# Submission to the HREOC Sexual Harassment at Work Inquiry

## Executive Summary

Gender Equity Victoria (GEN VIC) is the Victorian peak body for gender equity, women's health and the prevention of violence against women. GEN VIC welcomes the opportunity to provide feedback on the drivers of sexual harassment and good practice to address sexual harassment in Australian workplaces. Sexual harassment at work is not an individual problem but a collective one, deeply gendered and preventable. The key driver of sexual harassment is gender inequalities. The unequal distribution of power and resources between women and men in the workplace and beyond is underpinned by norms, practices and institutions that need to change. The adoption of a primary prevention approach to sexual harassment is critical to addressing the gender inequity that drives harassment in the workplace.

This submission advocates for a whole of community response to sexual harassment at work, one that recognises education, positive obligations for employers and accountability as key to the long-term success of any action to prevent sexual harassment in the work place. Institutionally, we strongly advocate for action to take place at all levels of organisations, with mandatory gender action plans to help identify, audit, record and prevent risk of sexual harassment.

## About Gender Equity Victoria (GEN VIC)

Gender Equity Victoria (GEN VIC) is the peak body for gender equity, women's health and the prevention of violence against women in Victoria. Our vision is for equality, wellbeing and freedom from violence for every woman and girl, in every community of Victoria. We exist to advocate, influence and collaborate to improve outcomes in gender equity, women's health and in the prevention of violence against women.

GEN VIC represents organisations across Victoria who advance gender equity and hold values that align with feminist principles. Our current membership reaches every region and community in Victoria.

GEN VIC recognises gender as a key determinant of one's position or status in society, and therefore one of the most powerful drivers of health inequities. By addressing the role of gender inequality in women's health, GEN VIC aims to ensure the equality, wellbeing and freedom from violence for every woman and girl, in every community of Victoria.

GEN VIC performs a number of key functions in that we:

- ensure women's voices are integral to policy, legislation and services
- deliver and support coordinated and evidence-informed women's health promotion activities and
- facilitate collaboration and partnerships.

For any further enquiries please contact GEN VIC Manager: Jacinta Masters

Our Approach to this Submission

This submission is based around four broad recommendations. These are that Commonwealth, State and Territory governments approach sexual harassment at work as:

1. A form of gendered violence
2. An issue that requires an intersectional-gendered lens
3. An issue that requires a primary prevention focus
4. An issue exacerbated by workplace inequity and insecure work

We will briefly address why these approaches are necessary and provide more specific recommendations for action.

## 1. Sexual Harassment is Gendered

Sexual harassment at work is gendered. Women are disproportionately concentrated in low paid, casualised sectors of the workforce and face a significant degree of inequity in their home and work lives. In 2012, a quarter of women (25%) and one in six men (16%) aged 15 years and older reported having experienced sexual harassment in the workplace (AHRC, 2013). In 2018, this figure rose to 39% of Australian women and 26% of Australian men (AHRC, 2018). According to *Everyone's Business*, women experience the most common forms of sexual harassment (offensive sexually suggestive comments or jokes, inappropriate physical contact and unwelcome touching, hugging, cornering or kissing) more than twice as much as men (AHRC, 2018).

Sexual harassment at work is one part of a wider system of harassment and gendered violence that women face during their life time. Women are substantially more likely than men to have experienced sexual harassment in their lifetime 85% and 56% respectively (AHRC, 2018) and we know that one-third of women (33%) have been sexually harassed since the age of 15, compared to fewer than one in ten (9%) men. Women are also significantly more likely than men to experience sexual assault, intimate partner violence, family violence, stalking and sexual harassment outside of the workplace (ABS, 2017). Sexual harassment at work is one part of a continuum of violence and shares the same causes or 'drivers' as violence against women.

*Change the Story* (Our Watch, ANROWS, & VicHealth, 2015), Australia's national framework for the primary prevention of violence against women and their children, demonstrates that disrespect towards women is one of the underlying drivers of high levels of violence against women. The framework makes it clear that there are particular manifestations of gender inequality that are most consistently associated with higher levels of violence against women. These gendered drivers are located in institutional, social, economic and political systems as well as the norms and practices of everyday life and our interpersonal relationships. Change the story outlines the following key drivers:

- Condoning of violence against women

- Men's control of decision-making and limits to women's independence in public life and relationships
- Rigid gender roles and stereotyped constructions of masculinity and femininity
- Male peer relations that emphasise aggression and disrespect towards women.

The normalisation of gender inequity fosters an environment where sexual harassment can flourish. Consequently, it is essential that sexual harassment at work is approached as a gendered issue.

## Recommendations:

- Australian governments should introduce comprehensive and multi-faceted strategies for the primary prevention of violence against women, based on *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, and addressing the underlying gendered drivers of violence against women.

- All levels of government to put enforcement measures in place to ensure employers underpin organisational sexual harassment policy and training with evidence-based principles around sexual harassment as gendered violence.

- Research and data collection efforts should be expanded to build evidence base on sexual harassment as a form of violence against women.

- *The Workplace Equality and Respect Standards* provide guidance for employers in developing a gendered approach to sexual harassment.

  -This includes a duty to self-regulate by auditing and identify risk and incorporating gender action plans.
  -Positive duty to extend to sexual discrimination as defined in the sex discrimination act.
  -inform the development of codes of practice that are legally enforceable.

### 2. Adopt an Intersectional Approach to Sexual Harassment

Gendered inequities are inextricably linked to inequalities based on other forms of difference. Social categories such as race, ethnicity, class, disability, sexuality and age play a key role in experiences of sexual harassment. The prevalence and impact of sexual harassment at work is compounded for women who face multiple forms of marginality. Aboriginal and Torres Strait Islander women, ethnically and culturally diverse women, women with disabilities, sexual and gender diverse women face higher levels of discrimination and harassment during their lifetime.

We have extensive data to support the necessity of taking an intersectional approach to sexual harassment at work. For example:

- Women from migrant and culturally and linguistically diverse (CALD) backgrounds are often concentrated in highly precarious, low paid work and have little recourse to prevent sexual harassment at work. They are at a higher risk of experiencing sexual assault and may experience additional barriers to reporting their experiences (AIFS, 2015). The Australian women's working futures project found that CALD women were twice as likely as others to say they experienced sexual harassment (Baird, Cooper, Hill, Probyn, & Vromen, 2018). These women experienced other forms of discrimination at the same time as gendered harassment, such as being singled out because of their physical appearance." (Baird et al., 2018, p. 6).

- Across both men and women, younger age groups were more likely than older persons to experience sexual harassment in the 12 months. Approximately 38% of women (421,400) and 16% of men (185,200) aged 18-24 years had experienced sexual harassment in the 12 months prior to the survey (ABS, 2017). However, older people face their own unique forms of sexual harassment and ageism in the workplace.

- Women with a disability were more likely to say they experienced sexual harassment at work 18% of women with disability in comparison to 9% of women without disability (Baird et al., 2018).

- According to *Change the course: National report on sexual assault and sexual harassment at Australian universities* 44% of students who identified as bisexual and 38% of students who identified as gay, lesbian or homosexual were sexually harassed in a university setting in 2016, compared with 23% of students who identified as heterosexual. Trans and gender diverse students (45%) were more likely to have been sexually harassed in a university setting in 2016 than women and men (AHRC, 2017).

Adopting an intersectional approach begins with an acknowledgment of diversity instead of commonality and by "bringing the voices and experiences of marginalised women to the centre of analysis" (Chen, 2017). In practice, this involves actively accounting for diverse voices and ensuring that data is collected appropriately to capture diverse experiences, in diverse sectors of work and that more marginalised communities are engaged on their own terms.

An example of such an engagement is the Multicultural Centre for Women's Health's (MCWH) Equality@Work project. The project is the first workplace project in Australia to address issues of gender equality with a focus on migrant women employees in care work. Using the Workplace Equality and Respect Standards and Implementation Guide, MCWH implemented a sector specific, intersectional approach to:

1. Establish organisational commitment to workplace equality
2. Engage migrant women staff members as project leaders

3.  Build understanding about the links between structural inequality and violence against women
4.  Build capacity to plan and deliver tailored workplace prevention activities
5.  Evaluate outcomes and continually improve activities and processes
6.  Sustain systems-level change through internal monitoring, and integration into strategic priorities

Recommendations:

- All interventions into sexual harassment at work should be guided by an intersectional gender equity approach.

- Engage specialist organisations (such as Multicultural Centre for Women's Health, Women with Disabilities, Aboriginal and Torres Strait Islander organisations and women's health services) in the implementation of any sexual harassment at work initiatives.

- Develop accessible reporting tools and improved data collection and analysis of incidents of sexual harassment at work as they impact on diverse communities. In line with the recommendation of Women's Health Victoria, include multilingual options.

- Apply an intersectional lens to the creation of resources, taking into account accessibility requirements of users in key messaging, advocacy and support.

### 3. Adopt a Primary Prevention Approach

In line with the perspectives of our members and the submissions by other prevention bodies, a primary prevention approach to sexual harassment at work is key to any long-term challenge to sexual harassment. Primary prevention is a whole of community approach that emphasises the importance of the factors that are linked to the causes of sexual harassment and an individual perpetrating violence. Primary prevention is about stopping violence before it starts and by addressing the underlying drivers of harassment. As has been detailed, sexual harassment is a form of violence against women and as a result, shares the same drivers. For that reason, efforts to prevent sexual harassment will be most effective when they align with efforts to prevent violence against women.

In Australia, an evidence-based approach to primary prevention already exists. *Change the Story* sets out five essential actions that comprise such an approach, by addressing the gendered drivers of violence against women. These actions are:

1. Challenge condoning of violence against women
2. Promote women's independence and decision-making in public life and relationships
3. Foster positive personal identities and challenge gender stereotypes and roles
4. Strengthen positive, equal and respectful relations between and among women and men, girls and boys
5. Promote and normalise gender equality in public and private life

As these actions attest to, preventing sexual harassment involves changing the social norms, practices and institutional cultures that encourage gender inequality. The point of a primary prevention approach is that all initiatives include a commitment to broader gender equity goals, including a focus on gender relations and taking power into account (Zippel, 2003). There are some key primary prevention measures to address sexual harassment.

The creation of a sexual harassment policy is considered a minimum bench mark for primary prevention and is not best practice in relation to the evidence (see submission from Professor Paula McDonald and Sarah Charlesworth for further evidence). For policies to be effective, they should be visible, widely disseminated and include a degree of enforceability. In addition, the most common form of primary prevention activities relate to training and workplace policy and procedure.

Sexual harassment training changes attitudes towards what constitutes harassment (Antecol & Cobb-clark, 2003). Antecol & Cobb-clark (2003, p. 840) found that training increased the probability of viewing unwanted sexual gestures, remarks, touching and pressure for dates to be a form of sexual harassment, particularly for men. However, these primary prevention initiatives need to be accompanied by institutional strategies that go beyond direct participation in a program and address institutionalised inequity such as equal pay.

It is crucial that any prevention program reaches people where they are at. In this respect, Victoria is leading the way with the primary prevention of violence against women and can be used as a model for other states. Victoria's women's health services are leaders in establishing best practice for working with women that have faced harassment. As Women's Health Victoria outlined in their submission, their *Take a Stand* program for workplaces was extended in 2017 to the Victorian Police with a recognition that family violence involves the same drivers as sexual harassment (WHV, 2018). While we need to address inequity in the workplace, it is crucial that we also adopt a whole of community response and go beyond the workplace as a setting to achieve gender equity.

Recommendation:

- Australian governments should introduce comprehensive and multi-faceted strategies for the primary prevention of violence against women, based on *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, and addressing the underlying gendered drivers of violence against women. Key elements could include:

  -Resource and support specialist prevention and response services such as the women's health services of Victoria.
  -Implement gender equity and sexual harassment training.
  -Work across the life course with the recognition that change needs to be happen in all age groups to make prevention most effective.

- Australian governments should introduce and adequately resource gender equality strategies which address gender inequalities across Australian society, in order to

change the broad and underlying conditions that produce and support violence against women (including sexual harassment). GEN VIC supports the Our Watch submission that these should include:

a. Gender responsive policy-making and budgeting that takes into account the organisational position of women and gender diverse employees in policy and budget processes.

b. Data collection strategies to monitor progress on gender equality and inform policy-making

c. Quotas and targets for women's leadership and representation. Take into account a diverse representation of women, ensuring that Aboriginal, migrant and culturally and linguistically communities are also represented in leadership.

d. Mechanisms for consultation and expert advice

- All bodies (anti-discrimination, health and safety, employers and unions) obligated to collect data on sexual harassment at work in order to help design evidence-based prevention strategies.

- Include mandatory reporting to the Workplace Equality Agency and the collection of data on private settlements.

- Australian governments should begin work on the development of a second 10-year National Plan to Reduce Violence against Women and their Children well before the expiry of the current plan (2022), with a particular emphasis on primary prevention. GEN VIC endorses Our Watch's recommendation that the prevention components of the Plan should include:

a. A long-term commitment and approach
b. A national, coordinated approach
c. Strategies to achieve cultural change via multiple levers
d. Structural changes
e. Adequate and sustainable funding
f. Robust monitoring and evaluation frameworks

### 4. Acknowledge and Address Workplace inequity

While sexual harassment shares the same underlying causes as other forms of violence against women, institutions of work and the structures of the labour market create specific relationships of power and vulnerability. Particular sectors and occupations have higher levels of gender inequity and consequently, higher rates of sexual harassment. Work arrangements and the conditions under which work is performed can promote harassment as well as an inability to speak up about harassment. The precarity of temporary work visa status and casual or contract work status has a profound impact on the power imbalance in a

workplace, compounding the experiences of the most marginalised workers and their ability to individually and collectively respond to inequity.

The relationship between precarious work and sexual harassment is profound. **This is particularly the case for the most vulnerable segments of the labour market. For example, as WEst Justice's submission carefully outlined,** for migrant women in work, exploitation is widespread. The reasons for exploitation are vast and multi-faceted, including the marginalisation of the voices of migrant workers; limited access to decent work; low awareness of workplace rights and services; lack of effective access to mainstream services; absence of targeted community services; and ineffective laws and processes. Workers being exploited are often not aware of their rights, and rarely seek help to enforce the law – this is a particularly acute experience for women, who in our experience are more likely to face the additional burden of community and family pressure not to pursue viable claims.

Achieving gender equity and reducing instances of sexual harassment at work are inextricably linked to equitable working conditions. Unequal access to opportunities, remuneration, recourse and collective bargaining in the workplace impacts on the prevalence of sexual harassment. Sexual harassment is fostered in insecure workplaces and the impact is compounded by insecurity. Workplace hierarchies play a role in the prevalence, prevention and response to sexual harassment at work. Friborg et al (2017) found that when the sexual harassment was directed from a supervisor or manager, victims were less likely to report the harassment due to concerns about their jobs, or work position.

The individual impacts of being sexually harassed at work can be catastrophic for income and career advancement (McLaughlin, Uggen, & Blackstone, 2017). Victims may need to voluntarily or involuntarily cease work due to ongoing harassment and this can have a direct effect on the victim's income which can lead to additional stress and lasting impacts for gender equality in particular sectors. Exiting a harassing work environment may be costly for women's long-term careers, lose access to social networks, experience gaps in employment, or cannot find comparable work.

The failure of employers to take preventative action undermines organisational change and shifts the risk onto individual workers. This system needs to change so that the burden is on the workplace and addressing some of the fundamental workplace inequities. This change is crucial for achieving gender equity more broadly because we also know that the gender composition of a person's occupation contributes more to variance in attitudes to both gender equality and violence against women than the gender composition of their social network (Webster et al., 2018, p. 106). This makes the workplace a crucial setting where attitudes towards violence against women and sexual harassment are fostered and need to be addressed.

This is not least because the evidence regarding gender inequity in the work place at a national and state level is unequivocal. For example, in Victoria women constitute 50.9% of the population (ABS, 2017b), yet women are underrepresented in leadership positions, over represented in paid and unpaid care work and the median salary for in the Victorian public sector is $76, 487 for women, compared to $86,684 for men (VPSC, 2017, p. 31). Across Australia similar forms of inequality have been legitimated through unconscious bias in the

hiring process, through stereotypes of women at work, inflexible work arrangements and, has over time, been normalised.

Recommendations:

- Model Work Health and Safety Regulations and Codes of Practice be amended to include an obligation to provide a work environment free from violence and harassment, including sexual harassment. These amendments should be adopted by all jurisdictions that use the model laws, and Victoria and Western Australia should incorporate the amendments into their own WHS legislation.

- Anti-discrimination laws across Australia (Commonwealth, State and Territory) be amended to impose a positive duty on employers and directors (and other entities with obligations under the Act) to prevent discrimination and sexual harassment by or of their employees as far as is possible (including third party sexual harassment). Breach of this duty should be subject to enforcement by the relevant anti-discrimination bodies and should attract substantial financial penalties. The duty should be supported by a code of practice that would set out the steps required to be taken by employers to meet the duty and this should be reviewed and updated on a regular basis. The Workplace Equality and Respect Standards provide guidance for employers in developing such an approach.

- Implement organisational assessments include identifying early risk factors including women's role, status and positions in the organisation. Adopt a gendered lens in HR process of induction, codes of conduct, training calendars and committees.

- In line with a whole of community approach, GEN VIC endorses the submission from Victorian Legal Aid to this inquiry and recommend a strengthening of:

    -Anti discrimination laws at the level of state and federal human rights
     commissions.
    -Workplace health and safety laws administered at the state level
    -The *Workplace Gender Equality Act 2012 (cth) and the draft Victorian Gender
     Equality Bill.*

- Allow representative complaints to be brought forward as a collective. As part of this, advocate and support the collective right to unionise and collectively bargain as fundamental to the prevention of sexual harassment at work.

- Develop accessible and anonymous online reporting mechanisms in line with recommendations by CASA and in line with Callisto in the US.

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