

29 July 2021

By Email: lacdjsc@parliament.wa.gov.au

M/s Libby Mettam MLA
Chair, Community Development and Justice Standing Committee
Legislative Assembly
Parliament House
West Perth WA 6005

Dear M/s Mettam

Inquiry into, and report on, the sexual harassment against women in the FIFO mining industry (Inquiry)

Thank you for the opportunity to make this joint submission to this important Inquiry on behalf of Crime Stoppers WA and national commercial law firm Piper Alderman.

Although we fully endorse the Terms of Reference, we consider that it could have been broadened to incorporate the wider community and all industry sectors as sexual harassment to women is clearly not confined to the FIFO mining industry.

Our submission primarily relates to “*What actions are being taken by industry and government to improve the situation and are there any examples of good practice?*”.

1. Introduction

Crime Stoppers

Crime Stoppers WA (**CSWA**) is one of the best known and trusted names in Western Australia, actively contributing to safer communities since 1995.

CSWA is an independent, not-for-profit community organisation and registered charity, working in partnership with the Western Australian Police Force to help members of the public play a key role in helping to report and solve crime.

The CSWA Impact Report 2017-2020 (**Impact Report**) states “*that the assurance of anonymity and confidentiality removes the fear of retaliation and empowers individuals to contribute to all stages of the crime prevention spectrum.*”¹

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¹ <https://www.crimestopperswa.com.au/cswp/wp-content/uploads/2021/06/CRI006-A4-IMPACT-REPORT-s-pages.pdf>

The Impact Report also states that:

- (a) “82% of people feel safer because Crime Stoppers exists;
- (b) there is 95% brand recognition and trust rate in CSWA; and
- (c) 30% of people would not provide information to anyone if CSWA was not there.”

Piper Alderman

Piper Alderman is a premier commercial law firm, and has offices in Adelaide, Brisbane, Melbourne, Sydney and Perth. The firm works with clients in Western Australia and across Australia to achieve optimum legal and commercial solutions.

Piper Alderman’s legal expertise has been built on nearly two centuries of industry experience. Piper Alderman has been a leading advisor to Australian commercial interests for more than 170 years and continues to advance in knowledge, skills and commitment. Piper Alderman listens to clients, responds to their needs and guides them through increasingly complex regulatory and business landscapes.

As a united, national partnership the firm is able to work in teams and collaborate in a manner that enables them to harness skills and network effectively for clients. The firm understands the importance of building enduring client relationships and is absolutely committed to advancing clients’ interests and helping them achieve their business goals.

Piper Alderman has a proud history of being at the forefront of many emerging organisations and areas of law, from landmark rulings to new legislation. By way of interest, in the early days of BHP, Piper Alderman was one of its legal advisors.

The national firm has opened an office in Perth with well-known local people to serve the growing client base across all industry sectors, including the mining and resources industry. The Perth office offers a variety of expertise and services; including a unique, holistic employment and workplace health and safety law service.

This service includes advising clients on the Commonwealth Government’s *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)*, privacy, and conducting a growing number of confidential and sensitive investigations on reported matters, including harassment, bullying and inappropriate behaviour in the workplace.

2. Legislative context

The Australian Securities and Investment Commission (**ASIC**) is responsible for administering the whistle-blower protection provisions in the *Corporations Act 2001 (Cth)*, including the whistle-blower policy requirement.

We note from the ASIC website that:

“whistle-blowers play an important role in identifying and calling out misconduct and harm to consumers and the community. To encourage whistle-blowers to come forward with their concerns and protect them when they do, the Corporations Act

2001 (Corporations Act) gives certain people legal rights and protections as whistle-blowers.

From 1 July 2019, the whistle-blower protections in the Corporations Act have been expanded to provide greater protections for whistle-blowers. This includes requiring public companies, large proprietary companies, and corporate trustees of APRA-regulated superannuation entities to have a whistle-blower policy from 1 January 2020.”²

We further note from the ASIC website that:

“Company officers, company auditors, and other senior people within companies have obligations under the Corporations Act if they receive a report from a whistle-blower. Unless these people handle the whistle-blower report correctly, they may breach the Corporations Act obligations. The whistle-blower protections include criminal offences and civil penalties for a person causing or threatening to cause detriment to a whistle-blower or breaching a whistle-blower’s confidentiality, including during an investigation into the whistle-blower’s concerns.”³

We consider that these are very significant, positive and pro-active legislative provisions which can have severe consequences for all stakeholders.

Under the whistle-blower legislation all public companies must have a whistle-blower policy.

It is also important for an entity to have mechanisms in place for deploying and monitoring the effectiveness of its whistle-blower policy and ensuring compliance with its legal obligations.

This should include having systems in place to provide oversight and reporting arrangements for ensuring its Board, or Audit / Risk Committee are kept informed about the effectiveness of the company’s policy, processes and procedures, whilst preserving confidentiality.

Under the existing *Occupational Safety and Health Act 1984 (WA)* and the yet to be enacted, *Work Health and Safety Act 2020 (WA)* employers also have a general duty of care to provide a work environment without risks to health and safety.

In addition, under the *Work Health and Safety Act 2020 (WA)*, “officers” (such as directors, secretaries, and senior officers) have a duty to exercise ‘due diligence’ to ensure that these provisions are met by the company, and the individual officer (as a Persons who Conduct a Business or Undertaking – PCBU). There are significant fines and penalties for legislative non-compliance.

3. Whistle-blowing reporting processes

We note that most eligible companies have publicly available whistle-blower policies, and are fully aware of their regulatory obligations.

Induction and on-boarding processes also normally refer to the opportunity of workers being able to make reports to:

² [Whistleblowing | ASIC - Australian Securities and Investments Commission](#)

³ Ibid

- (a) an Eligible Recipient, being:
 - (1) officers, auditors, or a member of an audit team conducting an audit on, or actuaries of, any Group company;
 - (2) a person authorised by the relevant Group company to receive Reports (each such person a Whistle-blower Protection Officer), being any of the persons from time to time listed on the Company website; or
 - (3) if the individual is an employee of the Group company, their supervisor or manager;
- (b) ASIC or APRA; or
- (c) a legal practitioner for the purpose of obtaining legal advice or representation on the operation of the whistle-blower provisions.

In most cases, company policies dealing with harassment, bullying, violence and other such complaints encourage whistle-blowers to make reports in the first instance to the company designated internal “Whistle-blower Protection Officer”. This is intended to facilitate the company’s investigation of the matter and protection of the whistle-blower’s identity and wellness.

In addition, some companies claim that their system is anonymous or at least confidential. Unfortunately, the reality is that workers have a lack of trust in internal company systems and tend not to believe the claims of anonymity. This lack of trust of internal systems is a global phenomenon. While workers can play a critical role in detection of misconduct or inappropriate behaviour, it is well established that most workers remain silent due to fear of being traced and faced with some sort of retaliation.

Instead of reporting, many workers develop an “ethical blindness” to protect themselves. The most common reason cited that deters workers from speaking out and sharing what they know is the ‘shoot the messenger’ phrase. In short, they are afraid to report.

This deficiency can be significantly enhanced by deploying the system in a considered way, with deliberate decisions being taken in relation to investigations, whether conducted by internal staff or by third-parties, such as the Western Australian Police Force, regulators, or the Piper Alderman team who are highly experienced legal advisors, investigators and workplace health and safety auditors.

4. Access to an anonymous and confidential ‘best practice’ two-way integrity reporting platform (**IRP**)

In order to avoid legislative non-compliance and provide a safer working environment, it is crucial that employers, workers, contractors and family members have access to an anonymous and confidential two-way integrity reporting platform.

Over the last two years Crime Stoppers WA (including significant input from Piper Alderman Partner, Shane Entriiken) has been developing and testing a new two-way integrity reporting platform for the public sector, private and not-for-profit organisations, which has resulted in the

Safe2Say Reporting Platform (Safe2Say). **Safe2Say** is a Crime Stoppers WA initiative with Ninja Software commissioned to develop the website and application.

Leveraging on the Crime Stoppers experience and expertise, **Safe2Say** has been developed to enhance organisational culture, reputation and employee well-being by providing a safe, external, trusted platform to report misconduct or inappropriate behaviour.

Piper Alderman has also successfully trialled **Safe2Say** and can confirm its anonymity and operational features.

We all know that it takes a great deal of courage for workers to share the information they may have regarding misconduct or inappropriate behaviour in an organisation.

Even though most workers have a high willingness to report misconduct and other workplace wrongdoing, for a number of reasons this willingness does not result in action. However, it has been well established that workers are more likely to share the information if they completely trust the reporting platform provided by their employer. While internal reporting platforms are the norm, workers are likely to prefer to use a trusted third-party provider, such as **Safe2Say**.

Experience has shown that if an internal reporting system is only provided; workers tell you what they think you want to hear. When an external reporting platform is used; workers will tell what you need to hear.

Safe2Say can be the basis for a 'best practice' integrity reporting system, or it can simply supplement what the company might already have in place.

The innovative two-way reporting platform allows:

- (a) Workers to anonymously report organisational misconduct or inappropriate behaviour with 100% confidence. That said, they can also provide their details if they wish;
- (b) The organisation, or their legal or other representative, to be first to get important information regarding workplace malpractice or inappropriate behaviour;
- (c) Allows the organisation to offer support and assistance to the worker making the report;
- (d) The organisation to ask for more information relating to the report while still maintaining the reporter's anonymity (or confidentiality if they choose to provide their details); and
- (e) The organisation to take appropriate action and respond to the reporter.

Safe2Say also provides a clear direction to workers that employers take matters of misconduct and integrity seriously, and wish to be compliant with whistle-blower legislation.

As **Safe2Say** is a Crime Stoppers WA not-for-profit initiative, any profits made from the annual and renewable platform licence fee paid by the employer to CSWA is returned to the community.

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We consider that the availability and use of **Safe2Say** will overcome any perceived concerns on anonymity of the whistle-blower, and provide a trusted reporting source using Crime Stoppers WA's intellectual property, and leading third party providers. This may extend to the Western Australian Police Force, regulators, or the Piper Alderman team who are highly experienced workplace legal advisors, investigators and workplace health and safety auditors.

5. Conclusion

We consider that the Inquiry should be made aware of the unique 'best practice' package being offered through Crime Stoppers WA, Ninja Software and commercial law firm Piper Alderman, comprising:

- (a) The guaranteed two-way anonymity integrity reporting platform provided by **Safe2Say**;
- (b) Set up, help desk and maintenance support by Ninja Software; and
- (c) The availability of specialist legal advice, implementation and investigation support from the Piper Alderman team.

The Inquiry should further note that:

- (a) As **Safe2Say** is a Crime Stoppers not-for-profit initiative, any profits from licence fees are returned to the community; and
- (b) **Safe2Say** can be applied for use throughout the community and other industry sectors.

We would be pleased to appear before the Inquiry in order that we can answer any questions and support our submission.

In the meantime, the Committee can refer to the following link to obtain a better understanding of the functionality of the **Safe2Say** platform (<https://youtu.be/L0E6riIMUGI>).

Yours sincerely

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