



**Submission to the Australian Human Rights  
Commission National Inquiry into Sexual  
Harassment in Australian Workplaces**

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## **INTRODUCTION**

1. The SDA welcomes the opportunity to make a submission to the Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces.
2. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 215, 000 members. The majority of these members are women and young people. Approximately 60% of SDA members are female, equating to approximately 131,000 women. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy, online retailing and modelling.
3. The SDA has a long history of advocating for improved entitlements for our members and healthy and safe workplaces free from all forms of discrimination, bullying and harassment, including sexual harassment.
4. The SDA does this through enterprise bargaining; ensuring Awards and the NES provide a relevant safety net; and through numerous submissions made to Senate Inquiries and other important reviews such as those conducted by the Australian Human Rights Commission. (AHRC).
5. The SDA would like to make particular reference to the submission we made to **AHRC Pregnancy and Return to Work National Review 2014** which makes recommendations to amend the *Sex Discrimination Act 1984* and the submissions we made to the **Senate Inquiry into Gender Segregation in the Workplace and its impact on women's economic security**, which are both relevant to this Inquiry.
6. Further, the SDA made a submission to the 2018 Review of Model WHS Laws, which made recommendations in relation to psychological risks and hazards which are relevant to this Inquiry.
7. The SDA has recently partnered with the AHRC to conduct a comprehensive, statistically significant survey of our members regarding their experience of sexual harassment at work. The survey (SDA/AHRC Survey) was completed by over 3,400

members and provides robust data on sexual harassment in retail, fast food, warehousing and other industries our members are working. The SDA will be relying on the report published by the AHRC to support the recommendations we make in this submission.

8. In our submission, the SDA will rely on the results of the SDA/AHRC survey and focus on the characteristics of the industries our members work in which contribute to the higher prevalence of sexual harassment, including customer perpetrated sexual harassment, insecure work and issues facing young workers and minors.
9. The SDA/AHRC survey was based on the national prevalence survey conducted by the AHRC but contained further questions to obtain data on customer perpetrated sexual harassment; current workplace practices; and health impacts from sexual harassment in our industries.
10. The SDA has reviewed and supports the submission of the ACTU, including its recommendations.

## **EXECUTIVE SUMMARY**

11. The SDA believes that every worker has the right to work in a safe and healthy environment free from all forms of harassment and violence, including sexual harassment.
12. In Australia, we have had laws to protect workers from sexual harassment since 1984 and laws which provide workers with a right to healthy and safe workplaces. However, the survey conducted by the AHRC last year demonstrated that these laws are failing workers in Australia with the prevalence of sexual harassment significantly increasing.
13. Disturbingly, the SDA/AHRC survey also shows that workers in retail and fast food are experiencing sexual harassment at even higher rates than the national workforce and at higher rates than previous surveys. This is particularly

concerning given the composition of the workforce being largely women and young people and those having their first experience of work.

14. The results clearly demonstrate that employers are significantly failing to meet their legal obligations to prevent sexual harassment in the workplace.
15. The results also demonstrate that the current laws have drastically failed workers and require a complete overhaul.
16. Changes must be made to strengthen legislation, employer's duties and compliance. We need proactive obligations on employers to prevent sexual harassment in workplaces and a more effective mechanism for individuals and/or groups of employees and representative organisations to make individual and collective complaints when they are sexually harassed at work, which provide appropriate compensation and penalties.
17. A proactive duty on employers supported by a complaints mechanism, which provides a real incentive for employers to prevent sexual harassment, is vital to ending sexual harassment in our workplaces. This must be supported by an agency empowered to investigate and ensure compliance.

## **SUMMARY OF RECOMMENDATIONS**

### **Recommendation: Gender Equality**

1. The FW Act should be amended to give explicit recognition of the right to gender equality. The FWC must be given legislative direction that gender equality must be achieved in all its functions, including in relation to awards, enterprise agreements, dispute settlement and minimum wages.
2. The pay equity provisions of the FW Act should also be strengthened, including by allowing cases to proceed without a 'male comparator'.
3. The FW Act must equip the FWC with broad discretion and powers to make any orders it sees fit to remedy gender inequality and require the FWC to be proactive in using these powers, for example in addressing undervaluing of



feminised occupations in modern awards. These powers and functions should be exercised by a specialist Gender Equality Panel, supported by a properly resourced Gender Equality Research Unit.

4. The *Sex Discrimination Act 1984 (Cth)* should be amended to introduce a positive duty on employers to achieve substantive gender equality (that is, recognising that women and men may need to be treated differently, for equality of results to occur) with an obligation on employers to take proactive measures to provide a workplace free of discrimination and sexual harassment.

### **Recommendations to prevent third-party sexual harassment**

5. The Sex Discrimination Act 1984 should be amended to make it clear that employers are also liable for harassment by customers and other third-parties.
6. The Sex Discrimination Act 1984 should be amended to provide a positive duty on employers to prevent sexual harassment by customers and amend in line with the Employment Relations Act in New Zealand to require employers to respond and investigate complaints and where they have failed to do so are liable for repeat behaviour.
7. A statutory code of practice should be developed, implemented and enforced by the AHRC. The code should include guidance for employers on preventing sexual harassment by a third-party and how to respond when it occurs, including action that can be taken against the harasser and a requirement to educate customers that sexual harassment is prohibited under the Act.
8. The Sex Discrimination Act 1984 be amended in a similar manner to the QLD Act to prohibit sexual harassment in all areas of public life.

9. Trespass laws should be strengthened and amended to give explicit power to employers to ban customers where they have a reasonable belief they have sexually harassed employees or are a risk of sexually harassing employees.
10. Information on banning customers should be included in a statutory code of practice or guidance material for employers.
11. The SDA recommends that the Sex Discrimination Act be amended to specifically prohibit employers from requiring employees to wear indecent or revealing dress or engaging in marketing or advertising campaigns that make an employee feel offended, humiliated or intimidated or provoke sexual harassment by another person.

**Recommendation re insecure employment:**

12. Workplace and anti-discrimination legislation must reflect the changing nature of work to ensure that all workers are protected from sexual harassment and can make a complaint without fear of adverse action or victimisation, regardless of the employment relationship.

**Recommendations regarding young workers and minors:**

13. A Code of Practice be developed for the employment of minors and young workers in the retail, fast food and hospitality industries. This Code would provide guidance on laws pertaining to minors and young people which are relevant to sexual harassment, including age of consent and child grooming legislation and mandatory reporting requirements regarding sexual abuse/behaviour. The Code should also include additional protections employers should have in place to safe guard minors and young people from sexual harassment.
14. Working with Children Checks should be mandatory for anyone who, during their employment, supervises or manages an employee who is a minor.

**Recommendations regarding sexual harassment using technology:**

15. The development and delivery of education by the AHRC on the use of social media and sexual harassment.

16. Amend the Sex Discrimination Act 1984 to make it clear that workplace sexual harassment includes sexual harassment perpetrated by anyone, including co-workers and customers, through the use of technology and that these behaviours conducted 'outside' of the workplace constitute workplace sexual harassment.

**Recommendations to strengthen the Sex Discrimination Act 1984:**

17. The Sex Discrimination Act 1984 must be amended to include a positive, proactive duty on employers to prevent sexual harassment. A breach of the duty should be an unlawful act carrying substantial penalties and compensation.

18. This new positive duty should also be underpinned by a statutory Code of Practice. Section 48(ga) of the Sex Discrimination Act 1984 (Cth), should be extended to give the AHRC the power to establish enforceable statutory codes of practice to prevent sexual harassment. The amendment should include referral of the code of practice to the relevant Minister for approval and assent so that it has statutory authority and is legally enforceable.

19. The Code of Practice should require employers to:

- have a comprehensive policy with a transparent and comprehensive complaints process;
- regularly provide accredited sexual harassment training to all employees delivered by an accredited trainer;
- have a proscribed complaints/investigation procedure which requires investigators to be accredited and impartial.

20. The Code of Practice should include minimum requirements for policy, procedures and training and model templates which are automatically adopted where companies do not have them or they don't meet the minimum requirements.

21. The AHRC should be empowered and resourced to investigate breaches of the Act or Code and issue compliance orders where breaches have been established.

22. The AHRC should be resourced to provide a free, accessible, efficient and timely complaints process which provides sufficient remedies including compensation, penalties and other orders such as changes to policies and procedures, to provide employers with appropriate incentive to prevent sexual harassment.
23. The AHRC should be empowered to conduct own motion inquiries into systemic sexual harassment and make orders arising from its inquiries.
24. The Sex Discrimination Act 1984 should be amended to abolish time limits or extend to at least 6 years in line with other employment related claims.
25. The AHRC should make recommendations that caps on compensation in state Anti-Discrimination jurisdictions be abolished or superseded by the Sex Discrimination Act 1984.
26. The *Sex Discrimination Act 1984 (Cth)* should be amended to provide a reverse onus of proof and the respondent must prove no sexual harassment or discrimination, as is the case for complaints under the *SDAct* in relation to indirect discrimination and in the *Fair Work Act 2009*.
27. The SDA supports compulsory conciliation before a hearing of complaints conducted by a conciliator of senior standing, with the requisite skills and knowledge, and able to be proactive in the process (rather than just a facilitator of the meeting) giving the parties direction based on the law.
28. The *Sex Discrimination Act 1984 (Cth)* should be amended to improve the level of punitive damages in sexual harassment and discrimination cases to provide a real deterrent to employers of not preventing sexual harassment.
29. The Sex Discrimination Act 1984 (Cth) should be amended to require disclosure to the complainant of the outcome and the action taken against the

respondent and actions taken within the organisation following substantiation of a sexual harassment complaint.

30. Empower and resource the AHRC to investigate complaints and create codes of practice and other appropriate, regularly updated educational and training material.
31. Amend the Sex Discrimination Act 1984 (Cth) to give the AHRC powers to monitor workplaces and ensure compliance with any orders following a resolution of a sexual harassment/discrimination complaint.
32. Empower the AHRC to issue improvement notices and require enforceable undertakings from employers.
33. Amend the Sex Discrimination Act 1984 (Cth) to legislate mandatory reporting by all employers of the number of sexual harassment complaints an organisation receives each year and empower the AHRC to initiate an investigation into systemic sexual harassment identified from the mandatory reporting of complaints.
34. Data (non-identifying, where necessary) should be collected of all discrimination enquiries, complaints, conciliations, confidential settlements, and hearing outcomes, and such data be analysed, according to key demographic groups, industry sectors and types of complaints, and is also widely publicised.
35. The Fair Work Act right to legal representation provisions, which requires barristers to seek leave to appear, should be adopted for AHRC conciliations.

#### **Recommendations to amend the *Fair Work Act 2009***

36. The SDA strongly recommends that the FW Act be amended to include a new explicit protection against sexual harassment (and all forms of discrimination at work).
37. The new protections should apply to all workers, regardless of contractual/ employment status. It should be made clear that workers are protected from



actions or failures to act by labour hire firms or other third-party actors. The provisions should cover sexual harassment by third-parties, as well as co-workers and managers. Both current and former workers should be able to access the Commission.

38. Unions should have standing to bring disputes on behalf of a member or members.
39. The FW Act should provide a complaints mechanism that is quick, simple and free. There should be no time limits for complaints or complainants should have at least six years to bring proceedings, in line with other workplace provisions.
40. The FWC should be expressly empowered to hear sexual harassment and discrimination disputes whether the cause of action arises under the FW Act, the Sex Discrimination Act, or other federal anti-discrimination statutes, where they relate to employment.
41. The FW Act should allow the FWC to resolve disputes by conciliation and, if necessary, arbitration.
42. The FWC should have broad powers to make a range of orders, including compensation, reinstatement and orders preventing or requiring future conduct, including requiring employers to take proactive steps to prevent harassment.
43. The FWC should be required to deal with urgent applications promptly, for example, within 14 days as per the Stop Bullying provisions. Breach of the FWC's orders should attract civil penalties. Matters which are unable to be resolved through the FWC process would be able to be progressed through the courts in a similar way to current general protections matters.
44. Courts should have the power to issue injunctions, penalties and order compensation or make other remedial orders, such as reinstatement or orders that conduct cease.

45. The test for discrimination or sexual harassment should not require proof of intent by the respondent. Employers should not be able to avoid liability simply by giving subjective evidence about their state of mind at the time of the decision. Courts should be required to examine all the evidence and circumstance to determine the real reason for the employer's conduct, whether conscious or unconscious.
46. The exemptions for actions lawful under State and Territory laws at s351(2)(a) and (c) of the Act should be removed.
47. The reverse onus of proof should remain.

**Recommendations regarding WHS:**

48. A new WHS Regulation and Code of Practice should be developed in consultation with social partners and experts on all psychosocial hazards, including sexual harassment.
49. WHS regulators must be sufficiently resourced and trained to deal with psychosocial hazards, including sexual harassment and sexual assault.
50. The definitions of 'notifiable incident', 'serious injury or illness' and 'dangerous incident' should be reconsidered and redrafted to require reporting in relation to psychosocial hazards, including sexual harassment.
51. Sexual assault must be a 'notifiable incident' and must require mandatory reporting to the regulator. The confidentiality of the victim must be strictly maintained.
52. Australia's national approach to WHS compliance and enforcement in relation to psychosocial hazards, including sexual harassment, needs an urgent review, including accessibility of workers compensation in cases of sexual harassment.



### **Recommendation regarding settlement agreements:**

53. That a standard confidentiality clause or settlement agreement be developed and included in a Code of Practice which doesn't prejudice complainants and doesn't allow for the distortion of reportable incidents and overall reporting to WGEA.

### **Recommendations to address sexual harassment in the modelling industry:**

54. That an educative and public awareness focus be given particularly to this industry, for example by engaging with organisers of major fashion shows in Australia, to highlight the risks prevalent in the industry and engage with the various stakeholders to encourage changes be made.

55. An Industry Code of Practice to establish an agreed position to provide a work environment free from sexual harassment. This should include agreement to the following measures:

- a. Private change rooms at all photo shoots, catwalks and other related modelling work.
- b. A commitment to provide and notify a model of the right to bring a person of their choosing to modelling job that would otherwise be one-on-one; at which the attendees are unknown to the model; or at which the model may be required to wear lingerie or model nude.
- c. A requirement to obtain express written agreement from the model prior to the job when lingerie or nudity is required at a job
- d. That all jobs must have a mechanism to confidentially report harassment.

56. Establishment of an online registry for non-compliant individuals or businesses.

### **Recommendations for Reporting:**

57. Amend the reporting requirements under the Workplace Gender Equality Act 2012 to require employers to provide the following information regarding sexual harassment:

- Do you have a policy and complaints process in relation to sexual harassment?

- How many sexual harassment complaints were received during the reporting period?
- What were the outcomes of the complaints, (including those where a confidential settlement has been reached)?
- Have the complainants continued in their employment?
- What actions have been taken to ensure sexual harassment doesn't happen again?

58. The powers and functions of the WGEA should be extended so that it can enforce mandatory reporting, conduct audits and investigate potential non-compliance.

59. Amend the Workplace Gender Equality Act 2012 to introduce penalties for companies who are required to report under the Act but fail to do so, and for those who provide misleading or inaccurate responses.

60. The requirement to report on minimum standards should be extended to all reporting organisations, not limited reporting organisations with 500 or more employees.

61. The requirement to meet the minimum standards set out in the Workplace Gender Equality (Minimum Standards) Instrument 2014 should be extended to all Gender Equality Indicators.

62. Companies should be required to report any complaints of sexual harassment and the outcomes of those complaints to their Board.

**Recommendation regarding the ILO Convention:**

63. That the Australian Government commit to support the development, ratification and implementation the new ILO Convention on Violence and Harassment at Work, including maintaining broad and inclusive definitions of 'work', 'worker' and 'violence and harassment'.

## **NATURE AND PREVALENCE OF SEXUAL HARASSMENT FOR SDA MEMBERS IN RETAIL, FAST FOOD AND WAREHOUSING**

18. The AHRC national survey found that workers in retail and fast food experienced the 4<sup>th</sup> and 7<sup>th</sup> highest level of workplace sexual harassment across all industries.
19. The SDA also knows from its own surveys conducted regarding customer abuse and violence that sexual harassment by customers is increasing.
20. Recognising that sexual harassment is an enormous issue in the industries where our members work, the SDA partnered with the AHRC to conduct a comprehensive, credible, statistically significant survey of our members about their experience of sexual harassment at work.
21. The survey conducted in March and April this year received ethics approval from Charles Sturt University and was conducted with the assistance of Roy Morgan to ensure it was conducted in a manner which protected the confidentiality of respondents and drew on a representative sample of our members.
22. More than 3400 members responded to the survey.
23. The AHRC Report on the findings of the survey have been drawn on extensively throughout our submission to evidence the pervasive, widespread nature of sexual harassment experienced by our members and workers in the retail and fast food industries.
24. The survey found that sexual harassment in retail and fast food is occurring at alarming rates and is getting worse. This is completely unacceptable.
25. The SDA/AHRC survey found that our members are exposed to sexual harassment at a higher rate than the overall national workforce. Below we provide the findings of the survey in relation to the nature and prevalence of sexual harassment experienced by our members.

## **Lifetime Sexual Harassment**

26. Two in three (65%) SDA Members aged 15 years or older have experienced sexual harassment at some point in their lifetime.
27. Women (73%) are significantly more likely than men (52%) to have experienced sexual harassment over the course of their lifetime.
28. The experience between men and women also differs when age is considered. Four in five women aged under 35 years reported experiencing sexual harassment at some point in their lifetime:
- | Women:            | Men:              |
|-------------------|-------------------|
| • 15-17 82%;      | • 15-17 43%;      |
| • 18-24 85%;      | • 18-24 53%       |
| • 25-34 77%;      | • 25-34 57%;      |
| • 35-44 69%;      | • 35-44 55%       |
| • 45-54 69%       | • 45-54 48%;      |
| • 55 or older 58% | • 55 or older 38% |
29. SDA members overall reported a lower rate of lifetime sexual harassment than overall workforce in the AHRC National prevalence survey which was 71% (85% of women and 56% of men). However, younger respondents to the SDA survey were more likely to have experienced lifetime sexual harassment than in the national prevalence survey.
30. In the AHRC survey 75% of people aged 18-29 experienced sexual harassment over the course of their lifetime compared to 85% of women aged 18-24 and 77% of women aged 25-34 in the SDA survey.
31. This difference was similarly present when looking at people aged 15-17. In the AHRC survey 55% of people aged 15-17 years were likely to have been sexually harassed in their lifetime compared with a significantly higher response of 82% of female SDA members aged 15-17.
32. The SDA contends that the reason for the higher prevalence of lifetime sexual harassment among young SDA members than the population generally is because of the higher risk of exposure to sexual harassment working in retail and fast food.

33. This would indicate that preventing sexual harassment in retail and fast food workplaces would lead to a reduction in the experience of lifetime sexual harassment of young workers.
34. The most common forms of lifetime sexual harassment experienced by SDA Members were:
- sexually suggestive comments or offensive jokes (43%): one in two (52%) women female and nearly three in ten (28%) of men,
  - intrusive questions about private life or physical appearance (40%): nearly half of the women (47%) and nearly three in ten (29%) of men,
  - inappropriate staring or leering (38%): half (50%) of the female SDA Members and one in five (19%) male SDA Members,
  - inappropriate physical contact (35%): two in five women (42%) and nearly a quarter (23%) men, and
  - unwelcome touching, hugging, cornering or kissing (34%): just over two in five (42%) women and one in five (21%) men,
35. Almost three in twenty (14%) female SDA Members have experienced actual or attempted rape or sexual assault at some point in their lifetimes and nearly a quarter (24%) of them have experienced unwelcome requests or pressure for sex or other sexual acts<sup>1</sup>.

### **Workplace Sexual Harassment**

36. The results of the SDA Survey indicate that the rate of workplace sexual harassment experienced by SDA Members in the last five years is higher than the general workforce (39% compared to 33%). As with lifetime sexual harassment, women are more likely to have been sexually harassed in the workplace during this period than men (46% compared to 29%).
37. In the last 12 months, a third (32%) of female SDA Members have experienced some form of workplace sexual harassment compared with one in twenty (19%) of the male Members.

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<sup>1</sup> Please note: there is no male equivalent statistic on this.

38. There is also a gender difference when the age of the victim is considered.

While over half of the women aged under 35 years reported experiencing sexual harassment at work in the last 5 years, this peaked at three in five amongst those aged between 18 and 34, dropping to around two in five for women aged 35 to 54 and a quarter of women aged 55 or older.

- 15-17 50%;
- 18-24 60%;
- 25-34 50%;
- 35-44 44%;
- 45-54 43%
- 55 and older 23%

39. The reported workplace experience of men was different with younger men much less likely to report having been sexually harassed at work. Harassment levels for men peaked at around one in three for men aged between 25 and 44 and dropping for older men.

- 15-17 14%;
- 18-24 28%;
- 25-34 36%;
- 35-44 34%;
- 45-54 24%;
- 55+ 16%

40. The most common forms of workplace sexual harassment experienced by SDA Members over the last five years is similar in nature to the lifetime experience of members:

- sexually suggestive comments or offensive jokes (24%): three in ten (28%) females and one in six (16%) males,
- intrusive questions about private life or physical appearance (22%): a quarter of women (26%) and nearly three in twenty (15%) men,
- Inappropriate staring or leering (20%): a quarter (26%) of the females and one in ten (9%) males,
- unwelcome touching, hugging, cornering or kissing (14%): nearly two in ten (17%) women and one in ten (10%) men, and



- inappropriate physical contact (12%): three in twenty women (15%) and one in ten (9%) men.
41. Unlike some other industries, there was no evidence that the gender mix of the workplace had any substantial impact on the likelihood of either male or female SDA Members experiencing sexual harassment in their workplace.
42. Workplace sexual harassment via social media is relatively low for SDA members. Only 4% of members had experienced employment-related sexual harassment in the form of sexually explicit comments in emails, SMS messages or on social media. There was no significant difference by gender in this regard (Males 3%, Females 4%).

### **Perpetrators of Workplace Sexual Harassment**

43. Most of the workplace sexual harassment experienced by SDA Members is perpetrated by men. Harassers are most commonly customers or clients followed by a co-worker employed at the same level as the victim.
44. The survey results indicate that, based on the most recent incident of sexual harassment experienced by SDA Members at work in the last five years:
- perpetrators of workplace sexual harassment are overwhelmingly male; in four out of five cases (82%), the perpetrator (or one or more, in cases with multiple perpetrators) of workplace sexual harassment was male,
  - almost two in three (57%) member's workplace sexual harassment involved a single perpetrator, one in six (16%) involved multiple harassers with the balance (27%) of those members who had been sexually harassed unable or preferring not to say how many perpetrators had been involved;
  - over one in three cases (36%) involved a customer/client, rising to more than two in five (42%) of cases where a female SDA member was harassed compared to one in five (22%) cases involving a male SDA Member;



- At least one senior person was involved (both single and multiple harasser cases) in 31% of all cases of harassment and co-workers at the same level were involved in 27% of all cases of harassment.
- Male SDA Members were more likely than female members to have been sexually harassed by a co-worker at the same level (34% and 24% respectively), a co-worker who was more senior (21% and 8% respectively); another manager or supervisor (15% and 10% respectively) and/or their direct manager or supervisor (16% and 9% respectively)

### **Nature and Impacts of Workplace Sexual Harassment**

45. In most workplace sexual harassment cases experienced by SDA Members, the harassment is ongoing over an extended period. In addition, a substantial proportion of Members who are sexually harassed experience negative consequences as a result, such as impacts on mental health or stress.
46. The survey results indicate that, harassment is often ongoing and extends over long periods:
- the harassment had occurred on more than one occasion for more than half (57%) of the SDA Members who had been harassed – this was similar for both women (58%) and men (52%)
  - for most of the victims who had experienced ongoing sexual harassment, their harassment was ongoing over an extended period of time; in just over half (53%) of cases the harassment lasted for more than six months with this more likely to be the case for men (56%) than women (51%)
47. While the survey found that a third (33%) of victims reported no long-term consequences of raising a complaint, most victims reported at least one negative health or employment related impact:
- nearly a quarter (23%) of the victims reported that the harassment negatively impacted on their employment, career or work and a third (35%) on their self-esteem or confidence;
  - over two in five (44%) said it caused them mental health issues or stress with nearly one in five saying that it had a negative impact on their health and general wellbeing,

- Females (45%) were more likely than males (40%) to say that the most recent incident had caused them mental health issues or stress, but there was little difference between men and women in the reported impact of the other consequences examined in the survey.

48. In terms of specific health and wellbeing consequences experienced following the most recent incident of workplace sexual harassment, the most commonly mentioned issue was anxiety (40%), followed by loss of self-esteem (23%) and depression (18%). Women were more likely than men to report feeling anxiety (42% and 33% respectively) or a sense of helplessness (18% and 13% respectively). Men were more likely than women to report experiencing burn out (13% and 8% respectively) or sleeplessness (19% and 14% respectively).

49. Women report higher levels of offence and intimidation about their most recent incident of workplace sexual harassment than men (24% of women felt 'extremely offended', compared to 14% of men; 24% of women felt 'extremely intimidated', compared to 12% of men).

50. There was a difference between women and men who had been sexually harassed in the last five years in their perception of how common sexual harassment was in their workplace:

- A quarter (25%) of female victims felt that sexual harassment at their workplace was common, compared to one in six (16%) men.
- Conversely nearly two in five (37%) of the male victims said that sexual harassment in their workplace was rare or very rare compared to a quarter (26%) of the female victims.

51. The survey also looked at where in their workplace they experienced sexual harassment:

- Three quarters (75%) of those who had been sexually harassed in the workplace in the last 5 years had been sexually harassed at their workstation or where they work while one in five (20%) had been sexually harassed in a social area for employees.
- Female SDA members were more likely to have been sexually harassed at their workstation/where they worked than men (78% of women

compared to 68% of men) whereas male SDA members were more likely to have been sexually harassed in a social area than women Members (26% men compared to 17% women)

52. Incidents of sexual harassment were often witnessed:

- in a quarter of cases (26%) the sexual harassment incident was witnessed by at least one other person (27% for female victims and 22% for male victims)
- the witness only tried to intervene in one in five (22%) cases (25% for female victims and 12% for male victims).
- In summary, sexual harassment of males was more likely to go unwitnessed, and to the extent it was witnessed, bystanders were only half as likely to intervene.

53. The survey also captured members knowledge of others being sexually harassed in their workplace:

- Nearly half (48%) of women who had been sexually harassed reported that someone else at work had experienced the same form of harassment; two in five (39%) male victims also said that someone else at work had experienced the same form of harassment
- a significant proportion of victims did not know if any else at work had experienced the same form of harassment (45% of women and 48% of men)

### **Reporting and Seeking Support in Relation to Workplace Sexual Harassment**

54. Most people who were sexually harassed at work did not formally report or seek support or advice in relation to the incident. Less people in retail and fast food make a formal report or complaint (13%), than the general workforce (17%).

55. There was no significant difference in the likelihood of reporting workplace harassment between women (14%) and men (11%), permanent (13%) or casual(13%) employees or in terms of the age of the victim ( 15-17 years 11%, 18-29=14%, 30+=15%).

56. If members did report the incident, the majority of people (71%) reported their most recent incident to their direct manager or supervisor.
57. Only a quarter (24%) of those who made a report said that there were no consequences for them. However, unfortunately, most suffered a negative consequence as a result of raising a complaint. Almost one in five people who made a formal report or complaint were ostracised, victimised or ignored by colleagues (19%). One in ten (12%) resigned and a similar proportion (11%) were transferred or had their shifts changed (15%). These findings are significant and reflect poorly on employers in the retail and fast food industries.
58. Importantly, in terms of the outcomes of complaints, in over a quarter (28%) of cases the formal report or complaint brought no consequences for the perpetrator. This provides no incentive for workers to report or make a complaint and does not change perpetrators behaviour or the culture of the workplace.
59. In a similar proportion of cases the perpetrator was informally spoken to (24%) or received a formal warning (20%).
60. Three in five (61%) people who made a formal report said that no changes occurred at their organisation as a result of the complaint, while another quarter (26%) did not know if there had been any outcome at their workplace as a result of their complaint.
61. The most common reasons for not reporting workplace sexual harassment were:
- that people would think it was an over-reaction (60%),
  - they didn't think it would change anything (51%)
  - it was easier to keep quiet (47%); and
  - one in five (22%) were not aware of how the complaint process worked or who to report to.

62. Less than one in five people (13%) who experienced workplace sexual harassment sought support or advice in relation to the incident. Where advice or support was sought, most commonly it was from friends or family (65%).

### **Witnessing and Hearing About Workplace Sexual Harassment**

63. Although more than one third (35%) of SDA Members had witnessed or heard about the sexual harassment of someone else in their workplace in the last 5 years, only one in three (35%) of these bystanders took action to intervene in the most recent incident that they had witnessed.

64. Where action was taken by a bystander, this was most commonly (in 74% of cases), to talk with or listen to the victim about the incident. In just over half of cases (55%) the bystander reported the harassment to the employer.

65. The most common reason for bystanders not taking action was that they knew that other people were supporting and assisting the victim (31%). In one-quarter (23%) of cases the bystander did not take action because they did not want to make things worse for the victim, while in one in five (21%) cases the victim asked them to not take any action. It was more common for females (23%) to ask the bystander not to take any action, than it was for males (17%).

### **Inappropriate Campaigns or Uniforms**

66. Four percent of members working in the retail or fast food sector reported that, in the last five years, their employer had conducted a marketing or advertising campaign that they felt was inappropriate or made them uncomfortable (4%) and/or expected them to wear a uniform or clothing that was inappropriate or made them feel uncomfortable (4%). There was no difference by gender in either of these areas. While 4% seems low, this would equate to around 8000 members if applied to our total membership.

67. However, among those who had experienced an inappropriate campaign and/or uniform, one in five (19%) said this had led to them being sexually harassed in

the workplace. This was twice as common among women (24%) than men (11%).

### **Workplace Sexual Harassment Policies & Training**

68. Three in five (59%) SDA members who had been in the workforce in the last 12 months said that their current employer had one or more of the sexual harassment policies/procedures referred to in the survey.

- one in two (50%) members said their employer had procedures for reporting or complaining about sexual harassment.
- just under one in three (30%) said their employer had conducted training on sexual harassment
- just under half (48%) said their workplace had a written policy on sexual harassment
- one in five (18%) said their workplace had one or more sexual harassment contact officers

69. Approximately one in three (31%) did not know whether their current employer had any of these policies or procedures in place. This rate was higher among women than men (34% and 27% respectively) and among younger employees,



42% among those aged 15-17 years, compared with 36% among those aged 18-29 years and 26% for those aged 30 or older.

70. Among respondents who said their current employer had training on sexual harassment:

- 21% said it occurred at least annually;
- 2% said it occurred at least every 2 years;
- 13% said it did not occur at any set time;
- 28% said that it only occurred during induction;
- 5% said it had only occurred once and had never been repeated; and
- 2% said it only occurred after someone reports or makes a complaint about sexual harassment.

71. Three in four (77%) SDA Members who had been in the workforce in the last 12 months said that they had received sexual harassment training at their current employer. There was little difference by gender or age group in this regards. 44% said they had received this training in the last six months and 60% said they had received the training within the last year.

72. In three quarters (76%) of all cases, some or all of the training was conducted online.

## **THE DRIVERS OF SEXUAL HARASSMENT**

73. There are many workplace and individual characteristics which can increase an employee's risk of sexual harassment, however, the data shows that the characteristic which increases the risk most is gender.

74. While we know that sexual harassment is experienced by women and men, the survey conducted by the AHRC last year showed that women are more likely than



men to be sexually harassed at work (39% of women sexually harassed in the last five years compared to 26% of men)<sup>2</sup>.

75. The SDA/AHRC survey showed that women in retail and fast food are more likely to have been sexually harassed in the workplace during this period than men (45% compared to 30%).
76. In the last 12 months, a third (34%) of female SDA Members have experienced some form of workplace sexual harassment compared with one in twenty (19%) of the male Members.
77. If you are a woman working in retail or fast food, you are more likely to be harassed by a customer than by anyone else in your workplace. The findings showed that more than one in three cases (37%) involved a customer/client, rising to more than two in five (43%) of cases where a female SDA member was harassed compared to one in five (22%) cases involving a male SDA Member.
78. Male SDA Members, however, were more likely than female members to have been sexually harassed by a co-worker at the same level (34% and 24% respectively), a co-worker who was more senior (21% and 8% respectively); another manager or supervisor (15% and 10% respectively) and/or their direct manager or supervisor (16% and 9% respectively).
79. The AHRC national survey conducted last year also showed that men are more likely to be the perpetrators of sexual harassment. 79% of victims of workplace sexual harassment in the last five years were sexually harassed by one or more male perpetrators<sup>3</sup>. The results of the SDA/AHRC survey was also consistent with this. Perpetrators of workplace sexual harassment of SDA Members are overwhelmingly male; in four out of five cases (82%).

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<sup>2</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018) p 32

<sup>3</sup> *Ibid*, p 38

80. The SDA/AHRC Survey also showed that women are more likely to experience sexual harassment that could constitute sexual assault than men. 17% of female members reported experiencing unwelcome touching, hugging, cornering or kissing compared with 10% of male members and 15% of female members reported inappropriate physical contact (compared with 9% of male members).
81. Therefore, the risk of more serious forms of sexual harassment are much higher for women. It is also important to note that these forms of sexual harassment may also be criminal in nature and constitute sexual assault.
82. The key driver of sexual harassment of women at work is gender inequality.
83. Australia is ranked 39 in the *World Economic Forum's Global Gender Gap Index, 2018*<sup>4</sup>. Australia's relative position in this index has continued to deteriorate from 15 in 2006<sup>5</sup> to its current position of 39. This is despite the fact that Australia ranks number 1 in the world for educational attainment.
84. Australia has the most educated female workforce in the world yet still ranks 39<sup>th</sup> in the world for gender equality. *'Australia (39) records a slight widening of its gender gap on legislators, senior officials and managers as well as some reversal of progress on wage equality, resulting in a slight drop in rank. It has closed 73% of its gender gap'*<sup>6</sup>.
85. The dramatic decline since 2006 is disturbing and represents a bleak outcome for working women in Australia. To stem this decline, proactive measures must be adopted to combat the factors driving the deterioration of the Gender Gap in Australia.
86. It is widely accepted that in improving the participation rates of women in the workforce will lead to economic growth. It has been estimated that increasing women's workforce participation in Australia by 6% could increase the national GDP by \$25 billion.<sup>7</sup>

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<sup>4</sup> World Economic Forum, *The Gender Gap Report 2018*, p 11 - 12

<sup>5</sup> World Economic Forum, *The Gender Gap Report 2006*, p 34

<sup>6</sup> World Economic Forum, *The Gender Gap Report 2018*, p 21

<sup>7</sup> Grattan Institute, *Game-changers: Economic reform priorities for Australia (2012)*, p 39

87. Australia's Gender Equality Scorecard published by the Workplace Gender Equality Agency in November last year showed that 'Women's average full-time base salary across all industries and occupations is 16.2% less than men's (\$15,457 p.a.). Women's' average full-time total remuneration across all industries and occupations is 21.3% less than men's (\$25,717 p.a.)'<sup>8</sup>.
88. Significantly, the gender pay gap also results in poor economic outcomes for women in retirement. Average superannuation balances at the time of retirement in 2011-2012 were \$197,000 for men and \$105,000 for women representing a 46.6% gap in superannuation at retirement<sup>9</sup>.
89. Despite a life time of work – paid employment and unpaid caring – many women won't be able to afford to retire with dignity. 90% of women will have inadequate retirement savings and around 29% of women over 65 years living below the poverty line <sup>10</sup>. Not surprisingly, single women over 55 are the fastest growing group at risk of being homeless.
90. One of the major factors impacting participation and economic outcomes of women in the workforce is sex-based discrimination and harassment.
91. In October 2016, KPMG released a report *She's Price(d)less: The economics of the gender pay gap*, prepared for the Diversity Council of Australia (DCA) and the WGEA. The report found that:

*'sex discrimination not only continues to be the single largest factor contributing to the gender pay gap, but it is worsening with systemic discrimination remaining a persistent feature of the workforce. The proportion of the gender pay gap that is attributable to gender discrimination increased from 35% in 2007 to 38% in 2014.*<sup>11</sup> [emphasis added]

92. Despite some improvements, women still lag significantly behind men in management and leadership positions at all levels of society.

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<sup>8</sup> Workplace Gender Equality Agency, Australia's Gender Equality Scorecard, November 2018, p

<sup>9</sup> Association of Superannuation Funds of Australia Resource and Research Centre, *An update on the level and distribution of retirement savings*, March 2014, p 3

<sup>10</sup> ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 64

<sup>11</sup> KPMG, *She's Price(d)less: The economics of the Gender Pay Gap*, October 2016, p 2

ibid, p 13

93. In the SDA/AHRC Survey, one member made the observation that:

*'Retail is predominantly a female occupation, when it comes to "store-level", but when it comes to management, it's predominantly male. Sexual harassment is usually (though not always) a female receiving unwanted advances from a male, and so having a predominately male management team is problematic. It makes reporting of incidents much more difficult for victims and therefore much less likely to happen.'*<sup>12</sup>

94. Gender inequalities within workplaces must be recognised and policies and procedures need to address the barriers that this creates in relation to implementation of policy and procedures on sexual harassment and creating positive reporting cultures.

95. Governments need to recognise and introduce proactive measures to address gender inequality in Australian workplaces and society more broadly.

96. Gender inequality in the workplace is one of the major causes of sex discrimination and sexual harassment. Any strategies proposed to eliminate and prevent sexual harassment from our workplaces cannot be done without broader measures to tackle gender inequality.

97. Legislative reform to workplace laws is needed to provide a right to gender equality. The SDA supports the recommendations of the ACTU in relation to amendments to the *Fair Work Act 2009 (FW Act)* and notes the recommendations of the Senate report on 'Gender segregation in the workplace and its impact on women's economic equality' and the SDA's submission and recommendations to that Inquiry<sup>13</sup>.

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<sup>12</sup> SDA/AHRC Survey 2019

<sup>13</sup> Senate Finance and Public Administration Committee, *Gender segregation in the workplace and its impact on women's economic equality*, June 2017

## Recommendations: Gender Equality

The FW Act should be amended to give explicit recognition of the right to gender equality. The FWC must be given legislative direction that gender equality must be achieved in all its functions, including in relation to awards, enterprise agreements, dispute settlement and minimum wages.

The pay equity provisions of the FW Act should also be strengthened, including by allowing cases to proceed without a 'male comparator'.

The FW Act must equip the FWC with broad discretion and powers to make any orders it sees fit to remedy gender inequality and require the FWC to be proactive in using these powers, for example in addressing undervaluing of feminised occupations in modern awards. These powers and functions should be exercised by a specialist Gender Equality Panel, supported by a properly resourced Gender Equality Research Unit.

The Sex Discrimination Act 1984 (Cth) should be amended to introduce a positive duty on employers to achieve substantive gender equality (that is, recognising that women and men may need to be treated differently, for equality of results to occur) with an obligation on employers to take proactive measures to provide a workplace free of discrimination and sexual harassment.

## **WORKPLACES CHARACTERISTICS AND PRACTICES WHICH ARE MORE LIKELY TO INCREASE THE RISK OF SEXUAL HARASSMENT**

### **Customer/third-party perpetrated sexual harassment**

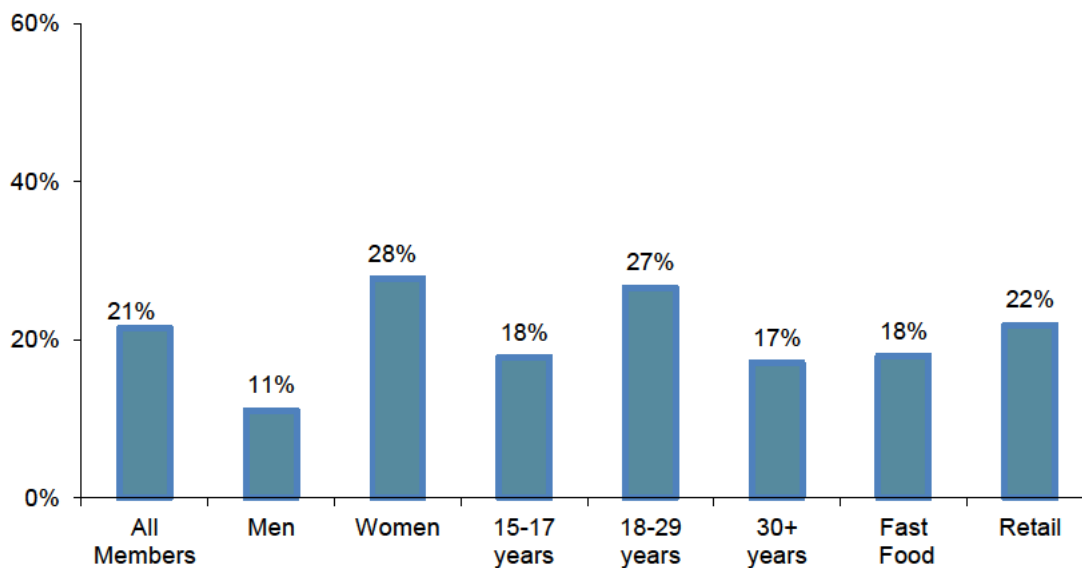
98. The AHRC National prevalence survey found that '30% of those who experienced workplace sexual harassment in retail trade and accommodation and food services respectively reported that the perpetrator was a client or

customer, compared with 18% of people who were sexually harassed in the workplace overall.<sup>14</sup>

99. The SDA/AHRC survey found that over one in three cases (36%) involved a customer/client, rising to more than two in five (42%) of cases where a female SDA member was harassed compared to one in five (22%) cases involving a Male SDA Member. This is a much higher prevalence of customer perpetrated sexual harassment than the general workforce.

100. When looking at sexual harassment experienced in their current job, 21% of SDA members had been sexually harassed by a customer. This was more likely to have happened to women (28%) than men (11%), and for those aged 18 to 29 years (27%), compared with 18% for those aged under 18 and 17% for those aged 30 or more. There was no statistically significant difference between the retail and fast food sectors in this regard.

101. The below figure represents the proportion of SDA members sexually harassed in their current job:

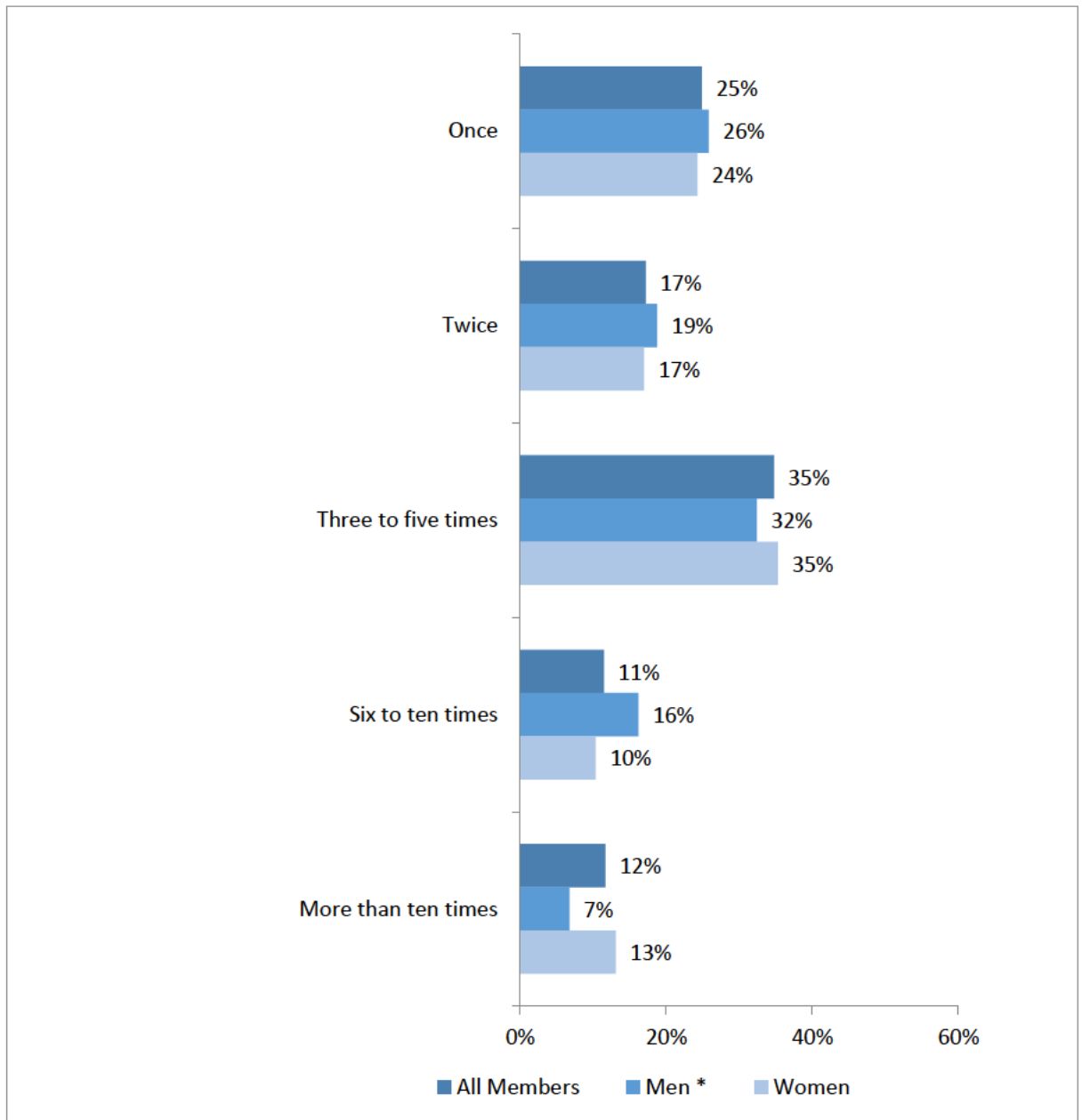


<sup>14</sup> Australian Human Rights Commission, 'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces' (2018) 68



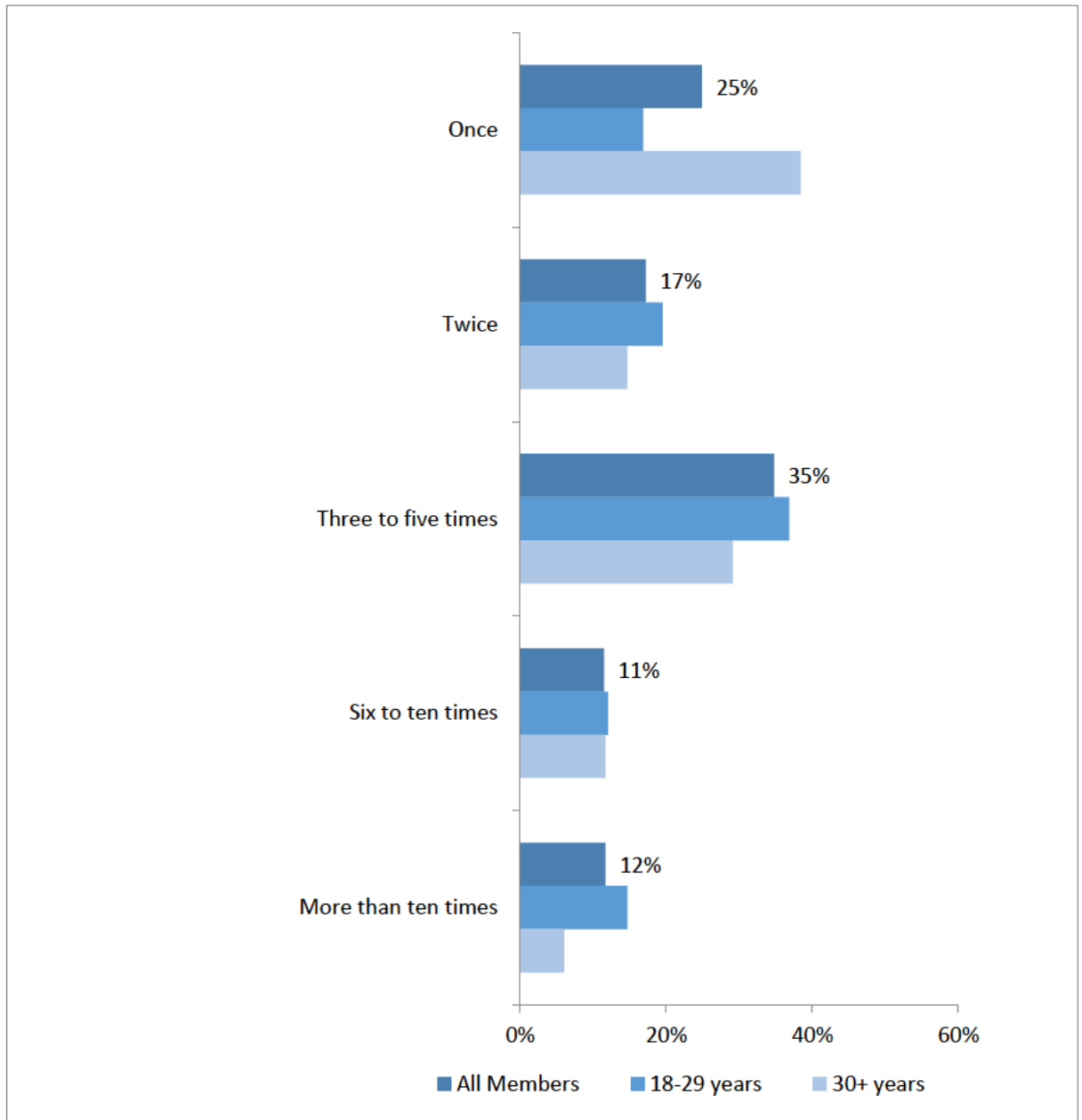
102. Members who had been sexually harassed by a customer in their current job in the last 12 months were also asked how often this had occurred. Most commonly, respondents said it had occurred three to five times (35%) and 12% of members said it had occurred more than 10 times in this period. On average across all, it occurred 5.9 times in the last 12 months.

103. The figure below shows how many times employees in their current job were sexually harassed by a customer in the last 12 months by gender:





104. The following figure shows how many times employees in their current job were sexually harassed by a customer in the last 12 months by age:



105. There is clear evidence from the survey that younger members were being harassed more often than older members. Those aged 18-29 years who had been sexually harassed in their current job by a customer within the last 12 were less likely than those aged 30 years or more to say they had been sexually harassed by a customer on only one occasion during this period (17% and 38% respectively), and more likely to say it had occurred more than ten times (15% and 6% respectively). The average number of times that those aged 18-29 had

been harassed in this way in the last 12 months was 7.2 times, compared with 4.1 times for those aged 30 years or more.

106. One young female member, responding to the SDA/AHRC survey observed that:

*'Honestly, minor sexual harassment from customers happens to me **once every few shifts**. I'm a 22 year old female so it's just something that I have to live with, honestly. It sucks. Whether it's an older man staring at me from a distance, loitering around near me for no apparent reason, or just being generally strange, or someone making some sort of comment on my appearance—it's **pretty much always happening**. Usually it's just a matter of myself and other female employees (usually around the same age) just sticking together and speaking about it afterwards. I think management could probably make more of an effort to show that they're supportive. I already know that they are, I have no doubt, but just more visibility on the issue, perhaps.*

107. Workers in customer facing roles are exposed to a greater risk of sexual harassment perpetrated by people who enter their workplace (third-party). The risk is also heightened by the nature of the interaction, expectations around service, and the culture in service industries such as retail and fast food that the "customer is always right".

108. Inappropriate customer behaviour has become normalised in sectors such as retail and fast food. Workers often expect to be treated poorly, including sexually harassed and therefore don't report incidents or make complaints. This was confirmed in a research report that employees don't complain because they *'expected to be treated disrespectfully by customers as they felt that customers perceived them as lower status'*<sup>15</sup>

109. While acknowledging some of the barriers employers face in dealing with customers who have sexually harassed employees, the SDA sees few policies in

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<sup>15</sup> Good, Laura, *Voicing their Complaints? Students Working in Retail and Hospitality and Sexual Harassment by Customers*, (2013), p 42

relation to sexual harassment that include reference to customer perpetrated sexual harassment and the mechanism by which an employee should report or make a complaint.

110. The SDA has been raising this policy deficiency with employers for the past few years with some now acknowledging the issue.
111. Over the past few years the SDA has been trying to address the increasing abuse and violence by customers against our members working in retail and fast food with our No-one Deserves a Serve Campaign. Customer abuse and violence takes many forms including verbal and physical abuse. For many workers in retail and fast food it is also sexual in nature.
112. In 2016 the SDA conducted an online survey of members in relation to customer abuse and violence. The survey found that abuse and violence by customers in retail and fast food is widespread and pervasive with more than 88% of members experiencing verbal abuse in the past 12 months and almost 15% experiencing physical violence.
113. In that survey 11% (637) of employees who had experienced abuse and violence said it was sexual in nature.
114. Following the survey, the SDA has conducted a concerted campaign, No-one Deserves a Serve (NODAS), which has involved a public advertising campaign including television, radio, print and billboard ads and a social media campaign. The SDA has also hosted an industry forum to encourage employers to get involved in stopping and preventing abuse and violence by customers as this is an industry wide issue.
115. The stories members provided of their experience of abuse and violence of a sexual nature ranged from sexual comments and innuendo to sexual assault perpetrated on the shop floor, including indecent touching, indecent exposure, threats of rape, asking for sexual favours or repeatedly asking out on a date.

116. The examples of customer perpetrated sexual harassment and assault are shocking and demonstrate that the issue of sexual harassment and gender-based violence is a systemic social problem which not only reflects the behaviour of individuals at work but throughout all aspects of society.
117. We have included the data drawn from the survey which relates to our members experience of abuse and violence of a sexual nature at **Appendix A**. The information includes the rate of prevalence of sexual abuse and violence and stories provided by members who said they would be happy for their stories to be shared..
118. The seriousness of customer perpetrated sexual harassment in retail and fast food is compounded by the fact that the employees experiencing sexual harassment and sexual assault are more likely to be women and young workers, including minors.
119. Many of the examples provided are from members who are under 18 years of age and likely to be in their first job. The stories provided at Appendix A have been categorised in age groups to provide a clear picture of the experience of young workers in these industries.
120. Stories from the survey include:

Workers aged under 18:

*“There are often sexual comments made by customers such as “could I order a blowjob with that?” Its meant as a joke but makes employees feel uncomfortable and we are unsure about what action to take in response so generally laugh it off despite it being confusing and sometimes distressing’.*

*‘Attempts to touch me’*

*‘A guy grabbed my ass’*

Workers aged 18-25

*'A customer **threatened to rape me** as I locked the car park gates after closing'*

*'**Unwanted touching** and trying to kiss me'*

*'Asking if I'm single, asking for my telephone number, asking to go on a date and getting abusive when the answer is clearly no. Being told I am beautiful, hot and sexy while serving customers.'*

*'I have been **sexually assaulted both physically and verbally** by male customers multiple times in the last 12 months'*

#### Workers aged 26-35

*'I have been **fully groped** by two drunk men at my store'*

*'Inappropriate comments, leering, stalking and attempting to brush against us'*

#### Workers aged 36-45

*'Customers asking what time you finish'*

*'ask me to have quick intercourse with him'*

*'I've had customers reach out to touch my name badge so they can **brush their hand on my breast**.'*

#### Workers aged 46-64

*'one guy came up behind me in self check out and **ground himself** against me from behind'*

*'Sexual discrimination against my sexuality'*

*'Customer **stuck his hands down the front of my shirt**'*

121. Further examples of sexual harassment provided in the survey can be found in Appendix A.

122. In 2018 the SDA conducted an online customer abuse and violence survey of members working in fast food. In this survey, 32.5% of employees who experienced customer abuse and violence said it was sexual in nature. Given

that the demographic of workers tends to be predominately under 30 years of age, the prevalence of abuse and violence of a sexual nature is very high for young workers in fast food, almost 39% for those aged 18-25 years and almost 30% for those aged 17 years and under.

123. Consistent with the results of the 2016 survey, the experiences ranged from sexual comments to sexual assault.

124. As with our previous survey, we asked members to provide examples of their experience of abuse and violence. We have included the data and stories from the 2018 Fast Food Survey in **Appendix B**.

125. Some of the stories from this survey include:

#### Workers 17 years and under

*I've had people wait till I finish my shift and follow me out, stare at parts of my body and then comment on them. I've had this daily and I'm 16'.*

*'Sexual Assault. Touching'*

*'Rape threats'*

#### Workers 18-25 years

*'A lady saying that she would take me to bed if she wasn't with her husband and that I should be lucky to be hit on by such a lady'.*

*'People asking for my number, asking when I finish, if I'm a virgin, if I have a boyfriend, customers have **touch**ed my waist, hips and butt, had people try to kiss me in exchange for paying more for food'.*

#### Workers 26 and over

*'Sleazy customers making sexual comments'*

*'touching me, grabbing my waist while working. Threats of rape'*



126. The SDA/AHRC survey showed that sexual harassment by customers takes the form of various behaviours ranging from sexually suggestive comments through to inappropriate physical contact. The below table provides a breakdown of sexual harassment by customers, including where it was a single or group of harassers:

MOST RECENT HARASSMENT -HARASSMENT WAS BY A CLIENT/CUSTOMER	SINGLE HARASSER CUSTOMER/CLIENT ONLY	GROUP HARASSERS INCLUDED AT LEAST ONE CUSTOMER/CLIENT	ALL HARASSMENT INCIDENTS INVOLVING A CUSTOMER/CLIENT
Sexually suggestive comments or jokes that made you feel offended	24.6%	20.3%	22.7%
Intrusive questions about your private life or physical appearance that made you feel offended	19.9%	25.2%	22.2%
Inappropriate staring or leering that made you feel intimidated	17.0%	28.7%	22.1%
Being followed, watched or someone loitering nearby	9.2%	6.4%	8.0%
Unwelcome touching, hugging, cornering or kissing	9.2%	5.0%	7.3%
Repeated or inappropriate invitations to go out on dates	6.4%	4.5%	5.6%
Inappropriate physical contact	7.5%	2.0%	5.1%
Sexual gestures, indecent exposure or inappropriate display of the body	2.2%	3.7%	2.8%
Any other unwelcome conduct of a sexual nature that occurred online or via some form of technology	2.5%	1.3%	2.0%
Indecent phone calls, including someone leaving a sexually explicit message on voicemail or an answering machine.	1.2%	2.4%	1.7%
Repeated or inappropriate advances on email, social networking websites or internet chat rooms	0.4%	0.4%	0.4%
Sexually explicit pictures, posters or gifts that made you feel offended	0	0	0
Requests or pressure for sex or other sexual acts	0	0	0
Actual or attempted rape or sexual assault	0	0	0
Sexually explicit comments made in emails, SMS messages or on social media	0	0	0
Sharing or threatening to share intimate images or film of you without your consent	0	0	0

127. The most common forms of sexual harassment by customers involve sexually suggestive comments or jokes, intrusive questions and inappropriate staring. However, harassment of a potentially dangerous or criminal nature such as being followed, unwelcome touching, hugging, cornering, kissing or physical contact is occurring at alarming rates.

128. In the SDA/AHRC survey members were asked *"Would you like to make any additional comments about your experience with, or observations of, sexual*

harassment in the workplace or suggestions about what employers or the SDA could do to reduce sexual harassment in the workplace?"

129. Members made the following additional comments in relation to customer perpetrated sexual harassment:

*'Having a customer with his hands down his pants whilst looking at me down the aisle is disgusting. If management were told, nothing would be done or addressed to the customer, as it is 'their customer' and since it doesn't affect them directly, it's not a significant concern for them unless I was physically punched then they would have no choice but to take action.'*

*'Put actual consequences in place for customers that are disgusting to people in retail/service. Because of the customer is always right mentality we just have to nod and smile when we're harassed until it's deemed "bad enough" that we finally get to ask them to leave. People shouldn't be able to make those comments period, refused service immediately and asked to leave or SOMETHING.'*

*'I have been harassed by customers, not just sexually but through intimidation and stalking. I refuse to wear a name badge because my safety is at risk when I leave work, I was followed for 300 metres in my shopping centre outside of work on my day off by a "regular" who has been sexually inappropriate with myself and team member for years. We still will not ban this man from our store because of the money he spends. I've also enquired and requested if we can get a security guard in our store because not only do I not feel safe but the large majority of women who work at my store do not as well. I was told "if we don't even have money for wages, we're not gonna have wages for a security guard" It's quite heartbreaking to constantly be reminded that the customer and the customers money is valued more than your safety and general well being.'* [Female 20-24 years]

*'My harasser sits outside my work in the food court and watches me as I work. If I notice him he averts his eyes but not for long. He also does his*

*grocery shopping in my store and on the last occasion bought his wife with him. He has also started parking his vehicle closer to mine so I see it when I leave work.'*

*'Most of the harassment in my experience has been from slightly drunk customers at the smoke-shop counter, late at night It has happened to almost all the young (18 to 26 years old) women I work with. It is so common, we're almost used to it. We don't report it because there's no point - we can't ban everyone from stores simply because they drunkenly ask us to the pub after work. Instead, we discuss our experiences, warn each other about the worst offenders and support each other. Our managers are aware that these kinds of things happen but we don't formally report these incidents because they are so common. Generally at a late hour of the evening, it is more important for those working on the shop floor with us to know that a customer has made us feel uncomfortable or unsafe, and I think this kind of support needs to be recognised by employers more.'*

*'I noticed most of the harassment happened in the checkout. Normally older guys sexually assaulted young teenagers who are between 15 years old to 18 years old. Also it's their first job so they're quite naive and scared to speak up and answer back. Those young girls are the most vulnerable of all. They just put up with it. We have an incident that our SDA Delegates ... Noticed the situation when the checkout operator started crying while the old guy is laughing. She was taken out of the register to compose herself. And our SDA Delegates had step up and spoken to the customer witnessed by the other customers....SDA Delegates called the police. It's sad because of that incident that young girl has resigned'*

*'We need to actually execute the idea that sexual harassment is a zero tolerance issue, and that employees should feel like they can actually tell people to stop, instead of allowing this horse shit power dynamic where customers know damn well they have the power to make a scene about poor customer service if we tell them to leave us alone.'*

*'all the times i have been **inappropriately touched** or commented on, it has been by customers. i feel as if i can't tell them to stop because i don't want to be rude to a customer.'*

*'One issue I face alot of the time, when receiving harrassment myself, is the fear of a customer making a complaint about me, as I have had in the past, and the manager not taking the time to find out what has happened. I have been disciplined in the past because of a customer who believes "the customer is always right" and despite him making inappropriate sexual comments that clearly I was not happy to be the recipient of, he believed that it was a compliment to comment on breast and that as a checkout operator I should remain friendly and happy no matter what. I would feel much safer and happier in my current workplace if my store managers and superiors made it open knowledge to all that they will not tollerate sexual harrassment and will support me and atleast let me FEEL like they beleive my claims.'*

*'I have experienced this issue mostly from male customers. It is difficult to be assertive at work because I am supposed to be friendly and amenable to customers. I have read on social media that this is then misinterpreted as 'interest' and I agree. I wish there was a culture in my workplace/culture that supported women whom feel harassed this way at work. It unfortunately would be easier for me if someone else such as a manager were to step in and say 'this is not okay' because I feel very awkward saying it. It is like having two jobs trying to avoid particular customers. I have spoken to other men whom I work with about it to at least garner some understanding of why men think it is okay to make repeated sexual comments to retail assistants, and so someone else is aware it makes me uncomfortable in case I need help. The best option for me is to ask someone to call me out the back of the store if they see particular customers near me, which was my main incentive to let a manager and co-worker of mine know what was going on.'*

*'I used to work at Discount Department 1 years ago in the fitting rooms and I was quite young at the time. I was intimidated by an older man asking me for **hugs and kisses** and it was so unnerving I felt physically sick and this has stuck with me ever since. Please ensure women and young girls are*



protected at work especially from customers/people who don't know and don't understand no means no.'

'Employees need to know they will be supported regardless of how 'serious' the incident is. **I get anxious every time I see this customer** in store. When I can't avoid serving him, even if he is completely polite to me, I feel sick and most times don't feel capable of going to work the next day.'

'Management should be more visible on the floor and easier reachable when sexual harassment especially from customers occur. Because of this reason it is hard to bring immediate attention to a manager when it happens. Most of the time they will just say call me when it happens again....not good enough'

'There was an **employee who was sexually assaulted in the fitting rooms** of our workplace 2-3 years ago. The management didn't discuss it with other workers, nor implement any safety measures to protect other staff members from the same thing occurring.'

'There was recently an incident with a customer who was making unwanted **sexual remarks/ touching** several females in our store. The **store manager and H.R ignored their concerns** several times and the incident was only resolved after they consulted a state level manager. This incident has left me worried for my co-workers when the harassment inevitably continues.'

'We are also **not supported when customers abuse and harass us**. I was asked yesterday by a customer what condoms I use with my boyfriend. When I told my ASM he laughed.'

'**Wearing a badge** with our name on it makes customers and sexual predators feel comfortable enough to harass us under the guise of friendliness. It also allows them to think that because they know your name they are entitled to other personal information about you and to touch you. Wearing a name badge also makes it incredibly easy for those same predators to go home and look us up **online and then harass us** from the comfort of their homes too.'

*'Once I told my manager at the time of the harassment, no action was taken and no support given. The customer that harassed me and has harassed at least 2 other staff that I know of still comes into the store. Many females try to avoid any customer service interaction with him. I am aware of the "free counselling services" available to staff because there's a small notice of it in the staff tea room but other than that I feel the managers could put in more effort to relay information around the processes of reporting and stopping sexual harassment. The fact that nothing happened when I told my store manager at the time of the harassment, not even a one on one meeting to talk about it, shows that the management themselves should be more prepared to deal with these situations.'*

### **Repeat Offenders**

130. Another disturbing statistic regarding the prevalence of sexual harassment by customers is that many workers who experience sexual harassment do so from regular customers who are repeat offenders.
131. The customer abuse and violence survey of SDA members in retail and fast food conducted in 2016 showed that 36% of customers who were abusive or violent were generally known to them.
132. In the SDA/AHRC survey, 35% of members who experienced sexual harassment by a customer in their current job in the last 12 months said the customer had sexually harassed them on more than one occasion.
133. There was no statistically significant difference by gender or SDA sector in this regard, but those aged 30 years or older (42%) were more likely than those aged 18-29 years (33%) to say that the customer had sexually harassed them on a previous occasion.
134. Members who had experienced sexual harassment by a customer in their current job in the last 12 months were also asked whether they knew the person who had been involved in the most recent incident.



135. In 15% of cases, the harassing customer was known to the victim and in four out of five (81%) cases, the harassing customer was unknown. There was no statistically significant difference by gender or SDA sector in this regard. However, those aged 30 years or older (22%) were more likely than those aged 18-29 years (13%) to have known their harasser.

136. Some of the stories members provided in the survey in relation to abuse and violence of a sexual nature included sexual harassment by repeat offenders:

*'I've had this "customer" touch my bottom, lower back, hips and an attempt to touch my breast which I was only just able to move away from. Usually he would always intercept me on the shop front and trap me between the shelf and my trolley.'*

*'Touched me on the hip. Then tried to kiss me on a separate occasion'*

*'a weekly regular touches me in inappropriate places and says inappropriate things to me, other staff are aware of this customer and how intense he can be. Other staff members usually call me to the warehouse when he is seen speaking to me.'*

*'Sleazy male touching female staff including myself. Asked to stop touching us.'*

*'I repeatedly had a customer try to show me physical affection and seek me out within the store, after asking him twice to stop and seeking support from management the issue wasn't rectified so I moved stores.'*

*'There is a regular offender that management has asked to leave on several occasions but will not formally prohibit entry to.'*

*'I used to have a man who would come in every week or so to talk to me and even when I told him I was uncomfortable and not interested he continued to visit and say upsetting things.'*

*'There is an older gentleman who comes in regularly and he will wait for me to finish serving my customers to talk to me. He always says very inappropriate things that make myself and other team mates really uncomfortable'*

*I had a man who knew my shifts and would come to the deli and ask me out repeatedly and when I said no he would imply we could go back to his and do stuff, it took 2 months before he stopped coming And I had ask our manager to help the situation and her advice was to tell him to leave which I did do everytime'*

*'Old man **frequently sexually harasses** myself and other young female staff. He implies sexual innuendos, directly says that he would like to sleep with me, as well as share me with his friends. He also asks other female staff if they are single. We have informed our store manager of this - not too sure what the outcome was. Although the old man now leaves me alone, I know the other female staff are still putting up with his sleazy behaviour.'*

*'Keeps coming through my checkout, making me uncomfortable, asking if I have a boyfriend, asking me out when I repeatedly said no. I said no very clearly'*

*'Customer asked me out for coffee. When I politely declined, a couple of days later came back into the store abusing my workmates and myself and complained about my service also.'*

*'A customer in his 70s continued to flirt with me and I told him several times I didn't appreciate his comments. The next time he came through my check out I tried to give him change from his payment and he tried to grab my hand and somewhere else. I told him to stop and he wouldn't take no for an answer'*

*'male customer has told a young staff member he'd like to take her up against a wall. Another time he smacked another female staff member on the rear'*

*'A **regular customer**, on 2 separate occasions, **touched me indecently**'*

*'I had been crouched down to fill up our drink fridges and had a male customer stand directly next to me **trying to put his private areas near my face**. I had to get up and move away from him to only have this happen to me again. He has also brushed up closely to other team members especially when they are assisting him on our Assisted Checkout areas. Trying to touch them in inappropriate places. **Have been told by management to***

*not make it look obvious that we were avoiding him even though he tries to sexually harass us.'*

137. Similar stories were shared by workers who responded to the customer abuse and violence survey of fast food workers conducted in 2018:

*'I have had a **regular customer** of mine come in and order food and on a couple of occasions when I have asked him if he wanted anything else with his food order, he said he wanted me. And the way he said it seemed to be hinting something sexual. So I simply told him that I myself was not for sale in any way, shape or form'*

*'On at least 3 occasions, a trucker I see on a regular basis, has told me he wants me in response to me asking if he wanted anything else with his meal.'*

*'Inappropriate comments, particularly uncomfortable with regular customers who I have called out and continue their behaviour towards my coworkers in front of me'*

138. The stories provided also demonstrate that employees are not aware of what they can do when a customer sexually harasses and/or assaults them and nor do their management.

139. There are many examples where the worker has complained to management or the store is aware and they have not taken any steps to stop the behaviour or prevent the offender from entering the workplace.

140. Allowing a customer who is a known risk to employees to continue to enter the premises is in breach of Work, Health and safety obligations. Failing to act may also be a breach of the Sex Discrimination Act 1984.

141. Obligations and compliance on employers to prevent sexual harassment by customers must be strengthened. It is also apparent that employers need guidance and nationally consistent laws which allow them to effectively deal with/ remove customers who sexually harass their workers. Customers who

sexually harass workers should also be liable for their behaviours and be subject to the full force of the law for their actions. It is a particularly stark contrast when we consider the way customers who sexually assault workers are treated versus other areas of public life..

### **Employer mechanisms for reporting sexual harassment by customers**

142. The SDA sees very few policies and procedures which provide a reporting or complaints mechanism to deal specifically with sexual harassment perpetrated by customers.

143. In the SDA/AHRC survey, only one in five (20%) members who had been sexually harassed by a customer in their current job said their employer had a mechanism in place.

144. A similar proportion (24%) said that there was no such mechanism in place, and the majority (56%) were not sure if there was one.

145. There was no difference by gender in this regard, but those aged 30 years or more (27%) were more likely than those aged 18-29 years (15%) to say their employer had such a mechanism in place.

146. One member who responded to the SDA/AHRC survey said:

*'I didn't think much of the incident. There are always weird customers to deal with. But if I did want to take it further I have no idea how to or what policies my store has in place to prevent, or report sexual harassment incidents.'*

147. Given that the customer is in the workplace for a limited time, the response from workers to address this behaviour needs to be more immediate and therefore should be set out separately in policies and procedures. At the very least, as this poses a risk to health and safety, there should be a mechanism to report sexual harassment by a customer as a WHS incident, requiring the company to follow up, and companies should encourage employees to report incidents in this way.

148. A significant limitation that employers identify to the SDA is that they don't have data to show the prevalence of sexual harassment by customers. However, employers could simply implement a reporting mechanism which would allow them to gather this data and identify problem stores and customers; particularly patterns of repeat customers. It is somewhat concerning to the SDA that most employers do not include sexual harassment in their incident reporting.
149. Implementing an appropriate reporting mechanism requiring company follow up will also lead to better strategies to deal with customers who sexually harass employees and assist with preventing it.
150. Members who had been sexually harassed by a customer in their current job were asked if they had ever reported such an incident to their employer. One in four (25%) said they had reported an incident of sexual harassment by a customer to their employer, and two in three (67%) said they had not done so. There was no statistically significant difference by gender or age in this regard.
151. Those who had reported sexual harassment by a customer in their current job were also asked if this report had been investigated by their employer. Only one in four (23%) of these Members said their report had been investigated by their employer, two in three (63%) said that it had not and the remainder (14%) were unsure what had occurred.
152. This demonstrates that the vast majority of reports or complaints of sexual harassment by customers are being ignored by employers.
153. While the sample size of those whose report of sexual harassment by a customer in their current job had been investigated by their employer was small, the actions taken by employers included the customer being spoken to or banned from the workplace, and in rare cases, the police being called.

### **Current laws protecting workers from SH by customers**

154. The Sex Discrimination Act 1984 makes not only the perpetrator of sexual harassment liable, but employers may also be vicariously liable if they did not



take 'all reasonable steps' to prevent the harassment. However, this is not entirely clear.

155. In 2011 the *Sex Discrimination Act 1984* was amended to include Section 28G making it unlawful for a person receiving goods or services (customer) to sexually harass another person while receiving those goods or services. The Act was amended in this way in recognition of the fact that the law prevented workers from sexually harassing customers but not vice versa. Prohibition of sexual harassment by customers was also explicitly included in the Act because of fears that employers could prioritise the demands of customers over the protection of their employees because of the commercial imperative to satisfy customers (Senate 2008).<sup>16</sup>

156. It is however unfortunate that this change has had no impact on the way employers deal with sexual harassment by customers. This example further demonstrates the need for a far more rigorous and robust compliance framework of the Sex Discrimination Act to ensure there is a genuine deterrence for employers in the prevention of sexual harassment in workplaces. It is a damning indictment on employers and the regulators that sexual harassment is more prevalent now than it was 10 years ago.

157. While it could be arguable that an employer may be held vicariously liable for sexual harassment by a customer if it has not taken all reasonable steps to prevent it, this has not been tested as the provisions have rarely been used and Section 28G is contained in a separate section of the Act to the protections that apply in employment.

158. To better protect workers from sexual harassment by customers the provisions in the Act should be strengthened to make it clear that employers are liable for third party harassment of their employees. This will require employers to introduce measures to prevent sexual harassment by customers and to implement more effective reporting and response mechanisms when it does occur.

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<sup>16</sup> Good L (2013), *Voicing their Complaints? Students Working in Retail and Hospitality and Sexual Harassment by Customers*, p 21



159. Section 117 of the Employment Relations Act 2000 (ER Act) in New Zealand makes it clear that an employee may make a complaint to their employer if an employee is sexually harassed by a customer or client of the employer. It also requires an employer to inquire into the facts, and if satisfied sexual harassment occurred, the employer must take whatever steps are practicable to prevent any repetition of the behaviour.
160. Section 118 of the ER Act then provides that if the person (including a customer or client) who the complaint was made in relation to, sexually harasses the employee again after the complaint was made and the employer had not taken whatever steps are practicable to prevent the repetition of the behaviour, the employee is deemed to have a personal grievance by virtue of having been sexually harassed in the course of the employee's employment as if the behaviour were that of the employer.
161. The SDA recommends that the provisions in the Sex Discrimination Act be extended in a similar manner to make it clear that it is unlawful for customers and clients to sexually harass employees, that employees can make a complaint to their employer when it happens, and employers must respond and take practical steps to prevent and if they don't they will be liable for subsequent harassment.
162. This is an important amendment, particularly to address the issue that our members have with repeat offenders, as described in our submissions above. It would clarify the duty on employers to respond to complaints, knowing that if they don't they will be liable if the customer repeats their behaviour.
163. The SDA, however, would also like the provision to include a positive duty on employers to prevent sexual harassment by customers and clients.
164. A statutory Code of Practice, enforceable by the AHRC, on preventing sexual harassment should also be developed and include measures that employers must take to prevent sexual harassment by customers and other third parties.

165. This should include as a minimum the development of policies and procedures on sexual harassment by customers, including reporting and complaints processes so that workers are educated about their right not to be sexually harassed by a customer and guidance on what employers can do to stop customers who have sexually harassed their workers.
166. In our experience employers don't have policies or strategies to deal effectively with customers who sexually harass their workers or appropriate reporting mechanisms for employees to access when this does happen.
167. The other important element of this is that, even with the amended legislation, we have not seen any active steps taken by retailers or other industries impacted to educate customers that it is unlawful to sexually harass anyone while receiving goods or services.
168. The SDA recommends that more education is undertaken to ensure customers are aware that they are prohibited by law from doing this. This work could be done by the AHRC, but also included as a requirement in a statutory code of practice. As part of our NODAS campaign, the SDA has taken the lead on this. We have undertaken extensive public education about unacceptable customer behaviours through television, radio, print, billboard and other forms of advertising.
169. As part of our No One Deserves a Serve campaign to address customer abuse and violence, many members support the idea of signage in stores and fast food outlets to encourage better behaviour by customers and educate them that abuse, violence and harassment towards employees will not be tolerated and is against the law.
170. One member responding to the SDA/AHRC survey suggests:
- 'We need signage to state that abuse of any form will not be tolerated. Our business does not want to put any up.'*
171. The current legislation is insufficient as it only prohibits sexual harassment in certain areas of public life.

172. The Anti-Discrimination Act 1991 in Queensland is broad, making it unlawful to sexually harass anyone.
173. The SDA recommends that the Sex Discrimination Act 1984 be amended in a similar manner to the QLD Act to prohibit sexual harassment in all areas of public life.
174. If the legislation was extended to all areas of public life it may be easier to educate customers that sexual harassment is unlawful.
175. Currently, state legislation provides companies with varying rights to ban customers from entering their stores/restaurants etc. The SDA has found, however, that few employers use this as a mechanism to deal with customers who behave inappropriately towards employees whether it be abuse, violence or sexual harassment. It is interesting to note that companies typically use it as a means of banning customers who engage in theft or damage to property, yet don't feel they can use it when customers sexually harass their employees. Perhaps employers need to adjust their perception of the prevalence and impact of sexual harassment in order to begin to treat it with the seriousness it deserves.
176. Due to the variations across states, employers are confused about their legal rights to remove and ban customers. Often actions taken will need police intervention if the customer ignores the ban.
177. In the SDA/AHRC survey one member commented that:
- 'If we can ban customers that sexually harass workers that would be a start, but if you call the police for incidents where banned customers enter the store they can take upwards of 3 hours to arrive and by then the customer has long gone and they get away with it.'
178. Trespass laws and the use of banning notices should be strengthened and amended to give explicit power to employers to ban customers where they

have a reasonable belief have sexually harassed employees or are a risk of sexually harassing employees.

179. Employers should be encouraged to use banning notices and trespass laws in cases where a customer is abusive, threatening, violent or sexually harasses employees. This should be included in any codes or guidance material for employers.

### **Company actions - Dress requirements and marketing/advertising campaigns**

180. Unfortunately, companies sometimes take actions which increase the risk of sexual harassment of their employees. These actions predominately involve requirements to wear indecent or revealing clothing or advertising and marketing campaigns.

181. Although we believe these actions would be in breach of the Sex Discrimination Act and employers would be found to have accessorial or ancillary liability for the acts of customers in these cases, employers seem deliberately blind of their obligations in these areas.

182. The act of requiring an employee to wear clothing which they find humiliating and offensive would also be deemed an act of sexual harassment of that employee, however, employers don't always see it this way.

183. Research has shown that in industries such as retail and hospitality *'employee sexuality is commodified by managers, in a way which is designed to 'draw in' customers and increase sales as a business strategy. Warhurst and Nickson (2009) argue that some organisations attempt to commercialise the sexuality of workers by imposing appearance and presentation rules that the authors classify as 'aesthetic labour'. Restaurant workers (Adkins 1995; Loe 1996), call centre workers (Brannan 2005) and bar staff (Hunyor 2006) have been shown to have been encouraged by their employer to dress in a sexually provocative uniform or to act in a sexual way with customers, to 'flirt' to increase profitability...This existing research highlights that employers can have an active role in encouraging sexualised interactions between employees and customers,*

*which may constrain employees from complaining to their employer about sexual harassment by customers*<sup>17</sup>.

184. In the SDA/AHRC survey 4% of members working in the retail or fast food sector reported that, in the last 5 years, their employer had conducted a marketing or advertising campaign that they felt was inappropriate or made them uncomfortable.

185. In addition, 4% of members working in retail or fast food reported they were expected to wear a uniform or clothing that was inappropriate or made them feel uncomfortable.

186. Among those who had experienced an inappropriate campaign and/or uniform, one in five (19%) said this had led to them being sexually harassed in the workplace. This was twice as common among women (24%) than men (11%).

187. Over the years there have been several cases where companies in retail and fast food have required employees to wear revealing clothing or clothing with indecent slogans. Wearing this clothing has resulted in employees being sexually harassed by customers.

188. As part of a marketing campaign run by General Pants Co. in 2011 young staff were asked to wear 'I love sex!' badges. This was part of a broader campaign 'I love sex! And fashion' campaign to launch a new denim range.

189. The firm's head office confirmed they received more than 40 complaints, mostly from parents, in the first week of the campaign...Along with the controversial badges, posters of a semi-naked woman with gaffer tape on her breasts and a man unzipping her jeans were placed in store windows and mannequins wearing only jeans are also being used to attract attention.<sup>18</sup>.

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<sup>17</sup> Good, L, *op cit*, p 18

<sup>18</sup> Courier Mail, 'Massive backlash after General Pants Co's racy campaign sees young staff forced to wear 'I love sex' badges', 8 May 2011

190. Despite the complaints from customers, parents and employees the company maintained using the badges but said it was optional. However, 'an employee at a General Pants store in Sydney said management instructed her to wear them even though she found the 'badges' degrading'.<sup>19</sup>

191. Employees provided further comments in response to the campaign<sup>20</sup>:

*"It's pretty degrading as a woman but there is nothing we can do"*

*Another employee said she felt "uncomfortable" wearing the badge because she found it "embarrassing" and "demeaning".*

*"I don't think we should be encouraged to wear them," she said "I think it's sending out the wrong message to our customers who are generally teenagers".*

*Staff said they were also forced to deal with shocked and angry shoppers coming in to the store to complain. "We had a lot of shoppers coming in to complain about the posters and ask why the mannequins didn't have any tops on"*

192. In this case the company eventually wound the campaign back [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

193. [REDACTED]  
[REDACTED]

194. Some pre-modern Awards used to contain provisions protecting employees from being required to wear indecent or revealing dress, for example the *Hairdressers and Beauty Industry (Victoria) Award 1996*. Following the modernisation of Awards in 2009, these provisions no longer remain.

195. There is now a significant gap in the protection of workers in relation to dress requirements. There is currently no mechanism for workers not to wear offensive or indecent dress or accessories.

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<sup>19</sup> *ibid*

<sup>20</sup> *ibid*



196. The SDA has made applications to the Fair Work Commission to insert these provisions back into Awards, however, while the Commission accepted the merits of the case were unable to return the provision. This is a classic example of why the *Fair Work Act 2009* must be amended to include an explicit gender equality objective.
197. Given the inability to do this, and to ensure broadest protection of employees, rather than just specific industries and workers covered by Awards, this protection should be provided in the Sex Discrimination Act for all workers.
198. Marketing and advertising campaigns can result in sexual harassment of employees in retail and fast food, whether by the employer through the direct actions of the campaign or by customers who feel empowered by the campaign to sexually harass the staff.
199. In the last couple of years we have seen this occur as a result of marketing campaigns and advertising materials. One major retailer ran a campaign with suggestive television ads and employees serving on registers holding up paddle boards saying 'I'm free', which made employees uncomfortable and subsequently led to sexual harassment by customers.
200. The SDA received an astonishing number of complaints about the campaign from members and raised the issue with the company which resulted in the company significantly modifying the campaign. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
201. Another retailer also frequently uses sexually suggestive advertising resulting in the sexual harassment of employees. [REDACTED]  
[REDACTED]
202. Our local retailers fail to acknowledge that their marketing and advertising impacts on gender equality and can result in an acceptance of violence against women and lead to sexual harassment of their employees.

203. Some employers fail to see that the actions they take are in fact sexual harassment as marketing and expectations around dress can make them feel uncomfortable, offended, humiliated and intimidated.
204. The SDA recommends that the Sex Discrimination Act be amended to specifically prohibit employers from requiring employees to wear indecent or revealing dress or engaging in marketing or advertising campaigns that make an employee feel offended, humiliated or intimidated or provoke sexual harassment by another person.
205. Unions globally have been doing work on the negative consequences sexualised advertising has on gender equality and gender-based violence, including sexual harassment of women workers. UNI Global Union has developed a video which can be found [here](#)<sup>21</sup>.

### **Recommendations to prevent third-party sexual harassment**

The Sex Discrimination Act 1984 should be amended to make it clear that employers are also liable for harassment by customers and other third-parties.

The Sex Discrimination Act 1984 should be amended to provide a positive duty on employers to prevent sexual harassment by customers and amend in line with the Employment Relations Act in New Zealand to require employers to respond and investigate complaints and where they have failed to do so are liable for repeat behaviour.

A statutory code of practice should be developed, implemented and enforced by the AHRC. The code should include guidance for employers on preventing sexual harassment by a third-party and how to respond when it occurs, including action that can be taken against the harasser and a requirement to educate customers that sexual harassment is prohibited under the Act.

The Sex Discrimination Act 1984 be amended in a similar manner to the QLD Act to prohibit sexual harassment in all areas of public life.

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<sup>21</sup> <https://www.youtube.com/watch?v=HtywZ5ogQxA&feature=youtu.be>

Trespass laws should be strengthened and amended to give explicit power to employers to ban customers where they have a reasonable belief they have sexually harassed employees or are a risk of sexually harassing employees.

Information on banning customers should be included in a statutory code of practice or guidance material for employers.

The SDA recommends that the Sex Discrimination Act be amended to specifically prohibit employers from requiring employees to wear indecent or revealing dress or engaging in marketing or advertising campaigns that make an employee feel offended, humiliated or intimidated or provoke sexual harassment by another person.

### **Insecure employment and the impact on the prevalence of sexual harassment**

206. Insecure work such as casual, contract, labour hire and the gig economy contributes to the prevalence of sexual harassment. Workplace and anti-discrimination legislations have not changed to reflect the changing nature of employment in Australia.

207. Insecure work is also a gendered issue as women are more likely to be employed in casual and precarious work.

208. This has resulted in insufficient protection against exploitation, including sexual harassment, for many workers who are not appropriately covered by the legislation.

209. Casualisation and insecure work has significantly increased since the Sex Discrimination Act 1984 was introduced. 'There were just under 2.5 million casual employees (those without access to leave entitlements) in Australia in August 2016. The use of casual employees in Australia grew most strongly from the early 1980s to the mid-1990s. During this time the casual share of all employees increased from around 13 per cent to 24 per cent.'<sup>22</sup>

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<sup>22</sup> Parliamentary Library, *Characteristics and use of casual employees in Australia*, Research Paper Series, 2017–18, 19 January 2018, p 1

210. Casual and insecure work is an important characteristic to consider in relation to the prevalence of sexual harassment and particularly in 'industries such as hospitality and retail trade (which) have very high concentrations of casual workers'<sup>23</sup>.
211. For many in insecure employment the experience of wage theft, bullying and harassment is commonplace and compounded by the fear of losing hours or employment when they speak up or make a complaint. Working in insecure employment is not conducive to an environment where employees feel encouraged to report sexual harassment or make a formal complaint.
212. Several vulnerable groups, such as women, migrant and visa workers, international students and young people are also more severely impacted by insecure work, so the risk of sexual harassment is even greater for them.
213. Research conducted about how workers in retail and hospitality respond to sexual harassment by customers found that *'There is also a high proportion of casual and contingent work in these industries (Bray and Macneil, 2012, p. 337; Chang and Travaligone, 2012, p. 315), another factor associated with workplace vulnerability (Kalleberg, 2009)'*<sup>24</sup>.
214. The nature of casual employment and the fact that many casuals are more likely to already be vulnerable workers results in non-reporting of harassment when it occurs. There are many reasons a casual employee will not report an incident of sexual harassment, regardless of who the perpetrator is, but the main reasons relate to fear that making a complaint will lead to negative consequences such as loss of employment or a reduction in hours.
215. We know from the survey conducted last year that these fears are real. '43% of people who made a formal report or complaint about sexual harassment reported experiencing negative consequences as a result. Almost one in five people who made a formal report or complaint were labelled as a trouble-maker

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<sup>23</sup> Ibid, p 1

<sup>24</sup> Good L and Cooper R, *'But it's your job to be friendly': Employees coping with and contesting sexual harassment by customers in the service industry*, *Gender, Work and Organization* Vol. 23 No. 5 September 2016, p 453.

(19%), were ostracised, victimised or ignored by colleagues (18%) or resigned (17%)<sup>25</sup>.

216. The SDA represents many casual employees. When representing casuals, many are afraid to take action in relation to workplace issues because of fear of adverse action and victimisation if they do. Most are concerned that it will impact on the number of hours they are given, when they are rostered to work which impacts on their take home pay and that it may impact on their ability to be offered more permanent employment.

217. For those reasons many casuals choose not to make a complaint or take any other action.

218. Workplace legislation needs to be strengthened to provide greater permanency and job security and protection for all workers regardless of the way in which they are employed. If workers have greater job security and protections they will be more likely to speak up if they are harassed and make a complaint, informal or formal.

219. Increased reporting of sexual harassment is vital to eliminating and preventing it in workplaces.

#### Recommendation:

**Workplace and anti-discrimination legislation must reflect the changing nature of work to ensure that all workers are protected from sexual harassment and can make a complaint without fear of adverse action or victimisation, regardless of the employment relationship.**

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<sup>25</sup> Australian Human Rights Commission, 'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces' (2018) 79

## **CHARACTERISTICS OF INDIVIDUALS IN THE WORKFORCE WHICH INCREASE THE RISK OF SEXUAL HARASSMENT**

### **Young workers and minors**

220. Young workers aged 18-25 are more likely to be sexually harassed than any other age group. The survey conducted by the AHRC last year found that 45% of workers in that age group experienced sexual harassment in the last 5 years. For workers aged 17 years and under the prevalence of sexual harassment was 20%<sup>26</sup>.
221. The SDA/AHRC Survey also showed that young workers are more likely to be sexually harassed, particularly young women. While over half of the women aged under 35 years reported experiencing sexual harassment at work in the last 5 years. The age group most likely to be sexually harassed was 18-24 year old females, 60% of female members in this age group reported being sexually harassed in the last 5 years.
222. Half (50%) of very young female members aged 15-17, which includes minors, and half of the women aged 25 to 34 also reported experiencing sexual harassment and were the second largest group.
223. The reported levels then begin to drop to around two in five for women aged 35 to 54. 44% of 35-44 year olds experienced sexual harassment and 43% of 45-54 year olds and a quarter (23%) of women aged 55 or older.
224. The reported experience of workplace sexual harassment of men was different with younger men much less likely to report having been sexually harassed at work. Three in twenty (14%) of those aged under 18 had experienced sexual harassment in the last 5 years and just over a quarter (28%) of the men aged 18-24.

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<sup>26</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 32



225. Harassment levels in the last 5 years for men peaked at around one in three for men aged between 25 and 44 (25-34 36%, 35-44 34%) and dropped to around one in five of the older males (45-54 25%, 55+ 16%)
226. These results demonstrate that young workers, particularly females, have an increased risk of being sexually harassed at work. There are many reasons for this.
227. The AHRC survey also found that the level of intimidation felt about workplace sexual harassment was greater among younger workers than older workers. The mean level of intimidation experienced declined proportionately with age until around age 30 and those under 18 years experienced the greatest levels of intimidation from sexual harassment<sup>27</sup>.
228. This would indicate that young workers are at a greater risk of being impacted by sexual harassment at work. This increased risk factor should be considered when addressing the issue of sexual harassment in workplaces, and also as a work health and safety issue.
229. Young workers predominately work in service industries so are exposed to risks of sexual harassment not only by people they work with (supervisors, managers and co-workers) but also by customers and other third-parties entering their workplace. We know from the results of the AHRC national prevalence survey that the rates of sexual harassment by customers is significantly increasing
230. We also know this from the results of the SDA/AHRC survey and our own surveys on customer abuse and violence, as detailed earlier in this submission.
231. Below are examples that our members aged under 18 years told us in response to our customer abuse and violence surveys. Our young members aged 18-25 years have provided similar experiences which again cover a broad spectrum of behaviour including comments, asking out, being followed in the store, threats of rape and all too often, sexual assault.

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<sup>27</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 61

232. Many instances are not only behaviours which constitute sexual harassment under the SD Act but are also criminal offences, such as sexual assault, which employers are failing to safeguard employees from.
233. Some of the more serious experiences included:

**2016 Retail and Fast Food Survey**

*'sexual comments, threats of rape'*

*'...customer touch my bottom, lower back, hips and attempt to touch my breast..'*

*'following me around the store making sexual remarks, and one customer tried to kiss me'*

*'An elderly man stroked/rubbed my legs up and down'*

*'touched me on the hip. Then tried to kiss my hand on separate occasion'*

*'...weekly regular and touches me in inappropriate places'*

*'Slapping me on the arse'*

*'stalking and showing me pornography on his phone. He was issued a stalking notice....'*

*'Handing me an unwanted graphic picture to look at – the customer made me look at it and flashed it in my face'*

*'A man masturbated into underwear and gave them to me'*

*'A customer threatened to rape me as I locked the car park gates after closing time'*

*'Hands on waist, not taking no for an answer. Constantly asking for sex'*

*'Lipstick was offered to be painted on my penis by a bunch of drunken gay men. Enough said'*

*'customer trying to lift up my skirt'*

*'Getting hit on all the time, asking if I had a bf, asking for a date, trying to touch me, sexualised comments, dick jokes, the list goes on'*

*"...grabbing me inappropriately and being held against them*

*'one customer threw his arm around me and grabbed my arse'*

*'the customer kept staring at my chest and said he made me horny'*

*I was groped by an old man who ran his hand, then his crotch, then his hand over my behind'*

*'Groping, asking to "come out to the car"*

*'Calling me a rapist'*

*'Grabbed on the behind while filling drinks...one person tried to grab my breast while I was behind the register'*

*'Had a customer tell me he would "fuck" me after my shift...'*

*'Have customers get very angry if I won't give them my number or get in their car'*

*'customer physically touched me on my ass'*

*'I have been sexually assaulted both physically and verbally by male customers in the last 12 months'*

*'Customers have threaten to rape me in the car park'*

*'A customer flashed his genitals at me when I was serving him'*

*'I was touched/rubbed on the backside by a male customer'*

### 2018 Fast Food Survey

*'customer tried to grab my boobs'*

*'customer saying he was driving around looking for me after night shift (I walk home)'*

*'A guy was rubbing himself 'down there while I was serving him'*

*'threats of rape and then drunks on a Friday night saying they're going to "bend me over and fill me up"*

*'self touching, indecent exposure'*

*‘...followed me outside when I was on break and wouldn’t leave me alone  
tried kissing me’*

234. As discussed further in our submissions below, young workers are also more likely to be sexually harassed online, via social media or some other form of technology.

235. A problem which compounds the risk of sexual harassment of young workers is the fact that young workers are unlikely to complain about sexual harassment.

236. Research has shown that ‘many young workers between the ages of 15 and 25 have a limited understanding of employment conditions and entitlements, including information relating to their working conditions and pay, as well as how these things are determined or what they should be.’ (Smiljanic, 2004). Furthermore, even when they are aware of their workplace rights, some young workers are unsure of the formal mechanisms and grievance procedures they could use when their rights are violated (McDonald et al., 2007). For example, young workers often treat workplace injuries as ‘part of the job’, because they are unaware of the procedures for making a complaint and also because they believe that such an action would not change their working circumstances (Breslin et al., 2007, p. 790). This is particularly concerning because young workers are the most at risk group of employees in relation to workplace injury and harm, including sexual harassment (AHRC, 2012, p. 4; Smiljanic, 2004).<sup>28</sup>

237. Most young workers in retail and fast food, and particularly minors, aged under 18 years, are casual as they are predominately still at school and in their first job. This places that age group at a heightened risk of sexual harassment and they are also less likely to make a complaint if they are harassed. ‘Researchers have found that sexual harassment intersects with other markers of workplace vulnerability, including age and temporary employment (AHRC, 2012, Krasas-Rogers and Henson, 1997; La Montagne et al, 2009)<sup>29</sup>’.

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<sup>28</sup> Good L and Cooper R, *‘But it’s your job to be friendly’: Employees coping with and contesting sexual harassment by customers in the service industry*, *Gender, Work and Organization* Vol. 23 No. 5 September 2016, p 453

<sup>29</sup> *Ibid*, p 452

238. In workplaces such as fast food, where the workforce is typically under 25 years, and many are casual the workplace culture can be highly sexualised or sexually hostile. The fact that young workers sometimes don't have a good understanding of their rights and obligations regarding sexual harassment, and even if they do, are not likely to report an incident of sexual harassment entrenches sexual harassment in the workplace culture.

239. The SDA/AHRC survey found that young SDA members were least likely to know if their current employer had a policy or procedure in relation to sexual harassment. Approximately one in three (31%) SDA members did not know whether their current employer had policies or procedures in place. This rate was higher among younger employees, 42% among those aged 15-17 years, compared with 36% among those aged 18-29 years and 26% for those aged 30 or older.

240. Young workers must be educated about their right to a workplace free from sexual harassment and their obligations not to sexually harass. Reporting cultures must be encouraged so young workers make a complaint so that sexual harassment can be eliminated and prevented.

241. Employers must have a positive obligation to prevent sexual harassment so that they are required to take proactive steps to drive a change in sexualised workplace culture.

### Sexual harassment involving minors

242. In the retail and fast food industries, most employers start to engage workers from the age of 15 years, with some employed at 14 years with the consent of a parent or guardian.

243. The AHRC survey found that '20% of 15–17 year old's have experienced sexual harassment in the workplace in the past five years'<sup>30</sup>.

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<sup>30</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 32

244. The SDA/AHRC survey conducted of SDA members found that just over half (51%) of very young female members aged 15-17, reported experiencing sexual harassment. Many of these members are minors under the law. This is a staggering statistic. It is completely unacceptable that young women, most likely in their first job, are more likely than not to experience sexual harassment. This is also significant because for those who are minors under the relevant state legislation, they are also potentially being exposed to criminal behaviour.
245. The experiences of sexual harassment provided by members 17 years and under in the SDA customer abuse and violence demonstrates that minors are experiencing a range of sexual harassment from verbal comments to sexual threats and assault.
246. Below provides some of the experiences that our members identified in the 2016 Customer abuse and violence in retail and fast food survey:

*'An old man comes in regularly that makes slimy remarks to the female employees, last time he said to me 'I'm glad you served me your prettier than the other girls' managers have been told about this man frequently'*

***'Watching porn in drive thru'***

***'A guy grabbed my ass'***

***'Cat calling'***

*'There are often **sexual comments** made by customers such as "could I order a blowjob with that?" Its meant as a joke but makes employees feel uncomfortable and we are unsure about what action to take in response so generally laugh it off despite it being confusing and sometimes distressing.'*

***'Attempts to touch me'***

*'Staring at my chest, making grabby motions with his hands that he knew I could see (even though directed towards his friends), in another instance catcalling in the carpark'*



*'upon receiving his food, a man made a remark to me about how 'nice my tits looked in that shirt'*

*'An owner of another shop across the mall often comes in and tells me I'm hot or sexy. As well as often calling me baby and telling me uncomfortable things such as "I want you to be a model" etc.'*

*'Inappropriate propositions and caressing of hands'*

*'Customer talks sexual about underage employees'*

*'Sexual comments and suggestions'*

*'I had a guy put his hands down his pants and rub... I didn't know what to do, I thought he had a mental issue, I didn't report it'*

*'inappropriate sexual comments'*

*'...three men in a taxi were drunk and were yelling inappropriate comments at me. I felt extremely uncomfortable and physically unsafe'*

*'Looking down my shirt making inappropriate comments'*

*'old men keep thoroughly questioning me including age name and if I will get off work and spend the rest of the night with them'*

247. The experiences below are from members aged 17 years and under who responded to our customer abuse and violence survey in fast food in 2018:

*'Rude comments and gestures'*

*'Old men winking and saying rude sexual comments'*

*'I asked if they wanted to insert the card and they said they'd insert something else'*

*'Inappropriate comments, man flashed me, rude gestures'*

*'constantly hitting on me to get me to go out with them and how age doesn't matter'*

*'customer wanting to take me home and have "fun" and shoot up'*

*'passing the cash change through the window he took my hand and was rubbing up and down my hand saying how nice I felt under his fingertips. Also had an old man ask to take me home with his fries'*

*'making comments like "I love it when a girl gives it a good twist" and inappropriate nicknames such as babe, darling, and sweetie, particularly from older, middle aged men. For context, I experienced this as a 16-17 year old'*

*'Some of the men will blatantly say things such as, "you are so pretty, why are you working here?" and try to hold my hand when I give them their change back.'*

*'Flirting at first then when I turned away they started making sexual advances'*

*'A customer made a comment about the chicken breasts saying why I can't I have more than 2 breasts these two ladies have 2 nice breasts'*

*'I've had people wait till I finish my shift and follow me out, stare at parts of my body and then comment on them. I've had this daily for three years and I'm 16.'*

*'Inappropriate comments, rude comments and **threats**.'*

*'I had a customer **comment on my breasts**, been stared at until I was made to feel uncomfortable by an old man'*

*'I had a guy continuously come into the store to see me and he **followed all my social media accounts** and sent and said really sexual things to me. I was 15 at the time'*

*'A man told me that I was sexy and that he wanted to have sex with me, his friend laughed and then they left'*

*'not towards me, but a coworker has experienced multiple occasions of unwanted sexual advances and gropes from customers'*

*'Telling me to suck them off, saying I have beautiful sucking lips'*

*'commenting on a coworker's appearance in an inappropriate manner, telling another coworker to reveal his genitals to them'*

*'Many men flirt with me at the drive thru which is very uncomfortable'*

*'Many make **customers** have hit on me and as a 14 year old girl who has already experienced sexual abuse it is very uncomfortable'*

*'I was **videoed at work/taken photos of'***

*'I have had people make **sexual comments and jokes** about my age saying "Oh yeah, you're finally legal now so it's open season." But its only happened 3 times in the past year.'*

*'Asking if I wanted to come with them, yelling sexual comments as they drive off'*

*'Sexually talking and commenting on my body'*

*'**Sexual assault. Touching.'***

*'looking at my breast. telling me I'm sexy.'*

*'**Rape threats'***

248. These stories represent a very disturbing reality for very young, inexperienced workers in Australia. Workers who are most likely having their first experience in the workforce. It is a very sad reflection on our workplaces and society more broadly that this their 'normal' expectation of work.

249. The problem is worse given the fact that we know that young workers are vulnerable not only due to age but also other factors such as being in insecure, predominately casual employment and that they have a lack of understanding about their rights and entitlements and do not have the skills or confidence to raise issues and make complaints about sexual harassment when they occur.

250. The problem is also compounded when you look at the results of the AHRC survey which suggests that workers under 18 years are more likely to be intimidated by sexual harassment than older workers.

251. Even though large numbers of workers aged from 14-17 years in these industries are experiencing high rates of sexual harassment, there are no additional obligations on employers or guidance in the materials provided by the

AHRC or safety regulators in relation to the treatment of minors and additional legal responsibilities or obligations which may be applicable.

252. The definition of a minor is determined under state legislation. Under Australian law the age of majority is eighteen. In many areas of law, however, a person under the age of eighteen may make decisions or be deemed old enough to be legally responsible for their actions.

253. Age of consent laws in each state restrict the decisions persons under the age of 18 years can make in relation to sexual behaviour and are aimed at striking a balance between protecting children and young people from exploitation and other harms and preserving their right to privacy and healthy sexual development.<sup>31</sup>

254. The key difference between adult sexual assault and child sexual assault is that adult sexual assault is based on the absence of consent, whereas in child sexual assault the issue of consent may be superseded by laws proscribing age of consent. Even though a 'child' may consent to sexual behaviour, according to the law they do not have the decision-making capacity to give consent. Therefore, sexual interactions between an adult and a person under the age of consent are considered abusive<sup>32</sup>.

255. When an adult engages in sexual behaviour with someone below the age of consent, they are committing a criminal offence (child sexual abuse)<sup>33</sup>.

256. This raises the issue of potential criminal behaviours which may be perpetrated in the workplace, even though they may not normally be considered sexual harassment because there has been consent. This is particularly relevant for employers where these instances occur between young worker and an adult co-worker or in many cases supervisor.

257. In addition to this is the risk of child grooming. Although they are not the common complaints we receive, we have received several complaints from

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<sup>31</sup> Australian Institute of Family Studies, *Age of consent laws*, CFCA Resource Sheet – July 2017

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

minors working in retail, and more frequently fast food, where the behaviours can be deemed to be grooming of the worker with the intention that it will lead to sexual behaviour.

258. The Australian Institute of Criminology says that 'A process of grooming then commences where offenders take a particular interest in the child and make them feel special with the intention of forming a bond. Intimate personal details including the predator's sex life are shared with the child 'confidante' with the intention of making it easier to procure the recipient to engage in or submit to sexual activity with the offender or another person'<sup>34</sup>.
259. All states have laws against the grooming of children, which in most cases is either under 16 years or under 17 years, by an adult, which is someone over 18 years.
260. Young workers are vulnerable to grooming by adult supervisors because there is already a power imbalance which creates a greater risk of young workers complying with the requests or behaviours of the person grooming them, particularly if they have control over their employment, including hours allocation and promotional opportunities.
261. We have dealt with examples of grooming which have resulted in young workers being exposed to sexual behaviours and harassment and led to health impacts and negative employment consequences, including resigning and being unable to undertake paid work due to fear.
262. Given that this type of behaviour occurs during a worker's first experience in the workforce it can potentially impact on their ability to work in the short and long term.
263. Grooming or any experience of sexual harassment should not be anyone's introduction to work.

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<sup>34</sup> Australian Institute of Criminology, *Online child grooming laws*, ISSN: 1832-3413, Published: 04/2008

264. The SDA has never seen any workplace policies which address the issues of age of consent or grooming. Given these can both be serious criminal matters, it is neglectful for employers in our industries, which employ minors and young workers, to leave this out.
265. In many forms of life adults working or volunteering who have exposure to children are required to undergo working with children checks (WWWC). WWWC's are required under state-based legislation and while the legislation varies, they broadly cover a range of activities and occupations but exclude the requirement to have a WWWC when you manage or supervise someone as part of the child's employment. This means that currently, adults who supervise children who are employed in work are not required to hold a WWWC.
266. The SDA believes that this should be a requirement for supervisors and managers in retail and fast food, or any workplace employing workers below the age of 18. Supervisors and managers are in a position of power and have unsupervised access to minors, which increases the risk of sexual harassment. Minors have no work experience and do not ordinarily have the confidence, knowledge or skills to speak up if they are being sexually harassed or feel uncomfortable from the behaviour of someone who is older and in a position of power.
267. Introducing a WWWC, would ensure that supervisors and managers do not have any history of offences against minors and would create an additional deterrent to committing such offences in the workplace.
268. The requirement for supervisors and managers to have a current WWWC would also focus the obligation on employers to eliminate and prevent sexual harassment of minors.
269. The SDA also recommends that the Sex Discrimination Act be amended to explicitly require employers to take proactive measures to prevent sexual harassment of young workers, and minors.



270. A code of practice should also be introduced which includes measures that relate to the additional legal considerations in relation to sexual harassment and sexual interactions/behaviour between adult employees and employees who are minors.

271. The SDA has never seen a company policy which addresses the issue of sexual harassment or sexual relations with minors and, as far as we are aware, employers in our industries have not considered whether they need to comply with any additional obligations in relation to this issue.

### **Mandatory Reporting**

272. A further question which this issue raises is whether employers have mandatory reporting requirements for sexual offences against minors. In the NT any adult is required to report if they have a reasonable belief that a sexual offence has been committed against someone up to the age of 18 years. This obligation does not exclude employment.

273. In Victoria there are also mandatory reporting requirements for any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 years.

274. While these obligations are not applicable in other states, this does not preclude an individual from making a report to police or a statutory child protection service if they have concerns about a child's welfare. Non-mandated or voluntary reporting makes up a large proportion of all reports. Anyone who reports, whether they are required under mandatory reporting or they do so voluntarily is protected with regard to confidentiality and immunity for any legal liability in a civil, criminal or administrative proceeding<sup>35</sup>.

275. Given that some behaviours are of a criminal nature, such as sexual assault, including consensual sexual behaviour of a minor, sharing of sexually explicit

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<sup>35</sup>Australian Institute of Family Studies, *Mandatory Reporting Child abuse and neglect*, Child Family Community Australia Resource Sheet – September 2017. (<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> )

material and child grooming, employers need to consider their obligations to report incidents of workplace sexual harassment, whether to the police or relevant state child protection authority.

276. Employer responses to this issue should also be addressed in company policies and procedures on sexual harassment and in training of managers and all levels of staff.
277. The SDA is aware of cases where sexual harassment perpetrated by a supervisor or manager has been substantiated and the respondent has maintained their employment, including their management position which would involve the supervision of 'children' employed in their workplace.
278. While the SDA believes that anyone in a position of authority or power who has been found to have sexually harassed someone should be terminated or at the very least demoted, we know that this is not always the outcome. This raises concerns about how seriously employers take the responsibility to prevent sexual harassment, the level of risk they are willing to take by leaving a manager in their position, the lack of deterrence it provides and the negative example this sets to all levels of employees which hampers any potential for positive cultural workplace change.
279. Companies employing minors should have sexual harassment policies and procedures which require employers to actively monitor employees who are in supervisory or management positions who have been found to have sexually harassed another employee.
280. Failing to monitor an employee in this circumstance should make an employer vicariously liable for any future sexual harassment by that employee. It would also be arguable that in a case such as this an employer could be found to have accessory or ancillary liability for future sexual harassment.<sup>36</sup> However, employers don't appear to understand their potential accessory or ancillary

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<sup>36</sup> Australian Human Rights Commission, *Ending Workplace Sexual Harassment: A resource for small, medium and large employers*, May 2014, p 21

liability and complaints don't result in the appropriate outcomes to suggest that this is a consideration by employers.

281. Failure to monitor would also be a failure under the WHS legislative regime.
282. The issue of managers and supervisors continuing in their role after a substantiated complaint of sexual harassment should be addressed in a Code of Practice and clarity around accessorial and ancillary liability should be provided and companies should be required to include steps to mitigate the potential for this in policy and procedures.
283. The protection of children in employment is dealt with in various state child protection legislation. Some states also have regulations which prescribe a statutory code of practice, however, these codes are confined to the entertainment industry, including modelling.
284. A code of practice has been developed for the entertainment industry to regulate the unique work requirements in this industry and the employment of children from birth to 16 years.
285. While a code of practice on the employment of children of this nature may not be necessary in other industries and occupations, a code of practice providing guidelines on sexual harassment of minors and young people in retail, fast food and hospitality is needed to prevent sexual harassment of this vulnerable group.
286. The survey results demonstrate that the sexual harassment of minors and young workers in Australian workplaces is a particular problem which requires a targeted response.

**Recommendations regarding young workers and minors:**

**A Code of Practice be developed for the employment of minors and young workers in the retail, fast food and hospitality industries. This Code would provide guidance on laws pertaining to minors and young people which are relevant to sexual harassment, including age of consent and child grooming legislation and mandatory**

reporting requirements regarding sexual abuse/behaviour. The Code should also include additional protections employers should have in place to safe guard minors and young people from sexual harassment.

Working with Children Checks should be mandatory for anyone who in the course of their employment supervises or manages an employee who is a minor.

### **WORKPLACE-RELATED SEXUAL AND SEX-BASED HARASSMENT PERPETRATED ONLINE AND VIA THE USE OF TECHNOLOGY AND SOCIAL MEDIA**

287. The changing nature of technology and its uses has introduced another forum through which workers can, and do, experience sexual harassment.

288. The AHRC national prevalence survey showed that 'One in twenty (4%) people have experienced sexual harassment occurring online or via some form of technology, in a work-related context, in the last five years. Women were equally as likely as men to have experienced this. As with lifetime sexual harassment, young people aged 18–29 (8%) were the age group most likely to experience technology-based harassment, while those aged 40–49 (4%) and 50–64 (3%) were comparatively less likely'<sup>37</sup>.

289. The SDA/AHRC survey found that 4% of members had experienced employment-related sexual harassment in the form of sexually explicit comments in emails, SMS messages or on social media. There was no significant difference by gender in this regard (Males 3%, Females 4%). While this figure appears low across the industries, it is still a significant number of people and we expect that this will continue to rise.

290. The SDA has seen a significant increase in the number of complaints from members who have been sexually harassed online and via social media. Many cases are either entirely online or via social media or this forms at least one element of the sexual harassment.

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<sup>37</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 45-46

291. Commonly the sexual harassment is via social media such as Facebook, snapchat and Instagram or via messenger or text.
292. This is a significant problem in fast food, which is a predominately very young workforce where the lines between work and social life can get blurred.
293. The examples we commonly see of workers being sexually harassed by co-workers via social media include using the forum to share indecent pictures of themselves, sexually explicit material, jokes or persistently asking a co-worker or subordinate to go out on a date.
294. A further problem we have identified is the use of technology, and in particular social media, for older workers to groom younger workers, including minors. The SDA has had recent cases where young girls aged 14-15 are being groomed by supervisors, trainers or co-workers who are in their early to mid-20s and while some of the grooming was done in person, the grooming often starts by befriending them via social media.
295. In the surveys the SDA has conducted on customer abuse and violence our members also provided examples of sexual harassment online and via social media:

*'I had a guy continuously come into the store to see me and he followed all my social media accounts and sent and said really sexual things to me. I was 15 at the time'* – Fast Food Survey 2018

*'messed me on facebook'* – Retail and Fast food survey 2016

*'Searching me on facebook and messaging me'* – Fast Food Survey 2018

*'I was videoed at work/taken photos of'* – worker 17 years and under Fast Food Survey 2018

296. It is common practice in both retail and fast food for workers to be expected to wear a name tag. This has led to many examples, particularly if workers have



a name which is not common, for customers to be able to track them on social media and continue sexual harassment online or via social media.

297. One member who responded to the SDA/AHRC provided the following comments in relation to this issue:

*'Wearing a badge with our name on it makes customers and sexual predators feel comfortable enough to harass us under the guise of friendliness. It also allows them to think that because they know your name they are entitled to other personal information about you and to touch you. Wearing a name badge also makes it incredibly easy for those same predators to go home and look is up **online and then harass us from the comfort of their homes too.'***

298. The majority of employers have policies on the use of social media which include harassment and bullying, including sexual harassment, though not harassment by customers. Most Branches of the SDA also have educational information for members and delegates regarding the use of technology and social media and the impact it can have on your employment.

299. There have been recent unfair dismissal cases before the Fair Work Commission which have involved the termination of the employee due to online/social media sexual harassment. These cases have predominately involved behaviours which have occurred outside of the physical workplace and out of work hours. The FWC in these cases has deemed that the behaviours constituted workplace sexual harassment and the terminations were upheld<sup>38</sup>.

300. The SDA believes that there is a need for more education, particularly of young workers, on the appropriate use of social media and the impact it has on work, particularly in relation to sexual harassment.

301. Most, if not all, of our young members use social media and co-workers and supervisors are included in their friends or followers. There is a general misunderstanding about their responsibilities when using social media and technology to communicate with people they work with. As friendships develop

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<sup>38</sup> [2019] FWC 606, [2018] FWC 3921, [2018] FWC 174



many feel the workplace obligations around the use of social media lessen if they are friends on social media as they view it as an out of work forum.

302. This, however, is not isolated to young workers, as can be seen from the cases before the Fair Work Commission, referred to above, which did not involve young workers.

The AHRC national prevalence survey found that workers who experienced sexual harassment via the use of technology were disproportionately more likely to report this form of sexual harassment than other, more common forms of sexual harassment, 'sexually explicit comments made in emails, SMS messages or on social media represented 2% of all incidents, but were reported in 34% of cases'<sup>39</sup>

303. One of the reasons, we believe, that workers are more likely to make a complaint about this form of sexual harassment is that they have the proof that it has occurred which eliminates many of the reasons provided for why workers don't make a complaint, particularly fear that they won't be believed, that it won't be taken seriously, or that they would be seen to be over-reacting, or embarrassment.

304. The SDA recommends that any changes to the Sex Discrimination Act consider the use of technology and ensures that workers are protected from sexual harassment perpetrated using technology, including online and social media.

305. The legislation also needs to provide greater clarity about the use of social media and technology and that behaviours perpetrated 'outside' the workplace can constitute workplace sexual harassment.

306. This clarity is also needed to ensure the policies also address customer perpetrated sexual harassment via online and other technological needs.

### **Recommendations regarding sexual harassment using technology:**

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<sup>39</sup> Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces* (2018), p 74

The development and delivery of education by the AHRC on the use of social media and sexual harassment.

Amending the Sex Discrimination Act 1984 to make it clear that workplace sexual harassment includes sexual harassment perpetrated by anyone, including co-workers and customers, using technology and that these behaviours conducted 'outside' of the workplace can constitute workplace sexual harassment.

### **INCREASE IN PREVALENCE OF MALE EMPLOYEES EXPERIENCING SEXUAL HARASSMENT**

307. While the results from both the AHRC National Prevalence Survey and the SDA/AHRC Survey found that women are much more likely to experience sexual harassment than men, the statistics also show that men's experience of sexual harassment at work is increasing and differs in some ways to the experience of female workers.

308. In 2012, the *Working without fear* report found that 16% of men had experienced sexual harassment at work in the past 5 years.<sup>40</sup> This has increased to 26% in the 2018 survey.<sup>41</sup>

309. For our members, there are differences in the likely perpetrators of sexual harassment of male employees and the age of victims. Male employees are more likely to be harassed by a more senior co-worker, including a supervisor or manager and less likely to be harassed at a very young age.

310. Consideration of the differences in the experience of sexual harassment should be taken to ensure that the measures are appropriate to deal with sexual harassment experienced by men.

311. As noted earlier in our submission, gender inequality is a key driver of violence against women, including sexual harassment and that strategies must be adopted which deal with the gendered aspect of sexual harassment as a form of

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<sup>40</sup> Australian Human Rights Commission, *Working without fear: Results of the 2012 sexual harassment national telephone survey*, p 17

<sup>41</sup> <sup>41</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)*, p 10

violence against women. However, it is important that the experiences of male employees are not ignored in the development of strategies for the prevention of sexual harassment. .

312. The SDA has had feedback from male members that they are often ignored or belittled if they raise a complaint of sexual harassment, so there is still a perception that male employees are not impacted by sexual harassment.

313. One male member in responding to the SDA/AHRC survey said:

*'When males get sexually harrassed treat it the same as when females get sexually harrassed. This is the 21st century, stop giving bias advise against males; because that's what i got. (Sorry for the implicit anger at that)'*

## **THE CURRENT LEGAL FRAMEWORK**

314. The current legal framework fails to protect workers from sexual harassment. The framework does not provide any positive, proactive duties on employers to prevent sexual harassment. Instead the framework relies on individual complaints from workers who have been sexually harassed and the employer's actions to take reasonable steps to prevent sexual harassment are then tested in light of the complaint.

315. When the Sex Discrimination Act was enacted in 1984 the threat of individual complaints may have seemed real and provided initial impetus for companies to develop comprehensive policies and complaints processes and procedures. The passage of time has shown that the legislation is rarely used and when it is used it is not an effective complaints mechanism and does not provide employers with the incentive to appropriately prevent and deal with sexual harassment.

316. A system which relies on individuals to make a complaint will not address the systemic nature of the prevalence of sexual harassment in Australian workplaces.

317. Many victims report that the complaints process, both internal and external, and the negative impacts from making a complaint after they were sexually harassed was worse and had more long-lasting effect than the incident itself.
318. The legal framework must be changed to provide:
- a proactive obligation on employers to prevent sexual harassment;
  - a complaint mechanism available to both individuals and collective complaints from representative organisations;
  - a mechanism which is quick, accessible and efficient;
  - sufficient compensation and punitive outcomes
  - an incentive for employers to prevent sexual harassment by way of appropriate fines and damages orders

### **Sex Discrimination Act 1984**

319. The Sex Discrimination Act 1984 (SD Act) makes it unlawful to discriminate on the grounds of sex and makes sexual harassment unlawful in several areas of public life including employment.
320. The SD Act does not provide a positive duty on employers to prevent sexual harassment. Section 106 of the SD Act confers vicarious liability on an employer for the acts of its employees or agents, unless it can establish that it took all reasonable steps to prevent the employee or agent from perpetrating acts of sexual harassment.
321. Under the current legislation, an individual complaint is required to test the vicarious liability of the employer and whether or not they took reasonable steps to prevent the sexual harassment that is being complained of from occurring.
322. The threat of an individual complaint and being held vicariously liable has not provided the desired incentive for employers to put in place measures to effectively prevent sexual harassment. This is compounded by the very low restorative and punitive compensation and damages awarded in this jurisdiction which are obscenely low when compared with other jurisdictions.

323. While we have seen increased prevalence of workplace sexual harassment over the last three AHRC national prevalence surveys, the data from last year's survey shows a significant increase in sexual harassment in Australian workplaces to critical levels.
324. It is abundantly clear that the current legal framework has not, and if unchanged, will not stop or reverse the appalling rates of sexual harassment in our workplaces.
325. The SD Act must be amended to include a positive, proactive duty on employers to prevent sexual harassment. This new positive duty should also be underpinned by a statutory Code of Practice requiring employers to have a comprehensive stand-alone policy, regular accredited sexual harassment training of all staff delivered by an accredited trainer and a transparent complaints/investigation procedure which requires investigators to be accredited and impartial.
326. The SDA must also empower the AHRC to monitor compliance with the Code and the ability to fine employers who are not compliant.

### **Current Workplace Practices Under the Sex Discrimination Act**

327. The evidence from the AHRC National prevalence survey and the SDA/AHRC survey demonstrate that workers overwhelmingly rely on their employer to protect them from sexual harassment and effectively deal with their complaints, with very few workers making complaints to external agencies.
328. The evidence also overwhelmingly demonstrates that employers are failing workers on both scores. Workers are experiencing sexual harassment at increasing levels, few are reporting (17% in national survey and 13% in SDA/AHRC survey), because they either don't know how to or the process or don't think anything will change. The SDA/AHRC survey confirmed that employees are justified in their reason not to report or make a complaint. In 28% of cases there was no

consequence for the perpetrator, in 61% of cases no changes to the workplace and in 26% of cases they didn't know if there had been an outcome.<sup>42</sup>

329. The legislative framework must change to require employers to prevent sexual harassment and to have appropriate reporting and complaints mechanisms to deal with sexual harassment when it occurs.

### **Policies and procedures**

330. With the enactment of the Sex Discrimination Act in 1984 many companies introduced comprehensive stand-alone Sexual Harassment Policies which contained complaints and investigation processes and rolled out training to all staff to ensure they were taking the reasonable steps necessary to avoid potential vicarious liability under the new laws.

331. Over more recent years in the retail and fast food industries we have seen a scaling back of policy on sexual harassment and a more ad hoc approach to training and procedures around reporting, responding to and investigating complaints.

332. The low levels of complaints to the AHRC and the very small number of decisions issued by Australian courts in relation to sexual harassment has resulted in a strategy of risk minimisation by employers, that is weighing the cost and burden of measures to prevent and appropriately respond to sexual harassment against the minimal potential cost of settling an individual matter if and when they arise.

333. Most retail and fast food companies include sexual harassment in broader 'Respectful Workplace' Policies which often do not contain a transparent grievance procedure or complaints process.

334. This has watered down policy and lead to a downgrading of the seriousness of sexual harassment. The lack of a grievance procedures and complaints

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<sup>42</sup> SDA/AHRC Survey, 2019



process has led to poorly executed investigations and outcomes for complainants.

335. The SDA/AHRC survey asked respondents a series of questions in relation to company policies and procedures. The survey found that:

- three in five (59%) SDA members who had been in the workforce in the last 12 months said that their current employer had one or more of the sexual harassment policies/procedures examined in the survey.
- one in two (50%) members said their employer had procedures for reporting or complaining about sexual harassment.
- just under half (48%) said their workplace had a written policy on sexual harassment
- one in five (18%) said their workplace had one or more sexual harassment contact officers

336. Approximately one in three (31%) did not know whether their current employer had any of these policies or procedures in place. This rate was higher among women than men (34% and 27% respectively) and among younger employees (42% among those aged 15-17 years, compared with 36% among those aged 18-29 years and 26% for those aged 30 or older.

337. Members responding to the SDA/AHRC survey provided many comments and suggestions in relation to company policy:

*'All workplaces should have a 0 tolerance policy on sexual harassment, and anyone found sexually harassing anyone should be fired immediately.'*

338. Many members made comments and suggestions about training, education and reporting which would also have implications on policy. These will be included further in our submission.

339. Companies should be required, under a code of practice, to have a stand-alone sexual harassment policy as this will send a signal to employees that the company takes the matter of sexual harassment seriously and will encourage a stronger reporting culture.

340. Last year both New York State and New York City introduced laws making it mandatory for all employers to have a Sexual Harassment Policy, procedures and training (in NY City the mandatory training is only for employer with 15 or more employees). If current policies did not meet minimum standards they were required to adopt the model policies, procedures and training provided.
341. The SDA would like to see minimum standards for policy proscribed by a Code of Practice and a model policy which could be adopted by employers. This minimum standards and model policy should be developed by the AHRC in consultation with unions and other stakeholders.
342. The SDA, however, is concerned that this should not be a tick and flick exercise and that additional measures should be introduced to ensure that workplaces are monitored and audited to demonstrate that they not only have a policy but that it is being implemented appropriately.
343. The disturbingly high prevalence of sexual harassment across Australian workplaces demonstrates that self-regulating policy has failed to protect workers from sexual harassment. We can no longer rely on employers self-regulating the obligation to take reasonable steps to prevent. The AHRC must be empowered to enforce compliance and ensure that policies are appropriate, are implemented properly and acted on by employers.
344. Policies and their implementation should be measured against the number of complaints received and the outcomes of those complaints.

### **Sexual Harassment Training**

345. Training on sexual harassment is often only provided on commencement and is now largely done via online training which cannot sufficiently test understanding and the veracity of the training. It would be worthwhile researching and reviewing the effectiveness of online training; as the use of online training over the past decade corresponds with an increase in sexual harassment, rather than a decrease.

346. More recently, some major employers have started more regular training on sexual harassment, however, refresher training on sexual harassment is still largely done on an ad hoc, irregular basis.

347. In the SDA/AHRC survey just under one in three (29%) SDA members said their employer had conducted training on sexual harassment.

348. Among respondents who said their current employer had training on sexual harassment:

- 21% said it occurred at least annually;
- more than one in four (28%) said that it only occurred during induction;
- 2% said it occurred at least every 2 years;
- 13% said it did not occur at any set time;
- 5% said only occurred once and had never been repeated;
- 2% said it only occurred after someone reports or makes a complaint about sexual harassment.

349. Three in four SDA Members who had been in the workforce in the last 12 months said that they had received sexual harassment training at their current employer. There was little difference by gender or age group in this regards. Of these members, 44% said they had received this training in the last six months and 60% said they had received the training within the last year.

350. In three quarters (77%) of all cases, some or all of the training was conducted online.

351. Training on sexual harassment has become a tick and flick exercise with employers as a means of satisfying 'reasonable steps' under the SD Act. However 'reasonable steps' are clearly not being taken, as evidenced by the increase in sexual harassment in workplaces.

352. Many members responding to the SDA/AHRC survey provided suggestions and comments in relation to training on sexual harassment, including:

*'More regular training needs to be done and done so in a serious manner have a person in our work space who is harmless but gets carried away with sexually suggestive comments and could easily offend some one. Would hate to see this person get into trouble.'*

*'Procedures surrounding incidents of sexual harassment need to be clearer for employees. Also, all employees should be made to complete training, teaching what is classed as sexual harassment and that this 'It was just a joke' mentality will not be tolerated.'*

*'The need to train employees about sexual harassment in the workforce . Also to have a meeting atleast every 6months about it so employees are aware that they can turn on fo someone for help if it's happening to them.'*

*'Ever since I started working here in Australia I have not found employers talking about sexual harassment. They should include it in the orientation program (what is sexual harassment and what will be the consequences)so that anyone thinking of behaving inappropriately with someone else, would think about the consequences before advancing for sexual harassment.'*

*'I feel as though in the workplace males might take things they say to females at a joke, but if not on that level of knowing each other/ friendship it comes across as sexual harassment and makes you uncomfortable. Personally I've had an issue with a male colleague who made up rumours about my sexual life to everyone and it made me depressed, but was dealt with but trusted co workers. I believe that **all work places should have better training** on sexual harassment.'*

*'I wish I had been empowered with more knowledge about sexual harassment from the very beginning when I entered the workforce. I was 16 when I was sexually harassed and it wasn't until much later that I was able to fully appreciate that the behaviour wasn't acceptable in any way, that it wasn't my fault and that I should have defended myself, even if I wasn't believed. The anxiety I felt about going to work was awful and not normal, and all staff regardless of whether or not they are casually employed or*

*young, should know this and be told the proper channels for making complaints. It would be great if such information was available in inductions.'*

*'Management need to be educated about diversity and sexual orientation and ways to communicate more effectively. Not just about not offending customers or training staff how to sell a credit card but about respect.'*

*'More awareness of inappropriate behaviours and what to do if you encounter them. Who to turn to and most of all making people aware that they can not be penalised for reporting it. I would like to see this for both sexual harassment and bullying in the work place. A focus on what it looks like and what is not ok. Repeated behaviours and what to do about them.'*

*'Training everyone how to handle with sexual harassment; Making any kinds of support/help more available and accessible for people when they are harassed; Enforcing law; Presenting posters, logos, images etc. publicly (i.e on bus, shopping centre etc.) to raise awareness.'*

*'It's a really big problem, especially for young women and teenagers. It makes me so sad to think of all my co-workers (especially teenagers) that have been sexually harassed at work, by other co workers or customers or both. I believe there should be **mandatory training** or information given out that employees need to know. I think it's difficult because a lot of the bosses are older heterosexual men at the store I work at and they don't know what it's like to be sexually harassed as a young female or someone part of the LGBTQ community.'*

*'I have found that taking the time to educate & train employees about sexual harassment, discrimination & bullying can be very effective as lots of employees are unaware of the different interpretations involved & they do not understand the consequences. In turn this also allows them to understand their individual accountability in all work situations.'*



*'I think all work places need information that is easily accessible for those who experience sexual harassment or anyone who would like to know what to do if they do experience sexual harassment.'*

*'I would like to have information sessions run either by the SDA or HR from my company to explain and discuss what is sexual harassment, what can be done if you are or have been sexually harassed and why it is important. I believe many people have experienced sexual harassment in some form but may not have known who they could go to or what to do. People need to feel safe in their place of work.'*

*'I would like store managers, department managers and and duty managers to have a bit more training and knowledge to deal with these situations. In my case, I felt that the person I confided in was unsure how to respond to what I told them and too ready to brush off and dismiss what I had to say. It might not have been a big deal to them, but I was uneasy, anxious and a little scared. Now I keep doubting myself and feel like I was overreacting.'*

*'Employers and SDA could provide advertising and education to teach employees what to do if they or someone else they know are being sexually harassed at work. Employers could also provide report cards that are accessible to all employees and may be filled out confidentially to initiate an investigation into workplace sexual harassment claims.'*

*'There should be more awareness in the workplace in regards to sexual harassment due to people not knowing the process.'*

*'Having more posters or pamphlets about sexual harassment and awareness. Due to the indecent and humiliation most victims may be scared to report or talk about it. I think that we should have more open support and awareness that this is a real issue and not one we should shy away from.'*



*'It would be great if there was more education and encouragement so that people can feel that they can talk about their experiences and report their concerns.'*

*'It would been nice to have a more clear code of conduct openly displayed in the tea room about how to deal/ who to call regarding sexual harassment in our workplace. It would also be nice to see training done in our store regarding the acceptable ways to talk about females and what it not acceptable.. also it would be nice to see a positive initiative for staff member who hear or are personal present at an incident to call it out.'*

353. The SDA believes that training on sexual harassment should be proscribed in a Code of Practice, setting out minimum standards to be achieved and that the training should be delivered by accredited sexual harassment trainers.
354. The AHRC could be empowered to assess and accredit workplace sexual harassment training programs; including refresher training; and trainers. The training programs could be developed by companies internally and delivered by in house trainers, but the program and trainer would need to be accredited. Alternatively, accredited external providers could be used.

### **Under-Reporting and Complaints process and investigations**

355. The AHRC national prevalence survey found that only 17% of workers who experienced sexual harassment made a complaint. Workers who made a complaint were most likely to report workplace sexual harassment to their manager or supervisor at work.
356. Workers in retail and fast food were even less likely to make a complaint. The SDA/AHRC survey found that 'a formal report or complaint in relation to workplace sexual harassment was made by just over one in ten victims (13%)'<sup>43</sup>.

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<sup>43</sup> SDA/AHRC survey

357. The AHRC national survey found that 'A formal report or complaint was made to a direct manager or supervisor in more than half (55%) of instances of workplace sexual harassment.<sup>44</sup> Most of all other complaints not made to direct managers or supervisors were made to others in the workplace. The Australian Human Rights Commission or a state/territory anti-discrimination agency was only involved in finalising 6% of formal reports or complaints.<sup>45</sup>
358. The SDA/AHRC survey found that the majority of people (71%) who reported their most recent incident of workplace sexual harassment made the report to their direct manager or supervisor.
359. This demonstrates that the policies and procedures that employers have in place to encourage employees to report and make a complaint, and the way they respond to reports and complaints and investigate and manage the outcomes of complaints is critical to addressing sexual harassment in Australian Workplaces.
360. In our experience, most complaints are dealt with internally. Depending on the employer and the personnel involved, this can be a lengthy and harrowing process, with little weight given to due process and the principles of natural justice. Employer investigations are often slow, lack independence and may not even involve interviewing the complainant or investigating the facts.
361. Another observation is that in some companies, double standards exist regarding how these complaints are handled if a manager has been the perpetrator, compared to a shop floor employee.
362. Many managers/HR who are tasked with conducting investigations are often poorly skilled in this area and frequently use the wrong legal test to determine if a complaint is substantiated. Complainants are often told that their complaint was not substantiated because they could not prove it beyond reasonable doubt. This is the test for criminal proceedings not a civil complaint of sexual harassment. In addition to this HR managers often cite the lack of 'intention' by the alleged

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<sup>44</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018) p 75

<sup>45</sup> *ibid*, p 75

perpetrator as a reason that no action will be taken or a complaint is not upheld, which again is not a defence under the Sex Discrimination Act.

363. The AHRC survey also found that those workers who did report or make a complaint of sexual harassment are often victimised for doing so. 'Almost one in five people who made a formal report or complaint were labelled as a troublemaker (19%), were ostracised, victimised or ignored by colleagues (18%) or resigned (17%)'<sup>46</sup>.

364. The SDA often represents members in relation to sexual harassment complaints who are poorly treated and victimised for making a complaint. When this does occur, it has a very negative impact on the reporting culture of that workplace because others are then less likely to choose to make a complaint for fear that they too will be treated poorly or suffer adverse action of victimisation.

365. Many members who disclose to the SDA that they have been sexually harassed ultimately choose to do nothing because of fear of the consequences of making a complaint.

366. In the SDA/AHRC survey it showed that while a quarter (24%) of those who made a report said that there were no consequences for them, almost one in five people who made a formal report or complaint were ostracised, victimised or ignored by colleagues (19%) while one in ten (12%) resigned and a similar proportion (11%) were transferred or had their shifts changed (15%).

367. A compounding problem is the fact that the outcomes of complaints are not sufficient. In one in five cases (19%) the formal report or complaint brought no consequences for the perpetrator, which is just astonishing...Shockingly, almost half (45%) of people who made a formal report said that no changes occurred at their organisation as a result of the complaint'<sup>47</sup>.

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<sup>46</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 79

<sup>47</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018)

368. The SDA/AHRC survey found that three in five (61%) people who made a formal report said that no changes occurred at their organisation as a result of the complaint, and (26%) did not know if there had been any outcome at their workplace as a result of their complaint.
369. The absence of a sufficient outcome or change following a complaint does not provide workers with any trust and confidence in the organisation to make a complaint, which severely hampers real cultural change.
370. The issue of nothing being done or no change occurring as a result of a complaint is also evidenced in the responses our members provided in our CAV Surveys. Many stories identified that customers were repeat offenders that had been identified to management and nothing had been done to stop the behaviour allowing the perpetrator to continue the harassment, and in some cases the nature of the harassment escalated.
371. The stories also demonstrate the absence of incident reporting mechanisms within workplaces.
372. In some examples, managers advised workers try to handle it themselves or not to make it obvious to the customer that they are avoiding them:

*'An old man comes in regularly that makes slimy remarks to the female employees...managers have been told about this man frequently'*

*'...a weekly regular and touches me in inappropriate places and says inappropriate things to me, other staff members usually call me to the warehouse when he is seen speaking to me'*

*'Comments mainly, if I responded in a way that made it clear to the customer that their behaviour was not appropriate I would not be backed by management if they complained about me'*

*'There was a man in the store who was peering around corners to look at customer's and employee's backsides. On a few occasions, he went right up behind them and leaned down in an attempt to have his backside touch a females. He was also ogling quite obviously at women's breasts. Several customers came up to me to tell me that he was being inappropriate. I told*

a manager as I had seen him doing this for about ten minutes to many females and nothing was done’

‘I repeatedly had a customer try to show me physical affection and seek me out within the store, after asking him twice to stop and seeking support from management the issue wasn’t rectified so I moved stores.’

‘There is a regular offender that management has asked to leave on several occasions but will not formally prohibit entry’

‘I had a man who knew my shifts and would come to the deli and ask me out repetitively and when I said no he would imply we could go back to his and do stuff, it took 2 months before he stopped coming And I had ask our manager to help the situation and her advice was to tell him to leave which I did do every time’

‘Being a door greeter some male customers become very touchy and when stated to managers they think it’s a joke’

‘Old man frequently sexually harasses myself and other young female staff....We have informed the store manager of this – not too sure what the outcome was ...I know the other female staff are still putting up with his sleazy behaviour’

‘I had been crouched down to fill up our drink fridges and had a male customer stand directly next to me trying to put his private areas near my face. I had to get up and move away from him to only have this happen to me again. He has also brushed up closely to other team members especially when they are assisting him on our Assisted Checkout areas. Trying to touch them in inappropriate places. Have been told by management to not make it look obvious that we were avoiding him even though he tries to sexually harass us.’

‘As a line manager, I often have to assist some checkout operators when customers make them feel uncomfortable. Its something that we should be able to stop the customers from doing.’

‘I have had two older male customers kiss me. I turned my head away with one but he partially got me in the mouth. I informed the complex manager. No record made.’



*'1 customer always state we should wear skirts and fishnet stockings and make up. **Management don't say anything as they think he is joking** (he is a regular)'*

373. The SDA and our members also have significant issues in relation to access to outcomes following a complaint. In most cases, employers are unwilling to share the final report from the investigation and reasons for the decision, particularly if the complaint is unsubstantiated and importantly where a complaint is substantiated they refuse to disclose the action they have decided to take against the respondent.
374. It is important when representing our members that the SDA can look at the investigation report, and the determination by the company, to ensure that the correct legal tests and due process have actually been applied. This goes to the issue mentioned earlier in our submission, as to the incorrect application of the law which is often adopted and applied by poorly skilled managers. It has also been our repeated experience that 'investigations' have been conducted by the employer in which only the alleged perpetrator has been interviewed yet the complainant and witnesses have not be interviewed as part of the investigation.
375. This is a significant issue for several reasons. It does not allow for procedural fairness. A complainant has no ability to determine if they are satisfied with the outcome and how the company has dealt with the complaint if they do not know the action taken. This impacts severely on the ability for a complainant to know if they should escalate the complaint or make a complaint to an external agency. This may also be one of the reasons why we see so few complaints filed with the AHRC and state anti-discrimination jurisdictions.
376. The non-disclosure of the action taken by the company also severely impedes an individual's ability to emotionally deal with the sexual harassment and its impact on them and hampers any chance they have to be able to move on. The health impacts from the complaint process and the outcomes can be just as damaging as the sexual harassment incident itself.
377. There is currently no legal requirement for a company to disclose the action taken against a respondent when a complaint is substantiated. The AHRC's *Good*



*practice guidelines for internal complaint processes* states that 'Where the allegations are admitted or substantiated: It is important that the complainant is provided with general information about the outcome of a complaint, as this may affect their decision to pursue the matter with an external agency. The level of detail provided should be balanced against the need to respect the privacy of the respondent'<sup>48</sup>.

378. It is unclear what 'privacy legislation' the AHRC is relying on in providing this advice.

379. The SDA strongly disagrees with this approach. Disclosure of the outcome and the action taken should be mandatory to ensure procedural fairness for the complainant and to embed a level of accountability on investigators and employers regarding the decisions taken against a respondent.

380. The SDA recommends that the SD Act be amended to require disclosure to the complainant of the outcome and the action taken against the respondent and actions taken within the organisation following substantiation of a sexual harassment complaint.

381. The current legal framework has not resulted in a system which supports workers to make a complaint in their workplace if they are sexually harassed. Significant changes are needed to create an accepted, effective reporting culture in Australian workplaces and a mechanism to ensure complaints lead to positive outcomes and change.

382. Policies on sexual harassment do not contain transparent, comprehensive procedures for reporting sexual harassment or making a complaint, or procedures the company will follow to respond to and investigate a complaint.

383. The lack of transparency in policy regarding the complaints process also impacts on an employee's decision to make a complaint. The results from the AHRC survey last year showed that several reasons given for not making a

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<sup>48</sup> <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/good-practice-guidelines-internal-complaint>, accessed 8 May 2019

complaint were in relation to uncertainty or fear of the complaints process, 27% thought the complaints process would be embarrassing or difficult, 20% were concerned about lack of confidentiality in the complaints process and 12% weren't aware of the complaints process or who to complain to<sup>49</sup>.

384. The SDA/AHRC survey showed that 'one in five (22%) of victims were not aware of how the complaint process worked or who to report to. This is much higher than the 12% of respondents who said the same thing in the national survey, demonstrating that workers in our industries have less knowledge of their rights and entitlements and what they can do to address workplace issues. This again demonstrates that there are significant deficiencies in company training.

385. Given that only members of the SDA responded to the survey, it is likely that retail and fast food workplaces that are non-unionised would have a much higher response rate than this.

386. Members responding to the SDA/AHRC survey provided many comments and suggestions in relation to reporting including current lack of knowledge of how to report and lack of action resulting from reports of sexual harassment. Some of the comments and suggestions include:

*'Although I am more than fine with the comments being made towards me, I understand others may not be, So I would like to see policies put in place that help report harassment at a basic level which sees offenders maybe made aware that what they done was innapropriate and if this were said and done to a different person than outcomes could be very different.'*

*'I think our 'go to' person should be known to staff and gender appropriate. Reporting sexual harassment, as a female, to a male would be very intimidating and vice versa.'*

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<sup>49</sup> Australian Human Rights Commission, *'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces'* (2018), p 86

*'Make people/staff regularly aware that sexual harassment is not okay!! Especially to younger staff members like myself I felt so uncomfortable I laughed it off and told my manager what someone had tried to do to me while I was working and they did nothing at all! And just laughed at it.'*

*'If there could be strict guidelines in place for reporting sexual harassment in the workplace. I've reported a serious one and the person I reported, got a slap on the wrist. Nothing more.'*

*'With offenders / harassers having friends in given places at head office staff feel there is a no confidence with reporting incidents. This further adds to the stress and anxiety to the person who has been sexually harassed.'*

*'Some store management make it impossible to speak to them about such things.'*

*'I think that my workplace takes these comments very seriously and I admire that. I talked to my supervisor who then spoke to the manager when I wasn't comfortable. In saying that, I think more information needs to be given to staff about what to do in the case of sexual harassment. Even have a staff member be a **person of contact** in this case. One man and one woman could also be an option and I would honestly be happy to do it if the position came up.'*

*'Make it easier to have someone to talk to. Not many people will because the Managers never listen to what you're saying. And if they do... They never take action.'*

*'Ensure that there is a safe space for employees to speak freely and safely. Young workers are less likely to say something. Make everyone feel comfortable.'*

*'We need strong emphasis on sexual harassment to be reported and make easy for people to be listened to and helped. Otherwise most people will not report.'*

*'Employers should encourage employees to report any form of sexual harassment and all complaints should be taken seriously and investigated whether they're by customers or co-workers with appropriate actions taken to prevent it from reoccurring.'*

*'Make there clients/employees fully aware of who to go to or where to go if they are unsure. Assure that all people know that they are supported and will be heard.'*

*'It would be great if there was more education and encouragement so that people can feel that they can talk about their experiences and report their concerns.'*

*'Employer could make easier options for victims to report to HR.'*

387. The survey results demonstrate that companies need to include a comprehensive grievance procedure and/or complaints and investigations process in the SH Policy so that employees understand their rights and obligations, know how to make a complaint, and feel comfortable and confident to do so.

388. Investigations are often not conducted by senior leaders in organisations who are sufficiently trained and skilled to conduct investigations. Investigations require a certain skill set and purely being a manager or HR professional does not necessarily mean that you have the required skills and knowledge.

389. The SDA sees great variation across our industry on the approach taken to investigations of sexual harassment complaints. Best practice in our industries, where we see investigations are conducted in the most appropriate manner and result in the best outcomes are organisations who have nominated trained HR specialists/managers who are responsible for all sexual harassment complaints and investigations.

390. However, many large organisations have a process which allows investigations to be conducted by store and regional managers who do not

have an appropriate knowledge and understanding of the legal obligations of the company or rights and responsibilities of workers in relation to sexual harassment and are not skilled to investigate or determine an outcome.

391. They can get support from centralised HR advisers, but as this requires specialist knowledge and skills, this support is not enough to ensure an appropriate process is undertaken.
392. Having nominated specialists or managers also allows those individuals to develop the necessary skills because they are dealing with complaints on a more regular basis. A store manager may only deal with one every 12-24 months or not at all over the course of their employment.
393. There are no requirements under the legislation for investigators to be trained or accredited in any way.
394. The fact that many organisations allow investigations to be conducted by many people rather than appointed specialists leads to variations in process and outcomes not only across the industries but even within organisations. It must be recognised that human resource departments within companies may have an inherent bias to minimise risk to the business above the correct and just outcome for the complainant.
395. Members responding to the SDA/AHRC survey provided the following comments in relation to investigations process and outcomes and suggestions for improvements:

*'Our supermarket have all the training in place BUT take NO action when it comes to consequences of actions of employees in the company. What is on paper is very different to real life within the Sipermarket group!!!'*

*'I have heard a lot of sexual harrasment case in the worplace. Some people did come forward and spoke about it and some couldn't. Some people did complain but nobody took it seriously and actions wasnot taken.'*

*'There was a lot of not just sexual harassment among staff but also bullying and aggressive behavior from management at [REDACTED] When I was*



*harassed the first time I reported it and I was blamed and told I should not bring personal issues to work even though it was happening at work.'*

*'In my personal workplace there has been three sexual harassment suits filed against the same individual, however, he is yet to be fired. I believe more action should be taken to resolve this situation.'*

*'Another team member has been reported for sexual harassment more than 5 times that I am aware and still is employed by Discount Department Store in the same store with no action taken. No one feels comfortable working with him. And nothing is done. There needs to be frameworks that ensure mandatory action is taken against these sexual predators.'*

*'It's not going to stop. People know what they can get away with. Added to managers who don't actually want it to stop because the paperwork is annoying or it's just easier not to deal with. Investigations need to be conducted and the whole collective of staff members need to be included and talked to without their line or store managers present. Talk is all well and good, but you actually need to do something.'*

*'Make better choices when a staff member reports that they have been sexually ASSAULTED, despite whether it happened at an "official" work event or not. Rather than moving a sexual predator to another store, they should be fired and should not be able to return to the store where the victim still works. This employee can still freely call our store for enquires and enter the store as they please even though they have grossly sexually assaulted another team member at our store.'*

*'at least investigate complaints and give feedback to the person who made the complaint otherwise it appears as no action was taken.'*

*'There needs to be more actual discussions about what is acceptable and what is not in the workplace as at my store there is way too much stuff going on which crosses the line. These are not bad people but very ill-informed about the code of conduct. Also the procedure for the victim*



*needs to improve. As a victim myself, I was not only feeling ostracised, demeaned, intimidated, scared, embarrassed and humiliated but I was **not informed of what I should do**. I was more or less **expected to continue to work my normal night shifts with the perpetrators** but when I refused to do that, I was forced to stay away on personal leave & unpaid leave and then finally changing shifts to daytime which **left me disadvantaged** with loss of penalty rates etc. Meanwhile the perpetrators continued working with absolutely no consequences. How is that fair to the victim?'*

*'Greater protection for the victim and those that report sexual harrassment at work place.'*

*"ve never heard any mention of support that is available for those whom may feel that they're victims of sexual harassment (while in the workplace) I believe there should be mechanism put into place so that effected people know how to easily contact support.'*

*'Initial claims should be taken more seriously rather than waiting for something further to happen, and ensuring that the staff member that has placed a complaint against someone isn't rostered to work the same/clashing hours with their harasser is not appropriate and should not happen, however, it does continue to happen.'*

*'The handling by my management team was detrimental I believe to more than just me: Nothing was done, it happened to multiple people at multiple times. There was no clear path to take in doing something about it and the one taken eventuated in basically no action taken. I was made to feel incredibly guilty and like I had ruined someone's life and that what they did didn't matter and wasn't a big deal and that my delay in reporting (which happened as I was uncomfortable doing so given the power dynamic, the fact that I didn't have much trust in the person higher up, the fact that it wasn't super intrusive and the fact that I didn't think anything would happen). Ultimately nothing really came of it and it was blamed on some completely unrelated issue that wasn't an excuse but it did mostly stop. Almost every employee know in the workplace and that person is still*

*employed there when most of the people this happened to have since left; some being more affected than others. The perpetrator still does not believe they have done anything wrong and claims ignorance. I think some very clear boundaries should be set, clear places to go possibly separate of the main company so no personal relationships affect the outcome and education for everyone given so people know that it isn't appropriate and if they're uncomfortable they're within their rights to be made more comfortable rather than feeling like they should suck it up.'*

396. The SDA recommends that employers be required to use trained and accredited internal or external investigators for all sexual harassment complaints.

### **Monitoring and Compliance**

397. The actions taken by employers to prevent sexual harassment, such as policies, procedures, reporting and investigations processes need to be monitored and assessed by an external agency, such as the AHRC, to ensure that they are effectively preventing sexual harassment.
398. The significant increase in sexual harassment, the appallingly low rate of formal reports or complaints being made, and the alarming rates of complaints which result in no outcome or change demonstrates that there must be a mechanism which makes employers accountable for actions or inaction taken.
399. The SDA believes that these accountability measures are an essential element of the changes needed to ensure employers take appropriate action to prevent sexual harassment. We can no longer rely on employers to self-regulate change on this issue.
400. Further to an external agency being empowered to monitor and enforce compliance with the Act, we believe that a requirement for internal accountability is essential. In our experience companies don't report complaints of sexual harassment to their leadership or their board.
401. A measure should be introduced to require companies to report any complaints of sexual harassment and the outcomes of those complaints to their

board. This would ensure that managers are accountable for how complaints are handled and that they are accountable for the outcomes.

402. Reporting complaints and outcomes to the board will assist with driving desperately needed cultural change within workplaces.

403. The SDA recommends several measures to ensure accountability leads to change, such as:

- Amending the SD Act to give the AHRC powers to monitor and enforce workplaces and ensure compliance with orders following a resolution of a sexual harassment/discrimination complaint.
- Amending the SD Act to require companies to provide the number of sexual harassment complaints and the outcomes.
- Empowering the AHRC to issue improvement notices and require enforceable undertakings from employers.
- A requirement that companies must report any complaints of sexual harassment and the outcomes of those complaints to their Board.

### **Sexual harassment complaints with external agencies**

404. Under the Sex Discrimination Act individuals who are sexually harassed can make complaints to the AHRC and state anti-discrimination agencies. These agencies typically only have the power to conciliate and if unsuccessful terminate the application and an individual then must proceed to the relevant court.

405. The current complaints processes are lengthy, costly and don't provide adequate resolution and remedies for breaches of the law and act to discourage individuals from making a formal complaint to the AHRC or state based equivalent.

406. The Australian Human Rights Commission 2017-2018 complaints statistics showed that 27% of complaints lodged under the Sex Discrimination Act were in relation to sexual harassment, 53% lodged under the SD Act were conciliated. 26% of those conciliated were successfully resolved and 74% were not resolved.

### **Current process is too long**

407. An application made in these jurisdictions most often follows a lengthy internal complaints process. At this stage employees who have experienced sexual harassment are already experiencing the health impacts because of both the sexual harassment incident/s and the internal complaints process.
408. The thought of entering another process to resolve the complaint is extremely difficult for anyone. This is compounded by the fact that the complaints process for discrimination claims are costly, time consuming and don't provide adequate remedies for breaches of the law.
409. The average time from receipt to finalisation of a complaint was approximately 4.6 months<sup>50</sup>. The SDA is surprised at this statistic as this does not at all reflect the experience we have in representing our members through this process and we note that this is the time from complaint rather than the length of time since the incident occurred.
410. Given that we know more that more than 74% of conciliated matters were not resolved we know that many individuals then must file an application with the relevant court. This further extends the time it takes to resolve a complaint, in some cases, years.
411. In recent years the SDA has seen an increase in the use of legal representatives and barristers attending conciliations. This is often used as an intimidatory tactic against the complainant and designed to frustrate the genuine resolution of the complaint. The SDA recommends that a similar model of granting permission to legal representation, as per the Fair Work Act should be adopted which would assist in making the resolution of complaints more timely, and less adversarial.
412. These time delays and legal intimidatory tactics further act to discourage women from making complaints which impacts on the effectiveness of legislation to eliminate and prevent sexual harassment in our workplaces.

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<sup>50</sup> Australian Human Rights Commission, 2017-2018 complaints statistics

413. The system needs to change to ensure sexual harassment complaints are dealt with in a more timely, just and fair manner.

### **Costly**

414. The federal anti-discrimination jurisdiction was established as a jurisdiction where ordinary individuals could make a complaint and, particularly at conciliation, represent themselves to resolve the complaint. It is now common for unrepresented individuals to face employers in conciliations who attend with a barrister and/or solicitor. The individual may have union representation, but then again, may just have their mother or husband to support them. This can be very intimidating for the worker and puts them at a significant disadvantage when trying to argue a reasonable settlement.

415. To create some balance and increase the likelihood of a fairer outcome, individuals often feel forced to obtain and pay for legal representation at the conciliation stage. For many workers the cost of this can have a severe financial impact and affect their ability to proceed with the complaint.

416. The SDA recommends that any complaints process be supported by a mechanism which provides free or low-cost advocacy to complainants to assist them through the process. An individual's ability to finance a complaint should not be a criterion for someone's ability to pursue a complaint.

417. Low cost advocacy should also be available to individuals to pursue unresolved complaints to the relevant court.

### **Conciliation is not effective**

418. In our experience, conciliation relies heavily on the respondent agreeing to participate in the process as the AHRC doesn't have the power to compel this and has no power to make an enforceable decision. This situation is compounded by the reluctance of conciliators to express a view about whether the incident/s constituted sexual harassment and what remedies would be appropriate.

419. Conciliators should have senior standing and be empowered to conduct conciliations in a similar manner to the Fair Work Commission where they hear



the facts from both sides and guide the parties to a resolution by providing a legal view point.

420. Without proper guidance from a conciliator in these matters it is more difficult to get parties to shift their position and to reach a settlement.

421. The SDA supports compulsory conciliation before a hearing of complaints conducted by a conciliator of senior standing, with the requisite skills and knowledge, and able to be proactive in the process (rather than just a facilitator of the meeting) giving the parties direction based on the law.

### **Insufficient Remedies**

422. The remedies provided in sexual harassment and discrimination cases do not deliver justice or compensate the complainant nor do they reflect the serious and pervasive nature of sexual harassment or provide the required incentive for companies to eliminate and prevent it.

423. In some state jurisdictions caps on remedies apply. This provides an unfair barrier to the delivery of appropriate remedies and justice outcomes for complainants.

424. Financial outcomes in sexual harassment cases have been incredibly poor and do not reflect the seriousness of the breach or the nature of the impact complainants are being compensated for. Compared to other areas of law, for example damages for hurt feelings and actual or potential financial loss in defamation cases, sexual harassment appears to pale into insignificance.

425. Remedies for sexual harassment should include amounts for compensation and punitive damages. Remedies should also include non-monetary orders requiring employers to change internal practices which have been found to have failed to prevent the sexual harassment from occurring or a failure of the company to appropriately respond.



426. The AHRC should also be empowered to monitor and enforce compliance and issue fines non-compliance of orders.

### **Inappropriate time-limits**

427. In 2017 the Turnbull Government amended the Australian Human Rights Commission Act to reduce the time limits on making a complaint to the AHRC from 12 to 6 months from the date of the most recent incident. The pathetic reason given for this was that it would lead to a more efficient process.

428. The real reason for this change is to discourage victims of sexual harassment from making a complaint and imposes unnecessary barriers.

429. Sexual harassment, abuse and violence has a severe impact on victims and many people who experience it are unable to report it straight away and, in many cases, either never report it or take a long time to be able to do so.

430. This is the same for other forms of sexual abuse and assault, therefore, time limits for sexual harassment complaints will have a negative effect on the number of complaints received and will preclude many workers from coming forward when they are ready to do so.

431. The SDA had an example of a member who raised a complaint with us that she had been digitally raped in the workplace by a manager. Following an investigation, it was found that the same thing had happened to her more than a year before.

432. The member chose to make the complaint because she was fearful it would happen again. She told us that she had tried over the course of the previous year to speak out about the incident but for a variety of reasons was unable to do so.

433. In our member's case, had she decided to make a complaint, in the absence of the second incident, her complaint would have been deemed out of time.

434. The other issue with the imposition of a time limit on complaints is that it does not allow sufficient time for a complainant to deal with a complaint of sexual harassment internally.

435. We have been involved in numerous cases where the complaints process has gone well beyond the time limits proscribed. Even though the Act allows the AHRC discretion to deal with matters filed outside of the time limit, it still acts to discourage complainants who are outside the time limit and shouldn't rely on the discretion of the Commission.
436. Time limits also don't consider the long-lasting and ongoing impacts of a sexual harassment complaint. We had a recent case where the sexual harassment incident occurred 2 years before the complaint was made to the AHRC. The issue arose again due to the poor handling of the complaint by the company and ongoing victimisation and adverse effects from making the complaint.
437. The complaint could proceed but the SDA and the member had to make a case for why the time limit should be waived.
438. Time limits for sexual harassment complaints serve to add additional barriers for individuals to make a complaint and will either force them to go to the Federal Court or Federal Circuit Court for a remedy or to choose not to pursue the complaint.
439. Time limits in this jurisdiction are also inconsistent with time limits in other jurisdictions governing workplace rights and entitlements which are generally 6 years.
440. The SDA strongly recommends that time limits for making complaints be removed entirely recognising that victims of sexual abuse may need more time to come forward, or at the very least that they be extended to 6 years in line with other workplace laws.

### **Alternative model for complaints**

441. Workplace sexual harassment is a workplace issue which requires a particular legislative response. Workplace sexual harassment has broader impacts on an employee's ability to continue to work and earn and income. Most employees are forced to continue to work throughout an internal and external complaints process which has severe health impacts or forced to go onto workers compensation, which has its own limitations.

442. Workplace sexual harassment needs to be recognised under workplace legislation and a mechanism for immediate intervention to stop the conduct, investigation of the complaint and a quick and just outcome.

443. We will address this further in our submissions below. We also have a series of recommendations to make in relation to the Sex Discrimination Act 1984 (Cth).

#### Recommendations to strengthen the Sex Discrimination Act 1984:

The Sex Discrimination Act 1984 must be amended to include a positive, proactive duty on employers to prevent sexual harassment. A breach of the duty should be an unlawful act carrying substantial penalties and compensation.

This new positive duty should also be underpinned by a statutory Code of Practice. Section 48(ga) of the Sex Discrimination Act 1984 (Cth), should be extended to give the AHRC the power to establish enforceable statutory codes of practice to prevent sexual harassment. The amendment should include referral of the code of practice to the relevant Minister for approval and assent so that it has statutory authority and is legally enforceable.

The Code of Practice should require employers to:

- have a comprehensive policy with a transparent and comprehensive complaints process;
- regularly provide accredited sexual harassment training to all employees delivered by an accredited trainer
- have a proscribed complaints/investigation procedure which requires investigators to be accredited and impartial.

The Code of Practice should include minimum requirements for policy, procedures and training and model templates which can be adopted where companies do not have them, or they don't meet the minimum requirements.

The AHRC should be empowered and resourced to investigate breaches of the Act or Code and issue compliance orders where breaches have been established.

The AHRC should be resourced to provide a free, accessible, efficient and timely complaints process which provides sufficient remedies including compensation,

penalties and other orders such as changes to policies and procedures, to provide employers with appropriate incentive to prevent sexual harassment.

The Fair Work Act right to legal representation provisions, which requires barristers to seek leave to appear, should be adopted for AHRC conciliations.

The AHRC should be empowered to conduct own motion inquiries into systemic sexual harassment and make orders arising from its inquiries.

The Sex Discrimination Act 1984 should be amended to abolish time limits or extend to at least 6 years in line with other employment related claims.

The AHRC should make recommendations that caps on compensation in state Anti-Discrimination jurisdictions be abolished or superseded by the Sex Discrimination Act 1984.

The *Sex Discrimination Act 1984 (Cth)* should be amended to provide a reverse onus of proof and the respondent must prove no sexual harassment or discrimination, as is the case for complaints under the *SDAct* in relation to indirect discrimination and in the *Fair Work Act 2009*.

The SDA supports compulsory conciliation before a hearing of complaints conducted by conciliator of senior standing, with the requisite skills and knowledge, and able to be proactive in the process (rather than just a facilitator of the meeting) giving the parties direction based on the law.

The *Sex Discrimination Act 1984 (Cth)* should be amended to improve the level of punitive damages in sexual harassment and discrimination cases to provide a real deterrent to employers of not preventing sexual harassment.

The Sex Discrimination Act 1984 (Cth) should be amended to require disclosure to the complainant of the outcome and the action taken against the respondent and actions taken within the organisation following substantiation of a sexual harassment complaint.

Empower and resource the AHRC to investigate complaints and create codes of practice and other appropriate, regularly updated educational and training material.

Amend the Sex Discrimination Act 1984 (Cth) to give the AHRC powers to monitor workplaces and ensure compliance with any orders following a resolution of a sexual harassment/discrimination complaint.

Empower the AHRC to issue improvement notices and require enforceable undertakings from employers.

That the Sex Discrimination Act 1984 (Cth) be amended to legislate mandatory reporting by all employers of the number of sexual harassment complaints an organisation receives each year and empower the AHRC to initiate an investigation into systemic sexual harassment identified from the mandatory reporting of complaints.

Data (non-identifying, where necessary) should be collected of all discrimination enquiries, complaints, conciliations, confidential settlements, and hearing outcomes, and such data be analysed, according to key demographic groups, industry sectors and types of complaints, and is also widely publicised.

## **Fair Work Act 2009**

444. The AHC national survey found that ‘there is a high rate of sexual harassment in Australian workplaces, with one in three people (33%) having experienced sexual harassment at work in the last five years’<sup>51</sup>

445. The SDA/AHRC survey found that our members experience sexual harassment at higher rates. 39% of members have experienced sexual harassment at work in the last 5 years.

446. These findings demonstrate that sexual harassment in Australian workplaces is widespread, increasing and at risk of becoming a normalised fixture of our workplaces. It also demonstrates that the legal system has fundamentally failed to protect workers from sexual harassment and needs significant reform.

447. While the SDA sees merit in strengthening the powers of the AHRC to deal with sex discrimination and sexual harassment, as per our recommendations

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<sup>51</sup> Australian Human Rights Commission, *‘Everyone’s business: Fourth national survey on sexual harassment in Australian workplaces (2018) p 9*



above, we believe that a positive duty on employers to prevent sexual harassment and a complaints process to deal with individual and collective sexual harassment and sex discrimination complaints must be embedded in workplace legislation.

448. In recent years we have seen examples, internationally, of countries moving to a one-stop shop tribunal for dealing with workplace issues. In October 2015, Ireland adopted a 'one-stop-shop' model for workplace complaints. The 'Workplace Relations Commission (WRC)' took over the employment related roles and functions previously carried out by other bodies including the Equality Tribunal.

449. The WRC became a single avenue for employees and unions to file individual and collective complaints and disputes. This allows the WRC to hear complaints that cross over multiple jurisdictions in one hearing.

450. The WRC has the power to mediate, conciliate and adjudicate in these matters. The change to a 'one-stop-shop' has led to the following results published in the WRC Annual Report<sup>52</sup> last year:

- Over 90% of complaints received by the Adjudication Service are processed within six months, where there are no requests for postponement
- The number of Adjudications heard increased by 20%
- The number of Adjudication decisions increased by 32%,
- The number of overall mediations increased by 220%

451. There are also obvious advantages for one jurisdiction to have the role and function for dealing with workplace complaints particularly where the complaint breaches multiple jurisdictions, for example a worker is terminated, and the reason relates to discrimination.

452. In addition to the recommendations we made above in relation to the amendments to the Fair Work Act 2009, to address gender equality, the SDA

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<sup>52</sup> Workplace Relations Commission (Ireland), 2018 Annual Report



makes the following recommendations in relation to the powers of the FWC to deal with complaints relating to sex discrimination and sexual harassment.

**Recommendations to amend the *Fair Work Act 2009*:**

The SDA strongly recommends that the FW Act be amended to include a new explicit protection against sexual harassment (and all forms of discrimination at work).

The new protections should apply to all workers, regardless of contractual status. It should be made clear that workers are protected from actions or failures to act by labour hire firms or other third-party actors. The provisions should cover sexual harassment by third-parties, as well as co-workers and managers. Both current and former workers should be able to access the Commission. Unions should have standing to bring disputes on behalf of a member or members.

The FW Act should provide a complaints mechanism that is quick, simple and free. There should be no time limits for complaints or complainants should have at least six years to bring proceedings, in line with other workplace provisions.

The FWC should be expressly empowered to hear sexual harassment and discrimination disputes whether the cause of action arises under the FW Act, the Sex Discrimination Act, or other federal anti-discrimination statutes, where they relate to employment.

The FW Act should allow the FWC to resolve disputes by conciliation and, if necessary, arbitration.

The FWC should have broad powers to make a range of orders, including compensation, reinstatement and orders preventing or requiring future conduct, including requiring employers to take proactive steps to prevent harassment.

The FWC should be required to deal with urgent applications promptly, for example, within 14 days as per the Stop Bullying provisions. Breach of the FWC's orders should attract civil penalties. Matters which are unable to be resolved through the FWC process would be able to be progressed through the courts in a similar way to

current general protections matters. Courts should have the power to issue injunctions, penalties and order compensation or make other remedial orders, such as reinstatement or orders that conduct cease.

Consistent with anti-discrimination laws, the test for discrimination or sexual harassment should not require proof of intent by the respondent. Employers should not be able to avoid liability simply by giving subjective evidence about their state of mind at the time of the decision. Courts should be required to examine all the evidence and circumstance to determine the real reason for the employer's conduct, whether conscious or unconscious.

The exemptions for actions lawful under State and Territory laws at s351(2)(a) and (c) of the Act should be removed.

The reverse onus of proof should remain.

There should be no need to identify a comparator as there is under anti-discrimination laws.

## **SEXUAL HARASSMENT & WHS LAWS**

453. Since 2014, data collected by the SDA via extensive surveying of over 30,000 workers has provided the union with a direct insight into the key Workplace Health and Safety (WHS) issues workers themselves have identified as impacting on them at work. The quantitative data collected over this period has helped inform the SDA's approach to health and safety issues in retail and fast food. See Appendix D

454. The significant number of respondents who reported they had experienced 'customer abuse and violence' (CAV) since 2015 led the SDA to conduct an online survey 'Customer violence and abuse in Retail and Fast Food' ('SDA CAV survey') of 6,358 retail and fast food workers in 2017.<sup>53</sup>

455. Overall the data and experiences shared by workers in the SDA CAV survey confirmed the existence of a serious, widespread and systemic workplace health and safety issue for the retail and fast food industry. Survey results found 88% of

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<sup>53</sup> Shop Distributive and Allied Employees' Association, *Customer violence and abuse in Retail and Fast Food*, 31 January 2017, SurveyMonkey, <https://www.surveymonkey.net/results/SM-CVNKLL9G/>.

respondents overall experienced CAV in the preceding 12 months, including 11% of workers who said they experienced CAV that was sexual in nature.<sup>54</sup> A subsequent survey of fast food workers in 2018 found that CAV that was sexual in nature was even more prevalent, with 32.5% confirming this experience.<sup>55</sup>

456. Recent data from the SDA/AHRC survey confirms irrefutably the enormity of the problem for fast food and retail workers with workplace sexual harassment, slightly higher than the general workforce (39%). The gender bias evident in this data, confirming that it is women and girls, aged 15 years and over, working in retail and fast food who are more likely to be sexually harassed than men (46% compared with 29%).

### **Health impacts of Sexual Harassment**

457. The adverse health impacts for workers exposed to sexual harassment are not in dispute. Scientific studies have confirmed that adverse psychological outcomes, including depression, anxiety, and post-traumatic stress disorder (PTSD) stem from exposure to sexual harassment.<sup>56</sup>

458. Retail and fast food workers clearly and consistently identify the personal health impacts they have experienced following what is in the majority of cases for SDA members over the last 5 years, ongoing and extended exposure to sexual harassment.

459. The SDA/AHRC survey found that the harassment had occurred on more than one occasion for more than half (57%) of the SDA Members who had been harassed – this was similar for both women (58%) and men (52%) and for most victims this harassment was ongoing over an extended period of time; in just over half (53%) of cases the harassment lasted for more than six months with this more likely to be the case for men (56%) than women (51%).<sup>57</sup>

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<sup>54</sup> Ibid.

<sup>56</sup> Willness, Chelsea R., Steel, Piers and Lee, Kibeom, *A Meta-analysis of the antecedents and consequences of workplace sexual harassment*, *Personnel Psychology*, volume 60, issue 1 spring 2007 pages 127-162 first published: 22 february 2007

<sup>57</sup> SDA/AHRC survey data

460. Despite cogent evidence of the deleterious health consequences of exposure to sexual harassment and evidence of it as widespread, systemic workplace health and safety issue, government, regulators, insurers and employers have failed to act in response.

461. The following are extracts from over 400 of the 1000 responses to the 2018 SDA Survey of Fast Food workers who said they had experienced abuse and violence from customers that was sexual in nature. All respondents to the survey who had experienced abuse and violence from customers that was sexual in nature said it impacted on their physical or mental health.

*'It's horrible, it's disgusting how human beings can treat others like the way I have been treated I'm only 17 and I have already witnessed how horrible society can be and how I can feel unsafe in my work place'*

*'People speaking to me in a disrespectful manner, men making uncomfortable sexual comments, having beverages thrown at me and accused of doing things I did not do by customers'*

*'A customer made me feel very uncomfortable when he repeatedly came into our store and insulted my manager and saying rude accusations towards her. I didn't really know what to do because if I told her then it would upset her hearing the insults. He also complained about as many things as possible just out of spite.'*

*'I am constantly yelled at, sworn at and treated inhumane by customers at my workplace. I've been called names ranging from "incompetent piece of shit" to "dumb cunt" and "fat slut". I try my hardest to give everyone a positive experience and be as welcoming and nice to people as possible, but being disrespected by others just because I am a teenager that works in fast food really pulls me down some days. I've seen other employees be threatened, had things thrown at them or near miss punches. I can understand if a customers frustration is valid but it is almost always not.<sup>58</sup>*

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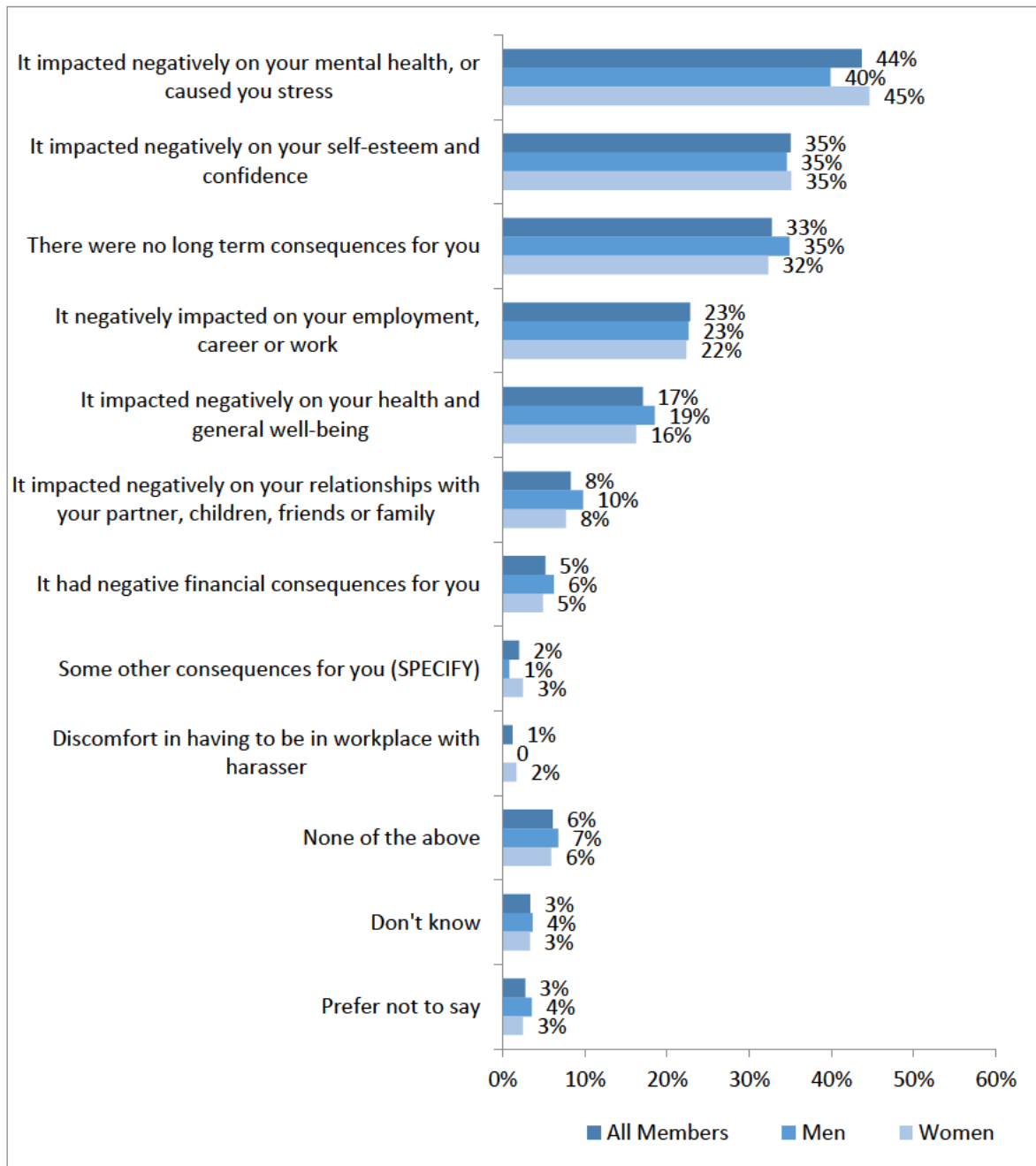
<sup>58</sup> SDA Fast Food CAV survey 2018

462. The AHRC/SDA survey establishes that the majority of sexual harassment experienced by SDA members is perpetrated by men. Women are most commonly harassed by customers or clients, followed by co-workers and men are more likely to be harassed by a co-worker.
463. A substantial proportion of SDA members who are sexually harassed at work experience negative consequences as a result, with women (45%) more likely than men (40%) to say that the most recent incident had caused them mental health issues or stress.<sup>59</sup>
464. Women report higher levels of offence and intimidation about their most recent incident of workplace sexual harassment than men (24% of women felt 'extremely offended', compared to 14% of men; 24% of women felt 'extremely intimidated', compared to 12% of men).

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<sup>59</sup> SDA/AHRC survey

465. The following table contains the consequences of sexual harassment for victims responding to the SDA/AHRC Survey:



466. Members were asked to indicate if they had experienced any specific health and well-being consequences following the most recent incident of workplace sexual harassment. While 37% of SDA Members said that they had not experienced any of the listed consequences, the majority of victims of



workplace sexual harassment did report experiencing some health and/or wellbeing consequences.

467. The specific health and/or well-being consequences most commonly identified by people who had experienced workplace sexual harassment were:

- Anxiety (40%)
- Loss of self-esteem (23%)
- Depression (18%)
- Sense of helplessness (16%), and/or
- Sleeplessness (16%).

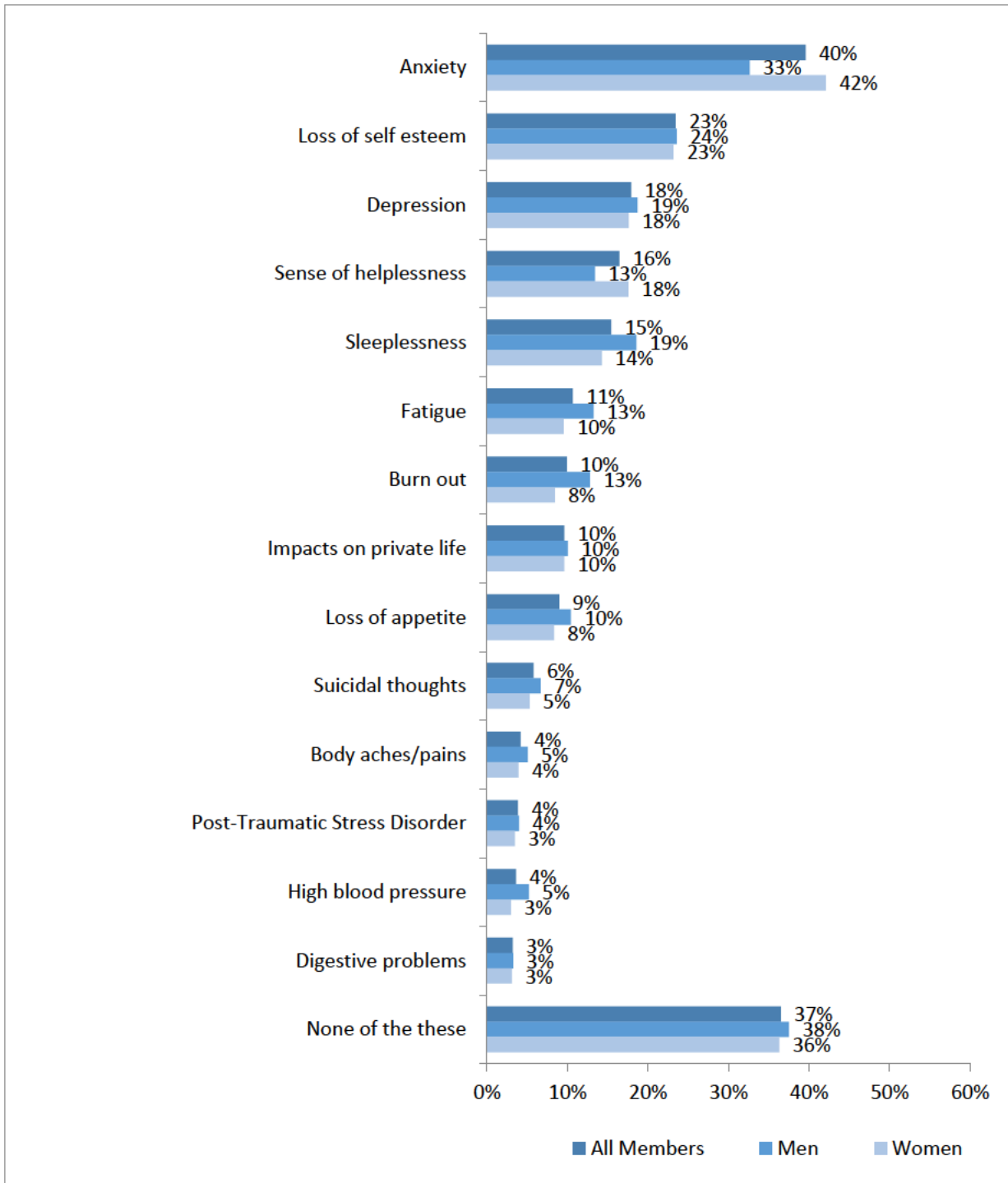
468. The proportions of men and women reporting experiencing a particular consequence were similar for nearly all listed items. The only statistically significant differences were that women (42%) were more likely than men (33%) to have experienced anxiety as a result of the most recent incident of workplace sexual harassment, and men more likely than women to have experienced burn out (13% and 8% respectively).

469. Incidents of sexual harassment can result in severe health and well-being consequences for our members. The SDA/AHRC found that 4% suffered post-traumatic stress disorder and 6% had suicidal thoughts following their most recent experience of sexual harassment.

470. One member said that:

*'A few years ago I was treated like crap by management and coworkers for filing a harassment complaint. It became so bad I considered ending my life. I have since never spoken up again if someone touched me or said something to make me feel uncomfortable.'*

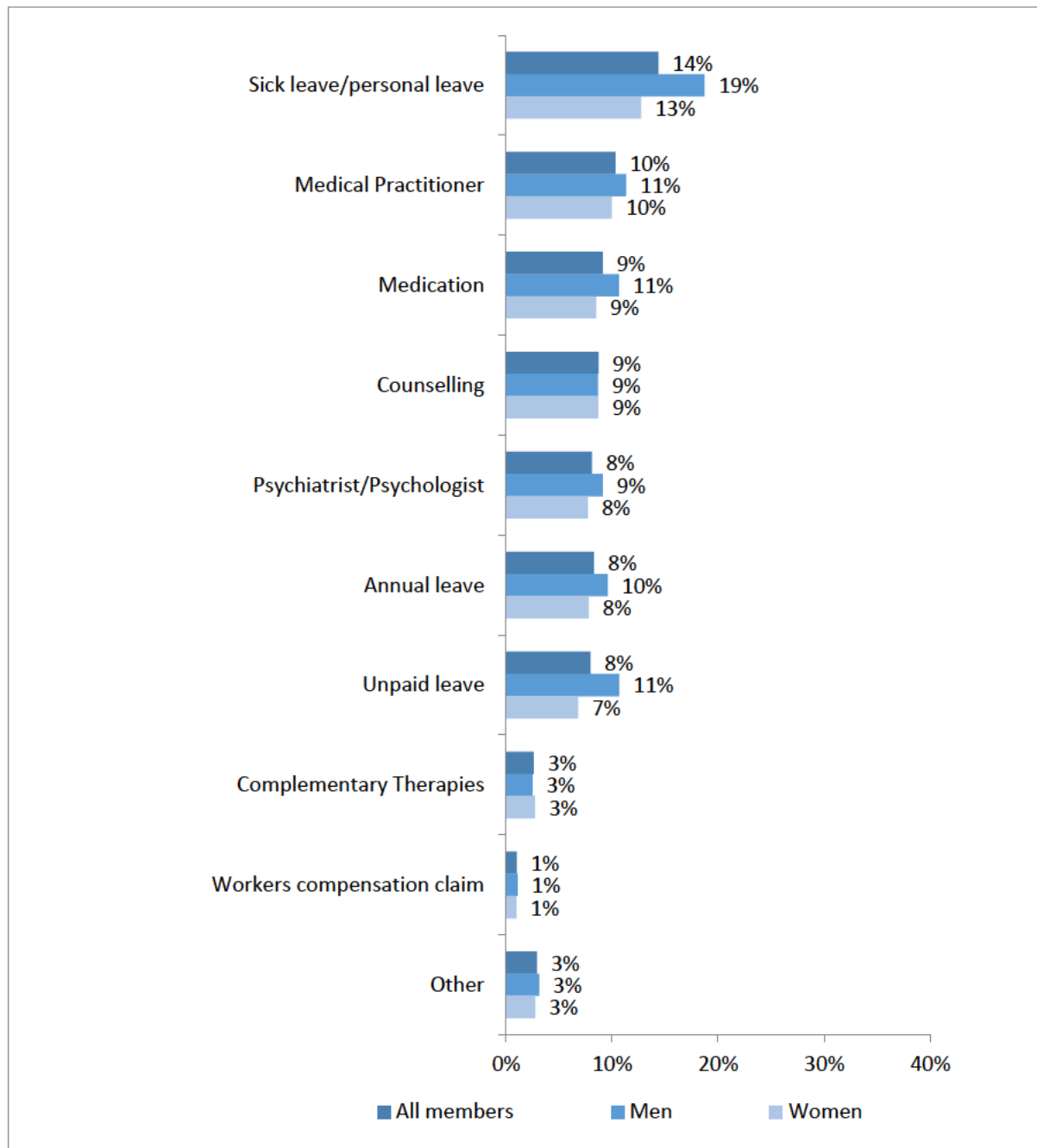
471. The following table shows the responses from those members who suffered negative health and well-being consequences following sexual harassment:



472. Those who had been sexually harassed in the workplace in the last five years were also asked to indicate whether they had sought assistance (from a closed set of potential sources of support) as a result of health problems directly associated with the most recent incident of workplace sexual harassment.

473. The source of support most often utilised was sick/personal leave (14%), followed by counselling (9%), medication (9%), a psychiatrist/psychologist (8%), annual leave (8%) and/or unpaid leave (8%). Men were more likely than women to have taken sick/personal leave (19% and 13% respectively) and/or unpaid leave (11% and 7% respectively). There were no sources of assistance more likely to have been utilised by women than men.

474. The following table represents the forms of assistance utilised by victims of sexual harassment:



475. This table provides evidence that there is not only a personal cost on individual workers, from a health and financial perspective, but also a cost on workplaces, companies and the economy more broadly. The cost on business results from the need for employees to use paid and unpaid leave and workers compensation. This says little about the impact this has on the individual worker, their colleagues and broader workplace.
476. This provides clear evidence that sexual harassment is a WHS issue.
477. Women and young workers are highly represented cohorts in retail and fast food and are groups most at risk of exposure to sexual harassment.
478. WHS laws have thus far, not dealt with sexual harassment as a workplace health and safety issue, which it plainly is.

### **Sexual Harassment is a WHS issue**

479. The objects of our WHS laws are largely consistent across jurisdictions, with the exception of Western Australia and Victoria who do not yet have harmonised legislation. Australia's WHS model laws include Legislation, (WHS act), Regulations (WHS Regulations) and non-binding Codes of Practice. Enforcement
480. Section 3 (a) of the Model Work Health and Safety Bill 2016 (the WHS act) outlines the objects of the our harmonised WHS laws:
- (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant]; and*
  - (b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and*
  - (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and*
  - (d) promoting the provision of advice, information, education and training in relation to work health and safety; and*

- (e) *securing compliance with this Act through effective and appropriate compliance and enforcement measures; and*
- (f) *ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and*
- (g) *providing a framework for continuous improvement and progressively higher standards of work health and safety; and*
- (h) *maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.*

481. The evidence of exposure of retail and fast food workers to sexual harassment, shows WHS laws have abjectly failed to meet their objectives to protect workers, women in particular, against harm to their health and safety, and wellbeing.

482. The model WHS laws also make clear that the responsibility to prevent harm to workers, lies primarily with the employer or Person Conducting a Business or Undertaking (PCBU).

- |                   |  |
|-------------------|--|
| <i>Division 2</i> | <i>Primary duty of care</i>  |
| <i>19</i>         | <i>Primary duty of care</i>  |
|                   | (1) <i>A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:</i>   |
|                   | (a) <i>workers engaged, or caused to be engaged by the person; and</i>   |
|                   | (b) <i>workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.</i>   |
|                   | (2) <i>A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.</i> |

483. Employers must also understand workers health includes both physical and psychological health. 'Health' is defined in at s 4) of WHS Act as both physical and psychological health.

484. Sexual harassment is a psychosocial hazard, that is an incident or situation which has the potential to cause harm including psychological injury. This is supported by the evidence of harm to workers caused by exposure to sexual harassment from the AHRC/SDA survey and the SDA work and advocacy for members over decades.

485. The WHS Act, is instructive in relation to what employers and PCBU are obliged to do in order to fulfil legal obligations to workers, that is their legal duty of care. Employers must ensure, so far as is reasonably practicable, that they:

- Provide a work environment that is maintained without risks to health and safety,
- provide and maintain a safe system of work,
- provide adequate facilities that are accessible,
- provide information, training, instruction or supervision that is necessary to protect all persons from risks and
- monitor the health of workers and the conditions at the workplace for the purpose of preventing illness or injury<sup>60</sup>

486. In particular, s 19 (3) (c) states an employer must provide and maintain 'a safe system of work'. The failure of employers to conduct risk assessments to identify 'unsafe systems of work' frequently leads to operational decisions that disregard the deleterious impact sexual harassment is having on their workers' health and safety.

487. The SDA has numerous examples of the adverse impacts of broader business decisions made by retail and fast food employers that have created an unsafe system of work. These decisions have increased the risk or lead to an environment that enabled sexual harassment of workers. Recent examples include requirements for workers in customer facing roles to wear uniforms or other apparel with inappropriate and sexually suggestive slogans and national marketing campaigns that denigrate workers as individuals, who exist only to please and service the customer.

488. There is no compelling evidence in the AHRC/SDA survey, or in the SDA's experiences with large and medium employer across the board in retail and fast food, that employers are meeting their legal obligation to workers to ensure they are not exposed to sexual harassment.

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60 Model WHS Act (s19 (3)).



489. The failure of WHS Regulations to address sexual harassment can be further understood in the context of the failure of the laws to adequately deal with the management of psychosocial hazards more broadly. While psychosocial hazards are dealt with in a new Codes of Practice, sexual harassment is glaringly omitted from the list of hazards that may cause illness or injury.<sup>61</sup>

### **WHS approach to Sexual Harassment in Retail and Fast Food Industry**

490. Customer perpetrated abuse and violence (CAV), including behaviour that is sexual in nature is impacting significantly on the psychological health of workers in retail and fast food. The SDA has done extensive work on this issue over the past 3 years including the launch of the union's public 'No One Deserves A Serve' campaign.<sup>62</sup>

491. In March 2018, the SDA hosted an industry roundtable to initiate an industry wide response, from retail and fast food employer associations, employers, regulators and other key stakeholders, to tackle this issue.<sup>63</sup>

492. There is broad consensus across industry that CAV, in general, is underreported as a WHS issue. The SDA anticipates that there will be an upward trend in relation to reporting of incidents in retail and fast food as awareness of the impacts of CAV increases.

493. Some employers have already taken measures to improve and encourage reporting of incidents. An Australian-first trial involving a major fast food and retail employer has recently launched by insurance provider iCare in partnership with the SDA to reduce abuse from customers towards workers. A key strategy of the trial is to reject the ideology that the "customer is always right". This trial is a direct result of the SDA's ongoing campaign to stop abusive and violent behaviour in retail and fast food in general.

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<sup>61</sup> Safe Work Australia, 'How to manage work health and safety risks' (Code of Practice) 25 May 2018.

<sup>62</sup> Shop Distributive and Allied Employees' Association, 'No One Deserves a Serve' – SDA launches major national campaign to stop abuse of retail and fast food workers this Christmas' (Media Release, 1712, 14 December 2017).

<sup>63</sup> Shop Distributive and Allied Employees' Association, 'Retail and fast food workers union hosts roundtable to tackle customer abuse epidemic' (Media Release, 1803, 14 March 2018).

494. Many workplace incidents that cause or create a risk of illness or injury are not reported, including sexual harassment. A problem for SDA members in retail and fast food is that the WHS laws do not specify that workers should have direct access to reporting systems. In the SDA's experience, many companies have online reporting processes which often can only be accessed by management and are not easily, if at all, accessible by workers. This can lead to errors in reporting and failures to properly investigate incidents by managers, especially if an incident does not result in a serious injury.
495. The SDA/AHRC survey confirms extensive under-reporting of sexual harassment in retail and fast food. Only 13% of victims make a formal report or complaint in relation to workplace sexual compared to 17% of the national workforce.
496. In a recent positive development following consultation with the SDA, a major national employer has confirmed it has successfully incorporated psychological health into its injury reporting system. This employer's critical incident reporting system now also captures sexual harassment as a type of incident, integrating it into notifiable WHS incidents. However, this is not yet an industry wide or standard approach.
497. The SDA would like to see all employers required to integrate incident reporting on sexual harassment into their WHS systems. The SDA supports the ACTU recommendation that notifiable incidents need to be reconsidered and redrafted in relation to reporting psychosocial hazards including sexual harassment.
498. The SDA's observation of the performance of WHS regulators in relation to sexual harassment is that they are largely absent from this space. The SDA supports the ACTU submissions in this regard. At this point in time, WHS regulators are ill equipped to address sexual harassment as a serious WHS issue from a compliance and enforcement perspective.

499. In general, employer WHS systems in retail and fast food do not properly identify sexual harassment as a health and safety hazard. These systems are flawed in their design as they:

- do not build in risk assessments in relation to psychological health
- do not train, instruct and appropriately supervise their staff
- do not monitor the health of their staff in relation to psychological health; and
- do not have provisions to capture incidents of sexual harassment in their reporting systems.

500. WHS systems set up by employers fail workers as they do not work to prevent incidents and keep workers safe from workplace sexual harassment.

501. Incidents of sexual harassment are driven by gender inequality. Any approach to address this issue in the context of WHS laws must consider the gendered aspect to sexual harassment, particularly given that affected workers in retail and fast food are predominately women.

502. The costs of inaction on addressing sexual harassment as a WHS issue far outweigh the potential costs of putting in place controls to eliminate or prevent the risk of exposure in Australian workplaces. The cost to business includes workcover premiums, legal fees, absenteeism, lost productivity and staff turnover.

503. To counter any argument advanced now or in the future about the cost to business of reforms to WHS laws to address sexual harassment, the model WHS Act is clear that cost should only be taken into account if it is grossly disproportionate to the risk.<sup>64</sup>

### **Recommendations regarding WHS:**

**A new WHS Regulation and Code of Practice should be developed in consultation with social partners and experts on all psychosocial hazards, including sexual harassment.**

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<sup>64</sup> *Blackadder v Ramsey Butchering* (2002) 118 FCR 395 at [67].

WHS regulators must be sufficiently resourced and trained to deal with psychosocial hazards, including sexual harassment and sexual assault.

The definitions of 'notifiable incident', 'serious injury or illness' and 'dangerous incident' should be reconsidered and redrafted to require reporting in relation to psychosocial hazards, including sexual harassment.

Sexual assault must be a 'notifiable incident' and must require mandatory reporting to the regulator. The confidentiality of the victim must be strictly maintained.

Australia's national approach to WHS compliance and enforcement in relation to psychosocial hazards, including sexual harassment, needs an urgent review, including accessibility of workers compensation in cases of sexual harassment.

## **ADDITIONAL MATTERS**

### **Confidential Settlement Agreements**

504. When complaints are settled before going to a public hearing, employers ordinarily require a confidential settlement to be agreed to in writing by the employee.
505. The use of confidential settlement agreements means there is no damaging exposure for the employer and has the impact of providing no real incentive for change as it is quietly brushed under the carpet and does not contribute to precedent case law.
506. While the SDA can see that there may be benefits for both parties it should be a genuine choice of the complainant rather than being forced to choose between agreeing to confidentiality and a potential settlement.
507. Complainants should also be protected against clauses which prohibit their freedom to disclose settlements or information available under other laws such as whistle-blower legislation; or to other regulators and/or agencies; police and to inquiries such as this National Sexual Harassment Inquiry.

508. A standard confidentiality clause or settlement agreement should be developed and included in a Code of Practice.

**Recommendations:**

**That a standard confidentiality clause or settlement agreement be developed and included in a Code of Practice which doesn't prejudice complainants and doesn't allow for the distortion of reportable incidents and overall reporting to WGEA.**

**OTHER INDUSTRIES**

**Modelling**

509. The SDA has coverage of models and mannequins. We have members working in these occupations, but it is a largely non-unionised, precarious industry.

510. The SDA notes that people performing modelling work are particularly vulnerable to sexual harassment. The modelling industry is largely unregulated, and models are frequently required to work as independent contractors resulting in them lacking many workplace protections and entitlements.

511. Modelling is also a highly sought-after career which means that many aspiring models will take whatever jobs they can get and therefore face a severe power imbalance in these situations.

512. Models are also often young (teenage) females although the following behaviours have also been reported by women in a variety of age brackets.

513. The associated risks of sexual harassment include:

- Working one-on-one and therefore there being no deterrent to harassment and no witnesses to the behaviour;
- Pressure to accept as normal excessive touching (explained as 're-positioning' the model)

- Pressure to wear little to no clothing in circumstances where a model does not feel comfortable or getting changed in the presence of others;
- It is commonplace to be approached online with an offer of a 'job' opening the model to the potential dangers of online harassment or grooming behaviour

**Recommendations to address sexual harassment in the modelling industry:**

That an educative and public awareness focus be given particularly to this industry, for example by engaging with organisers of major fashion shows in Australia, to highlight the risks prevalent in the industry and engage with the various stakeholders to encourage changes be made.

An Industry Code of Practice to establish an agreed position to provide a work environment free from sexual harassment. This should include agreement to the following measures:

- e. Private change rooms at all photo shoots, catwalks and other related modelling work.
- f. A commitment to provide and notify a model of the right to bring a person of their choosing to modelling job that would otherwise be one-on-one; at which the attendees are unknown to the model; or at which the model may be required to wear lingerie or model nude.
- g. A requirement to obtain express written agreement from the model prior to the job when lingerie or nudity is required at a job
- h. That all jobs must have a mechanism to confidentially report harassment.

Establishment of an online registry for non-compliant individuals or businesses.

**REPORTING AND MEASURING THE PREVALENCE OF SEXUAL HARASSMENT AND OUTCOMES OF COMPLAINTS**

**Workplace Gender Equality Act**

514. The SDA strongly supports the Workplace Gender Equality Act (WGEA) 2012 and the continued obligation on companies to provide public reports in accordance with the legislative requirements.



515. Apart from the AHRC National surveys on sexual harassment at work and reports by the AHRC and state Anti-Discrimination Commissions on the number of sexual harassment complaints they receive, which are a very small number of complaints made, we have very little evidence of complaints and outcomes of sexual harassment in workplaces.
516. The lack of information and transparency regarding complaints made in workplaces and the outcomes of those complaints, has led to a culture and environment of secrecy around sexual harassment and does not create an environment which encourages reporting and prevention.
517. Employers invariably argue that privacy prevents them from providing information to anyone, including a complainant, on the outcome of a sexual harassment complaint. We note again that it is unclear what privacy laws are relied upon for this assertion.
518. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Global Compact has developed the Women's Empowerment Principles for business. The Empowerment Principles offer guidance on how to empower women in the workplace, marketplace and community. One of the Principles is to 'Measure and publicly report on progress to achieve gender equality'. This involves making public the company policies and implementation plan for promoting gender equality, establishing benchmarks that quantify inclusion of women at all levels, measure and report on progress, both internally and externally, using data disaggregated by sex, and incorporating gender markers into ongoing reporting obligations.
519. The WGEA reporting obligations are the only legislative mechanism to ensure that Australian companies are measuring and reporting on progress to achieve gender equality. Given that Australia's position in relation to gender equality is deteriorating it is essential that reporting requirements are strengthened to meet the objectives of this empowerment principle.
520. The focus of the reporting requirements should be outcome focused rather than reporting whether an organisation simply has a policy. It is essential that

reporting requirements ensure the collection of meaningful data. Simply reporting on the existence of a policy or strategy is not enough to influence an improvement in gender equality.

521. The current WGEA reporting requirements simply require employers to report if they have a policy or strategy on sexual harassment and if training is conducted. The SDA submits, and evidence clearly shows that this in itself does not lead to cultural change to prevent sexual harassment.
522. The WGEA reporting requirements should require employers to report the number of sexual harassment complaints received in the reporting period, the outcomes and actions of those complaints, and how many complainants have continued in their employment after making a complaint?
523. Currently, the Workplace Gender Equality Act does not provide the WGEA with powers of investigation, auditing or enforcement. The WGEA doesn't even have the power to mandate that employers lodge a report or take action for non-compliance.
524. The powers and functions of the WGEA should be extended so that it can enforce mandatory reporting, conduct audits and investigate potential non-compliance.
525. To ensure the data is meaningful there should also be penalties built into the Workplace Gender Equality Act 2012 for those organisations who are required to report under the Act but fail to do so.
526. The Workplace Gender Equality (Minimum Standards) Instrument 2014 currently requires organisations with more than 500 employees to meet one or more minimum standards of four Gender Equality Indicators. We believe that the limitations set out in this instrument will lead to very slow progress in achieving gender inequality and closing the gender pay gap.

527. Organisations with more than 100 employees are required to report to WGEA. There is no reason these organisations should be excluded from the requirement to meet the minimum standards set under the Minimum Standards Instrument.

528. Organisations should also have to meet all the minimum standards to be compliant not just satisfy one or more.

529. The definition of 'employees' when determining which employers are obligated to report to WGEA and meet minimum standards should include employees, contractors, labour hire and other workers because of the changing nature and composition of the workforce.

530. Companies should be required to report any complaints of sexual harassment and the outcomes of those complaints to their Board.

### **Recommendations for Reporting:**

Amend the reporting requirements under the Workplace Gender Equality Act 2012 to require employers to provide the following information regarding sexual harassment:

- Do you have a policy and complaints process in relation to sexual harassment?
- How many sexual harassment complaints were received during the reporting period?
- What were the outcomes of the complaints?
- Have the complainants continued in their employment?
- What actions have been taken to ensure sexual harassment doesn't happen again?

The powers and functions of the WGEA should be extended so that it can enforce mandatory reporting, conduct audits and investigate potential non-compliance.

Amend the Workplace Gender Equality Act 2012 to introduce penalties for companies who are required to report under the Act but fail to do so, and for those who provide misleading or inaccurate responses.

The requirement to report on minimum standards should be extended to all reporting organisations, not limited reporting organisations with 500 or more employees.

The requirement to meet the minimum standards set out in the Workplace Gender Equality (Minimum Standards) Instrument 2014 should be extended to all Gender Equality Indicators.

Companies should be required to report any complaints of sexual harassment and the outcomes of those complaints to their Board.

### **ILO CONVENTION ON VIOLENCE AND HARASSMENT IN THE WORLD OF WORK**

531. The ILO has commenced a process to set a new international standard on violence and harassment (including sexual harassment) in the world of work.

532. The ACTU has made submissions to the National Inquiry in relation to this which we support.

#### **Recommendation regarding the ILO Convention:**

That the Australian Government commit to support the development ratification and implementation the new ILO Convention on Violence and Harassment at Work, including maintaining broad and inclusive definitions of 'work', 'worker' and 'violence and harassment'.

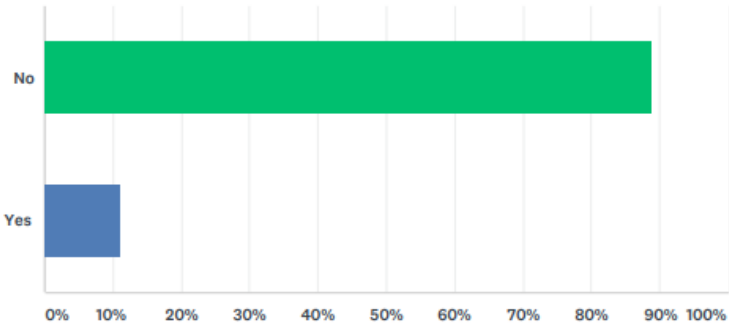
Customer Abuse and Violence Survey Retail and Fast Food 2016

Responses

17 Years and Under

**Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?**

Answered: 390 Skipped: 97



ANSWER CHOICES	RESPONSES	
No	88.97%	347
Yes	11.03%	43
<b>TOTAL</b>		<b>390</b>

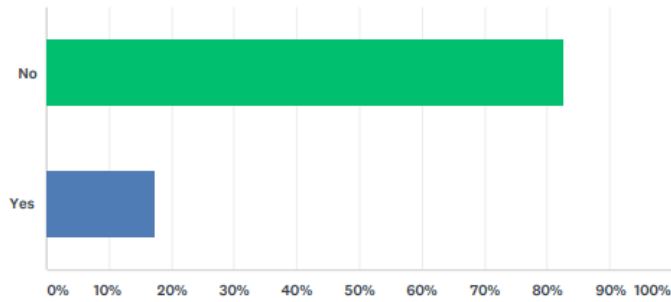
#	IF YES, PLEASE BRIEFLY DESCRIBE THE BEHAVIOUR?
1	An old man comes in regularly that makes slimy remarks to the female employees, last time he said to me 'I'm glad you served me your prittier then the other girls' managers have been told about this man frequently.
2	Watching porn in drive thru
3	A guy grabbed my ass
4	Cat calling
5	Objectification
6	There are often sexual comments made by customers such as "could i order a blowjob with that?" Its meant as a joke but makes employees uncomfortable and we are unsure about what action to take in response so generally laugh it off despite it being confusing and sometimes distressing
7	Older man making advancements after I told him to stop multiple times.
8	Attempts to touch me
9	Staring at my chest, making grabby motions with his hands that he knew I could see (even though directed towards his friends), in another instance catcalling in the carpark (multiple occasions)
10	Some people are flirty wouldn't say abusive
11	Upon receiving his food, a man made a remark to me about how "nice my tits looked in that shirt."
12	Customer made comments about getting my number, complimenting my appearance and generally just flirting with me, putting me in a really uncomfortable position.
13	Name calling and asking for details



14	An owner of another shop across the port mall often comes in and tells me that im hot or im sexy. Aswell as often calling me baby and telling me uncomfortable things such as "I want you to be model" etc.
15	Inappropriate propositions and caressing of hands
16	Sexual call outs and inappropriate words
17	Customer talks sexual about underage employees
18	Sexual comments and suggestions
19	Ass grabbing
20	Catcalling
21	I had a guy turn around and put his hands down his pants and rub... I didn't know what to do, I thought he had a mental issue, I didn't report it.
22	inappropriate sexual comments
23	In this circumstance, three men in a taxi were drunk and were yelling inappropriate comments at me. I felt extremely uncomfortable and physically unsafe.
24	Looking down shirt making inappropriate comments
25	I was sweeping the outside front of the store, with two young men in cars trying to get me to come over to their car and give them my number. I didn't, I came inside and told my super. this was half an hour before closing time.
26	Inappropriate language used by a customer on the phone
27	old men keep thoroughly questioning me including age name and if i will get off work and spend the rest of my night with them
28	Look, old men wink at you, but not everytime you look at them, or when they try to flirt with you, thankfully I haven't received any physical or straight forward sexual behaviour.
29	making inappropriate sexual comments
30	Been asked to date a stranger though Drive
31	asking for my name and number

**Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?**

Answered: 1,569 Skipped: 259



ANSWER CHOICES	RESPONSES	
No	82.54%	1,295
Yes	17.46%	274
<b>TOTAL</b>		<b>1,569</b>

I experienced a lot of inappropriate sexual comments when I was younger working there though.
Suggestive comments
A customer spoke about how we should be married and what a good time we would have together. He then gave me a suggestive wink.
A drunk customer made sexual remarks telling me to "suck her husband's cock" and other like comments.
I've had this "customer" touch my bottom, lower back, hips and an attempt to touch my breast which I was only just able to move away from. Usually he would always intercept me on the shop front and trap me between the shelf and my trolley.
Sexual comments, threats of rape
Man touching my lower back and telling me he was taking me home
following me around the store making sexual remarks, and one customer tried to kiss me
Unwanted touching and trying to kiss me
Smacked me on the bottom as he was leaving
Never sexual
Talked about inappropriate and vulgar topics
Asking for my phone number and if am single
Sly comments
An elderly man stroked/rubbed my legs up and down
Customers have shouted comments of a sexual nature when I have taken food to their parked car.

A customer kept asking me out/ asking for my number and wouldn't stop even after say no multiple times and was talking about to other customers. She made very uncomfortable and gave me fake money in which I got a written warning for.
Things like middle aged men asking "let's fuck?" to me as a 20 year old girl. Never appropriate. Not ever. Another Co-worker was invited to a foot fetish party while serving a customer next to me. A customer asked my manager behind me if he gets to have sex with any of us.
Sexual remarks
Telling me I was not sexually attractive to him and should shut up.
Touched me on the hip. Then tried to kiss my hand on a separate occasion.
bought frankfurts called them donkey dicks and told me he would give me his and told my co-worker to meet him in the cool room
the one from before where the guy was pushing his backside into me calling me a paedophile
There was an incident when an older man asked for my personal details and came into work 3 days in a row being persistent to ask me on a date
Calling me sexy, asking for a stroop search when I'm on door greeter
Aggressive, rude and just not natural human behaviour for such situations
An older man brushed my bottom with his hand, but our store I busy, so it may have been an accident.
In previous situations I have actually been mildly sexually harassed by customers, the first one was a one off but the second one is a weekly regular and touches me in inappropriate places and says inappropriate things to me, other staff members are aware of this customer and how intense he can be. Other staff members usually call me to the warehouse when he is seen speaking to me.
I have had men leering at my breasts before. I am a big girl and have had a button pop unknowingly and had men stare at me with no intention of telling me that my button has popped.
Sleazy male touching female staff including myself. Asked to stop touching us.
Asking if I would get down on my knees and suck him off
There was on incident where a male customer drove through the drive thru naked while masturbating, and made an attempt to gain the staffs attention.
Guys making crude sexual remarks
Being a young woman, constant unwanted sexual advances happen. Generally after being nice/smiling there's a chance people see this as an advance, even though it's in my job description
Comments, questions or remarks that make staff feel uncomfortable.
A 60 plus year-old male referring to me as his girlfriend and various other comments
Two regular customers pursued my two friends after they had told them multiple times they weren't interested
Male customer, following me around store, saying uncomfortable remarks
Males making uncomfortable comments
Inappropriate conversation. Inappropriate comments.
Standard old men making unwelcome comments. Gross

Yes, lots of grown men think it is normal to flirt and make young girls such as myself uncomfortable. Often these men and one in particular, will always stand really close to my face when I'm supervising on self checkout and he also commented on how I was wearing a skirt to work.
Comments, verbally. About me, to me or about female staff
Commenting on the way my body looks in my uniform, asking me if I'm single
Old men making suggestive comments. "You're too hot to be working here" and staring inappropriately at body.
Inappropriate comments
Comments
A customer touched me on my lower back with his cold hands
Sexual innuendo mostly
Slapping me on the arse
A customer commented saying I'm the sexiest women he knows and asked me on a date.
Sexual comments about appearance, suggestive comments, phone numbers, touching, and sexual jokes
Handing me an unwanted graphic picture to look at - the customer made me look at it and flashed it in my face
Inappropriate comments on physical appearance and sexual comments.
Stalking and showing me pornography on his phone, he was issued a stalking caution. He was 50+ years old and would visit the shopping centre on a daily basis to check if I was at work. He would then make comments such as "I noticed you weren't at work yesterday". I involved the Police as I felt extremely uncomfortable and threatened when working shifts by myself.
I have men flirt with me, invade my personal space
Phone calls asking us to take dirty to a heavy breathing male
Nudity
It was all verbal and I knew I was safe in public
A man masturbated into underwear and gave them to me
Men making untoward comments or advances
A customer threatened to rape me as I locked the car park gates after closing time.
Hands on waist, not taking no as an answer. Constantly asking for sex
Sexist and degrading language, inappropriate physical contact
Sexual innuendo & attempted groping
Lipstick was offered to be painted on my penis by a bunch of drunken gay men. Enough said.
Innuendos during interaction, remarked as "sexy"/"hot" on comment cards, called "doll/sweetheart/darling" by older male customers
I have been grabbed/touched or they have made sexual comments
A man told me his penis was too large for the zipper on pants and continued to discuss it to myself and another employee even though he knew we were uncomfortable.
Degrading comments, inappropriate behaviour and touching

Customer trying to lift up my skirt
Inappropriate comments about my clothing and looks
A man walked into store and just as I said hello how are you he began yelling at me. He yelled about how women like me only get jobs because we have sex appeal and sex sells. It went on for too long, I was new in retail, incredibly uncomfortable, alone on the service floor and too afraid to stand up for myself entirely.
Inappropriate name calling, intimidation, wolf whistling and the like
I was knelt down moving products on a bottom shelf when an older male made an inappropriate comment about me being on my knees.
Comments towards young female staff
Sexual comments or suggestions, makes the girls feel uncomfortable
lots of male partners of women shopping in the store think it's okay to harass
There are many occasions, but they are all effectively advances that you can't get away from because you have to serve them, and they are a customer so you feel like you have to be nice.
Creepy old man has said things of a sexual nature about our young female staff members
Once again it wasn't particularly horrible but I've had male customers ask me and my co-workers out a lot and made sexual comments about us. I used to have a man who would come in every week or so to talk to me and even when I told him I was uncomfortable and not interested he continued to visit and say upsetting things.
Sexist comments
We have customers who think it's okay to talk sexually about what they want and think it's okay to ask out store employees, one girl has someone who stalks her out in the store and eavesdrops where she's going to be and turns up at the same place
Indirect abuse, male customer hanging about female employees and deliberately standing too close so you would bump or brush into him if you moved, violating personal space and extending this to other female customers. He was eventually followed by security and before being asked, got the hint to leave
Getting hit on all the time, asking if I had a bf, asking for a date, trying to touch me, sexualised comments, dick jokes the list goes on
Verbal Sexual Harassment to both myself and other staff
Making sexual jokes at staff, giving staff nicknames of a sexual nature and trying to get staff members numbers.
Have been asked to walk in front so he can have a good view
Asked me to drive to Sydney with him when I declined he waited for me in the car park for me to finish to try and grab me as I walked home.
Sexually objectifying me and other female workers. Saying what he would "do" to us
Derogatory nicknaming including grabbing hold of my hand/wrist over the counter, as well as leaning close over the deli counter/case.
Being called sexy by 40 year old males who try and talk dirty whilst I have to serve them
Inappropriate language

Explained above but grabbing me inappropriately and being held against them.
Just being seedy and making me feel uncomfortable
Hit me on my butt. Another (different) customer offered sex and tried to hit me on my butt
Being a young female, pretty much every shift an older male will make a pass or inappropriate comment towards myself or another female team member
Very innuendo based but still made me extremely uncomfortable. Also had another customer asking young girls in skirts to climb ladders/bend over to get items for him that he had no intention of purchasing.
Asking for my number then threatening me when I didn't give it to him
Men coming into the store and saying sexually explicit and offensive things to our female employees
Comments mainly, if I responded in a way that made it clear to the customer that their behaviour was not appropriate I would not be backed by management if they complained about me.
Verbally sexual, so picking up, flirting, creepy lines/jokes that are not funny. Name calling.
Inappropriate comments
Inappropriate comments regarding the appearance of myself and other female team members.
Sexual comments from middle aged men
Touchy
Called my sexuality into question
One customer threw his arm around me and grabbed my arse
Not really abuse, but my co-workers and I have experienced unwanted sexual attention and advances many times.
Customers often take it upon themselves to make rude remarks and touch you inappropriately. This behaviour is almost exclusively by men directed towards younger female staff.
Touching, unwanted sexual comments
There was a man in the store who was peering around corners to look at customer's and employee's backsides. On a few occasions, he went right up behind them and leaned down in an attempt to have his backside touch a females. He was also ogling quite obviously at women's breasts.. Several customers came up to me to tell me that he was being inappropriate. I told a manager as I had seen him doing this for about ten minutes to many females and nothing was done.
The customer kept staring at my chest and said he made me horny
uncomfortable, provocative behaviour, unacceptable comments being made and gestures.
Calling out bad names like slut or bitch or whore
Unknown customer was insisting on a hug, I refused. Elder man referring to me as "yummy"
Suggestive comments
Touching of hands. Sometimes shoulders when not behind the register.
Men who feel that they can say sexually suggestive things towards me and other female co-workers, just because we HAVE to smile and be extremely friendly and helpful to everyone, so they seem to think it's an invitation to be uncomfortably familiar with us. This often includes touching and standing, in my opinion, waaayyyy too close as well.



making kissing noises towards me and encouraging me to come closer for a kiss
Graffiti in toilets requesting for sex 3 times this year
I was groped by an old man who ran his hand, then his crotch, then his hand over my behind
Groping, asking to "come out to the car"
Inappropriate sexual comments
messaging me on facebook
Being winked at, being grabbed/rubbed on my bare skin.
Asking for telephones number, saying they will see me later
One man in particular used to come in all the time and tell me all the things he would love to do to me and to watch out for him after I finished my shift. I banned him from the store and threatened to call the police if he ever returned
Calling me a rapist
Very common for sexually inappropriate comments to be made about my appearance, or other staff members appearances
Verbal threats
Customers regularly sexually harass female staff. Generally older men cornering you so you can't get away and hitting on you
Wanting to touch breasts, sexual comments
Customers persistently flirting and trying to get me to go out for coffee with them, lewd remarks about my appearance
The customer was making inappropriate comments as I was scanning a pack of tennis balls. They were watching me and said "you look like you'd be good with balls" and winked at me before calling me "gorgeous" and "sweetie"
A customer kept asking me to take off my top
Sexual advances
Referee to as "hey sexy" etc. which was not invited or ok in the work place
Grabbed on the behind while filling drinks, had customers attempt to force me to go on dates with them and one person tried to grab my breast while I was behind the register.
Some guy repeatedly trying to hit on staff members and generally being creepy
I was told I should leave work so he could follow me home to find out where I live.
You get comments about how hot you are or asked for your number etc
Sexually explicit language and suggestive behaviour
Customer who was attempting to steal and was obviously drug affected made severely inappropriate comments towards me after being asked to leave the premises
Verbal obscenity
Said "Hey gorgeous, can you show me where the rope is?" And then put his hand on my lower back, near my butt.
Someone was flirting with me and kept trying to touch me

I've had old men "accidentally" touch my bum. I also had a man who stroked my hair, back, lower back and arms.
trying out reach out and touch you, trying to get my personal details
sexual advances.
I repeatedly had a customer try to show me physical affection and seek me out within the store, after asking him twice to stop and seeking support from management the issue wasn't rectified so I moved stores.
If my girlfriend is happy in bed
looked me up and down and said I have a nice body
Sexualizing my body, calling me names, leering, standing very close
Regular customer hugs employees. Asks personal questions eg, would I consider getting my nipples pierced
Sexual comments
Males make comments about how my body would fill out a certain garment, requested that I try on lingerie.
There is a regular offender that management has asked to leave on several occasions but will not formally prohibit entry to
I was groped
Touching bum while I am on self serve ,comments of a sexual nature
Male customer attempted to show me his underwear because he wanted to purchase the same style. I felt uncomfortable and left him alone in the department.
Had a customer tell me that he would "fuck" me after my shift if I didn't remove myself from working where is was shopping
Made comments about my body while I was filling shelves.
Been looked up and down whilst the man stood closely to me and slowly said my name
Constantly trying to look down shirt and sexual comments
Have customers get very angry when I won't give them my number or get in their car
Just verbal stuff
Creepy winking and inappropriate compliments about my physical appearance
There is an older gentleman who comes in regularly and he will wait for me to finish serving my customers to talk to me. He always says very inappropriate things that make myself and other team mates really uncomfortable.
I had a man who knew my shifts and would come to the deli and ask me out repeatedly and when I said no he would imply we could go back to his and do stuff, it took 2 months before he stopped coming And I had ask Helen our manger to help the situation and her advice was to tell him to leave which I did do everytime
Customer psychically touched me on my ass.
the girls are constantly catcalled, females expose themselves asking for free food frequently

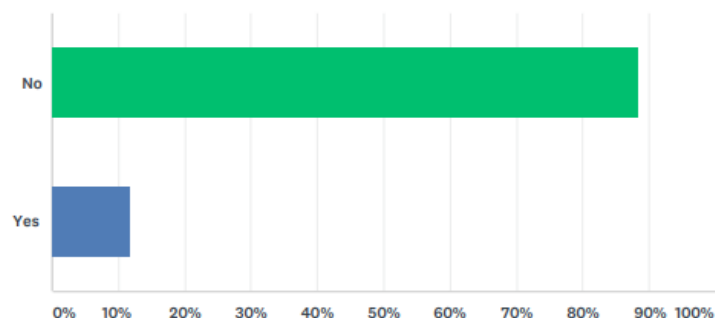
An older man came in and made sexual remarks to myself as well as several other young women working. He forced another girl to hug him and touched the cashiers upper arm without consent.
A man smacked my behind with a pair of shoes.
Asking if I'm single, asking for my telephone number, asking to go on a date and getting abusive when the answer is clearly no. Being told I am beautiful, hot and sexy while serving customers.
I had a teenage boy pretend to lose his pants and show me his underwear
Cat calling, inappropriate closeness, staring at inappropriate places on the body, touching hands too long whilst exchanging products or money,
making comments about appearance, asking for work times and holding my hand
Being a door greeter some male customers become very touchy and when stated to managers they think it's a joke
sexual comments are often made by older male customers, not so much abuse, but its still unsettling
Gestures and insinuations
Old man frequently sexually harasses myself and other young female staff. He implies sexual innuendos, directly says that he would like to sleep with me, as well as share me with his friends. He also asks other female staff if they are single. We have informed our store manager of this - not too sure what the outcome was. Although the old man now leaves me alone, I know the other female staff are still putting up with his sleazy behaviour.
I have been sexually assaulted both physically and verbally by male customers multiple times in the last 12 months
Touching hands on purpose and asking for number
A regular customer always hits on the girls and says vile things to us
Had a few old men try touching me while I was on the door checking bags
Winking, asking for phone numbers, commenting on the size of breasts etc.
Customers have threatened to rape me in the car park.
Stalking after rejection of sexual and "romantic" advances
I wouldn't say it was abuse but an old guy kept talking about what he did with his wife to me and another guy kept saying come over to my place
A male customer basically said that he wanted to see me bend over
Unwanted attention + advances
"While you're down there" every Sunday if the customer sees me on my knees reaching into the back of the fridges. Also MANY male customers think it's appropriate to call me sexy etc. it is never appropriate in a workplace and/or by a person I don't know.
Rude comments about my body and insisting that they have my number
I've been kneeling down filling something on a shelf or inside my smokeshop and had customers make lewd suggestions of 'while I'm down there'. When I have helped in the deli department customers ask for the items furthest away from us in cabinets in order to peer down my shirt. I've also seen my line manager be slapped on the ass by a customer as she bent down to get something off the floor.
A customer flashed his genitals at me while I was serving him.

Not to me but others in the store
"Excuse me" "yes how can I help you?" "What are you doing tonight? What are you doing?" One evening on the way to my department is the scariest one
No but have been made to feel uncomfortable by some male customers. To the extent when I asked security to walk me to my car after work.
The male customer I just mentioned.
generally unwelcome advances, it's less threatening for me as a guy than the girls receive though
I was touched/rubbed on the backside by a male customer
Indecent exposure
Stalking one of my team members
Customers making sexual references to me.
Inappropriate sexual comments

## 26-35 years

### Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?

Answered: 1,128 Skipped: 164



ANSWER CHOICES	RESPONSES	
No	88.39%	997
Yes	11.61%	131
<b>TOTAL</b>		<b>1,128</b>

Male customers often make lewd comments regarding appearance or marital status
Keeps coming through my checkout, making me uncomfortable, asking if I have a boyfriend, asking me out when I repeatedly said no. I said no very clearly
Customer asked me out for coffee. When I politely declined, a couple of days later came back into the store abusing my workmates and myself and complained about my service also.
Sexually verbal
A customer in his 70s continued to flirt with me and I told him several times I didn't appreciate his comments. The next time he came through my check out I tried to give him change from his payment and he tried to grab my hand and somewhere else. I told him to stop and he wouldn't take no for an answer
Customer says dirt unwelcomed jokes and innuendo towards several female staff asks me ever visit if I have got my bone yet
Comments on my breasts
called a 'good girl', 'darlin' and the customer made smooching noises toward me whilst being served.
I have been followed around the store and told how "nice" I looked. I have also witnessed this occurring to other staff members, often reps.
Grabbed my backside.
Every other shift there are customers who keep asking me out, forcing me to take their numbers, making comments about my legs/butt etc - some explicit, some not. Making statements about my assumed sexual preferences and habits etc.

I have been fully groped by two drunk men at my store
This happens a lot. I've been called a stupid girl
Sexual comments by older men
Had a customer tell me I promised to go home with him the previous night when I'd never seen him in my life, he then smacked my bum
A gentleman was trying negotiate the price of a tee shirt and informed him that I could not discount it but he should return Saturday as it would be on sale, he then walked toward me and stroked my hair and told me he'd be back for me. I'm so scared
have said they will rape me if they see me in public.
Customer has made repeated unwanted advances despite my rejections
A customer told me to shut my mouth as I was just a female and wanted to speak to a male
Msg of an inappropriate sexual nature
A customer kept grabbing my hand eg. When he passes me money, when I had to help him at the shelves. Told me my eyes were so blue and that I had luscious lips. He was roughly in his 50s and I was in my early 20s. I feel sick thinking about it.
There was a customer in October last year that tried to hit on me. He was an older gentleman and while I was out the back trying to calm down he went on to tell a co-worker some inappropriate comments about myself
Breach of personal space, suggestive language, inappropriate jokes, physical contact.
Lots of men between 20-40 years older than me make comments about wanting to take me home or me 'providing service', and things like that.
Sexual comments that are unwanted
Inappropriate comments
One man asked me to open a cock ring for him so he 'could use it straight away'. Another, when I said I was sorry we didn't have a product in stock said 'oh dear, well I'll have to spank you then. Although you'd like that, wouldn't you?'
I have men regularly calling me names and gesturing sexually to me
Too many incidents to name here
Making me choose items I'd need to bend for and constantly
"I like how you're handling those bananas" while filling banana display
inappropriate comments
I have had numerous instances in the past 12 months, more than I can count but three fairly inappropriate ones stand out. Men who come in with their wives or girlfriends and comment on my body and/or clothes while their partners are in the change rooms. Two have asked for my number while their partners are looking around and out of ear shot.
A regular customer who I knew from my work in the deli often gives lollies to the female employees. He had started saying I was his girlfriend, 'I love you' and 'don't forget we're dating now' to me when he came in. When he came through to talk to me when I was working in assisted checkout, and while we



were speaking reached up, grabbed my head, pulled it down and kissed me on each cheek. I was too shocked to react, and after he did that he continued to talk to me and also rubbed my arm.
Comments on ur body and gender
I have been called a fat slut a couple of times at the door
Nothing major, slurs when I refused something, trying to convince me to give them something I cannot by calling me "a pretty girl"
Was approached by 2 twenty-something guys who said they were doing a bet/competition and they needed me to give them a kiss. I felt very awkward and confused as my training instructs me to be polite and acquiesce to customers, but I felt violated. After a few minutes of awkwardness, a colleague saw I was distressed and when they spoke to her she awkwardly told them I had other work to do, so they left.
A customer called me "it" and ugly when his son asked what my gender was. Another called me a "dyke" and said I needed a man.
Customer asked if I was going to have a shower with him while I was selling a shower Bluetooth speaker.
customer asked me out repeatedly, making me feel uncomfortable. made comments regarding treating me like a sexual object.
By identifying as gay I have had several threats/verbal tirades about how I should be treated or what people should/would do to me
A customer who misinterpreted my professional friendliness asked me to kiss him.
Comments about appearance, touch hair, moved hair to see name badge
Inappropriate comments, leering, stalking, and attempting to brush against us
Staring, touching, discrimination
I was on my knees counting stock and a male customer walked and said to me "while you down there" and gestured to his crutch.
Had a customer say some inappropriate things to me after I told him I couldn't give him a phone recharge for free based on his complaint that he had thrown one he bought earlier in the bin
inappropriate sexual comments continued after asking him to stop
creepy older male comes in and talks in lude manner towards the younger female staff. he is being warned but ignores it just stays away for few days or comes when it's busy the manager can't chase him out. the police are aware of him but unfortunately its a he said she said no audio on CCT.
Not me, but the girls I supervise
Customer asked to grab my ass in front of the duty manager and 5 other employees. Two weeks ago a customer held me in place and I refused to kiss him at his request.
Crude sexual jokes and rape jokes.
Dirty old men saying filthy comments
In regards to blowing up balloons a customer very sleepily told me that he had something else I could blow
Have been groped, lewd comments about my appearance.

Touching my butt
Customer who is old keeps asking me and cognizes that he want to take me out to dinner want to take care of me
Passing of phone numbers and unwanted flirting behaviour
Inappropriate advances
Customer repeatedly cupping my breasts accidentally.
It's not necessarily abuse but I've had many unwanted comments and pick up lines from various male customers
Some customer told an associate that if she has sex with him he'll buy her a iPad
Regular customer comes in saying inappropriate things to young girls and women
Creepy comments and personal questions from a regular customer
A customer one put his arm around my waist when I was in self checkouts and made crude comments
The above mentioned male customer has told a young staff member that he'd like to take her up against a wall. Another time he smacked another female staff member on the rear.
Comments about the number 69
not so much abusive or violence, but inappropriate. yes. Was filling gaps in smoke cupboards. Happened to be on my knees filling the bottom row and a male customer came up to purchase cigarettes, and said, "Just where I like a girl to be"
Told me that I looked like a good fuck. And I could go a few rounds.
Customer talking about my breast, wanting to sleep with me, asking me to turn around and bend over. Etc
General inappropriate comments. Nice butt, nice chest, want you in my room. It might have been accepted 25 years ago not now
He asked me if I thought a condom would fit, and if they didn't could he return them, this particular customer was also under the influence of alcohol at the time
Grabbing my behind
Just repeating my name asking what time you finish
2 gay men trying to push to get me to agree to a sex meet up. Not wanted
While cleaning inside a deli case, a man said he wanted to photograph me leaning into the case. This was repeated to co-workers when they cleaned the case on other dates.
Told me to suck his d*#k
Male customer asked for a hug and kept moving toward me until I threatened to punch him.
While filling confectionary stands male customers have said while your down there and nice to see a woman on her knees
Called me unpleasant names after turning down his constant asking for my number.
Making lewd and inappropriate comments about physical features
Customer was telling me and another Female employee to get in his fertility van. Was I and out of the stood all day
sexual comments about my lips and the things he would like to do with them

He tried to grab me.
While bending over to pick up baskets, a customer came up behind me and told me "jokingly" that he had thought about smacking my bottom, but thought I might get angry if he did. Another customer while asking about mobile phones for purchase, started telling me that he needed a phone with a camera because he likes filming himself with his sexual partners.
Man told me 'damn girl don't turn around in front of a Sicilian man, don't you know we can control ourselves' while making hand gestures and licking his lips
I had been crouched down to fill up our drink fridges and had a male customer stand directly next to me trying to put his private areas near my face. I had to get up and move away from him to only have this happen to me again. He has also brushed up closely to other team members especially when they are assisting him on our Assisted Checkout areas. Trying to touch them in inappropriate places. Have been told by management to not make it look obvious that we were avoiding him even though he tries to sexually harass us.
inappropriate comments and watching me and playing with himself
Following me around the store and telling me that I "should date him because I love him" until I walk out the back and wait until he leaves
not me, however a customer made sexual remarks to a female team member
Older man who referred to animal body parts and compared it to mine.
I often get customers sexually harassing me. Thinking it's okay to hit on me whenever they want.
"You're sexy, I'll follow you if you show me where it is" re: query on location of item
Mostly verbal insults or swearing at or about me doing my job and following procedures. Some personal verbal attacks. One specific customer suggested I be "tied up"- which as a short female was quite confronting.
A regular customer, on 2 seperate occasions, touched me indecently.
I have a man that comes in regularly and always asks females to look down the back of his pants to tell him his size. He follows you if you don't do it.
A customer told me he'd jump the counter if he could (had night window) to have sex with me
I have experienced unwanted sexual attention on multiple occasions during my 9 years in retailers
I have been fully groped by two drunk men at my store
Underlying jokes
Repeatedly abuse surrounding accusations of my sexuality. Have also observed the female staff sexually harassed and ogled.
I was the manager on duty and felt I had to refuse service to a male customer as he was staring into space, swaying and slurring his words. It took 10 minutes until he listened to my request to leave the store and as he walked past my till he looked at my hand and told me I'd see the situation different if I was 'married and getting some'.
In reading the price of the sushi being asked if a blowjob comes with that.

My husband and I both work in the same store and often take lunch breaks together. While sitting in my car eating lunch, a well known offensive customer decided it was ok to yell vulgar comments into my car window directed at my husband and I.

However I do feel sexually harassed by a number of male customers who regularly come in and flirt asking when they can take me out etc. certain customers are known by staff and male staff members prefer to deal with them where possible due to female staff feeling uncomfortable

Asking me if I had a boyfriend and when I said yes asking if they could watch us fuck. They were clearly intoxicated at about 7:30/8 in the morning

Customer touched me inappropriately

Customer grabbed my bum

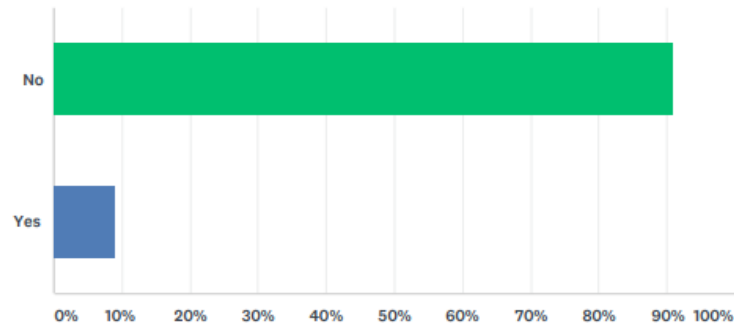
Flowers and very unnecessary comments

As a line manager, I often have to assist some checkout operators when customers make them feel uncomfortable. Its something that we should be able to stop the customers from doing.

### 36-45 years

## Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?

Answered: 877 Skipped: 95



ANSWER CHOICES	RESPONSES	
No	90.99%	798
Yes	9.01%	79
TOTAL		877

Called me a paedophile
I was on my knees stocking lower shelf's, and a customer said I bet I liked being on my knees for sexual reasons
Customer masturbated in front of me.
I have been threatened with kidnapping
a male customer tried to steal some meat when asked to return the meat he said to me when you leave tonight my meat (grabbing his crotch) will rip you wide open
Saying no one would have sex with a fat sheep and so on
reference to weight and attractiveness
But another girl was targeted for 3 days and she was fully pregnant
One of the "regulars" makes very inappropriate sexual comments to my young female team members
Although I've said no, I served numerous intoxicated people in my previous retail job & recently a man in a women's clothing store want help & referred constantly to my breasts & "his best mates missus' boobs" for a point of reference size wise.
Because I female
Sexual innuendo
Only a few weeks ago a customer who is well known to [REDACTED] came to make a large purchase from me. He began touching me inappropriately and calling me babe and honey. This continued for probably an hour.
dirty inappropriate comments and staring

Just making uncalled for comments
Always being suggestive about having a relationship with me
sexual innuendos, asking personal question and making sexual based comments, sexual advances and stalking in person and via phone calls, invasion of personal space
Men standing very close while bent filling lower shelves
Creepy guy demanded I look into his eyes and said I was "rude" if I didn't. He was buying boxes of condoms and lube
Being touched inappropriately as well as making verbal gestures.
Sexual suggestive comments
Touching
Lewd remarks
Was told I deserve to be raped with a chainsaw because a sale price finished. I also regularly have customers who believe it's okay to touch
Get felt up
Derogatory remarks of sexual nature
Email and Xmas card, plus inappropriate language
asking me to sit on his cock
Making lewd inappropriate comments about " hooking up"
Suggestive comments. Sexual remarks
ask me to have quick sexual intercourse with him
A man put a cold bottle of milk on my bum and asked me if it was cold
Some of them tried to touch me and ask can I hold your hand? I think this is ridiculous and I don't want him to hold my hand. I don't know him before in my life but he tried to flirt with me.
Stupid females know nothing, think with their legs. Can't service for a decent job, suck for the shit job, etc
Being told I would look better in a bikini serving
he made sexual innuendos
Making comments about my breasts
Inappropriate language and unwelcomed touching
Man buying condoms and lube demanded that I look into his eyes
Inappropriate comments, one customer groped my torso
I'm always getting chatted up and have been forced to wear a wedding ring to try to fend some off
Homophobic swearing
Asked for virgin ham and comment about nice breast regularly every visit
I've had customers reach out and touch my name badge so they can brush their hand on my breast
Had his hands in his pants whilst looking at me as well as other customers inappropriately touching me
Customers asking what time you finish
Inappropriate touching
Several Men have asked for more than just alcohol...sex

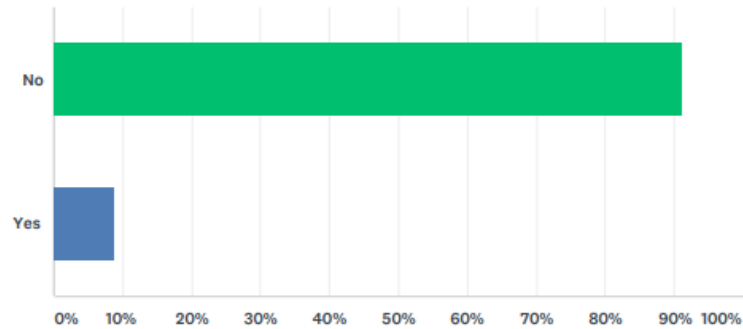


Crude comments eg: you'd be more easy going if you get a #####
I've had older man think there funny making sexual comments..in regards to the rewards cards. I would ask them do you have a rewards card as it's was part of our mode of sale... They would reply your the only rewards I need. Or are you going to reward me with somethink.. These comments would creep me out because I knew what they were insinuating
A customer asked me to get his wallet out of his pocket and I politely refused, he then got quite angry because I refused.
Inappropriate verbal gestures
Lewd comments, suggestions of what I could come do with him in the carpark.
Sexual, verbal abuse by customers late at night for no obvious reason while I was behind the counter.
Made out his weekend would be better if he was spending it with me
Teasing, joking
Touched me inappropriately or suggestive remarks

46-55 years

**Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?**

Answered: 971 Skipped: 106



ANSWER CHOICES	RESPONSES	
No	91.25%	886
Yes	8.75%	85
TOTAL		971

Comparing chicken breasts and womens breast
Sleezy talk looks u up & down
A guy said to me that because the weather was so hot, I should take my top off. He was disgusting, and the other female customers around him were also disgusted
Felt physically trap by the customer
Older male customer pinched my backside as he walked behind me
Just dirty old men trying to make dirty jokes
Dirty talk and trying to kiss me
Just trying to chat me up
Been called cunt, fat bitch, faggot
Sexual innuendo and inappropriate comments from male customer
Made comments about girls panties when they bend over. The customer smelled and didnt seem all together with the real world.
Suggestive comments
Customer asked if he could feel me
suggestive
drunk or on drug saying all kinds of remarks
I politely asked for a big bag check. The man replied: "you are not checking my "f'ng bag,"f you," " you can suck my d and my balls." He quickly run out of the store. I was shocked and trembling afterwards.
Sexual discrimination against my sexuality

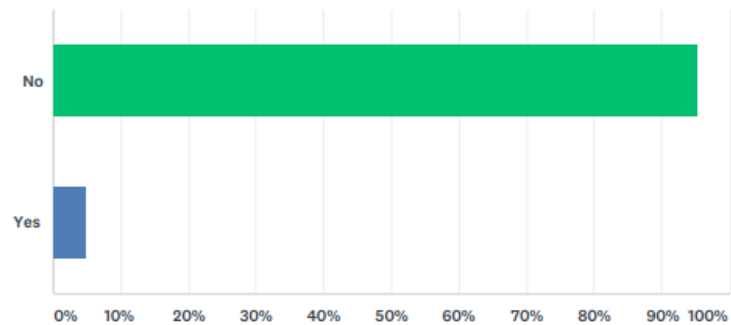
Just suggestive comments
Inappropriate comments that are gross and sleazy
Sleazy comments
Sexual request
Being grabbed by the arm and grabbing my hand. Suggestive remarks also
Demanded to speak with a male
Comments of sexual interest, innuendos, giving me their mobile numbers, constantly trying to look down my top, asking me out for coffee, and so on...
Sexual matter
I was loudly called a paedophile in several verbal attacks.
don't have to put up with attitude from a young girl like you!
Inappropriate touching on my bottom
Gentleman 60+ insinuated vulgar and forward unsolicited behaviour to my person urging me to leave my husband for him
Just customers who are overfriendly and tell me how beautiful I am which makes me uncomfortable.
male customer told me that he would like to give me a free sample of his genitals
been asked to recommend condoms and which ones I prefer
Old man touched my backside
A guy used to come through my register most Friday's. He wanted me to go out with him. I told him no, I don't think it was appropriate and my husband wouldn't like it. He was still persistent. Eventually he let up and left. Rarely see him at all now for at least 6 months or more
A partially blind gentleman comes in on a friday night and ask for help which the ladies would help him until his questioning became to personal like how do you shave your legs what do you use to shave your legs how many times do you shave your legs and then when a junior helped him he commented on her bottom.
We have one particular customer who is extremely crude and suggestive in his interactions with us
Only in the sense that he would not deal with women, and got very verbally abusive towards myself and wanted to only deal with a Manager. Unfortunately my Mgrs are all female.
Unsolicited touching of arms, legs, back. Inappropriate comments
I was propositioned by a man & I declined & next time I served him he accused me of being attracted to him just because of my good customer service skills with him.
old guy that can get abusive can also be suggestive put hand on my shoulder drew hand down back as I turned to see who it was, told him never to do that again ever, hasn't since
I have had two older male customers kiss me. I turned my head away with one but he partially got me in the mouth. The other customer snuck up behind me when I turned in his direction he kissed me on the mouth. I informed the complex manager. No record made.
Describe tightness of butt even been asked out
yeah baby do that
threatened with rape after catching shoplifter

Stalking
Seeking me out in store 2 leer & say 'hello beautiful' every shift.
Same guy trying to pick me up and saying sexual things
General male pig attitude and privilege.
Generally older men think its ok to be derogative when asking for goods
Whilst massaging (in my other job)
trapped in toilet
Prank phone calls with sexual abuse
Many men believe it's ok to tell dirty inappropriate jokes or flirt when it's in called fir
I had a guy who pretends he's heavily disabled come to me frightened as he had lost his carer. He then asked me to hold his hand and look after him, so I did and he was a criminal known to police.
one guy came up behind me in self checkout and ground himself against me from behind
Stalking and abusive behaviour when it was bought to his attention.
An old man that comes in trying to be cool...I take it with a grain of salt n just give a dirty look or tell him no need for that talk n he wanders off...
The truck driver who threw the punch at me told me I should go and get laid and I would be a smarter bitch. He also told me I was so dumb and ugly no one would want to have sex with me.
Customers asking for a pat down when exiting the store. One customer told me I was the one he would most like to have an affair with
Telling me about his sex life sand asking about mine
Follow me home and rape me
Customer talking with sexual innuendo and holding their crutch
Subtle suggestions relating to wanting to do specific things...mildly suggesting in a joking type manner, things that I would never do. Even though he knew that I was married and said that my husband wouldn't mind.
By patronizing comments as I am a female
When I was bending over a customer said you should be careful if your going to bend over like that in front of me.
man asking young staff about bras
A woman doing a mans job
Comments about my breasts or backside.

## 56-65 years

**Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?**

Answered: 485 Skipped: 44



ANSWER CHOICES	RESPONSES	
No	95.26%	462
Yes	4.74%	23
TOTAL		485

Young man had his genital out the top of his pants under his shirt, but enough for me to notice
Customer making comments about the size of my breasts
On one occasion an older man asked me to have a meeting with him in the nude, was very creepy and strange. Men ask for strip searches or want me to measure their inside leg. While it may all seem harmless, it makes me feel uncomfortable and I don't like it.
One customer I can think of saying inappropriate things about young female staff
He said all the women who worked there were a pack of whores
Told what they would do to me in carpark.
Men often feel it's okay to comment on the size of my breasts.
yes but non threatening more friendly or opiniated
Customer went to undo shorts and lower them making verbal comments of a sexual nature
A customer stuck his hands down the front of my shirt.
One customer makes it known that he hates women
Making sexual jokes
Called stupid bitch
About 25 year old male customer waited till he was up close about a hands distance from my face to tell me at the front door exit, that his zipper on his shorts was undone

## 65+ years

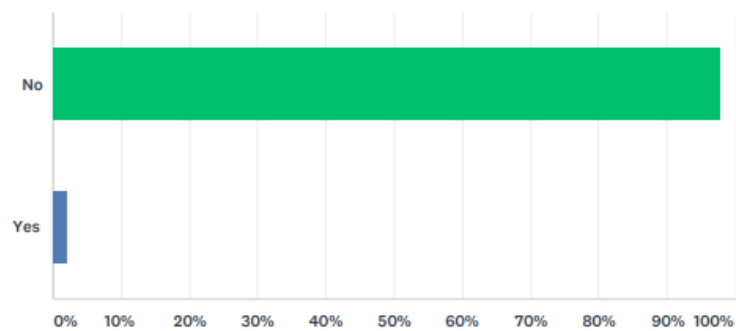
### Contents

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**Q18 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature?**

Answered: 46 Skipped: 6



ANSWER CHOICES	RESPONSES	
No	97.83%	45
Yes	2.17%	1
TOTAL		46

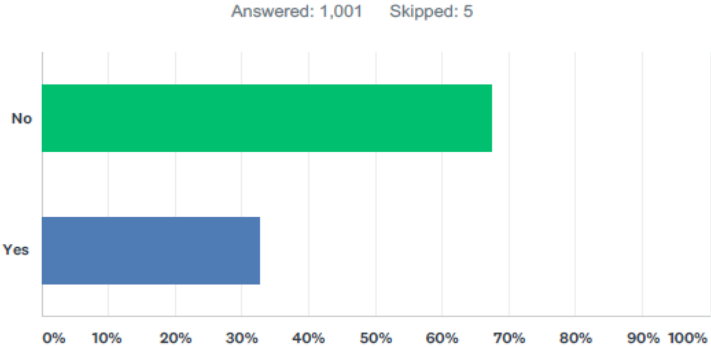


# APPENDIX B

## Customer Abuse and Violence Survey Responses (Fast Food Industry 2018)

All age respondents:

Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)

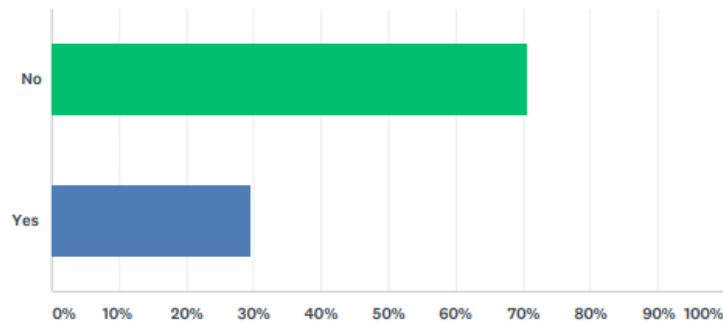


ANSWER CHOICES	RESPONSES	
No	67.43%	675
Yes	32.57%	326
TOTAL		1,001

## 17 years and Under

**Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)**

Answered: 342 Skipped: 0



ANSWER CHOICES	RESPONSES	
No	70.47%	241
Yes	29.53%	101
<b>TOTAL</b>		<b>342</b>

Rude gestures and comments
Customer saying I was beautiful and asking if I was alone and how long I'd be alone for
Old men winking and saying rude sexual comments
I asked if they wanted to insert the card and they said they'd insert something else
Inappropriate comments, man flashed me, rude gestures
people yelling out comments through drive thru
Cat calling by customers in the store
Got called slut and more
being name-called (one time it was "honey bunny", being touched on the hand inappropriately
People asking me what my other blood is called because my name tag is over the other one
asking name, winking, if I'm free
Inappropriate comments
Inappropriate comment
A guy called me a slut when I walked off and back inside
Constantly hitting on me to get me to go out with them and how age doesn't matter
Customer wanting to take me home and have "fun" and shoot up
passing the cash change through the window he took my hand and was rubbing up and down my hand saying how nice I felt under his fingertips. Also have had an old man ask to take me home with his fries

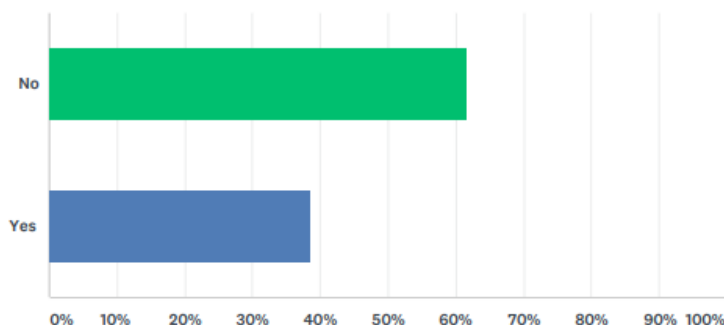
making comments like "I love it when a girl gives it a good twist" and inappropriate nicknames such as babe, darling, and sweetie, particularly from older, middle aged men. For context, I experienced this as a 16-17 year old.
Over the last 12 months there has been 2 or 3 instances that were sexual in their nature. Some of the men will blatantly say things such as, "you are so pretty, why are you working here?" and try to hold my hand when I give them their change back.
Flirting at first then when I turned away they started making sexual advances
A customer made a comment about the chicken breasts saying why I can't I have more then 2 breasts these two ladies have 2 nice breasts
Asking if they could have me as their drink
I've had people wait till I finish my shift and follow me out, stare at parts of my body and then comment on them. I've had this daily for three years and I'm 16.
Older customers making sexual remarks, asking for details such as snapchat
Inappropriate comments, rude comments and threats.
Sexual comments have been made towards me and I've seen advances being made on my coworkers.
I had a customer comment on my breasts, been stared at until I was made to feel uncomfortable by an old man
I had a guy continuously come into the store to see me and he followed all my social media accounts and sent and said really sexual things to me. I was 15 at the time
old man asking me for my phone number
During drive through, they will ask for my number and stuff like that
Comments made about my body parts and name calling (baby)
A man told me that I was sexy and that he wanted to have sex with me, his friend laughed and then they left
not towards me, but a coworker has experienced multiple occasions of unwanted sexual advances and gropes from customers.
Telling me to suck them off, saying I have beautiful sucking lips
idk he kind of just called me pretty birdy it kind of made me uncomfortable but wasn't that bad
Many times I will catch customers staring at my chest and sometimes they will wink at me which isn't that big of a deal however it makes me very uncomfortable
swearing
Sexual remarks been aimed towards me
Just being called babe, winked at, told I looked pretty by middle aged men
commenting on a coworker's appearance in an inappropriate manner, telling another coworker to reveal his genitals to them
Many men flirt with me at the drive thru which is very uncomfortable
In appropriate comments
Customers have asked what time I got off and how much. I have also given changed and the customer has grabbed my hand.

I was asked if my tongue piercing was working by an older man
Many male customers have hit on me and as a 14 year old girl who has already experienced sexual abuse it is very uncomfortable.
It hasn't happened to me but to a co worker. There was two old men glazing and talking sexually to a coworker
I had asked if that was all he would like to order, he responded "you?" And winked
Rude, abrupt, horrible, foul disgraceful
I was videoed at work/taken photos of
I have had people make sexual comments and jokes about my age saying "Oh yeah, you're finally legal now so it's open season." But its only happened 3 times in the past year.
Asking if I wanted to come with them, yelling sexual comments as they drive off.
I was reaching for something on a high shelf and I caught a group of men looking at my bum
Was an old man and kept saying I was beautiful, so was the manager and all the other women who worked here was beautiful
Sexually talking and commenting on my body
whistling, inappropriate comments , asking for my name details
Cat called, sexual comments about how I look
Cat calls
inappropriate comments and asking for my number
Inappropriate comments on my body
Sexual assault. Touching.
looking at my breast. telling me I'm sexy.
on an angle u can see through my shirt and he yelled he could see my breasts
Rape threats
I've had men try to hold my hand for extended periods of time even after I try to get away.
Sexual comments
when I was 16 I was called 'baby' by an elderly male customer
A gay man hit on me

18-25 years

**Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)**

Answered: 382 Skipped: 3



ANSWER CHOICES	RESPONSES	
No	61.52%	235
Yes	38.48%	147
<b>TOTAL</b>		<b>382</b>

I was given inappropriate comments on my body.
I've had men wink at me and call me sexy
Customer tried to grab my boobs
We had a customer make inappropriate remarks to a 15 yo crew
Just inappropriate comments about my body.
touching my hands blowing kisses. making comments about me in the shower
A creepy guy kept asking for my address from my managers and my number from fellow co workers when I strongly denied giving him anything.
Refusing to leave until I gave them my number. Another saying that I was and woman were what was wrong with the world.
Sexual harassment
Customer saying he was driving around looking for me after night shift (I walk home)
A guy was rubbing himself down there while I was serving him
Starring at breasts
Guys I'm drive through are always saying "wanna root" "are you single" "when you finishing I'll come get you we can have some fun"
Sexist and inappropriate comments on appearance
Inappropriate comments, tracking down on social media

As stated in previous question; threats of rape and then drunks on a Friday night saying they're going to "bend me over and fill me up"
"This is a pretty pink colour, just like your lips sweetheart" - some creepy old guy
Will look me up and down multiple times and makes it obvious. Also comments to their friends, and making sexual jokes related to their food and myself
Objectification and inappropriate comments
threatened to be raped.
Self touching, indecent exposure
Drunk people saying inappropriate sexual comments.
Handing out money, won't let go of my hand trying to yank my hand to try and get me out of my area. calling me baby and sexy trying to push to get my number even tho multiple times I said no but still kept a going.
Rude gestures
Suggestive comments.
I've been called "an exotic and spicy Latina" if that counts????
Asked for my number, cat called, whistled at, called love, babe, etc.
Customers will speak to the girls inappropriately, asking for their numbers when they're clearly underage.
1 customer always states we should wear skirts and fish net stockings and make up. Management don't say anything as they think he is joking (he is a regular)
I get people asking for my number sometimes, most of the girls do. Wasn't sure whether to tick yes or not.
Asking to take me home
called homophobic slurs
Inappropriate pick up lines, not leaving me alone when I say no to them
I delivered a pizza to a man's house, he continuously told me how beautiful I was and when I tried to leave he gave me his business card and kissed me on the cheek.
I had a guy watch me pull up my pants cause they were loose and made noises e.g- oh yeah baby
Just the general from tradies. Whistling and inappropriate jokes
Customer asked me to take off my shirt.
Mainly old men talking about my breasts
Was suggestively told I would be a "good" girl for him
Very rude comments about our uniforms which have phrases written on them such as spicy and saucy and man asked if I considered myself saucy and horny in the bedroom
Being sexually suggestive based on my body in an attempt to get free food
Multiple older men or even young men asking me to go home with them for my number or making whistling noises etc.
I have had a regular customer of mine come in and order food and on a couple of occasions, when I have asked him if he wanted anything else with his food order, he said he wanted me. And the way he



said it to me seemed to be hinting towards something sexual. So I simply told him that I myself was not for sale in any way, shape or form.
Inappropriate comments
A couple of men saying inappropriate comments about my breasts and using my body for their pleasure.
On at least 3 occasions, a trucker I see on a regular basis, has told me he wants me in response to me asking him if he wanted anything else with his meal.
A lady saying that she would take me to bed if she wasn't with her husband and that I should be lucky to be hit on by such a lady.
Constant remarks about the girls appearances in cafe, touching of shoulders, constant flirting from 1 customer
Making comments lewd comments towards the underage girls that were working
A customer was intoxicated and was being very inappropriate with comments
Lewd remarks about appearance
happened last night that a guy complimented my belt and then tried to touch it which is obviously in an inappropriate area
Comments about my body, making verbal advances
Guys are always flirty and grabby
Been asked out numerous times, been told I'm a whore for doing my job.
Rude, sexual comments
Rude gestures and sexual comments
Innuendos and invites that were inappropriate
Inappropriate comments and wouldn't take no for an answer.... followed me outside when I was on break and wouldn't leave me alone tried kissing me
They won't let me finish my sentence or do my job, they will hold my hand when I hand them change, get their friends over to gawk at me and worst of all while they are being served by someone they will call over the "hotter" cashier and complain that they aren't being served by them.
Commented on what he would do to me if I came home with him.
Most men who ask for my number usually get the hint after I politely decline, there's always a couple that are grossly persistent. In my opinion asking at all is extremely inappropriate, I just want to do my job. I think the worst scenario would have to be groups of young boys sitting on front counter staring for hours.
People asking for my number, asking when I finish, if I'm a virgin, if I have a boyfriend, customers have touched my waist, hips and butt, had people try to kiss me in exchange for paying more for food
Constant inappropriate comments
Asking for my number, calling me beautiful, asking personal questions
Inappropriate comments. Usually by guys trying to hit on me which makes me uncomfortable or older men

Sexual innuendos from an older customer saying "I would help you with those dishes but I don't think we would be getting much work done" didn't say anything to a manager because wasn't sure if he meant talking or stuff that I would not be interested in
Mostly general rudeness, haven't had any serious threats in a while but I'm assuming that's mostly due to a constant stream of police coming in for coffee
I'm a female. Cat calls and inappropriate jokes are something I get on a daily basis.
Asked how I can help someone today and they said I could help them in many ways and asked if I was single
Men constantly harass me for my phone number, catcall me etc. This occurs mostly on night shifts but also during the day.
Had an old man hold out his hand with change, expecting me to take it out of his hand. When I did this (thought it was helping him out) he said 'yeah you would be used to be taking money out of guys hands'!!! Highly inappropriate I was shocked and didn't know what to say!
We do get the occasional vulgar comment about dark car parks
I heard that the girl at the drive thru window was flashed by a woman
inappropriate comments
Inappropriate comments about my personal appearance and body
wolf whistles, recorded on the phone, starting directly at my torso
Talking about my body
I had a lady in the back of a car in drive thru pester me and ask some very inappropriate questions. The major one which made me uncomfortable was she asked "which sauce I came with" and winked
inappropriate sexual comment happen often
Asking for numbers, being called slut, commenting on body features
Yes there are lots of guys sexually abused me by saying you are hit sexy or what time you finishing your shift.
Inappropriate comments, particularly uncomfortable with regular customers who I have called out and continue their behaviour towards my coworkers in front of me.
Asking for number, asked about boyfriend, asked what time I finish to make me uncomfortable
Rape and sexual assault threat
Looking me up and down and asking for my number
Many inappropriate comments of sexual nature, persistent asking for name and number
Call me fat, asked for head
Customers asking for number, cat calling
rape threat, sexual assault threats, being called his "sluty baby"
When handing over money - they grab your hand and stroke you. Being called babe/love/just in general other comments that are uncomfortable coming from 40 year old men. People inviting you into their house when you do deliveries, or people stepping outside of their house entirely to go for a "hug" to express their gratitude.

When I walk out to give food to people, other customers will tell me to go talk to them, grab me while I'm walking, pull at my skirt when I'm walking back behind the counter
Making inappropriate and sometimes vile comments while ordering
I've had a few male customers say vulgar sexual things towards me.
Constant staring, and inappropriate comments
many inappropriate comments, wolf whistles.
Not sure if it was 'abuse' but a customer has joked quite rudely about kissing/being with me.
I have had a few customers lewdly comment on my appearance and physique
I've been called sexy and asked to come in a car.
When customers assume that when you tell them to "enjoy the rest of your night" as you are employed to do so, they begin making sexual comments or hitting on you.
Inappropriate comments about my breasts
sexual comments
Old seedy males making sexual jokes
customers were making me give them my number and I refused but they kept chanting and asking why. I had to end up making excuses but they didn't care they just kept laughing. then when I handed out the food they made me hand it into the person sitting in the middle so I had to lean in and they all laughed saying I was trying to kiss them.
A group of boys were discussing having sex with me amongst each other and talking about my body loud enough so I could hear, it was night time and I finished a couple of hours later, they were out the front and I was frightened so I had a male manager walk me to my car, a couple months later they were put in gaol for all raping a young 14 year old girl
Comments about breast size
Homeless man saying gross things
Asking for my number, adding me on social media, calling me little pet names
I had a customer cat call me ask for my number and comment on my appearance in a very creepy way
Customers asking me for my number, insinuating they want to have sex with me or making comments to other people in the car or restaurant
Inappropriate language while working close (police were called to deal with customer)
I've had drunk customers comment on the size of my boobs quite a few times
That I looked sexy and asking what time I finished
They wish they could order me and take me home. That I should wear a skirt so something was at least nice tasting.
I frequently receive unwanted sexual comments and have been pressured to hand out personal information
Creepy flirting etc
Saying things like "hay baby can I have your number" or "sexy mamma gimme your digits"
Inappropriate comments

I just described in general in my previous answer, but I've also had some disgusting comments about my appearance that has made me super uncomfortable in the past at work from a customer, in broad daylight.

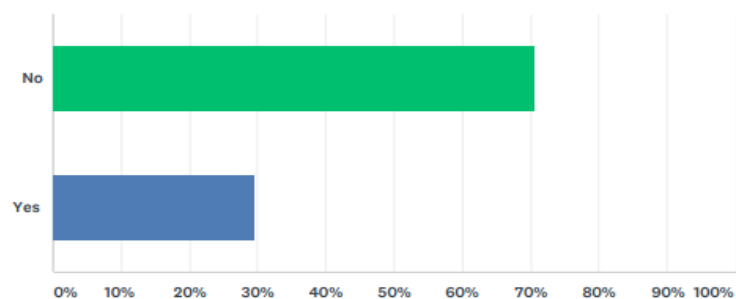
Was told "that uniform would look better on my bedroom floor"

Polite conversation turned to gross innuendos and degradation of women

## 26-35 years

**Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)**

Answered: 44 Skipped: 1



ANSWER CHOICES	RESPONSES	
No	70.45%	31
Yes	29.55%	13
<b>TOTAL</b>		<b>44</b>

Many inappropriate comments. One slapped me on the backside

Not towards myself, but several of my younger female staff. Customers making suggestive comments

touching hand when giving out money. in a bad way

"Oh you're the area manager? I'd let you manage my area"

Constant inappropriate comments and gestures.

Searching me on facebook and messaging me

As previously mentioned the comments made about my child...I was told I should go suck and jerk off my child

one has said I was a "piece of shit" because something wasn't currently available at the time

Sleazy customers making sexual comments

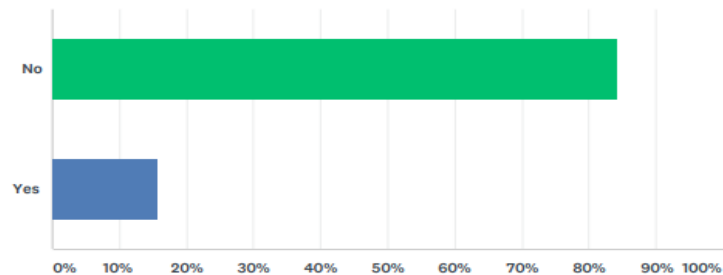
Touching me, grabbing my waist while working. threats of rape

Had a bloke pull his dick out and masturbate in front me and other staff.

## 36-45 Years

**Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)**

Answered: 19 Skipped: 0



ANSWER CHOICES	RESPONSES	
No	84.21%	16
Yes	15.79%	3
TOTAL		19

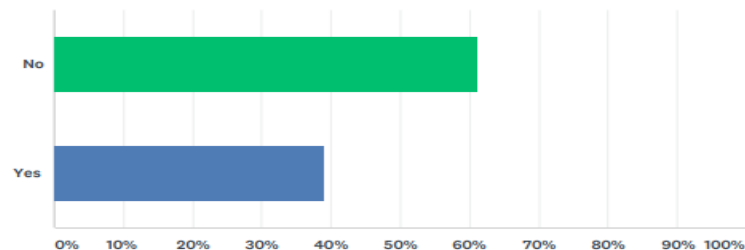
Inappropriate comments

Rude

## 46-55 years

**Q5 In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)**

Answered: 18 Skipped: 0



ANSWER CHOICES	RESPONSES	
No	61.11%	11
Yes	38.89%	7
TOTAL		18

inappropriate comments from male customers

just drunk idiots wanting phone numbers or asking for inappropriate sexual acts

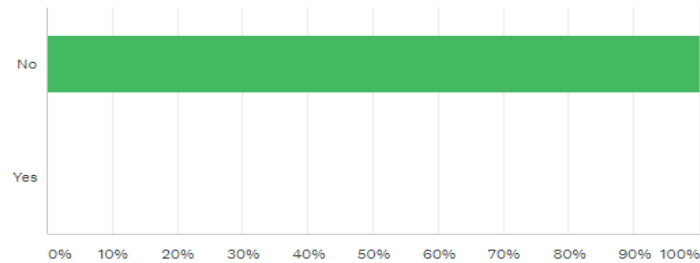
Your too fat to work here

Blowing kisses and asking if I am married and then asking if I'm happily married once I answered yes I was married for 18 years

## 56-65 years

In the last 12 months, have any incidents of customer abuse or violence involved behaviour by a customer towards you, that was sexual in nature? (For example, inappropriate comments, touching, rude gestures.)

Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES
▼ No	100.00% 6
▼ Yes	0.00% 0
<b>TOTAL</b>	<b>6</b>

A customer asked me to have coffee with him and see where it goes from there and slowly took the change from my palm with a soft intimate touch

## 65+ years

**NO DATA**



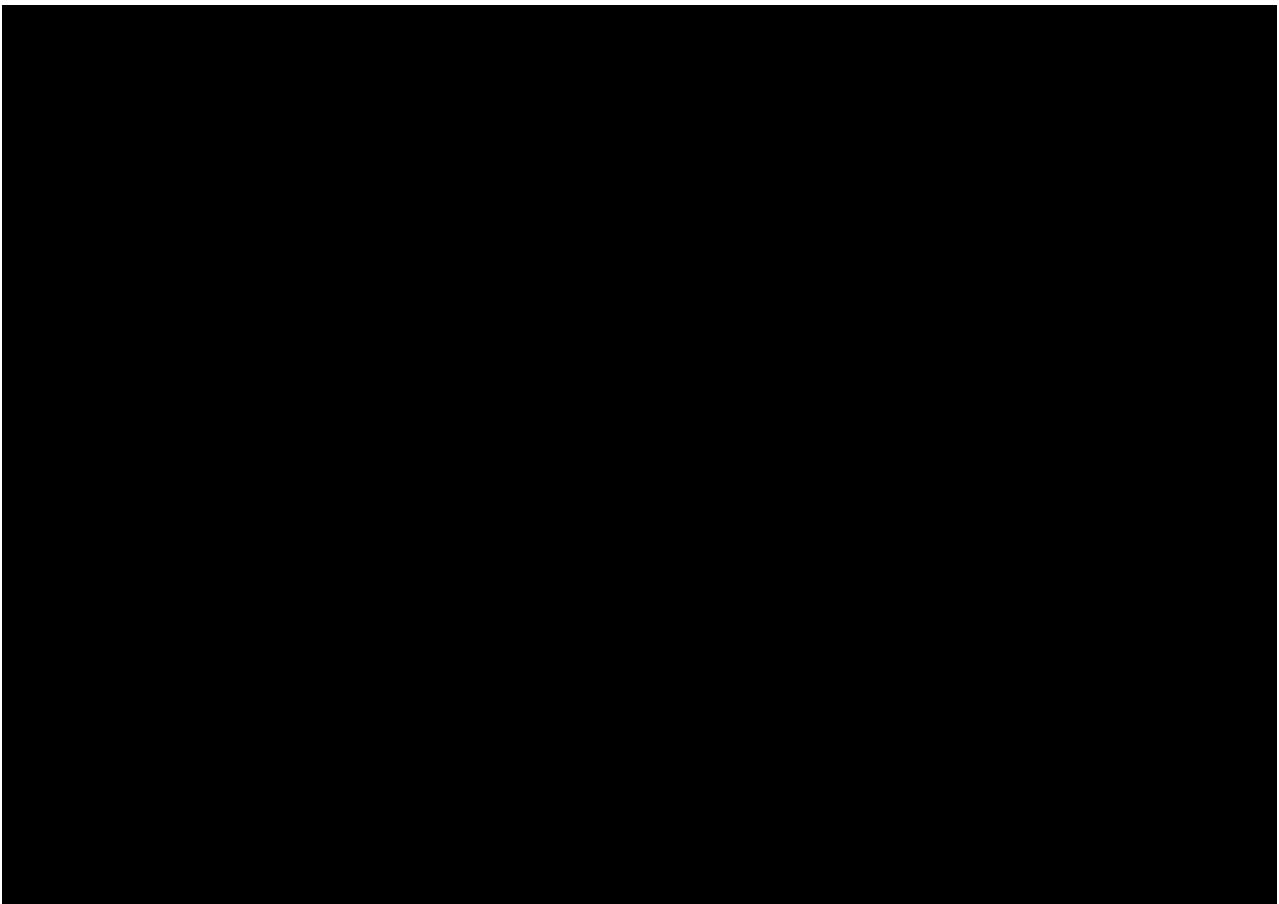


Table 1 - Retail &amp; Fast Food data trends 2014 - 2016

RETAIL & FAST FOOD	2014	2015	2016
<b>Total responses</b>	6754	6752	5712
<b>Rate importance of health and safety</b>	-	Extremely important - 84.78%	Extremely important - 86.88%
<b>Awareness of issues affecting workplace. (change to awareness of issues adversely affecting workplace in 2016) *</b>			
Bullying	31.40%	34.15%	28.43%
Slips, trips and falls	36.00%	36.60%	27.49%
Cuts and Abrasions	34.60%	42.40%	33.15%
Chemicals	13.10%	15.92%	12.60%
Workload/Rostering (change to Workload 2015,2016) *	52.40%	55.51%	47.96%
Manual handling	37.60%	41.62%	33.29%
Heat and Cold	41.50%	48.13%	43.80%
Traffic management	24.70%	27.46%	20.13%
Poor treatment of ill and injured workers	23.60%	25.55%	21.75%
Burns	-	14.02%	12.55%
Poor treatment of pregnant workers	-	7.89%	6.89%
<b>Experienced customer violence or abuse in last 12 months</b>	-	45.65%	44.39%
<b>Had work related injury (change to last 12 months in 2015, 2016)</b>	32%	20%	19.17%
<b>Health &amp; safety training since induction</b>	77.40%	73.38%	77.28%
<b>Participation in evacuation/fire drill in last 12 months</b>	64.01%	61.71%	58.32%
<b>Age group, largest group between under 17 and 65+</b>	-	18-25 year olds 26.38%	18-25 year olds 27.93%
<b>Female/Male</b>	-	62% Female, 34% Male	66.64% Female, 30.95% Male