

We were delighted to have 84 senior leaders from 48 NAWO member companies join us for this very important forum on Friday 6th August 2021.

Kate Jenkins, Australia's Sex Discrimination Commissioner, opened the session to provide context around the Respect@Work report and bring all the executives present up to speed as to how to best manage sexual harassment in the workplace. Here are the highlights from Kate's opening presentation.

The Respect@Work Report

This report was delivered in March 2020 and tabled in Parliament on March 5 before COVID.

Headline findings:

- The survey related to the report told us that sexual harassment continues to be very common in Australian workplaces with one in three Australian workers experiencing sexual harassment in the previous five years
- Some individuals or groups experience a higher rate of harassment – notably LGBTIQ, people with disability, Aboriginal and Torres Strait Islander people, and migrant workers.
- Harassment is not occurring in pockets – it is in metro and regional and remote areas, in large and small business and across most industries
- The key driver of sexual harassment is power and power disparity and the most prevalent power disparity is gender equality. People who hold most powerful positions are men – in both male and female dominated sectors
- Up until now employers have treated sexual harassment as a matter of individual misconduct. The whole system is only enlivened when someone complains (including the legal system)
- Employers will say they have policy, complaints procedures and training and we commonly hear – “we don't have a problem – we haven't had a complaint in years”.

The survey tells us harassment is happening and people are not complaining.

The absence of complaints is not a measure of success. The system currently drives an approach that is only brought to life (with management and leadership action) when it comes to our attention or something goes wrong – the legal system reinforces this. Hence why the report recommends a 'positive onus' approach rather than a reactive approach (current system). Having an effective complaint system is very important – but the legal system really drives this behaviour that means sexual harassment only gets attention when a complaint is made.

Employers need to recognise this as a systemic issue. Consider this as a risk like you think of all risks. Use the safety frameworks that you already have in place however do not switch responsibility for this from HR to Safety. It is more nuanced than this. We have made huge changes in safety in taking preventative approaches and we can leverage this – someone has been injured – the person comes forward to tell the story so that we learn from it and it doesn't happen again. But there are some nuances that also need to be well managed in regard to cases of sexual harassment.

Gather expertise to ensure a combined approach is taken. Bring together expertise of lawyers, safety professionals, HR plus expertise in gender and trauma. Most organisations will need to source this expertise – particular in relation to trauma management – some rape and domestic violence services are offering corporate support services.

Consider the recommendations in the ACSI report (linked below) – We all remember when the High Court had a complaint of sexual harassment and AMP was also in the news. ACSI became quite involved in asking questions of AMP. They wanted to know ‘what are the questions we should be asking of these organisations’. Kate interviewed 16 of top 200 companies and asked what information went where, also surveyed 118 ASX200 companies. The report is written for boards but in short there are six recommendations about sharing of information that are very relevant for all leaders;

- 1) Leadership: The board holds ultimate responsibility and accountability for sexual harassment and only 19% of board interviewed held this view
- 2) Skills and Experience: boards and executives should recognise the value of HR expertise and whether their voice is given the respect it should be given. It should also work to make sure all those responsible have the skills they need to do a good job
- 3) Make gender equality a priority and set gender diversity targets
- 4) Ensure systems and frameworks are in place to collect analyse and use data to effectively manage the risks relating to sexual harassment
- 5) Executive alignment with entity’s values to ensure visible leadership
- 6) Report internally and externally to measure and track effectiveness of systems. Using transparency to drive outcomes (vs keeping complaints quiet – sometimes with good reasons to protect confidentiality) but often to protect organisational reputations which means that there is very little opportunity for organisational learning and the possibility for repeat behaviour by perpetrators.

Kate then responded to audience questions:

We are at a moment in time where external expectations are all aligned (shareholders, employees, public sentiment) “We expect workplaces to be better”. However, people speaking up are still considered ‘brave’. Brittany Higgins was a turning point for the Government response. There will be some people who resist. But the risk is so evident now that it helps the argument for change along. The report is substantial and comprehensive.

It is not easy to balance sensitivity to the individual and transparency. When I set about the National inquiry, I asked that confidentiality clauses be lifted to enable people to speak to me – this was the first point where I realised I was onto something because there was strong opposition to this request (excluding RTIO and BHP who agreed). Often the idea that people can speak about these issues freely creates a bit of fear. A lot of the confidentiality applied in processes is not really focussed on individual welfare – many confidentiality clauses are not well nuanced. A resource that is useful is the Champions of Change Coalition – disrupting the system paper (linked below) – this outlines the steps you can take to use and share information whilst still protecting privacy of the individual – you can draw out themes, experiences. If you are large enough you can do this in an aggregated way. You will find serial perpetrators or hot spots. Consider running anonymous surveys without complaints required (if you are large enough) OR look at industry data to see where you should be – you can assume where you should be in terms of each industries data in the survey.

On employer concerns about introducing positive duty: Work health and safety laws should apply and the Sex Discrimination Act should include a positive duty. Currently the SDA is the only law that prohibits sexual harassment and there is no obligation on the employer to act but there is a mechanism for someone to complain, and if they complain the employer can run a defence to say they shouldn’t be held responsible - the current law doesn’t ask anything of employers.

The standard employer position has been – ‘we do not want anyone asking us to do anything at all.’ However, there is nothing to be concerned about if you are committed to doing things

differently. Our current law really drives the wrong behaviours and that is what we are recommending be amended.

We then had member guest speakers share with us significant initiatives and strategies they have proactively initiated in response to the Respect@Work report. We have included the highlights below.

We thank BHP and Programmed for sharing so generously.

- Fiona Vines, Global Head of Inclusion and Diversity and Workforce Transition, BHP
- David Ruddell, VP Development and Coal Transactions, BHP Minerals Australia
- Jema Cameron, Group Manager Organisational Development, Programmed
- Kurt Gillam, EGM, PERSOLKELLY Australia.

Programmed highlights:

- Our HR community was concerned about the lack of employee willingness to raise concerns - less than 1% complaints of bullying and harassment
- We felt we needed to respond
- We wanted to be better
- Our initiative is called Project Unity –HR, H&S and Leadership joined together to determine What does good look like?

Our aim is to have a wholistic approach to prevention and creation of workplace respect.

- 1) Cultivating zero tolerance commitment
 - 2) Ensuring Systems available to speak up – confidential and anonymous
 - 3) Respectful and inclusive team culture – education and behavioural awareness around microaggressions etc
 - 4) Understanding domestic violence and equitable conduct. Leaning in on coalitions of change initiatives
 - 5) Intentional based approach to having a look at incidents of harassment bullying and inappropriate behaviour in the workplace.
- We used existing systems. Culture Amp (our current engagement survey provider) helped us create the tool Open Door.
 - Quite an education process in rolling out. Toolbox talks and posters explaining Open Door. Large distributed workforce. Confidential safe and simple way to report bullying and harassment. Anonymous unless employee chooses to disclose.
 - Released in March – response rate of 1% of concerns raised. We want to reach 6%. Tool enables us to do trending reporting. One of the experiences – there was one site that we were concerned about – the tool reinforced that there was an issue – we could then use this data to take action. Education and awareness onsite has been very powerful.

BHP:

- Fiona started with a powerful **Safety Share** (attached in the presentation)
- The learning from this was we need to understand the nuances that need to be carefully thought through when we apply the safety lens to sexual harassment cases – there is a risk to disregard the needs of the person experiencing the trauma.
- David then spoke to us about front line prevention work. **Clear message - it starts with leadership.** He explained that at board, ELT and every leadership level in BHP the expectations are very clear.

- Extensive training has been provided – **Spectrum of Conduct Training** – addressing small talk through to extreme of physical sexual assault. Things can start small but then they grow and become much larger.
- **Security programs on site** – FIFO mining camps and villages, security guards, room security, cameras, and significant changes to alcohol policies – four drinks in 24 hour period (mid strength). Control in place around hoarding of alcohol etc. This is because we have seen the link between alcohol consumption and sexual harassment complaints.
- David shared a leadership story where he had to call out the behaviour of a senior leader (11 years ago) - he learned that this senior manager, who appeared to be completely compliant with all rules, was holding inappropriate conversations with two female subordinates. This leader was taken aback that he was being held to account, David took action and ceased his employment. David’s learning: ‘I didn’t look for the weak signals’ – **‘we as leaders need to be looking for weak signals because these things will be happening in our operations.’** David spoke of now really looking for signals and using tools such as engagement survey data and drilling into looking at scores for individual leaders. Do not disregard this feedback. When you get underneath things you can find that some people are not meeting expectations and they need to be held to account.

Fiona then spoke about BHP’s response. **Seven main attributes of the response strategy:**

- 1) Providing a wide range of reporting options. Ethics point (independent of line and HR) confidential and able to request an investigation – they can also make an anonymous report. We accept that many people are terrified of the investigation process. This system has a trigger if there is more than once report about the same person
 - 2) Far more victim centric – the core belief is “this has happened to you and we want to understand what has happened to you” trauma informed to ensure the investigation does not cause further harm. This includes the process of communication as well (how the communication is managed throughout the organisation post the investigation)
 - 3) Much better system of support for the victim. Overseen by occupational physician to ensure it is trauma informed and helps the individual return to work as well
 - 4) Support service launched in July – a hotline anyone can call – you can just talk to someone because they suspect something occurring but not sure. For some people they just want to talk to someone. This is a global service and staffed by diverse team members. LGBTIQ, Spanish speaking and Aboriginal and Torres Strait Islanders
 - 5) Removed NDA’s completely
 - 6) Discipline and outcomes for perpetrators. Where conduct has been substantiated, central investigation, leaders and HR will sit down and work together to determine the outcome using spectrum of conduct tool. Sexual assault – termination is default. Harassment – in some cases there may be lower end of severity scale we may take other action – but this has to be endorsed by two up leaders in the organisation. This is to ensure more consistent application of disciplinary outcomes.
 - 7) There are situations where external authorities will have to be reported to (Police and relevant authorities), ensuring the impacted person is informed and supported all the way through.
- **Fiona acknowledged that this has been a journey** – “we have learned the most in relation to supporting impacted people to ensure they are not further traumatised. A strong response can have unexpected consequences – it is not that zero tolerance is bad – but this is nuanced and a strong, decisive, bold response can drive reporting underground and does not always protect the victim.”

- The other lesson has been the importance of training and having the right conversation with teams. BHP’s **Spectrum of conduct training** is 90 minute interactive discussion with teams (on zoom and face to face where possible) - providing a range of scenarios which start with what would be considered lower end of the spectrum like giving a new joiner a hug, making a comment about appearance right through to serious matters such as taking photos to put on social media, propositioning someone, touching someone. The training creates space for a conversation where people can share and debate their perspectives and ideas and this has been extremely important – if you go down a line of zero tolerance it can tend to cause people to go into their corners and become very defensive. The biggest aha people have is around intent v impact - that the impact of your actions can be completely different to what you may have expected and that this is no excuse.
- **BHP on rosters** – we found the changeover date was identified as particularly problematic re: drinking and bad behaviour. We are looking at this to see if we can reduce the risk here. We are also looking at rosters from a family friendly perspective – so this is work in progress. We are also adding more extra-curricular activity to camps so that people have more to do other than drink and to create a more inclusive environment. South flank is where we are starting.
- **What’s a benchmark for healthy reporting?** We know what the level of harassment is happening in certain industries – so we should start there. 17% of people being harassed report. The lack of a reporting system is not the only reason people do not report. Remote sites and small business – the culture can be the issue – ‘if you report say goodbye to your job.’

Some common themes and actions evolved across the breakout sessions. Here are the key observations and the actions our leaders committed to taking back into their workplaces.

Group reflections and actions

1. What are your reflections on the presentations today? Group members share one reflection each

- 1) ‘Aha’ moment - that this issue is a board responsibility, not just an HR responsibility - one participant said they can’t recall the board ever mentioning it workplace sexual harassment
- 2) ‘Aha’ moment - that sexual harassment should be part of the organisation’s risk review and fits within the safety framework
- 3) It was good to hear the number of boards who are actively responsible in this space, but how engrained is the culture within these boards and within their organisations?
- 4) How often do people get reminders of what is the definition of sexual harassment? You need to go searching for it. This was countered by participants who shared that they thought definitions can be tricky, because if the action is not in a box, then the action might not get the respect that is needed or discourage the victim reporting it.
- 5) Often it is a crisis, in which there is a risk to loss of female talent or brand damage which prompts action, however what sort of cultural change does this really encourage? Is it a short term impact or longer term systemic change? So how do we encourage more boards to take action before a crisis hits?
- 6) The legislation must shift and we need to take the victim-centric approach
- 7) The Champions of Change Coalition report has some really good practical solutions that can be used

- 8) Non-disclosure agreements – worrying anecdote from BHP about the extent of how these can negatively impact the victim. NDAs and confidentiality needs to respect the approach the individual wishes to take
- 9) Focus on victim-centricity is key
- 10) The example Fiona gave resonated with me because I have been involved in investigations just like that – we need to do better to take care of the victim – this really resonated with me.
- 11) The Open Door QR code reporting platform is an excellent way to allow reporting and complaints in an anonymous and victim-centric way
- 12) Importance of recognising the weak signals, what are they?
- 13) Smaller companies struggle with the resources to deal with harassment and look to the bigger companies for ideas and support
- 14) It was great to hear from Kate that her experience is that the Unions are getting behind this and that we should consider actively involving them as another avenue of support for the affected employees. Unions are considered a safe place to go to get advice and we shouldn't be concerned about this.
- 15) How do global companies address harassment when they have offices in other countries/cultures?
- 16) Convincing International Boards of the need to focus on these issues can be difficult. The NAWO Nine Levers has actually been helpful for us in explaining our focus on I&D to our Board.
- 17) One participant reported that harassment is not a big issue in very heavily male dominated companies as there are very few women, but it is something they need to consider as they grow the number of women and other cultural representations
- 18) Smaller companies wanted to 'steal shamelessly from others' who are more resourced
- 19) Was great to hear about the anonymous surveys regarding these issues – one organisation has a "reporting option/speak out/speak up" option but it is not well used
- 20) A response is not just a series of process steps and it is the nuance in response that is important and what makes it complex
- 21) An organisation cannot congratulate itself for no specific reports – broad industry data says sexual harassment is prevalent, so we need to focus on how this is going to change
- 22) One participant reported their company has all the protocols and values in place that have been mentioned – but need to do more as they are still not doing enough
- 23) There are workplace behaviours that are not acceptable but have become normalised – we need to empower employees and give them the tools to challenge those behaviours
- 24) Lockdown - with management and leaders working from home, things may be unseen and how to stay on top of this?
- 25) The importance of respecting the victim and taking a trauma-based approach to support. Very interested in the Physician support provided to the victim by BHP.
- 26) One participant is reflecting upon how to best move forward with the Board – managing the cross over between what is board responsibility and what is management responsibility will be key. How do we keep boards in tune with culture without them having to be directly involved in management responsibility?
- 27) One participant noted that he had always cringed at 'anonymous reporting' as it left management with very little options on how to manage/respond. However, he has now been convinced to rethink this and take a deeper look.
- 28) Recognition of the power imbalance – particularly between young casual staff and more senior people. Something that really needs to be considered in our approach.
- 29) Anonymity in reporting is a double-edged sword – about getting the balance right between people feeling comfortable enough to step forward and report. Great food for thought about how we can move forward.
- 30) Perhaps anonymous reporting is the start of moving to a culture where people will come forward and better enable action? Has got me thinking.

- 31) Great insight around the Spectrum of Conduct and opening up conversations about this to help people understand and get the aha moments. Would love to learn more about the spectrum of conduct tool that BHP uses.
- 32) The QR code aspect of the Open-Door reporting process very practical for those of us with remote workers/onsite workers.
- 33) Really like what BHP are doing around the hotline and ensuring representation of different identity groups so that people can just speak to someone about what's going on.

“There is so much more we need to continue to learn and do. How do we continue to share and learn to become stronger together as leading employers in Australia?”

2. What I am taking forward from today's discussion and taking leadership action on?

- 1) I am going back to have an interesting conversation with my CEO and ELT with the intent for it to be then taken forward as an agenda item with the board.
- 2) We have a Japanese board and it is pretty useful to give them a framework and we are going to use the NAWO Nine Levers framework.
- 3) Dig into the Australian Council of Superannuation Investors report and see what the actions could arise from that.
- 4) “I would change the board paper I submitted yesterday to include something on sexual harassment”
- 5) Normalise the conversation, make it easier to speak out
- 6) We must treat sexual harassment as a safety issue and have an organisational approach rather than treating individual issues case by case
- 7) Look at having some distance from the victim so that there is a more neutral team (as per BHP ethics team)
- 8) Need to make sure there are enough avenues for people to raise issues and report
- 9) Challenge how we can use our leadership team to get going at the grass roots
- 10) Use the “safety approach” to support building the culture and the individual specific/centric approach to respond if there is an event
- 11) “I am inspired to do more and don't want to lose good women”
- 12) We need to create client engagement to understand how our outplaced employees are being treated in their workplaces
- 13) Will add a question on psychological safety and harassment to engagement survey
- 14) Will ask the board what their approach and commitment to this issue is
- 15) One participant is new to the executive team and will ask them what they have done so far at their first meeting
- 16) Establish individual support programs with OHS physician support
- 17) Run a gap analysis of the organisation against BHP's seven pillars for reporting framework
- 18) Engage employees where you may have “downtime/shift changeover days” – finding alternate positive activities to support
- 19) Engage in a similar ‘spectrum of conduct’ framework to that at BHP
- 20) Understand what data is available – are we capturing enough to support a diagnostic for improvement and identify options to resolve? If reporting is not data rich – how do you make decisions on improvement?
- 21) Where you see those weak signals - take action!
- 22) How can my organisation use Open Door and open this up to our business?
- 23) My company is early in the journey, but now I am more alert, aware in language and observations now that this has been brought to the forefront. I will raise conversations with the leadership team

- 24) I am committed to a systemic response to this – the relationship to safety is a very important one and we are bound to be able to lean into the behavioural aspects of safety management. How do we develop a system for this like what we have done with safety?
- 25) One participant is going to take a moment to step back, pause and really reflect upon the learnings here to make sure they get it right this time – this session has been incredibly helpful. We have a great opportunity to get this right. Timing is right to make big changes.
- 26) I am going to step into this connectivity of culture and awareness of our board. I will look at the industry stats and assume they are right and work out why my reporting stats don't match.

“We call all use our agency as levers, what can we do to promote the conversation, and what are the next steps? We can continue to talk about the topic. Leadership work will always be continuing - engage other people in the organisation and externally to assist.”

What can NAWO do?

- Facilitate future discussions and connections between lesser resourced companies and better resourced companies on issues such as workplace sexual harassment.
- Share BHP's Spectrum of Behaviour Tool if possible.
- Provide more insight/ suggestions as to how we can better support those who are reporting.
- Connect us to the resources mentioned by Kate and others today.

Resources:

- 1) Forum Slide Pack- attached
- 2) NAWO/AGEC - Respect@Work Member Resource - attached
- 3) [Community Guide to the Respect@Work Report](#)
- 4) [ACSI – ASX200 Companies – Driving Safer and Respectful workplaces](#)
- 5) [Champions of Change Coalition – Disrupting the System](#)

Questions to ask of your current systems:

To prevent workplace sexual harassment, ask yourself these four questions:

1. Does our leadership display behaviour that contributes to cultures that prevent workplace sexual harassment?
2. Do we have a strong focus on risk assessment and transparency to mitigate the risk it can pose to our business?
3. Do we have a culture based on trust and respect that minimises the risk of sexual harassment and ensure it is managed adequately? – how to we assess this?
4. How do we ensure knowledge in our workforce through education and training?

To better respond to sexual harassment, ask yourself these three questions:

1. How well do we prioritise support of workers' wellbeing before and after reporting?
2. How can we increase reporting options available to workers and address barriers to reporting?
3. How can we improve our understanding of the nature, prevalence and impacts of sexual harassment through measuring and collecting data?