

## **Shifting focus: Preventing gendered violence and harassment at work and supporting victim-survivors**

Joint submission to the Department of Justice and Community Safety Consultation Paper, *Addressing sexual harassment in Victorian workplaces*



## Acknowledgement of country

This submission was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all First Nations people who today continue to experience discrimination, including sex-based discrimination and harassment, more frequently than other Australians.

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## Executive Summary

Everyone deserves to feel safe and respected at work and to live free from gendered violence and harassment.<sup>1</sup> Gendered violence and harassment, including sexual harassment, causes harm to individual workers, to workplaces and to the Victorian community.

Women's Health Victoria (**WHV**), Sexual Assault Services Victoria (**SAS Vic**) and Victoria Legal Aid (**VLA**) welcome the Victorian Government's commitment to stopping sexual harassment in Victorian workplaces.

Through our work, we see a culture, system and regulatory framework that fail to prevent gendered violence at work, and to adequately address it when it does occur.

In this joint submission, we combine our direct experience: developing and delivering primary prevention programs, training and resources to prevent all forms of violence against women (**WHV**); advising people who have experienced sexual harassment at work and assisting them to take legal action (**VLA**);<sup>2</sup> and of member organisations working with victim survivors of sexual harassment and other forms of sexual abuse to promote their rights and recovery (**SAS Vic**) (see **Annexure 1**).<sup>3</sup> We have included, and been informed by, stories of VLA clients, whose words highlight the toll of gendered violence and sexual harassment on women's health and wellbeing, financial security, careers and lives,<sup>4</sup> as well as WHV's experience of working with employers to prevent this harm and to promote gender equality in Victorian workplaces, and SAS Vic's experience working with victim survivors of sexual harassment and other forms of sexual abuse.

We unpack the urgent reforms needed to prevent gendered violence and sexual harassment in Victorian workplaces, hold perpetrators accountable, and support victim survivors to recover and receive redress.

We articulate **10 goals** for a culture, system and regulatory framework that prevents and addresses gendered violence and harassment in Victoria.

We have taken a system-wide focus that lifts the burden of achieving these goals from the individual and has the potential to drive cultural and behavioural change.

Our **25 detailed recommendations** set out a suite of State-based reforms that together could stop gendered violence at work.

Our proposed reforms focus on the recognition of sexual harassment and gendered violence as a serious cultural, systemic, work health and safety issue that requires evidence-based primary prevention interventions; the law reform required to prevent sexual harassment, including to Victoria's discrimination laws, work health and safety laws and the enforcement of these laws; the powers that the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) requires to ensure

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<sup>1</sup> 'Gendered violence' refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. For further information see *A Guide for Employers: Work Related Gendered Violence including Sexual Harassment*, WorkSafe Victoria (March 2020) (Available [here](#)).

<sup>2</sup> Over the past five years VLA's Equality Law Program provided over 6,720 legal advice sessions regarding discrimination matters, including 1,058 advice sessions about sexual harassment and sex discrimination. Approximately 80% of clients assisted with a workplace sexual harassment complaint were women.

<sup>3</sup> In 2019 WHV, VLA and SAS Vic (then CASA Forum) joined with leading organisations across the legal, health, community and government sectors to create a joint statement of over 100 organisations: [Power to Prevent: Urgent Actions Needed to Stop Sexual Harassment Joint Statement](#) (see **Annexure 2**), which was submitted to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces.

<sup>4</sup> Names and some identifying details of clients have been changed throughout this submission.

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compliance with anti-discrimination laws; and the need to increase the availability of accessible, targeted and culturally sensitive support and legal services.

We acknowledge that certain groups, particularly First Nations people, experience sexual harassment at higher rates and face additional and compounding barriers to reporting harassment and violence in the workplace.<sup>5</sup> Accordingly, we urge government to undertake direct consultation with Aboriginal Community Controlled Organisations about the change that is needed.

## Ten goals for a culture, system and regulatory framework that prevent and address gendered violence and harassment in Victoria

1. Gendered violence at work, including sexual harassment, is addressed as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality.
2. Those with responsibility for workers and workplaces take proactive steps to prevent gendered violence including sexual harassment at work.
3. Victim-survivors of sexual harassment and other forms of gendered violence at work are supported to recover and respond, with easy access to specialist support services, including counselling and legal services, that are appropriately resourced and have well-trained staff.
4. People who report gendered violence and harassment at work are protected from retaliation and have confidence in their employer's investigation process.
5. All forms of harmful sex-based discrimination and harassment at work are prohibited.
6. Victim-survivors can access fair redress for the harm they experience as a result of sex-based harassment and discrimination.
7. There is a high level of compliance with the *Equal Opportunity Act 2010* (Vic) (**Equal Opportunity Act**), including duties relating to gender equality and sexual harassment.
8. Gendered violence and sexual harassment at work is addressed as a serious work health and safety issue.
9. Further research, evidence and data is collected to better understand the prevalence and nature of sexual harassment and gendered violence at work, including intersectional experiences, to design effective interventions.
10. All Victorian workplaces have a culture of respect, equality and inclusion and employers proactively prevent gendered violence and harassment and respond in a victim-centred way when it occurs.

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<sup>5</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report*, Report by the Australian Human Rights Commission (2020) (Available [here](#)).

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## Twenty-five recommendations to prevent and address gendered violence and harassment in Victoria

Informed by our work with victim-survivors of gendered violence and harassment at work, we make the following 25 recommendations to prevent and address gendered violence and harassment in Victoria.

### PREVENTION

#### A holistic strategy to prevent violence against women

1. **Prevention strategy, capacity-building and investment.** Commit to, and invest in, dedicated prevention efforts to address the underlying gendered drivers of sexual harassment, as part of a holistic strategy to prevent violence against women and promote gender equality within the *Free from Violence Second Action Plan*. This should include investment in scaling up interventions to prevent gendered violence and harassment at work, including both workplace-based programs and programs that aim to shift social and organisational norms in other settings, such as comprehensive whole-of-school education programs.
2. **Resources and support to enable employers to prevent gendered violence.** Provide resources and support for employers of all types across Victoria – including smaller and rural employers – to implement whole-of-organisation initiatives to prevent gendered violence and promote gender equity within their workplaces. This should include resourcing specialist primary prevention organisations, such as women’s health services, with a track record of building the capacity of organisations to prevent violence against women, to support workplaces to implement these approaches.
3. **Universal, intersectional approaches and targeted strategies for high risk industries and employees.** Invest in both universal strategies and initiatives for the prevention of sexual harassment that embed an intersectional approach, and develop and deliver targeted strategies to address high rates of sexual harassment within particular industries and among certain workforces, in collaboration with specialist organisations. To identify appropriate strategies for preventing and responding to sexual harassment among high risk populations, we recommend the Victorian Government undertake a meaningful consultation with high risk groups and communities.
4. **Building understanding of the problem and effective solutions.** Identify effective strategies and enable employers and primary prevention organisations to design targeted solutions to prevent sexual harassment, particularly among marginalised or at-risk groups by:
  - a) Investing in further research and evaluation to understand the prevalence and nature of sexual harassment in certain industries.
  - b) Creating tools that employers can use to identify the nature of gendered violence and harassment and its causes at their organisation, such as online attitudinal surveys.

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- c) Investing in further research and evaluation to identify effective interventions that target or are adapted to the context of sexual harassment and gendered violence at work, including by monitoring and evaluating existing interventions to determine their effectiveness.

## Positive duty to prevent gendered violence

5. To motivate compliance with the law and greater efforts by employers to prevent gendered violence and harassment, the Equal Opportunity Act should be amended to:
  - a) **Representative action.** Enable direct enforcement of the positive duty by an individual and by representative groups (recognising the significant social, emotional and financial costs for individuals who pursue a legal claim of sexual harassment).
  - b) **Investigations.** Remove the barriers to investigation by the VEOHRC under the Equal Opportunity Act, which currently restricts investigations to matters relating to a class or group of people that cannot reasonably be expected to be resolved by dispute resolution or application to the Victorian Civil and Administrative Tribunal.<sup>6</sup>

## SUPPORT

### Access to specialist support services

6. **Specialist support services and promotion.** Existing support services, such as SAS Vic members including Centres Against Sexual Assault and the Sexual Assault Crisis Line, should be funded to provide targeted support to victim-survivors of sexual harassment and other forms of gendered violence at work, and these services widely promoted.
7. **Cultural safety and disability-accessibility.** Consultation with appropriate groups should be undertaken to ensure that there are culturally safe and appropriate services for First Nations and culturally and linguistically diverse victim-survivors, which are also accessible for people with disability and are promoted using targeted communications strategies.
8. **Confidential online reporting tool.** Invest in piloting an accessible and confidential online reporting tool, hosted by a specialist victim-focused organisation, that overcomes a range of barriers to reporting and recording evidence and identifies systemic trends. The host should be adequately funded to provide the service and staffed by suitably qualified and trained counsellors who take a victim-centred approach and can follow up online reports with necessary support.<sup>7</sup>
9. **Legal assistance.** Invest in legal services to assist victim-survivors on low incomes or with strategically important cases to understand their rights and options and pursue legal claims of

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<sup>6</sup> *Equal Opportunity Act 2010* (Vic) s 127(a)(ii) and (iii).

<sup>7</sup> See below in this submission under 'Support - Technological solutions can encourage reporting' reference to examples such as Callisto ([mycallisto.org](http://mycallisto.org)).

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sexual harassment and discrimination, with consideration given to establishing a dedicated Working Women's Centre or Unit in Victoria.<sup>8</sup>

### Support victim-survivors to report sex-based harassment and discrimination at work

- 10. Protecting against detriment after reporting.** Amend the Equal Opportunity Act to improve protection and redress for people who complain of discrimination or sexual harassment and suffer detriment because the employer or other duty holder fails to respond reasonably or handles an investigation badly.
- 11. Workplace investigations.** Consider regulating workplace investigations to strengthen procedural fairness for all parties, and facilitate an appropriate balance between privacy and transparency.
- 12. Defamation laws.** The Model Defamation Provisions should extend absolute privilege to complaints of unlawful conduct such as sexual harassment or discrimination made to:
  - a) Employers, or to investigators engaged by employers;
  - b) Professional disciplinary bodies; and
  - c) For the avoidance of any doubt, any statutory body that is empowered to receive complaints of the unlawful conduct in question, including VEOHRC, the Australian Human Rights Commission (**AHRC**) and the Fair Work Commission.

### Prohibit conduct that causes harm

- 13.** Amend the Equal Opportunity Act to prohibit the following conduct that causes harm:
  - a) **Public life.** Sexual harassment in all areas of public life, in addition to existing protections, to address the broader community culture that contributes to gendered violence.<sup>9</sup>
  - b) **Environment.** Creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex and related protected attributes, because everyday sexism and sex-based hostility has a harmful impact on workers who are exposed to it, even if the conduct is not directed towards them individually.
  - c) **Inclusive protections.** Harassment on the ground of sex, gender identity and intersex status, to make sure that the prohibition on this form of sex discrimination is clear and easily understood by workers and duty holders.

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<sup>8</sup> See *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n5, p 47 and 48 (Recommendations 49 and 53).

<sup>9</sup> See for example, section 118 of the *Anti-Discrimination Act 1991* (Qld).

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## Fairer and more accessible system to redress

### 14. Amend the Equal Opportunity Act to:

- a) **Burden of proof.** Shift the burden of proof to the employer once the employee has established a prima facie case of unlawful conduct, including discrimination and sexual harassment.
- b) **Time limits.** Extend the time limit for bringing a complaint to 6 years. This would bring the time limit into alignment with the *Fair Work Act 2009* (Cth) time limit for non-dismissal related civil remedy provision protections.
- c) **Unpaid workers and volunteers.** Extend the definition of 'employee' to include unpaid workers and volunteers, so that these workers are protected against sex discrimination and other employment-related conduct that is prohibited in the Equal Opportunity Act, as well as sexual harassment.
- d) **Intersectionality.** Require the decision maker to take into account any attributes protected by section 6 of the Equal Opportunity Act (including race, physical features, sexual orientation, gender identity and disability) that the applicant has and how these attributes affected their experience of the conduct when "having regard to all the circumstances" of any alleged unlawful harassment.

### 15. **Legal costs.** Amend the Equal Opportunity Act and the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) to include an exception to the presumption that parties bear their own costs in circumstances where there is a finding that a party has contravened the Equal Opportunity Act, as well as in instances where the application is frivolous, vexatious or without foundation.

## ENFORCEMENT

### Improve compliance with anti-discrimination laws

### 16. **Improving enforcement and compliance.** Amend the Equal Opportunity Act to enable VEOHRC to enforce compliance with the Equal Opportunity Act following an investigation, including by issuing compliance notices, entering into enforceable undertakings, prosecuting contraventions and seeking pecuniary penalties.

### 17. **Funding and functions.** Accompany the additional powers of VEOHRC with:

- a) Additional and secure funding;
- b) Consideration of VEOHRC's structure and functions (including fee-for-service functions) to ensure that it can effectively perform the functions of a regulator.

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## Sexual harassment as a serious work health and safety issue

- 18. Psychological health and safety guidance.** Ensure that any regulations and ancillary guidance made to address psychological health and safety at work cover gendered violence and harassment, including sexual harassment.
- 19. Education for key stakeholders.** Provide ongoing training and capacity building to the WorkSafe inspectorate, Health and Safety Representatives and other stakeholders who regularly come into contact with workers reporting psychosocial work injuries, such as clinicians and community lawyers.
- 20. Guidance for employers.** Develop guidance for employers about taking a victim-centred approach to responding to and investigating reports of gendered violence and harassment.
- 21. Public education.** Conduct campaigns to educate the public and increase awareness of the need to address gendered violence at work, including sexual harassment, as a work health and safety issue.
- 22. Social and organisational norms.** Undertake other evidence-based strategies to shift social and organisational norms to improve sexual harassment and gendered violence prevention and response, including within a work health and safety framework.
- 23. Demonstrate effectiveness.** Demonstrate that WorkSafe is taking a responsive and victim-centred approach to addressing gendered violence and harassment at work that recognises the underlying drivers of sexual harassment.

## AWARENESS RAISING

### Effecting change

*We refer to and repeat recommendations 1-4 and 18-23 above.*

- 24. Building capacity to respond.** Build management and employee capacity to recognise, report and respond appropriately to sexual harassment and gendered violence.
- 25. Data collection.** Invest in data collection and analysis to build the evidence base about the prevalence and nature of gendered violence and harassment in different industries and in workplaces of different types and sizes, in order to design effective interventions.

## ENDORSEMENT

This joint submission and its recommendations are also endorsed by:



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# Prevention

## A holistic strategy to prevent violence against women

**Goal:** Gendered violence at work, including sexual harassment is addressed as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality.

Sexual harassment is a community-wide issue. The prevalence of sexual harassment both within and outside workplaces, and the fact that sexual harassment shares the same drivers as other forms of gendered violence, mean that effective primary prevention of sexual harassment at work requires whole-of-community action.

The Victorian Government must continue to invest in and scale up efforts to address the underlying gendered drivers of sexual harassment, as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality in line with *Change the story: A shared framework for the prevention of violence against women and their children in Australia*.<sup>10</sup> The development of the Second Action Plan for *Free from Violence: Victoria's strategy to prevent family violence and all forms of violence against women* provides an opportunity to include a stronger focus on sexual harassment and other forms of gendered violence at work, and scale up primary prevention initiatives, including both workplace-based programs and programs that aim to shift social and organisational norms in other settings, such as comprehensive whole-of-school education programs. Similarly, preventing sexual harassment and promoting gender equality in the workplace should be a priority in the renewal of *Safe and Strong: A Victorian Gender Equality Strategy*.

### Addressing the gendered drivers of sexual harassment

Sexual harassment is a form of violence against women. International evidence shows that all forms of violence against women, including sexual harassment, share the same gendered 'drivers', and that gender inequality provides the necessary social context for violence against women to occur.<sup>11</sup>

This means that promoting gender equity in the workplace – and in the broader community – is integral to preventing sexual harassment and gendered violence at work. To be effective, a whole-of-organisation approach that addresses gendered norms, practices and structures is required to create gender equitable work environments.<sup>12</sup>

Research shows that structural and norms-based change are interdependent and must be aligned to be successful. For example, evidence from workplace-based interventions shows that when trying to change a culture of discrimination or inequality, structural changes must be supported by, and in alignment with, changes to social norms and attitudes. On the one hand, efforts to change individual attitudes and behaviours are difficult to sustain without structural changes to support individual efforts.<sup>13</sup>

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<sup>10</sup> *Change the Story: National framework for a consistent and integrated approach to preventing violence against women and their children in Australia*, Our Watch (May 2019) (Available [here](#)).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> *A high price to pay: the economic case for preventing violence against women*, PricewaterhouseCoopers Australia (2015) (Available [here](#)) p 24.

On the other, structural gender equity interventions (for example, quotas for women in leadership positions) that are not supported by efforts to change attitudes are more likely to result in resistance or ‘backlash’.<sup>14</sup> For example, the introduction of a policy on flexible work will be ineffective if the absence of buy-in from management and lack of training for relevant staff means that women trying to access such entitlements are met with ignorance or hostility.

### **Case study: Addressing violence-supportive attitudes in the workplace**

Women’s Health Goulburn North East (**WHGNE**) works closely with rural and regional organisations on whole-of-organisation approaches to gender equity. This occurs in a number of stages, one of which involves a pre-training readiness assessment. This readiness assessment collects base-line data across four key skills for mainstreaming gender, as well as incorporating workplace-specific questions from the National Community Attitudes towards Violence against Women Survey (**NCAS**).

Recently, this readiness assessment was administered to the senior executive and leadership team of a large regional local government. Pre-training, the optional NCAS questionnaire was completed by 36 respondents and the results indicated a prevalence of attitudes that are violence-supportive and undermine gender equality.

People who hold these attitudes are not necessarily prone to violent behaviours, nor would they openly condone violence, but when they are held by a large number of people, they contribute to a culture in which violence is not condemned, or where it may be actively encouraged.<sup>15</sup>

These organisational leaders have a responsibility to set the standard of acceptable workplace behaviours and shape workplace culture, as well as making significant decisions that impact the community. However, these attitudes are not only confined to the workplace. It is likely that these leaders also play additional roles outside of their paid employment – in their families, local sporting clubs, and their circle of friends, where these attitudes are shaping and are shaped by social norms and practices.

Recognising that the drivers of violence against women play out at an individual, organisational, community and societal level, any strategies implemented in the workplace need to be reinforced by whole-of-community action that prevents gendered violence and sexual harassment across multiple settings and at every level.

### **Embedding gender equality and respect in Victorian workplaces**

Our Watch’s *Workplace Equality & Respect (WER) Standards* provide guidance for workplaces to promote and embed gender equality and respect in the workplace through a comprehensive organisational change process. A range of tools and resources are available to support workplaces to implement the WER Standards, which can be accessed via the Our Watch website.

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<sup>14</sup> Salter, M., Carmody, M., Presterudstuen, G. (2015) ‘Resolving the prevention paradox: The role of communities and organisations in the primary prevention of violence against women’, presented to the Inaugural Asia-Pacific Conference on Gendered Violence and Violations, University of New South Wales.

<sup>15</sup> Australian National Research Organisation for Women’s Safety [ANROWS], *Are we there yet? Australians’ attitudes towards violence against women & gender equality*, (2019) available at [https://201an81kynngg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/300419\\_NCAS\\_Summary\\_Report.pdf](https://201an81kynngg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/300419_NCAS_Summary_Report.pdf)

The *Gender Equality Act 2020* (Vic) (**Gender Equality Act**) also provides a strong legislative framework for increasing gender equity within the Victorian Public Sector. The Commissioner for Gender Equality in the Public Sector provides access to a range of leading practice resources to assist public sector organisations to meet their obligations under the Act. Sexual harassment in the workplace is one of the workplace gender equality indicators for which public sector employers must collect and report data.

We recommend that the Victorian Government consider providing incentives and resources to support non-public sector employers to implement the WER Standards and/or undertake initiatives similar to those required of public sector organisations under the Gender Equality Act. This should include providing funding for organisations with specialist expertise in prevention of gendered violence to support workplaces to implement the WER Standards and promote gender equity.

Victoria's network of women's health services, for example, have extensive expertise delivering organisational change and capacity-building programs with an intersectional gender lens that are tailored to the local and organisational context. This includes experience working with smaller employers, particularly in rural areas, who often need dedicated assistance to understand how to create a safe and equitable workplace for women and may respond better to messaging that focuses on promoting gender equality in the workplace rather than preventing gendered violence and sexual harassment. With additional funding, women's health services could provide tailored support and resources for workplaces of different sizes and from different industries, including in rural and regional contexts.

### **Building the evidence base for interventions targeting sexual harassment**

Supporting workplace change requires an understanding of the prevailing social norms and readiness for change within an organisation, implementation of targeted, evidence-based interventions, and monitoring and evaluation of the effectiveness of these interventions.

While the prevention of sexual harassment should be integrated into broader efforts and strategies to prevent all forms of gendered violence, as recommended above, and any specific initiatives should contextualise sexual harassment by emphasising the links with other forms of violence against women and the shared gendered drivers, there remains a gap in our understanding of the need for and effectiveness of programs that are adapted to focus specifically on sexual harassment and/or gendered violence at work.

While some strategies for addressing gendered violence at work have been tested, research in this area is nascent. The [Review of Sexual Harassment in Victorian Courts and VCAT \(Appendix 1\)](#)<sup>16</sup> and CARE Australia's report [What Works? Preventing & Responding to Sexual Harassment in the Workplace A Rapid Review of Evidence](#)<sup>17</sup> discuss some evidence-based interventions that have been used to address sexual harassment, such as strategies to address workplace incivility, improve organisational culture and leadership, shift norms and behaviours, promote diversity and inclusion, effectively message change, and minimise backlash.<sup>18</sup> For example, research has identified that training focused on identifying employees as allies who support one another to solve problems of

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<sup>16</sup> *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts*, Court Services Victoria (February 2021) (Available [here](#)).

<sup>17</sup> *What Works? Preventing & Responding to Sexual Harassment in the Workplace a Rapid Review of Evidence*, CARE (November 2018) (Available [here](#)).

<sup>18</sup> *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts* n 16, p 11-32.

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gendered violence is an effective alternative to training focused on identifying forbidden behaviours and punitive consequences.<sup>19</sup>

Few studies have explored bystander interventions to prevent and respond to workplace sexual harassment,<sup>20</sup> although recent studies in the university and high school context have shown that bystander education (particularly if coupled with a 'majority norm messaging campaign') can change social norms and increase the likelihood of staff and students intervening to prevent assaults and sexual harassment.<sup>21</sup> VicHealth has released a number of tools to assist organisations to implement bystander intervention programs, but emphasises that these tools must be accompanied by a suite of other actions as part of a whole-of-organisation approach to change, including top-down organisational support, a clear and enforced sexual harassment policy, key metrics to track sexist and sexually harassing behaviour, and an effective reporting and resolution process.<sup>22</sup> The suitability of the tools also depends on the workforce's level of understanding of gendered violence, as bystander action cannot be taken unless a person can identify problematic conduct.<sup>23</sup>

WHV's 2018 report [\*Working with Workplaces: Challenges and opportunities for workplace violence prevention and bystander programs\*](#) suggests that programs designed to prevent family violence cannot simply be 're-purposed' to focus on sexual harassment.<sup>24</sup> While the fundamental elements of programs to address all forms of violence against women should be consistent (for example, addressing the four gendered drivers), existing programs may need to be adapted and tailored to include a specific focus on workplace sexual harassment and to take into account the particular dynamics of the workplace as a setting.

Focusing on specific forms of gendered violence, such as sexual harassment – which are of current concern to the community – encourages workplaces to engage with prevention programs. However, a broader focus on gendered violence makes clear the links between different forms of gendered violence, including those that occur within the workplace and outside of it, and encourages participants to think more broadly about the impact of gender inequality.

WHV's experiences in this area show that there is still much work to be done on how to design and implement sexual harassment prevention programs in workplaces and further research is needed to examine the differences and challenges for program delivery. There is also a need for further investment in building the evidence base to understand what works to prevent sexual harassment in particular industries, workplaces and workforces.

## **Intersectional discrimination**

Experiences of gendered violence and sexual harassment often intersect with other forms of social inequality. For example, women on temporary visas or with uncertain residency status experience

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<sup>19</sup> *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts* n 16, p 75.

<sup>20</sup> *Encourage. Support. Act! Bystander approaches to sexual harassment in the workplace*, Australian Human Rights Commission and McDonald P, Flood M (June 2012) (Available [here](#)).

<sup>21</sup> *Prevention Strategies*, Centre for Disease Control and Prevention (February 2021) (Available [here](#)) and *Take action: Empowering bystanders to act on sexist and sexually harassing behaviours*, The Behavioural Insights Team and Vic Health (2019) (Available [here](#)) p 2.

<sup>22</sup> *Guide to Implementing a University-wide Bystander Email Campaign*, The Behaviour Insights Team and Vic Health (2019) (Available [here](#)) and *Take action: Empowering bystanders to act on sexist and sexually harassing behaviours*, n 21.

<sup>23</sup> See for example, *Guide to Implementing a University-wide Bystander Email Campaign* and *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts* n 16, p 84-88.

<sup>24</sup> *Working with Workplaces: Challenges and opportunities for workplace violence prevention and bystander programs*, Women's Health Victoria (May 2018) (Available [here](#)).

compounding discrimination based on race, language barriers, having their visa or residency status affected if they complain and a lack of understanding of their rights and complaint processes.<sup>25</sup> An intersectional approach to addressing gendered violence and sexual harassment in the workplace involves understanding and responding to the ways in which experiences of gendered violence intersect with experiences of other forms of discrimination. As such, an intersectional approach is necessary to respond to the ways in which the experience of disability, Aboriginal and/or Torres Strait Islander identity, cultural or racial minority status, migration status, sexuality and gender identity, rurality, and socio-economic status intensify gender-based inequality and violence and impact upon the ways in which women and gender diverse people experience harassment.

Taking an intersectional approach to 'mainstream' or universal prevention initiatives includes creating workplace cultures where diversity is valued, where women and gender diverse people are safe to share experiences and identities if they choose without fear of exclusion, discrimination or harassment, where the validity and reliability of women's experiences and accounts are upheld, where myths about gendered violence and diverse communities' experiences of gendered violence are challenged, and where expectations of behaviour respecting personal boundaries are high. It must involve implementing prevention strategies and initiatives that are tailored toward addressing other forms of discrimination and structural inequality in addition to gender inequality.

## Targeted interventions

Universal approaches that take an intersectional approach should also be complemented by strategies which target workforces at higher risk of sexual harassment. This includes both targeting education and prevention initiatives to industries and employers who employ marginalised workers, such as women on temporary visas or with uncertain residency status, as well as developing tailored information and supports to assist women at higher risk of experiencing sexual harassment (because of the industry they are in, conditions of work, their exclusion from the mainstream workforce, or their experience of intersecting forms of discrimination) to report sexual harassment, be aware of the full suite of options for recourse, and access legal representation. Ensuring all workers are aware of their rights and avenues for reporting and accessing support is a critical component of primary prevention; this is because failure to respond adequately to sexual harassment contributes to an environment in which it is condoned, which is itself one of the drivers of sexual harassment.

As noted in the Consultation Paper,<sup>26</sup> there are key industries and workforces that are at higher risk of experiencing sexual harassment, as set out below. These sectors and workforces would benefit from targeted approaches to primary prevention.

- Industries that are male-dominated and/or have male-dominated management structures.<sup>27</sup>
- Workforces dominated by young women such as retail and service industries.<sup>28</sup> Young women experience higher rates of sexual harassment<sup>29</sup> and other forms of violence against

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<sup>25</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, pp. 184, 191.

<sup>26</sup> *Consultation Paper: Addressing sexual harassment in Victorian workplaces*, Engage Victoria (25 June 2021) (Available [here](#)) p 2.

<sup>27</sup> Saunders, S., Eastaugh, P. (2013) 'The nature, pervasiveness and manifestations of sexual harassment in rural Australia: does 'masculinity' of workplace make a difference?' *Women's Studies International Forum*, 40 pp 121–131.

<sup>28</sup> *Everyone's business: Survey on sexual harassment of members of the Shop, Distributive and Allied Employees' Association*, Australian Human Rights Commission (2019) (Available [here](#)).

<sup>29</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace*, Australian Human Rights Commission (2018) (Available [here](#)).

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women than older women.<sup>30</sup> Three quarters of women in these industries reported having been sexually harassed and they may experience sexual harassment from customers/clients (third party harassment) as well as co-workers/employers.<sup>31</sup> Younger workers also experience higher levels of intimidation from workplace sexual harassment than older workers.<sup>32</sup>

- Education and training settings,<sup>33</sup> noting sector-specific complexities (for example, perpetrators of sexual harassment may not be employees, but students<sup>34</sup>
- Industries with higher rates of sexual harassment, including information, media, telecommunications, arts and recreation services.<sup>35</sup>
- Rural workplaces including in the agriculture sector, where there may be higher rates of casualised labour and higher numbers of migrant and undocumented workers, coupled with isolation and/or lack of access to support.<sup>36</sup>
- Migrant and refugee women, in particular those on temporary visas and undocumented workers.<sup>37</sup>
- Women in precarious work.<sup>38</sup>
- Women with disabilities.<sup>39</sup>

To identify appropriate strategies for preventing and responding to sexual harassment among groups who are at a higher risk of experiencing gendered violence, we recommend that the Victorian Government undertake a meaningful consultation with groups and communities disproportionately affected by gendered violence including young workers, Aboriginal and Torres Strait Islander workers, LGBTIQ+ people, migrant and refugee workers (especially those with uncertain visa or residency status who are subjected to regulation within their employment) and people with a disability.

While the key messages may be universal (e.g., that sexual harassment is against the law, that employers have a responsibility to prevent it, and employees have a right to report it and access supports), the way these messages are delivered should be informed by an intersectional approach which considers factors such as accessibility (ability, geography, language, cost), cultural responsiveness/safety and gender inclusiveness. The Multicultural Centre for Women's Health (MCWH) has developed the *Intersectionality Matters: A guide to engaging immigrant and refugee communities to prevent violence against women* which provides useful examples of how to prevent and respond to experiences of gendered violence in a way that is culturally appropriate and responsive to the unique intersectional experiences of gendered violence.<sup>40</sup>

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<sup>30</sup> *Quick Facts, Our Watch* (2021) (Available [here](#)).

<sup>31</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace* n 29, pp 9-13.

<sup>32</sup> *Ibid* p 56.

<sup>33</sup> *Ibid* p 57.

<sup>34</sup> *Change the Course: National report on sexual assault and sexual harassment in Australian Universities*, Australian Human Rights Commission (August 2017) (Available [here](#)).

<sup>35</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace* n 29, p57.

<sup>36</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, pp. 244-249.

<sup>37</sup> *Ibid*, p 184, 191.

<sup>38</sup> *Ibid*, p 19.

<sup>39</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace*, n 29, p 23.

<sup>40</sup> *Intersectionality Matters: A guide to engaging immigrant and refugee communities in Australia*, Multicultural Centre for Women's Health, (2017) (Available [here](#)).

Similarly, from the employer side, 'universal' communications and education on sexual harassment should be complemented by tailored messages relevant to the industry and workforce. For example, research in the construction and manufacturing industries has shown that programs which work with employees to challenge misconceptions and stereotypes can be effective in creating a positive workplace culture.<sup>41</sup> Organisations that specialise in the primary prevention of gendered violence with an intersectional lens, such as women's health services, are well-placed to support employers to understand, prevent and address sexual harassment in their organisational context.

### **Case study: Addressing gender inequality in the advertising industry**

Available evidence suggests there are high rates of sexual harassment within the Australian advertising industry. In a 2016 survey of a sample of agencies, 42 per cent of women surveyed said they had been sexually harassed at some point in their career in advertising, and 45 per cent of women felt vulnerable in the industry because of their gender, compared to 3 per cent of men.<sup>42</sup> This is consistent with the findings of the 2018 national survey on sexual harassment in Australian workplaces, which found that rates of sexual harassment were highest within the information, media and telecommunications industries.<sup>43</sup>

The advertising industry is characterised by many of the features highlighted in the Respect@Work report as contributing to higher rates of sexual harassment:

- It is highly male dominated: one industry survey found 84% of CEOs and 71% of creative and design professionals in Australian advertising are men.<sup>44</sup> Limited parental leave, long working hours and a lack of flexibility are barriers to greater gender equality.
- The average age of people in advertising is under 30.
- Masculine organisational cultures that prioritise competition, aggression and hierarchy can create macho, hostile or unsafe environments that exclude women.

[shEqual](#) is an initiative led by Women's Health Victoria that specifically targets gender inequality within the advertising industry, both in advertising portrayals and in advertising workplaces. The project takes an evidence-based whole-of-system approach to work towards long-term, sustainable change, including working with industry, regulators and consumers. A key project objective is to promote gender equality within the advertising industry, including through attracting, promoting and retaining more women in leadership positions.<sup>45</sup> This includes delivery of tailored gender equity training and resources which have been developed in partnership with advertising industry representatives to ensure they are relevant to advertising professionals and workplaces. A gender equity audit of the advertising industry is also planned, which will aim to collect more comprehensive data on experiences of gender inequality and sexual harassment within the industry to enable more targeted strategies for prevention and response to be developed.

<sup>41</sup> Quay Connection (2014), [Ducks on the pond: women in trade apprenticeships](#), NSW State Training Services.

<sup>42</sup> Baker R (2017), True state of agencies revealed: the Agency Circle results are in AdNews. Available [here](#).

<sup>43</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace* n 29, p 57.

<sup>44</sup> Baker R (2017), True state of agencies revealed: the Agency Circle results are in AdNews. n 42

<sup>45</sup> *Seeing is Believing: a national framework for championing gender equality in advertising*, Women's Health Victoria (2020) (Available [here](#)) p 41.

At scale, industry-specific initiatives like shEqual have strong potential to reduce and prevent sexual harassment in industries where rates are high.

**Recommendation 1: Prevention strategy, capacity-building and investment.** Commit to, and invest in, dedicated prevention efforts to address the underlying gendered drivers of sexual harassment as part of a holistic strategy to prevent violence against women and promote gender equality within the *Free from Violence Second* Action Plan. This should include investment in scaling up interventions to prevent gendered violence and harassment at work, including both workplace-based programs and programs that aim to shift social and organisational norms in other settings, such as comprehensive whole-of-school education programs.

**Recommendation 2: Resources and support to enable employers to prevent gendered violence.** Provide resources and support for employers of all types across Victoria – including smaller and rural employers – to implement whole-of-organisation initiatives to prevent gendered violence and promote gender equity within their workplaces. This should include resourcing specialist primary prevention organisations, such as women’s health services, with a track record of building the capacity of organisations to prevent violence against women, to support workplaces to implement these approaches.

**Recommendation 3: Universal, intersectional approaches and targeted strategies for high-risk industries and employees.** Invest in both universal strategies and initiatives for the prevention of sexual harassment that embed an intersectional approach, and develop and deliver targeted strategies to address high rates of sexual harassment within particular industries and among certain workforces, in collaboration with specialist organisations. To identify appropriate strategies for preventing and responding to sexual harassment among high-risk populations, we recommend the Victorian Government undertake a meaningful consultation with high-risk groups and communities.

**Recommendation 4: Building understanding of the problem and effective solutions.** Identify effective strategies and enable employers and primary prevention organisations to design targeted solutions to prevent sexual harassment, particularly among marginalised or at-risk groups by:

- a) Investing in further research and evaluation to understand the prevalence of sexual harassment in certain industries.
- b) Creating tools that employers can use to identify the nature of gendered violence and harassment and its causes at their organisation, such as online attitudinal surveys.
- c) Investing in further research and evaluation to identify effective interventions that target or are adapted to the context of sexual harassment and gendered violence at work, including by monitoring and evaluating existing interventions to determine their effectiveness.

## Positive duty to prevent gendered violence

**Goal:** Those with responsibility for workers and workplaces take proactive steps to prevent gendered violence including sexual harassment at work.

Employers should be legislatively required to take proactive and preventative steps to provide a working environment free from sex-based harassment or discrimination.

While employers already have a positive duty to eliminate discrimination and sexual harassment under s15 of the Equal Opportunity Act, it is difficult to enforce – and in fact, has never been enforced – and therefore has limited effect. This is because the duty in s15 is not enforceable by direct action; it can only be enforced if the VEOHRC refers a matter to VCAT following an investigation.<sup>46</sup> However, VEOHRC investigations are rarely undertaken, and this referral process has not been utilised.

While there is also a positive duty under work health and safety laws,<sup>47</sup> which can be enforced by WorkSafe Victoria, we consider that positive duties under both the Equal Opportunity Act and the Occupational Health and Safety Act 2004 (Vic) (**OHS Act**) are important and complementary. It is important to treat sexual harassment as a workplace hazard and take a work health and safety approach to eliminating the risks, as we discuss further below. However, it is equally important to acknowledge that sexual harassment is a form of discrimination that occurs beyond the workplace and must also be addressed from an anti-discrimination perspective. The VEOHRC has unique expertise in this area that it can contribute – if adequately funded – to support employers to prevent sex-based discrimination and gendered violence and create more inclusive workplaces.

Further, a breach of the positive duty under work health and safety law is a criminal offence that must be proven beyond reasonable doubt (the criminal standard of proof). This is likely to limit action being taken under that framework to only the most extreme and criminal cases of employers failing to prevent sexual harassment. In contrast, a contravention of the positive duty under the Equal Opportunity Act is a civil breach, which reflects the nature of the wrong in most circumstances. While a failure to prevent sexual harassment has very serious consequences, we do not consider that an employer's failing in this regard is commonly at a criminal level of culpability, although punitive consequences may be warranted.

A civil positive duty under the Equal Opportunity Act, made visible through enforcement by the VEOHRC, is likely to lead to more employers making greater efforts to prevent gendered violence and harassment. Pursuing sanctions should not be the primary activity of a regulator, however the threat of punishment for non-compliance can help efforts to persuade compliance with the law. As a result, it is important to have a positive duty to eliminate sexual harassment that is actually enforced, and that the VEOHRC has the full suite of regulatory powers to do so. We discuss this further below.<sup>48</sup>

### Recommendation 5

To motivate compliance with the law and greater efforts by employers to prevent gendered violence and harassment, the Equal Opportunity Act should be amended to:

<sup>46</sup> See *Equal Opportunity Act 2010* (Vic) s 139(2).

<sup>47</sup> See *Occupational Health and Safety Act 2004* (Vic) part 3.

<sup>48</sup> *Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work*, Victoria Legal Aid (February 2019) (Available [here](#)) pp 29-30.

(a) **Representative action.** Enable direct enforcement of the positive duty by an individual and by representative groups (recognising the significant social, emotional and financial costs for individuals who pursue a legal claim of sexual harassment).

(b) **Investigations.** Remove the barriers to investigation by the VEOHRC under the Equal Opportunity Act, which currently restricts investigations to matters relating to a class or group of people that cannot reasonably be expected to be resolved by dispute resolution or application to the Victorian Civil and Administrative Tribunal.<sup>49</sup>

## Support

### Access to specialist support services

**Goal:** Victim-survivors of sexual harassment and other forms of gendered violence at work are supported to recover and respond, with easy access to specialist support services, including counselling and legal services, that are appropriately resourced and have well-trained staff.

#### Increased access to counselling services for victim survivors

Trauma research suggests that timely access to support can have a positive impact on victims' recovery trajectories.<sup>50</sup> Sex-based discrimination and harassment often causes significant harm to victim-survivors, but few people receive specialist support. Many victim-survivors would benefit greatly from receiving counselling and practical information about how to respond to the incident – either informally or formally – and to support their recovery in the event that the incident has caused them harm. It is important that counselling support services are provided in a culturally safe and appropriate way and that eligibility for such services is not restricted on the basis of visa or residency status.

Currently, Centres Against Sexual Assault (**CASAs**) are the major providers of counselling and therapeutic support services to adult victim survivors of sexual harm. The Sexual Assault Crisis Line and 1800 Respect are also key support services in Victoria. However, these services are not widely promoted for victims of workplace gendered violence including sexual harassment and are not sufficiently resourced to meet the demand. As a result, there is a significant gap in the provision of counselling support to victim-survivors of sex-based discrimination and harassment at work.

The more formal reporting and complaint options available to victim-survivors can also be confusing and overwhelming with options including a report to Police or WorkSafe Victoria, a legal complaint to the VEOHRC, VCAT, AHRC, a workers compensation claim, and a complaint to various professional or industry regulators. This is particularly the case for people from migrant and refugee backgrounds where formal reporting processes are not culturally accessible or safe, and may impact visa eligibility. A well trained and resourced service could provide victim-survivors with targeted, culturally appropriate information about these options, ongoing counselling support and 'warm' referrals to relevant agencies.

<sup>49</sup> See sections 127(a)(ii) and (iii) of the *Equal Opportunity Act 2010* (Vic).

<sup>50</sup> *Strengthening Victoria's Victim Support System: Victim Services Review Final Report*, Centre for Innovative Justice (November 2020) p 198 citing James K Hill, 'Victims' Response to Trauma and Implications for Interventions: A Selected Review and Synthesis of the Literature' (Policy Centre for Victims Issues, 2003).

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## Technological solutions can encourage reporting

Certain barriers to reporting can be addressed by better supporting victim-survivors as soon as possible after an incident occurs. For example, we have worked with clients who have not wanted to pursue a legal claim initially but have changed their mind once they have had the time to make sense of what happened. By this stage, however, they have often lost precious evidence, such as text messages, photos, or a contemporaneous account of what happened.

Online web-based systems (staffed by counsellors) can protect against this situation and solve a number of other barriers to reporting. For example, web-based systems can enable victim-survivors to confidentially create a report about what happened and upload evidence, which is then time-stamped and preserved, without having to disclose this to anyone. This information can then be accessed months or years later when the victim-survivor is ready to take further action.

Online reporting systems can also help to overcome reluctance to report in situations where there is no corroborating evidence (it is the victim-survivor's word against that of the perpetrator). By way of example, [Callisto \(mycallisto.org\)](https://mycallisto.org) provides a comprehensive information and support service to victim-survivors of sexual assault, with a 'matching' function that identifies when 2+ victims name the same offender. This prompts a counsellor at Callisto to contact the victims and confidentially explain their options, including referrals to legal and other services. This can reduce the risks and social costs involved with being a lone complainant, as well as support claims with otherwise limited evidence.

With sufficient uptake, a sophisticated online reporting tool can also identify trends to assist with prevention and enforcement efforts.

Online reports can be made anonymously, at any time, and anywhere, ensuring high levels of accessibility. Further, chatbots with well-designed decision trees can provide information that is tailored to different scenarios, help answer complex questions and identify reporting options and other support services.<sup>51</sup> The VEOHRC has developed a chatbot as part of its workplace training program '[Raise it](#)'. The interactive digital tool provides information and resources to users about workplace sexual harassment, but not the full range of functions above.

SECASA also previously developed the Sexual Assault Report Anonymously (**SARA**) tool which was a mobile friendly website for victims to report what happened to them and elect if they would like to be contacted by a sexual assault counsellor. However, it is no longer available due to concerns by the provider about security of reports, follow-up and duty of care in the context of constrained resources.

As the Review of Sexual Harassment in Victorian Courts and VCAT identified, for a web-based system to perform these functions it needs to be victim-centred and designed in a way that is trauma-informed and staffed by people who are appropriately trained to respond in a way that protects the wellbeing of both service users and themselves, as workers who are vicariously exposed to information about traumatic experiences.<sup>52</sup>

We recommend an exploration of models that address the risks identified by SECASA in relation to the SARA tool, while harnessing the potential of online reporting tools. A reporting tool should be hosted by a specialist victim-focussed organisation that is staffed by suitably qualified and trained counsellors who take a victim-centred approach and can follow up online reports with necessary support. It should have the capability to:

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<sup>51</sup> *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts* n 16, p 103.

<sup>52</sup> *Ibid*, p 106.

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- a) assist people to:
    - i. report and address problem behaviour.
    - ii. obtain clinical and mental health support.
    - iii. upload and save time-stamped evidence and reports for future use.
    - iv. notify regulatory bodies, Police and other authorities through a warm referral process.
  - b) have a 'matching' function that identifies when 2+ victims name the same offender and prompts a counsellor to contact the victims and confidentially explain their options, including referrals to legal and other services.
  - c) identify trends to assist with prevention and enforcement efforts.

### Increased access to legal services

Given that workplace sexual harassment is primarily experienced by working women, victim-survivors are often financially ineligible for free legal assistance. The low cost-benefit of litigation means that these matters are also rarely suited to no-win no-fee legal representation, leaving many victim-survivors unable to engage a lawyer to pursue their claim.

In *Respect@Work* the AHRC found that even if the legal system relating to sexual harassment is reformed, legal aid commissions, Aboriginal and Torres Strait Islander Legal Services, and community legal centres will play an important role in advising workers about their options and which option is best suited to their circumstances, and giving support to redress power imbalances and avoid further trauma.<sup>53</sup>

The AHRC considered that legal representation may result in a fairer, more efficient process and "should be available to all victims of sexual harassment navigating legal and external complaint processes, including those who do not have the means to pay lawyers' fees".<sup>54</sup> The AHRC concluded that: "Legal aid commissions, Aboriginal and Torres Strait Islander Legal Services, and community legal centres should be adequately resourced to enable them to provide quality advice and representation in sexual harassment matters."<sup>55</sup>

### Services must be culturally safe and disability-accessible

As Sexual Assault Services Victoria has identified, some people, including people with a disability, Aboriginal and Torres Strait Islander people, those from culturally and linguistically diverse backgrounds, and LGBTIQ+ people face additional barriers to reporting and accessing justice.<sup>56</sup> In its report on *Strengthening Victoria's Victim Support System*, the Centre for Innovative Justice found that victim services must respond to the needs and experiences of victims from diverse circumstances and backgrounds and actively address barriers to access.<sup>57</sup>

**Recommendation 6: Specialist support services and promotion.** Existing support service, such as SAS Vic members including Centres Against Sexual Assault and the

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<sup>53</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, p 770.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> See, eg, Sexual Assault Services Victoria, *Submission to the Victorian Law Reform Commission's Improving the Response of the Justice System to Sexual Offences Inquiry*, Sexual Assault Services Victoria (December 2020) (Available [here](#)).

<sup>57</sup> *Strengthening Victoria's Victim Support System: Victim Services Review Final Report*, n 50, p 59.

Sexual Assault Crisis Line, should be funded to provide targeted support to victim-survivors of sexual harassment and other forms of gendered violence at work, and these services widely promoted.

**Recommendation 7: Cultural safety and disability-accessibility.** Consultation with appropriate groups should be undertaken to ensure that there are culturally safe and appropriate services for First Nations and culturally and linguistically diverse victim-survivors, which are also accessible for people with disability and are promoted using targeted communications strategies.

**Recommendation 8: Confidential online reporting tool.** Invest in piloting an accessible and confidential online reporting tool, hosted by a specialist victim-focused organisation, that overcomes a range of barriers to reporting and recording evidence and identifies systemic trends. The host should be adequately funded to provide the service and staffed by suitably qualified and trained counsellors who take a victim-centred approach and can follow up on online reports with necessary support.<sup>58</sup>

**Recommendation 9: Legal assistance.** Invest in legal services to assist victim-survivors on low incomes or with strategically important cases to understand their rights and options and pursue legal claims of sexual harassment and discrimination, with consideration given to establishing a dedicated Working Women's Centre or Unit in Victoria.<sup>59</sup>

## Support victim-survivors to report sex-based harassment and discrimination at work

**Goal:** People who report gendered violence and harassment at work are protected from retaliation and have confidence in their employer's investigation process.

### Protecting against detriment after reporting

Victim-survivors and those who report sexual harassment commonly experience retaliation for speaking up or taking action. The 2018 AHRC Survey found that 'almost one in five people who made a formal report were labelled as a trouble-maker, victimised, ostracised or resigned.'<sup>60</sup>

Further, many victims of sex-based discrimination and harassment experience victimisation in the form of employer responses that are humiliating, undermining and completely inadequate, as illustrated by Fiona's story below. However, there is often no available redress for this harm.

#### Fiona's story<sup>61</sup>

I was subjected to sexual harassment by my manager in my employment. This person would make lewd jokes, call me by sexual nicknames and discuss his sexual fantasies with me at work. He would also sit very close to me and other female staff. It was common knowledge

<sup>58</sup> See in this submission under 'Support - Technological solutions can encourage reporting' reference to examples such as Callisto ([mycallisto.org](http://mycallisto.org)).

<sup>59</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, pp 47- 48 (Recommendations 49 and 53).

<sup>60</sup> *Everyone's business: Fourth national survey on sexual harassment in Australian workplace*, n 29, pp 73-75.

<sup>61</sup> *Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work*, n 48, p 23.

in the workplace that he regularly behaved in this way to female staff, but it was never addressed.

I initially spoke with the HR manager about the sexual harassment I was experiencing, and nothing happened. There were six other women in my area who made complaints. It took six-months for the company to do anything. The manager only left when the complaints against him became overwhelming as me and the other women were reporting more incidents.

When he left the company the HR manager sent an office-wide email thanking him for his service and explaining that he is pursuing a new adventure. That email felt like the company telling us that we weren't valued.

I was treated unfavourably as a result of my internal complaint. I felt I had no choice afterwards but to resign. I then lodged a legal complaint, and I found the conciliation process to be very adversarial and intimidating. The organisation responded to my complaint by attacking my work ethic rather than by acknowledging any wrongdoing or responsibility for what happened. I felt like the process was a battle and afterwards I didn't have anything left in me to keep pursuing my rights. I felt depleted.

I was unable to obtain any outcome and in the end, I just let the matter go. My manager was never really punished for his behaviour. I ended up feeling like the system favours the perpetrator.

### **Silencing effect of defamation law**

In VLA's experience, some clients are fearful of reporting or discussing allegations of sexual harassment or assault due to concerns about defamation. In some cases, employers and alleged perpetrators have actively used the threat of defamation against clients who have raised a concern about sexual harassment.

Even when victims do make a complaint or seek legal advice, some decide not to pursue their complaint further for fear of retaliation, as evidenced by Lydia's story below.

#### **Lydia's story**

I worked for a sole proprietor who subjected me to sexual harassment. He touched my bottom, sexually propositioned me, made comments about my appearance and invited me to his home. He also behaved this way towards other female employees.

I was concerned about making sure he did not continue to sexually assault female staff, but I did not know who to speak to. I heard my boss say directly to me and other staff at the time that if anyone spoke out about anything, he would use his lawyers to come back at them with everything he could, including a defamation claim. When I spoke up about his conduct, I was made redundant.

I didn't know much about defamation at the time, but I felt that the threat of defamation on top of everything else was enough to scare me out of proceeding with the complaint. Even though I received legal advice that I had a strong claim, I decided not to pursue the complaint because of fear to my reputation and risk of a defamation claim against me.

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When people like Lydia are deterred from enforcing their rights, there is no justice for the victim and no steps are taken to stop the conduct from happening again. In some cases, the employer is not even aware that sexual harassment has occurred in their workplace.

Addressing the silencing effect caused by the actual or perceived threat of a defamation action could remove a barrier to reporting sexual harassment and improve the safety of women at work and in our community. To do this, it is our view that the Model Defamation Provisions should extend absolute privilege to complaints of unlawful conduct such as sexual harassment or discrimination made to:

- employers, or to investigators engaged by employers;
- professional disciplinary bodies; and
- for the avoidance of any doubt, any statutory body that is empowered to receive complaints of the unlawful conduct in question, including the Victorian Equal Opportunity and Human Rights Commission, the Australian Human Rights Commission and the Fair Work Commission.

As VLA indicated in its submission to the Review of Model Defamation Provisions in May 2021,<sup>62</sup> the extension of absolute privilege to complaints to employers, professional disciplinary bodies and the various commissions that deal with such complaints provides certainty to complainants, and may, for example, have provided sufficient comfort for Lydia to pursue her complaints.

## **Workplace investigations**

We consider that improved regulation of workplace investigations would improve safeguards for all parties, including people subject to a potential false or malicious complaint. Such laws are a more appropriate method for protecting the interests of parties during a workplace sexual harassment complaint process and investigation than defamation actions.

*The Review of Sexual Harassment in Victorian Courts*<sup>63</sup> identifies that the legal dimensions of workplace investigations are often complex and unsettled, and that one consequence of this complexity is that it is likely to be challenging for employers and employees involved in workplace investigations to navigate these rules, understand their legal obligations and/or assert their legal rights.<sup>64</sup>

While there is no legislation specifically directed at workplace investigations in Australia, workplace investigations take place within an intricate framework of regulation.<sup>65</sup> VLA recommended in our *Change the Culture, Change the System* report that: “Consideration should be given to reforming Commonwealth, State and Territory anti-discrimination laws and the Fair Work Act to improve protection and redress for people who complain of sexual harassment and suffer detriment because the employer or other duty holder fails to respond reasonably or handles an investigation badly.”<sup>66</sup>

Improved regulation of workplace investigations would strengthen procedural fairness for all parties and facilitate an appropriate balance between privacy and transparency.

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<sup>62</sup> Submission to the Review of Model Defamation Laws, Victoria Legal Aid (May 2021) (Available [here](#)).

<sup>63</sup> Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts, n 16.

<sup>64</sup> Ibid p 112.

<sup>65</sup> Ibid p 112.

<sup>66</sup> Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work, n 48, p 43 (Recommendation 16).

### **Recommendation 10: Protecting against detriment after reporting.**

Amend the Equal Opportunity Act to improve protection and redress for people who complain of discrimination or sexual harassment and suffer detriment because the employer or other duty holder fails to respond reasonably or handles an investigation badly.

### **Recommendation 11: Workplace investigations.**

Consider regulating workplace investigations to strengthen procedural fairness for all parties and facilitate an appropriate balance between privacy and transparency.

### **Recommendation 12: Defamation laws.**

The Model Defamation Provisions should extend absolute privilege to complaints of unlawful conduct such as sexual harassment or discrimination made to:

- (a) Employers, or to investigators engaged by employers;
- (b) Professional disciplinary bodies; and
- (c) For the avoidance of any doubt, any statutory body that is empowered to receive complaints of the unlawful conduct in question, including VEOHRC, the Australian Human Rights Commission and the Fair Work Commission.

## **Prohibit conduct that causes harm**

**Goal:** All forms of harmful sex-based discrimination and harassment at work is prohibited.

### **Sex-based harassment**

Conduct at work that falls short of sexual harassment, including ‘everyday sexism’, may nonetheless constitute unlawful sex discrimination under the Equal Opportunity Act. Such sexist comments or conduct are often referred to as ‘sex-based harassment’. However, as outlined by the AHRC in *Respect@Work*, the case law that supports this position may not readily be understood in the community.<sup>67</sup> The AHRC recommended that the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**) be amended to expressly prohibit sex-based harassment to provide clarity and certainty to the law and encourage workers and employers to recognise these behaviours as potentially unlawful.<sup>68</sup> For the same reasons, we consider that a similar amendment should be made to the Equal Opportunity Act.

Our practice experience reflects that rigid gender and sex-based norms in society contribute to driving sexual harassment.<sup>69</sup> Further, while ‘milder’ incidents of sex-based harassment may not have an impact in isolation, the compounding effect of repeated slights is significant. According to Professor Belinda Smith et al:

<sup>67</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, p 458.

<sup>68</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, p 470 (Recommendation 16(b)).

<sup>69</sup> *Academic Evidence on the Causes, Manifestations and Responses to Workplace Sexual Harassment Initial Submission to the AHRC’s National Inquiry*, Professor Paula McDonald, QUT and Professor Sara Charlesworth, RMIT University (January 2019) (Available [here](#)) p 10.

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An organisational climate that is sexist and tolerates sexual harassment also causes direct harm to the broader workforce. A recent meta-analysis of studies examining women's occupational wellbeing concluded that 'the more frequent, less intense, and often unchallenged gender harassment, sexist discrimination, sexist organizational climate, and OTSH [organizational tolerance of sexual harassment] appeared at least as detrimental for women's well-being' as low frequency, individualised and targeted acts of harassment, such as sexual coercion. The authors concluded that the organisation-wide impacts of this kind of conduct may be much larger, though less obvious.<sup>70</sup>

VLA's *Change the Culture, Change the System* report highlighted Jessica's story, which shows how a culture that facilitated inappropriate jokes about violence against women and gender stereotypes was interlinked with her experience of sexual harassment.

### **Jessica's story**

I don't have many happy memories of my time at university. I undertook tertiary studies in a male-dominated field of study, and I frequently experienced sexist remarks and sexual harassment from both students and staff. It was often done in a joking manner, but I found it very isolating. It made me feel unsafe. I would constantly ask people to stop making these remarks, which would include jokes about family violence and gender stereotypes, including women's place being in the kitchen. I came very close to withdrawing from my studies because I was worried that the same blokey, sexist culture would continue when I commenced work in the industry.

I spoke up and made an internal complaint. I really wanted to try and change the culture. I asked the University for better policies, awareness training, intervention and help. I spoke to numerous lecturers who did nothing. One lecturer subsequently reprimanded me when I escalated my complaints above them. I did all I could to make the University take it seriously, but I was treated like I was a troublemaker.

The victimisation I experienced after speaking up changed me as a person. My mental health suffered significantly, and I truly struggled to complete my degree. In the end, my complaints were lodged as a grievance. This was a tiresome, lengthy and mentally tormenting process. Although the University ultimately agreed to introduce new policies to address the behaviour, this wasn't consistently or meaningfully implemented. I had to engage a lawyer to obtain an outcome to address the harm I had suffered.

### **Addressing hostile work environments**

It is also important to implement Recommendation 16(c) of *Respect@Work*: 'ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.' While this recommendation was in respect to the Sex Discrimination Act, we consider that the same amendment should be made to the Equal Opportunity Act.

As Jessica's story illustrates, an environment that tolerates generalised hostility towards women causes harm even if the conduct is not directed towards any individual. The evidence supports this observation:

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<sup>70</sup> Smith, B., Schleiger, M., and Elphick, L. 'Preventing Sexual Harassment at Work: Exploring the Promise of Work Health and Safety Laws' (2019) *Australian Journal of Labour Law*, 219-249, 226, citing VE Sojo, RE Wood and AE Genat, 'Harmful Workplace Experiences and Women's Occupational Well-Being: A Meta-Analysis' (2016) 40 *Psych Women Q* 10 at p 31.

A study on the effects of sexual harassment by Sorenson, Mangione-Lambie and Luzio found that it is an 'emotionally devastating event' for bystanders, as well as direct victims. There was no statistically significant difference in the negative effects of sexual harassment on victims and bystanders, with both reporting that they experienced depression and loss of motivation. Likewise, a study by Glomb et al found that 'ambient sexual harassment' — measured by the frequency of sexual harassment experienced by other women in a workgroup — had a detrimental impact on the psychological conditions of individuals in that workgroup. Women who are simply 'members of work groups where ambient sexual harassment is prevalent ... report higher levels of absenteeism, intentions to quit, and are more likely to leave work early, take long breaks, and miss meetings'.<sup>71</sup>

### **Recommendation 13:**

Amend the Equal Opportunity Act to prohibit the following conduct that causes harm:

- (a) **Public life.** Sexual harassment in all areas of public life, in addition to existing protections, to address the broader community culture that contributes to gendered violence.<sup>72</sup>
- (b) **Environment.** Creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex and related protected attributes, because everyday sexism and sex-based hostility has a harmful impact on workers who are exposed to it, even if the conduct is not directed towards them individually.
- (c) **Inclusive protections.** Harassment on the ground of sex, gender identity and intersex status, to make sure that the prohibition on this form of sex discrimination is clear and easily understood by workers and duty holders.

## **Fairer and more accessible system of redress**

**Goal:** Victim-survivors can access fair redress for the harm they experience as a result of sex-based harassment and discrimination.

### **Prohibitive time limits, coverage and cost**

There are currently numerous aspects of the Equal Opportunity Act that commonly deter victims from pursuing complaints, such as short time limits, restrictive coverage, and the risk of adverse cost orders.

### **Difficulties of proof**

Many people are also deterred from pursuing claims due to difficulties in proving the conduct, including due to lack of access to documents and other information held by the employer. Penny's story below illustrates a number of these challenges.

<sup>71</sup> Ibid, citing RC Sorenson, MG Mangione-Lambie and RC Luzio, 'Solving the Chronic Problem of Sexual Harassment in the Workplace: An Empirical Study of Factors Affecting Employee Perceptions and Consequences of Sexual Harassment' (1998) 34 Cal West L Rev 457 at p 460 and TM Glomb et al, 'Ambient Sexual Harassment: An Integrated Model of Antecedents and Consequences' (1997) 71 Organ Behav Hum Decis Process 309 at p 322.

<sup>72</sup> See section 118 of the *Anti-Discrimination Act 1991* (Qld).

### **Penny's story<sup>73</sup>**

I worked as a retail assistant at a clothing store. I was sexually assaulted by my manager after work hours. He also sent me text messages containing sexual comments that were quite controlling and confronting. I complained, and my employer investigated the conduct. I felt that at the time I was not supported as I had to tell the story a few times to different people. It felt like an interrogation. I told them that I was anxious and unwell as a result. I said I hadn't asked for anything, I just didn't want him to work there anymore. They came back with a decision that there wasn't enough evidence to support my complaint, but they would relocate him. I knew I would still have contact with him through the work phone and email.

I told them that they haven't provided me with a safe workplace and I put in a letter of resignation as I could no longer work here.

The way that management handled the situation highlighted that the workplace did not have the framework to handle complaints as I felt dehumanised from the investigation process and it turned me off wanting to pursue legal matters further. It was all too much, even living at that point was a struggle. Nothing that I said was believed.

If there wasn't a timeframe on sexual harassment complaints, I would probably do something about it now. At the time I was trying to make sense of what happened. I felt a lot of shame and guilt.

It would be good if, after speaking to a lawyer, there was an option to be transferred through to a counsellor to debrief about it afterwards. This would've helped me as it was triggering speaking about it and I felt alone after hanging up on the phone. I would have liked to have someone tell me that I haven't done anything wrong and to let me know what I could have done for self-care and referral to some doctors. Kind words are appreciated as it was hard to survive.

### **Intersectional discrimination**

As discussed above, gendered violence and sexual harassment often intersect with other forms of social inequality to create differing and complex experiences of gendered violence. The AHRC has found that inequalities other than sex and gender also play a pivotal role in effecting how gendered violence is experienced. It found that experiences of intersecting forms of discrimination (such as the experiences of Aboriginal and Torres Strait Islander peoples, people with disability, LGBTQI+ people and people of culturally and linguistically diverse backgrounds) can increase the risk of experiencing sexual harassment, and make it harder for victim-survivors to report it.<sup>74</sup> We consider that the Equal Opportunity Act should explicitly require decision-makers to recognise that different attributes intersect to affect and often compound victim-survivors' experiences of gendered violence and harassment.

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<sup>73</sup> See *Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work*, n 48, p 45.

<sup>74</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report* n 5, p 92 and *Discussion paper: Priorities for federal discrimination law reform*, Australian Human Rights Commission (2019) (Available [here](#)), p 7.

#### **Recommendation 14:**

Amend the Equal Opportunity Act to:

- (a) **Burden of proof.** Shift the burden of proof to the employer once the employee has established a prima facie case of unlawful conduct, including discrimination and sexual harassment.
- (b) **Time limits.** Extend the time limit for bringing a complaint to 6 years. This would bring the time limit into alignment with the *Fair Work Act 2009* (Cth) time limit for non-dismissal related civil remedy provision protections.
- (c) **Unpaid workers and volunteers.** Extend the definition of ‘employee’ to include unpaid workers and volunteers, so that these workers are protected against sex discrimination and other employment-related conduct that is prohibited in the Equal Opportunity Act, as well as sexual harassment.
- (d) **Intersectionality.** Require the decision maker to take into account any attributes protected by section 6 of the Equal Opportunity Act (including race, physical features, sexual orientation, gender identity and disability) that the applicant has and how these attributes affected their experience of the conduct when “having regard to all the circumstances” of any alleged unlawful harassment.

#### **Recommendation 15: Legal costs.**

Amend the Equal Opportunity Act and the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) to include an exception to the presumption that parties bear their own costs in circumstances where there is a finding that a party has contravened the Equal Opportunity Act, as well as in instances where the application is frivolous, vexatious or without foundation.

## **Enforcement**

### **Improve compliance with anti-discrimination laws**

**Goal:** There is a high level of compliance with the Equal Opportunity Act, including duties relating to gender equality and sexual harassment.

#### **Lack of consequences for non-compliance**

The vast majority of employers and individuals who contravene the Equal Opportunity Act face no legal consequences. Currently, individual victims of sexual harassment bear the burden of enforcing the Equal Opportunity Act, but there are high financial, social and emotional costs involved in doing so, and contraventions are often difficult for an individual to prove.

Applicants who choose to pursue a legal claim of sexual harassment may end up out of pocket, even if they win their case at VCAT, because the awards of compensation are generally low (particularly if the applicant was in a low paid job), the social, emotional and legal costs of litigation are so high, and successful litigants cannot recover their legal costs because of the ‘no-costs’ rule.

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## Greater enforcement, greater compliance – Equal Opportunity Act

Visible enforcement and meaningful sanctions for breaches of the Equal Opportunity Act are important to deter non-compliance and encourage preventative action by employers. As outlined in VLA's *Change the Culture, Change the System* report, efforts to persuade compliance with the law are more effective if they are backed by the threat of punishment for non-compliance.<sup>75</sup> British academics Hepple, Coussey and Choudhury developed an enforcement pyramid for regulating discrimination and sexual harassment laws:

- At the base of the pyramid is persuasion, including education and training, followed by voluntary action plans.
- Next is an investigation by a Commission which can enter into enforceable undertakings or issue compliance notices.
- At the top of the pyramid is prosecution and sanctions.<sup>76</sup>

Currently the VEOHRC lacks the full suite of powers that form the regulatory pyramid outlined above, particularly at the pointy end. While it has education and dispute resolution functions, and limited investigation powers, it does not have meaningful powers to compel compliance with the Equal Opportunity Act.<sup>77</sup> Reforms in the original Equal Opportunity Act 2010 (which were largely repealed before they commenced) would have enabled the VEOHRC to enter into enforceable undertakings and issue compliance notices, however these reforms were repealed in 2011 before coming into force.

As a result, the legal, social and financial penalties for contravening the Equal Opportunity Act are dependent upon a victim-survivor commencing action. We consider that the VEOHRC should be given greater investigation powers, the power to enter into enforceable undertakings and issue compliance notices, and the power to seek sanctions against those who breach the Equal Opportunity Act in order to enforce compliance with the Act.

### **Recommendation 16: Improving enforcement and compliance.**

Amend the Equal Opportunity Act to enable VEOHRC to enforce compliance with the Equal Opportunity Act following an investigation, including by issuing compliance notices, entering into enforceable undertakings, prosecuting contraventions and seeking pecuniary penalties.:

### **Recommendation 17: Funding and functions.**

Accompany the additional powers of VEOHRC with:

- (a) Additional and secure funding;
- (b) Consideration of VEOHRC's structure and functions (including fee-for-service functions) to ensure that it can effectively perform the functions of a regulator.

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<sup>75</sup> Ayres, I., and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press.

<sup>76</sup> Hepple, B., Coussey, M. and Choudhury, T. (2000) *Equality: A New Framework: Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Hart Publishing, pp 58-59.

<sup>77</sup> The VEOHRC currently has the power to refer a matter to VCAT following an investigation under s 139(2) of the Equal Opportunity Act. VCAT must conduct an inquiry into the matter in response to the referral under s 141 of the Equal Opportunity Act. However, we are not aware of this power ever having been utilised, which may be due to a combination of factors including limited resources and barriers to initiating an investigation (discussed above).

## Sexual harassment as a serious work health and safety issue

**Goal: Gendered violence and sexual harassment at work is addressed as a serious work health and safety issue.**

Victoria has taken a number of significant steps forward in terms of its work health and safety response to gendered violence: In March 2020 WorkSafe Victoria (**WorkSafe**) released the Guide: [Work-related gendered violence including sexual harassment - WorkSafe](#); and in May 2021 the Victorian Government announced that it will introduce regulations to address psychological health. We support this progress and WorkSafe's commitment to recognise gendered violence and harassment at work as a psychosocial hazard that is within its regulatory remit.

The OHS Act has long contained general duties that enable WorkSafe to regulate risks to psychological health, including gendered violence and harassment. In addition, WorkSafe also has relevant statutory functions to promote awareness, provide incentives to reduce risk and promote education and training to make workplaces safer.

In practice, however, WorkSafe has not yet utilised its powers in a regular or systemic way to address gendered violence or harassment at work. Historically, clients have reported that WorkSafe dismissed their sexual-harassment related inquiries because WorkSafe did not recognise this workplace hazard to be within its remit. As a result, many Victorians may not consider gendered violence and harassment to be a work health and safety issue, know what these terms mean, or understand their rights and obligations under the OHS Act in relation to these hazards.

An important step to encourage employers to address gendered violence and harassment at work as serious work health and safety issues is to change community perceptions. Employers and workers need to understand the systemic and cultural nature of gendered violence and harassment at work, and that they are safety hazards that can be prevented and addressed organisationally by using a work health and safety framework. There must also be an understanding that psychosocial hazards are no less harmful to workers' safety and wellbeing than physical hazards.

A significant amount of work is required to educate employers and the broader community about these issues and encourage behavioural change. It is important that WorkSafe is adequately resourced to create this cultural change within the broader community. It is essential that WorkSafe is also organisationally equipped to respond sensitively and appropriately when it receives reports of workplace gendered violence and harassment.

Emily's story shows the serious harm caused by gendered violence at work and the important role that WorkSafe Victoria must play to ensure that women are safe at work.

### Emily's story<sup>78</sup>

I did not receive any support when I reported the rape and was asked to consider the ramifications of going ahead with the complaint. I was never treated like a victim and had to seek my own support. I was told that I shouldn't have reported my colleague. I was ostracised as a result of reporting. I did not make a complaint about this conduct as I did not know who to report it to and was afraid of further repercussions.

The culture at my workplace never varied or changed during my service. The sexual harassment, victimisation, unwanted comments about the rape and other conduct resulted

<sup>78</sup> *Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work*, n 48, pp 18-19.

in me not being able to cope as these issues were a constant reminder. As a result, I resigned from my employment as I had reached the point of no return.

The traumatic incidents that I dealt with impacted on my ability to succeed in a personal relationship. My employer failed to support me in the traumatic incidents that I experienced, as I was expected to deal with whatever came my way. If I had received support and psychological counselling I would not have resigned and would have been able to work through to my retirement age. My employer prevented me from reaching my potential by not providing a safe work environment for me. Eventually I sought medical attention as I felt that I was on the verge of a breakdown. This led to me being diagnosed with post-traumatic stress disorder. What happened to me had and continues to have a detrimental impact on my mental health and everyday life.

**Recommendation 18: Psychological health and safety guidance.**

Ensure that any regulations and ancillary guidance made to address psychological health and safety at work cover gendered violence and harassment, including sexual harassment.

**Recommendation 19: Education for key stakeholders.**

Provide ongoing training and capacity building to the WorkSafe inspectorate, Health and Safety Representatives and other stakeholders who regularly come into contact with workers reporting psychosocial work injuries, such as clinicians and community lawyers.

**Recommendation 20: Guidance for employers.**

Develop guidance for employers about taking a victim-centred approach to responding to and investigating reports of gendered violence and harassment.

**Recommendation 21: Public education.**

Conduct campaigns to educate the public and increase awareness of the need to address gendered violence at work, including sexual harassment, as a work health and safety issue.

**Recommendation 22: Social and organisational norms.**

Undertake other evidence-based strategies to shift social and organisational norms to improve sexual harassment and gendered violence prevention and response, including within a work health and safety framework.

**Recommendation 23: Demonstrate effectiveness.**

Demonstrate that WorkSafe is taking a responsive and victim-centred approach to addressing gendered violence and harassment at work that recognises the underlying drivers of sexual harassment.

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# Awareness raising

## Effecting change

**Goal:** Further research, evidence and data is collected to better understand the prevalence and nature of sexual harassment and gendered violence at work and design effective interventions.

### Evidence-based interventions

We acknowledge the importance of raising awareness about what sexual harassment is, its causes, and how to prevent and respond to it.

There is a need to increase employers' and employees' understanding of what constitutes sexual harassment. Victoria's Women's Health Services report that this is still poorly understood within many of the organisations with which they work. Research into the construction and manufacturing industries, for example, found that 'many managers and employers reported wanting more practical guidance and support on what constitutes appropriate workplace behaviour'.<sup>79</sup> Similarly, Women's Health Services report that employers and managers require training on how to respond to sexual harassment, including reporting channels and appropriate responses to victim-survivors.

Changes to organisational culture through primary prevention will look different depending on the size of an organisation. Small businesses will require additional supports to implement various interventions to better support employees.<sup>80</sup>

There is also a need to address the perception that sexual harassment is not serious – an attitude which is often internalised by victims and perpetrators, making women less likely to come forward with a complaint and employers less likely to take allegations seriously<sup>81</sup> – by raising awareness of the significant health and economic impacts of sexual harassment and gendered violence at work.<sup>82</sup>

However, we consider that the focus should be on whole of organisation approaches to primary prevention to reduce its prevalence – and building staff and organisational capacity to respond appropriately when sexual harassment is reported or identified – rather than simply raising awareness. Research shows that raising awareness of a problem and its causes does not always result in behavioural change – and is unlikely to lead to long term, sustainable organisational culture change<sup>83</sup> – and can in fact lead to backlash.

As discussed under the heading 'Prevention', gendered violence, including sexual harassment, must be addressed as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality. An integral part of this strategy must involve a change in workplace culture to address

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<sup>79</sup> Quay Connection (2014), Ducks on the pond: women in trade apprenticeships, NSW State Training Services.

<sup>80</sup> See, eg, Ethnic Communities' Council of Victoria, *Submission to the Ministerial Taskforce on Workplace Sexual Harassment* (July 2021) and its recommendations in relation to small and micro businesses, including regarding the need for collaboration with industry bodies, ethnic business associations, local councils and small business associations, as well as for multilingual resources to support micro and small businesses in industries that tend to employ a large number of migrant workers, especially temporary workers.

<sup>81</sup> Fileborn (2013) Conceptual understandings and prevalence of sexual harassment and street harassment, Australian Centre for the Study of Sexual Assault, p 8.

<sup>82</sup> Implementing Recommendation #21, above – 'Conduct campaigns to educate the public and increase awareness of the need to address gendered violence at work, including sexual harassment, as a work health and safety issue' – would go some way towards achieving this.

<sup>83</sup> *Change the Story: National framework for a consistent and integrated approach to preventing violence against women and their children in Australia* n 10, p 65.

underreporting and ill-informed responses. Ensuring all workers are aware of their rights and avenues for reporting and accessing support – and feel safe and confident to do so – is a critical component of primary prevention; this is because failure to respond adequately to sexual harassment contributes to an environment in which it is condoned, which is itself one of the drivers of sexual harassment.

Social media campaigns and internal communications can play an important role in raising awareness of sexual harassment and gendered violence and supporting capacity-building interventions on the ground. For example, as noted above, VicHealth has shown that using a ‘majority norm messaging campaign’ to support bystander interventions can change social norms and increase the likelihood of staff and students intervening to prevent assaults and sexual harassment.<sup>84</sup> However it is important that campaigns and communications:

- highlight intersectional experiences of inequality, discrimination and violence
- include information about supports for victim-survivors and organisational policies and processes for reporting and responding to incidents of sexual harassment and gendered violence that are culturally safe and responsive
- are part of a whole of organisation approach that includes best practice primary prevention, as outlined in Our Watch’s *Workplace Equality & Respect Standards*
- are careful not to normalise gendered violence
- anticipate backlash.<sup>85</sup>

### **Case study: Adapting to an online environment – WHV’s microcredentials**

In the context of COVID-19 and the transition to remote work, employers and employees are increasingly expecting to be able to access training online. In response, WHV has transitioned its gender equity and prevention of violence against women training to an online platform, offering a range of online modules and blended interactive workshops.

While not sufficient on its own, online training can play an important role in raising awareness and building individual and workforce capability to prevent and respond to sexual harassment, as part of a whole of organisation approach to change.

WHV’s microcredentials in gender equity and prevention of violence against women, for example, are short online modules developed by industry for industry, and provide foundational knowledge necessary for employees to engage in further gender equity and prevention work. They are self-paced, allowing the employee flexibility to manage competing demands in their professional and personal lives. WHV’s offerings include a new dedicated microcredential on [understanding and addressing sexual harassment](#). Feedback from participants to date includes:

*‘This microcredential clarified the different forms of sexual harassment in the workplace, allowing me to have a greater understanding on what is not appropriate.’*

*‘This was very informative to me and I think it would be an especially useful course that should be completed in all workplaces.’*

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<sup>84</sup> Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT, Appendix 1: Summary Review of Interventions to Prevent and Respond to Sexual Harassment in Courts n 16 and Encourage. Support. Act! Bystander approaches to sexual harassment in the workplace n 20.

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*‘Out of all the online learning course I’ve done, this has been the most engaging and important.’*

Online learning provides a new avenue for building understanding and capacity to address sexual harassment at work.

## **Data collection**

Further investment is needed in data collection and analysis so that we can better understand the problem and design appropriate and effective solutions. While the AHRC’s Everyone’s Business surveys present a broad picture of sexual harassment across Australian workplaces, there is a lack of detailed data about the prevalence of sexual harassment in particular industries and types of organisations. As the case study on the shEqual project shows, for example, there is limited data on the prevalence of sexual harassment within the advertising industry. We also know little about prevalence within smaller organisations, ethno-specific organisations and labour hire firms, among others. In addition, we need more data on victim-survivors that is disaggregated by demographic characteristics beyond sex/gender so that we can better understand the needs of those whose experience of sexual harassment is driven by intersecting forms of inequality and discrimination. In obtaining this data, it is important that it is done in a culturally safe and responsive way to ensure that the experiences of marginalised groups, such as women from migrant and refugee backgrounds who may not speak English as a first language, are captured to inform a holistic evidence base about effective interventions.

*We refer to and repeat recommendations 1-4 above.*

### **Recommendation 24: Building capacity to respond.**

Build management and employee capacity to recognise, report and respond appropriately to sexual harassment and gendered violence.

### **Recommendation 25: Data collection.**

Invest in data collection and analysis to build the evidence base about the prevalence and nature of gendered violence and harassment in different industries and in workplaces of different types and sizes, in order to design effective interventions.

**Goal:** All Victorian workplaces have a culture of respect, equality and inclusion and employers proactively prevent gendered violence and harassment and respond in a victim-centred way when it occurs.

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## Annexure 1: Our organisations and our commitment to preventing and addressing gendered violence at work

### Victoria Legal Aid

Victoria Legal Aid (VLA) is a Victorian statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems. VLA assists people with legal problems such as family separation, child protection, family violence, discrimination, criminal matters, fines, social security, mental health and tenancy. In 2019–20, VLA provided assistance to over 88,000 unique clients across Victoria.

VLA has a free specialist discrimination law service, the Equality Law Program, which promotes and protects substantive equality by addressing individual and systemic discrimination through advice, casework, legal education, and strategic advocacy. We work to enable people to obtain and retain employment, to remain engaged with key service and education providers, to receive fair compensation, and to use the law to help stop discrimination and sexual harassment occurring again in the future.

As part of this work, over the past five years we provided over 6,720 legal advice sessions regarding discrimination matters, including 1,058 advice sessions about sexual harassment and sex discrimination. Approximately 80% of clients who we assisted with a workplace sexual harassment complaint were women.

VLA is also deeply committed to building an organisational culture that stops sexual harassment occurring and meaningfully addresses it when it does. VLA is currently undertaking a review of its own sexual harassment policies and practices with the assistance of the Victorian Equal Opportunity and Human Rights Commission, and participates on the Starts With Us project, which is a collaboration of organisations across the justice sector in Victoria that aims to address and prevent sexual harassment in the legal profession.

### Women's Health Victoria

Women's Health Victoria (WHV) is a Victorian state-wide women's health promotion, advocacy and support service. We collaborate with health professionals, researchers, policy makers, service providers and community organisations to influence and inform health policy and service delivery for women.

WHV has developed significant expertise in relation to prevention of violence against women in the workplace setting, including sexual harassment. In 2016-17, WHV developed a tailored version of its award-winning workplace-based program for the prevention of violence against women, *Take a Stand against Domestic Violence: It's Everyone's Business* focusing on sexual harassment. Since that time, WHV has also developed Australia's first accredited training course in gender equity and offers a range of online and interactive training modules on gender equity and the prevention of violence against women, including a microcredential on sexual harassment.

WHV also brings experience in whole-of-system approaches to the prevention of violence against women and promotion of gender equality, including through the Gender Equality in Advertising project – known as shEqual – an initiative that specifically targets gender inequality within the advertising industry, both in advertising portrayals and in advertising workplaces. The project takes an evidence-

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based whole-of-system approach to work towards long-term, sustainable change, including working with industry, regulators and consumers.

In 2018, WHV initiated and convened a Victorian Sexual Harassment Working Group bringing together representatives from Centres Against Sexual Assault (CASAs), the Victorian Equal Opportunity and Human Rights Commission, the Victorian Trades Hall Council, Women's Legal Service and Job Watch. This cross-sector group was established prior to the Australian Human Rights Commission's national inquiry into sexual harassment at work to support a more integrated approach to addressing sexual harassment in the workplace in Victoria. The group was subsequently superseded by the Power to Prevent coalition convened by Victoria Legal Aid, of which WHV remains an active member.

## Sexual Assault Services Victoria

Formerly CASA Forum, Sexual Assault Services Victoria (**SAS Victoria**) is the newly incorporated and expanded peak body for sexual assault services and harmful sexual behaviour services.

SAS Victoria shares a vision for a world free from sexual assault and violence. We know that sexual assault is both a consequence and reinforcer of the power disparity that exists largely between men, women and children. It also happens within families and in multiple other settings and types of relationships, including within the LGBTIQ+ community.

Sexual assault occurs along a continuum of violent behaviour, from uninvited sexual behaviour that makes the recipient feel uncomfortable, harassed, or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; to rape with physical violence and threat to life.

We believe in the power to prevent sexual assault and violence with coordinated social, cultural and political action. This action exposes the gendered nature of sexual assault and challenges the context in which sexual assault is able to thrive.

We also believe in the possibility of recovery from sexual assault and family violence when systems are in place to provide timely and appropriate support. We advocate for services that address trauma and empower service users through a victims' rights model.

SAS Victoria aims to build a consistent, responsive, quality, coordinated service system, that promote the rights and recovery of victim survivors of sexual assault and addresses the social and systemic factors that contribute to harmful sexual behaviours in children and young people impacted by violence and abuse.

Our work is based on our shared understanding of the causes, consequences and impact of sexual assault.

Our advocacy is founded on service user experiences.

We bring over 30 years of evidence-based practice knowledge, and practice-based evidence wisdom to the task of reforming system responses to sexual assault. We aim to help shape and guide systems to ensure service users are able to get the support they need when they need it.

# Power to Prevent: Urgent Actions Needed to Stop Sexual Harassment at Work

## Joint statement

We are a group of diverse organisations, unions, researchers, peak bodies, health professionals and lawyers who have come together to say we need to do more to stop sexual harassment in workplaces. Our organisations and research efforts see the effects of sexual harassment on people around Australia every day and how our systems are not working to respond to the issues.

Everyone deserves to be safe at work and in their community. Yet the rates of sexual harassment in Australia are alarming, particularly for women, with 85% having experienced it in their lifetime. Sexual harassment is about more than just individual behaviour. It is a problem that is deeply entrenched within our society and occurs because gender inequality is ingrained in our social and cultural norms, structures and practices.

It's time that employers and workplaces stamp out sexual harassment. Sexual harassment causes significant harm to individuals, workplaces and society. We know what the solutions are, but we need governments and employers to implement them. We need strong action to prevent and respond to sexual harassment, and we need it now.

We call on State, Territory and Federal Governments across Australia to take urgent and coordinated action to implement the following solutions.

1. **Dedicated prevention efforts to address the underlying gendered drivers of sexual harassment**, which should be part of a holistic strategy to prevent violence against women and promote gender equality in line with *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*.
2. **Stronger and clearer legal duties** on employers to take proactive steps to prevent sexual harassment at work, and strong and effective regulators that have the full suite of regulatory tools and resources necessary to effectively tackle sexual harassment, including as a cultural, a systemic and a health and safety issue.
3. **Access to fair, effective and efficient complaints processes**, including a new right of action under the Fair Work Act, extended time limits, increased transparency of conciliation outcomes where appropriate, and other amendments and resources necessary to address the unique barriers that currently prevent workers who experience sexual harassment from taking effective legal action.
4. **Appropriate advocacy and support for workers** who experience sexual harassment, including access to information, counselling and legal services that are appropriately resourced and coordinated.
5. **Accessible reporting tools**, including piloting an online reporting tool that assists people to report and address problem behaviour and seek support, and identifies trends to assist with prevention and enforcement efforts.

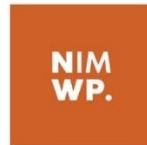
We stand together to call for change to create sexual harassment free workplaces.

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## List of Signatories (as at October 2019)

1. Alice Springs Women's Shelter
2. Annie North Inc
3. Australasian Meat Industry Employees Union - Victoria Branch
4. Australian Council for International Development
5. Australian Council of Social Service
6. Australian Council of Trade Unions (ACTU)
7. Australian Discrimination Law Experts Group, Academic forum
8. Australian Education Union - Victoria
9. Australian Lawyers' Alliance
10. Australian Manufacturing Workers' Union Victorian Branch
11. Australian Services Union Victorian and Tasmanian Authorities & Services Branch
12. Australian Women Against Violence Alliance
13. Basic Rights Queensland
14. Centres Against Sexual Assault Forum
15. CFMEU Construction and General Division Victoria and Tasmanian Branch
16. Community and Public Sector Union - PSU Group
17. Community Broadcasting Association of Australia
18. Community Legal Centres' NSW
19. Disability Discrimination Legal Service
20. Djirra
21. Domestic Violence NSW
22. Domestic Violence Victoria
23. Dr Alysia Blackham, Academic
24. Dr Belinda Smith, Associate Professor of Sydney Law School, University of Sydney
25. Dr Cristy Clark, Legal Academic
26. Dr Dominique Allen, Legal Academic
27. Dr Karen O'Connell, Associate Professor, Faculty of Law, UTS
28. Dr Paula McDonald, Legal Academic
29. Dr Sara Charlesworth, Legal Academic
30. Drummond Street Services
31. Emeritus Professor Margaret Thornton of Australian National University College of Law
32. Emma Coetsee, Human Rights Consultant
33. Equality Rights Alliance
34. Fair Agenda
35. Federation of Community Legal Centres
36. Finance Sector Union of Victoria
37. Fitted for Work
38. Gender Equity Victoria (GEN VIC)
39. Gippsland Sexual and Reproductive Health Alliance
40. Gippsland Women's Health
41. Good Shepherd Australia New Zealand
42. Gordon Legal
43. Health and Community Services Union
44. Human Rights Law Centre
45. Independent Education Union Victoria and Tasmania
46. International Women's Development Agency
47. Job Watch
48. Jumbunna Institute for Indigenous Education and Research, UTS
49. Justice Connect
50. Karen Willis, Executive Officer, Rape and Domestic Violence Services Australia
51. Kingsford Legal Centre
52. Liam Elphick, Legal Academic
53. Maritime Union of Australia
54. Maurice Blackburn

55. Media Entertainment and Arts Alliance
56. Migrant Workers' Centre
57. Minus18
58. National Association of Community Legal Centres (NACLC)
59. National Working Women's Centres
60. Northern Territory Legal Aid Commission
61. Not in My Workplace
62. NOW Australia
63. NT Working Women's Centre
64. Professor Beth Gaze, Academic
65. Public Health Association of Australia
66. Public Interest Advocacy Centre
67. Rail Bus and Tram Union
68. Redfern Legal Centre
69. RMIT Centre for People, Organisation & Work (CPOW)
70. Ruby Gaea Darwin Centre Against Sexual Violence
71. Sexual Assault Support Service Inc
72. Shop Distributive and Allied Employees' Association (SDA) National
73. Slater & Gordon Lawyers
74. St Kilda Legal Service
75. Switchboard Victoria
76. Thorne Harbour Health
77. Unions NSW
78. United Voice
79. University of Melbourne Students Union
80. Victoria Legal Aid
81. Victorian Aboriginal Legal Service
82. Victorian Council of Social Service
83. Victorian Multicultural Commission
84. Victorian Trades Hall Council (VTHC)
85. Victorian Women's Lawyers
86. Victorian Women's Trust
87. Villamanta Disability Rights Legal Service Inc.
88. WestJustice
89. Women in Adult and Vocational Education (WAVE)
90. Women with Disabilities Victoria
91. Women's Electoral Lobby
92. Women's Health and Wellbeing Barwon South West
93. Women's Health Goulburn North East
94. Women's Health in the South East (WHISE)
95. Women's Health NSW
96. Women's Health Victoria
97. Women's Health West
98. Women's Information and Referral Exchange Inc
99. Women's Legal Centre ACT
100. Women's Legal Service NSW
101. Women's Legal Service Victoria
102. Women's Legal Services Australia
103. Women's Property Initiatives
104. Working Women Queensland
105. Working Women's Centre South Australia Inc
106. Young Workers' Centre
107. Youth Affairs Council Victoria
108. YWCA Australia



NT Working Women's Centre



