



Submission to the Australian Human Rights Commission

**National Inquiry into
Sexual Harassment in Australian Workplaces**

**Women's Electoral Lobby Australia
February 2019**

Contents

About WEL	3
REPRODUCTIVE RIGHTS	3
ENDING VIOLENCE AGAINST WOMEN	3
EMPOWERING WOMEN FINANCIALLY	3
RAISING WOMEN’S VOICES	3
Foreword.....	4
Introduction	6
1. The drivers of sexual harassment	7
2. The impact of sexual harassment, including differential impact on groups of women	9
3. The current legal framework for sexual harassment.....	12
Employer positive duty and liability – mandatory, statutory code of practice	13
Increase time limit for making a complaint under anti-discrimination law to six years	13
Make sexual harassment an industrial issue	14
Make sexual harassment a work health and safety issue	15
Protection from defamation and victimisation and the public interest.....	16
Include sexual harassment as part of the reporting obligations of employers with regulator power to investigate and follow up.....	16
Encourage bystanders and whistle blowers to speak up.....	16
Adequately resource for support and specialist legal services.....	16
Stop sexual harassment by clients, patrons and customers.....	17
4. Existing measures and good practice by employers.....	18
5. The impacts on individuals and business of sexual harassment.....	19
6. Recommendations to address sexual harassment in Australian workplaces.....	20
6.1 Employer positive duty and liability – mandatory, statutory code of practice.....	20
6.2 Increase time limit for making a complaint under anti-discrimination law to six years.....	20
6.3 Make sexual harassment an industrial issue.....	20
6.4 Make sexual harassment a work health and safety issue	20
6.5 Protection from defamation and victimisation and the public interest	20
6.6 Adequate resourcing for support and specialist services	21
6.7 Stop sexual harassment by clients, patrons and customers	21
6.8 Include sexual harassment as part of the reporting obligations of employers with regulator power to investigate and follow up	21
6.9 Encourage bystanders and whistle blowers to speak up	21
References	22

About WEL

For over 45 years, Women's Election Lobby has brought women from all walks of life together to work for the good of all. Women of all ages, races and backgrounds have lobbied, marched, protested and carried out important research into the barriers that hold women back from a life of dignity, safety and success, sharing equally in society's rewards and responsibilities.

Governments, leaders, and public attitudes have changed rapidly, but WEL has always adapted, bringing new talents and fresh ideas to address each new challenge and give women a voice on the issues that really matter.

WEL is proudly reformist and always ambitious. Through passion, determination and strategic thinking, we have won many significant policy changes and law reforms to make life better for women everywhere.

WEL is feminist, not for profit, non-party political and independent. It has rarely received government funding and exists thanks to the generosity of its members and supporters.

REPRODUCTIVE RIGHTS

Women are still denied autonomy over their own bodies in our country and our reproductive choices can even be subject to criminal prosecution. Since we began, we have been committed to giving women control over their own bodies and easy access to health services.

ENDING VIOLENCE AGAINST WOMEN

We are committed to ending the systemic violence experienced by women in our society by keeping the issue of domestic and family violence firmly on the national agenda and advocating for adequate funding of women's refuges and attendant support services.

EMPOWERING WOMEN FINANCIALLY

We believe all women deserve economic equality and financial stability. We campaign hard to win equal pay, affordable housing and a secure financial future for all women.

RAISING WOMEN'S VOICES

We believe in making the political system work for women. Our **Think WEL Before You Vote** program ensures women from across society understand how to make their vote count and communicate effectively with their MPs.

wel.org.au

Foreword

WEL welcomes this Inquiry and has high expectations that it will lead to much needed reform, systemically and culturally to address the pervasiveness of sexual harassment in Australian workplaces. WEL was part of the process which led to the *Commonwealth Sex Discrimination Act 1984* (SDA) and the outlawing of sexual harassment. Yet 35 years later, we are still faced with alarming statistics on the prevalence of sexual harassment, with all the costs at individual, employer and macro-economic levels.

In preparing this submission, WEL surveyed its membership and reached out more widely through social media. It was a great opportunity to contribute to the now large body of evidence that sexual harassment in the workplace is a serious issue, impacting adversely on the working lives of many women. WEL sincerely thanks the respondents who wrote so candidly about their experiences, in some cases for the first time. These included incidents of sexual assault as well as job loss, economic hardship and accounts of the lasting psychological damage.

The survey also asked respondents about their views on what should be done, including what is wrong with the system now and what would work best to end sexual harassment. Respondents overwhelmingly concurred with the approach WEL is recommending in this submission, emphasising that there is not one solution or measure that will stop sexual harassment. It must be a multi-pronged approach where legal reforms are one essential aspect. Equally important is training and education, workplace policies and procedures, adequately resourced, well targeted support services for women and properly resourced, regulatory bodies which can take action. Many argued that there must be real consequences for both the perpetrators and employers if they fail to provide respectful and safe workplaces.

In preparing this submission, WEL has thoroughly reviewed the literature, research and data, particularly as it relates to Australia. This evidence showed a high degree of consensus about framing sexual harassment as part of broader gender-based discrimination and inequality. WEL has considered carefully the policy solutions offered by experts and advocates in developing its recommendations.

Importantly, WEL offers this contribution to the Inquiry as a signatory to the *Time's Up: Urgent Actions Needed to End Sexual Harassment at Work, Joint Statement*, (reproduced below). The Statement emphasises that women have waited long enough for real action and advocates have proposed these solutions for many years. It needs political will to make it happen. WEL adds its voice to the many who are determined to hold policy makers and employers to account. The time for action is now.

Jozefa Sobski AM

Convenor, National Coordinating Committee

Women's Electoral Lobby, Australia

Philippa Hall

NSW Convenor

Women's Electoral Lobby, NSW

Time's Up: Urgent Actions Needed to End Sexual Harassment at Work

Joint statement

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 a problem that is deeply entrenched within our society and is about more than just individual behaviour.

It's time for employers to stamp out sexual harassment at work. 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 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 and systemic 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 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.

Introduction

Sexual harassment continues to impact significantly on women, curtailing their work opportunities, reducing their financial security and adversely affecting their emotional and physical health. Respondents to the **Tell WEL** survey offered familiar stories about the impacts, financially, emotionally, with their working lives thwarted, often concluding that they have no other viable option but to leave their employment.

The *#MeToo movement* has highlighted just how prevalent sexual harassment and abuse continues to be at all levels of society and around the world. It has produced harrowing disclosures on the impact of sexual harassment on women's working and personal lives. It has given new momentum to efforts to address the issue and shown that, despite formal laws and policies, the practice remains pervasive.

The surveys and the wider research tell us that in Australia, the hope that generational change would lead to a shift in attitudes and behaviour, has not eventuated. Decades after the SD Act, women are still held back and their workplace safety threatened, with very limited avenues for redress. It is impossible to know if the trends are accurate. Women may be more likely to identify their experiences as sexual harassment now, causing the upward trend.

Regardless, the statistics are alarming and probably still are likely to under-report the extent of sexual harassment in the workplace.

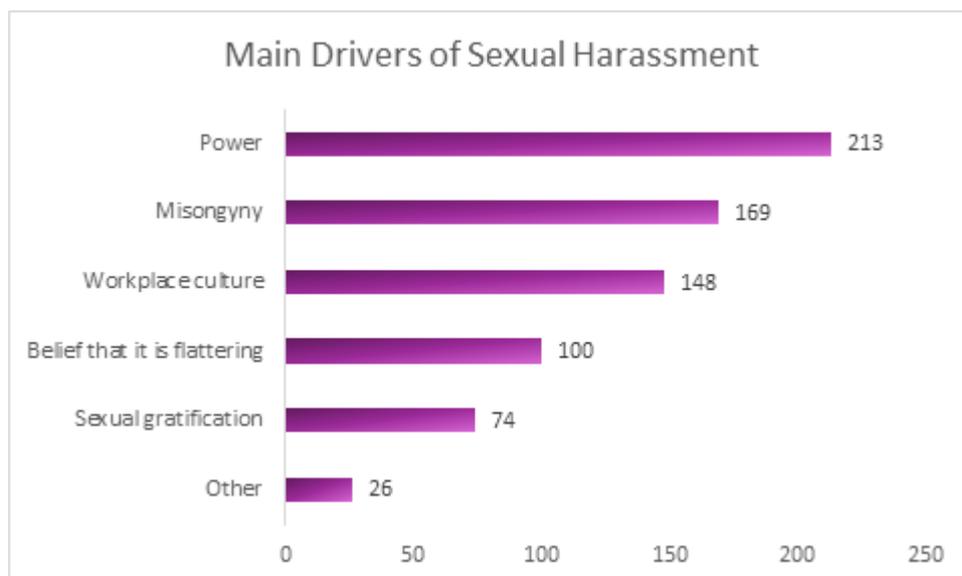
This submission is divided into 6 sections addressing the terms of reference of the Inquiry:

1. The drivers of sexual harassment
2. The impact of sexual harassment, including differential impact on groups of women
3. The current legal framework for sexual harassment
4. Existing measures and good practice by employers
5. The impacts on individuals and business of sexual harassment
6. Recommendations to address sexual harassment in Australian workplaces.

1. The drivers of sexual harassment

WEL asked respondents to nominate what they saw as the main drivers of sexual harassment, allowing them to choose more than one option. As shown in *Fig 1*, the overwhelming response was that it is about asserting *power* (85.5 per cent), followed by *misogyny* (68 per cent.) Around 60 per cent nominated *workplace culture* as a significant factor.

Fig 1. The Drivers of Sexual Harassment



Misogyny, power and culture closely related

Many respondents pointed out that the factors are closely related, particularly power and misogyny and its expression in workplace culture. Almost all respondents commented, with some giving detailed examples and cogent analysis. Several named ‘patriarchy’ as the system of control, with men feeling ‘entitled...in a culture that condones their behaviour’:

In a culture that supports toxic masculinity including casual sexism and racism, any expression of confidence is a challenge to power/dominance of the alpha group. I was harassed by a weak but well-loved member of the dominant group and his intention was to unsettle me and unseat my confidence. He sought to embarrass and humiliate me and drag me to the level of ‘unsexy’ by first sexualising our interactions and then attacking my contribution in that space.

– Tell WEL respondent

In the workplace, its manifestation varied depending on context. From strongly hierarchical, male dominated workplaces to hospitality and service settings, respondents gave examples to illustrate how sexual harassment played out in many different industries and occupations.

Flattery?

A significant minority thought that some perpetrators have a genuine belief that it is flattering, especially when it is at the lower end, the belief that 'it is just a compliment' and recipients should 'lighten up' belies the seriousness and the impact. As discussed in *Section 2*, these impacts are anything but trivial. Others argue that it is convenient to hide behind the excuse that it is flattering, when in reality it is a tactic to put women 'in their place' as subordinates and objects.

Around 30 per cent thought that men were also motivated by sexual gratification. The old slogan that 'sexual harassment/rape is about power and not sex' might need to be revisited to clarify that reducing women to objects of sexual gratification is an expression of power over women. As one respondent commented, 'men grow up being taught women are consumable and exist for their pleasure; they do not see us as fully human.' Another suggested that 'men's egos often dwell in their sex drives...' and many others noted the strong connection with their egos and their behaviour.

Understanding the causes of sexual harassment is essential to finding adequate measures to address it. The respondents to the survey overwhelmingly saw it as a systemic issue, a view strongly supported by the literature and the data. Most concerning is the lack of progress, which should be at least commensurate with the increased participation of women in the workforce and their greater numbers in more senior roles. While progress here is also slow, as one respondent commented about the experience of her 13-year-old daughter:

It is rife amongst adolescents too as pathetic, disempowered boys try to clamber up a social ladder by denigrating others. My 13 year old is off school today as she's sick of being called bitch and THOT and being threatened with 'getting you' by yr 8 boys she's turned down going out with. The school addresses it but has a Sisyphean task addressing ingrained acceptance of gender bigotry. It is bigotry and is as violently damaging and stupid as racism and sectarianism.

– Tell WEL respondent

The views expressed on the causes strongly support the proposition that sexual harassment is an expression of sex discrimination. Respondents stated that it conveys the message that women are not fully human with the right to be respected and valued as workers. Effective responses need to be situated in the broader context of addressing systemic gender inequality and discrimination. Seen from this broader perspective, misogynist norms also exist in gay culture and intersect with racism and workforce status. Just one example of many illustrates this complexity:

In my experience of witnessing sexual harassment it was a case of gay men using derogatory language towards women at work. I'm 57 and worked with loads of gay men in retail and hospitality but have never experienced such hostility and misogyny. Truly hateful stuff. It's worse than a hetero guy harassing in my opinion.

– Tell WEL respondent

2. The impact of sexual harassment, including differential impact on groups of women

Respondents concurred with the many other studies in Australia and other similar countries about the often devastating impact of sexual harassment on their working and personal lives.[1] WEL invited respondents to indicate how frequently they had experienced and witnessed sexual harassment. As shown in Fig. 2 and Fig 3, almost half had often experienced and witnessed sexual harassment, with another quarter indicating that they had sometimes experienced and witnessed the behaviour.

It was a more-rare occasion for a significant minority of 18 per cent of respondents, while around 10 per cent reported they had never either experienced or seen sexual harassment in the workplace.

Fig 2. Experience of workplace sexual harassment

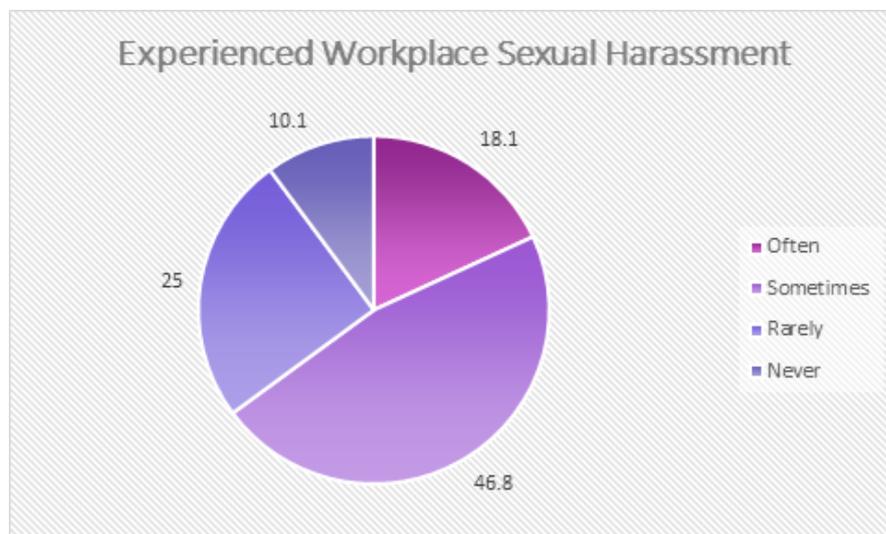
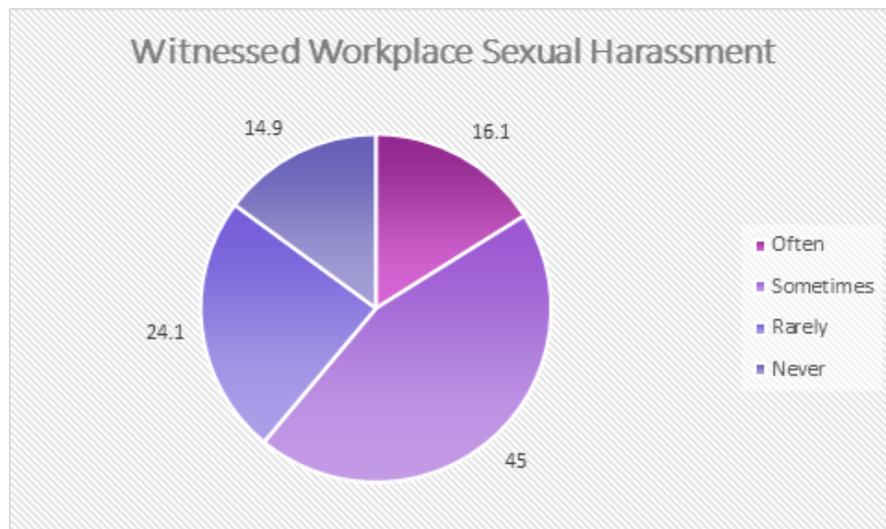
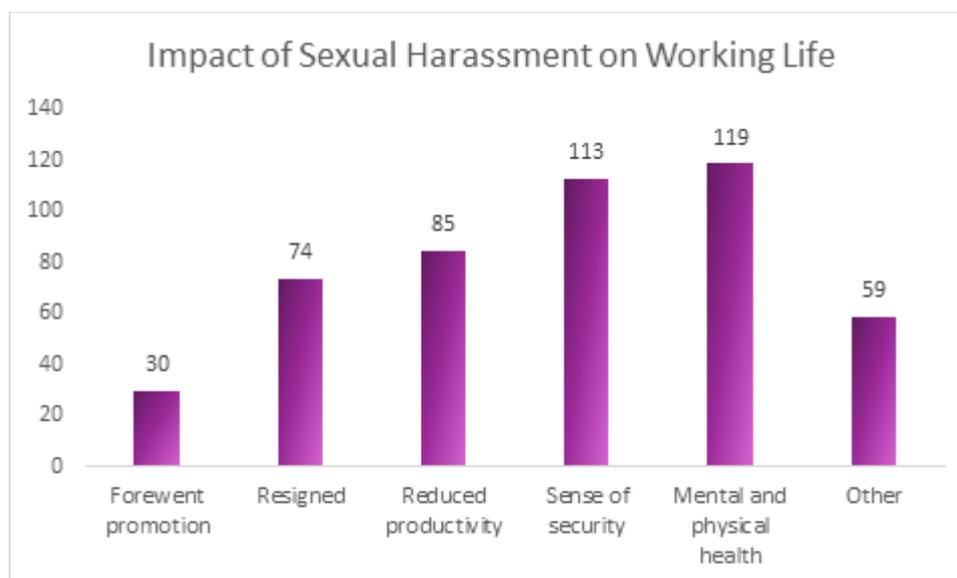


Fig 3. Witnessed workplace sexual harassment



For one respondent 'it was [her] first ever job and made her 'scared to work again'. Again, respondents were able to nominate more than one impact and specify others not listed. As shown in Fig 4, the impacts varied from 'foregoing promotion', feeling forced to resign and over 50 per cent noted adverse impacts on their 'physical and mental health.'

Fig 4. Impact of sexual harassment on working life



The impacts belie the notion that sexual harassment is trivial, and many women indicated that the way it is treated as trivial is part of the problem. While the impacts on individuals can often be economically and personally devastating, the cumulative effect at the workplace and industry level is clearly much greater than acknowledged. Many respondents saw sexual harassment as a form of sex discrimination which has reduced their ability to advance in the workplace and even to work at all.

I've had men physically assault me in the workplace (grind against me). My male supervisor has said 'nice legs' to me, would tell stories about his penis, and ended my contract when I tried to draw a line and maintain professional boundaries.
 – Tell WEL respondent

There is no doubt that other disadvantages and characteristics increase the impact on particular groups of women. Women in insecure and isolated jobs are certainly more likely to experience more severe impacts and these are more likely to be women who are subjected to multiple disadvantages and prejudices[MNS]. The AHRC surveys have highlighted that 'women of colour, young adults, those with a disability and LGBTI people are particular targets of sexual harassment'. [2] But while the impacts are often more severe, it is also clear that tertiary educated women in better paid and more secure jobs are not immune. Just one example illustrates the experiences of many:

I was harassed by the man who would have to sign off on my tenure...He never crossed the line to sexual assault but I spent several years avoiding him. He would touch me on the arms and shoulders and told me once about his sexual attraction to me. I have good mental health generally and am not especially vulnerable, but it was awful.

– Tell WEL respondent

Nor is there necessarily safety in numbers in female dominated industries and occupations.

Respondents gave examples in academia and in corporate roles and in the public sector. Roles such as nursing, hospitality workers are particularly exposed to discriminatory, derogatory and demeaning behaviour, not only from their co-workers and managers but also from clients and members of the public.

Many respondents added their voice to the widely cited impacts on women from leaving their employment, losing their jobs to feeling the need to alter their behaviour and dress and avoid the perpetrator.

A number of respondents indicated that their experiences made them 'more conscious of the power imbalance between men and women in the workplace'. Many saw sexual harassment as part of sex/gender-based discrimination and our patriarchal norms. In a number of cases, it had motivated their feminist activism and membership of WEL.

Generalising about the impact is difficult when the nature and incidence of sexual harassment occurs along a continuum from verbal to physical and from comment, to insult to assault. A number of respondents gave examples that would fall within the legal definition of rape and reported severe and lasting impacts on their lives. For some women there was little or no impact or they felt that they were able to deal with it.

The negative impact on women's health and well-being, and their economic security has much wider implications economically and culturally. It underlines the need for collective and proactive solutions as proposed by Unions NSW/ACTU through industrial and work health and safety jurisdictions. In particular, the onus needs to be on the employer to address the workplace culture that enables and protects perpetrators.

3. The current legal framework for sexual harassment

WEL joins the widespread call for significant reforms to the legal framework. While it is vital that there be mechanisms for individual redress, the focus needs to shift to a positive and proactive employer responsibility to provide for a healthy, safe workplace, without discriminatory and predatory behaviour to contend with. Such a focus would shift the onus away from individual women to the site and the context in which most sexual harassment occurs.[\[MN6\]](#)

The survey was an opportunity to ask WEL members and our wider networks what they thought would have most impact on stopping sexual harassment. While most supported reforms to the legal framework, many used the opportunity to point to the limitations of a complaints-based approach. They pointed out that women who complain are often not believed, are victimised, traumatised and forced to leave their employment. The main focus of changes was for there to be actual consequences for the perpetrator and the employer, financial penalties, with mandatory requirements including a code of practice.

They also pointed to the need for financial compensation for women, taking into account the cost to the complainant on their financial and mental health.

However, respondents concurred with the widely held that legal redress on its own, no matter how strong, is not enough, still leaving it to individuals to seek justice.

The focus of many comments was on the need for prevention, through education, training and most importantly through leadership which communicates zero tolerance.

One proposal was that sex/gender-based harassment should be seen as vilification in the same way as racial vilification is legally defined. WEL supports further research and policy development to investigate the benefits of this proposal and how it could work in practice, noting that enforcing racial vilification laws has severe limitations in practice.

A further suggestion was to explore the concept of restorative justice both in law and in workplace procedures. Others questioned if the very term needs to change from sexual harassment to or gender based or sexualised harassment to emphasise that a person is targeted for their gender identity.

WEL's specific recommendations for legal reform are framed by the Time's Up Statement namely that there should be '**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 and systemic issue.'

Employer positive duty and liability – mandatory, statutory code of practice

There should be a positive duty imposed on employers to prevent sexual harassment. This duty can be accompanied by a statutory code of practice which sets out how employers can meet that duty.

Under current state and Commonwealth anti-discrimination laws, employers can defend their liability if they have taken 'all reasonable steps' to prevent employees from contravening the legislation. While this appears to place the onus on employers to prevent sexual harassment, it only comes into effect when there is an actual case to defend. Only a tiny proportion of incidents are reported and even fewer are resolved. The current approach relies on the individual making a complaint, with all the personal costs that this entails.

A positive duty to prevent sexual harassment would place the onus on employers and regulators to prevent sexual harassment. As recommended by a number of studies and reports, this would require implementing a mandatory, statutory code of practice, which would include the following features:

- guidance on reporting systems and procedures, including the ability to make anonymous reports
- support for people to help them make complaints, including protection against victimisation
- guidance on when sexual harassment allegations may constitute criminal offences
- an obligation to develop and implement policies, provide training and conduct risk assessment
- enables dispute resolution, including mediation where appropriate.^[5]

Increase time limit for making a complaint under anti-discrimination law to six years

The time limits on making a complaint are restrictive and do not reflect the reality that it often takes people some time to work up to making a complaint, as they weigh up the potential negative consequences, including losing their job. In many cases, the complaint is not reported until after they have left and our survey provides further evidence that women often feel that they have no other option but to resign. A number of respondents disclosed that they still felt traumatised years after the events/experiences and the practical impacts on their careers and their financial security lasted over decades. Again, this is not a new finding and points to the need for compensation as indicated above.

At the same time, the focus should be on dealing with the issue as early as possible. It was also stated that the behaviour often only escalates if it is left unchallenged.

The decision to reduce the time limit for the AHRC from 12 to six months has been widely condemned for adding a further barrier to an already difficult process. The stated rationale that it would make the process more efficient and enable non-meritorious claims to be dismissed earlier, is insulting. It is also out of step with time limits on other breaches of employment law.

This proposal for a six-year statutory time limit for bringing a complaint would make it consistent with other employment laws such as underpayment. WEL contends that this longer time limit should also apply to other discrimination complaints.

Make sexual harassment an industrial issue

Related to the legal obligation and the ability to enforce it, WEL also concurs that there needs to be appropriate **access to fair, effective and efficient complaints processes**.

WEL's key proposal for dealing with sexual harassment in the workplace is for the *Fair Work Act, 2009 (FWA)* to be amended to cover action on sexual harassment collectively and not just individually. WEL recognises that this will not cover everyone and it should be one of a number of legal options. One respondent who had used the *Fair Work Act*, 'did not tick the legislative box' as it did not result in the outcome she sought. WEL contends that the most important reform is to have access to prevention and to collective solutions. As already noticed, sexual harassment is ultimately a poor reflection on the status of all women, but the remedies are directed to individual instances against a particular party by a particular offender.

Commentators have proposed a number of ways that this could be achieved, all with advantages and limitations.^[6] On balance, WEL proposes that a whole new part should be added to the FWA and relevant state based industrial law which gives the power to make orders to stop, conciliate, arbitrate and award compensation. This should be a broad power, with the same broad application to different types of employment contracts, like the anti-bullying jurisdiction, with the same features such as that the application must be dealt with within a 14-day timeframe.

A complementary provision would be for the FWA to mandate standard clauses in enterprise agreements and awards. This would be consistent with other standard clauses such as dispute settlement and consultation clauses and would add strength to the proposed broader coverage of sexual harassment/sex discrimination under industrial law.

Make sexual harassment a work health and safety issue

Arguably, sexual harassment is already covered under Work, Health and Safety legislation. Many studies, including our survey, underline that the impact can cause lasting damage on the physical and psychological health of the individual and to the collective wellbeing of the workforce. However, it has not been treated as such, with regulators tending to refer such matters to anti-discrimination jurisdictions, with all the limitations of individualising the issue. It makes sense that the laws that cover industrial and work health and safety issues should include sexual harassment and discrimination more broadly.

Including sexual harassment as a risk to be managed places the positive onus on employers to prevent sexual harassment from occurring in the first place. It sends a clear message that sexual harassment is not permissible in the workplace and women have the right to work in a positive and harassment free environment.

While current WHS laws could cover sexual harassment, WEL believes there is a need to make it explicit and include specific requirements that employers must implement to mitigate the risks, with penalties for non-compliance. These include having a clear policy, supported by education and training and avenues for redress.

In industrial and work health and safety jurisdictions, it has been noted that the regulators themselves don't appear to understand the nature and widespread impact of sexual harassment in the workplace. Regulators need to step up and get informed. There is no excuse for such ignorance, in the face of such overwhelming evidence, including the AHRC surveys, the ACTU survey and indeed our own survey, which show that sexual harassment occurs predominantly in workplaces. It is, after all where most adults spend most of their time .[7] There is a dire need for adequate resources to enforce these provisions, including educating employers on their obligations.

Protection from defamation and victimisation and the public interest

This Inquiry should consider the implications of confidentiality clauses in settlement agreements. It is a difficult issue, where on the one hand, it helps protect the victim but also silences them and it also protects the perpetrator, enabling them to re-offend. Various jurisdictions in America are considering the best approach, in light of the Harvey Weinstein settlements, and several recent cases in Australia have highlighted the ability of the accused to take counter action for defamation.

A further issue is that secret settlements mean that the real cost of sexual harassment and the extent of compensation is not aggregated for research, policy and monitoring purposes.

Include sexual harassment as part of the reporting obligations of employers with regulator power to investigate and follow up

WEL supports the recommendation from Maurice Blackburn for employers to be obliged to report to the Workplace Gender Equality Agency (WGEA) but also to enable it to follow up when their reporting and approach shows gaps and flaws in their policies and procedures.^[8]

This would provide a valuable source of data on the extent of sexual harassment and what employers are doing to prevent it.

Encourage bystanders and whistle blowers to speak up

A further issue is the role of bystanders and whistle-blowers. WEL is aware that AHRC has already undertaken research on how bystanders could be supported and empowered to call out sexual harassment. WEL supports the main proposal from this paper to include bystander protections in sexual harassment policies and procedures, this should include:

- education and training for all employees to increase recognition of sexual harassment and different ways that bystanders could intervene
- ensuring anonymity of bystanders
- enlist their support for targets of sexual harassment
- monitor and evaluate bystander strategies.

Adequately resource for support and specialist legal services

WEL is particularly concerned that there is **appropriate advocacy and support for workers**. We are particularly women with multiple disadvantages, in poorly paid and insecure employment are more likely to be harassed and have the least access to justice and support. The use of temporary, migrant workers has proved a recipe for exploitation, especially the mandatory requirement to undertake 88 days of farm work to obtain a second year of the 417 visa. While the terms of these visas might fall outside the remit of this enquiry, they deliberately exclude these workers from access to justice.

WEL strongly supports the reestablishment and expansion of working women's centres in NSW and other jurisdictions where they no longer exist. The focus should be on women who are particularly vulnerable, because of multiple disadvantages. This includes women in precarious employment without union support.

This support should be available alongside adequate resourcing of legal services and regulators.

Stop sexual harassment by clients, patrons and customers

The workplace is also the site of sexual harassment perpetrated by third parties. All the research and surveys point to the prevalence of sexual harassment in the hospitality and service sectors. A number of respondents gave examples of their powerlessness in this situation, when part of the job is to be friendly and 'the client is always right'.

I've only experienced sexual harassment at work once, when a male client harassed me. I told a woman supervisor, who told me to suck it up, and handle the situation better. I stopped working for that client. It distressed me a lot at the time.

– Tell WEL respondent

The company only cared about the client and not the staff making the complaint.

– Tell WEL respondent

During my university studies I worked in the hospitality industry in Canberra as a waitress. Verbal and physical sexual harassment - mainly perpetrated by men against women - was ubiquitous, normalized and accepted.

– Tell WEL respondent

I experienced it while working in hospitality – co-workers, bosses and customers belittle you and think you deserve or enjoy being harassed.

– Tell WEL respondent

I started to get and still do get panic attacks if I work in a customer facing role.

– Tell WEL respondent

One proposal to explore is to make sexual harassment part of RSA training and to mandate zero tolerance of this behaviour.

These specific proposals and remedies are included in WEL's recommendations in *Section 6*.

4. Existing measures and good practice by employers

WEL notes that some employers have already developed policies and procedures to deal with sexual harassment and provide training for employees and support to complainants.

Unions NSW reports that some unions have successfully pursued policies and procedures in enterprise agreements and awards.^[3]

There are a number of short-term programs that include training modules and 'best practice' policies and procedures for organisations to adopt and incorporate into their organisations active culture. There are few frameworks that look at an organisation with a comprehensive lens, with the view to significantly change the organisations culture and behaviour in addressing sexual harassment incidents and the root culture.

One of a number of recommended and successful models that WEL has identified, and is widely used by employers across government, community and commercial organisations is White Ribbon Australia's Workplace Accreditation Programⁱ. It is comprehensive, thorough and has all the elements needed for a successful program to change culture, attitudes and behaviour. It works in partnership with an organisation's leaders as well as a whole of workforce approach. This includes standards and a framework that has been rigorously tested and evaluated to achieve the change identified by each organisation, it is not a one size fits all approach. Each participating organisation must meet 16 criteria and must include a commitment from leadership that includes both men and women to be the change champions they want to see.

As well as training and education that draws upon accredited third-party training programs suitable for the organisation's needs, the program gives a role to bystanders and requires policies and procedures for complainants to be treated fairly. While the focus is to stop violence against women, the program comes from a feminist perspective, recognising the connection with sexist and disrespectful attitudes which underpin sexual harassment and violence against women.

A comprehensive program that is continually monitored and reviewed is needed to counter the 'lip service' that many respondents referred to and the lack of confidence many had in policies and procedures in their workplaces.

A program like this can work for larger organisations and set the standards for smaller employers to follow. However, the deregulation of the labour market, with many in insecure, casual jobs in small organisations points to the need for other support and regulation to apply in these contexts.

Without systematic reporting on these measures, it is impossible to tell how effective these initiatives are. However, we can be certain that they are not widespread. A systematic approach is needed that compels employers to take positive action to stop sexual harassment and prevent it from occurring. Proper resourcing for enforcement of labour and WHS and anti-discrimination laws is needed across the workforce.

5. The impacts on individuals and business of sexual harassment

The monetary and personal costs to individuals are well known and constitute major disincentives to taking action. As discussed in *Section 2*, some respondents to the WEL survey gave harrowing accounts of the impact on them financially and emotionally. Many reported a culture of sexual harassment and discrimination. While one or two instances might have stood out for individuals, it is the pervasiveness of sexual harassment which makes it much harder to address.

As demonstrated in the responses to the latest AHRC survey on sexual harassment, many people do not recognise sexual harassment for what it is, using the current legal definition. Particularly young people were much more likely to agree they had been subjected to sexual harassment when they are offered specific examples of the type of behaviour included under the definition of sexual harassment.^[4]

Despite the legal definition of sexual harassment in the ADA in 1984 and the many policies and procedures, based on that definition, there is still widespread ignorance of its manifestations and its impact on individuals and businesses.

The 'business case' for combating sexual harassment and discrimination in general has also been made for decades. The obvious points about the loss of productivity and skills that businesses incur, including the cost of turnover and retraining have been all been made over and over, but they are rarely explicitly counted as a cost to business.

Thanks to the four large surveys the AHRC has conducted since 2003, the body of evidence on the human and business costs is irrefutable and further strengthened by the ABS Personal Safety Survey. The forthcoming ACTU Survey, with over 10 000 respondents is unlikely to change the numbers on the incidence and impact of sexual harassment. Many respondents to WEL's survey related the negative impact on their own productivity. While there might be some question about whether people are more likely to recognise sexual harassment, on any measure, the numbers are alarming. They show that logical, pragmatic arguments and evidence are not enough of a call to action on the part of regulators and employers. WEL sees no other option but to compel employers to address the issue.

6. Recommendations to address sexual harassment in Australian workplaces

6.1 Employer positive duty and liability – mandatory, statutory code of practice

Develop a mandatory, statutory code of practice, to include the following features:

- guidance on reporting systems and procedures, including the ability to make anonymous reports
- support for people to help them make complaints, including protection against victimisation
- guidance on when sexual harassment allegations may constitute criminal offences
- an obligation to develop and implement policies, provide training and conduct risk assessment
- enables dispute resolution, including mediation where appropriate.^[5]

6.2 Increase time limit for making a complaint under anti-discrimination law to six years

Extend the statutory time limit for bringing a complaint would to six years to make it consistent with other employment laws such as underpayment.

6.3 Make sexual harassment an industrial issue

Add a whole new part to the FWA and relevant state based industrial law which gives the power to make orders to stop, conciliate, arbitrate and award compensation. This should be a broad power, with the same broad application to different types of employment contracts, like the anti-bullying jurisdiction, with the same features such as that the application must be dealt with within a 14 day timeframe.

The FWA to mandate standard clauses in enterprise agreements and awards.

6.4 Make sexual harassment a work health and safety issue

Make it explicit that sexual harassment is included in WHS law and require employers to have policies and procedures with penalties for non-compliance.

Allocate adequate resources to enforce these provisions, including educating employers on their obligations.

6.5 Protection from defamation and victimisation and the public interest

Consider the implications of confidentiality clauses in settlement agreements.

6.6 Adequate resourcing for support and specialist services

Re-establish and expand working women's centres in NSW and other jurisdictions where they no longer exist. The focus should be on women who are particularly vulnerable, because of multiple disadvantages. This includes women in precarious employment without union support.

This support should be available alongside adequate resourcing of legal services and regulators.

6.7 Stop sexual harassment by clients, patrons and customers

Consider making sexual harassment part of RSA training and to mandate zero tolerance of this behaviour.

6.8 Include sexual harassment as part of the reporting obligations of employers with regulator power to investigate and follow up.

Oblige employers to report to the WGEA and resource the agency follow up when their reporting and approach shows gaps and flaws in their policies and procedures.^[8]

6.9 Encourage bystanders and whistle blowers to speak up

Include bystander protections in sexual harassment policies and procedures with the following features:

- education and training for all employees to increase recognition of sexual harassment and different ways that bystanders could intervene
- ensure anonymity of bystanders
- enlist their support for targets of sexual harassment
- monitor and evaluate bystander strategies.

References

[1] Cite AHRC,

[2] Unions NSW Discussion Paper, Reforms to Sexual Harassment

[3] Unions NSW

[4] Everyone's business: Fourth national survey on sexual harassment in Australian workplaces 2018

[5] Equality and Human Rights Commission, *Turning the Tables: Ending Sexual Harassment at Work*, March 2018.

[6] <https://www.whiteribbon.org.au/stop-violence-against-women/get-workplace-involved/workplace-accreditation/>

[7] Unions NSW, Discussion Paper, Reforms to Sexual Harassment laws,

[8] Cite surveys and reports

[9] Maurice Blackburn, Time for Reform (2018)

[MN1] Insert recommendation from survey.

[MN2] Cite ACTU, HREOC UNSW, others?

[MN3] Cite stats from HREOC, ACTU

[MN4] Cite and quote key stats

[MN5] Cite references from Union NSW discussion paper

[MN6] Cite ABS

[MN7] Modify graphs, cut and paste results into editable form
