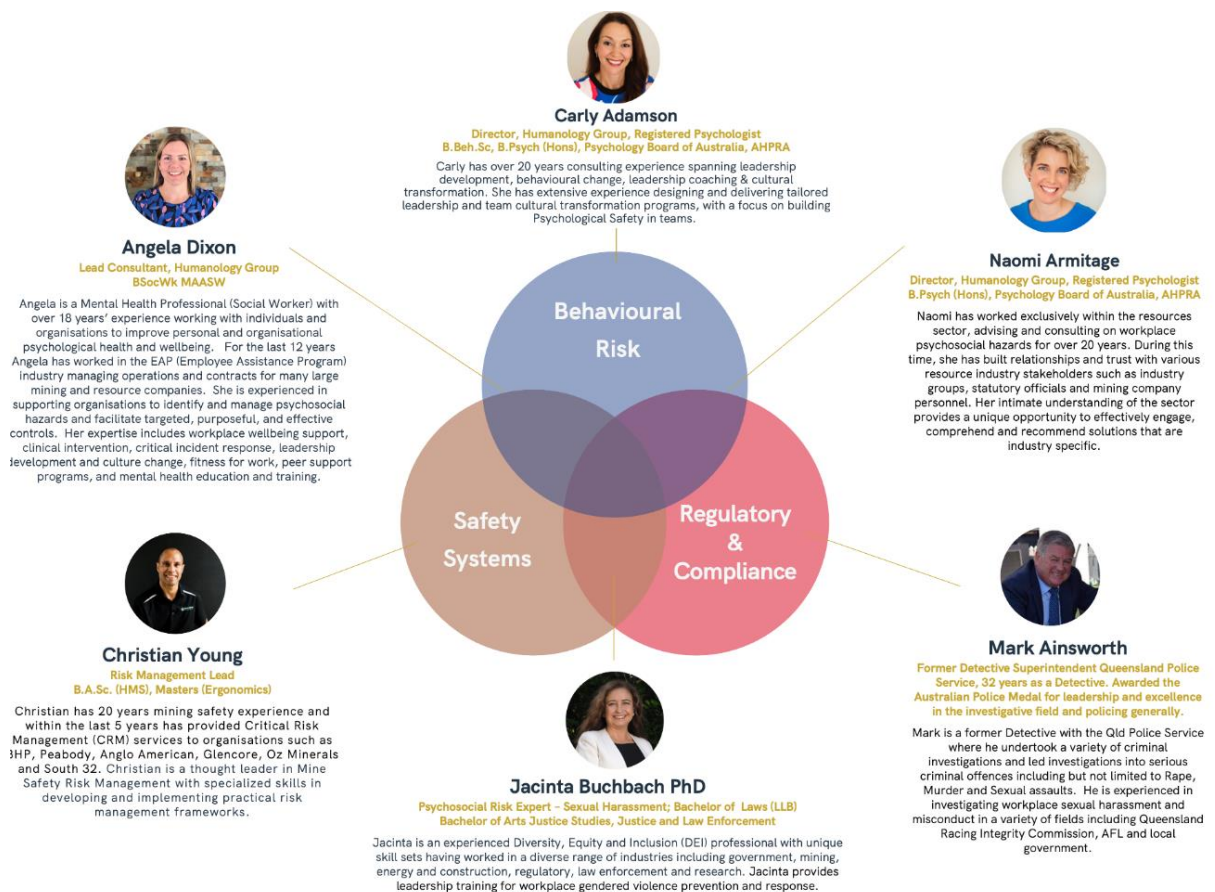


About Us

Stakeholder Background

We have established an expert team to assist the mining and resources industry in the management of psychosocial hazards, including harassment and sexual harassment. Our team comprises a diverse group of experienced professionals from various disciplines, including mining, law, psychology, risk management, compliance and investigations. The team’s collective expertise enables a comprehensive and holistic approach to addressing the very complex psychosocial hazard of sexual harassment and sexual assault within the industry based on the three key pillars of Behavioural Risk, Safety Systems and Regulatory and Compliance (Refer **Figure 1**).

Figure 1



Our Stakeholder Feedback to Proposed Psychosocial Hazard Reforms

1. Do you support the proposed option of clarifying obligations to manage psychosocial hazards?

- Yes. Legislation and supporting regulation are required to clarify operators' obligations as it is vital in ensuring psychosocial hazards are addressed appropriately and professionally.

2. Which part of the proposed option do you support and why?

- Extending the Queensland resources safety and health legislation, and their supporting regulations, has the potential to clearly articulate an operators' general duty to protect the safety and health (inclusive of psychosocial hazards) of persons at their site, as well as persons who may be affected by their operations and/or operating plant
- Defining health as both physical and psychological
- Providing a regulation-making power to further define how to manage psychosocial risks arising from psychosocial hazards and respond to complaints or incidents
 - Regulation is necessary to articulate the resources industry duty to appropriately manage the risks of psychosocial hazards which closely aligns with the WHS framework
 - Regulation is necessary to clarify reporting obligations for incidents relating to psychosocial hazards and psychological injuries

3. Which part of the proposed option do you not support and why?

- Nil

4. If you do not support the proposed option, is there an alternate option which you do support?

- Nil

5. Within the proposed option, do you support reporting obligations for incidents relating to psychosocial hazards and psychological injuries?

- Yes. Regulatory oversight is necessary to ensure the resources sector compliance aligns closely with WHS positive obligations to prevent and respond to psychosocial hazards. Reporting obligations need to be supported by appropriate policy and procedures.

6. Do you have any other feedback or comments about the proposed option?

- Yes. We confirm we agree with Option 1 in amending the relevant Queensland resources Acts and supporting Regulations in managing psychosocial hazards.

As a collective team with expertise in psychosocial hazards, risk assessment, best practice frameworks, respectful workplace behaviours and sexual harassment/assault investigations, we have formed the view

that harassment, including sexual harassment, should be carved out of the psychosocial hazards with a **Guideline**.

In addition to the regulatory amendments to the resource's safety and health legislation, a further harassment, including sexual harassment Guideline is suggested due to the complexity of these kinds of behaviours and the extra level of further scrutiny by virtue of:

- a. Recent Sex Discrimination amendments compliance in further positive obligations commencing December 2024;
- b. Workplace Gender Equality Agency (WGEA) mandatory company reporting around sexual harassment/sexual assault metrics in 2024;
- c. Wide ranging inquiry powers of the Australian Human Rights Commission with regulatory oversight to inquire into systemic cultural issues, public reporting and enforcement undertakings
- d. Investment Funds investment and insights around managing sexual harassment in the mining sector

Our suggestion for a further Guideline for the psychosocial hazard of sexual harassment has two bases:

- a. Extension of the scope of Harassment, including sexual harassment
- b. Widening the WHS framework to include the Respect@Work Best Practice sexual harassment, sex-based harassment framework

Extension of the scope of the Harassment, including sexual harassment

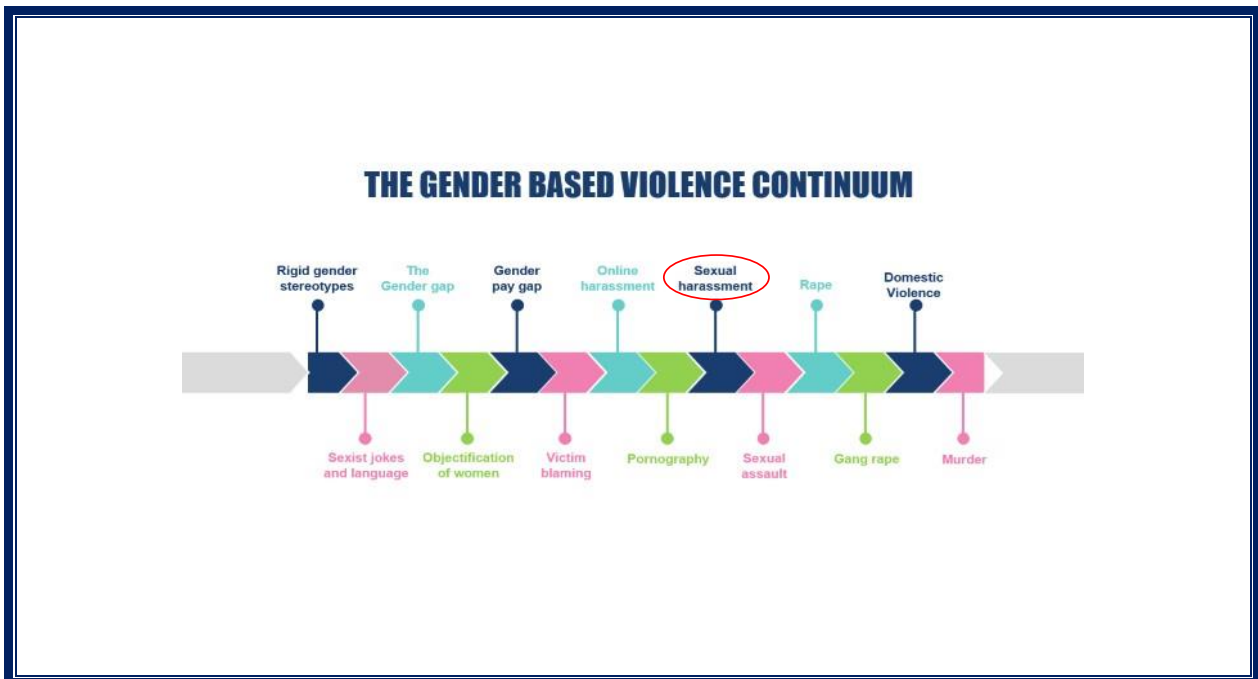
We believe the psychosocial hazard of harassment, including sexual harassment be expanded to capture sex-based harassment ('gender-based' in nature), sexual harassment ('sexual' in nature) and sexual assault.

We note the Western Australia Department of Mines, Industry Regulation and Safety (DIMRS) falls under WA WorkSafe legislation and adopts a broad interpretation of sexual harassment and sexual assault as work-related Gendered Violence. *'Gendered Violence at work is any behaviour directed at a person or that affects a person because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety. Work-related gendered violence can include incidents of sexual assault.'*

We believe it is important to highlight that a narrow framing of harassment, including sexual harassment, may risk missing an important opportunity to fully address the wider issue of gender-based violence and sex discrimination behaviours which is now reflected in Federal and State positive obligations at law.

Whilst sexual harassment and sexual assaults are 'sexual' in nature and sit on the gender-based violence continuum (See **Figure 2** in each of their various forms), there are other sex-based harassment behaviours which are not potentially 'sexual' in nature but are related to a person's gender or sex.

Figure 2



To capture harassment that is not 'sexual' in nature, a new provision exists in the Federal *Sex Discrimination Act 1984* (Cth) s28AA **Harassment on the ground of sex by reason of:**

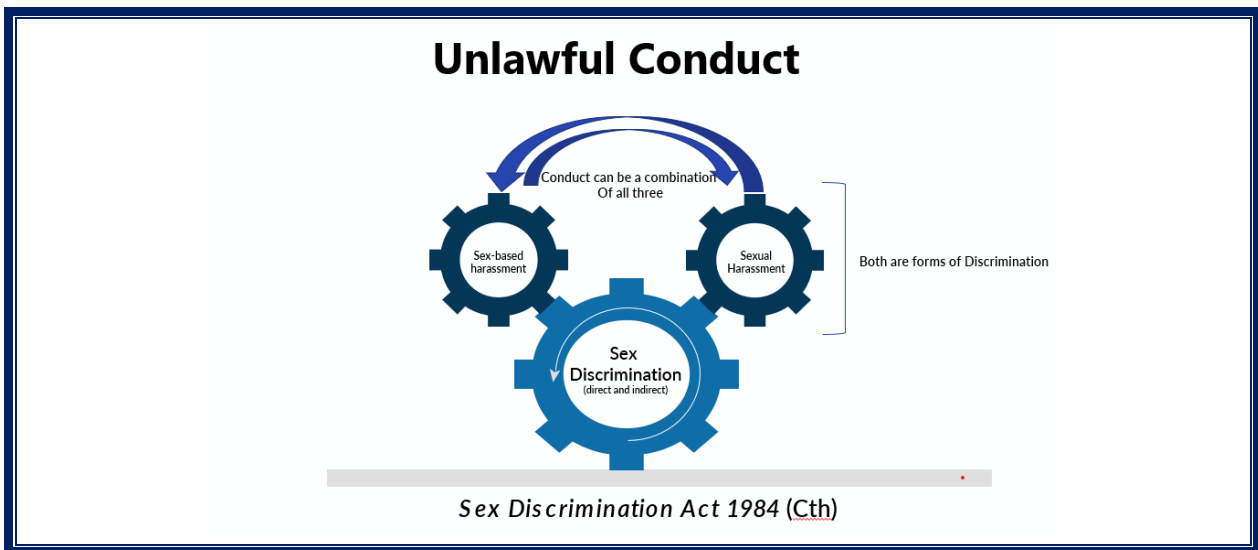
the sex of the person harassed;

or a characteristic that appertains generally to persons of the sex of the person harassed;

or a characteristic that is generally imputed of the sex of the person harassed.

Put simply, there are essentially two provisions of gendered harassment under Federal Sex Discrimination law – **sexual harassment and sex-based harassment which are both forms of sex discrimination** (See **Figure 3**). The complexity lies in the fact that sexual harassment behaviour can be sex-based harassment and vice versa. There may be an overlap between sex discrimination, sexual harassment, and sex-based harassment as the reason for the harassing conduct may be a combination of someone's sex characteristics or they may not be easily distinguishable from one another. One subtle nuance is that sex-based harassment is 'gender based' and can be repetitive behaviour, where sexual harassment is 'sexual in nature' and only needs one instance to occur to make a report to any of the regulators.

Figure 3



Why does this matter?

Health and Safety Legislative Framework

In the health and safety legislative stream, Safe Work Model guidelines and individual State and Territory Work Health and Safety or Occupational Health and Safety Acts places positive obligations on employers to prevent and respond to sexual harassment (along with bullying, aggression, conflict and others) as a psychosocial hazard that requires a risk assessment process.

Anti-Discrimination Legislative Framework

By contrast, In the anti-discrimination legislative stream, the *Sex Discrimination Act 1984* (Cth) extends a wider positive duty for employers to eliminate, as far as is reasonably practicable, by implementing reasonable and proportionate measures with respect to behaviours that extend beyond behaviour that is 'sexual' in nature in sexual harassment to further include:

- a. sexual harassment **and sex-based harassment**
- b. victimisation and retaliation
- c. prevent a hostile work environment

We note the Queensland Anti-Discrimination legislation is currently under review. Given the proposed substantial reforms to the Queensland *Anti-Discrimination Act 1991* (Qld) in 2024, the amendments will likely follow the Federal Sex Discrimination legislative framework for a positive duty to take reasonable and proportionate measures to eliminate **discrimination and sexual harassment for Respect@Work**. This positive duty for employers aligns with other state jurisdictions. What this means is the positive duty to eliminate under Queensland anti-discrimination law will align with the positive duty under the Federal law but be extended to include sex discrimination, not just sexual harassment as one form of sex discrimination.

With reference to the Gender-Based Violence Continuum graphic (See **Figure 2**), some of these sex-based harassment behaviours are captured on the continuum as rigid gender stereotypes, sexist jokes and language, objectification of women, victim blaming, online harassment, pornography which are potentially violence supportive behaviours underpinning sexual harassment, sexual assaults, rape, murder.

The premise in addressing gender-based violence in this way is twofold:

- Sexual harassment and sexual assault are often interconnected with other forms of gender-based violence such as discriminatory practices. Failing to address these interconnected issues may result in incomplete or fragmented guidelines that overlook important factors contributing to the overall problem. By extending the scope to include gender-based violence behaviour, guidelines can capture the interplay between different forms of violence and provide a more holistic approach.
- Gender-based violence affects individuals across various intersections of identity including race, ethnicity, sexual orientation, disability and more. By considering gender-based violence behaviours, guidelines can account for the unique experiences and challenges faced by individuals at these intersections. This intersectional lens ensures that guidelines are inclusive and responsive to the diverse needs and experiences of all individuals that represent the mining and resources sector.

With recent Federal Sex Discrimination positive duties to prevent and respond to sexual harassment and the new provision of sex-based (gendered) harassment, coupled with the impending amendments to the Queensland Anti-Discrimination positive duties likely to follow and capture all sex-based behaviours, we believe it is material to inform you of these developments at this early stage of guideline discovery and development.

Given these developments, we believe there are three distinct behaviours that ought to be considered to inform a guideline:

- sexual harassment ('sexual' in nature);
- sexual assault as a criminal offence with different pathways of reporting and investigation ('sexual' in nature);
- sex-based harassment ('gender-based' which includes the behaviours shown on the Gender Based Violence Continuum)

Adopting this approach will align more closely with WA DMIRS wider framing of Gendered Violence which is all inclusive of sexual harassment, sex-based harassment and sexual assault.

Widening the WHS framework to include the Respect@Work Best Practice sexual harassment, sex-based harassment framework

The recommendations from the *Respect@Work Report 2020* included a National Framework for the Prevention and Response to Sexual Harassment and Sex-Based Harassment in Australian workplaces which takes a sharp focus on Culture, Leadership and Knowledge as the three key areas that can help prevent and respond to these behaviours.

A WHS risk assessment process to managing sexual harassment takes a more health focus that identifies what could cause harm (physical and psychological) to individuals and appropriate controls are identified to reduce the likelihood, frequency and severity of the hazard.

A National Respect@Work Best Practice to managing sexual harassment and sex-based harassment adopts a more systemic cultural approach. The systemic cultural approach to preventing and responding to sexual harassment focusses on the broader culture of the organisation.

We believe **both** approaches are important in preventing and responding to sexual harassment and sex-based harassment. We suggest the mining and resources sector consider a Guideline that incorporates the use of a health **and** cultural lens to help operators create workplaces where sexual harassment is not tolerated. (Refer **Figure 4** the National Best Practice and WHS Risk Assessment Process below and **Table 1** key differences)

Figure 4

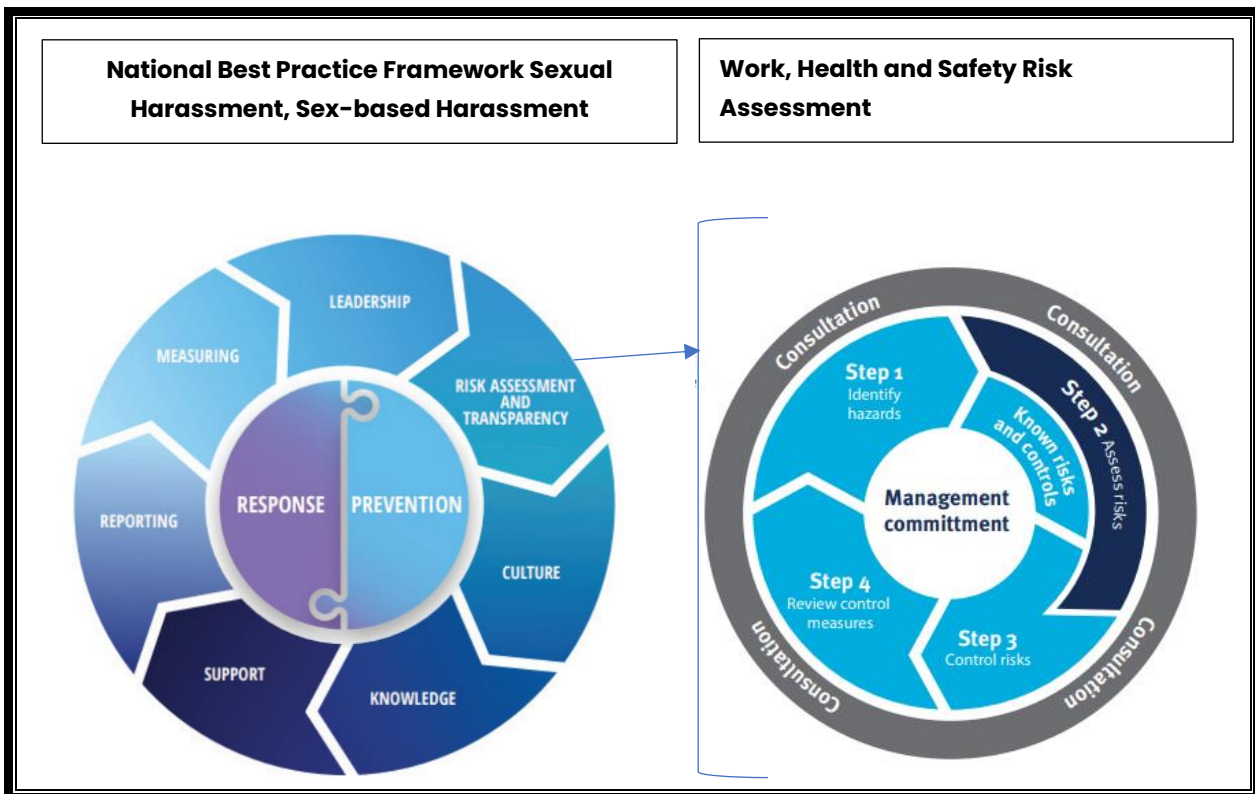


Table 1: Key Differences in Both a WHS Health Approach and Cultural Approach

WHS Risk Assessment Process	Respect@Work Cultural Approach
Focuses on the physical and psychological health of the individual	Focuses on the broader culture of the organisation
Identifies and evaluates hazards that could cause harm to the health of the individual	Identifies and addresses attitudes, beliefs, power dynamics and complaint handling procedures that contribute to sexual harassment, sex-based harassment
Puts in place controls to reduce the likelihood, frequency and severity of the hazards	Creates a culture of respect and inclusion where sexual harassment is not tolerated
Positive Duty to eliminate the behaviour as far as reasonably practicable	Positive Duty to eliminate behaviour by taking reasonable and proportionate measures AND Positive Duty taking a deep focus on culture to prevent a hostile work environment, victimisation

The Benefits to Industry

Widening the scope and framework of a standalone Guideline for sexual harassment and sex-based harassment, as outlined above, will also assist organisations take a broader cohesive cultural approach to addressing workplace behaviours. Many of the broader cultural interventions to reduce harassment in the workplace also apply to sexual harassment and sex-based harassment as evident in research undertaken in other high risk work environments.¹ We are committed to helping the industry implement best practices to create physical and psychologically safe and respectful workplaces.

We would welcome further discussion around this very complex psychosocial hazard.

¹ Westbrook J, Sunderland N, Ling L et al., The Prevalence and Impact of Unprofessional behaviour among hospital workers: a survey in seven Australian Hospitals, *Medical Journal of Australia* 214(1) 2021 <https://onlinelibrary.wiley.com/doi/full/10.5694/mja2.50849> (viewed 13 July 2023).