

**To: Department of Mines, Industry Regulation and Safety**

**Re: Draft Workplace Behaviour Code of Practice**

**30 August 2021**

## Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Mines, Industry Regulation and Safety (DMIRS) consultation on the draft Workplace Behaviour Code of Practice (COP).

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 400 member companies across Australia, with the majority having project interests in Western Australia. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people, and in 2018/19 collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

## Draft Code of Practice

### General feedback

AMEC welcomes the intent behind creating codes of practice, to provide practical guidance materials for regulators and Industry, on how to comply with general and specific duties under Western Australian work health and safety (WHS) laws. Consultation on this draft COP provides an important opportunity for Industry and Government to work collaboratively to develop a document which is technically and legally correct, providing practical examples and a common understanding of important safety issues, to enhance occupational health and safety (OHS) standards for the Industry.

The safety framework Industry is regulated against has been gradually shifting to align with current and future needs more closely. The heightened awareness and recognition of psychosocial risks and hazards as a WHS issue, presents a timely opportunity for consultation on this draft COP.

The primary concern for AMEC and our member companies, is the safety of our workers and workforce. This safety extends beyond physical safety, to encompass psychological safety. Industry acknowledges that the behaviours a worker is exposed to in the workplace have the ability to considerably impact their physical and psychological wellbeing. Ensuring there are practical and relevant resources available to workers and workplaces across the industry, to comply with their legal obligations, is a necessary step to creating and supporting safer workplaces.

As outlined below, AMEC has highlighted areas of concern within the draft COP we consider should undergo further consultation, before the draft is finalised.

### **Balance between employer and employee expectations**

While it is not considered this was the intent of the document, the actions and responsibilities highlighted in the draft COP have a significant focus on employers, which diminishes the role employees play in the workplace. The responsibilities of employees are equally important, and should be given more visibility, to portray an accurate representation of workplace expectations in a more holistic manner.

We have consistently heard from members the importance of a company's culture in deterring poor behaviours. This culture will be reflected in policies and procedures, which should always be readily available to all workers. Managers and leaders within the workforce have a pivotal role in driving this culture through the entire workforce, from the top down, to see it in practice. Concurrently, employees also have a responsibility to meet these expectations, by adhering with clearly outlined expectations.

The policies and practices each workplace has will differ. They are often driven by the company's values, and the scale and nature of the company. Aligning a company or workplace's policies with this draft COP when finalised, is an important step. This COP is not intended to replace a company's policies, rather to be an additional point of reference for the workplace and workers.

When this draft COP is finalised, AMEC would welcome communications from the Department about how a company can work to review their policies to ensure they align with the expectations of the regulator as outlined in the COP.

The education of workplace behavioural expectations will be a key determining factor of how well a company's policies, procedures and COPs are embedded. The importance of effective communications and the ability for management and workers to communicate in an open manner cannot be understated.

### **Ambiguity**

Much of the content in this draft COP can be considered subjective, and circumstantial. The draft COP provides an opportunity for the regulator to clarify the expectations of employers and employees. However, in its current form, the draft COP does not clearly address ambiguous requirements or provide clarity around what could be considered a reasonable expectation, nor does it adequately define the extent of these expectations.

Multiple sections in the draft COP highlight specific characteristics or risk factors, but do not provide reference to research to justify their inclusion. Given the broad scope of companies within the sector, the different factors and environments presenting varying scales of potential for inappropriate workplace behaviour, and the subjectivity involved in determining what constitutes acceptable behaviour and what does not, the more clarity that can be provided in the form of examples within this draft COP, the better.

As such, Industry questions if the hierarchy of controls is the most suitable framework to address these issues?

For example, the use of “prolonged conflict” in the introduction of what is inappropriate or unreasonable workplace behaviour, is ambiguous. The term prolonged conflict has not been defined, and beyond the introduction, there is no further mention of prolonged conflict, instead “unresolved conflict” starts to be used. This inconsistency and absence of definitions of what exactly prolonged conflict is, so it can be measured and effectively used for the purposes of this COP, is likely to create confusion.

Additionally, Industry has questioned where third party visitors or contractors fall within this draft COP? Is the draft COP intended to extend to them while they are in the workplace?

### **Definitions and examples**

Providing examples which can be referred to by workers and workplaces will be a helpful guide as to what constitutes acceptable behaviour and what does not, what effective controls could be, and how issues can be effectively managed. The identification of certain aspects or characteristics, while somewhat helpful, is not enough to provide a broad understanding to the majority of the workforce.

For example, section 1.2.5.2 refers to different management styles which could be associated with an increased risk of workplace bullying, while another sections lists personal protective equipment (PPE) as a control measure. Providing an example of behaviours common to these management styles, what the management structures may look like, and what PPE could prevent inappropriate workplace behaviours, would be a helpful inclusion in the draft COP.

The definition of conflict should be amended. In its current form, as per Section 1.2.2 of the draft COP, conflict is defined as “In general, conflict involves two or more people of approximately equal power or roles with behaviours from both parties towards each other.” This statement does not take into consideration that conflict is not predicated on people having similar levels of authority within the workplace, and there is potential for it to occur between workers of different levels or powers. It is not an accurate description of what conflict is and how it can arise, and should be amended to provide a more consistent and fulsome understanding, which should lead to increased awareness as a preventative measure.

The definition of ‘workplace’ as per the draft COP includes ‘home office’. However, to what extent is the employer reasonably responsible for behaviours occurring in an employee’s home? This question is also relevant to the statement in the opening paragraph about behaviours occurring through various mediums including social media, texting, emails, telephone communications and in person. There is no clarity of the extent of an employer’s responsibility over behaviours occurring across these mediums, which in many circumstances the employer has limited knowledge or awareness of. We do not want to introduce prescriptive measures and controls through this draft COP, but there is merit in providing practical examples which can be referred to as a point of reference. More clearly defining the extent of the employer’s responsibility, through the provision of examples and case studies, would address the current uncertainty.

## Company policies to address behavioural expectations

It seems an obvious omission that internal company policies to mitigate, address and manage conflict have not been referenced in the draft COP. Each company's internal policies and processes should be the primary reference point and align with the expectations of the COP, without needing to first refer to the COP. COPs should not be the first point of reference, as can be inferred by the omission of reference to these policies and procedures.

### Section 1.2.4 - Harassment

Section 1.2.4.1 lists the factors that can contribute to the likelihood of racial and sexual harassment at work. One of AMEC's recommendations in our submission<sup>1</sup> to the WA Parliamentary Inquiry into sexual harassment against women in the FIFO mining industry was to provide more consistency in the language and references used around this important topic. The *Respect@Work: Sexual Harassment National Inquiry Report (2020)*<sup>2</sup> provides a detailed list of contributing factors and areas of heightened risk. AMEC recommends aligning the factors outlined in this draft COP with the Report's findings.

The explanation of the difference between discrimination and harassment as per Section 1.2.4.2 is noted. It provides examples of the issues, but doesn't highlight that the two aren't mutually exclusive; an example showing what could constitute discrimination and harassment occurring simultaneously could be included.

### Section 1.2.5 - Bullying

Section 1.2.5.1 – Types of bullying behaviour – it is an important distinction between the effect of behaviour and intent. Often there may not be any specific intent to bully, but the resultant effect can impact the safety and health of employees at the workplace.

The second dot point in 1.2.5.1 implies that the behaviour is only considered bullying when it is delivered by screaming or yelling. Given these two factors don't need to be present for the behaviour to constitute bullying, we recommend the reference to yelling and screaming is removed.

### Section 2.3 – Risk management approach

This section states that "elimination controls are the most effective and reliable form of control" but does not explain what an elimination control could be. In its current state, it could be interpreted that the elimination control involves removing someone from the workforce. Industry requests more clarity and examples.

### Final comment

AMEC welcomes opportunities to participate in the development of practical guidance materials which will provide Industry and regulators alike, with a shared, common understanding, of ways they can

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<sup>1</sup> <https://secureservercdn.net/198.71.233.51/0h5.0cf.myftpupload.com/wp-content/uploads/2021/08/0817-Submission-to-WA-Parliamentary-Inquiry-into-sexual-harassment-against-women-in-the-FIFO-mining-industry.pdf>

<sup>2</sup> <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

improve the safety of workers and workplaces. We look forward to continued engagement as more guidance materials are developed to align with WA's new WHS framework.

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