



Workplace Sexual Harassment National Forum

11-12 November, 2021

Influencing positive change

This document includes summaries of speeches from Day 1 of the program. Each summary has been edited by Comcare and has not been transcribed verbatim with the exception of the opening address from Senator the Hon Michaelia Cash, former Attorney-General and Minister for Industrial Relations.

For the full presentations, you can watch recordings via the Comcare [website](#).

**Compendium
of Speeches**

Workplace sexual harassment is widespread and pervasive across Australian workplaces. In every industry, every location and at every level. The Australian Human Rights Commission's (AHRC) national inquiry into workplace sexual harassment found that one in three workers experienced sexual harassment at work in the past five years.¹ The majority of workers chose not to report it, as some believed it would be seen as an overreaction, while others felt it was easier to keep quiet.

Sexual harassment can cause psychological and physical harm and is unlawful under the Commonwealth Sex Discrimination Act 1984 and prohibited by state and territory anti-discrimination law. Supporting workers and employers to create safe workplaces through education about prevention and management is a critical part of Comcare's role as the national work health safety and workers' compensation authority.

On 11-12 November 2021, Comcare - in collaboration with Safe Work Australia, and state and territory work health and safety regulators - hosted the Workplace Sexual Harassment National Forum with the theme: influencing positive change. The forum with the theme: influencing positive change. The forum aimed to facilitate a nationally consistent understanding of workplace sexual harassment risks, prevention and management to ensure employers, workers and regulators play their part in influencing positive change.

The virtual event's program was co-designed with the Heads of Workplace Safety Authorities (HWSA), state and territory regulators and Safe Work Australia and contributed to the commitment made by the Commonwealth Government to provide training to employers and managers covered by Commonwealth Work Health and Safety laws to better understand and meet their obligations. The first day of the program was open to a general audience and raised awareness of the Respect@ Work Sexual Harassment National Inquiry Report findings and recommendations for Australian workplaces. Attendance on the second day was restricted to representatives from eight regulatory organisations.

¹Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020. Available online at: [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#)

Workplace Sexual Harassment National Forum

Forum Program – Day 1

This compendium summarises the following presentations:

Senator the Hon Michaelia Cash

Former Attorney-General and
Minister for Industrial Relations

Opening address

Kate Jenkins

Sex Discrimination Commissioner,
Australian Human Rights Commission

Key findings from the Respect@Work Report

Jodeen Carney

Commissioner for Equal Opportunity,
South Australia

Review of harassment into the South Australian legal profession

Michelle Baxter

Chief Executive Officer,
Safe Work Australia

Workplace sexual harassment guidance and regulations

Michele O'Neil

President,
Australian Council of Trade Unions

Union address and response to Respect@Work

John Atkin FAICD

Chair,
Australian Institute of Company Directors

Employer experience and respectful workplaces

Workplace Sexual Harassment National Forum

Opening address



Senator the Hon Michaelia Cash
Former Attorney-General and Minister for Industrial Relations

“Good morning everyone and thank you for your time and engagement today. I’m pleased to launch this important forum, focusing on the prevention, management and regulation of workplace sexual harassment. And I acknowledge the important theme of influencing positive change. A big thank you to Comcare for hosting this event, and the contribution of Safe Work Australia and state and territory work health and safety regulators in developing this forum. Sexual harassment is unacceptable in any context, in workplaces, or anywhere.

As a government, we’re committed to ensuring all Australians have safe and respectful workplaces. Our response to Kate Jenkin’s Respect @Work Report aims to foster a culture of respectful behaviour in Australian workplaces. As we know, a respectful culture should be commonplace. Business as usual. The Morrison Government committed over \$64 million in this year’s budget, in addition to the \$2.1 million provided in the previous budget to implement our response to the Respect@Work Report. We’ve already made significant progress on implementing the recommendations. 41 of 55 recommendations have been either fully implemented or fully funded. We’ve also taken strong action to strengthen and simplify national laws to better protect Australians against sexual harassment in the workplace.

This forum is part of the government’s continuing work to implement our response to the Respect@Work recommendations. Education is central to the government’s action and this forum will help drive a national approach to prevention strategies. We bring together work health and safety regulators, professionals and employers from across Australia to promote cultural change in our workplaces. You will focus on the role that work health and safety regulators, businesses and employers have to provide physically and mentally safe workplaces to prevent harm, manage the risks and address poor workplace behaviours and cultures. This will be an important step towards driving cultural change and creating safer workplaces.

A number of speakers will address you and share their knowledge and expertise. This includes Kate Jenkins, Sex Discrimination Commissioner and Chair of the Respect@Work Council. And Michele O’Neil, President of the ACTU, which is an associate member of the Respect@Work Council. Day one of the forum will provide information and awareness about workplace sexual harassment. We want to facilitate a nationally consistent understanding of workplace sexual harassment and work health and safety risks.

The second day of the forum will focus on best practice regulation and sharing existing knowledge and responses from state and federal regulators to workplace sexual harassment. It will focus on shaping a nationally consistent approach to regulation and guidance materials to support employers and workers. Under the model work health and safety laws, employers already have a duty to ensure that all persons in the workplace, including workers, are not exposed to health and safety risks. This duty as you know, requires risks to health and safety, including the risk of sexual harassment to be eliminated or minimised so far as is reasonably practicable. It is the responsibility of every jurisdiction to ensure that both strong regulation and education are in place to support compliance with this duty.

This forum continues the important work the Australian Government has already undertaken to better protect Australians against sexual harassment in the workplace. Every Australian is entitled to be safe at work. Thank you for participating in this important forum, for bringing your expertise and experience to the virtual table. I wish you all the very best for the next two days and I look forward to seeing the outcomes.”

**The opening address by Senator the Hon Michaelia Cash is transcribed verbatim. The presentations from all other speakers were shortened to fit the format of this compendium, summarising the key points and recommendations. As the remaining presentations are not transcribed verbatim, they may not always include the terminology used by the presenter.*



Kate Jenkins
Sex Discrimination Commissioner, Australian
Human Rights Commission

Findings from the Australian Human Rights Commission's (AHRC) National Inquiry into Sexual Harassment in Australian Workplaces 2020 ('Respect@Work' or 'the National Inquiry')

Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission

Prohibition on sexual harassment was introduced in Australian law in 1984 and a considerable amount of work has followed to consider, address and respond to the issue. A turning point occurred in 2017 with the sexual harassment and abuse allegations made against Harvey Weinstein, leading to a real conversation about workplace sexual harassment not just in Australia, but globally. The media called out sexual harassment in the media and entertainment industry, and while not all employers have taken action, a number have started to address and respond to the issue.

2021 was also a watershed year, recording further milestones, including:

- The remarkable Grace Tame recognised as Australian of the Year
- The Government's response to the National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work report, conducted by the Australia Human Rights Commission) delivered in April 2021
- The loud and courageous voice of Brittany Higgins shining a spotlight on the experiences of workers in Parliament
- Chanel Contos highlighting the experiences of young women in schools
- March 4 Justice taking place across Australia on 15 March 2021.

The aim of this presentation is for the audience to gain a better understanding of what can be done to prevent sexual harassment.

The legal definition of sexual harassment is:

Sex Discrimination Act 1984

28A Meaning of *sexual harassment*

- (1) For the purposes of this Division, a person sexually harasses another person (the **person harassed**) if:
- a) The person makes an unwelcome sexual advance, of an unwelcome request to sexual favours to the person harassed; or
 - b) Engages in other **unwelcome conduct of a sexual nature** in relation to the person harassed;
- in circumstances in which a **reasonable person**, having regards to all the circumstances, would have anticipated the possibility that the person harassed would be **offended, humiliated or intimidated**.

Several key findings from *Respect@Work*¹ are significant for bringing about the necessary change. They include:

1. The *Sex Discrimination Act 1984* (Sex Discrimination Act) has not been able to do its work as well as was hoped, notwithstanding that sexual harassment has been unlawful for more than 30 years.
2. Many employers have been taking action, but it was not the right type of action for preventing sexual harassment. The focus generally was on what to do once sexual harassment already happened.
3. Work health and safety laws do not require reform to recognise sexual harassment. They already place a duty of care on employers to prevent risks to health and safety, including sexual harassment.

Many in the audience are from Human Resources (HR) to Work Health and Safety (WHS) roles, which have been identified as needing specialist knowledge on the prevention of workplace sexual harassment. It is important to clarify that workplace sexual harassment will not be solved by moving the issue from the Sex Discrimination Act into the Work Health and Safety Act². Workplace sexual harassment is a very complex issue driven by gender inequality, power discrepancies, and lack of accountability and transparency. It is an issue that needs to be tackled by different parts of the organisation working together – from HR to WHS – and drawing on expertise from different areas. Education sessions are necessary to enable specialists to understand the drivers and impacts of sexual harassment so that they can be part of the solution.

Findings from [Respect@Work](#)

Respect@Work has a strong evidence base. It collected data from and analysed a large number of sources, including:

- 60 public consultations with more than 600 people
- 460 written submissions
- surveys with 10,000 people
- review of global research
- economic modelling.

After an 18-month process, the final report was launched on 6 March 2020 with The Hon Marise Payne, Minister for Women. The Government Response, led by Attorney General the Hon Michaela Cash was delivered shortly after the launch, on 8 April 2021.

The report's main findings showed that:

- **Sexual harassment is a common experience.** In 2018, one in three Australian workers reported having experienced sexual harassment in the last five years.³ Groups particularly vulnerable to sexual harassment included LGBTIQ+, Aboriginal and Torres Strait Islander communities, migrant workers, persons with disabilities, and people working in regional and rural areas.
- **Sexual harassment happens in all workplaces.** Australian Human Rights Commission's (AHRC) 2018 survey revealed industry-specific data for the first time. Information, Media and Technology (81%) and Arts and Recreation (49%) were industries with the highest rate of workplace sexual harassment experiences. Sexual harassment tended to be perpetuated by male workers at senior levels and was compounded by the insecure nature of the work that is also highly competitive and reliant on word of mouth for referrals. Male-dominated industries such as construction and mining also figured strongly.
- **The onus has been on victims to complain.** Fewer than one in five people (17%) who said they had experienced sexual harassment at work made a complaint. The Sex Discrimination Act requires a victim to complain to bring perpetrators to justice. People who complain often experience negative consequences and frequently the complaints led to no changes.
- **Sexual harassment has a high cost.** The annual cost of workplace sexual harassment to the Australian economy is \$3.8 billion.⁴ The majority of this cost is worn by employers.
- **Workplace sexual harassment is driven by power disparity.** The main driver of workplace sexual harassment is power disparity; it is not driven by sex and gender as some believe. Gender inequality is a main form of gender disparity in workplaces, but other groups also face discrimination based on their race, sexuality and so on. Workplace sexual harassment is made possible by a lack of accountability and transparency over time of who is perpetrating it. Employers may work hard to resolve issues but keep them confidential and this has resulted in repeat offenders and victims for whom sexual harassment is almost a daily occurrence.

¹ *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020*. Available online at: [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#)

² WHS laws are based on the *Model Work Health and Safety Act 2011 (Cth)* in all states and territories, except Victoria and Western Australia which have their own WHS schemes.

³ *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces, 2018*

⁴ Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace, Final Report, Feb 2019*

Recommendations from *Respect@Work*

Respect@Work made recommendations in five areas:

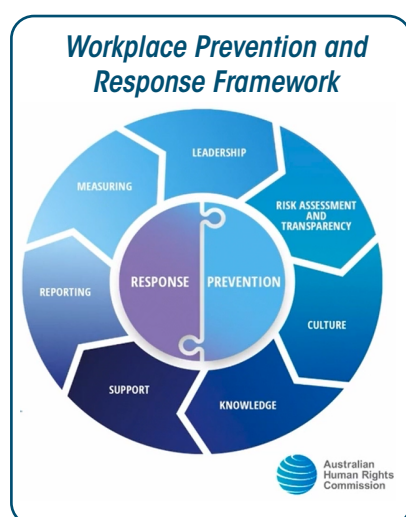
1. Data and research
2. Primary prevention (includes education, media and public campaigns)
3. A new legal and regulatory framework
4. Better workplace prevention and response
5. Better support, advice and advocacy

Employers are encouraged to read Chapter 3, which provides critical information on the systemic nature of workplace sexual harassment and Chapter 6, which provides a new workplace response and prevention model.

In the past, it was thought important that employers have in place a policy, training and a complaints procedure, but this system has not alone worked, particularly in small workplaces where people may not feel comfortable making a complaint in fear of losing their job. Having a policy and training does not automatically translate to an understanding of workplace sexual harassment and/or to behaviour that corresponds with the policy.

To address this, the report made specific recommendations for workplaces and employers, including:

1. Address workplace sexual harassment through **industry action**. One of the most effective ways to deal with the issue is through industry action as this provides an opportunity to address the common drivers of workplace sexual harassment. Collective action is also more efficient and effective for pooling resources and coming up with a common training initiative, for example. Finally, because many people across various sectors move between different employers in the same industry (e.g., in the entertainment industry it is common to move between jobs while remaining in the same industry), industry action can draw on sector-specific knowledge and provide cover. For example, the legal sector has moved on industry action and the Minerals Council of Australia has led an industry initiative.
2. Shift focus to **prevention of workplace sexual harassment**. Organisational approaches to addressing safety issues can also be applied to addressing sexual harassment. Currently when it comes to psychosocial injuries, such as workplace sexual harassment and bullying, the focus tends to be at the response end. As is the case with approaches to safety, more needs to be done early to identify risk factors and prevent workplace sexual harassment from happening. To assist with preventing sexual harassment, the *Workplace prevention and response framework* (Chapter 6 of *Respect@Work* report) was developed.



The Workplace Prevention and Response Framework incorporates seven domains.

Leadership: A safe and respectful workplace needs to have a line leader that models the right behaviour, making workers feel safe to raise workplace sexual harassment related concerns.

Risk assessment and transparency: Employers can draw on the safety model of work to identify systems of work and the people who might be at risk and build on this assessment to identify mitigation strategies. Safe Work Australia has produced guidance material.

Culture: Prioritising gender equality, and a psychologically safe workplace, is critical to preventing workplace sexual harassment.

Knowledge: Knowledge needs to be provided in multiple, useful formats and repeated regularly to stick. This may include bite-sized messages and infographics, as well as more involved guidelines, training modules, etc.

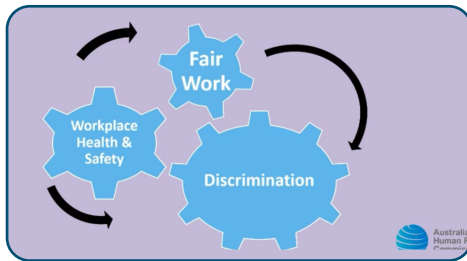
Support: Different ways to support the affected person need to be available.

Reporting: Multiple options for reporting, including anonymous reporting, need to be available.

Measuring: Tracking what has happened, what has and hasn't worked and sharing that information to increase transparency.

The months that followed the release of *Respect@Work* saw a significant amount of activity from different stakeholders to implement the report's recommendations. This included the development of educational materials on the topic, which will be put together on a common platform created by AHRC.

The new legal and regulatory framework



Australia has strong workplace laws. Sexual harassment has been prohibited in state and territory legislation by the Sex Discrimination Act since 1984. The intersection of the three laws related to sexual harassment – i.e., *Fair Work Act 2009* (Fair Work Act), work health and safety laws, and Sex Discrimination Act – should deliver better, safer and more respectful and productive workplaces. Several of the recommendations made in *Respect@Work* relate to the modification of these acts.

Some of these recommendations have already been passed by Government, while the balance between these frameworks is being considered. The proposed modifications include aligning the definitions of “work” in the Sex Discrimination Act to match that in the *Model Work Health and Safety Act 2011*, similar to the PCBU (a person conducting a business or undertaking) concept. The report found that the definition of employer/employee in many cases was not fit for purpose to how work is done today. The report also recommended that an employer’s “positive duty” be included in the Sex Discrimination Act, as currently the Act relies on a victim’s complaint to be enacted. It also found that work health and safety laws were applicable to workplace sexual harassment and Safe Work Australia has subsequently produced guidance on this issue.

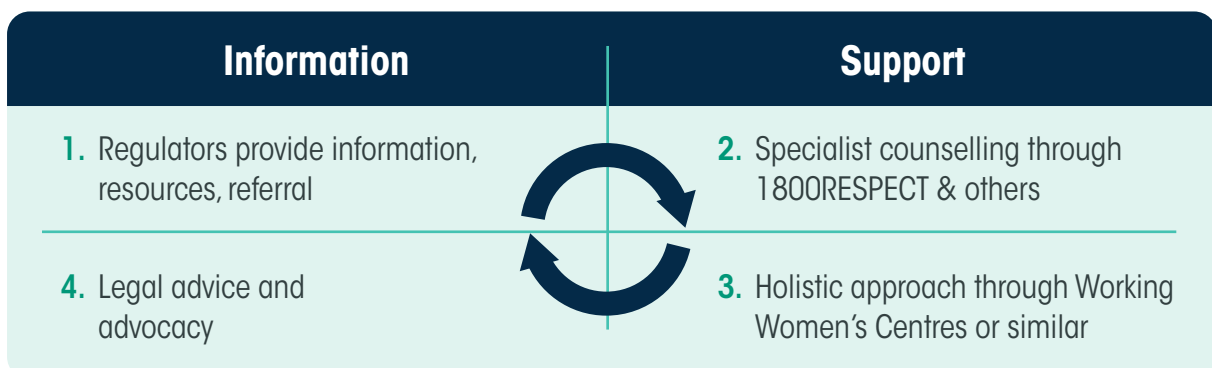
The Boland Review’s recommendations about psychosocial health were also recommended for implementation. Finally, some recommendations were targeted specifically at the Fair Work Act, which currently does not explicitly prohibit sexual harassment, but is the Act that workers look to for information on their workplace rights.

The Government has already introduced a ‘stop sexual harassment order’ (not its actual name; the order uses the Stop Bullying jurisdiction) passed on 11th of September 2021 and Fair Work has been updating materials in line with this new order. A new Respect@Work Council, chaired by the Sex Discrimination Commissioner has been established, bringing together key government regulators and policy makers responsible for sexual harassment policy and complains. These include the Fair Work Ombudsman, the Fair Work Commission, SafeWork Australia, Workplace Gender Equality Agency, Australian Council of Human Rights Authorities, Attorney-General’s Department, and the collective of Heads of Workplace Safety Authorities (HWSA) and Heads of Workers’ Compensation Authorities (HWCA). It was convened and supported by Government, holding its first meeting in March 2021 and works together with associate members from employer, employee and community sector. The new system brings allows key bodies to work together in a more consistent, clear and easy way for workers and employers to navigate.

Person-centred response: The role of support, advice and advocacy

Respect@Work found that while the experience of sexual harassment itself is often harmful, the experience of raising a complaint, processing a worker’s compensation claim and getting help can also be damaging. These negative experiences of getting help have led to the need to have a much stronger focus on person-centred responses. Employers will benefit from getting specialist assistance from trauma and sexual assault services on how to appropriately assist victims of workplace sexual harassment through a supportive person-centred approach. The last thing safety regulators want is to cause more trauma and harm by subjecting claimants to a complicated investigation process. The report also makes recommendations around how workers can obtain better access to information about their rights and access to the supports they need.

Previously, support was only available if a complaint was made, but these processes should not be linked. It should be up to the person to decide what they want to do and how. The option to get support should not be tied to the individual’s decision to make a complaint. The figure below outlines an approach to receiving support that is not contingent on making a complaint.



Workplace Sexual Harassment National Forum

Harassment review into SA legal profession



Jodeen Carney
Commissioner for Equal Opportunity,
South Australia

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Support, advice and advocacy

Respect@Work found that while the experience of sexual harassment itself is often harmful, the experience of raising a complaint, processing a worker’s compensation claim and getting help can also be damaging. These negative experiences of getting help have led to the need to have a much stronger focus on person-centred responses. The last thing safety regulators want is to cause more trauma and harm by subjecting claimants to a complicated investigation process. The report also makes recommendations around how workers can obtain better access to information about their rights and access to the supports they need. Previously, support was only available if a complaint was made, but these processes should not be linked. The option to get support should not be tied to the individual’s decision to make a complaint. The figure below outlines an approach to receiving support that is not contingent on making a complaint.

⁶ South Australia, Parliamentary Debates, House of Assembly, 4 December 1984, 2079 (Greg Crafter, [former] Minister of Community Welfare).

⁷ South Australia Equal Opportunity Act 1984, Version 20.09.2021

The focus of this presentation is the *Review of Harassment in the South Australian Legal Profession* (the Review) undertaken in 2021 by South Australia's (SA) Office of the Commissioner for Equal Opportunity. The Review preceded Jodeen Carney's appointment and was undertaken by the former Acting Commissioner, Steph Halliday. The former Acting Commissioner was appointed by the State Attorney General to conduct the Review following revelations in the High Court regarding the conduct of former Justice Dyson Heydon. The Review was delivered in April 2021.

While Australia's work health and safety (WHS) laws are largely harmonised, equal opportunity laws and anti-discrimination laws are not. Each State and Territory has its own equal opportunity laws, which work concurrently with Commonwealth legislation. While they all seek to achieve the same objectives, their scope and reach differ.

The SA *Equal Opportunity Act 1984* (SA Equal Opportunity Act) provides protection against discrimination, victimisation, and sexual harassment in a range of areas of public life. It commenced in 1984 with the stated intention of giving "each and every person a basis on which they can live their life in dignity and in equality and with the respect that is due to every single person in the community".⁶ Jodeen Carney's office is responsible for administering the SA Equal Opportunity Act, which predominantly includes dealing with complaints. As Commissioner, she has two key roles:

1. Fostering and encouraging members of the public unprejudiced attitudes with a view to elimination discrimination.
2. Making recommendations to the Attorney General about reforms that further the Act's objectives.

Under the SA Equal Opportunity Act, it is unlawful to treat people unfairly on a number of grounds, including sex, disability, and age, in a number of areas including the provision of goods and services, education, accommodation, and most notably, employment. The largest area of complaints that the office receives is about employment. Across all grounds of discrimination employment complaints account for/about half of all complaints. In SA, it is unlawful for a person to sexually harass another person with whom s/he works. The SA Equal Opportunity Act defines sexual harassment as "an unwelcome sexual advance, or an unwelcome request for sexual favours [...] or other unwelcome conduct of a sexual nature [...] in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."⁷

A significant difference exists between the Equal Opportunity Act and WHS laws regarding the obligations for employers. WHS laws provide a positive duty on employers to prevent or minimise workplace risks, such as workplace sexual harassment. In contrast, equal opportunity laws do not have a positive duty requirement and employers and regulators are not required to take positive or proactive steps to prevent sexual harassment in the workplace. However, the Parliament will shortly consider enacting or amending legislation to impose a positive duty. At present, an employer's liability in relation to sexual harassment does not arise until an unlawful act has occurred. There needs to be a victim and the burden rests solely on the individual to make a complaint.

Key findings from the Review into harassment in the legal profession in SA

The revelations about former Justice Heydon led to an independent investigation commissioned by the High Court, which found that six women associates were sexually harassed by him. For many, especially lawyers, these revelations were disheartening and astonishing. The Equal Opportunity Commissioner's office was to consider the adequacy of laws for making complaints about harassment and sexual harassment.

During the 2021 Review into harassment, all current and former members of the SA legal profession including judicial officers, practitioners and support staff were approached. Participation was widely promoted, and an anonymous online survey was completed by 600 participants. The Review examined discriminatory harassment and offensive behaviour on the basis of age, sex, disability, race, gender identity, sexual orientation, caring responsibilities, and pregnancy. Sexual harassment was the most significant area of complaint.

⁸ Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020. Available online at: [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#)

The *Respect@Work* report⁹ added momentum to the Review into harassment in SA, with many of its findings were mirrored in the latter report. For example, it found that sexual harassment is more likely to happen in workplaces where there are:

- other forms of incivility such as bullying and harassment
- an over-representation of men in senior leadership roles
- a hierarchical structure that has significant power imbalances
- a highly competitive workplace culture.

These characteristics allow sexual harassment to flourish and create an environment in which barriers prevent or deter victims and bystanders from reporting. Some additional points unique to the legal profession that have the potential to increase the risk of sexual harassment include:

- Currently in SA, there are more female solicitors (53%) than male solicitors (47%). There are almost two women to every man solicitor in corporate legal practice.
- There is still a clear deficit in the representation of women in senior roles and positions of authority which creates an environment where power imbalances thrive.
- The legal profession has a strongly entrenched hierarchical structure.
- Decisions lawyers make are likely to shape their careers from an early stage. Reporting something is likely to be more important to someone new in the profession than a more senior person. Young lawyers are the most vulnerable.
- Students and recent graduates often work unpaid to advance their careers. Many undertake unpaid internships, summer clerkships and voluntary work at student-run law centres. This creates a situation where junior members of the profession are often working with those who have the most power.
- Judges' associates work in Judge's Chambers with few others, which can lead to unreasonable expectations and disrespectful behaviour.
- Many young people are ill-equipped to complain, others are simply too afraid to do so because they are concerned it will ruin their careers.
- In private practice, there's a widespread view that no-one will make a complaint about a person whose name is on the building.

It would be a mistake to believe that only young people are subjected to sexual harassment. The investigation into former Justice Heydon revealed a pattern of predatory sexual conduct not just towards young associates but also to senior barristers and prominent lawyers. His conduct was reportedly an open secret perpetuated by a culture of silence and tolerance.

Other key findings from the Review included:

- More than 40% of the survey respondents had experienced sexual harassment while working in the profession.
- 60% of women had experienced sexual harassment, compared to 10% of men.
- The most common types of sexual harassment included sexually suggestive comments, inappropriate close contact, intrusive questions about physical appearance and private matters, inappropriate touching, repeated requests to go on dates, and requests or pressure for sex and other intimate acts.
- Email and social networking applications were commonly used to share inappropriate images and messages outside of work hours.
- Three quarters of those who had been sexually harassed had experienced it in an office or other workplace.
- 10% of victims had experienced sexual harassment during legal proceedings. One recounted sitting in a courtroom and receiving sexualised text messages from a magistrate who was at the time presiding over the very courtroom she was in.
- 80% of victims identified their harasser as being a person more senior to them. A quarter of victims were harassed by their direct line manager.
- About a third of sexual harassments were by a third party external to the business such as a client.
- 70% of sexual harassment victims never reported it.
- Even within the confines of a confidential survey, 32% of those who participated preferred not to say how they had been sexually harassed.
- Some of the reasons for not reporting harassment included a lack of understanding and trust in complaint processes, and fear of repercussions on career and work life.

⁹ Review of Harassment in the South Australian Legal Profession, Report by the Equal Opportunity Commission to the Attorney-General, April 2021. Available online at: [Final-Report-of-the-Review-of-Harassment-in-the-South-Australian-Legal-Profession.pdf \(eoc.sa.gov.au\)](#)

Complaint mechanisms in the legal profession include bodies such as the Legal Profession Complaint Commissioner, but these require that the complainant reporting harassment is identified. From an early stage of making complaints, many victims felt that they were not believed, and others simply did not have confidence in the complaint process. As the former Acting Commissioner wrote in her report "Awareness is not the problem. Fear of speaking up is the dominant constraint".⁹

Recommendations from the Review

The Review made 16 recommendations for amendments to the Equal Opportunity Act including that:

- Legal workplaces deliver one course each year for the next five years with respect to bullying, discrimination, and harassment.
- Judicial officers undergo training on the nature, driver, and impacts of harassment.
- SA universities and providers of practical legal training review their ethics content to ensure that before being admitted, students have a comprehensive understanding of the issues.
- Members who are appointed to the Legal Practitioners Disciplinary Tribunal have expertise in dealing with sexual harassment and that membership of that tribunal is broadened.
- All legal professional workplaces consider adopting workplace policies and good-practice principles with respect to appropriate victim-centred procedures and use of non-disclosure agreements
- Persons conducting a business of a legal nature review their policies and procedures including staff induction manuals to ensure they eliminate or minimise the risks of harm arising from sexual harassment.

The last recommendation was a revelation for many lawyers who have never seen sexual harassment through a WHS prism before. While sexual harassment is recognised, it is not specifically referred to in the *Work Health and Safety Act 2017*. It's recognised by SafeWork SA as a workplace hazard which may cause physical and psychological harm and WHS laws impose positive duties on PCBU's. It is clear that workplace sexual harassment gives rise to health and safety risks and in a WHS context, an employer must actively and comprehensively manage health and safety risks. Failure to do so can result in enforcement action including prosecution.

Outcomes and upcoming work

Employers often fail to take decisive action about sexual harassment because they don't know how to manage it or fail to see it as a HR or WHS issue. SA employers in the legal profession have not historically managed sexual harassment through a WHS framework. Most workers feel confident about raising a workplace safety issue and may feel they have a duty to report it to their manager or safety representative. The WHS framework is strong and well-established in SA. Seeing sexual harassment in this context is new and may take time to embed in many legal workplaces. However, the Review recommendations have been well received and acted on by senior leaders in the profession. There have been many positive outcomes, including:

- A Judicial Conduct Panel was established to examine allegations against a magistrate who has been stood down.
- The Chief Justice invited practitioners who were victims of sexual harassment to contact him directly and some did.
- Lawyers who want to maintain their practising certificates will complete mandatory professional development training in sexual and other harassment.
- Most judicial officers have undergone training on the nature, drivers and impacts of harassment.
- The Attorney General's Department, the State's largest employer of lawyers has implemented programs to educate staff about inappropriate workplace behaviours.
- Any private sector firms that want government work must demonstrate they have model policies and procedures.

In conclusion, after a thorough review some positive and encouraging changes have occurred. Sexual harassment will not become a thing of the past, but with training, improved complaint mechanisms and support, as well as viewing sexual harassment as a WHS issue, there is a chance it will reduce. The Commissioner's office will review the progress in three years and assess changes made to determine whether safer, more respectful and inclusive legal workplaces have been delivered.

Workplace Sexual Harassment National Forum

Guidance and regulations



Michelle Baxter
Chief Executive Officer, Safe Work Australia

Safe Work Australia (SWA) is working to influence positive change and accountability in the topical and important area of workplace sexual harassment. SWA plays a crucial role in the creation of safer and more productive workplaces through improvements to national work health and safety policy and workers' compensation arrangements. This includes taking a preventative approach to dealing with sexual harassment at work.

This presentation outlines:

- How sexual harassment at work has been dealt with in the past and what needs to change.
- Existing positive duties in the *Model Work Health and Safety Act 2011*¹⁰ (WHS Act) to prevent sexual harassment.
- The work SWA has been doing to influence change and accountability through changes to the model Work Health and Safety (WHS) legislative framework and guidance materials.

Over the last few years sexual harassment has been promoted to the forefront of social and media commentary. Significant momentum has been built for Governments and workplaces to understand what can be done to influence positive change. A safe workplace includes one that is free from risks to workers' physical and psychological health and safety, including those arising from sexual harassment. Unfortunately, sexual harassment continues to be prevalent across all industries in Australia. The latest survey from the Australian Human Rights Commission showed that one in three people have experienced sexual harassment at work sometime in the past five years.

Sexual harassment at work is often driven by gender inequality and impacted greatly by individual workplace leadership and the culture of an organisation. Power imbalances in workplaces can mean workers who experience sexual harassment may have limited options to stop that harassment, are likely to fear reporting it and are often forced to endure it. The effects of sexual harassment can lead to loss of productivity, low morale, absenteeism, and increased staff turnover, which not only affects the individual but the workplace more generally. Psychological injuries are one of the costliest forms of workplace injuries. They lead to significantly more time off work and have a higher median payment per workers' compensation claim. Work-related harassment and bullying were the cause of over 30% of mental stress claims in 2018/19.

What needs to change?

To look at what can be done to influence change, it is important to identify what has gone wrong in the past. Historically, sexual harassment has been treated as a discrimination or a workplace relations issue, not a WHS issue. The past approach has been reactive and focused on the individuals involved and their specific behaviours rather than taking a proactive and systematic approach to prevention at the organisational level.

The way a workplace deals with complaints about sexual harassment has a great impact on the employment, career progression, health, and wellbeing of those affected. This impacts all workers. If appropriate action is not taken by employers, individuals who experience or observe sexual harassment will not feel they work in a safe environment to raise an issue and those who harass others will face no consequences for their behaviour and may believe that their behaviour is acceptable. It is important that workplaces understand sexual harassment is an issue that needs to be addressed at the organisational level – not an issue of just a few individuals behaving badly. Preventing sexual harassment is just as important as preventing harm from other workplace hazards. Making it a common part of the risk management process, and an organisational problem rather than an individual's problem, will initiate change.

¹⁰ *Model Work Health and Safety Act 2011* (Cth)

Existing duties under the model WHS Act

In 2011, SWA developed a WHS framework which consists of a single set of model WHS laws to be implemented across Australia. The model WHS laws contain positive duties to prevent sexual harassment before it occurs. Persons conducting a business or undertaking (PCBUs) must ensure the physical and psychological safety of workers while at work so far as is reasonably practicable.

The model WHS laws apply to all types of working relationships, including volunteers, independent contractors and other less traditional arrangements. The laws also require PCBUs to prevent harm from work to others, including customers, students or patients. The primary duty in the model WHS laws requires PCBUs to eliminate or minimise the risk of sexual harassment. Workers and others in the workplace also have duties under WHS laws, including not adversely affecting the health and safety of others. This means that workers have a duty to not sexually harass their colleagues and others in the workplace. Workers also have a duty to comply with policies and instructions related to health and safety. WHS regulators have a range of options for enforcing WHS laws, from education, support and awareness-raising, through to fines of up to \$3 million for body corporates, and up to \$600,000 and five years of imprisonment for individuals.

Managing workplace sexual harassment

Exactly how can a PCBU manage the risk of sexual harassment at work? The answer is that it needs to apply a **preventative risk management approach**. This approach is the same as would be undertaken for any physical hazard. The processes for managing psychosocial risks – such as sexual harassment – does not need to be separate from the processes of managing physical risks. If all health and safety risks are managed together, control measures will be more effective. PCBUs should:

1. Start by identifying how, where, and when sexual harassment might happen at work, assessing the likelihood of it happening, and how it may affect workers.
2. Eliminate or minimise these risks by creating safe physical and online working environments.

For example:

- Ensuring the workplace layout avoids workers' movements being restricted, has good visibility, and provides secure and private change rooms.
 - Using security settings online to block harmful material and not using personal social media accounts for work.
3. Implement safe work systems and safe job design. Sexual harassment may be more likely to occur when workers are doing certain tasks, or while in certain places. Work should be redesigned in a way to minimise these risks. This includes:
 - setting standards of behaviour
 - addressing lower-level harassment early and appropriately
 - creating a culture where workers feel comfortable reporting issues
 - implementing workplace policies and providing training to support it
 - increasing workplace diversity and addressing power imbalances.
 4. Consult workers directly affected by a health or safety matter. Workers are great sources of information and are well placed to identify practical ways to improve safety. However, it is important to consider the sensitivities involved in consulting workers on sexual harassment. Individual preferences of how workers want to be consulted, and what action they would like taken should be respected.
 5. Develop reporting processes that support confidential and/or anonymous reporting. Processes for dealing with complaints should be appropriate, tailored and well communicated.

If PCBUs can implement these work processes and deal with sexual harassment, workplaces will be much better placed to deal with issues as they arise. If PCBUs do not manage sexual harassment, not only are they not meeting their legal obligations under WHS laws, but they are also likely to be increasing their financial costs through more workers' compensation claims, negative publicity, lower productivity, and higher staff turnover. Under the model WHS laws, CEOs and senior managers must exercise due diligence to ensure the risks of sexual harassment at work are being managed. The WHS laws prohibit workers from being disadvantaged for reporting sexual harassment and workers can report problems directly to the WHS regulators where workplace hazards exist. Regulators can also provide advice to PCBUs to help them meet their WHS duties.

What is SWA doing to influence change and accountability?

Although sexual harassment is covered by the model WHS laws, there is more work to be done to address psychosocial hazards at work, including sexual harassment. While the model WHS laws cover psychosocial hazards, there aren't any specific regulations or codes of practice for these hazards. The 2018 review of the model WHS laws found that this can create a perception that psychosocial hazards are less important than physical hazards. It also found there is a lack of understanding and compliance with existing duties and obligations when it comes to psychosocial hazards. To rectify this, SWA is/has:

- **Amending the model Work Health Safety regulations** to assist PCBUs to identify psychosocial risks and the appropriate control measures to manage those risks. Amendments will not introduce new requirements, rather they will clarify existing duties.
- **Developing a model Code of Practice** on managing psychosocial hazards at work. This will provide detail on what psychosocial hazards are and how to apply the risk management process and highlight the importance of consultation with workers throughout this process. This will be developed through SWA's tripartite process, drawing on the expertise of the jurisdictions, as well as employer and worker representatives to ensure that the code is accurate and useful. There isn't a single set of control measures that will work in every workplace. The code will support and educate duty holders to tailor control measures to their workplace.
- **Published a comprehensive guide** to clarify WHS duties and provide businesses with practical information on how to proactively prevent sexual harassment. The guide sets out the steps PCBUs must take to meet their duties and provides practical examples of how PCBUs can proactively manage the risk of sexual harassment.
- **Developed supporting materials**, such as fact sheets and shorter guides tailored for small businesses. Accessible information will be provided to ensure that all workplaces, no matter the size or industry, understand and know how they can prevent sexual harassment at work.

In conclusion, SWA is working at the forefront of this important issue and wants to make it easier for Australian workplaces to adopt a preventative management approach for psychosocial hazards in the workplace, as it is adopted for physical hazards. Improving the culture of a workplace and creating a safe working environment will go a long way to actively prevent workplace sexual harassment. While there is still a long way to go to initiate change, there is a strong commitment to address sexual harassment as a WHS issue, and much more community awareness than five or ten years ago. Australian workplaces are adopting policies and training and, improving the way they respond to this issue. Working environments can be actively changed, foundations can be built for a positive, inclusive workplace culture, and Australian workplaces can be made safe and healthy from both physical and psychosocial hazards.

Workplace Sexual Harassment National Forum

Union address and response to Respect@Work Report



Michele O'Neil
President, Australian Council of Trade Unions

Workplace sexual harassment is a critical issue. Australian women and many men are hoping that 2021 is remembered as a turning point on issues of workplace gendered violence and sexual harassment. It is an indictment that this turning point had to rely on a young woman revealing the trauma of an alleged workplace sexual assault in the nation's parliament. Every day in every type of workplace, workers face the hazard of harassment and violence. Brittany Higgins has done her part – telling her story has changed the story. The hard work of reform, legislative protections, and appropriate regulation now sits in the hands of many.

It will soon be the 40th anniversary of the *Sex Discrimination Act 1984* (Sex Discrimination Act). When rereading the speeches to Parliament given by the (then) Opposition at the time the Act was introduced, one would think that the most radical legislation in the world was being debated. While it was a huge step forward, the legislation did not deliver the change women demanded and again this year, women had to take to the streets to demand change.

The lived experience of sexual harassment and gendered violence against women at the workplace is still a major and grossly underreported issue. The Australian Council of Trade Unions (ACTU) national workplace surveys found 64% of women have personally experienced one or more forms of sexual harassment in their lives. This issue does not affect only women, and is also considerable, and rising in reports made by men. A recent workplace health and safety survey of more than 30,000 people found a quarter of workers have experienced sexual harassment in the last 12 months. Younger women are more likely to experience gendered violence or sexual harassment, and sectors such as retail and health are particularly high-risk industries.

Most women subjected to sexual harassment never make a formal complaint. Their reasons include:

- fear of losing their job
- backlash from the perpetrator
- not wanting to cause a problem at work or face negative consequences
- not having enough support.

It is critical to realise that even when women know what sexual harassment is through their lived experience, many also know that the systems of work will not protect and support them if they make a complaint.

To meaningfully tackle sexual harassment and gendered violence at work, gender inequality needs to be addressed first. Australia still has a gender pay gap of over 14% and over 30% if the actual working hours are factored in. The Government's Workplace Gender Equality Agency statistics show that the gender pay gap has increased over the past year. Industries which predominantly employ women have high levels of award dependency, lower wages, more insecure jobs, and fewer protections. These industries include the frontline workers, who carried the community through the pandemic. In Australia, unpaid care and domestic work between men and women is one of the most unequal in the world. Out of all the members of the Organisation for Economic Co-operation and Development (OECD), Australia has one of the least generous paid parental schemes and one of the most expensive and inaccessible early childhood education and care systems. Between 2006 and 2020 Australia plummeted from 15th to 44th place in the World Economic Forum Gender Gap Report. This is the context in which gender-based violence and sexual harassment at work occurs.

The change that is required is fundamental and complex. It is critical that sexual harassment and gendered violence are addressed through a regulatory framework. The answer does not lie with the Work Health and Safety regime on its own. The Sex Discrimination Act¹¹ and the Fair Work Act¹² have important and interconnected roles to play. Fortunately, the way forward has been mapped out by two key federal government reports:

1. The Boland Review

In 2018, the Boland Review¹³ of Work Health and Safety laws found they are inadequate for dealing with psychosocial hazards and injuries, including sexual harassment and gendered violence. The report also found the regulation covering notifiable incidents does not cover sexual harassment or assault. The Boland review recommended changes to legislation and to regulation to address these gaps in the laws.

2. Respect@Work Report

In January 2020, the Respect@Work¹⁴ report was delivered to the Attorney General. The report was comprehensive, well researched, and delivered 55 practical recommendations for reform. The report found sexual harassment to be prevalent and pervasive across all workplaces. It also found, like the Boland Review, that the current legal and regulatory framework was failing. It needs to be ensured that women have a safe system of work, and that employers take active steps to protect workers from sexual harassment and gendered violence.

The *Respect@Work* key regulatory reform recommendations included:

- **Changes to the Sex Discrimination Act** to require employers to have a positive duty to take preventative measures to address sexual harassment rather than simply relying on individual complaints.
- **Changes to the Fair Work Act** to explicitly prohibit sexual harassment and provide an enforceable right for victims of sexual harassment in the workplace.
- **Amendment to the model WHS laws** to deal with psychological health as recommended by the Boland review.
- **New guidelines on sexual harassment** to inform the development of a WHS Code of Practice on sexual harassment.

An illustrative workplace example

The following is a story of a young supermarket worker called Sandy. The policy at her workplace is for staff to park at the far end of the carpark, the closest car parks are for customers. She regularly finishes her shift at midnight and walks to her car alone. A group of young men regularly hang out in the carpark and yell sexualized comments to her. The last time she walked to her car, one of the men ran towards her and threw something at her. She feels unsafe and anxious every night she is working. She starts to make mistakes and cuts herself one night with a box cutter while opening stock to put on the shelves. She is reprimanded by her supervisor for not paying attention. She tells the supervisor what is worrying her, but he tells her not to worry about it, saying: "Those young men are just mucking around". This is not just Sandy's story. It is emblematic of the stories told to unions around the country every day. It is why unions have said that the federal government's minimalist legislative change in its response to the *Respect@Work* report is not enough.

A duty on employers to prevent sexual harassment is critically important. The Sex Discrimination Act must be amended to require employers to take reasonable and proportionate steps to eliminate sexual harassment and discrimination. Safe Work Australia is developing a new regulation, addressing psychosocial hazards, including sexual harassment and released new guidelines on preventing sexual harassment earlier in the year. These guidelines must now inform the development of a code of practice on sexual harassment. Sandy's story shows how the response to the hazard requires positive action by the employer to understand and control the hazard appropriately. It also shows the need to address the underlying causes of sexual harassment at work – gender inequality, discrimination and power imbalances. Unless employers adopt both a Work Health and Safety approach and an anti-discrimination approach to addressing the problem of sexual harassment, the problem will persist in Australian workplaces.

In addition, industrial laws must respond to sexual harassment effectively. Changes need to be made to the Fair Work Act to explicitly prohibit sexual harassment and discrimination and provide an efficient Fair Work complaints process. Today there is the commencement of Stop Sexual Harassment Orders in the Fair Work Commission. This is a step forward, but leaves significant gaps in what is required, and recommended in *Respect@Work*.

¹¹ *Sex Discrimination Act 1984* (Cth)

¹² *Fair Work Act 2009* (Cth)

¹³ *Review of the model Work Health and Safety laws – Final Report, 2018*. Available online at: [Review of the model WHS laws: Final report \(safeworkaustralia.gov.au\)](#)

¹⁴ *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020*. Available online at: [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](#)

Other critically important issues for reducing workplace sexual harassment

It is important that all of the recommendations from the Respect@Work report are implemented to achieve the appropriate legislative and regulatory reform. Good work is underway at the State level including WorkSafe Victoria's Prevention of Gendered Violence guide for employers, and the award-winning Australian Services Union workplace guides in New South Wales. The union movement will continue to campaign for the necessary structural changes and to ensure that all of Respect@Work's 55 recommendations are acted on. Some of the remaining recommendations that still need to be implemented, include:

- Amendments to the Sex Discrimination Act to empower the Sex Discrimination Commissioner to initiate her own inquiries.
- Changing the objects of the Sex Discrimination Act to achieve substantive equality between women and men.
- Increasing access to justice for victims by allowing unions and other representative groups to bring claims to court, and ensuring costs are only awarded against a party if it acted vexatiously or without cause.

Another vital issue – outside the scope of Respect@Work – to keeping women safe at work is paid family and domestic violence leave. Union campaigning in Australia has won the right of paid leave for over one in three workplaces across the country. This is a tremendous effort, but too many workers are still left out. The COVID-19 pandemic has made family and domestic violence worse, with Police and frontline support services recording a surge in cases in 2020. The National Employment Standards need to include a minimum of ten days paid family and domestic violence leave – this will save lives and help build safe and inclusive workplaces.

The final issue that needs attention is the scourge of insecure work. When initially written, health and safety laws, industrial relations laws, and discrimination laws were largely based on full-time and permanent forms of employment. The rise of insecure forms of work not only puts workers at risk, but also poses a threat to existing regulatory functions and compensation schemes tasked with looking after injured workers. The workers' insecurity is more than financial; they are also limited in being able to access systems that can protect them and ensure their basic human and workplace rights. People who have insecure jobs are less safe at work. They are more likely to be sexually harassed, suffer a workplace injury, and experience wage theft. Workers deserve better job security and the financial security that comes with it. The laws need to change. And of particular concern to workplace sexual harassment is that insecure work is over-represented in industries dominated by women.

To conclude, workplace sexual harassment and gendered violence are a result of gender inequality. Events in 2021 have led to some action and given some hope, but there are also signs of growing economic inequality. Researchers at the University of Sydney say that Australia has one of the most gender segregated workforces in the OECD, made worse by the pandemic. Of the 800,000 workers who lost their jobs between March and May 2020, 54% were women. There is no question that the COVID-related interruptions to work will have long-term impacts on women and worsen existing inequalities. Women retire with 47% less superannuation than men. Without appropriate changes to laws, at the current rate of change, it will take women about 50 years to achieve equal pay. Sexual harassment and gendered violence must be addressed as serious work health and safety issues. It is important that regulators have the necessary tools to enact changes that protect workers. Safer workplaces for women and girls - for every worker - is one of the marks of a decent, fair and modern society. Women in Australia will not be safe until they are equal, and the achievement of gender equality will not happen by accident. Structural problems require structural solutions and structural solutions require leadership. Every worker, every day, deserves to be safe.

Workplace Sexual Harassment National Forum

Employer experience and respectful workplaces



John Atkin FAICD
Chair, Australian Institute of Company Directors

The Workplace Sexual Harassment National Forum focuses on raising awareness about sexual harassment in the workplace, but issues of sexual harassment and discrimination need to be seen in the broader context of social change. Behaviours associated with sexual harassment fall on a spectrum from discrimination to violence and need to be viewed as such.

This talk is given from the personal perspective of a company director. Being able to stand in other people's shoes and see the issues from another person's perspective is one of the critical capabilities we need to build in the workforce to solve the challenges ahead.

The key points presented include:

1. The elimination of sexual harassment in the workplace is the responsibility of the Board.
 - The Board is accountable for the culture of the company which it leads.
 - Most companies that adhere to "contemporary governance standards" acknowledge that a Board has the key responsibility for organisational culture. The Hayne Royal Commission also endorsed this principle.
2. Organisational change requires leadership from the top, starting with the Board and the Chief Executive Officer. Change starts with these roles and will not be effective unless it happens there.
3. The elimination of sexual harassment must be approached from the positive perspective of building a diverse respectful and inclusive workplace.
 - Setting diverse and respectful workplaces as an objective will result in a workplace culture that does not tolerate discrimination and sexual harassment.

These three points are clearly a responsibility of the Board and leadership from the top. But how can Boards know whether sexual harassment is happening? It is unlikely to happen in front of them and effective mechanisms need to be instituted to ensure the Board is sufficiently informed. Having regular feedback is particularly important because of the tendency to keep issues of sexual harassment silent – it is something that is often difficult for a victim to raise.

Risk factors for workplace sexual harassment

Between the Board and frontline workers are layers of management where attitudes may differ and an unconscious bias against victims of sexual harassment may be present, making a reporting system that relies on victims or bystanders insufficient. A critical assessment of the risk factors for workplace sexual harassment is necessary – with **"traditional" workplace culture** being one of the most common. The average worker will work for 30-40 years and many of their present-day attitudes are likely to be similar to those that were prevalent when they first entered the workforce. Many current workforce leaders started working in the late 70s/early 80s and – unless there was a positive action to change – their attitudes were carried forward from that time.

The second risk factor that needs to be assessed is the **gender profile**. This needs to stretch beyond simply the gross ratio of males to females in the workforce to also look at the gender profile across different levels of seniority. For example, a company that has 60% female employees across the business, but where the senior and more powerful members are predominantly men, is at greater risk of experiencing sexual harassment. Some of the practices and policies that can be put in place to address these risks include:

- **Recruitment priorities.** In some workplaces, such as banking, it was common to recruit “type A” personalities, because they worked well in the aggressive environment of the trading desk. However, these types of personalities also bring with them behavioural characteristics that might create an organisational risk. Recruiting a diversity of personalities is important for creating balance and inclusion.
- **Remuneration policies.** The behaviours associated with facilitating a diverse and respectful work culture need to be recognised in remuneration and vice versa. It is important to have Key Performance Indicators (KPIs) that measure inclusive and respectful performance.
- **Staff surveys.** Most decent, large organisations already conduct engagement, cultural or pulse surveys on a regular basis. It is important that such surveys ask specific questions around the workplace environment and sexual harassment specifically. They need to ask questions around comfort and motivation to report sexual harassment, such as whether workers would be comfortable raising incidents of sexual harassment if they saw them.
- **Exit interviews.** In-person exit interviews with probing questions are more likely to uncover underlying issues than online exit interviews.

Gender-based discrimination in the workplace – A case study

To illustrate how organisational culture can create an environment that leads to the exclusion of women and other minority groups and has the potential to lead to sexual harassment, a case study of Sally (not her real name) is presented. Sally did a double degree in Commerce and Engineering and was a high-performing student, who was snapped up as a graduate employee by a major construction company. The company was keen to build up a cohort of female managers and had excellent policies around workplace practices, diversity and inclusion. It also had formal policies outlawing sexual harassment, appropriate grievance procedures and induction training, which was repeated every two years. Sally worked on major projects and was highly valued by the company. However, the organisational culture was predominantly masculine, and women were sometimes excluded from social activities. For example, Sally was often not invited to after-work drinks, because the male managers would want to visit a strip club afterwards and did not think it appropriate to invite her. On another occasion, she was not invited to a workplace trip to watch a rugby tournament, because the organisers presumed she would not be interested. (An incorrect assumption as she was a big rugby fan.)

Although Sally did not experience any overt sexual harassment – such as groping or inappropriate suggestions – gender-based discrimination took place through low-level comments related to her gender and the exclusion from social activities in which workplace bonding often took place. Sally described the culture as “if you weren’t a bloke and prepared to go along with the bloke way of doing things, then you wouldn’t feel welcome or included.”

At great financial and human capital loss to the company, Sally eventually left to find a more inclusive workplace.

The company was well aware that it needed to address gender equality in the workforce; it had developed an entire graduate program to recruit female employees to try to address the issue. Some years, 100% of its graduate intake were women. However, it had underestimated the depth of the challenges presented in changing the organisational culture. There was no strong leadership or senior role models who could mentor young, high-achieving graduates. No one was checking in with new female recruits to monitor the situation and in-person exit interviews with probing questions were also not offered. The company conducted staff surveys, but these were quite general and not designed to identify issues of gender-based discrimination and sexual harassment.

In contrast to its approach to diversity and inclusion, Sally’s employer had well-developed workplace health and safety procedures and practices. Every subcontractor had to identify at least three safety issues per week and report them as part of their job. A foreman on a site had to raise at least one safety issue per day in order to meet their KPIs. The reports were tracked on every site and reported back into the company’s safety standards, which went all the way up to the Board. This marked contrast between dealing with issues of safety vs. diversity and inclusion lies at the heart of why workplace sexual harassment continues to be such a significant issue today. Sally’s example also illustrates the importance of having an informed Board that is in touch with workers’ everyday experiences.

Approaches to making workplaces more gender equitable

The next example will illustrate how another large Australian company leveraged its strong focus on safety to transform into a more diverse and inclusive workplace. A few years ago, Aurizon's (a freight rail transport company) number one item on every Board meeting agenda was safety, with a strong focus dedicated to bystander support and raising of safety issues. Improvements in safety also led to improvements in operational efficiency, where reengineering for safety provided an opportunity to also redesign for efficiency. The transformation to a more diverse and inclusive workplace was led by its then CEO, Lance Hockridge, who did a number of things to signal its priority. He took over chairing the Governance Committee which was responsible for overseeing workplace diversity and ensured it was gender-balanced and responsive to LGBTQI+ issues. He role-modelled his commitment to supporting women by identifying promising female managers from anywhere across the business and giving them an opportunity to shadow and work alongside him for four months. He usually had three female managers per year, and they attended all of his meetings, had dinner with the Board, and went to investor, site and executive meetings with him. Through this type of engagement, the CEO was sending a signal that gender equality and empowerment in the workplace was an issue he personally supported and prioritised.

The company also had clear promotion targets for women. This resulted in some pushback from some of the male employees, who perceived this as a threat to their own promotion opportunities. The CEO called the issue out and developed a cohort of male 'champions of change' and also launched an annual Board lunch to celebrate diversity. The subsequent CEO continued to prioritise diversity. Facilitating this type of culture of respect and diversity helped to address issues of sexual harassment, created stronger employee engagement, improved individual and team performance and retention of talent. Furthermore, an inclusive internal culture also improves customer relations through a more customer-centric and respectful engagement. There is a big payoff for companies who embrace a program that builds diverse, respectful and inclusive workplaces and critical to its success is that this type of change comes from the top.

Recommendations for institutionalising a diverse and respectful workplace

In conclusion, it is recommended that work health and safety professionals consider the following when reflecting on how to build and promote a culture of diversity, inclusion and respect in the workplace:

- Reflect on how some of the sophisticated principles (e.g., openness and transparency) and practices from workplace health and safety (e.g., tracking of accidents and potential accidents, lost time, injury frequency; benchmarking of "near-misses"; root cause analysis of major incidents; etc.) can be applied to workplace diversity and respect. There is likely to be a stark contrast in the way the two risk areas are being managed as the journey on the latter is at its inception.
- Set very clear expectations about workplace diversity and respect and ensure good quality training and support is provided to workers to facilitate implementation.
- Set up transparent reporting mechanisms. These do not need to include names, but there must be a way for incidents to be reported up to senior leadership.
- Conduct a root cause analysis of any incidents that occur.
- Ensure leadership on issues of diversity and respect comes from the top. This will not only help eliminate sexual harassment but also improve employee engagement, team performance, staff development and retention, and will ultimately lead to improved service provision from the company.

For more information

Forum resources

[Watch speaker videos](#)

Safe Work Australia resources

- Guide: [Preventing workplace sexual harassment](#)
- Guide: [Workplace sexual harassment – advice for workers](#)
- Guide: [Preventing workplace violence and aggression](#)
- Guide: [Preventing and responding to workplace bullying](#)

Comcare online training

Micro Learns – 5-minute video presentations

- [An introduction to Workplace Sexual Harassment: Never part of the job](#)
- [How to Respond to Workplace Sexual Harassment](#)
- [Prevention of Workplace Sexual Harassment](#)

Online courses – self paced learning

- [Workplace Sexual Harassment: an overview for workers](#)
- [Workplace Sexual Harassment: an overview for employers and managers](#)

State and territory regulators

[SafeWork ACT](#)

[SafeWork NSW](#)

[SafeWork SA](#)

[WorkSafe NT](#)

[WorkSafe Queensland](#)

[WorkSafe Tasmania](#)

[WorkSafe Victoria](#)

[WorkSafe WA](#)

Australian Human Rights Commission resources

- [National Information Service](#) – referrals for individuals, organisations and employers on human rights and discrimination issues.
- [Respect@Work Report](#) – Chapter six provides guidelines on appropriate workplace prevention and response frameworks
- [Respect@Work Community Guide](#)

Support services for workers

- [1800RESPECT](#) – 1800 737 732
- Beyond Blue – 1300 22 4636
- LifeLine – 13 11 14
- Employee Assistance Program (EAPs are available in most workplaces)
- If anyone in the workplace is in immediate danger, **call the Police on 000**.
- If workers are not in immediate danger and would like to make an enquiry or report, **call the Police on 131 444**.
- You can make a complaint to the Australian Human Rights Commission or relevant state or territory antidiscrimination body. A solicitor advocate or union can also make a complaint on your behalf.



Australian Government
Comcare



safe work australia



Queensland Government

WORKSAFE ACT
SAFE + HEALTHY WORKPLACES



NT WorkSafe



Government of South Australia
SafeWork SA

For more information go to [Workplace Sexual Harassment National Forum](https://www.workplacesexualharassmentforum.gov.au) or contact forums@comcare.gov.au