

**Review of
Sexual Harassment
in Victorian Courts**

Preventing and Addressing
Sexual Harassment in
Victorian Courts and VCAT

Appendix 2:

**Prevalence data – A snapshot
of surveys and projects on
sexual harassment**

FEBRUARY 2021



A snapshot of recent surveys and projects on sexual harassment ¹

Introduction

This report builds on the extensive quantitative data from recent surveys conducted in Victoria, Australia and abroad that show the extent of sexual harassment in workplaces including in the courts. The results of surveys such as those conducted by the Victorian Legal Services Board and Commissioner, the Australian Human Rights Commission, the Victorian Equal Opportunity Commission, the Women Lawyers Association of NSW and the International Bar Association, to name just a few, show a disturbing commonality. Qualitative projects by the Women’s Legal Services Victoria and the Male Champions of Change, reveal similar findings.

In undertaking this review the Review Team was mindful that there is a wealth of relevant survey and project work in existence that can form the basis of this Review. As such the approach of this review has been clear – we accept that there is a problem with sexual harassment. Our job is to deliver practical and sustainable solutions.

As all the survey findings show sexual harassment in legal environments, including in the court context occurs at unacceptable rates. At the same time the reporting of sexual harassment is extremely low, resulting in a lack of justice for complainants, perpetrators being able to offend, and organisations failing to ensure the well-being of their staff. Each of the surveys in this section found that workplaces where gender inequality exists, including through a lack of women in leadership roles, occupational segregation, a failure to support flexible work environments and the existence of everyday sexism, disrespect and bullying, including gendered bullying, all help to create environments where sexual harassment not only exists, but has the opportunity to thrive. This Review had similar findings.

This report together with the recommendations should be read in conjunction with the results of the surveys. The report also draws on the extensive literature and importantly, on the voices of victim-survivors. It also builds on the recommendations that the reports of those surveys make, putting them in a Victorian context.

The large bank of survey results from the studies cited above indicate that urgent action is required to eliminate sexual harassment across all workplaces. Failure to do so will have significant individual, organizational and community impacts.

The survey results together with the findings against former High Court Judge, Dyson Heydon, provide a unique opportunity for the courts to effect significant and sustainable change regarding sexual harassment. With these surveys, as the NSW Women’s Lawyers Association states “the culture of silence around sexual harassment has been shattered”. We must now ensure that court workplaces are environments which promote a culture of respect, diversity, inclusion and safety. The recommendations contained in this report, provide a blueprint on how such a culture can be created and sustained now and in the future.

The following information reproduces in part the key findings of the most relevant and recent surveys of sexual harassment in workplaces, including in legal settings and courts. In short, all the results paint a picture of workplaces where individuals continue to experience sexual harassment and where organisational systems and structures perpetuate a culture where it is unsafe to report.

¹ The surveys and projects identified in this section are not an exhaustive list but represent those that are most relevant and recent. The information presented here is often taken

verbatim from the surveys and projects so as to ensure the integrity of the data is presented in the way it was intended. Each survey and project is referenced at its title.

Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces ²

The Australian Human Rights Commission's Report, Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces was released in March 2020. The National Inquiry was informed by the results of the Commission's 2018 National Survey.

In the Terms of Reference, the Commission's task was to review and report on workplace sexual harassment and make recommendations in relation to:

- its prevalence, nature and reporting in Australian workplaces
- the role of technology
- its drivers, including risk factors for particular population groups or in different workplace settings
- the current legal framework
- existing measures to address it and examples of good practice
- its impacts on individuals and businesses, including its economic impact.

In her foreword to Respect@Work, Sex Discrimination Commissioner, Kate Jenkins stated:

In 1984, the Australian Government introduced the Sex Discrimination Act 1984, which specifically prohibited sexual harassment at work and established the role I currently occupy, as Australia's Sex Discrimination Commissioner. Since that time, successive Sex Discrimination Commissioners have identified the elimination of workplace sexual harassment as a key priority.

However, over 35 years on, the rate of change has been disappointingly slow. Australia now lags behind other countries in preventing and responding to sexual harassment... Sexual

harassment is not a women's issue: it is a societal issue, which every Australian, and every Australian workplace, can contribute to addressing. Workplace sexual harassment is not inevitable. It is not acceptable. It is preventable.

The key findings of Respect@Work follow. They demonstrate that the nature of sexual harassment is gendered and intersectional. The findings also demonstrate that sexual harassment occurs when there is a failure of leadership – at all levels of an organisation.

The key findings are taken from the 2018 National Survey and Respect@Work. They are as follows:

Prevalence

- Sexual harassment in Australian workplaces is widespread and pervasive. One in three people experienced sexual harassment at work in the past five years.
- **Almost two in five women (39%) and just over one in four men (26%) have experienced sexual harassment in the workplace in the past five years.**
- Aboriginal and Torres Strait Islander people were more likely to have experienced workplace sexual harassment than people who are non-Indigenous (53% and 32% respectively).

Data collection deficiencies

- There is little consistency in the collection, monitoring and reporting of data on workplace sexual harassment by anti-discrimination and other regulatory agencies.

² Australian Human Rights Commission 2020
Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, Sydney Australia

Types of Sexual Harassment Behaviours

- Each victim -survivor's experience of workplace sexual harassment is unique and influenced by a range of factors. The National Survey identified a number of different types of sexually harassing behaviours including:
 - verbal forms of sexual harassment, such as sexually suggestive comments or jokes, intrusive questions about private life or physical appearance, repeated invitations to go on dates, or requests or pressure for sex
 - sexually explicit pictures, posters or gifts
 - intimidating or threatening behaviours such as inappropriate staring or leering, sexual gestures, indecent exposure,
 - or being followed, watched or someone loitering nearby
 - inappropriate physical contact, such as unwelcome touching, hugging, cornering or kissing, or actual or attempted rape or sexual assault
 - sexual harassment involving the use of technology, including sexually explicit emails, SMS or social media, indecent phone calls, repeated or inappropriate advances online, or sharing or threatening to share intimate images without consent.
- The two most commonly reported types of behaviour were sexually suggestive comments or jokes and intrusive questions about private life or physical appearance.

Frequency of Sexual Harassment

- When people who said they had been sexually harassed in the workplace in the last five years were asked about the most recent incident they experienced:
 - 49% said the same type of harassment had happened to them previously at the same workplace.
 - 45% of those who said they experienced the same type of sexual

harassment previously, said it had been ongoing for 12 months or longer.

- 52% said they were sexually harassed at their workstation or where they worked
- The frequency, duration and location of workplace sexual harassment is revealing. When people who said they had been sexually harassed in the workplace in the last five years were asked about the most recent incident they experienced:
 - 49% said the same type of harassment had happened to them previously at the same workplace
 - 45% of those who said they experienced the same type of sexual harassment previously, said it had been ongoing for 12 months or longer
 - 52% said they were sexually harassed at their workstation or where they worked.

Drivers of Sexual Harassment

- Other forms of discrimination and disadvantage that create power imbalances in the workplace and in society, can also drive sexual harassment.
- When people experience a range of types of intersecting discrimination and harassment, for example on the basis of gender, race, disability or sexuality, they experience 'intersectional' discrimination. 'Intersectionality' is an important factor in understanding workplace sexual harassment and how to appropriately deal with it.
- Overwhelmingly, the Commission heard that **gender inequality** is the key power disparity that drives sexual harassment. Gender inequality relates to the unequal distribution of power, resources and opportunity between men and women in society, due to prevailing societal norms and structures.
- Women experience higher rates of workplace sexual harassment than men.
- In addition to gender, other factors may increase the likelihood of workplace

sexual harassment for workers. Workers who may be more likely to experience sexual harassment in the workplace include:

- young workers aged less than 30 years
- lesbian, gay, bisexual, transgender, queer or intersex (LGBTQI) workers
- Aboriginal or Torres Strait Islander workers
- workers with disability
- workers from culturally and linguistically diverse (CALD) backgrounds
- migrant workers or workers holding temporary visas
- people in working arrangements described as ‘precarious’ or ‘insecure’.

Who are the harassers?

- Existing research has shown that in most incidents of workplace sexual harassment the harasser is male. However, the Commission found that there is limited research on harassers beyond this, so it is difficult to identify any typical characteristics of a person who engages in sexual harassment. Harassers engage in different behaviours and have different motivations. They exist across all age groups, industries and social strata.
- The 2018 National Survey does provide some insights into harassers in the Australian workforce. When people who said they had experienced workplace sexual harassment in the last five years were asked about the most recent incident:
 - the majority (64%) said they were sexually harassed by a single harasser
 - most (79%) said that one or more of their harassers was male
 - where the most recent incident involved a single harasser, more than half (54%) indicated that the harasser was aged 40 or older
 - victims said that the harasser was most commonly a co-worker

employed at the same level (27% for single harassers, and 35% for multiple harassers).

Workplace settings

- Sexual harassment is more prevalent in some workplace settings than in others. There are a range of characteristics and practices specific to particular industries, professions or workplaces that may increase the risk of sexual harassment. Workplace settings where there is a higher risk of experiencing sexual harassment include those that:
 - have been found by the 2018 National Survey to have a higher prevalence rate of sexual harassment than the rate across all industries of 31%
 - are male-dominated because of:
 - the gender ratio
 - the over-representation of men in senior leadership roles
 - the nature of the work being considered ‘non-traditional’ for women
 - the masculine workplace culture
 - involve a high level of contact with third parties, including customers, clients or patients
 - are organised according to a hierarchical structure.

Impacts of sexual harassment in the workplace

- As well as having a destructive and extreme impact on individuals, workplace sexual harassment also undermines workplace productivity and places a considerable economic cost
- Experiencing and reporting workplace sexual harassment can impact workers through, for instance:
 - negative impacts on health and wellbeing
 - negative impacts on employment (both day-to-day and in relation to career progression)
 - significant financial consequences.

- Sexual harassment is a cost to Australian employers through:
 - lost productivity, including through absenteeism
 - staff turnover
 - negative impact on workplace culture
 - the use of resources to respond to complaints, litigation and workers' compensation
 - damage to reputation.
- Deloitte estimated the total financial cost of workplace sexual harassment to the Australian economy as \$3.8 billion, noting that this was likely to be a 'conservative estimate'. Lost productivity (\$2.6 billion) represented the largest component of the estimated economic cost of workplace sexual harassment, with the largest share of this borne by employers.
- Together with the non-financial impacts on victim-survivors, the considerable economic costs provide a powerful case for investment by governments and employers in preventing and effectively responding to workplace sexual harassment.

Victorian Legal Services Board and Commissioner's (VLSB+C's) profession-wide study on sexual harassment in Victoria's legal sector.³

This study was the first of its kind to be undertaken by an Australian legal regulator. It involved two anonymous surveys. All lawyers who held Victorian practicing certificates as at 30 June 2019 were invited to complete the VLSB+C Practitioner survey, and report on their experience of sexual harassment in Victoria's legal workplaces. Another Management Practices survey was provided to principals of law practices who were asked to report on the measures that their organisations have in place to address sexual harassment.

³ Victorian Legal Services Board and Commissioner, Sexual Harassment in the Victorian Legal Sector 2019 Study of Legal Professionals and Legal Entities Report of Findings available

Sample sizes

Practitioner survey

- More than 2,300 lawyers responded to the Practitioner survey. This represented 11% of those sent the survey.
- 259 law practices who responded to the Management Practices survey, providing information about their organisations' sexual harassment-related training, policies and procedures.

Management survey

- The Management Practices survey was sent to principals of Victorian law practices and could be completed by the principal themselves or a nominated representative of their organisation (e.g. the human resources manager). This survey focussed on training and the policies and procedures used to prevent and manage sexual harassment at legal workplaces.
- A total of 259 people took part in the survey (representing approximately 5% of the legal entities in Victoria that were invited to participate in the survey).

Overall findings

- **The study found that sexual harassment is widespread in Victoria's legal profession, with more than one in three lawyers having experienced sexual harassment at work. It disproportionately affects women. Sexual harassment is a current issue with most of those who told the VLSB+C they had been harassed said the latest incident happened within the previous five years, and many of these individuals had been harassed within the previous 12 months.**
- Key findings include:
 - **Around one in three (36%) legal professionals said they had personally experienced sexual harassment while**

at <https://lsbc.vic.gov.au/resources/report-sexual-harassment-study>

working in the legal sector, similar to the five-year average for all workplaces (33%) found by Australian Human Rights Commission in its report on its fourth national survey on sexual harassment in Australian workplaces (AHRC report).

- **Women in the legal sector were significantly more likely to have experienced sexual harassment in their careers (61%) when compared to men (12%).**
- **Women in the legal profession experienced higher rates of sexual harassment than the AHRC found was the case for women in all Australian workplaces (61% of women in the legal profession vs. 39% of women generally noted in the AHRC report).**
- **One in four (25%) legal professionals have personally experienced sexual harassment in the legal sector within the last 12 months, and 57% within the last 5 years.**
- Employers and employees' perceptions of the prevalence of sexual harassment differed. One in four (23%) respondents to the Practitioner survey said it was common or very common, while 41% thought it occurred sometimes; only one in ten (9%) thought it was rare. In comparison, 73% of respondents to the Management Practices survey thought that sexual harassment was very rare within their own organisation; a minority of 5% believed that incidents occurred sometimes, and 1% suggested it was commonplace.

Types of sexual harassment in the legal sector

- The most common types of sexual harassment that legal professionals had personally experienced were non-physical behaviours such as intrusive questions about their own or someone else's private life or physical appearance (24%), sexually aggressive sounds, comments or jokes (23%) and inappropriate staring or leering

(19%). These findings are consistent with the AHRC's findings for Australians in other workplaces,

- **However, one in five (18%) had personally experienced unwelcome physical contact, including touching, hugging, cornering or kissing (18%) or actual or attempted rape or assault (2%).**

Who experiences sexual harassment in the legal sector?

- The majority of legal professionals who had experienced sexual harassment were women at 82%, compared with 15% of men.
- Those with less experience in the legal profession were significantly more likely to have been sexually harassed (59% of those with less than 6 years' experience in the profession had personal experiences, including 33% less than 3 years' experience).
- One in five (21%) legal professionals who experienced sexual harassment were lawyers who hadn't completed their period of supervised legal practice.

Who perpetrates sexual harassment in the legal sector?

- **Consistent with the AHRC's findings, the majority of perpetrators of sexual harassment in Victoria's legal sector are male (90%), and the remaining 10% were female. Harassers were most frequently to be described as being over the age of 40 (66%). Almost one in every two (45%) respondents said the harasser(s) had been male, and in a more senior role than they were at the time of the incident and aged over 40.**
- For the majority of legal professionals who experienced sexual harassment, their harasser was senior to them at the time of the most recent incident (72%). This is in contrast with the AHRC's findings that perpetrators of sexual harassment in Australian workplaces are generally co-workers at the same level as a victim-survivor.

- It was common for incidents of sexual harassment to be part of a pattern of behaviour from the harasser (40%) or for the harasser to be known for being involved in similar incidents (48%).

What are the long-term and short-term effects of sexual harassment?

- 88% of respondents with a personal experience of sexual harassment said they had experienced at least one negative **short-term effect**, including a degree of discomfort and/or awkwardness at work (68%), a negative effect on their mental health, or stress (51%) and a negative effect on their self-esteem and confidence (39%).
- Almost half of the respondents (47%) with reported a negative **long-term effect**, for example a negative effect on their relationships with colleagues (35%), discomfort and/or awkwardness at work in the long term (25%) and a long-term effect on their self-esteem and confidence (17%).

Reporting incidents of sexual harassment

- **Sexual harassment in Victoria's legal profession is significantly under-reported. Those victims who did report their experiences often had unfavourable experiences.**
- Most incidents of personally experienced sexual harassment went unreported (81%), although it was common to discuss an incident with colleagues (46%). **Four in five (80%) people said it was easier to keep quiet than report an incident.**
- Common experiences among those who filed a formal report about an incident of sexual harassment they had experienced included having their complaint ignored (41%) and being treated less favourably in the organisation after filing the report (38%). Further, nearly half (46%) of those who made a formal report said they felt there were no consequences for the harasser.

Barriers to reporting sexual harassment

- Survey respondents with personal experiences of sexual harassment who chose not to report their latest incident cited the following reasons for their decision:
 - Common barriers included negative pre-existing attitudes towards the process or outcomes of reporting (97% of respondents), in particular a belief that 'it was easier to keep quiet' (80%) or that 'it was a minor incident' (66%) and a distrust or lack of confidence in the system in place to address the incident (59%).
 - Social barriers were also common barriers to reporting an incident, referenced by 91% of those who chose not to report. The most common social barriers were: concern about negative reactions from colleagues or the harasser (67%); the belief that others would think the respondent was overreacting (67%); and generally, not wanting others to know about the incident (52%).

Witnessing sexual harassment

- Many respondents indicated that they had either witnessed or heard about the sexual harassment of another person while working in Victoria's legal sector. Nevertheless, it was extremely rare for a respondent to have reported the incident.
- More than one in three (36%) legal professionals said they had personally witnessed sexual harassment in the legal sector, while 43% had heard about it directly from someone who had been subject to the sexual harassment. Overall, more than half (53%) of respondents witnessed and/or had heard about sexual harassment first-hand. However, only one in ten witnesses (10%) reported it.

Workplace sexual harassment policies

- Responses to the Management Practices survey suggest that there are many legal workplaces without sexual harassment policies:
 - Only 44% of respondents to the Management Practices survey said their organisation had a policy that addressed sexual harassment. Fewer than one in three (28%) organisations overall had documented policies.
 - Respondents from small workplaces (between 2-50 people) were less likely to say there was a documented policy in their workplace (65%), compared with larger workplaces with over 50 people (90%).
 - Just over one in two (54%) of those surveyed in the Practitioner survey said that their workplace definitely had a documented sexual policy in place.

Training and education to prevent sexual harassment

- The results of the Management Practices survey suggest that the provision of training to employees as a sexual harassment prevention tool is particularly rare.
- The majority of organisations that had a sexual harassment policy communicate that policy to new employees during the induction process (88%). However, fewer than half of all organisations appear to have such policies.
- Specific training on sexual harassment is uncommon in legal workplaces with just 13% of all respondents to the Management Practices survey providing training on sexual harassment. Fewer than half (44%) of the respondents to the Practitioner survey said they had taken

part in training on sexual harassment in their current workplace.

Victorian Auditor General's Office (VAGO) - Sexual Harassment in the Victorian Public Service⁴

In 2019 the Victorian Auditor General's Office (VAGO) published a report into sexual harassment in the Victorian Public Service. The role of VAGO was to determine whether Victorian government departments provide workplaces that are free from sexual harassment. The departments examined were:

- Department of Environment, Land, Water and Planning (DELWP)
- Department of Education and Training (DET)
- Department of Health and Human Services (DHHS)
- Department of Justice and Community Safety (DJCS)
- Department of Jobs, Precincts and Regions (DJPR)
- Department of Transport (DoT)
- Department of Premier and Cabinet (DPC)
- Department of Treasury and Finance (DTF).

VAGO examined whether departments:

- have effective measures to prevent and report on sexual harassment
- respond to complaints of sexual harassment in a fair and effective manner.

VAGO found that despite departments expressing a clear message that sexual harassment is unacceptable, the 2019 People Matter Survey (PMS) found that:

⁴ Victorian Auditor General's Office 2019 "Sexual Harassment in the Victorian Public Service" Independent assurance report to Parliament 2019–20: 8, Melbourne, Victoria available at <https://www.audit.vic.gov.au/sites/default/files/2019-11/20191128-Sexual-Harassment-report.pdf>

- In the 2019 PMS, 7 per cent of departmental respondents said they had experienced sexual harassment in the past 12 months. This is more than 1 400 employees. This is a reduction from 11 per cent of respondents in the 2016 survey, however, VAGO determined that it is too soon to determine if this decrease is a trend.
- Departments make complaint channels available, but staff rarely use them, because staff lack faith in the complaints system, fear the consequences, or perceive that the behaviour they experienced is not serious enough.
- The PMS results show that the following types of respondents are at much greater risk:
 - those with a self-described gender identity (26 per cent experienced sexual harassment)
 - women aged 15 to 24 (14 per cent experienced sexual harassment)
 - lesbian, gay, bisexual, trans and gender diverse, intersex, queer and questioning (LGBTIQ) persons (13 per cent experienced sexual harassment)
 - Aboriginal and Torres Strait Islanders (12 per cent experienced sexual harassment)
 - those who earned less than \$75 000 (11 per cent experienced sexual harassment)
- The 2019 PMS reports that the most common experiences were:
 - intrusive questions about a person’s private life or comments about their physical appearance
 - sexually suggestive comments or jokes that offend a person (either in a group or one-on-one situation).
 - employment, career or work
 - relationship with their partner, children, friends or family.
- For organisations, sexual harassment may reduce workforce morale, and increase absenteeism and turnover. It can also expose departments to legal liability and considerable investigation costs.
 - Of the PMS respondents who said they experienced sexual harassment, only:
 - 3 per cent said that they made a formal complaint.
 - The top reasons why staff do not make complaints about sexual harassment are because they:
 - did not think it was serious enough
 - believed there would-be negative consequences for their reputation and/or career
 - did not think it would make a difference
 - did not believe the complaint would result in any action.

VAGO found that while some departments have implemented strategies to encourage staff to report complaints, they determined it is too soon to assess whether this has improved reporting.

VAGO found that departments do not always keep accurate and complete records on how they have handled formal sexual harassment complaints. This ranged from minor to some more serious instances, such as where investigation reports were missing.

In November 2018, the Victorian Public Services Commission (VPSC) introduced *the Model Policy for the Prevention of Sexual Harassment in the Workplace* (the model policy). In general, departments have clear and accessible policies on sexual harassment that align with VPSC’s model policy.

VAGO found some policies miss elements that the model policy includes, such as referring to the importance of bystander intervention and outlining external complaint avenues. As the VPSC introduced the model policy in November 2018, departments are still updating their sexual harassment policies to align with it.

VAGO undertook its own survey of departmental employees and received 4 811 responses.

- Twelve per cent of respondents who experienced sexual harassment said it negatively affected their:
 - mental health and caused them stress
 - self-esteem and confidence

Some departments include sexual harassment training in their staff induction modules, but not all staff have completed this training. VAGO's survey found only 23 per cent of respondents said they completed training on sexual harassment at induction, and 42 per cent said that they had never received sexual harassment training.

In VAGO's survey, 71 per cent of respondents agreed that their department communicates zero tolerance for sexual harassment. VAGO recommended that departments should continue to communicate at least annually with staff and express a commitment to eliminate this behaviour in the workplace. It also recommended that they consider further, targeted communication based on risk factors.

VAGO made 12 recommendations including the introduction of mandatory training for staff, a targeted campaign to encourage complaints of sexual harassment, to increase staff confidence in the complaints system, improving record keeping practices and at least annual record keeping by departmental leaders.

Us Too? Bullying and Sexual Harassment in the Legal Profession. Report of the International Bar Association ⁵

In 2018, the IBA and Acritas conducted the largest-ever global survey on bullying and sexual harassment in the legal profession. Nearly 7,000 individuals from 135 countries responded to survey. The respondents were drawn from the spectrum of legal work environments, including law firms, in-house, barristers' chambers, government and the judiciary. 4,651 respondents were female and 2,261 were male. 14 were non-binary or self-defined. 54 respondents preferred not to specify.

The results found that bullying and sexual harassment are rife in the legal profession. The majority (53%) of respondents to the survey were under the age of 40, and more than three-quarters of respondents were under 50.

Key Findings

- Sexual harassment is widespread and commonplace in the legal profession.
- Sexual harassment disproportionately, but not exclusively, affects female members of the profession.
- It is most prevalent in government legal workplaces and least prevalent in law firms, although it occurs in all workplace types "with troubling frequency".
- Sexual harassment is most commonly perpetrated in the physical work environment and by a non-supervisor senior colleague.
- The conduct is also common at work-related social events, conferences and during work travel.
- Younger members of the profession are disproportionately impacted by sexual harassment— **one in five respondents younger than 35 had been sexually harassed within the past year.**
- Incidents are very rarely reported and, when they are, workplace responses are inadequate, with perpetrators infrequently sanctioned.
- Sexual harassment is having a considerable negative impact on the legal sector, with many sexually harassed respondents considering leaving their workplaces or the profession altogether.

⁵ Pender K, 2019 *Us Too? Bullying and Sexual Harassment in the Legal Profession: Report of the International Bar Association*, International Bar Association, London, United Kingdom

Gender

- Workplace sexual harassment has an unequal impact on female members of the legal profession:
 - 37% of female respondents had experienced sexual harassment during their career (1 in 3)
 - 7% of male respondents had been sexually harassed (1 in 14)
 - 43% of non-binary/self-defined individuals (albeit a low sample size limits the reliability of this statistic).
- On a gender-weighted basis, the survey found that **sexual harassment impacts 22% - over one in five - members of the profession.**
- Respondents who had not personally experienced such conduct were asked whether they had witnessed sexual harassment in work-related contexts:
 - 23% of female respondents and 26% of male respondents had witnessed sexual harassment.

Workplace

- Government legal workplaces have the highest average prevalence of sexual harassment on a gender-weighted basis, at 35% of respondents.
- Law firms have the lowest rate, at 20%.
- Judicial workplaces sit at 23%.
- In-house workplaces sit at 26%.
- Barristers' chambers sit at 28%.
- Male respondents at government legal workplaces were more than twice as likely to have been sexually harassed than the male average.

Age

- Sexual harassment disproportionately impacts younger members of the profession.

This trend is particularly evident among female respondents, while the impact of age on male experiences of sexual harassment is less clear.

- Experiencing sexual harassment within the past year is most common among female respondents aged 25–29 (29%), decreasing on an almost linear basis to 5% among female respondents aged 55 or above.
- 16% of trainees, 20% of solicitors/associates, 22% of senior associates/senior solicitors and 23% of partners have been sexually harassed

Reporting

- The reporting mechanisms at many legal workplaces are failing: 75% of sexual harassed respondents and 57% of bullied respondents had never reported.
- Among the most commonly cited reasons for not reporting was fear of repercussions and a lack of confidence in reporting procedures.

The National Action Plan to Reduce Sexual Harassment in the Australian legal profession ⁶

The National Action Plan to Reduce Sexual Harassment in the Australian legal profession (NAP) reflects the decision of the Law Council's state and territory Constituent Bodies to address sexual harassment in the legal profession across the nation.

The NAP is designed to map a path forward that addresses the regulatory and cultural change factors necessary to facilitate better experiences for legal professionals. The NAP includes specific law reform proposals as policy positions of the Law Council. It also includes measures to be implemented within the legal profession to drive cultural change.

⁶ The Law Council of Australia 2020 National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession available at <https://www.lawcouncil.asn.au/media/media-releases/release-of-national-action-plan-to-reduce-sexual-harassment-in-the-australian-legal-profession->

As a starting point the The Law Council recognises that sexual harassment in Australian workplaces is pervasive and damaging. It argues that the law profession is no different, and draws on a range of surveys to support this assertion. These include:

- The Law Society of Tasmania’s Employment and Equal Opportunity Committee’s survey on sexual harassment and inappropriate workplace behaviour in the local legal profession, completed by 132 men and 89 women, where 47 respondents (21 per cent) stated they had been subjected to inappropriate workplace behaviour.⁷
- Changing the Rules: The Experiences of Female Lawyers in Victoria where 24 per cent of the female lawyers who responded to the survey reported having experienced sexual harassment.⁸
- The National Attrition and Re-engagement Study (NARS) Report where 24 per cent of the female lawyers and eight per cent of the male lawyers who responded to the survey reported having experienced sexual harassment.⁹
- The International Bar Association’s Women in Commercial Legal Practice where 27 per cent of the female lawyers and seven per cent of the male lawyers who responded to the survey reported having experienced sexual harassment.¹⁰
- The Victorian Bar’s Quality of Working Life Survey where 16 per cent of the female barristers and two per cent of the male barristers who responded to the survey reported having experienced sexual harassment.¹¹
- The Women Lawyers Association New South Wales survey of 242 respondents, 96 per cent of which were women, where 71 per cent of respondents reported having experienced sexual harassment.¹²
- The NSW Young Lawyers Human Rights Committee’s survey on the incidence of sexual harassment in the legal profession distributed to the NSW Young Lawyers membership, where 51 per cent of the respondents reported having experienced sexual harassment.¹³
- The Women Lawyers Association of the ACT survey on sexual harassment in the local legal profession where 57 per cent of the respondents reported having experienced sexual harassment.¹⁴
- The International Bar Association’s final report on its global survey, entitled *Us Too? Bullying and Sexual Harassment in the Legal Profession* where 47 per cent of the female lawyers and 13 per cent of the male lawyers who responded to the survey from Australia reported having experienced sexual harassment.¹⁵
- The Women Lawyers of Western Australia Sexual Harassment Survey revealed that 72 per cent of the 500 participants had personally experienced sexual harassment in the workplace.¹⁶

⁷ Law Society of Tasmania’s Employment and Equal Opportunity Committee 2019 Submission No 358 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces

⁸ Victorian Equal Opportunity and Human Rights Commission, 2012, *Changing the Rules: The Experiences of Female Lawyers in Victoria*

⁹ Law Council of Australia, 2014 *National Attrition and Re-engagement Study (NARS) Report*

¹⁰ International Bar Association, 2017 *IBA LPRU: Women in Commercial Legal Practice*

¹¹ Victorian Bar, 2018 *Victorian Bar: Quality of Working Life Survey* University of Portsmouth.

¹² Women Lawyers Association New South Wales, 2019, *Submission No 340 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces*

¹³ Law Society of New South Wales Young Lawyers, 2019 *Submission No 308 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces*

¹⁴ Women Lawyers Association of the Australian Capital Territory, 2019 *WLA Submission to AHRC Workplace Sexual Harassment Inquiry* <<http://www.wlaact.org.au/national-inquiry-into-sexual-harassment-in-australian-workplaces>>.

¹⁵ Pender K, 2019 *Us Too? Bullying and Sexual Harassment in the Legal Profession: Report of the International Bar Association*, International Bar Association, London, United Kingdom

¹⁶ Women Lawyers of Western Australia 2019 *WLWA Sexual Harassment Survey and Submission to ALRC* available at <https://www.wlwa.asn.au/our-projects/workplace-equality-reform-and->

- The Victorian Legal Services Board + Commissioner's report on Sexual Harassment in the Legal Sector found that approximately one in three (36 per cent) legal professionals said they had experienced sexual harassment while working in the legal sector, and that women were significantly more likely to experience sexual harassment (61 per cent) as opposed to men (12 per cent).¹⁷

From these surveys and other studies, the NAP determines that the key drivers of sexual harassment in the legal profession are:

- The hierarchical nature of the work environment
- The male-dominated nature of the profession
- Competitive work environments
- A focus on profits, productivity, efficiency, and client satisfaction and on the firm over the individual
- Social events and alcohol

The NAP reported that reporting rates are very low. Reasons for this included:

- Fear of repercussions
- Fear of ostracism
- Negative impact on career
- Belief that nothing would be done
- Profile or status of perpetrator
- Complex or overwhelming complaints process
- Labelled as being too sensitive or not a team player
- Feelings of embarrassment, guilt, shame, trauma and stigma.

The Law Council found that a failure of employers to act can perpetuate, in the minds of both perpetrators and victim-survivors, a culture that condones sexual harassment in the workplace.

The Law Council's provided a number solutions and recommendations in the NAP, many of which

policies/workplace-harassment-in-the-legal-profession-survey/

¹⁷ Victorian Legal Services Board and Commissioner, Sexual Harassment in the Victorian Legal Sector 2019 Study of Legal Professionals and Legal Entities Report of Findings, available

are consistent with the recommendations in this report. They include:

- advocating for reform to the Sex Discrimination Act 1984 (Cth) (SDA).
- supporting the work of the Australian Human Rights Commission, particularly in relation to the establishment of a Workplace Sexual Harassment Council.
- Amending the SDA:
 - to introduce positive duties;
 - expand aiding and abetting provisions to sexual harassment;
 - to clarify the position of civil actions for victimisation as unlawful discrimination;
- harmonisation of federal and state and territory discrimination laws; and
- education and training programs for judicial officers and tribunal members.
- Driving cultural change in the legal profession through:
 - legal profession regulation;
 - the development of national model sexual harassment policy and guidelines;
 - the development of a centralised source of information and suite of educational tools;
 - the facilitation of a consistent complaints process;
 - the consideration of bystander provisions; and
 - supporting individuals who have experienced sexual harassment.

at <https://lsbc.vic.gov.au/resources/report-sexual-harassment-study>

Starts with Us: Legal and Justice Sectors Action to Prevent Violence Against Women – Women’s Legal Service Victoria¹⁸

Starts with Us is a sector-wide, workplace-based strategy to meaningfully address gender inequality in the legal and justice workforce in Victoria. The project has two parts that are designed to support the achievement of meaningful gender equality goals across the legal and justice workforce:

- Sector-wide collaboration
- Co- design and implementation of workplace gender equality strategies

Key Findings

- The legal and justice workforce in Victoria is comprised of 32,000 people in a broad range of roles. Research from the *Starts with Us* project shows that the legal and justice is a sector where gender inequality is pronounced and entrenched. This includes:
 - High incidence of workplace sexual harassment experienced by women working in the legal and justice setting.
 - Men working in the legal profession are much more likely than women to be in leadership roles, are more likely to be working at the Bar, and are less likely to take on primary caregiving roles.
 - Women are much more likely to experience discrimination for working part time to look after children, are less likely to be able to

- develop suitable mentors, are likely to be subject to unconscious bias and legal workplace cultural norms that limit career progression, and are less likely to continue in the profession after having children.
- The gender pay gap in the legal sector for fulltime employees is 26% — higher than in other comparable sectors.
- ‘Casual’ and ‘everyday’ sexism contributes to workplaces that can be hostile to women and privilege men.
- Gender stereotypes are subtly and overtly reinforced and sexism is normalised across the sector. Sexual harassment in the sector is pervasive and often accepted, in a culture of objectification of women.
- The sector is very hierarchical, reflecting rigid social norms and Anglo male privilege. The *Starts with Us* research identified the a ‘boys club’ culture within the sector which operates to favour male relationships, and contributes to discrimination and preferential treatment in hiring and promotion.
- Research participants described intersectional disadvantage and discrimination including sexual harassment and bullying that, in addition to gender, often also related to ethnicity, religion, sexual orientation, gender identity and age.

Women’s Lawyer’s Association of NSW-2018 Survey¹⁹

- Women Lawyers Association NSW (WLANSW) is a voluntary association that promotes and protects the interests of women in the legal profession. It has

¹⁸ Campo M, Memery L and Ulasowski N Women’s Legal Service Victoria Starts With Us: Discussion Paper: Sexism and Gender Inequality In The Victorian Legal And Justice Sector, Women’s Legal Services Victoria available at <https://www.womenslegal.org.au/files/file/Starts%20With%20Us%20discussion%20paper.pdf>

¹⁹ Women Lawyers Association New South Wales, 2019, Submission No 340 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces

members throughout NSW. Its members include solicitors, barristers, judicial officers, academics, corporate counsel, lawyers and law students. Members work in private practice, corporations, the public sector, the community legal sector and at the Bar.

- In 2018, a survey of 242 respondents by the WLANSW found that 71 per cent of respondents reported having experienced sexual harassment.
- Of the 242 responses received:
 - 96% were females;
 - 41% have been in legal professional for less than ten years;
 - 60% were under the age of 40 years of age;
 - 88% are not from a non-English speaking background; and
 - 64% work in private practice and 15% are barristers.
 - 71% of the respondents reported that they had been sexually harassed at work while engaged in the legal profession.
 - Only 18% has ever made a complaint to their employer.
- The harassment occurred mostly at the respondent's workplace and at social events (68% and 49% respectively). Other recurring work places reported by respondents were "court", "mediation", and "volunteer centre".
- In relation to the nature of the sexual harassment the majority of respondents reported unwelcome comments, offensive comments, which mainly occurred at the respondent's workplace or at a social event. "Other" conduct, included:
 - "Shown inappropriate photographs and drawings".
 - "Objectification; boss implied to others in the profession that we were in a sexual relationship; being referred to as secretary or even

"angel" rather than correct professional term".

- "A partner I was working in once criticised me because I wouldn't go with them into a strip club at an after-work function. Another partner at another law firm repeatedly tried to "set me up" with a solicitor at the same practice".
- A majority of the respondents reported that the position of the harasser was a person whom they reported to at their workplace.
- 82% of respondents have not made a complaint of sexual harassment to their employer and 44% of respondents chose not to make complaint for fear of impact on their career.
- Around 51% of respondents were not confident that their employer would deal with their complaint in a comprehensive, confidential and objective manner.
- Around 58% of respondents have witnessed another person being sexually harassed and 47% of respondents agreed that sexual harassment policies should require people who have observed the behaviour to report it.

Disrupting the System: Preventing and responding to sexual harassment in the workplace, Male Champions of Change (MCC) ²⁰

The Male Champions of Change (now known as the Champions of Change Coalition) strategy involves male leaders stepping up beside women leaders to achieve gender equality and advance more women into leadership. The heart of the strategy involves listening, learning and leading with practical, constructive and disruptive action to accelerate change.

²⁰ Champions of Change Coalition (formerly Male Champions of Change) 2020 *Disrupting the System: Preventing and responding to sexual harassment in the workplace*, Champions of Change Coalition Institute, Sydney,

available at https://championsofchangecoalition.org/wp-content/uploads/2020/09/Disrupting-the-System-Preventing-and-responding-to-sexual-harassment-in-the-workplace_FINAL.pdf

This involves leaders taking a clear stance, demonstrating compassionate leadership, shared language, practical knowledge, disruptive actions, and providing tools and resources that empower staff to support this goal.

Summary of the Research

- Sexual harassment is prevalent, largely experienced by women but also by men and other genders.
- Men are most commonly the perpetrators of sexual harassment against women, men and people who identify as non-binary.
- However, sexual harassment is a systemic cultural issue, not only an act of individual conduct.
- Young age, gender identity, sexual orientation, Indigeneity, other cultural and linguistic diversity, disability, low income and job insecurity are factors that increase the likelihood a person may experience sexual harassment and compound the barriers to speaking out against the behaviour.
- Location (remote or isolated sites, international offices; environments (high-pressure situations, extended working hours) and demographics (male-dominated or culturally homogenous workforces) can increase the incidence and the severity of the behaviour.
- Very few people choose to report sexual harassment. This is for a range of reasons including fear of ostracism and a negative impact on their income, career and/or reputation.
- Given sexual harassment is so under-reported, the extent of the problem is not fully understood.
- There is no evidence to suggest that generational change in workforces will stop this behaviour.
- Sexual harassment sits on a continuum of behaviours and norms that reflect unequal gender power dynamics in the workplace. These behaviours can vary in how they manifest and can occur in isolation or concurrently. Workplace cultures that normalise, tolerate and excuse disrespectful behaviour at one end

of the continuum lead to more serious issues at the other.

- Underreporting is rife. This means that employees do not feel safe in raising sexual harassment, they lack confidence in existing systems to deal with it, or both.
- In particular, while sexual harassment is experienced throughout organisations, it takes on an especially malignant character when perpetrated by leaders. When complaints are made, the established approach is to “shut the issue down” usually in the name of profile, performance or reputation, which visibly and perversely serves to protect perpetrators who are powerful.
- Sexual harassment is one of a number of behaviours that occur in and outside the workplace that contribute to a wider culture of disrespect of women.
- Examples of disrespectful behaviour include:
 - Inappropriate after-hours or outside-of-work behaviour of employees.
 - Inappropriate social media activity of employees.
 - Trolling of women by people within and outside our organisations.
 - The objectification of women in mainstream media advertising
 - Intimate relationships formed through work that are inappropriate because they involve conflicts of interest and significant power imbalances
 - Gendered bullying and victimisation.

The MCC’s previous report on *Everyday Sexism*, highlighted how these kinds of behaviours can repeat, escalate and/or cumulatively cause harm. Critically, if overlooked or condoned it creates a permissive culture for more serious incidents, like sexual harassment.