



DRAFT CODE OF PRACTICE

Psychosocial hazards at work for fly-in fly-out (FIFO) workers in the resources and construction sectors

Public consultation

In response to the 'Enough is Enough' inquiry into sexual harassment against women in the FIFO mining industry, it was agreed that the *Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors* would be reviewed to assist with the integration of sexual harassment into work health and safety (WHS) practices.

The draft code of practice, *Psychosocial hazards at work for fly-in fly-out workers in the resources and construction sectors* has been developed by the Work Health and Safety Commission and the Mining and Petroleum Advisory Committee.

The draft code is intended to provide guidance on the application of a risk management process to avoid or minimise the harm from psychosocial hazards and risk factors. It contains material adapted from the *Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors* code and incorporates changes in practices brought about by the adoption of the WHS legislation.

The code should be used by people who have duties to manage exposure to psychosocial hazards and risk factors in the resources and construction sectors. It is intended to apply to workplaces in Western Australia utilising fly-in fly-out, drive-in drive-out and bus-in bus-out work arrangements that are covered by the WHS legislation.

The WHS Act provides for the approval, variation, and revocation of codes of practice by the Minister. Under section 275 of the WHS Act, the Minister may only approve a code of practice if it was developed by a process that involves consultation between the unions and employer organisations.

The Work Health and Safety Commission and the Mining and Petroleum Advisory Committee are inviting public submissions on the draft code of practice.

A draft code of practice *Managing health and safety in employer-provided accommodation* is currently being developed to supplement this code.

Submissions close: 5.00 pm WST, 24 October 2024.

Please use this cover sheet and feedback template to submit your comments to safetycomms@demirs.wa.gov.au

Section 1: Submission details

Full name:	Imogen Tatam
Organisation and position (if applicable):	Circle Green Community Legal, Senior Lawyer (Law Reform) - Workplace
Email:	imogen.tatam@circlegreen.org.au
Telephone:	(08) 6148 3660

Internet publication

Public submissions may be published in full on the website, including any personal information of authors and/or other third parties **contained in the submission.**

Please tick this box if you wish for your input to remain confidential (that is, you **do not consent** to having your input published on the internet)

Anonymity

Please tick this box if you wish for your input to be treated as anonymous (that is, you **do not consent** to having your name, or the name of your organisation, published on the internet with your input)

Third party personal information

Please tick this box **if your input contains personal information of third party individuals**, and strike out the statement that is not applicable in the following sentence:

The third party **consents** ~~/ does not consent~~ to the publication of their information.

Section 2: Feedback

1. General comment

About Circle Green

1. Circle Green Community Legal (**Circle Green**) is a community legal centre in WA providing state-wide specialist legal services in the areas of workplace, tenancy, humanitarian, and family and domestic violence to the WA community. Our services are aimed at assisting people who are marginalised and face disadvantage in gaining access to justice. More information about Circle Green's services can be found on our website: <https://circlegreen.org.au/>.
2. Circle Green is the only community legal centre in WA with a specialist workplace law practice that provides state-wide services to marginalised and disadvantaged non-unionised WA workers. Our workplace law services include legal advice, casework, representation, information, referrals and education on state and national workplace law, including workplace discrimination and harassment. This means Circle Green has expertise in providing legal assistance to WA workers targeted by discrimination and harassment in connection with their work.
3. Circle Green is the lead agency delivering the Workplace Respect Project in Western Australia as part of the Commonwealth Government's response to the Respect@Work Report, which identified the prevention of and response to workplace sexual harassment as an urgent priority due to the widespread and pervasive nature of its occurrence in Australian workplaces. The Workplace Respect Project seeks to address workplace sexual harassment by working across the spectrum of prevention, as well as providing confidential free legal advice to people who've been targeted by workplace sexual harassment and discrimination.
4. Circle Green also delivers the Mining Industry Respect Infoline, a State Government response to the Parliamentary inquiry into sexual harassment in the FIFO mining industry. The Mining Industry Respect Infoline provides information services to people working in the mining industry or a WA mine site, who've witnessed or been targeted by sexual harassment, sex-based harassment, or sex discrimination.

Focus of this submission

5. We recognise and commend the Department of Energy, Mines, Industry Regulation and Safety (**DMIRS**) and WorkSafe Western Australia (**WorkSafe WA**) for their ongoing work in addressing the issue of psychosocial hazards at work, particularly following the publication of:
 - a. the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report (**Respect@Work report**) which, amongst other things, highlighted the need to recognise that psychosocial risks are clearly a work health and safety (**WHS**) issue, and that WHS schemes have historically only focused on physical harms; and
 - b. the *'Enough is Enough' Sexual harassment against women in the FIFO mining industry* report (**Enough is Enough report**) which exposed the alarming prevalence of workplace sexual harassment in the fly-in fly-out (**FIFO**) mining industry in WA.
6. We also thank DMIRS and WorkSafe WA for the opportunity to provide feedback on the draft code of practice: *Psychosocial hazards at work for fly-in fly-out workers in the resources and construction sectors* (**Draft Code**).
7. Our feedback will focus on the importance of specifically and adequately addressing workplace sexual harassment in the Draft Code. As we do not deliver services relating to

work health and safety laws, we will not comment on operational detail or propose specific wording.

Issues

Inadequate focus on workplace sexual harassment

8. Whilst we are pleased to see that workplace sexual harassment is explicitly acknowledged as a psychosocial hazard in the Draft Code, in our view it is not adequately addressed as a specific psychosocial hazard in FIFO workplaces.
9. Both the Respect@Work report and the Enough is Enough report made it clear that the FIFO industry embodies most, if not all, the risk factors that enable or promote sexual harassment in the workplace. Some key factors identified in the *Respect@Work* report include poor culture, gender inequality, isolation, job security, and power disparities. Further, the *Enough is Enough Report* made it clear that workplace sexual harassment is alarmingly prevalent in the FIFO mining industry in Western Australia.
10. For a code of practice that provides guidance on risk management processes to avoid or minimise the harm from psychosocial hazards in the FIFO industry in Western Australia, it is not sufficient that the term “sexual harassment” is only used seven times in the 51-page Draft Code (mostly only in a list of examples of psychosocial hazards). Further section 2.4 is dedicated to the characteristics of FIFO work arrangements and how they increase the risk of suicide, without a single mention of workplace sexual harassment.
11. We understand that sexual harassment is currently not defined in the *Work Health and Safety Act 2020 (WA) (WHS Act)*, and regulations. Nonetheless, workplace sexual harassment is unlawful under State¹ and Federal legislation², and organisations and businesses have a positive duty to eliminate, as far as possible, unlawful behaviour including discrimination, sexual harassment and sex-based harassment in connection with work.³
12. Further, the following recommendations specifically target the WHS framework:
 - a. Recommendation 35 of the Respect@Work report: *WHS ministers agree to amend the model WHS Regulation to deal with psychological health, as recommended by the Boland Review, and develop guidelines on sexual harassment with a view to informing the development of a Code of Practice on sexual harassment. Sexual harassment should be defined in accordance with the Sex Discrimination Act.*
 - b. Recommendation 23 of the Enough is Enough report:

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.***

¹ *Equal Opportunity Act 1984 (WA).*

² *Sex Discrimination Act 1984 (Cth); Fair Work Act 2009 (Cth).*

³ *Sex Discrimination Act 1984 (Cth) s47C.*

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 (emphasis added).

13. In the Government Response to the Enough is Enough report, the Government supported Recommendation 23 and explicitly stated that it recognises sexual harassment as a WHS issue.⁴ The current Draft Code does not reflect the Government's support for Recommendation 23 as it does not provide a clear guide to what constitutes sexual harassment and gender harassment, does not provide guidelines for dealing with identified incidents specific to workplace sexual harassment, and does not provide definitions of thresholds for various types of identified behaviours and incidents of workplace sexual harassment.
14. In line with Recommendation 23 of the Enough is Enough report, we recommend that the Draft Code includes a separate section (akin to section 2.4) that specifically addresses workplace sexual harassment as a psychosocial hazard. We recommend that this new section:
 - a. Emphasises that workplace sexual harassment is a work health and safety issue and should be taken seriously at all levels within the workplace.
 - b. Highlights the prevalence of workplace sexual harassment in the resources and construction sectors, drawing on evidence from the *Respect@Work* report and the *Enough is Enough* report, and emphasize how the characteristics of FIFO work arrangements increases the risk of sexual harassment.
 - c. Refers to the SD Act definition of workplace sexual harassment and explains that:
 - i. workplace sexual harassment includes a range of behaviours;
 - ii. workplace sexual harassment can be one-off, or several incidents involving one or multiple harassers;
 - iii. harassers can include managers, co-workers, customers, or clients; and
 - iv. workplace sexual harassment is not limited to a physical workplace.
 - d. Provides examples of workplace sexual harassment, such as:
 - i. staring or leering;
 - ii. sharing sexual images, emails, or text messages;
 - iii. making sexually suggestive, offensive comments, and "jokes";
 - iv. repeated requests for dates or sex;
 - v. asking personal questions about a person's sex life or body; and/or
 - vi. unwelcome touching, hugging, or kissing.
 - e. A single incident of workplace sexual harassment is still unlawful and actionable under State and Federal legislation. Even one isolated one incident of workplace sexual harassment must be considered as a WHS issue and taken seriously. It is not appropriate to indiscriminately treat such cases as a human resources issue to be resolved internally between the individuals involved.

Lack of focus on proactive measures to prevent workplace sexual harassment

15. The Draft Code takes a largely reactive approach to psychosocial hazards in the workplace, focusing on addressing incidents after they occur rather than on how to prevent them happening in the first place. A code of practice that is intended to provide guidance on the application of a risk management process to avoid or minimise the harm from psychosocial hazards and risk factors should take a proactive, not a reactive, approach.

⁴ Western Australian Government response to the Community Development and Justice Standing Committee Report 2: *'Enough is Enough' Sexual harassment against women in the FIFO mining industry* (September 2022), p 14.

16. This reactive approach is particularly problematic where there are statutory frameworks – both the WHS framework and the anti-discrimination law framework – that impose positive duties on employers to prevent psychosocial hazards (WHS Act) and eliminate sexual harassment in the workplace (SD Act).
17. A reactive code of practice that does not promote preventative measures is unlikely to contribute meaningful change in the workplace culture of FIFO worksites in the resources and construction sectors. The *Respect@Work* report emphasized the importance of proactive measures, such as mandatory training, to prevent sexual harassment and foster a culture of respect and safety. The Draft Code should adopt a more proactive stance by requiring workplaces to implement prevention-focused strategies that address the root causes of sexual harassment.
18. For example, section 2 of the Draft Code discusses leadership involvement and responsibilities in fostering a positive workplace culture that is free of psychosocial hazards. This is consistent with the recommendations of the *Respect@Work* report. However, while the Code encourages leadership to play an active role in addressing harassment, it does not provide specific guidance on how to tackle the entrenched cultural issues that contribute to sexual harassment in male-dominated industries like resources and construction sectors.
19. The *Respect@Work* report emphasised the need for leadership to take a proactive approach to preventing harassment by setting clear expectations for behaviour, holding perpetrators accountable, and creating an environment where workers feel safe to report harassment without fear of retaliation. The Draft Code should incorporate more detailed recommendations for leadership on how to address the specific cultural and power dynamics that contribute to sexual harassment in FIFO workplaces.

Reporting and support guidelines, and trauma-informed incident management

20. The Draft Code mentions the importance of reporting systems and the need to address inappropriate behaviour early. However, the discussions around reporting and incident management are too general. It must be recognised that workplace sexual harassment and other psychosocial hazards require reporting and support systems that are specific to the nature of the conduct and not relying on traditional systems tailored around physical WHS hazards.
21. The *Respect@Work* report and the *Enough is Enough* report both highlighted the importance of having robust and accessible reporting systems in place, particularly in remote FIFO work environments where workers may feel isolated and cut off from their usual support networks.⁵ The *Enough is Enough* report found that many workers in the mining industry did not trust their employers' internal reporting systems and were reluctant to report harassment due to fear of retaliation or not being taken seriously.⁶
22. Section 5.1 of the Draft Code is itself generally inconsistent with the approach that should be taken for incidents of workplace sexual harassment. The section notes that “[f]or example, a suitable response to a single low-level instance of inappropriate behaviour (e.g. a one-off negative comment or joke about another’s work performance in front of others) may be addressed through immediate informal discussions with the workers involved...”. If a single low-level instance of inappropriate behaviour fits the definition of workplace sexual harassment, this approach is neither suitable nor appropriate. A complaint of workplace

⁵ *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, Community Guide* (February 2020), p. 21 and *Community Development and Justice Standing Committee Report 2: ‘Enough is Enough’ Sexual harassment against women in the FIFO mining industry* (June 2022), p. 88.

⁶ *Community Development and Justice Standing Committee Report 2: ‘Enough is Enough’ Sexual harassment against women in the FIFO mining industry* (June 2022), p. 63

sexual harassment, in any form, should be taken seriously and a formal investigation should be undertaken in a fair and timely manner so that the incident does not occur again.

23. Workplace sexual harassment can also be, and often is, a pattern of conduct that escalates over time. It is crucial that even “low-level” instances of inappropriate behaviour are addressed and investigated when reported, to prevent the conduct from happening again, continuing or escalating.
24. Further, the Draft Code does not adequately address the importance of trauma-informed approaches to managing reports of workplace sexual harassment. Section 5.3 starts with the sentence ‘[w]hile work health and safety investigations are not focused on individual action...’. Reports and investigations into workplace sexual harassment should always be focused on the individual action for the reasons outlined above.
25. Through our work, we see that our clients have similar experiences to those described in the *Enough is Enough* report. These highlight the absolutely crucial importance that the Code guide appropriate responses to reports of WSH.
26. We have seen cases where superintendents or managers on site try to address reports of workplace sexual harassment by requiring the parties to attend a meeting together to resolve the issue. This is inappropriate, as someone who has been targeted by workplace sexual harassment generally does not want to face the perpetrator of the conduct. Requiring a worker to face their perpetrator of workplace sexual harassment may be a psychosocial hazard in itself and should be noted in the Draft Code.
27. We also often see persons targeted by workplace sexual harassment relocated to another site after making a complaint (without an investigation into the incident) whilst the perpetrator remains on the same site without being relocated, or persons required to take unpaid leave during or even after an investigation. This is another inappropriate response to a complaint, as it isolates and unsettles a worker who has done no wrong, at an already vulnerable time. Meanwhile, the perpetrator is allowed to continue their working life without consequence. If the Code were to guide managers as to what would constitute an appropriate response to a WSH complaint, such inappropriate situations could be avoided.
28. We recommend that:
 - a. Section 5.1 include definitions and specific guidance around the various types of identified behaviour/incidents, specifically focusing on workplace sexual harassment and sex-based harassment, in line with Recommendation 23 of the *Enough is Enough* report; and
 - b. Section 5.3 include a more substantive discussion of trauma-informed approaches to managing reports of workplace sexual harassment with reference to the discussions in section 6 of the *Respect@Work* report (preventing and responding to sexual harassment in the workplace).

Vulnerable workers: failure to address power imbalances as a major driver of sexual harassment

29. The Draft Code does not provide sufficient strategies and guidelines for addressing the risks posed by power imbalances between senior workers and more vulnerable workers, such as young workers, women, Aboriginal and Torres Strait Islander (**ATSI**) workers, gender-diverse workers, culturally and linguistically diverse (**CaLD**) workers, and workers with a disability. This is particularly problematic given the findings of the *Enough is Enough* report which highlighted that sexual harassment in the mining industry often involves the abuse of power by supervisors or managers. To address this, we recommend that the Draft Code include the following:
 - a. Recognition of power imbalances as a risk factor for workplace sexual harassment, drawing on evidence from the *Respect@Work* report and *Enough is Enough* report, and specifically identifying groups of vulnerable workers (e.g. young workers,

women and gender-diverse workers, ATSI workers, CaLD workers, workers with a disability).

- b. Guidance on how organisations can mitigate the risks posed by power imbalances, such as implementing policies that protect vulnerable workers, providing training for managers on how to recognise and address power dynamics, and ensuring that workers have access to safe, confidential and anonymous reporting options.
 - c. Address the intersectional nature of sexual harassment, which often co-occurs with other forms of discrimination such as racial or sex-based harassment. The *Respect@Work* report and the *Enough is Enough* report both emphasised that women from marginalised groups, such as Aboriginal women or LGBTQIA+ individuals, are at increased risk of harassment and often face additional barriers to reporting. The Draft Code should incorporate more comprehensive strategies for addressing the unique vulnerabilities faced by these groups, including targeted training and support systems that consider the intersectional nature of harassment.
30. Thank you for considering our submission. We would be very pleased to discuss any aspect further. Please contact Imogen Tatam, Senior Lawyer (Law Reform) – Workplace, at workplace@circlegreen.org.au or (08) 6148 3660 to do so.
31. We wish to acknowledge the contributions of the following Circle Green team members in preparing this submission:
- a. Vanessa Wakasiaka - Volunteer – Workplace;
 - b. Fiona Yokohata – Lawyer – Workplace;
 - c. Imogen Tatam – Senior Lawyer (Law Reform) – Workplace; and
 - d. Elisha Butt – Principal Lawyer – Workplace.