual harassment;
- sexual harassment has only belatedly been considered a work health and safety issue; and
- government bodies are currently under-equipped to address the nature and scale of the issue across this industry, let alone across all sectors.

6.3 We note that we took most of our evidence in a moment of legislative change, as the new WHS laws were replacing the prior framework. We therefore heard much about the operations of the old system, and only predictions about the effects of the new system – the impact of which will be revealed in time. For this reason we have treated suggestions for further legislative and regulatory amendment with caution, and have listened to those urging restraint in pre-empting reviews and analysis of the consequences of recent or imminent changes.⁴⁵⁵

The regulatory framework for sexual harassment is complex

6.4 There are various legal instruments at the Commonwealth and the State level that are relevant to the FIFO mining industry's approach to dealing with sexual harassment and assault in the workplace. Some cover all forms of work and some are specific to particular industries. There are employment laws, work health and safety laws and anti-discrimination laws. There is also criminal law, with obvious connections to incidents of sexual assault and related offences, and whistle-blower protection laws which must be taken into account by the mining industry. We do not go through all areas in detail but focus on areas with the greatest influence on key inquiry issues: namely anti-discrimination, employment, and workplace health and safety laws. At the Commonwealth level these are the *Sex Discrimination Act 1984*, the *Fair Work Act 2009*, and the *Model Work Health and Safety Act 2011*. In WA the key legislation is the *Equal Opportunity Act 1984*, the *Mines Safety and Inspection Act 1984*, and the *Work Health and Safety Act 2020* (WHS Act).

6.5 Legal frameworks covering workplace sexual harassment must of course balance competing requirements, and we are encouraged by recent efforts to streamline legislation to limit confusion, and to allow regulators to be more responsive to these issues. Undoubtedly, people experiencing sexual harassment in the workplace, and those responsible for regulating and running workplaces, need clear and straightforward pathways to address their complaints. Any reduction in unnecessary legal complexity is a positive step. But we also recognise that more must be done.

Commonwealth law

6.6 The Commonwealth *Sex Discrimination Act 1984* (SDA) is the primary framework for addressing sexual harassment as a human rights issue across Australian jurisdictions. The SDA makes workplace sexual harassment unlawful and aims to protect people from discrimination in a range of areas, including employment.⁴⁵⁶ It establishes the office of the Sex Discrimination Commissioner and empowers the Australian Human Rights Commission

455 Submission 45, Australian Resources and Energy Group, p. 9; Submission 70, AMEC, p. 19; Submission 56, CME, p. 5.

456 *Sex Discrimination Act 1984*, (Commonwealth), s. 28B.

to conciliate sexual harassment complaints.⁴⁵⁷ Importantly, under the SDA an employer can be held vicariously liable for harassment by their employees if the employer did not take 'all reasonable steps to prevent the employee' from committing the harassment.⁴⁵⁸ The *Respect@Work* report noted the SDA does not specifically define what these steps would be and they 'may vary depending upon the size, structure and resources of a particular workplace'. However, it said that:

all employers should adopt a number of essential preventative measures, including:

- creating a healthy and safe work environment based on respect
- developing and implementing a sexual harassment policy
- providing or facilitating education and training on sexual harassment.⁴⁵⁹

6.7 Crucially, *Respect@Work* also recommended the inclusion of a positive duty in the SDA that would require employers to take, as far as possible, 'proportionate measures to eliminate sex discrimination, sexual harassment and victimisation' so as to shift 'the burden from individuals making complaints to employers taking proactive and preventative action.'⁴⁶⁰

6.8 In employment law, the Commonwealth *Fair Work Act 2009* (FWA) and its supporting regulations sets out the legal relationship between employers and employees.⁴⁶¹ The FWA established the Fair Work Commission as the national workplace relations tribunal, responsible for dealing with, among other things, unfair dismissal and anti-bullying claims, and making orders to stop or suspend industrial action. *Respect@Work* notes that while the FWA itself does not explicitly prohibit sexual harassment, claims related to sexual harassment can be brought to the Commission through provisions in the Act to enforce workplace rights and protect workers from unfair dismissal or bullying.⁴⁶²

6.9 In response to *Respect@Work*, in September 2021 the Commonwealth Parliament passed the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* which amended the FWA, the SDA, and the *Australian Human Rights Commission Act 1986*. One change was to expand who comes under the SDA – it now covers interns, volunteers and self-employed people, and employees who were harassed even when not at the time performing work. It also makes accessories to sexual harassment liable under the law. Changes to the FWA mean the Fair Work Commission can issue stop orders relating to sexual harassment, while sexual harassment is now deemed a valid reason for dismissal.⁴⁶³ Insofar as they expressed a view, industry representatives to our inquiry supported the intent of the new Commonwealth legislation. Fortescue said it would 'provide clarity to employers' and 'strengthen Fortescue's ability to take disciplinary action against its employees for engaging in sexual harassment.'⁴⁶⁴ More generally, Rio Tinto said 'a clear and simple legislative regime

457 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 27.

458 *Sexual Discrimination Act 1984*, (Commonwealth), s. 106.

459 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, pp. 485-486.

460 *ibid*, p. 479.

461 *ibid*, p. 30.

462 *ibid*.

463 *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*, (Commonwealth), *passim*.

464 Submission 55, FMG, p. 14.

is in everyone's interests, but most importantly it would assist people who experience sexual harassment.'⁴⁶⁵

6.10 Turning to workplace health and safety laws, most Australian States and Territories follow the *Model Work Health and Safety Act 2011*. This framework was set by Safe Work Australia, the Commonwealth agency established under the *Safe Work Australia Act 2008* to develop national WHS policy. The model WHS framework is three-tiered: the Act sets out general duties of care; the regulations outline detailed duties for specific incidents; and Codes of Practice give practical guidance on how meet the laws.⁴⁶⁶ Importantly, under this system 'health' refers to psychological as well as physical matters, though the model Act makes no explicit reference to sexual harassment. When this inquiry was launched WA and Victoria were exceptions in having work, health and safety schemes that differed from the national model.⁴⁶⁷ However, the commencement of the *Work Health and Safety Act 2020* has changed this situation in WA, as we discuss below.

6.11 *Respect@Work* noted that, unlike the SDA, the Model WHS laws do effectively contain a positive duty to prevent health and safety hazards, including sexual harassment. It discussed the difference between the duty in the model WHS laws and that proposed for the SDA:

In essence, the WHS positive duty, as it relates to sexual harassment, is focused on psychological health broadly and frames sexual harassment as a safety risk and hazard. The Sex Discrimination Act positive duty would have a more specific and targeted focus on sexual harassment, sex discrimination and victimisation, and would importantly operate within a human rights framework that takes into account the systemic and structural drivers and impacts of sexual harassment.⁴⁶⁸

Finding 58

Commonwealth legislation providing frameworks for anti-discrimination and employment processes has been amended to strengthen and clarify definitions and strengthen protections from sexual harassment.

Finding 59

Most Australian States and Territories follow Safe Work Australia's *Model Work Health and Safety Act 2011* framework, which imposes a duty to minimise hazards to workers' health which covers sexual harassment.

Finding 60

The Australian Human Rights Commission's *Respect@Work* report recommended that the Commonwealth *Sex Discrimination Act 1984* be amended to include a positive duty requiring employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation.

465 Submission 63, Rio Tinto, p. 11.

466 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 540.

467 The *Occupational Health and Safety Act 2004* is the main WHS law in Victoria, with WorkSafe Victoria being the State Government regulator.

468 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 480.

State law

- 6.12 Though Commonwealth legislation provides the overarching legal framework, this Committee necessarily focused on relevant State laws. At the broadest level, the key State legislation is the *Equal Opportunity Act 1984*, which establishes WA's Equal Opportunity Commission (EOC). The Act's goal is to promote equality of opportunity in WA, and its key function is to provide an avenue to resolve and offer remedies for cases of discrimination, most importantly in employment and the workplace.⁴⁶⁹ Unlike other organisations with fact-finding or punitive roles, the EOC is limited to conciliating complaints.⁴⁷⁰ The Act also aims to eliminate workplace sexual harassment.⁴⁷¹ The Commission said most claims it receives relating to sexual harassment are based in the workplace.⁴⁷² It aims to prevent sexual harassment by examining best practice, informing people of their rights and obligations and enhancing understanding of equal opportunity principles.⁴⁷³ We discuss a number of issues with the legislative role and function of the Act below.

Finding 61

The main WA anti-discrimination legislation is the *Equal Opportunity Act 1984* which establishes WA's Equal Opportunity Commission, whose key role is to conciliate complaints.

- 6.13 Regarding employment law, in WA the national Fair Work system sits alongside the State system governed by the *Industrial Relations Act 1979* (IR Act), which established the State's Industrial Relations Commission (WAIRC). Although the two systems have differing employment rights and obligations, all WA employers and employees are covered by one or the other.⁴⁷⁴ As this report was going to print the Government announced changes to the IR Act, allowing individuals to make applications to the WAIRC for a stop bullying/sexual harassment order. Failing to comply with any such order could attract a \$13,000 penalty for individuals, and \$65,000 for bodies corporate.⁴⁷⁵

WHS frameworks

- 6.14 The situation for the State's WHS laws is somewhat more complicated, and until recently, different government entities were responsible for regulating different industries. We stated above that WA was an outlier in not having adopted the Model WHS laws. Prior to the WHS Act coming into effect in March 2020, most WA workplaces were regulated according to the *Occupational Safety and Health Act 1984* (OSH Act), which set out general provisions to maintain safe, healthy and hazard-free workplaces. The WorkSafe WA Commissioner was

469 Submission 54, EOC, p. 1.

470 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 3.

471 *Equal Opportunity Act 1984*, (WA), s. 3B.

472 Submission 54, EOC, p. 2.

473 *ibid*, p. 1.

474 See DMIRS/Commerce, accessed 20/5/2022, <https://www.commerce.wa.gov.au/labour-relations/key-features-wa-industrial-relations-system>.

475 Hon Bill Johnston, *Minister for Industrial Relations*, [New State employment laws to commence on Monday](#), 18/06/2022; DMIRS, [New stop bullying and sexual harassment provisions](#), https://www.commerce.wa.gov.au/sites/default/files/atoms/files/new_stop_bullying_and_sexual_harassment_provisions_fact_sheet.pdf accessed 20/06/2022.

responsible for the administration of the OSH Act and its regulations, and WorkSafe investigators monitored workplaces for compliance with the Act.⁴⁷⁶ However, the mining and petroleum industries were excluded from coverage of the OSH Act, operating under separate legislation designed to give specialist legal treatment to these industries: the *Mining Act 1978* and, most relevant to this inquiry, the *Mines Safety and Inspection Act 1994* (MSI Act), administered by DMIRS.⁴⁷⁷ To further complicate things, the OSH Act applied to the natural gas industry. And offshore oil and gas activities in Commonwealth waters were covered by different legislation again in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and are regulated by the National Offshore Petroleum Safety and Environmental Management Authority.⁴⁷⁸

- 6.15 While this inquiry spans the periods covered by both the older OSH/MSI and current WHS frameworks, most of the evidence we received dealt with activity carried out under the previous framework.
- 6.16 DMIRS outlined the relevant parts of the MSI Act, which included:
- Section 9: under which employers were responsible for providing and maintaining a safe working environment and ensuring workers were not exposed to hazards. The Act also required employees to not cause harm to other employees at work.⁴⁷⁹ DMIRS told us that the general duty obligations extended to ‘contractor and labour hire arrangements’.⁴⁸⁰
 - Section 11: which required all potentially serious incidents and hazards to be reported to the person in immediate authority, who must investigate all reports, decide on a course of action and advise of these decisions to the person who made the report. Failure to meet these obligations was an offence under the Act.⁴⁸¹
 - The requirement to notify DMIRS’ Mines Safety division of all health and safety accidents or potential accidents, ‘including psychological injuries and psychosocial hazard exposures, that meet the definitions provided in sections 76, 78 and 79 of the MSI Act’.⁴⁸² The Act required Registered Managers to appoint ‘sufficient competent people to assist them in carrying out their duties’ including ‘making accurate determinations of potentially serious occurrences under section 79 of the MSI Act’.⁴⁸³
- 6.17 DMIRS was responsible for investigating compliance with the Act and taking the appropriate course of disciplinary action where required (see diagram 6.1 below for the DMIRS’ compliance and enforcement model). Options included ‘proactive and reactive’ workplace inspections, and providing the training and education necessary for workers to perform their roles while not being exposed to hazards.⁴⁸⁴ DMIRS could examine workplaces and issue improvement notices where necessary, whereby a company must improve a particular

476 Submission 69, DMIRS, p. 13.

477 *Occupational Safety and Health Act 1984*, (WA), s. 4(2).

478 Submission 34, APPEA, pp. 4-5.

479 Submission 69, DMIRS, p. 12.

480 *ibid.*

481 *ibid.*

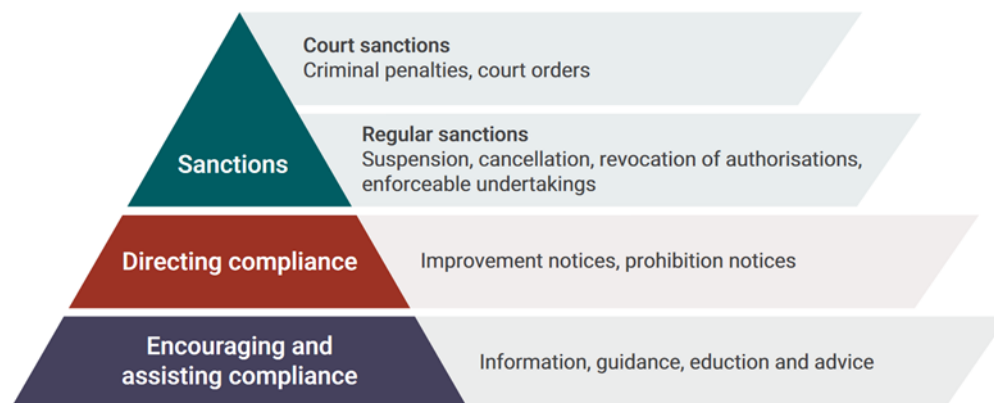
482 *ibid.*

483 *ibid.*; Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 3.

484 *ibid.*, pp. 10-11.

practice. For more serious cases DMIRS could issue prohibition notices which, as the name suggests, prohibit the offending activity from ‘continuing or being carried out in a specific way’.⁴⁸⁵

Figure 6.1: DMIRS compliance and enforcement model⁴⁸⁶



6.18 Jurisdictional arrangements changed when the WHS Act and regulations commenced on 31 March 2022. The WHS Act replaced both the WorkSafe-administered OSH Act, and those parts of the MSI Act, and other Acts covering petroleum, that related to work health and safety. It offered instead a single, consolidated piece of work health and safety legislation (see Figure 6.2).

6.19 As discussed below, the WHS Act features several improvements on previous legislation in the prevention of sexual harassment. Besides generally simplifying matters, the WHS Act broadens the scope of work health and safety laws by applying to all ‘persons conducting a business or undertaking’ (PCBU) rather just employers, and applying to all workers including contractors and labour hire. Moreover, there is now an explicit focus on ‘psychological health’ as distinct from simply ‘health’ in the MSI Act.⁴⁸⁷ This definition seems also to extend to incidents with the potential to cause psychological injury, rather than only those where harm has been caused. The laws mean a PCBU must do what is ‘reasonably practicable’ to ensure worker health and safety. There are recent Government guidelines for defining and applying ‘reasonably practicable’ measures but here we simply note two basic steps: ‘A duty holder must first consider ... what is possible in the circumstances for ensuring health and

485 Mr Andrew Chaplyn, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 9; WorkSafe WA, Overview of Western Australia’s Work Health and Safety Act 2020, p. 32: https://www.dmirs.wa.gov.au/sites/default/files/atoms/files/overview_wa_whs_act_0_0.pdf, accessed 16/5/2022.

486 WorkSafe WA, *Compliance and enforcement policy*, 2022, p. 7: <https://www.wa.gov.au/government/publications/worksafe-compliance-and-enforcement-policy> accessed 16/5/2022.

487 Belinda Smith, Melanie Schleiger and Liam Elphick, ‘Preventing Sexual Harassment in Work: Exploring the Promise of Work Health and Safety Laws’, *Australian Journal of Labour Law*, vol. 32, 2019, pp. 20-21; Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 2.

safety’ and then ‘consider whether it is *reasonable in the circumstances* to do all that is possible.’⁴⁸⁸

6.20 Under the new system the WorkSafe WA Commissioner, as an independent statutory officer responsible to the Minister for Industrial Relations for the WHS Act, became the sole regulator of workplace safety issues for all industries across the State. DMIRS now assists the regulator in administering the Act by providing ‘inspectors and other staff to secure compliance with the legislation.’⁴⁸⁹ All WHS inspectors are now consolidated under WorkSafe WA. The operational relationship is between the WorkSafe Commissioner as the ‘regulator’ and DMIRS as the ‘WHS department’.⁴⁹⁰ Among other things, the Act establishes WA’s peak consultative bodies: the WHS Commission, which replaces the Commission for Occupational Safety and Health, and the Mining and Petroleum Advisory Committee, which replaces the mining-specific Mining Industry Advisory Committee.⁴⁹¹

6.21 In monitoring and enforcing compliance with the WHS Act and regulations, the WorkSafe Commissioner’s functions include:

- investigating and reporting on matters relating to work health and safety;
- providing advice and information on work health and safety to duty holders;
- collecting, analysing and publishing statistics relating to work health and safety;
- fostering a cooperative, consultative relationship between duty holders and the people to whom they owe work health and safety duties, and their representatives;
- promoting education and training on matters relating to work health and safety; and
- promoting and coordinating information sharing to achieve the object of the WHS Act.⁴⁹²

Finding 62

WA’s work, health and safety regime is complex, and until recently, the mining industry was covered by separate legislation.

Finding 63

Since the commencement of the *Work Health and Safety Act 2020*, the WorkSafe WA Commissioner is the WHS regulator of all workplaces, and is supported by DMIRS in administering the Act.

Finding 64

The new Work Health and Safety laws are likely to reduce legal complexity and improve on approaches to addressing sexual harassment in the workplace.

488 See WorkSafe WA, How to determine what is reasonably practicable to meet a health and safety duty - interpretive guideline, p. 3, (original emphasis): https://www.wa.gov.au/system/files/2021-11/211101_GL_ReasonablyPracticable.pdf accessed 16/5/2022 .

489 WorkSafe WA, Overview of Western Australia’s Work Health and Safety Act 2020, p. 2.

490 DMIRS, *Role of the Department*, 17/12/2021, accessed 16/5/2021, <https://www.dmirs.wa.gov.au/safety-regulation/work-health-and-safety-laws/regulating-whs/regulating-whs/role-department> .

491 WorkSafe WA, Overview of Western Australia’s Work Health and Safety Act, 2020, p. 3.

492 *ibid*, p. 27.

Figure 6.2: WA WHS regulatory framework⁴⁹³



WA legislation inconsistently and inadequately defines and deals with workplace sexual harassment as an issue

6.22 The need for clear and consistent definitions of concepts is essential if employers and regulators are to meet their responsibilities. Unfortunately, the evidence before the Committee revealed concerns over non-existent, deficient, or conflicting definitions of

493 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/2022, Attachment B, [p]. 11.

sexual harassment in various pieces of legislation. We were told the new WHS legislation would clarify this situation, though even here there was a missed opportunity to specify sexual harassment as an issue. This only strengthens our view that sexual harassment is not treated within the regulatory framework with the gravity or detail we should expect in 2022.

- 6.23 DMIRS noted the absence of a specific definition of sexual harassment in the earlier MSI Act and OSH Act but said both had relevant provisions ‘in the context of inappropriate behaviours that present physical and/or psychological risks to the health and safety of workers and others in the workplace.’⁴⁹⁴ It submitted that ‘Sexual harassment in workplaces may be captured by a range of psychosocial hazards or inappropriate workplace behaviours such as bullying, occupational violence and aggression and harassment’ while ‘Sexual assault at a workplace is also an offence under criminal law’.⁴⁹⁵
- 6.24 We were not satisfied by this response. While sexual harassment ‘may’ have been captured in this way, the evidence presented to us shows that too often it was not. Rather than a coherent and comprehensive set of arrangements, we found a distressing disparity between what the regulator and mining companies told us they believe the case should be, and what individuals told us of their actual experiences. We see no reason not to include a specific reference and/or definition in the relevant legislation or in the accompanying regulations. If there is even a chance that this clarity and forthrightness would make the situation more immediately understandable, and help prevent any incidents or make their resolution simpler, it is worth doing.
- 6.25 The most widely cited definition comes from the SDA, which defines sexual harassment as when a ‘person makes an unwelcome sexual advance, or an unwelcome request for sexual favours’ to another person or ‘engages in other unwelcome conduct of a sexual nature’ where it could reasonably be anticipated that ‘the person harassed would be offended, humiliated or intimidated’.⁴⁹⁶ Under this definition, sexual conduct includes ‘making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.’⁴⁹⁷ This seems to us a clear and appropriate definition, taking into account the recommendations in *Respect@Work*.⁴⁹⁸ As we discussed in Chapter 2, however, sexual harassment in the workplace is also more than this. It is a violation of basic rights, and often an exercise of unequal power relations based on gender, workplace status, and type or employment, as well as ethnicity, age, disability, nationality, and religion. Moreover, sexual harassment has generally been regarded as a matter between individuals rather than a whole-of-society issue.
- 6.26 One problem for employers and employees in WA is that different legislation contains other, sometimes untenable, definitions. The Commissioner for Equal Opportunity WA told us that a disadvantage of going to the EOC ‘is we have an outdated definition of “sexual harassment” in our act’, which was one of the reasons there was a Law Reform Commission

494 Submission 69, DMIRS, p. 12.

495 *ibid.*

496 *Sex Discrimination Act 1984*, (Commonwealth), s. 28B (1).

497 *Sex Discrimination Act 1984*, (Commonwealth), s. 28B (2).

498 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 479.

review into the *Equal Opportunity Act 1984*.⁴⁹⁹ The *Equal Opportunity Act 1984* is strong in that it makes sexual harassment in employment ‘unlawful’⁵⁰⁰. However, this strength is diluted by defining sexual harassment as existing only where

the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person’s employment or work or possible employment or possible work.⁵⁰¹

6.27 In other words, the onus falls on the complainant to prove their harassment has or would disadvantage them relating to their employment. This so-called ‘disadvantage’ test reflects the age of the act, and is now unique in Australian jurisdictions to WA.⁵⁰² The effect of this, a group including the Centre for Women’s Safety submitted, was that ‘sexual harassment only exists where there is a power imbalance between the harasser and the harassed’ such that ‘Discrimination liability sits directly with an employer, but harassment liability sits with an individual.’⁵⁰³ The Equal Opportunity Commission itself recommended ‘a reversal of the evidentiary onus of proof’ and suggested the legislation be made consistent with recent anti-discrimination legislation elsewhere in Australia.⁵⁰⁴ We agree, and though the Law Reform Commission review was underway at the time of writing, we strongly recommend that any changes to the Act remove this legislative relic which should have no place in a modern sexual harassment framework.

6.28 To provide one example of a better framing of the issue, we look to the Victorian experience. As noted in *Respect@Work*, the Victorian *Equal Opportunity Act 2010*:

places a positive duty on employers to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible, in their workplaces. In determining whether a measure is reasonable and proportionate the following factors must be considered:

- (a) the size of the person’s business or operations
- (b) the nature and circumstances of the person’s business or operations
- (c) the person’s resources
- (d) the person’s business and operational priorities
- (e) the practicability and the cost of the measures.⁵⁰⁵

6.29 Industry witnesses noted the inconsistencies across acts. Fortescue said the different definitions in the Equal Opportunity Act and the SDA burdened employers who had to apply both definitions, and that in the Equal Opportunity Act was ‘somewhat difficult to apply in

499 Dr John Byrne, EOC, *Transcript of Evidence*, 13/10/2021, p. 2.

500 *Equal Opportunity Act 1984, (WA)*, s. 24(1).

501 *Equal Opportunity Act 1984, (WA)*, s. 24(3).

502 Submission 73, The Centre for Women’s Safety and Wellbeing, Stopping Family Violence and the WA Network of Alcohol and other Drug Agencies, p. 8.

503 *ibid.*

504 Submission 54, EOC, p. 6. See also Mr Leigh Smith, *Transcript of Evidence*, 23/3/2022, p. 2.

505 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 472.

any event'.⁵⁰⁶ It recommended instead the consistent adoption of the SDA definition.⁵⁰⁷ AMEC concurred, telling us that 'there is no fixed agreed definition of sexual harassment and sexual assault' and there was 'a range of different terminologies used when referring to incidents and alleged victims and respondents.'⁵⁰⁸ Macmahon supported a single definition of sexual harassment and said 'it would be helpful for the WHS Act to include a definition of what sexual harassment is.'⁵⁰⁹ The CME saw the new WHS framework as 'appropriate and more explicit' than the MSI Act on sexual harassment, and provided for a more 'victim-centric and risk-based approach'.⁵¹⁰

Finding 65

There are inconsistent legal definitions of sexual harassment in different pieces of legislation applicable to addressing sexual harassment in WA workplaces.

Finding 66

The Commonwealth *Sexual Discrimination Act 1984* contains the most satisfactory definition of sexual harassment in current legislation.

Finding 67

WA legislation placing the onus of proof on sexual harassment victims is outdated.

Recommendation 20

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

6.30 More surprisingly, given its very recent passage through Parliament, the WHS Act also contains no specific definition of sexual harassment. This is despite it having, we were told, 'a much stronger focus on health beyond just safety'. A DMIRS representative under questioning accepted that opting not to define sexual harassment 'could be considered a missed opportunity.'⁵¹¹ DMIRS said that if the new Act included a definition of sexual harassment 'and coupled it with a requirement for reporting around it, that would be a much stronger step than we have at the moment.'⁵¹²

6.31 In an explanation provided after their hearing, DMIRS clarified that

Rather than itemise individual hazards, the WHS Act is structured so that in order to meet their duties, PCBU's [persons in control of a business or undertaking] must identify hazards and as far as practicable eliminate these risks to health and safety.

506 Submission 55, FMG, p. 15.

507 *ibid.*

508 Submission 70, AMEC, p. 13.

509 Submission 84, Macmahon Holdings, pp. 10-11.

510 Submission 56, CME, p. 5.

511 Mr Ian Munns, DMIRS, *Transcript of Evidence*, 8 September 2021, p. 14.

512 *ibid.*

Sexual harassment is a known hazard and serious health and safety issue which creates a risk of harm to the health of workplace participants individually and collectively. PCBUs will continue to have a duty to address the hazard of sexual harassment at their workplace. These obligations include minimising the risk of exposure to psychosocial hazards at the mine and meeting statutory internal and external reporting requirements.⁵¹³

6.32 We understand the preference for a broad definition of workplace hazards rather than an itemised list. We discuss below why sexual harassment should indeed be treated with the seriousness of other workplace safety hazards – and we are encouraged by moves to do this. But it is also clear that sexual harassment has specific characteristics that WHS laws must account for. While the WHS Act has a mechanism to deal with sexual harassment, and we cannot predict whether explicitly defining sexual harassment would immediately improve those powers, we feel the lack of a definition reflects the previous failure to regard sexual harassment as a distinct issue requiring targeted intervention. To put it another way, we see no compelling reason to have not provided a definition. And as Mr Leigh Smith of Curtin University suggested:

Explicitly defining sexual harassment in the WHS Act and/or WHS Regulations could provide increased clarity on how sexual harassment is to be defined within the WHS Act context. A need for such clarity could become relevant if, for example, sexual harassment was to be identified as a type of notifiable incident or become the subject of specific regulations.⁵¹⁴

6.33 For these reasons, we agree that not specifying sexual harassment in the new legislation was a missed opportunity.

Finding 68

The failure to define sexual harassment in the *Work Health Safety Act 2020* and regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.

Recommendation 21

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

It is unclear if recent changes to regulations, codes, policies and practices are adequate

6.34 Supporting the legislation is a suite of regulations, codes, and policies relating to sexual harassment or assault. The WHS regulations were only finalised in March 2022, so it is too soon to assess their impact or the practicalities of operating under them. However, neither

513 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 2.

514 Mr Leigh Smith, Responses to questions taken on notice and further question, 22/4/2022, p. 4.

the Mines regulations nor the General regulations contained any mention of psychological/psychosocial harm or risk, or of any kind of harassment.⁵¹⁵

6.35 New Codes of Practice and Conduct for complying with new health and safety laws and preventing and managing poor behaviour – which supersede Codes under earlier legislation – are more promising.⁵¹⁶ The final *Workplace Behaviour Code*, released in February 2022, specified types of ‘inappropriate or unreasonable behaviour’ including actions that constitute sexual harassment, ranging from ‘suggestive comments or jokes’ through to ‘actual or attempted rape or sexual assault.’ And in doing so it draws on the definition of sexual harassment in the SDA. The Code states that ‘Sexual harassment should be reported to WorkSafe WA if it meets the notification threshold’, though we are concerned about remaining ambiguity in determining if particular incidents meet that threshold.⁵¹⁷

6.36 The *Psychosocial Hazards in the Workplace Risk Code of Conduct*, also released in February 2022, listed sexual harassment and assault as examples of a psychosocial hazard or risk factor.⁵¹⁸ So too did the *Code of Practice on Violence and Aggression at Work 2022*.⁵¹⁹ These Codes follow the 2019 *Code of Practice for mentally healthy workplaces for fly-in fly-out workers* that DMIRS released in response to an earlier Committee report on the impact of FIFO work practices on mental health. That Code included ‘inappropriate behaviours as a psychosocial hazard or risk factor’ to employee health and safety.⁵²⁰ And while these are a step forward, we must note that codes of practice are the lowest rung in the hierarchy of legislation, and do not carry the same weight as regulations, for instance. As their shared Foreword says:

A code of practice does not have the same legal force as a regulation and is not sufficient reason, of itself, for prosecution under the legislation, but it may be used by courts as a standard when assessing other methods or practices used.⁵²¹

6.37 DMIRS told us it was ‘currently undertaking a large body of work to review what initiatives and other action the mining industry has taken to address the issue of sexual harassment on mine sites.’⁵²² It told us that it had already undertaken Mentally Healthy Workplace Audits,

515 Work Health and Safety (Mines) Regulations 2022; Work Health and Safety (General) Regulations 2022.

516 In addition to our comments on the content of these and other policy and regulatory documents, it is worth noting their somewhat arcane provenance. These codes are nominally produced by the Work Health and Safety Commission, co-owned by DMIRS, but only available via the Commerce section of the DMIRS website.

517 Work Health and Safety Commission, *Workplace behaviour: Code of practice*, p. 7. <https://www.commerce.wa.gov.au/worksafe/mentally-healthy-workplaces-codes-practice> accessed 16/5/2022.

518 *ibid*, p. 9.

519 Work Health and Safety Commission, *Violence and aggression at work: Code of practice*. <https://www.commerce.wa.gov.au/worksafe/mentally-healthy-workplaces-codes-practice> accessed 16/5/2022.

520 Submission 69, DMIRS, pp. 14-15.

521 Work Health and Safety Commission, *Workplace behaviour: Code of practice*, p. iii. <https://www.commerce.wa.gov.au/worksafe/mentally-healthy-workplaces-codes-practice> accessed 16/5/2022.

522 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 8.

used ‘to inform Mines Safety’s understanding of work to develop and maintain mentally healthy workplaces’.⁵²³ DMIRS also mentioned its Mentally Healthy Workplaces Hub, which offered resources for management to help design good and appropriate work arrangements.⁵²⁴ In addition, it told us of two guidance bodies. The Mining Industry Advisory Committee was a statutory body established in 2005 to provide advice on mining-related occupational safety and health matters (now reformed as the Mining and Petroleum Advisory Committee under the WHS Act). The Mental Health Strategies Working Group was established in 2016 ‘to assist in identifying a framework to support good practice for positive mental health wellbeing in the resources sector workplace.’⁵²⁵ The Department also pointed to an explanatory video to guide employees on reporting requirements for psychological injuries.⁵²⁶

6.38 In April 2022, DMIRS and the WorkSafe Commissioner provided an update of structural and oversight arrangements. We were told that:

- a regional Mines Safety inspector ‘has been allocated to manage and coordinate all reports related to sexual harassment and assault in the mining industry’ and they will be working ‘closely with the specialist Mental Health and Wellbeing Inspectors and is overseeing the response to historical cases that have recently been reported to DMIRS.’
- Further, the Mental Awareness, Respect and Safety (MARS) program, announced on 11 December 2021, would target the mining industry and ‘seeks to address workplace sexual harassment and assault, as well as boost responses to mental health, alcohol and drug use and other health and safety issues in the industry.’ In May 2022 the State Government announced \$6.5 million in funding for the second phase of the MARS program to support educating the workforce in some small-to-medium companies ‘about gendered drivers of violence, implement a whole-of-organisation approach to violence prevention and work to embed respectful relationships across the organisation’. The funding would also be put towards other mental health and wellbeing initiatives.⁵²⁷
- The MARS program will include a four-year research project to gather and evaluate data on sexual assault, harassment, mental health, drug and alcohol use, and emerging mine safety issues, to be undertaken by The Centre for Transformative Work Design (who made a submission to our inquiry). Preliminary findings are expected by September 2022, and these ‘will be used to further develop mental health and workplace culture initiatives and improve safety outcomes.’⁵²⁸

523 Submission 69, DMIRS, p. 8.

524 *ibid*, pp. 10-11.

525 *ibid*, p. 16.

526 *ibid*, p. 18.

527 Hon Bill Johnston, *Minister for Mines and Petroleum; Industrial Relations*; Hon Simone McGurk, *Minister for Women’s Interests*, Media release: [Resources workforce safety program gets \\$6.5 million boost](#), 4/5/2022.

528 Hon Bill Johnston, *Minister for Mines and Petroleum; Industrial Relations*, Media release: [Successful tender announced for mining workforce safety study](#), 4/5/2022.

- DMIRS further said that it 'is working with the Mental Health Commission, the Equal Opportunity Commission and the Department of Communities to develop and deliver the program.'⁵²⁹
- Finally, DMIRS told us one aspect of the MARS program was a Regulatory Capability Review to be conducted by an expert consultant to 'examine the DMIRS enforcement model and processes for responding to incidents of sexual harassment and assaults, and identify any opportunities for further improvement.'⁵³⁰

6.39 The new funding for the MARS program shows that the Government is serious about tackling this issue, and we are gratified that our inquiry has given impetus to these initiatives. The announcement of a long-term research program will be invaluable in dealing with the knowledge gaps we discussed in Chapter 5. We trust that our recommendations will complement that long-term project.

6.40 All of these developments are encouraging, and the new Codes in particular go some way to alleviating our concerns over the lack of specificity in the WHS legislation and regulations. While we cannot assess their impact, we expect that the Minister will be regularly updated with analysis to show how they are progressing, how they are being measured for effectiveness, and the extent to which they are having the intended impact. To ensure that the public and the industry can be fully apprised of progress in these important areas, we also expect that the Minister will provide regular updates to Parliament on their progress.

Finding 69

Recent Codes of Practice and Conduct explicitly address sexual harassment, and a number of other measures are being taken to address workplace sexual harassment in the mining industry. But it is too soon to tell what difference these will make or if they are sufficient.

Recommendation 22

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

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

Sexual harassment is best considered primarily as a work, health and safety issue, not simply an HR matter

6.41 Two fundamental questions crystallised during our inquiry: what is the overriding approach the mining industry currently takes to workplace sexual harassment? And what approach should it be taking? It became clear to us that companies historically have dealt with sexual

529 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/2022, p. 1; Hon Bill Johnston, *Minister for Mines and Petroleum; Industrial Relations*, Media release: [Successful tender announced for mining workforce safety study](#), 4/5/2022.

530 *ibid.*

harassment as a human resources issue, and that neither the mining regulator nor mining companies have paid due attention to what sexual harassment in the workplace primarily is: a serious health and safety issue. Appropriately trained and resourced human relations staff are of course essential, and will form one part of a broader response to incidents of sexual harassment. And while it might occur on a spectrum of risk, all harassment has the potential to cause serious injury and must be treated accordingly. Industry and regulatory practices accustomed to dealing with physical danger and injury must now adapt to accommodate the characteristics of psychosocial harm.

6.42 The FIFO mining industry has lagged behind shifting expectations of workplace behaviour. It cannot continue to do so, and the message appears to be cutting through at the executive level. But relevant government entities, industry bodies, unions and stakeholders must work together to ensure these messages translate into substantial changes at all levels of FIFO workplaces.

6.43 The need for a new approach to sexual harassment is recognised as a broader problem in national workplaces. *Respect@Work* noted that ‘WHS schemes have historically focused on physical harms.’ It said this view of safety was ‘reflected in the approach of employers and WHS regulators, where psychological risks and hazards have been given less focus than physical risks and hazards’ while ‘Even less attention is given to sexual harassment as a subset of psychological health.’⁵³¹ Professor of Work and Organisation at Queensland University of Technology Paula McDonald said the increasing awareness of sexual harassment as a work health and safety issue alongside physical safety was ‘crucially important’.⁵³² And while discrimination laws dealing with sexual harassment are of course necessary, ‘discrimination legislation is largely ineffective in addressing the structural barriers to challenges around workplace sexual harassment because it relies inherently on individuals coming forward to make complaints.’⁵³³

6.44 That the mining industry in particular has dragged its feet on this issue was a consistent theme in evidence we received. CME said, as did others, that *Respect@Work* was a crucial catalyst for change. Before this, it was ‘not something that was dealt with, generally speaking, in health and safety departments in our industry’. They also said there is ‘a lot of work going on to try to ensure that we continue to frame this as a health and safety issue.’⁵³⁴ This work included using WHS language when discussing sexual harassment; applying WHS risk factor assessment to sexual harassment to help plan to manage the risk; and gendered safety audits for company worksites to assess particular safety measures to reduce the risk of sexual harassment or assault.⁵³⁵

6.45 Industry broadly supported the idea of treating sexual harassment as a WHS matter in principle while seeing practical difficulties. ‘From a cultural perspective’, Rio Tinto said ‘health and safety is a concept with which mining companies and workers have a high level

531 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 480.

532 Professor Paula McDonald, *Transcript of Evidence*, 6/4/2022, pp. 2-3.

533 *ibid*, p. 3.

534 Ms Elysha Millard, CME, *Transcript of Evidence*, 20/10/2021, p. 10.

535 Submission 56, CME, p. 9.

of familiarity ... safety risk management processes are clearly defined, and workplace discussion about safety is normalised.’ However,

[a]lthough we consider the hazard identification and elimination focus of safety regimes to be useful in preventing sexual harassment in the workplace, we do not believe sexual harassment reports or claims will necessarily lend themselves to a typical safety investigation response.⁵³⁶

6.46 We note that a senior Rio Tinto representative with responsibility for health and safety also told us that on reflection ‘we have normally treated [reports of sexual harassment] as more of an HR incident’.⁵³⁷

6.47 Performance in this area is uneven, and some companies have taken something of a lead. BHP said that since 2018 they have ‘formally defined sexual harassment as a health and safety risk, to be overseen in the same way as all other occupational health and safety risks in our workplaces and business.’⁵³⁸ Macmahon also said it understood sexual harassment to be a workplace safety issue.⁵³⁹ But it is unclear how far this has impacted practice in dealing with such cases. Speaking on behalf of AMEC, Mr Warren Pearce expected the focus on psychosocial factors, which includes the potential for injury time off work, to encourage companies to respond as they would to other health and safety issues.⁵⁴⁰

Finding 70

The mining industry has historically treated sexual harassment as a human resources issue. But it is primarily a workplace health and safety issue, and must be treated accordingly.

6.48 Among the practical challenges of dealing with sexual harassment in existing frameworks is the legal requirement to report the consequences of an injury, as opposed to the incident itself. DMIRS suggested an act of sexual harassment, as opposed to psychological harm resulting from it, might not meet the definition of ‘serious events and dangerous incidents’ in the WHS Act.⁵⁴¹ The Deputy Director General, Safety Regulation said the WHS Act had ‘a focus on the psychosocial aspect of the outcome’ which would ‘capture things such as bullying, which is not the same as sexual harassment but it is harassment of a sort which leads to a psychosocial impact on the individual.’ He added:

The challenge is in the Work Health and Safety Act. We have defined serious event and dangerous incidents. It is arguable that sexual harassment does not necessarily fit into the definitions which are contained in the Work Health and Safety Act specifically, but the events that do occur would lead to the psychosocial harm, so we would consider that something that should be reported to us...⁵⁴²

536 Submission 63, Rio Tinto, p. 12.

537 Ms Cecile Thaxter, Rio Tinto, *Transcript of Evidence*, 27/10/2021, p. 3.

538 Submission 71, BHP, p. 3.

539 Submission 84, Macmahon Holdings, p. 10.

540 Submission 70, AMEC, p. 20.

541 Mr Ian Munns, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 14.

542 *ibid.*

6.49 As Mr Leigh Smith of Curtin University explained:

My interpretation of section 36 and section 37 is that section 36 is [...] concerned with the outcome of the incident, while section 37 and this idea of 'dangerous incident' is more focused on what has happened or the immediate cause of the incident. In relation to section 36, I tend to agree that the focus would not be on sexual harassment itself, but rather the outcome of the sexual harassment on the person that is being subjected to it.⁵⁴³

6.50 Mr Smith went on to say:

In relation to section 37, I am not sure how relevant sexual harassment would be in that particular context, because if you look at the categories of the types of hazards [...] that it seems to be looking at, it is things like escaped substances in paragraph (a), electric shock in (e), an inrush of water and things like that. There does not really seem to be much reference in section 37 to psychosocial hazards.⁵⁴⁴

6.51 On this basis, Mr Smith wondered whether there was 'merit in including sexual harassment as a type of dangerous incident explicitly and to drawing more attention to psychosocial hazards'.⁵⁴⁵

6.52 A further problem is the notification threshold for reporting injuries. DMIRS stated that:

According to Part 3, Section 36(1)(e) of the WHS Act, sexual harassment must be notified to DMIRS if it causes an injury that, in the opinion of a medical practitioner, is likely to prevent the person from being able to do the person's normal work for at least 10 days after the day on which the injury or illness occurs. [...] For the mining industry, incidents that could have caused serious harm are also reportable. Under the Work Health and Safety (Mines) Regulations 2022, a reportable incident mean any of the following:

- an incident that results in illness or injury that requires medical treatment; and
- a workplace incident that could have caused serious harm to a person, plant or structure.⁵⁴⁶

6.53 DMIRS said these notification requirements are similar to the previous State safety and health laws and that workers themselves can opt to report to DMIRS whether or not this threshold has been met. A person conducting a business or undertaking also still has a duty to take action to mitigate risks to a worker's health and safety as far as reasonably practicable 'and do not need to await a formal diagnosis of a medical condition or for the 10 days lost time threshold to be met.' DMIRS nonetheless conceded that

some serious psychological injuries may not be captured using this method of recording as the impacts of psychological injuries do not always present in a

543 Mr Leigh Smith, *Transcript of Evidence*, 23/3/2022, p. 3.

544 *ibid*, p. 4.

545 *ibid*.

546 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/ 2022, pp. 1-2.

manner similar to that of serious physical injuries, where a worker cannot return to normal work for at least 10 days.

6.54 DMIRS said Safe Work Australia is currently coordinating national discussions ‘to consider whether the national model work health and safety laws should be amended with respect to notification requirements, particularly in regards to psychological injuries and illnesses’ and that DMIRS and the WorkSafe WA Commissioner ‘are actively engaging in the consultation on this matter and will consider any revisions to the model laws for possible adoption in Western Australia.’⁵⁴⁷

6.55 On the adequacy of this 10 day threshold, Professor Paula McDonald was unequivocal: ‘that is not going to work for sexual harassment.’⁵⁴⁸ She explained:

We know from a substantial body of evidence that people who experience sexual harassment often respond passively to the problem, even though they are aware that responding assertively is likely to be the most effective strategy in getting the harassment to stop. [...] At what point an organisation decides that a psychological injury or physical injury has occurred is much more difficult and complex when it comes to sexual harassment than it is if somebody, you know, touches an open electrical cord or trips over something and has a biomechanical injury or so on. There would need to be an understanding of that in setting down parameters around time periods for reporting to an inspectorate....⁵⁴⁹

6.56 Professor McDonald added that in any case, companies ‘would not necessarily know that somebody had taken 10 days off work ... because they experienced sexual harassment’ and as such ‘it needs a different approach. The association between sick leave and sexual harassment is very dubious indeed and I think it would need a whole new way of thinking about that.’⁵⁵⁰

6.57 We agree with this assessment and consider a 10-day time-off threshold to be an arbitrary and inappropriate measure in dealing with cases of sexual harassment and assault. A different approach is indeed needed. DMIRS and WorkSafe WA have indicated that they are open to considering changes. We support this position.

6.58 Mr Smith of Curtin University suggested one reason why current laws were inappropriate for dealing with sexual harassment is that any harm suffered can differ greatly among individuals depending on their own unique circumstances:

You could end up with a situation where someone of particularly high fortitude is subjected to quite horrific behaviour, but there is a limited remedy in the sense that it has not really had a major impact on that person physically or psychologically, or you could have a situation where someone of lower fortitude is

547 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/2022, p. 2.

548 Professor Paula McDonald, *Transcript of Evidence*, 6/4/2022, p. 3.

549 *ibid*, pp. 3-4.

550 *ibid*, p. 11.

exposed to still very much wrongful conduct but less severe, but with a much more significant impact.⁵⁵¹

- 6.59 Industry itself accepted there was an issue in current practice. The CME recognised the nature of psychological harm could make predicting any required time off work hard to gauge: ‘where injury may take some time to manifest, where a diagnosis may take some time, or where the connection between the event and the injury or harm may be difficult to prove.’⁵⁵² Chevron Australia said it was potentially unclear ‘how safety reporting requirements relate to workplace conduct such as sexual harassment in circumstances where the complainant does not report suffering a reportable injury or illness under WHS legislation criteria.’⁵⁵³
- 6.60 Similarly, BHP said previous legislation ‘generally requires reporting when someone has an injury that results in time off work or there is a “near miss”, but some sexual harassment victims do not take time off, bypassing the legislative requirement to report sexual harassment. BHP therefore saw ‘an opportunity’ for the Committee to improve the legislation ‘so that more incidents that result in psychological harm, including sexual harassment, are reported.’⁵⁵⁴ As Fortescue said, industry regulations made it difficult to fit sexual harassment neatly into categories of workplace safety as the Act requires reporting for accidents resulting in time off.⁵⁵⁵

Finding 71

It remains unclear how the updated Work Health and Safety framework will deal with incidents of sexual harassment as reportable injuries or ‘accidents’ in practice.

Finding 72

The current reporting threshold for sexual harassment is not fit for purpose. The *Work Health and Safety Act 2020* currently requires that DMIRS must be notified of an instance of sexual harassment if it causes an injury that is likely to prevent a person from doing their normal work for at least 10 days after the day on which the incident occurs.

Recommendation 23

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

- clear guides to what constitutes sexual harassment, gender harassment and other dangerous behaviours;
- guidelines for dealing with identified incidents;
- definitions of thresholds for various types of identified behaviour/incidents, recognising that ‘days off work’ is not a reasonable measure for these matters; and

551 Mr Leigh Smith, 23/3/2022, p. 5.

552 Submission 56, CME, p. 14.

553 Submission 48, Chevron Australia, p. 12.

554 Mr Brandon Craig, BHP, and Ms Jessica Farrell, BHP, Responses to questions on notice and further questions, 10/12/2021, p. 4.

555 Mr Robert Watson, FMG, *Transcript of Evidence*, 27/10/2021, p. 15.

- expectations for reporting to the regulator and by the regulator of the prevalence and progress in dealing with incidents.

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

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

6.61 Challenges notwithstanding, we agree with the Centre for Women’s Safety and Wellbeing and their colleagues who argued it was ‘important to treat sexual harassment as a workplace hazard and take a work health and safety approach to eliminating the risks’ and pointed to recent actions by the Victorian Government and Worksafe Victoria.⁵⁵⁶ Government entities can, the Centre said, already regulate such matters accordingly, but this needs to be more explicit and used to support WA employees impacted by sexual harassment.⁵⁵⁷ Other jurisdictions can offer guidance in achieving this. *Respect@Work* also described WorkSafe Victoria as:

moving towards a more specialised approach to psychological health matters, including developing strategic approaches to the prevention of mental health injury and establishing specific teams responsible for handling psychological health matters. This includes a specialist psychosocial inspectorate that monitor and enforce compliance with the legislation.⁵⁵⁸

6.62 The report said other State jurisdictions have also developed or are developing ‘similar units or teams that focus specifically on psychological health’.⁵⁵⁹ It mentioned that ‘some WHS agencies have recruited specialist inspectors to align with an industry need’ which ‘provides a model for recruiting specialist inspectors for a specific need, which could also apply to sexual harassment matters.’⁵⁶⁰

6.63 This approach has much to recommend it. Sexual harassment is a work health and safety issue with particular characteristics that requires specialist expertise that is not always available in existing systems. It must be, and existing approaches in other jurisdictions can show the way. We discuss this further in the following section.

Finding 73

Other jurisdictions have developed or are recruiting inspectors or teams of inspectors with specialist expertise in matters relating to psychosocial health.

556 Submission 73, Centre for Women’s Safety and Wellbeing, *Stopping Family Violence, and the WA Network of Alcohol and other Drug Agencies*, p. 7.

557 *ibid.*, p. 8.

558 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 545.

559 *ibid.*

560 *ibid.*

DMIRS and WorkSafe are underprepared to deal with sexual harassment

6.64 DMIRS and WorkSafe play a pivotal role in regulating the State's workplaces. But to reiterate a fundamental point, sexual harassment and sexual assault are different from other types of workplace harm. Specialist training and experience is a prerequisite, and a suitable number of inspectors must be educated appropriately. As the new regulatory system adapts to treating sexual harassment as a WHS issue, the safety regulator must have such people to hand, and be empowered to apply pressure to ensure compliance with the new framework. However, the evidence we heard is that the regulator has historically been deficient in dealing with psychosocial risk. And there seems to have been only a belated effort to provide an inspectorate with the appropriate skills to regulate this area. Further, there are, not surprisingly given the gendered nature of the mining industry, few female inspectors in the field.

6.65 Workplace and mining inspectors have long had considerable powers. They report on questions of safety routinely, and the industry is rightly proud that it has made great improvements in tracking, monitoring and resolving physical safety issues in the workplace. Under the new WHS laws, as we have noted, WorkSafe inspectors have significant powers, including:

- providing advice on complying with WHS laws;
- helping resolve workplace WHS issues;
- issuing notices for compliance with the WHS Act;
- investigating contraventions and helping to prosecute offences; and
- reporting on WHS matters, including hazards specific to particular industries.⁵⁶¹

6.66 Throughout this inquiry questions were raised over the ability of DMIRS and WorkSafe – as organisations – to respond appropriately to incidents of sexual harassment and assault. While it is difficult to predict what might change under the WHS Act, the evidence we received was not encouraging. DMIRS said instances of non-compliance with reporting obligations and any resulting disciplinary actions were addressed according to particular cases and circumstances. In mid-2021, they conceded that 'like many regulators, it is not possible to investigate all reported complaints' and they 'must make appropriate choices as to where its resources can be best applied' and prioritise 'investigations to ensure those cases which meet strict criteria are advanced'.⁵⁶² It said it instead uses a triage system

that coordinates all incoming reports and notifications, ensuring that each one is handled in the appropriate manner. This may include assigning reports of a serious nature to the investigation teams and general reports to inspectorate teams. As a risk based regulator, DMIRS assigns resources to matters based on the risk to the health and safety of workers.⁵⁶³

561 DMIRS, Role of the Department, <https://www.dmirs.wa.gov.au/safety-regulation/work-health-and-safety-laws/regulating-whs/regulating-whs/role-department> accessed 16/5/2022.

562 Submission 69, DMIRS, p. 7.

563 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 29/4/2022, p. 4.

- 6.67 We accept the need for this and we acknowledge that the regulator cannot reasonably be expected investigate all sexual harassment complaints. As Mr Leigh Smith of Curtin University told us: ‘As much as you might change the law, as much as you might update the law, the regulator can only do so much. They have only got a finite number of staff, they only have finite resourcing.’⁵⁶⁴
- 6.68 Unfortunately, one of the reasons for this is that workplace harassment is so prevalent that investigating all incidents would likely be beyond the capacity of any regulator.⁵⁶⁵ When questioned, however, DMIRS said it had issued 13 improvement notices relating to sexual harassment or assault in the last ten years – that is, fractionally more than one per year over the last decade across the entire mining industry.⁵⁶⁶ We do not believe this represents a realistic indication of the size of the problem. Nor does it suggest a realistic effort to regulate poor behaviour and meet their obligations across a significant economic sector.
- 6.69 DMIRS explained how the improvement notice process worked:
- When an improvement notice is issued, the Mines Safety inspector assigns a due date for compliance. The employer is required to update the record in SRS [the Safety Regulation System] when compliance has been achieved. Generally, Mines Safety inspectors will accept the employer's compliance advice if there is evidence produced by the mine-site through SRS, for example: procedures, risk assessments, investigations, photos and/or receipts. Mines Safety inspectors may also verify that compliance has been achieved on their next scheduled proactive site inspection, or sooner if the issue has been reported again.⁵⁶⁷
- 6.70 Of the 13 improvement notices DMIRS has issued it had:
- received notification and verified compliance for eight notices;
 - received notification of compliance for three notices and is currently reviewing the actions taken to verify compliance; and
 - not yet received notification of compliance for two notices. [...] DMIRS will verify compliance for these notices once notification has been received.⁵⁶⁸
- 6.71 DMIRS also identified two instances where a company failed to meet their obligations over the last 10 years but, despite being asked, did not specify the consequences for these failures.⁵⁶⁹
- 6.72 The Acting Director of Mines Safety later told us that ‘While improvement notices do not have a fine attached to them, they can actually involve a fairly significant amount of work and improvement that is required to be done through that notice, so they can be quite

564 Mr Leigh Smith, *Transcript of Evidence*, 23/3/2022, pp. 10-11.

565 *ibid*, p. 7.

566 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 1.

567 Submission 69, DMIRS, p. 5.

568 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 1.

569 *ibid*, p. 2.

influential.⁵⁷⁰ With such a low number of notices issued, we were unsurprised to learn that ‘In the case of specific matters reported in the media to date, Mines Safety has taken an educational approach rather than issuing notices.’⁵⁷¹ DMIRS also said ‘with the exception of specific audits’ it ‘does not explicitly monitor if companies are implementing their policies unless there is a complaint or cause for investigation.’⁵⁷² The Worksafe Commissioner said the WHS Act 2020 has stronger provisions than the MSI Act.⁵⁷³ He cited additional due diligence requirements of the officer position which he hoped would improve cultural change. He pointed to enforceable undertakings provisions, and the ability for the regulator to conduct inquiries, initiate investigations and examine matters the data says needs exploring.⁵⁷⁴

6.73 Given what we have heard about the appalling and systemic nature of sexual harassment and assault in the mining industry, the number of improvement notices issued, the limited monitoring of companies and the ‘educational approach’ towards companies seems remarkably light-handed. It also reflects wider trends. *Respect@Work* said ‘prosecutions for breach of the duty relating to psychological health are rare’ with Safe Work Australia informing the AHRC that ‘as far as it is aware, no prosecutions have been brought for non-compliance with the model WHS laws in relation to sexual harassment.’⁵⁷⁵ This approach is not having the desired results if the disturbing evidence we have received is anything to go by.

Finding 74

DMIRS currently does not investigate all complaints of sexual harassment.

Finding 75

DMIRS has issued 13 improvement notices relating to sexual harassment or assault over the last 10 years, and has taken an ‘educational approach’ to recent cases reported in the media. This shows the Department’s reactive approach, and does not reflect a realistic effort to regulate poor behaviour and meet their obligations across a significant economic sector.

6.74 In terms of its personnel, DMIRS explained that the Safety Regulation Group within DMIRS has different groups of workplace safety inspectors with different focus areas. Separate inspectorates include, among others, Gas and Petroleum, with 15 inspectors FTE including four women, and, most relevant for our purposes, Mines Safety with 60 inspectors FTE

570 Ms Sally North, DMIRS, *Transcript of Evidence*, 8/9/2021, pp. 9-10.

571 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 12.

572 Submission 69, DMIRS, p. 7.

573 Mr Darren Kavanagh, WorkSafe WA, *Transcript of Evidence*, 8/9/2021, p. 15.

574 *ibid*, pp. 14-15.

575 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p. 546.

including 10 women.⁵⁷⁶ In addition, WorkSafe has ‘a Human Factors and Ergonomics team of five inspectors that may conduct investigations into psychosocial hazards...’.⁵⁷⁷

6.75 We were told that of the 60 Mines Safety inspectors, just four were Mental Health and Wellbeing Inspectors, three of whom were women.⁵⁷⁸ And ‘[a]ll four Mental Health and Wellbeing Inspectors in Mines Safety have qualifications and experience in psychology and/or mental health.’ Further, ‘Three of the Mental Health and Wellbeing Inspectors and an additional four Mines Safety inspectors have attended training with the Sexual Assault Resource Centre (SARC) on sexual assault and responding to disclosures’ and ‘are trained in victim-centric, trauma-informed, psychosocial responses’.⁵⁷⁹ In Gas and Petroleum, ‘one of the inspectors [who is a woman] is a trained psychologist with experience managing harassment matters. This inspector has provided basic training to the other gas and petroleum inspectors.’⁵⁸⁰

6.76 These numbers concern us. To reiterate: we know that incidents of sexual harassment are prevalent and likely far higher than officially reported; we know that sexual harassment represents serious risks for the health and safety of workers; and we know that the characteristics of sexual harassment require a different approach than is required for other forms of physical harm and injury. We would therefore expect the number of suitably trained inspectors to reflect these facts. As Leigh Smith of Curtin University said:

it is clear from the literature and the case law around sexual harassment that those subjected to sexual harassment (and related behaviours) can suffer significant psychological harm. Given the investigative and prosecutorial role often played by inspectors, the more training they have in relation to mental health, likely, the better.⁵⁸¹

6.77 We heard that Mines Safety was reviewing its internal processes and undertaking actions ‘to enhance the internal capability of the inspectorate, and department more broadly to ensure that DMIRS is up to the task’ including ‘specialised training’. We also heard that Government funding was allocated for further inspectors and investigators to improve workplace safety and health outcomes in Western Australia.⁵⁸² DMIRS told us that ‘Since 2021, Mines Safety has significantly expanded its resources, with the number of Mental Health and Wellbeing Inspectors doubling. This has increased DMIRS capacity to fulfil its functions as the regulator.’⁵⁸³ We are encouraged by these changes, but remain concerned this is not happening fast enough.

576 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 29/4/2022, p. 3.

577 *ibid.*

578 *ibid.*

579 *ibid.*

580 *ibid.*

581 Mr Leigh Smith, Responses to questions taken on notice and further question, 22/4/2022, p. 6.

582 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to questions taken on notice and further questions, 11/10/2021, p. 12.

583 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/2022, p. 4.

Finding 76

At April 2022 there were 60 FTE Mines Safety inspectors in the DMIRS Safety Regulation Group. Of these, 10 were women, and only four of the 60 were specialists in mental health.

Finding 77

Government funding has been allocated for further inspectors and investigators to improve workplace safety and health outcomes in WA.

- 6.78 Industry bodies and stakeholders recognised the challenges in this area. Warren Pearce of AMEC sympathised with DMIRS and saw improvement in the establishment of mentally healthy workplaces. Mr Pearce viewed DMIRS' role as important but limited 'to identify[ing] trends and providing some level of oversight' to ensure 'companies are addressing those issues appropriately.' He suggested it was not for DMIRS to intervene to resolve individual complaints, which is the responsibility of companies, though he did accept it should be able to get the information to monitor and address particular cases.⁵⁸⁴
- 6.79 Unions WA acknowledged that WorkSafe has received major new resources in recent years with a considerably increased inspectorate, which they welcomed, as they did the appointment of an independent Commissioner. They looked forward to the merger of Mines Safety and general workplaces into one inspectorate.⁵⁸⁵ They also welcomed recent State budget announcements increasing the WorkSafe resourcing and inspectorate numbers. However, they cautioned:
- after long-term neglect, you cannot just put a few more inspectors in there and assume that everything is going to be fixed overnight. The training of those inspectors is a long-term process. ... I would certainly say that bullying and harassment and gendered violence are areas where more work can be put into in terms of creating some more specialist inspectors. ... We would welcome some more specialisation within the inspectorate.⁵⁸⁶
- 6.80 The Centre for Women's Safety and Wellbeing and its colleagues expressed frustration that 'WorkSafe does not utilise its [statutory] powers in a regular or systemic way to address gendered violence or harassment at work.'⁵⁸⁷ We accept the DMIRS and WorkSafe are trying to improve in this area, but they have considerable way to go. WorkSafe, after all, has previously been open about its lack of specialisation in this area. As it told the inquiry that resulted in the *Respect@Work* report, DMIRS' 'processes for managing matters where claims of sexual harassment are raised, include referring complainants directly to the Equal Opportunity Commission' while 'As a safety regulator, WorkSafe is not sufficiently resourced and does not have the expertise to adequately address sexual harassment matters. Therefore these matters are appropriate to remain in the jurisdictional control of the

584 Mr Warren Pearce, AMEC, *Transcript of Evidence*, 10/11/2021, p. 12.

585 Mr Owen Whittle, Unions WA, *Transcript of Evidence*, 24/11/2021 p. 5.

586 *ibid*, p. 6.

587 Submission 73, Centre for Women's Safety and Wellbeing, Stopping Family Violence, and the WA Network of Alcohol and other Drug Agencies, p. 8.

EOC.⁵⁸⁸ This was in 2019. When we questioned them on this submission, DMIRS responded that:

During this period there were concerns about the quantity of inspectors to perform WorkSafe functions. Since this time, the McGowan government has funded 21 inspectors and subsequently 45 additional positions coinciding with the introduction of the WHS Act [...] DMIRS and WorkSafe has expanded its specialist resources and training since the February 2019 submission. WorkSafe is resourced and has the expertise to conduct investigations within the authority of the WHS Act.⁵⁸⁹

6.81 And still, given what we heard and what we have outlined above, we lack confidence that the regulator is fully prepared to address this issue on the scale and in the manner required. To do so it needs to ensure it is sufficiently staffed and resourced to manage all psychosocial hazards, but specifically including sexual harassment, and undertake the necessary analysis to anticipate exactly what will be required of it.

6.82 To help achieve these goals, and to accompany a rollout of consistent anonymous reporting platforms recommended in the previous chapter, we find merit in the formation and expansion of an appropriately trained and experienced group or unit of psychosocial specialists, independent of mining companies. The primary task of this group would be to monitor, investigate, and respond to complaints of sexual harassment and assault, and related issues raised by any worker in the industry, including all contractors and labour hire workers. The most appropriate body to lead this work in the first instance is likely to be DMIRS and/or WorkSafe WA, though its creation should involve close consultation with mining companies and their representatives, unions and other industry stakeholders. In exploring options for such a group or unit, DMIRS should assess the needs and possibilities for its composition, remit and resourcing and provide regular public updates on its progress.

6.83 In March 2022, CME expressed concern that introducing any ‘additional independent body’ could expose victims to re-trauma, add ‘further complexity’ and duplicate existing systems.⁵⁹⁰ We agree, which is why we have recommended developing and strengthening areas of specialisation in existing public agencies to properly handle specific kinds of complaints. This is precisely in order to protect workers from trauma and to improve on efficacy and efficiency in a system that is clearly falling short. We see no persuasive reason why this cannot be achieved with relative speed.

Finding 78

Regulators of workplace health and safety must have the required specialist expertise, experience and training to investigate, assess and deal with reports of sexual harassment and assault.

588 WorkSafe WA submission to AHRC, National Inquiry into Sexual Harassment in Australian Workplaces, February 2019, [Submission 204](#), p. 1.

589 Mr Richard Sellers, DMIRS, and Mr Darren Kavanagh, WorkSafe WA, Responses to further questions, 29/4/2022, p. 5.

590 Submission 56A, CME Supplementary, p. 6.

Finding 79

DMIRS and WorkSafe WA have recently improved their capacity and capability to deal with the risk of psychosocial safety in the workplace, but as organisations they remain underprepared to deal with sexual harassment as a work health and safety issue.

Recommendation 24

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

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

FIFO work camps and accommodation are part of work sites

- 6.84 Until recently there was an unhelpful distinction between FIFO worksites, and FIFO work camps and accommodation. It was unhelpful because a defining feature of FIFO employment is that employees are necessarily situated adjacent to their workplaces for extended periods. Though changes have seen work camps and accommodation formally defined as workplaces for the regulation of work health and safety, union groups continued to raise questions about whether WHS regulations in practice stopped 'at the camp gate'. And there seems to be residual confusion over exactly how this this regulation operates. There is a difference between companies acting as if a particular rule applied, and it actually being properly regulated in force. If sexual harassment is to be treated as a workplace health and safety matter, there must be certainty about where and to whom laws and regulations apply, and the consequences for failing to meet them.
- 6.85 Questioned on the matter in September 2021, DMIRS told us most camps are indeed considered part of mining operations and regulated as such, but a distinction remains 'when a camp is not on the mining operation, so on a different tenure.'⁵⁹¹ While safety regulations and duties existed for those in charge of the camps it not always clear whether these are enforced by mine safety or by WorkSafe inspectors.⁵⁹² However, we note that the newly released *Workplace Behaviour Code of Conduct* specifically listed 'accommodation camps for fly-in fly-out (FIFO) workers' in its definition of the workplace.⁵⁹³
- 6.86 Industry body AMEC acknowledged that new legislation considers FIFO work camps as work sites, and industry is adjusting to the improved reporting requirements for 'work adjacent settings'.⁵⁹⁴ Similarly, Ms Millard of CME said despite the 'deficiencies' in previous legislation around reporting requirements for workplace accommodation, both industry and the State regulator had 'effectively' treated accommodation as a worksite, while the new Act would

591 Mr Andrew Chaplyn, DMIRS, *Transcript of Evidence*, 8/9/2021, p. 15.

592 *ibid.*

593 Work Health and Safety Commission, *Workplace behaviour: Code of practice*, p. 3.

<https://www.commerce.wa.gov.au/worksafe/mentally-healthy-workplaces-codes-practice> accessed 16/5/2022.

594 Submission 70, AMEC, p. 13.

only provide 'greater teeth to managing health and safety risks in accommodation camps.'⁵⁹⁵ Mr Finnegan of Macmahon, speaking of incidents that occurred off shift, said 'the way we see it, especially with the new legislation, the village is classed as a work area'.⁵⁹⁶

6.87 The unions saw things differently. The WA Branch of the AMWU told us in mid-2021 that 'campsites are under-regulated, beginning with the fact that they are not designated as workplaces.' And though there is 'some good legislation [...] it currently does not apply to the campsites and accommodation where workers spend so much of their time.'⁵⁹⁷ They said:

...while there are requirements to report on WHS incidents during shift, off shift there is no requirement to report as the camps are not considered the workplace. This is despite the fact that the campsite's entire raison d'être is for workers, is entirely controlled by the employer, and is dependent on work performance and behaviour. It is realistic that this Inquiry's terms of reference refer to the accommodation facilities as 'workplace', but the reporting regimes of FIFO employers do not reflect this reality.⁵⁹⁸

6.88 Such comments echo a 2015 Parliamentary Committee report into FIFO mental health which found 'the occupational safety and health provisions of the *Mines Safety and Inspection Act 1994* do not, generally, apply to the workers who are off-shift and using the on-tenement accommodation for residential purposes.'⁵⁹⁹ But since 'FIFO work arrangements are, in many instances, intrinsic to employment at a resources site ... FIFO work arrangements should be subject to a Code of Practice to limit the negative impact of such work arrangements on employees' mental health.'⁶⁰⁰ That report recommended the *WHS Act* 'ensure that a FIFO worker occupying or residing in FIFO accommodation is not exposed to risks to health and safety, including mental health and wellbeing.'⁶⁰¹

6.89 We are heartened that new WHS laws will drop the distinction between FIFO worksites and adjacent work camps and accommodation for health and safety purposes. And yet we are frustrated that there still appears to be uncertainty about the legal responsibilities around FIFO worksites and accommodation. If what industry bodies say is true, and they are treated as if they are worksites, then this is good. But for the benefit of the entire industry, there must be no doubt as to who is responsible for what and where. This is even more important given the widespread use of contractors and labour hire in different parts of mining operations, which only compound regulatory ambiguities.

595 Ms Elysha Millard, CME, *Transcript of Evidence*, 20/10/2021, p. 4.

596 Mr Michael Finnegan, Macmahon Holdings, *Transcript of Evidence*, 10/11/2021, p. 4.

597 Submission 20, AMWU, [p. 6].

598 *ibid*, [p. 3].

599 Education and Health Standing Committee, *The impact of FIFO work practices on mental health*, June 2015, p. 47.

600 *ibid*.

601 *ibid*, p. 50.

Appendix One

Committee's functions and powers

The functions of the Committee are to review and report to the Assembly on: -

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

Appendix Two

Submissions received

No.	Name	Position	Organisation
1	Personal Submission		
2/2A	Personal Submission – Ms Kerin Collins		
3	Personal Submission		
4	Personal Submission		
5	Personal Submission		
6	Personal Submission		
7	Personal Submission		
8	Personal Submission		
9/9A	Personal Submission		
10	Personal Submission		
11/11A	Personal Submission		
12	Personal Submission		
13	Personal Submission		
14	Personal Submission		
15/15A	Personal Submission		
16	Mr Shane Entriken	Partner, Head of Perth Office	Piper Alderman
	Dr Vince Hughes	Chief Executive Officer	Crime Stoppers WA
17	Personal Submission		
18	Ms Meg O'Neill	Acting Chief Executive Officer	Woodside Energy Ltd
19	Personal Submission		
20	Mr Steve McCartney	State Secretary	Australian Manufacturing Workers' Union, WA Branch
21	Personal Submission		
22	Personal Submission		
23	Dr Mark Duncan-Smith	President	Australian Medical Association – WA Branch
24	Personal Submission		
25	Personal Submission		
26	Professor Nicole Lee	Chief Executive Officer	360Edge Pty Ltd
27	Personal Submission		
28	Personal Submission		
29	Personal Submission		
30	Personal Submission		

Appendix Two

31	Personal Submission		
32	Ms Melissa Ledger	Director, Cancer Prevention and Research	Cancer Council WA
33	Ms Jaqueline Outram	Chief Executive Officer	RePipe Pty Ltd
34	Ms Claire Wilkinson	Director - WA	Australian Petroleum Production & Exploration Association Ltd (APPEA)
35	Personal Submission		
36	Ms Megan Davison	Principal Adviser - Safety and Health	Minerals Council of Australia
37	Personal Submission		
38	Personal Submission		
39	Personal Submission		
40	Personal Submission		
41	Personal Submission		
42	Personal Submission		
43	Ms Tania Cecconi	Executive Officer	CEOs for Gender Equity
44	Mr Owen Whittle	Secretary	Unions WA
45	Mr Tom Reid	Head of Policy and Public Affairs	AMMA, Australian Resources and Energy Group
46	Dr Jessica Gilbert	Research Fellow	Centre for Transformative Work Design at Curtin University and the Psychology at Work Laboratory at the University of Western Australia
47	Hon Simone McGurk, MLA	Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services	WA Government
48	Mr Christopher Watts	Senior Human Resources Manager – Upstream Australia	Chevron Australia
49	Personal Submission		
50	Mr Brad Gandy	Australian Workers' Union WA Branch Secretary	Western Mine Workers' Alliance
	Mr Greg Busson	Mining and Energy Unions WA District Secretary	
51/51A	Personal Submission – Ms Kathryn Forrest		
52	Personal Submission		
53	Personal Submission		
54	Dr John Byrne	Commissioner for Equal Opportunity	Equal Opportunity Commission
55	Ms Linda O'Farrell	Director Fortescue People	Fortescue Metals Group Ltd

Submissions received

56/56A	Mr Paul Everingham	Chief Executive	The Chamber of Minerals and Energy WA
57	Personal Submission		
58	Mr Gerhard Veldsman	Chief Executive Officer	Roy Hill
59	Personal Submission		
60	Mr Mick Buchan	State Secretary	CFMEU WA Branch
61	Personal Submission – Ms Astacia Stevens		
62	Ms Florence Drummond	Chief Executive Officer	Indigenous Women In Mining and Resources Australia
63	Mr Simon Trott	Chief Executive Iron Ore	Rio Tinto
64	Personal Submission		
65	Personal Submission		
66	Personal Submission		
67	Senator Louise Pratt	Senator for Western Australia Shadow Assistant Minister for Manufacturing; Shadow Assistant Minister for Skills and Employment Services	Commonwealth Parliament
68	Ms Michelle Duke	Director Executive Services, Strategy and Partnerships	Department of Communities WA
69	Mr Richard Sellers	Director General	Department of Mines, Industry Regulation and Safety, WA
70	Mr Warren Pearce	Chief Executive Officer	Association of Mining and Exploration Companies (AMEC)
	Ms Samantha Panikar	Senior Policy Adviser	
71	Ms Aimee Jones	Corporate Affairs	BHP
72	Ms Susan Pickford	General Manager WA	Engineers Australia
73	Dr Alison Evans	Director - Family, Domestic and Sexual Violence, Centre for Women's Safety and Wellbeing	The Centre for Women's Safety and Wellbeing (CWSW), Stopping Family Violence (SFV) and the WA Network of Alcohol and other Drug Agencies (WANADA)
74	Ms Sarah Coleman	Chief Executive Officer	idoba
75	Personal Submission		
76	Personal Submission		
77	Personal Submission		
78	Personal Submission		
78a	Personal Submission		
79	Personal Submission		
80	Personal Submission		
81	Personal Submission		

Appendix Two

82	Hon Cheryl Edwardes AM	Chairman PHIA Group	Port Hedland International Airport
83	Personal Submission		
84	Mr Mike Finnegan	CEO and Managing Director	Macmahon Holdings Ltd
85	Personal Submission		
86	Personal Submission		
87	Personal Submission		

Appendix Three

Hearings and briefings

Date	Name	Position	Organisation
8 September 2021	Mr Richard Sellers	Director General	Department of Mines, Industry Regulation and Safety
	Mr Ian Munns	Deputy Director General, Safety Regulation	
	Mr Andrew Chaplyn	Director, Mines Safety	
	Ms Sally North	Acting Director, Mines Safety	
	Mr Darren Kavanagh	WorkSafe WA Commissioner	WorkSafe WA
8 September 2021	Mr Brad Gandy	WA State Secretary, Australian Workers' Union	Western Mine Workers' Alliance
	Mr Greg Busson	WA State Secretary, Mining and Energy Union	
15 September 2021 (closed)	Private Individual		
15 September 2021 (closed)	Private Individual		
13 October 2021 (closed)	Private Individual		
13 October 2021	Dr John Byrne	Commissioner for Equal Opportunity	Equal Opportunity Commission
	Ms Diana MacTiernan	Manager, Commission Services	
	Ms Sara Shengeb	Community Education and Training Officer	
13 October 2021	Mr Shane Enriken	Director	Crime Stoppers WA
	Dr Vince Hughes	Chief Executive Officer	
20 October 2021	Mr Paul Everingham	Chief Executive	Chamber of Minerals and Energy WA
	Ms Elysha Millard	Manager, Safety, Health and Wellbeing	
20 October 2021	Mr Brandon Craig	Asset President, WA Iron Ore	BHP
	Ms Jessica Farrell	Asset President, Nickel West	
	Ms Melanie Fisher	Practice Lead Care and Human Performance	
	Mr Tim Robinson	Chief Compliance Officer	

Appendix Three

27 October 2021	Mr Simon Trott	Chief Executive, Iron Ore	Rio Tinto
	Mrs Laura Thomas	Acting Vice President, Human Resources	
	Ms Cecile Thaxter	Vice President, Health, Safety, Environment and Communities	
27 October 2021	Ms Elizabeth Gaines	Chief Executive Officer	Fortescue Metals Group
	Ms Linda O'Farrell	Director, Fortescue People	
	Mr Robert Watson	Director, Health and Safety	
10 November 2021	Mr Michael Finnegan	Managing Director and CEO	Macmahon Holdings
	Mr Greg Gettingby	Chief Development Officer	
	Ms Nicola Jane Hamilton	General Manager, People	
	Mrs Elizabeth Gray	General Manager, Health, Safety, Environment, Quality and Training	
10 November 2021	Mr Warren Pearce	Chief Executive Officer	Association of Mining and Exploration Companies
15 November 2021	Mrs Fiona Hick	Executive Vice President, Operations	Woodside Energy Ltd
	Mr Philip Reid	Vice President, Health, Safety and Environment	
	Mrs Jacqueline Connolly	Vice President, People and Global Capability	
	Mr Steven Pyle	Manager, Business Integrity	
15 November 2021	Mr Colin Blanch	Deputy Commissioner, performing the duties of the Commissioner of Police	WA Police Force
	Mr Bradley Royce	Assistant Commissioner, State Crime	
15 November 2021	Mr Mick Buchan	State Secretary, WA	Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)
15 November 2021 (closed)	Private Individual		
17 November 2021 (closed)	Private Individual		

Hearings and briefings

17 November 2021 (closed)	Private Individual		
24 November 2021	Mrs Stacey Offner	General Manager, Health, Safety and Environment	Chevron Australia
	Mr Christopher Watts	Senior Manager, Human Resources, Upstream Australia	
24 November 2021	Mr Owen Whittle	Secretary	Unions WA
	Ms Lisa Judge	Assistant Secretary	
	Dr Tim Dymond	Organising and Strategic Research Officer	
23 March 2022 (closed)	Mr Leigh Smith	Lecturer, Curtin University Law School	Individual
28 March 2022 (Briefing)	Ms Kate Jenkins	Commonwealth Sex Discrimination Commissioner	
29 March 2022 (closed)	Hon Bill Johnston, MLA	Minister for Mines and Petroleum	WA Government
6 April 2022 (closed)	Professor Paula McDonald	Professor of Work and Organisation, Queensland University of Technology	Individual
11 May 2022 (closed)	Private Individual		

Appendix Four

Glossary

AHRC	Australian Human Rights Commission
AMEC	Association of Mining and Exploration Companies
AMWU	Australian Manufacturing Workers' Union
APPEA	Australian Petroleum and Exploration Association
CFMEU	Construction, Forestry, Maritime, Mining and Energy Union
CME	Chamber of Minerals and Energy WA
DMIRS	Department for Mines, Industry Regulation and Safety
EOC	Equal Opportunity Commission
FIFO	Fly-in-fly-out
FMG	Fortescue Metals Group
IWIMRA	Indigenous Women in Mining and Resources Australia
MCA	Minerals Council of Australia
WA	Western Australia
WMWA	Western Mine Workers' Alliance



Parliament House
4 Harvest Terrace, West Perth WA 6005
Telephone: +61 8 9222 7222
Email: laco@parliament.wa.gov.au
Website: www.parliament.wa.gov.au