



Research Brief

Australian Human Rights Commission: National Inquiry into Sexual Harassment in Australian Workplaces

Introduction

The purpose of the National Inquiry into Sexual Harassment in Australian workplaces is to improve how Australian workplaces prevent and respond to sexual harassment.

Sexual harassment as defined under the Commonwealth's *Sex Discrimination Act 1984* (Cth) (1984), includes:

- any unwelcome sexual advance
- unwelcome request for sexual favours, or
- other unwelcome conduct of a sexual nature in relation to the person harassed.

The Act also recognises that the victim of the sexual harassment can be humiliated, intimidated and/or offended making sexual harassment unlawful in public life including the workplace (*Sex Discrimination Act 1984* Cth). Despite being unlawful, sexual harassment remains a significant issue across workplaces Australia-wide.

This Research Brief examines the Australian Human Rights Commission National Inquiry into *Sexual Harassment in Australian Workplaces* (2020). The research brief explores:

- the prevalence, nature, reporting of sexual harassment in Australian workplaces and the role of technology,
- the drivers of sexual harassment,
- the legal framework and human rights obligations,
- the impacts of sexual harassment in the workplace, and the need for primary prevention (AHRC, 2020)

Background

In 2020, the Australian Human Rights Commission (AHRC) released its findings from the National Inquiry into Sexual Harassment in Australian Workplaces. The overarching objective of the report was to examine how Australian workplaces can effectively prevent and respond to sexual harassment in an effort to inform effective prevention and elimination of sexual harassment in the workplace. The report was informed by 460 submissions made by business groups, government departments and agencies, community groups and most importantly from victim-survivors. The AHRC held 60 consultations with the participation of 600 individuals, forums with key stakeholders and three roundtables. These took place across Australian metropolitan and regional areas (AHRC, 2020).

The significance of the report must be noted as sexual harassment in the workplace has adverse ramifications for individuals, groups, organisations, and the broader community. The estimated cost to the Australian economy in 2018 due to workplace sexual harassment was a staggering \$3.8 billion (Deloitte Access Economics, 2019).

Commissioned by the Australian Federal government, the AHRC (2020) report - often referred to as the 'Respect@Work Report' - made 55 recommendations calling for appropriate collection and use of data, improved research, legislative changes and for the planning of primary prevention resources to challenge current practices. The 55 recommendations were made carefully and sensitively, given the overwhelming and often harrowing submissions made to the Commission. It was determined that the system for victims wishing to lodge a complaint and for employers was convoluted and reactive (AHRC, 2020). The system places the onus on individual victims to make a complaint and navigate a difficult and largely opaque process.

There was a time when Australia was a pioneer on the world stage in tackling sexual harassment by ratifying the United Nations's (UN) International Labour and Organization's Discrimination (Employment and Occupation) Convention in 1973 and the UN Convention on the

Elimination of all Forms of Discrimination of Discrimination against Women (CEDAW) in 1983. A human rights issue, the *Sex Discrimination Act 1984*, made sexual harassment in the workplace unlawful. However, progress has been slow. Preventing and responding to sexual harassment has made the issue appear inevitable and almost acceptable, which of course, it is not. Sexual harassment in the workplace is wholly preventable.

Prevalence, nature, reporting of sexual harassment in Australian workplaces and the role of technology

The Commission established the prevalence of sexual harassment in Australian workplaces by drawing on the findings of the national survey conducted by the Commission in 2018, *Everyone's Business: Fourth survey on sexual harassment in Australian workplaces* (AHRC, 2018). The National Survey is conducted every four years and demonstrates the widespread prevalence of sexual harassment. The latest survey of 2018 demonstrated that 39% of women and 26% of men had experienced sexual harassment at their place of work in the past five years (AHRC, 2018), reflecting the very gendered nature of workplace sexual harassment with women more likely to have experienced sexual harassment.

It is proposed that the national survey continues to be undertaken every four years with the next one being in 2022, to assist employers, provide for ongoing data analysis and to assist governments at all levels to crystallise policy initiatives. It is imperative that this recommendation is adopted as Australia has scant monitoring, collecting, and reporting of data on sexual harassment in workplaces.

The nature of sexual harassment in Australian workplaces is of course unique to each victim, which is not to be minimised. However, common themes submitted to the Commission include jokes of a sexually suggestive nature, comments about physical appearance, repeated requests for sex, leering, being followed and indecent exposure. Submissions also revealed unwanted touching, kissing, or hugging and sexual assault and attempted rape (AHRC, 2020). Technology was also used for inappropriate phone calls and emails of a sexual nature and threats to share compromising imagery without consent (Caxton Legal Centre, Submission 382, *Sexual Harassment Inquiry*, 2).

Disturbingly, numerous victims told of the trajectory whereby verbal insults culminated in sexual assault or rape (Individual, Submission 241, *Sexual Harassment Inquiry*, 1–3; Individual, Submission 163, *Sexual Harassment Inquiry*, 1; Individual, Submission 235, *Sexual Harassment Inquiry*).

The drivers of sexual harassment

Mirroring the drivers of family violence, the Commission ascertained that the single largest driver of sexual harassment was gender inequality (see also Webster & Flood, 2015). Gender inequality is where inequities between men and women exist with regard to access to power, opportunities, and resources. Embedded in societal structures and norms, such inequalities become cultural and systemic creating ripe conditions for disrespect and enable sexual harassment (Our Watch, 2015).

What cannot be overlooked in these drivers is the concept of intersectionality which may compound the experience of sexual harassment in the workplace. Intersectional factors can include ethnicity, race, sexuality, or disability. There were multiple submissions made to the Commission citing intersectionality as important in confronting sexual harassment in Australian workplaces (AHRC, 2020).

The legal framework and human rights obligations

The overarching legislation with regard to sexual harassment in the workplace is the *Sex Discrimination Act*, with state and territory versions of same or similar. There is also the *Fair Work Act 2009* (Cth) (*Fair Work Act*), state workplace relations laws, and work, health, and safety laws. Whilst these various pieces of legislation are to protect victims from sexual harassment in the workplace, the Commission consistently heard of the difficulties for victims and employers to navigate the processes involved to bring sexual harassment matters forward (AHRC, 2020).

The Commission therefore recommends a new model which avoids duplication of existing legislative frameworks and to utilise as a basic premise that sexual harassment is a fundamental violation of human rights in keeping with Australia's obligation to international human rights instruments which allow for people to live and work free from violence, harassment, discrimination, and to have security of person (ILO, 1951, CEDAW, 1979). Australia has signed and ratified the international instruments supporting aforementioned rights and is therefore obligated to uphold these.

Therefore, it is fortunate that the Sex Discrimination Act 1984 remains as the primary framework for dealing with sexual harassment within a human rights context. The recommendation by the Commission to augment the obligations under the Sex Discrimination Act is an important part of this new model. As is the removal of a time limit, which is normally 6 months, (Australian Human Rights Commission Act, 1986) in which a victim can make a report. Given the complex nature and reason as to why victims report when they do, the Commission's new proposal is that the reporting period is extended to 24 months (AHRC, 2020)

To drive the changes proposed to the legal framework and Australia's human rights obligations it is envisaged that a Workplace Sexual Harassment Council be established. Funding would need to come from the Australian Federal Government and the Council would under the leadership and advisory of the Commission ensure that sexual harassment is to be understood within a human rights context. The Council would consult widely and have members from across employer groups, government, and non-government agencies and union representatives (AHRC, 2020). A glaring omission in this proposal of the new Council is lived experience. Victim survivors must be at the centre of such important work.

Impacts of sexual harassment in the workplace and the need for primary prevention

The Commission's Inquiry found that the impacts of sexual harassment in the workplace devastatingly affected victims and destabilised workplace morale and productivity.

Individual impacts included:

- detrimental impacts on health, welfare and wellbeing
- relationship problems within the workplace & within their personal lives due to added distress of sexual harassment
- loss of career, training, promotional opportunities

Economic/workplace impacts included:

- lost productivity
- staff turnover
- toxic or negative workplace culture
- the allocation of resources to respond and investigate complaints
- litigation and workers' compensation costs
- undermining of organisational reputation
- other financial costs and/or consequences
- co-worker wellbeing (AHRC, 2020)

As mentioned above the estimated cost to the Australian economy in 2018 due to workplace sexual harassment was a staggering \$3.8 billion (Deloitte Access Economics, 2019). This is believed to be a conservative estimate. The majority of this accumulated loss is shouldered by the employer. When combined with the financial and non-financial costs and impacts on the victims, there is an undeniable and extremely powerful economic argument as to why governments and employers must seek to address and prevent sexual harassment in the workplace.

Primary prevention strategies of sexual harassment need to focus on gender inequality and the cultural and system drivers which propagate sexual harassment. It was widely recommended to the Commission by over 100 organisations (AHRC, 2020) that Our Watch's (2015) *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia (Change the Story)*, be utilised as an evidence-based guide to inform prevention efforts.

Primary prevention efforts addressing intersecting variants of harassment, encouraging bystander action and using a whole of community approach are essential for prevention. A sustained effort by governments to espouse the political will to incorporate the primary prevention of sexual harassment in the workplace before it happens is

required.

Some immediate priorities as per the Commission's recommendations include:

- behaviour change strategies on sexual harassment, including a national campaign to increase knowledge that drive sexual harassment,
- prevention initiatives that teach people that sexual harassment is a form of gender-based violence, and
- resources on workplace rights for sexual harassment.

Sexual harassment in the workplace, such as other forms of violence against women can be prevented. The basic human right to attend work free from violence and harassment is never to be underestimated or taken as a given.

References

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Australian Human Rights Commission (2020) *Respect @ Work: National inquiry into Sexual Harassment in Australian Workplaces*, retrieved from <https://humanrights.gov.au/our-work/sex-discrimination/publications/respect-work-sexual-harassment-national-inquiry-report-2020>

Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace* (Final Report, March 2019)

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Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and the Victorian Health Promotion Foundation (VicHealth), *Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and their Children in Australia* (2015) 61.

Sex Discrimination Act 1984 (Cth) s 28A.

United Nations Convention on the Elimination of all forms of Discrimination Against Women (1979)

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Webster, K. & Flood, M, *Framework Foundations 1: A Review of the Evidence on Correlates of Violence Against Women and What Works to Prevent It* (companion document to *Change the Story: A Shared Framework for the Primary Prevention of Violence against Women and their Children in Australia*, Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and Victorian Health Promotion Foundation (VicHealth), 2015) 15, 21.

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For further inquiries: [arts.monash.edu/gender-and-family-violence](https://www.monash.edu/arts/gender-and-family-violence/safe-and-equal-at-work-program)
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