

August 6, 2021

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██████████ Community Development and Justice Standing Committee
Parliament of Western Australia
(Submitted via the Committee Secretariat through the Parliament of Western Australia web site.)

Dear ██████████

RE: Inquiry into sexual harassment against women in the FIFO mining industry by the Parliament of Western Australia's Community Development Justice Standing Committee.

The Australian Petroleum Production & Exploration Association (APPEA) appreciates the opportunity to provide a submission to the Parliament of Western Australia's inquiry into sexual harassment against women in the FIFO mining industry (Inquiry), and to provide our feedback to the Community Development and Justice Standing Committee (Committee) that will consider and report on this important issue.

APPEA is the peak national body representing upstream oil and gas explorers and producers with interests in Australia. APPEA's member companies account for more than 95 per cent of Australia's petroleum production, the majority of which is produced from facilities located in Western Australia (WA). The oil and gas industry in WA is a major contributor to the state and national economies creating jobs and business opportunities whilst providing oil and gas to domestic and international consumers. Further information about APPEA and the Australian oil and gas industry can be found at www.appea.com.au.

Background to WA's oil and gas industry and its use of FIFO workforce arrangements

In WA, oil and gas activities and operations typically require an element of fly-in-fly-out (FIFO) workforce arrangements. WA oil and gas operations can be split into onshore and offshore operations.

Onshore operations in WA includes exploration and production well drilling activities, Liquefied Natural Gas (LNG) plants that process gas that has been piped to shore for export, and domestic gas processing facilities that prepare either offshore or onshore produced gas for use by WA consumers and industries (eg mining and minerals processing).

Offshore operations, usually situated in Commonwealth waters off WA, include drilling rigs for subsea exploration and development well operations; offshore platforms that typically combine production from several subsea wells and some initial processing of the well stream before it is piped to shore for further processing; and Floating Production Storage and Offtake facilities (FPSOs) that process oil and condensate production on the FPSO before being loaded directly at sea onto condensate and oil tankers for export. In Commonwealth waters off WA, there is also one Floating LNG facility (FLNG) that processes the well streams at sea to produce LNG, condensate, and Liquefied Petroleum Gas (LPG) that is then loaded directly onto offtake tankers for export.

When looking at the types of activities and operations of the WA oil and gas industry, exploration activities, construction activities, operational activities, maintenance activities, and decommissioning activities, would include a FIFO element to the workforce. FIFO is also generally required given most onshore activities are in remote and regional areas of WA, whilst all offshore activities require FIFO given the facilities are far from shore, so employees stay on board the rig, platform, FPSO or FLNG for the duration of their swing. It is also relevant to note that employees at an oil and gas facility will generally be a mix of employees of the company operating the activity, and several contractor companies that are providing specialist skills and support to the activity or operation.

Based on the nature of our industry and requirements for FIFO workforces, APPEA would like to provide the Committee with information for their consideration in relation to the Terms of Reference point “iv. What actions are being taken by industry and government to improve the situation and are there any examples of good practice?” and point “iii. Are current legislation, regulations, policies and practices adequate for FIFO workplaces in Western Australia?”

Current practices common across companies in the WA oil and gas sector to provide safe and respectful workplaces

APPEA member companies have a high focus on health and safety of people and the environment, and, within this framework, it is paramount that everyone in the workplace feels safe and respected. Our member companies also have strong policies on diversity and inclusiveness and are working to increase the participation of women in our industry at all levels and disciplines.

Sexual harassment or assault in the workplace or linked to the workplace is unacceptable and APPEA members have a zero-tolerance approach to such behaviour. Company policies, procedures and communications are in place to lessen the risk of such behaviour and outcomes. However, as stated in the 2020 report of the Australian Human Rights Commission’s “*Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*”¹, “Workplace sexual harassment is prevalent and pervasive: it occurs in every industry, in every location and at every level, in Australian workplaces”.

The oil and gas industry therefore accepts that despite its focus on policies, procedures, and actions to promote respectful and positive behaviours in the workplace, that it is not immune to incidences of sexual harassment. As such, should an incidence of sexual harassment occur, companies have processes and reporting avenues (including through independent third-party support services) so that individuals can get the support they need to recover and to take it to relevant authorities for potential investigation should they wish to do so. They also have disciplinary actions (up to an including termination of employment) wherever a breach by an individual has been established.

APPEA, as the peak industry body representing Australia’s oil and gas industry, also has in place *Principles of Conduct*². Commitment to these overarching principles is an expectation of all members of APPEA, and outline the following:

¹ [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#)

² https://www.appea.com.au/wp-content/uploads/2021/07/APPEA_Principles-of-Conduct-2021.pdf

- Continuously strive to improve health, safety and environmental performance in ways that:
 - Protect people and the environment through the responsible management of operations and their impacts
 - Incorporate risk management strategies based on sound science, to the application of new technologies and industry practices
 - Engage constructively with government and industry to develop appropriate principles/objectives-based standards.
- Promoting and adhering to ethical and responsible business practices, so that APPEA members:
 - Make both ethical business practices and good corporate governance pervasive features of company operations
 - Use open and effective communication and engagement with communities, regulators, government, and other affected parties.
- Supporting social and economic development in Australia in ways that:
 - Respect the rights, property and dignity of the communities in which we operate and acknowledge Aboriginal and Torres Strait Islanders as the first peoples of Australia
 - Enable members to co-exist with stakeholders to generate long-term mutual benefit
 - Enable member activities to foster economic growth and enduring value
 - Provide Australian suppliers full and fair opportunity to compete for commercially competitive resource development activities.

In relation to point iv of the Inquiry's Terms of Reference, feedback from APPEA members indicate the following common company procedures, policies and practices that are in place to facilitate a respectful and safe working environment:

- Company codes that set expectations on acceptable behaviour, to which company employees and contractors are bound:
 - Code of conduct;
 - Code on bullying, discrimination and harassment;
 - Code on fitness to work in terms of drugs and alcohol.
- A requirement for employees and contractors to adhere to the company codes of acceptable behaviour whether at work, at a work-related event, or at an out-of-hours activity that is connected to their employment.
- Random screening for drugs and alcohol is conducted with disciplinary action if a worker is found to have any in their system when presenting for work. Regarding alcohol, it should be noted that no alcohol is available on offshore facilities under any circumstance given the potentially hazardous nature of the facility in which people are living and working. Onshore accommodation for FIFO workers has limits on the amount of alcohol that can be consumed each day after their shift has finished.
- Company policies on diversity and inclusion, stating how the company will achieve an inclusive workplace where there is no discrimination based on areas such as gender, race, or religion.
- Regular training on the codes for acceptable behaviour, typically at the start of employment and then refresher courses once a year thereafter.
- Issue resolution/grievance procedures to manage interpersonal incidents in the workplace.

- Identified and impartial “contact officers” at each work site to which an employee can speak about anything of concern. Some companies also have “hotlines” staffed by personnel trained in sexual harassment and assault.
- In addition to the “contact officers”, companies have whistle-blower lines that allow employees to confidentially report an issue if they feel it is necessary to report independently, or they are uncomfortable reporting to their line manager or human resources department.
- If an incident is potentially criminal, the affected individual is encouraged to report the incident to Police, with the company providing support to any Police investigation.
- Access to Employee Assistance Programs (EAPs) for both employees and their immediate family members to discuss personal matters confidentially and anonymously and to receive counselling.
- A commitment on contractors to have written policies that meet or exceed company requirements regarding acceptable behaviours, including regular training of employees in these areas.
- Employee performance reviews include assessment against the company values and behaviours to promote respectful interpersonal interactions at work.
- Communication to all employees (company and contractors) of expectations on how they should behave at work is regularly provided, including encouragement for individuals to report any incidences or behaviour that does not meet the required standard e.g. internal communication channels such as posters, emails, site inductions, pre-start talks from site leaders. Some companies have dedicated internal campaigns focusing on respect for each other.
- A focus on personal security such as “lone worker” or “late worker” procedures, and security measures in accommodation villages/camps linked to a facility or operation such as providing sufficient lighting and CCTV coverage, and a requirement for individuals to sign out/sign in with site security when leaving the accommodation with an expected time for return.

Regulatory framework and reporting

In relation to point iii of the Inquiry’s Terms of Reference, companies with operations and activities onshore in WA and within WA state waters are required to report specific reportable injuries or a dangerous occurrence to the Worksafe and Petroleum divisions of the Department of Mines, Industry Regulation, and Safety (DMIRS)³. In the offshore, for activities and operations occurring in Commonwealth waters, there are similar reporting requirements to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)⁴.

Specific reportable injuries noted above are defined in the applicable legislation and relate to dangerous occurrences or certain illness or injuries in the workplace that meet thresholds in terms of minimum days away from work. Reportable injuries include those related to incidences linked to petroleum workplace hazards such as the actual operations of the facility (e.g. incidents related to working at heights or confined spaces, failure to isolate equipment, high potential incidences etc). Although these reporting processes could be expanded to be used for reporting injury or illness arising from sexual harassment, it may not be the most obvious nor appropriate avenue for an individual seeking support.

³ <http://www.dmp.wa.gov.au/Safety/What-incidents-need-to-be-10036.aspx>

⁴ <https://www.nopsema.gov.au/offshore-industry/report-incident>

In terms of legislation specifically relevant to sexual harassment, there are several Acts at both a Federal and State level, the requirements of which are typically addressed by employers via workplace policies. Federally, sexual harassment is a form of sex discrimination and is provided for in the Commonwealth *Sex Discrimination Act 1984* (Sex Discrimination Act) which, most importantly, deems sexual harassment as unlawful. Provided for under section 106 of the Sex Discrimination Act, employers could be vicariously liable if an employee commits sexual harassment, on the proviso that the employer did not take all reasonable steps to prevent the employee from undertaking these acts. A code of practice has been developed and published by the Australian Human Rights Commission (AHRC) to assist employers in understanding their responsibilities under the Sex Discrimination Act⁵, providing employers with guidance on expectations to:

- have a sexual harassment policy;
- provide training for employees on how to identify and respond to sexual harassment; and,
- implement an internal complaints-handling procedure and take appropriate remedial action if and when a sexual harassment complaint is made.

In Western Australia, the *Equal Opportunity Act 1984* (Equal Opportunity Act) provides for the function of the Equal Opportunity Commission (EOC) in Western Australia. The EOC website⁶ provides information on how to make a complaint about sexual harassment in Western Australia and in addition, the website also allows users to submit a complaint online. Under the Equal Opportunity Act, the Commissioner can investigate and endeavour to conciliate allegations of discrimination.

In addition to legislation mentioned above, the *Respect@Work* report found that Work Health and Safety (WHS) legislation provides an appropriate framework for to address sexual harassment but that it is underutilised. This may be because of a lack of any express code or guidance on sexual harassment, given sexual harassment is included in WHS legislation as one of many workplace hazards. The *Respect@Work* report also found that additional regulation and guidance may assist in clarifying that WHS laws includes prevention of sexual harassment, rather than including new obligations.

Given there are several applicable Acts, and several reporting avenues for someone who has experienced or witnessed an incidence of sexual harassment, APPEA believes increased regulatory guidance specifically focused on sexual harassment may help clarify the existing duties of employers to prevent sexual harassment in the workplace as well as make it easier to report incidents.

Conclusion

The WA oil and gas industry has a zero-tolerance approach to sexual harassment in the workplace, and although not immune to such instances, it is committed to working with its employees, contractors, and government agencies to mitigate this risk as much as possible, and to support anyone in our workforce who has suffered an incidence of sexual harassment.

⁵ https://humanrights.gov.au/sites/default/files/content/sexualharassment/employers_code/COP2008.pdf

⁶ <https://www.wa.gov.au/organisation/equal-opportunity-commission>



APPEA welcomes any follow up questions or queries from the Committee on this important issue.
Please do not hesitate to contact me on [REDACTED] or [REDACTED]

Yours sincerely,



Claire Wilkinson
Director – Western Australia