



## INFORMATION SHEET

# Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety

This information sheet is intended to assist persons conducting a business or undertaking (PCBUs) to respond to incidents of mine site gendered violence.

## Background

Exposure to gendered violence poses risk of significant harm to the psychological and physical health of workers. The *Work Health and Safety Act 2020* (WHS Act) and Work Health and Safety (Mines) Regulations 2022 (WHS Mines Regulations) outline the requirements for reporting workplace gendered violence incidents.

As the WHS Act definition of 'health' includes physical and psychological health, incidents which could cause or have caused psychological harm at work should be treated in the same way as incidents which risk physical health and safety.

## What is gendered violence?

Gendered violence is any behaviour that is 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. Gendered violence includes sexual harassment and sexual assault and is considered a workplace psychosocial hazard due to the risk of harm to psychological and physical health.<sup>1</sup>

Sexual harassment includes any unwelcome or inappropriate behaviour of a sexual nature, where a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person harassed would be offended, humiliated or intimidated.

Sexual assault can be any sexual behaviour or act which is threatening, violent, forced, coercive or exploitative and to which a person has not given consent or was not able to give consent.

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<sup>1</sup> *Safe Work Australia, [Preventing Workplace Sexual Harassment Guide](#). (2021)*

## Reporting incidents to WorkSafe Mines Safety

Under the WHS Act and WHS Mines Regulations, gendered violence that results in a notifiable or reportable injury or illness must be reported to WorkSafe Mines Safety. Failing to report a notifiable or reportable incident is an offence.

Certain notifiable injuries and incidents must be reported to the regulator [ss. 36, 38]. A PCBU must notify WorkSafe Mines Safety immediately after becoming aware that a notifiable incident has occurred. **Notifiable incidents should be reported by calling 1800 678 198.**

After phoning WorkSafe Mines Safety, details of the incident should be submitted using the Safety Regulation System (SRS). An incident of gendered violence is notifiable if it results in a psychosocial or physical injury or illness that <sup>2</sup>:

- requires the person to have immediate treatment as an in-patient in a hospital
- occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment, or
- in the opinion of a medical practitioner (including a general practitioner), is likely to prevent the person from being able to perform their normal work for 10 days or more. This includes both lost time and restricted work injuries.

The person with management and control of the workplace must ensure that the site where the incident occurred is not disturbed until an inspector arrives at the site, or until directed by an inspector.

Regulation 675V contains the additional requirement that the mine operator of a mine must notify the regulator as soon as possible after becoming aware of a reportable incident. An incident of gendered violence is reportable<sup>3</sup> if:

- it results in an illness or injury (either physical or psychosocial) that requires medical treatment
- a person attempts suicide at a mine or a place associated with a mine, including at worker accommodation, or
- the incident could have caused serious harm to a person.

The PCBU must report notifiable and reportable psychological injuries to WorkSafe Mines Safety regardless of whether the injury is a result of a single incident or from repeated instances of exposure to gendered violence. Examples of psychological injuries that may result from gendered violence include:

- anxiety disorders
- depression
- trauma and stress related disorders, including:
  - post-traumatic stress disorder
  - acute stress disorder
  - adjustment disorders
- alcohol and substance use disorders
- other psychological conditions.

If you are not sure if an incident is notifiable, or are seeking clarification on the information required to be included in the notification, you are encouraged to contact WorkSafe Mines Safety for advice.

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<sup>2</sup> Section 36(1) of the WHS Act contains additional criteria for notifiable incidents.

<sup>3</sup> Regulation 5 of the WHS Mines Regulations contains additional criteria for reportable incidents.

## Incidents that could have caused serious harm to a person

If a person has been exposed to a psychosocial hazard that had the potential to cause serious harm to a person, it is considered a reportable incident. Reporting should not be delayed while a workplace investigation is conducted.

Factors to consider in determining whether a psychosocial incident could have caused serious harm to a person include:

- Could the incident result in the person being unable to conduct the duties they were performing immediately beforehand or require a modification of work arrangements?
- Has there been any lost time associated with the incident, even if an injury was not diagnosed when that lost time occurred?
- Has a registered medical practitioner formed the opinion that the exposure to the psychosocial hazard could lead to an injury?
- In the absence of a medical assessment, has a competent assessor formed the opinion that exposure to the psychosocial hazard could lead to an injury?
- Did the incident lead to serious disciplinary action being taken, including termination of the employment of the respondent?
- Was the report in relation to a sexual assault?

Details of the incident should be submitted to WorkSafe Mines Safety via SRS as soon as possible.

## Internal systems

Personnel with responsibility for statutory reporting should clearly understand these requirements, and internal processes for reporting and investigation of psychosocial hazard exposures should support accurate and timely reporting.

Regulation 675X requires that a PCBU at a mine who is not the mine operator, (for example, a PCBU contracted to provide services at a mining operation) notifies the mine operator as soon as practicable of any notifiable or reportable incident.

The mine operator must document notifiable and reportable incidents in the mine record, which must be kept and available for seven years [r. 675Y, 675Z]. If the PCBU is not the mine operator, they must keep a record of each notifiable incident for at least 5 years [s. 38(7)].

PCBUs at a mine are required to manage risks to health and safety, including risks to psychological health [r. 617]. If a notifiable or reportable incident occurs, control measures must be reviewed and if necessary, revised [r. 618].

Section 27 establishes a requirement to have appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information. This includes processes for reporting, investigating and responding to psychosocial hazards and psychological injuries, whether or not the report meets the threshold for notification to WorkSafe Mines Safety.

## Confidentiality

Initial notifications to WorkSafe Mines Safety can be made without including the names of the persons involved. To protect the confidentiality of victims of gendered violence, initial notifications of potentially serious occurrences should be limited in detail. Notifications made via SRS do not require a detailed account of the events contributing to the incident, but should identify the psychosocial hazard category, actual or potential seriousness of the psychosocial hazard exposure and the immediate actions and response of site personnel. This should be accompanied by the relevant SRS coding in the case of an injury notification.

Where further information is required to support WorkSafe Mines Safety investigations into reports of gendered violence, these will be obtained directly by the inspector responsible for investigating the incident. Details (including names) of involved persons can be redacted from the information provided to WorkSafe Mines Safety to maintain the confidentiality of all involved persons and information submitted in response to these requests is only visible to those inspectors assigned to the investigation. If other statutory instruments act to limit the information that can be provided to Mines Safety, this can be disclosed at the time of the notification.

## Incident response – sexual assault

If a worker or anyone at your workplace is in immediate danger, call 000.

Anyone who reports being sexually assaulted should be encouraged to contact the Sexual Assault Resource Centre (SARC), and offered information regarding reporting sexual assault to the Western Australian Police. More information can be found in the *Information sheet - Gendered violence: Sexual assault*.

Where investigations are undertaken by other agencies in relation to gendered violence, including the involvement of the Western Australian Police, the reporting requirements of the WHS Act and Regulations must still be complied with.

### Further information

#### Department of Mines, Industry Regulation and Safety

- [\*Mentally healthy workplaces for fly-in fly-out \(FIFO\) workers in the resources and construction sectors: code of practice\*](#)
- [\*Mentally healthy workplaces hub\*](#)
- [\*Code of practice: Psychosocial hazards in the workplace\*](#)
- [\*Code of practice: Workplace behaviour\*](#)
- *Incident notification – guide*
- *Incident notification – information sheet*
- *Gendered violence: sexual assault – information sheet*

#### Safe Work Australia

- [\*Preventing workplace sexual harassment: National guidance material\*](#)

#### Australian Human Rights Commission

- [\*Respect@Work: Sexual Harassment National Inquiry Report\*](#)