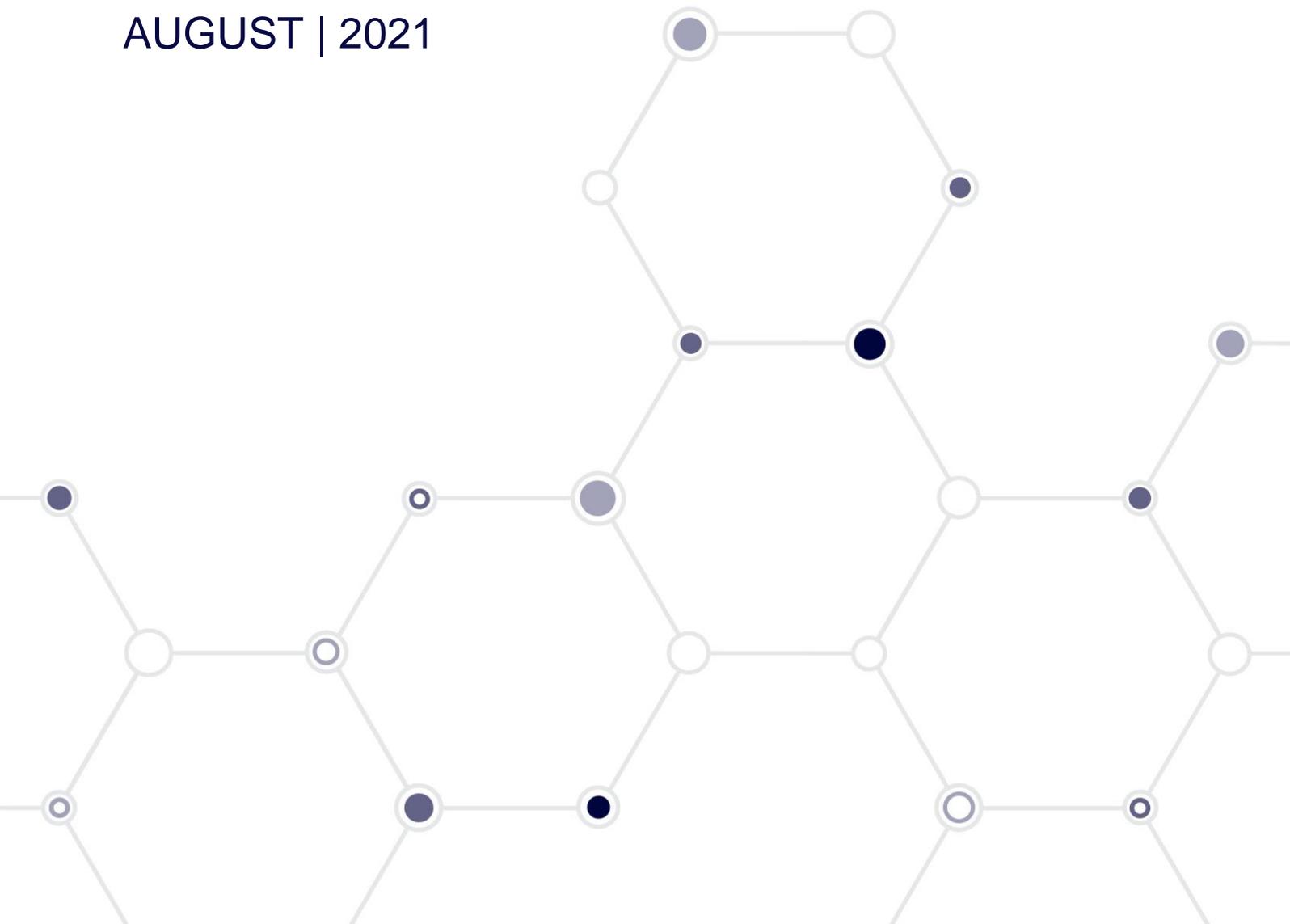


Inquiry into sexual harassment against women in the FIFO mining industry

Submission to the Western Australian Parliament's
Community Development and Justice Standing
Committee

AUGUST | 2021



ABOUT AMMA

AMMA is Australia's resources and energy industry group and has provided a unified voice for employers on workforce and other industry matters for more than 102 years.

AMMA's membership spans the entire resources and energy industry supply chain, including exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to these sectors.

AMMA works to ensure Australia's resources and energy industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

AMMA members across the resources and energy industry are responsible for a significant level of Australian employment, with an estimated 10% of our national workforce, or 1.1 million Australians, employed directly and indirectly as a result of the resources industry.

First published in 2021 by

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1. Introduction

1. Australian Resources and Energy Group AMMA provides the following submission to the Community Development and Justice Standing Committee in relation to the Western Australian Parliament's *Inquiry into sexual harassment against women in the FIFO mining industry*.
2. The submission deals with and outlines AMMA's positions relating to workplace sexual harassment in the resources and energy industry, in particular industry-level efforts to address causal factors of sexual harassment and existing measures and good practice being undertaken by employers at the individual workplace level.
3. For the purposes of this submission, AMMA recognises the Australian Human Rights Commission's (AHRC) definition of sexual harassment, including that it is "any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated"¹.
4. AMMA supports the Inquiry and believes it is extremely important to address sexual harassment in all Australian workplaces. To this end, AMMA recognises the policy work currently being undertaken by the Australian Government, on advice from the AHRC and Sex Discrimination Commissioner, to strengthen the legal framework in relation to sexual harassment.
5. In the resources and energy industry, AMMA submits that amongst its members there are countless proactive policies, procedures, measures and initiatives in place to tackle sexual harassment in the workplace, especially FIFO workplaces where unique challenges exist.
6. Despite this, AMMA recognises that the industry has a long way to go, with a higher-than-average prevalence of sexual harassment reported.
7. AMMA therefore welcomes the Committee seeking to understand and, in consultation with employers and other social partners, make recommendations to support best practice strategies that promote safe, respectful, harassment and discrimination-free workplaces in Western Australia's resources and energy industry.

2. Gender diversity in the resources and energy industry

8. An important consideration for addressing workplace sexual harassment in the resources and energy industry is that the sector is one of the most male-dominated in Australia, with data from the Workplace Gender Equality Agency (WGEA) showing women comprise 18% of the workforce².
9. That this is the average figure for the industry at whole, and most CBD head office environments sit much closer to gender parity, indicates that the proportion of women to men at FIFO workplaces is lower than 18%.
10. With growing awareness and acceptance of the benefits of increased female participation, over the past decade resources and energy organisations have ramped up efforts to develop leading programs, initiatives and incentives to attract more women to their workforces.
11. While these efforts and the resulting cultural change of the industry have been significant, progress has been very slow with only a 2.3% increase in women as a portion of the workforce since 2014³.

¹ Full definition available at <https://humanrights.gov.au/quick-guide/12096>

² Found via WGEA's "Data Explorer" tool: <https://data.wgea.gov.au/industries/87>

³ WGEA data shows 15.7% of the 'Mining' industry were women in 2014



12. One of the leading national initiatives working to support increased female representation in the resources and energy industry is the Australian Women in Resources Alliance ('AWRA').
13. AWRA was formed by AMMA in 2011, bringing together leading experts and practitioners from across the sector. Its charter is to assist employers on their gender diversity journey, with the overarching goal to increase women's participation in the resources, allied and related construction sectors. Over time this charter has expanded to include diversity campaigns in relation to other demographics including employees from the LGBTQIA+ community.
14. AWRA facilitates programs and provides support and guidance materials that help employers attract, retain and develop female talent, build their gender diversity capability, become an employer of choice for women and realise the advantages of a diverse and inclusive workforce.
15. Examples of these programs and support initiatives include:
 - a) Release of a comprehensive report into workplace gender diversity, *Gender Diversity in the Australian Resources Industry – Leading, Lagging or Losing Out?*⁴ The report covers the five main areas of gender diversity as they relate to employers: workforce participation, cultural change, women in leadership, pay equity and workplace flexibility.

All aspects of the report are critical to improving female representation, however the area of 'cultural change' is most directly relevant in the context of workplace sexual harassment.
 - b) Delivery of the Bright Future STEM Primary Schools Program – a national program that engages 9-12 year-old schoolkids in STEM energy and resource industry experiences.

The program provides exposure to female STEM professionals, encourages an interest in STEM careers and gives insights into future STEM employment in the Australian resources and energy industry.
 - c) Monthly diversity and inclusion webinars, featuring guest speakers from within the industry. These webinars are catered to executive leaders, human resources managers and diversity and inclusion practitioners, with learning including how to foster more diverse and inclusive workplaces and how to tap into new talent pools.
 - d) Publication of other resources, such as the *AWRA Guide to Flexible Work*, in addition to case studies, strategy documents and guides for employee engagement and cultural change.
 - e) Delivery of Inclusive Safety Audits in member workplaces.
 - f) Delivery of "Appropriate Workplace Behaviours" training in member workplaces.
16. More information on initiatives (e) and (f) is provided further below.
17. The suite of projects and initiatives delivered under the AWRA banner are developed and guided by the "AWRA Advisory Board" – a dedicated committee comprising senior and experienced human resources practitioners drawn from AMMA member and non-member organisations in diverse sectors of the resource and energy industry.
18. More generally, employers are increasingly aware of the correlation between an inclusive culture and attracting and retaining more women. As part of this cultural change, many employers have invested significantly in education and awareness campaigns which identify sexual harassment in the workplace as a key focus area.

⁴ https://www.amma.org.au/wp-content/uploads/2020/07/AWRA_Gender_Diversity_Leading_lagging_losing2.pdf



3. Sexual Harassment in the resources and energy industry

19. AMMA notes clear data on sexual harassment by specific industries is limited, however strong insights can be found within the data collated and presented by the Workplace Gender Equality Agency (WGEA) through statutory reporting obligations on employers with more than 100 employees⁵.
20. Most notable, in the area of “sex-based harassment” the following insights are provided when comparing “Mining”⁶ with “All Industries”.
 - a) In the mining industry, 100% of organisations required to report to WGEA have a formal policy or formal strategy on sex-based harassment and discrimination prevention. This is greater than the 98.6% reported across all industries – noting this is also a strong figure.
 - b) 97.9% of reporting mining organisations include a grievance process in any sex-based harassment and discrimination prevention policy or strategy, compared with 97.8% across all industries.
 - c) 91.7% of reporting organisations in the mining industry provide training for all managers on sex-based harassment and discrimination prevention, compared with 88.5% across all industries.
21. Despite the clear strength in policies, procedures and training across mining companies, statistics from the 2018 AHRC report “*Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces*”⁷ demonstrates these efforts are not yet achieving the required outcomes.
22. Findings included:
 - The prevalence of workplace sexual harassment was 40% in mining compared with the national prevalence rate of 33%.
 - In the mining industry women were far more likely than men to have been sexually harassed, with an estimated 74% of women experiencing workplace sexual harassment in the past five years compared with 32% for men.
 - Of those who experienced workplace sexual harassment across all industries, 64% were sexually harassed by one person, with the overall mean number of perpetrators of sexual harassment being 1.7 people. However, comparatively in the mining industry, the overall mean number of perpetrators of sexual harassment against a person is three.
 - In mining 48% of those who experienced sexual harassment reported the perpetrator was a co-worker at the same level as them, compared with 30% across all industries.
 - 26% of workplace sexual harassment across all industries occurred in a social area for employees such as a lunchroom, however this is 48% in mining.
 - In total, 40% of workplace sexual harassment across all industries was witnessed by someone else, however this was higher in mining at 48%.

⁵ See data.wgea.gov.au

⁶ Encompasses coal mining; oil and gas extraction; metal ore mining; non-metallic mineral mining and quarrying; and exploration and other mining support services. Hereon referred simply as ‘mining’.

⁷ “Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces.” Australian Human Rights Commission, 2018.



23. Many of these findings were repeated in the AHRC's landmark *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report⁸, which also concluded:
 - *Research has suggested that workplaces where women perform tasks considered 'atypical' for women may present a risk for sexual harassment. Atypical work for women includes work that men have historically performed, for example engineering, mining and trades, and work that is seen to diverge from stereotypes of women's roles relating to caring and motherhood.*⁹
24. One positive finding from this research was employees in the mining industry were more likely to make a formal complaint or report about an incident of sexual harassment in the workplace – 24% compared with 17% across all industries.
25. Notwithstanding this, collectively the findings indicate a cultural issue within the resources and energy industry where people (especially women) are more likely to be harassed by groups of co-workers in open, common areas (such as crib rooms or social areas at camp), than other industries.
26. This demonstrates and validates the extremely high importance of the efforts and strategies of most employers in the resources and energy industry to address cultural change and diversify their workforce gender composition.
27. Policies and frameworks to prevent sexual harassment in the workplaces are being pursued alongside broader attempts to increase women's workforce participation. The responses to the 2018 national survey demonstrate that much work needs to be done.

4. Existing measures and good practice

28. Despite the higher-than-average level of sexual harassment in the mining industry, many AMMA members have created effective good practice in both preventing and responding to workplace sexual harassment.
29. Many employers allow employees to disclose issues anonymously to promote reporting of concerns or incidents without fear of retribution. Further, some organisations have dedicated reporting hotlines specifically for this purpose.
30. Preventative measures have also been implemented by many employers to mitigate the risk of sexual harassment occurring in their workplaces. The resources and energy industry is unique in that often employees are required to work in remote locations where they both work and live for various amounts of time depending on their roster. For example, they work on-site during their day shift for 12 hours and then return to their accommodation in a 'camp' environment where they eat, sleep and socialise.

Inclusive Safety Audits

31. In order to mitigate risk of sexual harassment arising from this unique environment, a number of organisations have undertaken inclusive safety audits of their workplaces.
32. The purpose of conducting an inclusive safety audit is to examine the actual and perceived physical and psychological safety of employees, whether it is all employees, employees from a specific work location or employees in a minority group such as female employees.
33. The design of the audit considers the range and variety of work practices and locations in the resources and energy industry to accommodate a range of employer-specific purposes to

⁸ Accessible via humanrights.gov.au/

⁹ Page 230 of the AHRC *Respect@work* report, referencing various research sources.



conduct components or the full audit. These audits are completed by independent assessors / workplace inspectors with special expertise in this field.

34. AMMA is one such independent provider of inclusive safety audits, with its unique offering constantly evolving and improving under the guidance of the AWRA Advisory Board.
35. Typically the audits of workplace facilities, policies and practices is accompanied by a survey completed anonymously by employees. The survey asks if employees feel safe in certain areas, raising a number of practical matters including workplace cultures, reporting processes, alcohol consumption, social areas and activities, and lighting and other facilities considerations.
36. This approach allows organisations to have a better understanding of the issues facing their employees on-site and subsequently to create safer working environments. It also provides an avenue for employees to anonymously provide information about their work environment without feeling intimidated or pressured to not speak out.

Sexual Harassment Training

37. Additionally, many other organisations undertake significant training to educate and raise awareness amongst executive leaders, managers, supervisors and all other employees of sexual harassment.
38. AMMA provides one such specialist training program – *Appropriate Workplace Behaviours*. This course, which is growing strongly in demand, is designed to educate employees on the legislative and policy requirements relating to appropriate workplace behaviour and the steps to take if they are victim to or become aware of inappropriate behaviour. Managers and leaders are also provided with the knowledge relevant to preventing inappropriate behaviour and managing any breaches that may occur.
39. The course also provides employers with the tools to identify clear deficiencies in their organisation's practices in regard to appropriate workplace behaviour, and to rectify those issues.
40. Another common example is *Active Bystander Training*, which is widely implemented in the industry and provides skills for bystanders to intervene when they see behaviour that is not acceptable. Such programs further educate employees on what constitutes sexual harassment or has the potential to lead to sexual harassment.
41. More generally, some organisations report employees undertake a comprehensive Equal Employment Opportunity (EEO) training module every two years. Other organisations similarly conduct Code of Conduct training on a yearly or quarterly basis, outlining procedures within the organisation designed to prevent sexual harassment.
42. The majority of these are easily implemented however often smaller organisations do not have the resources (financial/internal capability or focus) available to do this.
43. AMMA submits that this Inquiry could examine how the Western Australian Government could assist in developing and delivering more support materials, campaigns (potentially involving influential spokespeople) and educational resources, which especially benefit smaller employers within the state's FIFO mining industries.
44. This could include subsidising employer access to existing training programs (such as AMMA's *Appropriate Workplace Behaviours* course noted above) or government-provided online modules on sexual harassment that can be provided to organisations at little or no cost.



5. The regulatory framework

45. AMMA recognises that the Australian Government has recently introduced legislation seeking to implement various recommendations of the AHRC's *Respect@Work* report and strengthen the regulatory framework in relation to sexual harassment in Australian workplaces.
46. The *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill* was introduced into Parliament on 24 June 2021 and referred to a Senate Education and Employment Legislation Committee, which handed down its report on 6 August 2021 recommending the Bill be passed.
47. The Bill seeks to make changes to the *Fair Work Act* (FW Act), the *Sex Discrimination Act* (SD Act) and the *Australian Human Rights Commission Act*, with the most important aspects from AMMA's perspective being:
 - a) **Dismissal:** The FW Act would be amended to clarify that sexual harassment can be conduct amounting to a valid reason for dismissal in determining whether a dismissal was harsh, unjust or unreasonable. The Government also indicated that it would amend the definition of 'serious misconduct' in the FW Regulations to include sexual harassment.
 - b) **Stop Sexual Harassment Order:** The existing anti-bullying jurisdiction in the FW Act would be amended to make it clear that the Fair Work Commission can make an order to stop sexual harassment in the workplace. Distinct from existing stop bullying orders, the conduct would not need to be repeated to qualify.
 - c) **Expansion of Application of Sex Discrimination Act:** The protection from sexual harassment under the SD Act would be expanded to include those not previously covered such as interns, volunteers, and self-employed workers. This is designed to align with the model Work Health and Safety law.
 - d) **Prohibition on Sex-Based Harassment:** Sex-based harassment would be prohibited under the SD Act, which would be defined as unwelcome conduct of a seriously demeaning nature by reason of the person's sex, in circumstances which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

This is relevant to both employees and employers who can be held vicariously liable for the conduct of their workers. Ancillary liability provisions will also apply, meaning for example, a supervisor may be held liable as an 'accessory' to the sex-based harassment if they aided and permitted its continuation.
 - e) **Complaints:** Instead of the current six months, a complaint under the SD Act could only be terminated if it is made more than 24 months after the alleged unlawful conduct took place.
 - f) **Victimisation:** The Bill would provide that victimising conduct (such as threatening or subjecting a person to detriment for lodging a complaint) can form the basis of a civil action for unlawful discrimination (in addition to a criminal complaint) under the SD Act.
48. The Australian Government also introduced the *Fair Work Amendment (Respect at Work) Regulations 2021*, which took effect on 10 July 2021.
49. The key change is that sexual harassment was added to the list of conduct falling within the definition of 'serious misconduct' in the Fair Work Regulations. Sexual harassment in the Fair Work Act now has the same meaning as it does in section 28A of the Sex Discrimination Act.
50. This gives effect to recommendation 31 of the *Respect@Work* report, which observed that the intention was to provide clarification to assist in ensuring that sexual harassment is understood



as conduct that is potentially serious enough to be inconsistent with the continuation of the employment and warrant summary dismissal.

AMMA's Position

51. AMMA supports the above legislative amendments insofar as they further clarify rights and responsibilities for employers and employees in relation to workplace sexual harassment. In addition, if passed into law they will strengthen the courses of action available to employers, employees and third parties (such as tribunals and courts) to both proactively mitigate (as far as possible) workplace sexual harassment and swiftly action allegations and complaints.
52. AMMA submits to this Committee that with the above changes to Commonwealth laws likely to take effect, alongside existing obligations within Western Australia's WHS laws to provide a safe environment in which employees undertake their work, it would be inappropriate for the Committee to recommend any specific changes to Western Australia's regulatory framework in relation to workplace sexual harassment at this time.
53. The new obligations, rights and responsibilities within pending new laws must be given some time to take effect, be implemented by employers and measured/reviewed by authorities before any additional regulatory measures are potentially considered.
54. This approach is especially prudent given the significant efforts in recent years to harmonise WHS laws across Australian states and territories, of which Western Australia is a late adopter with its new WHS Act and Regulations likely to take effect from early 2022.
55. AMMA instead submits that the role of this Committee should be to investigate ways the Western Australian Government could encourage and support further industry-driven initiatives as among the most effective strategies for addressing workplace sexual harassment.
56. Alongside these efforts, the Government could consider developing a suite of educational materials and/or campaigns to assist individual employers in their continued efforts to lead cultural change.

6. Conclusion

57. AMMA appreciates the opportunity to make this submission to the Western Australian Parliament's *Inquiry into sexual harassment against women in the FIFO mining industry*.
58. AMMA and its members believe that this Inquiry, with a collaborative and consultative approach, can provide impactful learnings, tools and support required to achieve real and lasting change in relation to sexual harassment in Western Australian FIFO industries.

