



Submission to the Australian Human Rights Commission

**National Inquiry into Sexual Harassment
in Australian Workplaces**

February 2019

Commercial in confidence

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 100 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.

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Executive Summary

Australia's resources and energy industry group, AMMA, provides the following submission to the Australian Human Rights Commission's (AHRC) Inquiry into Workplace Sexual Harassment (**Inquiry**). AMMA's submission relates to the following terms of reference:

- The current legal framework with respect to sexual harassment.
- Existing measures and good practice being undertaken by employers in preventing and responding to workplace sexual harassment, both domestically and internationally.
- Recommendations to address sexual harassment in Australian workplaces.

AMMA submits the following key recommendations to the Inquiry:

- 1) AMMA recommends that the AHRC examine ways in which the current laws relating to sexual harassment could be streamlined and made simpler and easier for employers and employees to understand and follow. This includes addressing the unnecessary duplication within the current laws.
- 2) To assist in changing the attitudes of Australians in relation to sexual harassment, the AHRC (and related government agencies) should consider implementing a suite of comprehensive educational materials/campaigns to instigate/prompt/create systematic cultural change.
- 3) That more support materials, campaigns by influential people and education resources be developed by the AHRC (or other government body/department) to support organisations to train their employees on sexual harassment. This could include (but is not limited to) online training modules on sexual harassment for organisations to provide to their employees at little to no cost.

In addition, AMMA is an association member of the Australian Chamber of Commerce and Industry (ACCI) and has reviewed and endorses its submission to this Inquiry. Particular recommendations AMMA wishes to reinforce include:

- 1) The need for the AHRC to invite further input on an Exposure Draft prior to the Inquiry's final report and associated recommendations.
- 2) The role of the Government to encourage and support further industry-driven initiatives as among the most effective and less intrusive strategies for addressing workplace sexual harassment.
- 3) The pursuit of a potential national "One-Stop Shop" for Sexual Harassment Complaints.
- 4) The need for the Inquiry to identify and resolve any jurisdictional ambiguity related to sexual harassment legislation.

AMMA is available to elaborate on any information to which the Inquiry seeks further detail.

1. Introduction

1. Australian Resources and Energy Group AMMA welcomes the opportunity to make this submission to the AHRC in relation to sexual harassment in the workplace.
2. The submission deals with and outlines AMMA's positions relating to the Inquiry, in particular the current legal framework, existing measures and good practice already undertaken by employers, and recommendations to address sexual harassment in Australian workplaces.
3. For the purposes of this submission, AMMA recognises the AHRC definition of sexual harassment:
 - Sexual harassment is any unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated and can take various forms.
 - Sexual harassment is not interaction, flirtation or friendship which is mutual or consensual.
 - Sexual harassment is a type of sex discrimination.¹
4. AMMA supports the Inquiry and believes it is important to address sexual harassment in Australian workplaces. While AMMA's general approach to regulatory matters is that minimal government intervention fosters the greatest productivity, competitiveness and growth, AMMA members recognise the work of the Sex Discrimination Commission as being critical to the workplace safety and human rights of all Australians. AMMA members are therefore proud to participate via this submission and welcome the opportunity to support the AHRC in its endeavours to reducing the prevalence and harm of sexual harassment in Australian workplaces.
5. AMMA recognises the many positive sexual harassment policies and procedures already implemented in many workplaces, including across the Australian resources and energy industries. While acknowledging many employers already have measures in place to tackle sexual harassment in the workplace, AMMA fully supports the Inquiry and its efforts to address this issue.
6. As such, AMMA welcomes the Inquiry making recommendations, in partnership and consultation with employers across the broader business community, to support best practice strategies that promote safe, discrimination-free and respectful workplaces.

¹ Australian Human Rights Commission - <https://www.humanrights.gov.au/publications/sexual-harassmentcode-practice-what-sexual-harassment>

2. Situational Analysis

7. To provide context to AMMA's response to the Inquiry's terms of reference, it is important to examine available data relating to gender diversity and sexual harassment in the resources and energy industry.

Gender Diversity in the Resources & Energy Industry

8. An important consideration for addressing sexual harassment in the workplace is that the resources and energy industry is one of the most male-dominated in Australia, with data from the Workplace Gender Equality Agency (WGEA) showing women comprise 16.7% of the workforce.²
9. Employers are increasingly aware of the benefits of increased female participation in their organisations and continue to develop leading programs, initiatives and incentives to attract more women to their workforces. While recognising significant efforts to increase female participation through a number of organisations and employers, including AMMA's initiative the Australian Women in Resources Alliance (AWRA), a significant amount of ongoing work is required to close the gender diversity gap.
10. In March 2018, AWRA released a comprehensive report into workplace gender diversity, *Gender Diversity in the Australian Resources Industry – Leading, Lagging or Losing Out?* 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 appropriate in the context of this submission.
11. 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 to provide a more diverse, inclusive workplace, which identifies sexual harassment in the workplace as a key focus area. While there are unique challenges in the resources and energy industry, many areas of activity and initiatives have been identified to foster the required cultural change.
12. AMMA acknowledges the Inquiry is intended to be non-gender specific, and that men are often also victims of sexual harassment in the workplace, however the influence of gender and gender equality to the prevalence of sexual harassment is incredibly important.

Sexual Harassment in the Resources & Energy Industry

13. Data on sexual harassment by specific industries is very limited, however insights can be gained from WGEA statistics for reporting companies. For example, in the 'Mining'³ industry 100% of organisations required to report to WGEA (those with over 100 employees) have a formal policy or formal strategy on sex-based harassment and discrimination prevention. This is greater than the 97.9% reported across all industries – noting this is also a strong figure.
14. Further, 97.9% of reporting "Mining" organisations include a grievance process in any sex-based harassment and discrimination prevention policy or strategy, compared with 97.4% across all industries. Lastly, 92.1% of reporting organisations in the mining industry provide

² Workplace Gender Equality Agency Data, 2017-2018.

³ Encompasses coal mining; oil and gas extraction; metal ore mining; non-metallic mineral mining and quarrying; and exploration and other mining support services.

training for all managers on sex-based harassment and discrimination prevention, compared with 86.2% across all industries.

15. Despite the clear strength in policies, procedures and training across “Mining” companies, statistics from the recent report *“Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces”*⁴ demonstrates these efforts are not yet achieving the required outcomes.
16. The report found the following:
 - 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.
 - In 83% of workplace sexual harassment instances in the mining industry over the past five years, one or more of the perpetrators was male compared with 79% across all industries.
 - 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 3.
 - 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 break or lunch room, however this is 48% in the mining industry.
 - In total, 40% of workplace sexual harassment across all industries was witnessed by someone else, however this was higher in mining at 48%.
 - When reporting sexual harassment, 17% of people across all industries made a formal complaint or report about the most recent incident of workplace sexual harassment in the past five years. However, in mining people were more likely to make a formal report or complain about sexual harassment (24%).
17. This data indicates 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.
18. 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. 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 national survey demonstrate that much more work needs to be done.

⁴ “Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces.” Australian Human Rights Commission, 2018.

3. Current Legal Framework

19. The current legal framework in Australia relating to sexual harassment comprises both state and federal legislation. AMMA submits that the current legal framework can be confusing to employers, particularly those who have employees across multiple sites in Australia, where state legislation differs across jurisdictions. While differing laws on a state-by-state basis can be confusing, there is currently sufficient legal framework to adequately deal with sexual harassment in the workplace in Australia.
20. AMMA submits that laws regarding sexual harassment should be made simpler, with less duplication and red tape allowing for both government and employers to instead look at initiatives to drive cultural and behavioural change, rather than heavy-handed compliance measures that have proven ineffective.
21. Further, while the laws are currently adequate it is clear that as a society Australia does not understand what constitutes acceptable behaviour in relation to sexual harassment. Recent reports on sexual assault and sexual harassment in Australian universities⁵ and street harassment of women⁶ demonstrate that sexual harassment permeates all aspects of life in Australia, not just in the workplace.
22. It is recommended this inquiry add value and assist employers by firstly understanding the cultural issues in Australia that impact people's attitudes towards sexual harassment which is then brought into the workplace. No amount of legal intervention of compliance framework will assist employers to abolish sexual harassment in their workplaces if the broader societal attitudes of Australians towards sexual harassment are not changed in the first place.

Recommendation 1 – AMMA recommends that the AHRC examine ways in which the current laws relating to sexual harassment could be streamlined and made simpler for employers and employees to understand and follow. This includes addressing the unnecessary duplication within the current laws.

Recommendation 2 –To assist in changing the attitudes of Australians in relation to sexual harassment, the government should consider implementing a suite of comprehensive educational materials/campaigns to instigate/prompt/create systematic cultural change.

23. Suggestions on how to best implement such widespread education could include education through all appropriate levels of schooling, using experiential and engaging lessons promoting the safety and wellbeing of children, teens and adults.
24. Key features from these campaigns could include highlighting the message of teaching children respectful boundaries for touch, play, health and safety. It could also include self-advocacy and positive consent skills, help-seeking skills, online safety and digital citizenship to build healthy relationships and protect personal sexual safety.

⁵ "Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities." Australian Human Rights Commission, 2017.

⁶ "Sexism in the City: Young women speak up about street harassment in Sydney." Plan International, May 2018.

5. Existing measures and good practice

25. 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.
26. Many employers allow employees to disclose issues anonymously to promote reporting the matter without fear of retribution. Further, some organisations have dedicated reporting hotlines specifically for this purpose.
27. 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.
28. In order to mitigate risk of sexual harassment arising from this unique environment, a number of organisations have undertaken safety audits through surveys that are completed anonymously by employees. The survey asks if employees feel safe in certain areas, evoking answers about issues such as whether lighting is adequate and other safety-related issues. 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.
29. Additionally, many other organisations undertake significant training to educate and raise awareness amongst employees of sexual harassment. An 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.
30. Some organisations report employees undertake a comprehensive Equal Employment Opportunity (EEO) training module every two years. Many employers note the success of this approach, with no reported cases of sexual harassment since its implementation. Other organisations similarly conduct Code of Conduct training on a yearly or quarterly basis, outlining procedures within the organisation designed to prevent sexual harassment.
31. The majority of these are easily implemented however some organisations do not have the resources (financial/internal capability) available to do this.

Recommendation 3 – That more support materials, campaigns by influential people and education resources, be developed by the AHRC (or other government body/department) to support organisations in training their employees on sexual harassment. This could include (but not limited to) online training modules on sexual harassment that can be provided to organisations to provide to their employees at little to no cost.

6. Alignment to Broader Business Community

32. AMMA is an association member of the Australian Chamber of Commerce and Industry (ACCI) and has reviewed and endorses its submission to this Inquiry. Specific recommendations from ACCI's submission that align to the views of AMMA members include:
- a) The need for the AHRC to invite further input on an Exposure Draft prior to the Inquiry's final report and associated recommendations. This would include proposed conclusions and recommendations with further input from the business community prior to delivering a final report.
 - b) The role of the Government to support industry bodies to develop and implement industry-driven codes of practice in order to address sexual harassment at work in more workplaces, particularly small business lacking capacity to do so on a stand-alone basis.
 - c) The pursuit of a potential national "One-Stop Shop" for Sexual Harassment Complaints. Whereby the responsibilities of the Sex Discrimination Commissioner and State and Territory anti-discrimination bodies for the conciliation of claims of sexual harassment into a single conciliation body. This could be undertaken by an expanded Fair Work Commission.
 - d) The need for the Inquiry to identify and resolve any jurisdictional ambiguity related to sexual harassment legislation. To ensure widespread positive response and take-up of its outcomes.
33. AMMA recommends that all findings and recommendations from the Inquiry should be made available for the feedback and consultation of the broader business community, through representative groups including AMMA and ACCI, prior to being publicly released.

7. Conclusion

34. AMMA appreciates the opportunity to make this submission to the Australian Human Rights Commission. AMMA and its members believe that this Inquiry, if conducted with a collaborative and consultative approach, can provide the tools and support required to achieve real and lasting change in relation to sexual harassment in Australia.