

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

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IWDA INTERNATIONAL
WOMEN'S
DEVELOPMENT
AGENCY

IWDA SUBMISSION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION NATIONAL INQUIRY INTO SEXUAL HARASSMENT IN AUSTRALIAN WORKPLACES

International Women's Development Agency (IWDA) is the leading Australian agency entirely focussed on women's rights and gender equality in the Asia Pacific region. We are international, feminist and independent. Our vision is gender equality for all and our purpose is to advance and protect the rights of diverse women and girls.

IWDA congratulates the Australian Government and the Australian Human Rights Commission for their leadership in initiating this inquiry into sexual harassment in Australian workplaces. We welcome the opportunity to provide recommendations to help workplaces better prevent and respond to sexual harassment, in order to create a culture free from sexual harassment for workers across all sectors.

In the international development sector, the line separating "Australian workplaces" from the rest of the world is complicated. Recent events internationally have highlighted the ways in which organisational culture can create an enabling environment for sexual harassment, exploitation and abuse,¹ and the complexities that can arise when an organisation is working across national boundaries, in conflict or disaster affected areas, or where there are power imbalances between people linked to the interconnected systems of patriarchy, colonialism, and capitalism.² In 2018, with the leadership of peak body the Australian Council for International Development (ACFID), the Australian international development NGO sector commissioned the Victorian Institute of Forensic Medicine (the VIFM) to conduct the *Independent Review into the Practice and Response of ACFID Members in the Prevention of Sexual Misconduct* of its own culture, policy approach and leadership on the issue of preventing sexual exploitation, abuse and harassment. At the same time, ACFID's independent Code of Conduct Committee conducted a review of compliance against the sector's Code and recommended strengthening areas of the Code to better prevent sexual exploitation, abuse and harassment.³

This submission aims to broaden the discussion of sexual harassment in Australian workplaces to account for the complexities of international work, drawing on IWDA's analysis of the drivers of sexual harassment and the findings of the two reviews. It responds to Terms of Reference 3, 5 & 7: commenting on the drivers and risk factors for workplace sexual harassment, highlighting examples of existing measures and good practice in preventing and responding to sexual harassment, and making recommendations for the Inquiry's consideration.

DRIVERS AND RISK FACTORS FOR WORKPLACE SEXUAL HARASSMENT

IWDA recognises that the root causes of gender based violence – including sexual exploitation, abuse, harassment and misconduct – are multi-dimensional and a consequence of the inequality experienced by women and girls, as well as compounding drivers of marginalisation relating to age, class, race, sexuality, gender identity and disability status. We recognise that sexual harassment sits on a spectrum of violence, and that while all forms of sexual violence are not the same, they stem from the same roots of patriarchy and gender inequality. We recognise that survivors of all forms of gender based violence will predominantly (though not always) be women and girls and that perpetrators will predominantly (though not always) be men and boys.

The Terms of Reference of this Inquiry focus on Australian workplaces, however in the international development sector, the line separating Australian workplaces from the rest of the world is more complicated. Australian workers (and a small number of local staff) contracted to an Australian organisation

¹ BBC News. 2018.

² Victorian Institute of Forensic Medicine (VIFM). 2018b.

³ ACFID, 2018a.

but working internationally enjoy the protections Australian law (ie: the overseas location is considered an Australian workplace for the purposes of equal employment opportunity, occupational health and safety, FairWork and other industrial law requirements). However, they often work in close partnership with the staff of local organisations in the countries where they operate, as well as volunteers and members of the community. The UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW Committee) have explored the application of human rights obligations in extraterritorial contexts, and found that states not only have an obligation to protect the human rights of those within their borders, but also to ensure that their actions or inactions do not give rise to human rights violations in other countries.⁴

In this context it is pertinent to discuss additional drivers of sexual harassment in international contexts, which stem from the history of colonialism and capitalism which have shaped the global world order and created inequality between and within countries.⁵ It is these factors which create the conditions of inequality and power imbalances between Australian aid workers and local communities, which in some cases are exploited. The focus on international contexts can also highlight the ways in which these drivers similarly operate in Australia, and contribute to the experiences of diverse women and girls including Indigenous, refugee, migrant and low-socioeconomic women.

IWDA recognises that while it is clearly outside the scope of this inquiry to fundamentally address these systemic drivers, it is nonetheless critical to understand how they operate in order to better target efforts at preventing, identifying, and holding perpetrators to account for sexual harassment. **Centring discussions of sexual harassment on an understanding of gender norms and power can enable us to understand the root causes of sexual harassment, and better target efforts at preventing sexual harassment in all contexts.**

Gender norms are the ideas which shape people's views about the world, including on appropriate behaviours and roles for men and women. They can vary over time and between different contexts, and this creates difficulties in identifying, preventing and responding to sexual harassment. For example, people from different social and cultural backgrounds may have different views about what is appropriate behaviour or content for discussions in the workplace.⁶ This goes both ways: behaviour which is considered acceptable in some countries or subcultures (such as men holding hands, or sexually suggestive jokes between colleagues) might be considered sexual harassment by Australian standards, or behaviour which is considered acceptable in Australia (such as a group of men and women who are colleagues going for a drink together after work) might be considered inappropriate in some contexts. For organisations working in cross-cultural settings (or even many organisations in Australia who employ staff from different cultural backgrounds) it is critical to understand how these norms affect peoples' views in order to better target prevention efforts (which may focus on shifting harmful social norms), and to better support those wishing to make a claim of sexual harassment.

Focusing on gender norms as an entry point to discussions about sexual harassment also provides a framework for expanding the discussion beyond women as survivors and men as perpetrators, as it points to the underlying driver of hetero-patriarchy. For example, while gender norms can exacerbate the risks for women (for example, the norm that suggests men are libidinous and women are submissive leads to greater risk of sexual harassment for women), it also contributes to risks for Lesbian, Gay, Bisexual, Queer or Questioning, Transgender and Intersex (LGBTI) individuals who may represent a divergence from traditional gender roles, and as such, be at greater risk of harassment. Gender norms also present a barrier for men who experience harassment, as they may be less likely to identify and seek a response to harassment for fear of undermining norms about their own masculinity.⁷

In addition to gender, there are other examples of power imbalances that come into play in discussions about sexual harassment, particularly in international development work. For example, the power imbalances between locally employed staff and Australians working overseas may mean that local staff do not feel comfortable asserting their personal boundaries or reporting inappropriate conduct on the part of

⁴ Committee on the Elimination of all forms of Discrimination Against Women. 2016. Paragraph 35.

⁵ Women's Working Group on Financing for Development. 2015. Pp 1.

⁶ VIFM, 2018b, pp 101

⁷ VIFM. 2018b. pp 110

expatriates, who may also be perceived to hold financial power over their organisation or individual employment security.⁸

Recommendation 1: The inquiry should take the systemic drivers of sexual harassment, in particular gender norms and power, as the starting point for understanding, responding to and preventing sexual harassment.

EXISTING MEASURES AND GOOD PRACTICE

As noted, in 2018 the Australian international development NGO sector via ACFID commissioned two independent reviews of the sector's approach to the prevention of sexual exploitation and abuse, including sexual harassment; one conducted by the independent committee which oversees compliance against ACFID's Code of Conduct, and a second, broader review by the Victorian Institute of Forensic Medicine (VIFM) looking at policies and regulation, social norms and attitudes, and systems and resources within the sector.⁹ IWDA commends this comprehensive, independent and robust approach as a best practice response to preventing sexual harassment, exploitation and abuse.

CODES OF CONDUCT AS A TOOL TO STRENGTHEN ACCOUNTABILITY AND PREVENTION

IWDA further recognises the strength and unique approach of the ACFID Code of Conduct – a voluntary, self-regulatory industry code of good practice covering various aspects of international development work and organisational culture and practice – and the positive contribution this has made to safeguarding vulnerable people including children. While codes of conduct alone are not sufficient, they can be a powerful tool for preventing sexual harassment, alongside broader efforts to shape organisational culture. The *Independent Review* conducted by the VIFM found that while there was scope to strengthen the ACFID Code in regards to PSEA, it positively contributed to a culture of accountability and learning, and noted that “[i]n some areas it seems that Australia has a number of specific strengths in safeguarding in comparison to other countries.”¹⁰

Robust Codes of Conduct and behavioural standards, clear organisation policies and commitments to equality and challenging sexual harassment and discrimination on an everyday level can create a culture which decreases the risks of sexual exploitation and abuse. Additionally, one of the key findings of the *Independent Review* was the importance of organisational culture and leadership in ensuring sexual harassment would not be tolerated. The review describes a “spectrum of behaviours” where sexual harassment is connected to other forms of sexual violence.¹¹ Placing sexual harassment in this context provides a guide for agencies wishing to create a culture of zero tolerance for all forms of sexual and gender based violence and discrimination.

Codes of Conduct at both the sectoral and organisational level can be a powerful factor in setting standards for acceptable behaviour and efforts to safeguard people against abuse of all kinds, and should be considered by the inquiry as a means to help prevent, and strengthen responses to, abuse in all its forms.

Recommendation 2: Explore the potential for sectoral and organisational level codes of conduct in setting standards and guiding behaviour to prevent, and strengthen response to, sexual harassment.

A SURVIVOR AND COMPLAINANT CENTRED APPROACH IN BOTH POLICY AND PRACTICE

IWDA recommends that a survivor centred approach is central to action to prevent and respond to sexual harassment. The Interim Report of the VIFM *Independent Review* identified the following as important to survivors:

⁸ VIFM. 2018b. pp 102; VIFM. 2018a. pp 24

⁹ ACFID, 2018b.

¹⁰ VIFM. 2018a. pp 33

¹¹ VIFM. 2018a. pp 28.

We have heard from review participants that it is of utmost importance to strengthen the response to sexual misconduct, including the support provided to victim/survivors. This mirrors contemporary research, literature and best practice where a robust response to reporting of sexual misconduct must meet the needs of the victim so that they:

- *feel physically and psychologically safe*
- *are listened to, valued and believed*
- *have access to counselling advocacy support*
- *have swift and competent investigative processes*
- *see tangible benefits which may include putting a stop to the violence, seeking health, social, or justice outcomes, financial reparation, job security*
- *are not punished for reporting and or seeking help.*¹²

IWDA recommends that the basic standards developed by UN Women in implementing a survivor centred approach are applied in the development of policy, guidelines, tools and action taken in response. These standards call for the prioritisation of *the rights, needs, and wishes of the survivor* while ensuring natural justice for all parties to a complaint.

Essentially, a survivor-centred approach applies the human rights-based approach to designing and developing programming that ensures that survivors' rights and needs are first and foremost. The survivor has a right to:

- *be treated with dignity and respect instead of being exposed to victim-blaming attitudes*
- *choose the course of action in dealing with the violence instead of feeling powerless*
- *privacy and confidentiality instead of exposure*
- *non-discrimination instead of discrimination based on gender, age, race/ethnicity, ability, sexual orientation, HIV status or any other characteristic*
- *receive comprehensive information to help her make her own decision instead of being told what to do.*¹³

Such an approach is essential to support the rights of survivors and to ensure response mechanisms respect and respond to the needs of survivors. This will promote recovery and increase complainant's ability to identify their needs and priorities in pursuing complaints.

Recommendation 3: Ensure that a survivor centred approach is central to action to prevent and respond to sexual harassment and other forms of sexual misconduct in Australian workplaces.

Recommendation 4: Basic standards developed by UN Women in implementing a survivor centred approach should be applied in the development of all policy, guidelines, tools and action taken in response to sexual exploitation, abuse and harassment.

LIMIT THE USE NON-DISCLOSURE AGREEMENTS

Non-disclosure agreements effectively serve to exonerate perpetrators and can contribute to new abuses continuing in new contexts, with impunity. The International Development Inquiry into Sexual Exploitation and Abuse in the Aid Sector in the United Kingdom found that lack of rigour in reference checking and difficulty in navigating privacy concerns allowed individuals who had admitted to sexual abuse and misconduct to move to new positions in the sector.¹⁴

IWDA welcomes the Sex Discrimination Commissioner's comments regarding the challenges posed by non-disclosure agreements and the negative impact they have had on this Inquiry to date. We recommend that the Inquiry recommend to the Government that they explore mechanisms to limit the use of non-disclosure agreements to settle cases of sexual harassment as this practice directly contributes to under-reporting, survivor lack of confidence in reporting systems, and lack of accountability of perpetrators.

Agencies in the international development sector are exploring the use of passporting, registration or accreditation of humanitarian and development personnel (including volunteers) to streamline work places

¹² VIFM. 2018a. pp25.

¹³ UN Women. 2011.

¹⁴ United Kingdom Parliament. 2018.

practices around recruitment and to strengthen safeguarding (including work by the UK's Department for International Development and Interpol). IWDA commends this approach to the Inquiry and recommends that, similar to Police and Child Protection checks, such a passporting system should apply to all Australian workers, and at least to all those working internationally in high risk sectors. IWDA supports the use of a "privacy waiver", where candidates agree that their previous employers disclose certain information to the prospective employee where it relates to sexual harassment, abuse, misconduct and exploitation. The Disability Worker Exclusion Scheme currently in place in Victoria provides a valuable model and lessons for how such a scheme may be implemented. The Disability Worker Exclusion Scheme works to exclude from employment, those who have been identified as posing a risk to the safety and wellbeing of people with a disability. Those who are found to be unsuitable are placed on the List and prevented from obtaining further employment in disability services with the Department or a disability service provider. The scheme works via an additional mandatory pre-employment check and is supported by an on-line portal.¹⁵

Recommendation 5: The inquiry should recommend to the Government that they explore mechanisms to limit the use of non-disclosure agreements to settle cases of sexual harassment, abuse, misconduct and exploitation.

Recommendation 6: Explore a system of financially viable passporting, registration or accreditation, based on the model of the Disability Worker Exclusion Scheme.

Recommendation 7: Explore ways to promote the use of privacy waivers where candidates agree that their previous employers disclose certain information to the prospective employee where it relates to sexual harassment, as well as other forms of sexual abuse, misconduct and exploitation.

DEVELOPMENT OF BEST PRACTICE STANDARDS FOR INVESTIGATION OF COMPLAINTS

IWDA recommends the development of Best Practice Standards and Toolkits to support complaints handling that:¹⁶

ENSURES CONFIDENTIALITY – where it is not possible to guarantee confidentiality e.g. where referral is made to national authorities, or where the identity will be readily inferred from the detail of a complaint, the guiding principle in supporting complainants must be that of fully informed consent, with complainants provided detailed information on who will receive information and how this will be used.

PROVIDES MECHANISMS FOR ANONYMOUS COMPLAINTS – repeated studies demonstrate a high level of under reporting for sexual exploitation, abuse, harassment and misconduct. Fear of reprisal; complex and tiring reporting systems at a time of great personal vulnerability; and lack of confidence in reporting bodies inhibit reporting. Anonymous complaints can be treated as seriously as 'named' complaints - though the extent to which they can be investigated may be circumscribed by the anonymity. Anonymous reporting will provide more realistic data on the extent of the issue.

ENSURES SAFETY AND WELL-BEING OF THOSE MAKING COMPLAINTS - the needs of those making complaints must be provided for including:

- Provision of immediate medical and psychological or psycho-social support
- Medical and psycho-social support that continues after a determination is made and after the end of any employment relationship (in the case of paid employees)
- Protection plans where required, including limiting exposure to the person/s complained against
- Access to independent Legal Advice or support
- Access to survivor advocates trained in sexual abuse

¹⁵ Victorian State Government. 2018.

¹⁶ Adapted by IWDA from the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse Model Complaints and Investigation Procedures and Guidance Related to Sexual Abuse and Sexual Exploitation; IASC. 2004.

- Professional care and competence - all those involved must have adequate training, skills and knowledge to conduct and manage investigations and be aware they may be dealing with individuals with diagnosed or undiagnosed mental health illness or issues. Reporting processes must not subject complainants to further harm.

THOROUGH AND TIMELY INVESTIGATIONS - investigations must be conducted in a diligent and rigorous manner to ensure that all relevant material and issues are considered, following the principle of natural justice for all parties. Investigations must be conducted as quickly as possible without prejudicing quality, to agreed timeframes, and efficiently to minimise adverse impact on those involved. A number of factors (communication systems, travel, distance etc.) will influence what is a reasonable timeframe. However, as a recommended standard, investigations should be complete (i.e. final report submitted) within 28 days of receipt of complaint, with weekly progress updates to all parties.

INDEPENDENCE - it is essential that investigators have no personal or professional interest in the people or organisations implicated. This will require access to a pool of qualified investigators.

RESPECT FOR ALL CONCERNED - including the subject of the complaint. All concerned have the right to be treated with respect and dignity and to be kept informed of the progress of the investigation.

COMPLIANCE WITH AUSTRALIAN AND NATIONAL LAWS - in any case in which a crime appears to have been committed, consideration needs to be given to informing national authorities. This can be a very challenging decision if there are doubts as to the integrity of police/legal systems. The decision to inform the authorities should be taken with the agreement of complainants and survivors.

As recommended above, an independent national unit could lead the development and implementation of these standards and tools and ensure that sanctions are enforced for non-compliance.

Recommendation 8: Develop Best Practice Standards and tools that ensure confidentiality, safety, independence and respect, legal compliance and allow for anonymous reports

Recommendation 9: Develop guidance for investigations and complainant support, which must be provided by individuals trained in sexual violence and its impact and all investigations must be thorough and timely

SUMMARY OF RECOMMENDATIONS

Recommendation 1: The inquiry should take the systemic drivers of sexual harassment, in particular gender norms and power, as the starting point for understanding, responding to and preventing sexual harassment.

Recommendation 2: Explore the potential for sectoral and organisational level codes of conduct in setting standards and guiding behaviour to prevent, and strengthen response to, sexual harassment.

Recommendation 3: Ensure that a survivor centred approach is central to action to prevent and respond to sexual harassment and other forms of sexual misconduct in Australian workplaces.

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