



HARMONY ALLIANCE

YOUNG WOMEN'S ADVISORY GROUP

National Inquiry into Sexual Harassment in Australian Workplaces Protecting Young Women from Workplace Sexual Harassment

Introduction

The Young Women's Advisory Groups of Equality Rights Alliance and Harmony Alliance - *Migrant & Refugee Women for Change*, welcome the opportunity to provide a submission to the Australian Human Rights Commission's *National Inquiry into Sexual Harassment in Australian Workplaces*. In this submission we focus on the experience of young women who experience sexual harassment in the workplace, with a focus on women from culturally and linguistically diverse backgrounds, and identify practical and evidence-based solutions.

Sexual harassment is inextricably linked to violence against women and girls, with its roots in gender inequality, sexism, and harmful stereotypes.¹ Young women are particularly vulnerable to workplace sexual harassment. This is more pronounced for young women from culturally and linguistically diverse (CALD) backgrounds.

- *Higher rates:* Young people aged 18-29 are the most likely age-group to experience technology based harassment. Thirty-nine per cent of 18-29 year olds experience sexual harassment online or via some form of technology.² According to the Women and the Future of Work report, women born in Asia and Culturally and Linguistically Diverse women reported experiencing sexual harassment at twice the rate of the surveyed population.³
- *Higher levels:* The level of intimidation felt about workplace sexual harassment is greater among younger workers.⁴

¹ Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth (2015) *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia*, <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>

² Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_WORKPLACE_SH_2018.pdf

³ Marian Baird, Rae Cooper, Elizabeth Hill, Elspeth Probyn and Ariadne Vromen (2018) *Women and the Future of Work: Report 1 of The Australian Women's Working Futures Project*, <https://sydney.edu.au/content/dam/corporate/documents/business-school/research/women-work-leadership/women-and-the-future-of-work.pdf>

⁴ Australian Human Rights Commission (2018)



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- *Greater impacts:* Younger women are also more likely to have a work-related mental condition safe work claim resulting from sexual or racial harassment.⁵ Young workers are also more likely to suffer negative health outcomes as a result of workplace harassment.⁶
- *Gaps in understanding:* Awareness of what constitutes sexual harassment is lowest among people aged 15-17 and for people who speak a language other than English at home.⁷

Our Expertise

The **Young Women's Advisory Group to the Equality Rights Alliance** is made up of ten young women (aged 30 and under) from across Australia, working together to bring young women's perspectives and views to ERA's advocacy and driving research and advocacy projects relevant to the lives of young women.

The **Harmony Alliance Young Women's Advisory Group** is made up of nine young women (aged 30 and under) and two co-chairs from the Alliance Council from across Australia, bringing forward the views, voices and issues of young women from migrant and refugee backgrounds, and driving specific advocacy, policy and research projects.

The Drivers

The heightened vulnerability to and risks for young women, in particular young CALD women, in experiencing sexual harassment are produced by a collision of systemic industrial power imbalances and broader social and cultural structural inequalities.

Gender-based occupational segregation:

Research consistently points to higher rates of sexual harassment in industries and sectors that are male-dominated.⁸ Gender-based occupational segregation remains a stubborn and persistent

⁵ Safe Work Australia (2015) *Work-Related Mental Disorders Profile*,

<https://www.safeworkaustralia.gov.au/system/files/documents/1702/work-related-mental-disorders-profile.pdf>

⁶ Adrienne O'Neil (2018), *Workplace sexual harassment is a public health issue and should be treated as such*,

<https://theconversation.com/workplace-sexual-harassment-is-a-public-health-issue-and-should-be-treated-as-such-98937>

⁷ Australian Human Rights Commission (2018)

⁸ Australian Human Rights Commission (2017) *Gender segregation in the workplace and its impact on women's economic equality- Submission to Finance and Public Administration References Committee*

https://www.humanrights.gov.au/sites/default/files/AHRC_Submission_Inquiry_Gender_Segregation_Workplace2017.pdf and Women's Health Victoria (2017) *Spotlight on Sexual Harassment in the Workplace* <https://bit.ly/2BY2b0M>



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problem in Australia.⁹ According to WGEA data, 60% of working Australians are in a workplace dominated by one gender.¹⁰ Greater gender balance and indeed greater numbers of women across all sectors and within all levels of an organisation is key to addressing workplace sexual harassment.¹¹ The 2017 Senate inquiry into gender segregation in the workplace made a suite of recommendations, including:

- Restoring funding for the Equal Pay Unit in Fair Work Australia;
- Investigating Britain's gender pay data transparency measures for application in Australia;
- Reforming the *Fair Work Act 2009* to improve its capacity to address equal remuneration orders;
- Implementing gender responsive career guidance in schools.¹²

Precarious work and Casualisation:

Insecure work contributes to the likelihood of experiencing sexual harassment. Workers who are self-employed, on contract or casually employed are more likely to experience sexual harassment than workers in permanent positions.¹³ Research indicates that the limitations on tenure and workplace rights for casual employees are enabling factors for this.¹⁴ Workers with the least bargaining power are over-represented in precarious work, including women, migrant workers, young workers, Aboriginal and Torres Strait Islander workers and people with disabilities.¹⁵ Women are slightly more likely to be employed on a casual basis and young people are significantly overrepresented in casual work.¹⁶ The often precarious work available for temporary

⁹ Senate Finance and Public Administration Committee (2017) *Gender segregation in the workplace and its impact on women's economic equality*

https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Gendersegregation/Report

¹⁰ Workplace Gender Equality Agency (2016) *Australia's gender equality scorecard Key findings from the Workplace Gender Equality Agency's 2015-16 reporting data*

https://www.wgea.gov.au/sites/default/files/documents/80653_2015-16-gender-equality-scorecard.pdf

¹¹ Frank Dobbin and Alexandra Kalev (2017) *Training Programs and Reporting Systems Won't End Sexual Harassment. Promoting More Women Will*, Harvard Business Review

<https://hbr.org/2017/11/training-programs-and-reporting-systems-wont-end-sexual-harassment-promoting-more-women-will>

¹² Senate Finance and Public Administration Committee (2017)

¹³ Anthony LaMontagne, Peter Smith, Amber Louie, Michael Quinlan, Jean Shoveller and Aleck S Ostry (2009) "Unwanted sexual advances at work: variations by employment arrangement in a sample of working Australians," *Australian and New Zealand Journal of Public Health* 33(2):173-179 <https://www.iwh.on.ca/summaries/research-highlights/unstable-work-increases-risk-of-unwanted-sexual-advances>

¹⁴ As above.

¹⁵ Michael Rawling (2015) "Regulating Precarious Work in Australia: A Preliminary Assessment", *Alternative Law Journal* 24(3):297-315 <http://classic.austlii.edu.au/au/journals/UTSLRS/2015/41.html>

¹⁶ Geoff Gilfillan (2018) *Characteristics and use of casual employees in Australia*, Australian Parliamentary Library https://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Casual_EmployeesAustralia#_Toc504135070



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migrant workers leaves this group “particularly vulnerable to exploitation and disadvantage.”¹⁷ Actions that need to be taken to address this includes:

- Specific reforms to enhance protections against sexual harassment for casual workers;
- Addressing the growing casualisation of the workforce;
- Reforming the employer sponsorship component of permanent residency eligibility.¹⁸

Gender, age and race inequalities:

Prevailing gender, age and race-based inequalities drive the unequal positions that many young women hold in workplaces. The gender pay gap is a reality from the moment girls and young women step foot into the workplace. Data from the Workplace Gender Equality Agency indicates that a gender pay gap of 5.7 per cent affects workers aged 20 and under.¹⁹ Young women are also disproportionately victims/survivors of gender-based violence.²⁰ These are issues young women are well aware of with sixty-nine per cent of respondents to a Plan International Australia and Our Watch survey believing that “inequality between men and women (including girls and boys) is still a problem in Australia today.”²¹ Actions to address sexual harassment in the workplace need to be a part of broad-based action to address gender-based and race-based inequalities.

Barriers to Reporting for Young CALD Women

There is very little data that is currently collected on the prevalence of sexual harassment within CALD communities in Australia, and even less data on young CALD women. Despite this, research by the Australian Institute of Family Studies (AIFS) indicates that women from CALD backgrounds may be at higher risk of experiencing sexual assault and can experience a number of barriers to reporting.²²

It is critically important to understand cultural attitudes and the diverse social views on sexual harassment and violence when considering why women from migrant and refugee backgrounds

¹⁷ Multicultural Centre for Women's Health (2018) *How to change the culture of sexual harassment* <http://www.mcwh.com.au/how-to-change-the-culture-of-sexual-harrasment/>

¹⁸ Joanna Howe (2016) “Examining a Temporary Migrant Worker's Ability to Make a Complaint of Sexual Harassment,” *Alternative Law Journal* 41(2) 102-104
<https://search.informit.com.au/documentSummary;dn=221581738428111;res=IELHSS>

¹⁹ Workplace Gender Equality Agency (2019) *Australia's Gender Pay Gap Statistics*
<https://www.wgea.gov.au/data/fact-sheets/australias-gender-pay-gap-statistics>

²⁰ Our Watch (n.d.) *Fact and Figures* <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

²¹ Plan International Australia and Our Watch (2016) *Everyday Sexism: Girls' and young women's views on gender equality in Australia* https://www.ourwatch.org.au/getmedia/1ee3e574-ce66-4acb-b8ef-186640c9d018/Everyday-Sexism_version_03.pdf.aspx

²² Annabelle Allimant and Beata Ostapiej-Piatkowski (2011) *Supporting women from CALD backgrounds who are victims/survivors of sexual violence*, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies <https://aifs.gov.au/sites/default/files/publication-documents/w9.pdf>



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experience barriers to reporting. Evidence indicates that women from CALD backgrounds associate sexual harassment and violence with feelings of shame. There is also stigma that can be felt from family and community if experiences are disclosed and these feelings can be very isolating. Other barriers to reporting for young women from CALD backgrounds include the failure to recognise what sexual harassment encompasses, isolation, cultural barriers or stigma, fear about the loss of residency status, language barriers and being in insecure or precarious work.

Protective and Remedial Measures

There is an assumption that all women have the same access to support services, protective and remedial measures if they experience sexual harassment in the workplace. There is a greater propensity among young women to seek support and advice after having experienced sexual harassment compared to older women. However the overall rates remain low, with just 1 in 5 people who have experienced harassment between the ages of 18-29 having pursued protective or remedial measures (AHRC). While young women in general, are more likely to seek advice and support than older cohorts, CALD women face additional barriers in pursuing remedies/complaints.

- The Fourth national survey on sexual harassment in Australian workplaces indicates that those in the youngest age groups are most likely to have sought support or advice (58% for under 15 and 29% for 15-17).²³
- Bystanders or witnesses to harassment are more likely to intervene with younger people. While the majority of witnesses to sexual harassment do not take action to intervene, they are more likely to intervene when the victim is young.²⁴
- Further, when legal remedies are sought, among other factors “extreme youth is an indicator of success” in rural settings and when the harasser is older.²⁵
- Temporary migrant workers face significant barriers in pursuing complaints about exploitative treatment at work which emanate from strong power differentials between an employer and visa holder. These barriers include: a stronger likelihood of being employed casually and/or in low-skilled (“replaceable”) work, lower English language competency, low understanding and awareness of complaint mechanisms, unaffordability of legal assistance, different cultural norms around complaints at work and, crucially, the contingency of employer sponsorship in visa programs.²⁶

²³ Australian Human Rights Commission (2018)

²⁴ As above.

²⁵ Skye Saunders (2015) “*Whispers from the Bush*” *The Workplace Sexual Harassment of Australian Rural Women* http://www.canberra.edu.au/researchrepository/file/647dfc77-90a3-4644-b1bb-5b06ae1d86c9/1/full_text.pdf

²⁶ Howe (2016)



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- It's important to note that economic migrants and international students may not have strong networks in Australia, and therefore may not be accessing information, protective and other remedial measures.

The Solutions

Effective solutions to address workplace sexual harassment require social, cultural, industrial and legal change that is holistic and integrated. We join the call from over 95 organisations in the *Power to Prevent Statement* highlighting these solutions focused on prevention, legal duties of employers, complaints processes, support and advocacy for workers who have experienced sexual harassment and the need for accessible reporting tools. We endorse the submissions of the Victorian Legal Aid, NOW, AWAVA and Our Watch, especially in relation to prevention, stronger and clearer legal duties on employers and access to fair, efficient and effective complaints processes.

1. From the international realm to the domestic, strong legal frameworks are required to clarify accountabilities and realise rights to safety at work. It is vital that the Australian Government continues to **support the development of a much-needed binding International Labour Organisation Convention to address workplace sexual harassment.**²⁷
2. **Address the drivers of sexual harassment:**
 - a. **Implement dedicated prevention efforts to address the underlying gendered drivers of sexual harassment as part of a holistic strategy to prevent violence against women and promote gender equality in line with *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia***
 - b. **Take action to address precarious work and casualisation, address gender-based occupational segregation and reform temporary working visa arrangements to eradicate the exploitation of migrant workers. See further information above in *The Drivers*.**
3. **Leverage WGEA's Reporting, Compliance and Data Collection Systems to Address Sexual Harassment.**

Existing policies and mechanisms to promote gender equality at work and in public life should be recalibrated for the purposes of preventing and addressing sexual harassment. A case in point is

²⁷ Care Australia (2018) *This is not working: Stopping sexual harassment in workplaces across our region*
https://www.care.org.au/wp-content/uploads/2018/05/000501_ThisIsNotWorking_A4-Report_ONLINE_20180510.pdf



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the reporting, compliance and data collection frameworks of the Workplace Gender Equality Agency (WGEA) which could be considered for further refinement to address sexual harassment.

WGEA's Gender Equality Indicator (GEI) framework forms the basis for reporting requirements. Of the six GEIs, GEI 6 requires employers to report on "any other matters specific by the Minister: sex-based harassment and discrimination." In order to meet the minimum standard, a relevant employer with 500 or more employees must have a formal policy or strategy in place. If the employer fails to meet this standard, WGEA offers advice and assistance to improve performance against the standard. GEI 6 and the broader reporting framework offer an opportunity to consider how these systems can be strengthened to improve sexual harassment outcomes. Consideration should be given to the following:

- In addition to the *presence* of a sexual harassment policy or strategy, effectiveness should be assessed. This could occur through assessing the policy against best practice guidelines,²⁸ the number of reports and outcomes of sexual harassment and possible consequences for failure to meet standards; and
- How best to assess and capture employers with less than 500 employees.

Further, WGEA's data collection and reporting systems could be expanded to include claims and statistics on sexual harassment. Formal reporting requirements have the potential to place a greater focus on this area for reporting organisations. These data could also form an important evidence base in addressing sexual harassment. In addition, WGEA's data collection should be reviewed to ensure that all data collection is disaggregated to strengthen reporting, inform policy outcomes and tailor services to the needs of all women who may experience workplace sexual harassment.

Finally, Governments should consider how WGEA can be better utilised to influence procurement policy. For example, WGEA's Employer of Choice system could be integrated into decisions on procurement.²⁹ This points to the potential of existing systems to be strengthened and more effectively utilised to ensure that considerations of gender equality and work are embedded in a range of Government policy areas.

²⁸ For example, the AHRC example Code of Practice

https://www.humanrights.gov.au/sites/default/files/content/sexualharassment/employers_code/COP2008.pdf

²⁹ For further information on how this could be achieved, see ERA's Submission on Gender Equality and Commonwealth Procurement <http://www.equalityrightsalliance.org.au/publications/submission-to-the-joint-select-committees-inquiry-into-commonwealth-procurement-processes/>



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4. Properly Resource Specialist Services to Advocate and Support People Experiencing Sexual Harassment.

Working Women's Centres (WWC) have a long history of supporting women with employment and workplace issues. In particular WWCs are expert in supporting the most disadvantaged and marginalised women workers, including Aboriginal and Torres Strait Islander women, CALD women and young women.³⁰ Working Women's Centres have previously had a presence in five States and Territories. Today WWCs operate in just three - Queensland, the Northern Territory and South Australia. Funding for the QLD WWC has been significantly reduced in recent years resulting in a dramatic decrease in service provision.³¹ Working Women's Centres have long played a critical role in sexual harassment advocacy, advice and representation. Research on the previous NSW Working Women's Centre found that the Centre dealt with over 600 cases of sexual harassment over 3 years the mid-2000s.³² Working Women's Centres are effective and important in informing vulnerable workers of their rights.³³

5. Investigate Innovative and Accessible Reporting Tools

Research continues to show that there is a connection between prevalence and workplace cultures that are permissive and tolerant of sexual harassment. Accessible and innovative reporting systems that ease and incentivise reporting for complainants *and* bystanders would go a long way to inoculating workplaces from sexual harassment. Indeed findings from the 2018 AHRC survey indicated that 38 per cent of people had observed or heard about sexual harassment of another person at their workplace over the past five years. The majority of people who witnessed or heard about sexual harassment did not take any action in response.³⁴ Training and reporting avenues that focus on the role of bystanders are untapped and have the potential to affect cultural change in the workplace by making it everyone's issue.

To this end, a range of different approaches to reporting should be investigated by workplaces which include:

³⁰ Working Women's Centres (N.D.) *About Us* <http://www.wwc.org.au/index.php?page=about-us>

³¹ National Foundation for Australian Women (2018) *Gender Lens on the Budget 2018-19* http://genderinstitute.anu.edu.au/sites/default/files/docs/2018_docs/Gender%20Lens%20on%20the%202018-19%20Budget.pdf and Working Women's Centre QLD (n.d.) *Call to Action - Queensland Working Women's Service Closure* <http://wwq.org.au/call-to-action/>

³² Nareen Young (2004) "Sexual Harassment and the Sex Discrimination Act: The Micro Effect," *University of New South Wales Law Journal* 27(3) 977-883
<https://search.informit.com.au/documentSummary;dn=111890399618656;res=IELFSC>

³³ Howe (2016)

³⁴ Australian Human Rights Commission (2018)



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- Conducting anonymous surveys to gauge “clusters,”³⁵
- Providing anonymous reporting portals such as escrows or tools modelled on [sara.org.au](https://www.sara.org.au),³⁶
- Providing incentives for increased reports (which demonstrate faith in the system).³⁷

Further, the systemic impediments to reporting in law and policy should be considered. For example, increasing commentary points to Australia’s defamation laws as a barrier to reporting and sharing experiences of sexual harassment.³⁸

6. Streamline and Expand Complaints Mechanisms and Educational Initiatives

At present, the complaints mechanisms for all people experiencing sexual harassment in the workplace are onerous and confusing. For young people it can be particularly difficult to navigate, especially if you are unaccustomed with the process, if English is not your first language, or you are a recent arrival to Australia. We recommend the streamlining of the complaints processes to support complainants with following through with their complaints.

A national service should be established to support all people experiencing sexual harassment to facilitate their complaints, with a particular focus on vulnerable groups. The service should provide confidential advice, emotional support, clear and consistent information and referrals. This service could potentially be captured through 1800RESPECT, with the scope of the current service expanded to manage this.

This service should be complemented by educational initiatives to inform young people of their rights, the spectrum that encompasses workplace sexual harassment, and clear avenues for complaint and redress. It is imperative that these initiatives are targeted toward vulnerable groups, such as young people, new migrants, refugees, temporary workers (such as international students and working holiday visa holders), people with disability, as well as unpaid workers, such as volunteers. It is also vital that these initiatives are targeted at employers to demonstrate the positive obligation on them to protect their young employees from sexual harassment, the policies and procedures they should have, and the steps they need to take to support victims.

We also highlight the effectiveness of cross-cultural service provision for young women from CALD backgrounds who may experience sexual harassment in the workplace, and the importance of this as part of any complaints mechanism.

³⁵ Claire Cain Miller (2017) *Sexual Harassment Training doesn't Work. But Some Things Do.* *The New York Times.* <https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html>

³⁶ As above and see S.A.R.A. Sexual Assault Report Anonymously <https://www.sara.org.au/>

³⁷ Miller (2017)

³⁸ University of Technology Sydney (2018) *#MeToo exposes problems with Australia's defamation laws* <https://www.uts.edu.au/partners-and-community/initiatives/social-justice-uts/news/metoo-exposes-problems-australias>



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7. Address Technology Facilitated Abuse and Sexual Harassment

The National Survey on Sexual Harassment at Australian Universities (2017) found that twenty-one per cent of students were sexually harassed in university settings, including technology-based harassment and university employment.³⁹ Any and all protections highlighted above must also extend to the digital sphere, taking into consideration the link between technology facilitated abuse and sexual harassment. The Australian Violence Against Women Alliance (AWAVA) submission to the UN Special Rapporteur on Violence Against Women in 2018 emphasised the growing abuse of women human rights defenders in digital contexts.⁴⁰ Increasingly, the shift of programs and services online and the emergence of new digital technologies is expanding opportunities for employment in the digital sphere. However, policing the rights of workers in this space, particularly young workers, is challenging. We acknowledge the work of the eSafety Commissioner in this space, however highlight there is a need for more to be done. New research conducted by Australia's e-Safety Office has found that women from culturally and linguistically diverse communities face barriers in seeking support with technology facilitated abuse, stalking or threats.⁴¹ Their research also found that "shaming and traditional gender roles often prevent women from seeking support"⁴², as well as low digital literacy levels also playing a significant role. Many women were also unaware that technology-facilitated abuse was a crime.

Conclusion

Harmony Alliance and ERA Young Women's Advisory Groups would welcome further opportunity to consult or expand on any of our recommendations raised in this response.

Contacts:

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³⁹ Australian Human Rights Commission (2017), *Change the course: National Report on Sexual Assault and Sexual Harassment At Australian Universities*, https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_University_Report.pdf

⁴⁰ Australian Women Against Violence Alliance (AWAVA) (2018), *Submission to the UN Special Rapporteur on Violence Against Women: Online Violence*, https://awava.org.au/2018/02/06/submissions/submission-un-special-rapporteur-violence-women-online-vaw?doing_wp_cron=1551043962.2691440582275390625000

⁴¹ Hannah Sinclair (2019), *Women from culturally diverse backgrounds less likely to report online domestic abuse*, SBS <https://www.sbs.com.au/news/women-from-culturally-diverse-backgrounds-less-likely-to-report-online-domestic-abuse?cid=news:socialshare:twitter>

⁴² As above.