

Submission to the National Enquiry of Sexual Harassment in the Work Place

By the Rural, Regional and Remote Women's Network of Western Australia

1 Executive Summary:

Over the last 21 years, the Rural, Regional and Remote Women's Network of Western Australia (RRR) has been committed to connecting, and advocating for, Western Australian women. The RRR Network provides an invaluable, trusted avenue resource to collect and understand the intimate and emotionally challenging views and experiences of Western Australian women for this National Enquiry.

The RRR Network uncovered concerning responses from its recent online Survey on Sexual Harassment in Western Australia. Sadly, these results are not surprising and only confirm common perceptions. The results offer similarities to the Fourth National Survey on Sexual Harassment in Australian Workplaces (2018). However, as the RRR Network primarily focuses on the WA regions some contrasting data was found. For instance, 'Agriculture, Fishing and Forestry and Associated' represented the industry with the most sexual harassment complaints and or had a complaint/incident but not yet reported at 35%.

In total, the RRR Network Survey collected the opinions and experiences of 349 participants state-wide and received over 80 personal stories and comments between the dates of 20/12/2018 and 31/01/2019. 78 of these responses were provided as a result of following survey links shared on social media and the balance of 279 were from email list recipients who form part of the RRR Network subscriber base.

The RRR Network met with the Western Australian Equal Opportunity Commission to assist their understanding on current and formal complaint path-ways available for victims of sexual harassment in Western Australia and consulted with a Human Resources Lawyer for legal clarifications.

The results of the RRR Network survey suggest that critical self-assessment, and an ability to clearly separate sexual harassment from normalised and reciprocated flirting is evident in the public domain, driving a rational and balanced opinion on the topic.

Our data demonstrated both an on-going and compliant response from women to accept sexual harassment in its various forms on any given day at their work place with 58% of women altering their behaviour.

Terms of Reference:

The submission by the RRR Network will primarily focus on the below three terms of reference:

1. The prevalence, nature and reporting of sexual harassment in Australian workplace

2. The current legal framework with respect to sexual harassment
3. Recommendations to address sexual harassment in Australian workplaces.

1.1 Stories from Three West Australian Women

The first serious incident I experienced was when my manager told the contractors that the first one to have sexual intercourse with me got \$1000. These were men between the ages of 19 and 21. And the manager was the only person in a position of leadership on that station. There was no mobile signal and like many stations there is only a joint landline that is shared between everyone. On other large pastoral companies while out at stock camp there's not even a landline available.

I strongly believe the isolation is linked to the issue of sexual harassment being more prominent in regional areas. I also think that a lot of organisations representing those in Ag and in particular women, forget how isolated some jobs are in the industry. We have limited Wifi – reporting things on an App isn't as straight forward as it may seem.

We are young – there is a lot of old school values (I'll also add that these values and the isolation are not the issues, sometimes what attracts people to these types of jobs) therefore we aren't automatically respected – nor our complaints. And we are sometimes hundreds of KM's from the nearest town. There has not been a clear pathway into the pastoral and Ag industry with an organisation to report this behaviour too. So no one is being held accountable. The manager of this station should have been setting an example to the young men and to me. I went out there wanting to learn about the basics of stockmanship and instead I was made to feel like a sex toy. The young men knew that this wasn't acceptable behaviours, yet they felt powerless to say anything as they didn't want to put their job at risk.

The message needs to be clear, that this behaviour is no longer apart of 'being involved in the agricultural industry'. Women nor men should witness it or ever have to endure it. Like animal welfare, climate change, and all other areas of the industry – we are evolving. We are setting the standards for the future and both men and women want change. We need to cull out these bad managers, leaders and anyone who isn't on board with this message. They need to be held accountable and every single woman on a property, wherever they are in Australia, needs to know she has a voice.

It's the treatment you receive not only from the perpetrator but the outside world once you've reported it that I found the hardest.

I was in a vehicle on my way back from an end of year work event. The driver was my boss and a work colleague were in the back seat. My boss proceeded to ask me if I would give him a head job (fellatio). I continued to tell him no. As proceeded by telling me that he

has sexual contact with women my age every weekend. (My boss was the same age as my father). He continued to try telling me that it was just like sucking on a lollipop and that I would enjoy it. I gave him another firm no and turned to face the window and ignore him. We were still 2 hours from our destination, so I wasn't able to avoid him asking me.

I reported him to the next boss up from him who was the owner of the business we worked for. Nothing was done for a week and when he was spoken too, he made going to work every day unbearable. He would ignore me and only refer to me by my position; receptionist and not use my name. This continued for another 2 weeks. This same man then sexually harassed another woman in our building, and it was at the point that he was then made to take leave. Even while he was gone my work colleagues were treating me differently as they had all found out about me reporting. After another month I then resigned from this job.

When working for a non-profit, I had a level of contact with a senior Ministerial Chief of Staff. At events he would regularly get intoxicated and make lurid remarks toward me, such as "That outfit really turns me on, I'd love to bend you over". On the first occasion I let it slide and didn't say anything. On the second occasion, sexual and demeaning remarks were made toward me in front of my boss (I can't recall the specific detail) at retirement party for the Minister. My boss failed to speak up or do anything at the time apart from laugh. I confronted my boss the following week and expressed my disappointment; that I had felt like a piece of meat and that I was especially furious that he had failed to defend me and call-out the inappropriate behaviour. He was shocked and taken-aback, I don't think the situation had registered with him at all. He was sincere in his apology for not taking action at the time of the incident. I requested that I receive a formal written apology from the Ministerial Chief of Staff. I believe management, including the chairman, were hesitant to take action due to the power that this person had within Government. Thankfully they did request a formal apology, however all I received was a fairly insincere message left on my phone, with the excuse "I was drunk". This was my first job out of university.

I was young and clearly there was a power imbalance which was played on. I was unsatisfied with the resolution to my complaint, but felt like I couldn't take it any further, nor did I want to for fear of damaging future career prospects. I am no longer with the company now, though I didn't leave the position due to these matters.

2 Introduction:

The Rural, Regional and Remote Women's Network of Western Australia is a not-for-profit organisation that advocates for women in Western Australia. The RRR Network Board felt an obligation to regional women to be their voice, and with the prevalence of sexual harassment primarily within the Agriculture sector. Since focusing resources in this direction, the RRR Network has become a recognisable body in advocating for women in this regard and is committed to exploring practical ways in which sexual harassment can ultimately be reduced in Western Australia.

To better understand sexual harassment in Western Australia the RRR Network released an online survey to gather its own data. The 24 questions within the survey focused on the various forms of sexual harassment as defined by the Australian Human Rights Commission, demographics including work place size, industry and assessing how much the public have welcomed the recent surge in discussion of sexual harassment. More specifically, the survey design asked confronting and direct questions on forms of sexual harassment experienced, for what age groups and in what time periods. The survey was completed by 344 women (99%) and five men, and therefore the following discussion will address the female perspective. It is important to note, that this data-set is uniquely reflective of the regional and rural demographic in W.A which sees more male dominated work place environments.

3 The Rural Context

The dominant demographic of our study was of the 45-54 female, living in the Wheatbelt region of WA, working in the 'Agriculture, fishing and forestry and associated industries', also works full-time in a small business with under five employees and has been in her role for more than five years. We found this age bracket to be the most vocal in communicating their experiences of sexual harassment. Based on this, we suggest including such women in the exploration and delivery of social solutions as their voices are now empowered.

"It was/is common in shearing sheds for a male shearer to put a shearer's handpiece on a female worker bottom and laugh when she jumped back"

Of the data-set that works in the above-mentioned industry -

- 25% of them have been scared to go to work at some stage due to sexual harassment;
- 9% presently have a sexual harassment complaint but not yet reported it;
- 12% have made a complaint but it is not yet resolved;
- 16% have taken time off work to avoid certain people or situations because of sexual harassment and;

- 49% either said ‘no’ or were ‘unsure’ on their current work place having a sexual harassment policy in place.

The rural context has a noticeable imbalance of power which makes for a complicated space for women. Women in these situations are uncertain of the consequences if they speak out against sexual harassment and more importantly – who do they speak too? For instance, the female who works for a rural small business typically does not have a Human Resources department to consult with. Her options are to either negotiate her way through the problem, avoid the person or find new employment. The latter is problematic where employment options can be limited.

Additionally, as a result of employment, 16% have been sexually harassed by a ‘client, customer or contractor’ related to their work in the last 12 months to five years and a further 28% more than five years ago. Third party harassment is a major concern for women in the rural regions, who at times can be alone with customers or clients in order to carry out their work. Managing sexual harassment perpetrated by third parties can be complicated for an employer because they may feel the need to appease inappropriate behaviour from these individuals only to maintain the business and existing relationships. It would be beneficial to provide strategies to employers on how to deal with third party harassment, so that both customer and employee have best opportunity to overcome any sexual harassment issues.

4 Definition, Complexities and Legal Issues

Nearly 92% of the RRR Network survey participants agreed with the public definition that sexual harassment is ‘any unwanted or unwelcome sexual behaviour which makes a person feel offended, humiliated or intimidated, and that it is not interaction, flirtation or friendship which is mutual or consensual’.

Although, nearly half of the respondents ‘neither agreed or disagreed’ that ‘suggestive sexual commentary and joking’ constituted sexual harassment as listed as an example of sexual harassment on the

Australian Human Rights website. This response supports the notion that the definition, acceptance and or acknowledgment of sexual harassment has a grey area of understanding by the public. It also marks a distinct barrier in overcoming inappropriate behaviour at the work place that can lead to increased and more aggressive forms of sexual harassment.

“Men just thinking they can get away with sexual advances. Not respectful. And when u make it very clear – they just keep harassing you. But its often the nature of the beat. Not making excuses for them – but I wasn’t the only one and some like it. Not me though”

What one individual defines as a joke, another may perceive as a taunt. 47% confirmed receiving insults and taunts of a sexual nature at their work place. While the majority clearly accepted the 'public definition' of sexual harassment, the lived experience at the work place remains complex for women with most viewing sexual language at work to either be reasonable, acceptable, forgivable or simply common practice.

The RRR Networks considers the biggest threat to tackling sexual harassment in the work place is the often-subtle nature surrounding sexual harassment that goes unnoticed and or devalued.

"have worked in many male-dominated workplaces, where the tolerance for inappropriate language is very low. When I worked for a very large hospitality company at a sporting venue, on the bar we were constantly harassed by customers - whether a comment about our appearance, jeers, questions about when we got off work, told that we're not as friendly as other staff (in the same bar)."

Many women feel an obligation, or an unconscious bias, or are forced to accept inappropriate sexual language as a facet of daily work-life and therefore the formal complaint rate is statistically very low. The West Australian Equal Opportunity Commission (WA EOC) had 18 complaints from females in 2016-17 and then 43 complaints in 2017-18. It has been suggested that the 2017 #Metoo movement has led to an increase in women seeking justice against sexual harassment, however the statistics from the WA EOC do not strongly support this thinking. In the last ten years, the highest amount of complaints received was in 2012-13 with 66 complaints from females.¹ Given the size of the data set, it is not possible to draw any statistically significant conclusions about push factors driving fluctuations in reporting.

To add to the complex nature of women successfully processing and reporting sexual harassment, the language surrounding sexual harassment can be confusing. Those who work in law and the WA EOC understand that 'discrimination' and 'harassment' are legally paired, however the woman who has just been sexually harassed does not necessarily equate 'discrimination' to her situation. For example, the following survey participant when asked about being 'discriminated' against could only relate to the concept after sexual harassment had occurred.

"His behaviour after I reported him was no longer sexual, his attitude was definitely targeted specifically at me so I would guess that you could label that as 'discrimination'. After the reporting he stopped acknowledging me as a person or by my name. Always referred to me as my position title. "Ask the receptionist to do it", "the receptionist should have rung and booked that job". And it was never in person,

¹ Data provided by the Western Australian Equal Opportunity Commission on the 15th February 2019

he would avoid being in the same room as me if he could, everything was done via emails or notes left on my desk or messages passed on from other office staff.”

The unfamiliar and legalistic language represents significant and practical challenges to the formal reporting of sexual harassment. Anecdotally, the RRR Network found all women consulted on the topic:

- did not know where to make a complaint to;
- were surprised that it was either the WA EOC or the Australian Human Rights Commission; and
- most thought ‘Fair Work’ or ‘Work Safe’ seemed the most logical option for an individual to make a formal complaint.

The WA EOC confirmed that regularly, people are redirected from ‘Work Safe’ to their agency when looking to make a formal complaint. Women find it difficult to connect issues of harassment with discrimination without further explanation, and then more so to agencies that are labelled with ‘human rights’ and ‘equal opportunity’. Furthermore, the profile of these agencies can be intimidating and perhaps result in an individual feel uncomfortable about approaching them to raise issues of sexual harassment that are either not physical or life threatening. In contrast, the avenue of Human Rights is more likely be contacted if a woman believes she has been discriminated against because of an imminent pregnancy and consequently did not secure a pay increase.

The overall biggest form of sexual harassment found in the RRR Network survey was being asked ‘intrusive questions about personal life and or comments on physical appearance’ at 20%; a form of sexual harassment that can be very subtle, delivered quickly and with little opportunity to capture evidence of to meet complaint criteria. Do women feel that this form of sexual harassment for example, equates to ‘discrimination’, ‘human rights’ and ‘equal opportunity’? The legal and formal language surrounding sexual harassment is intimidating and does not resonate with those it directly impacts.

The RRR Network argues that the current reporting process is inadvertently acting as a deterrent to the overall reduction and monitoring of sexual harassment in the work-place.

To add to the complaint path-way confusion, the legal process for handling sexual harassment complaints is also in need of a review. Current legislation does not treat all West Australians equally.

At present, many people in W.A have the choice between the State laws and the Federal laws. The State laws around sex discrimination/harassment are contained in the Equal Opportunity Act, and complaints are dealt with by the EO Commission and then State Administrative Tribunal. At a Federal level, it is all in the Sex Discrimination Act, and dealt with by the Australian Human Rights Commission, then Federal Circuit Court. There are some key differences between the two. The definition

*of harassment in the Federal legislation is much broader. The State definition requires that the employee have suffered detriment as a result of the conduct – whereas the Federal does not. This needs to change. The Federal legislation is not open to be used by local government or State government employees and this means that a substantial chunk of people in WA are worse off than others who can access the Federal legislation.*²

The above suggests a review of the current Federal and State legislation is required and, on advice from the WA EOC, this may happen later in 2019. In the meantime, and to overcome the misleading language and intimidating avenues for conciliation, it would make sense to explore the inclusion of sexual harassment complaints within the agency or field of ‘Work Safe’ and or ‘Occupational Health and Safety’. It is already an assumed pathway for victims of sexual harassment to approach these departments to make a complaint. Both mental and physical health and safety should be viewed equally. Sexual harassment within the work place can lead to stress, distraction, fear and even physical abuse. For instance:

“Two years of excessive stress and emotional bullying that resulted in extremely reduced confidence and withdrawal from those around me.”

Such environments are threatening to the health and safety of employees. It only takes a matter of minutes to report an unsafe work place online because these environments are not tolerated. The reporting period of sexual harassment is arduous and lengthy and consequently employee relationships have soured, or accusers have since left their jobs.

Streamlining the current processes for sexual harassment complaints is required. Firstly, where to make a complaint to and secondly what legal options are available.

5 Accepting and Adjusting Behaviour

The most concerning statistic of the RRR Network survey was that 58% of women reported they have altered their behaviour at work to avoid certain people or situations because of unwanted or unwelcome behaviour. The adjustment of daily behaviour at the work place is compounded with additional and concerning data. For example -

- 15% have considered resigning;
- 8% have a sexual harassment concern but have not yet reported;

“Whilst I have been very lucky in that I have not personally experienced sexual harassment there have been times over my career when I have not felt safe and have modified my behaviour as a result. That has probably saved me from unwanted behaviour over the years”

² Joanne Alilovic - Lawyer from 3D HR Legal (2019)

- 24% have been scared to go to work because of sexual harassment; and
- 13% have experienced sexual harassment but never made a report.

These insights demonstrate both an on-going and passive response from women to accept sexual harassment in its various forms on any given day at their work place. Our survey found that only 10% of women aged from 18 to 34 were comfortable to report sexual harassment. It then jumps to 36% for both age brackets of 35 to 44 and 45 to 64. It would seem with age and distance from the incident, that speaking up against sexual harassment becomes easier. Prior to this, sexual harassment experiences remain either private and or ignored.

If the current trajectory of sexual harassment continues, women currently in the age bracket of 18 to 34 who are most vulnerable³ will not communicate their experiences (if any) for at least another decade.

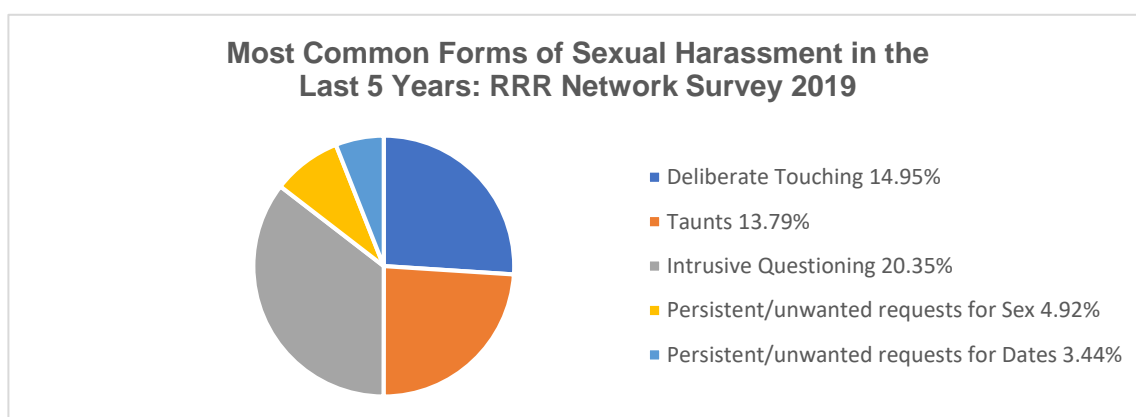
6 Forms of Sexual Harassment

In the last 12 months, 5.75% of women claimed to have experienced unnecessary familiarity, such as deliberately brushing up against them and or unwelcome touching at a work place and 9.2% of women in the previous 2-5 years. In total 54% of women have experienced this form of sexual

“Workplace has a culture of sexist and racist joking. Women aren’t valued as highly as the ‘boys club’”

harassment in their life time. In comparison other forms of sexual harassment rated very low, such as requests for sex and to go out on dates at less than 2%.

The results of the RRR Network survey mirror the data from the Fourth National Survey on Sexual Harassment in the Work Place (2018)⁴ as highlighted in the following graph.



³ Analysis of RRR Network survey indicates that women aged from 18 to 34 were statistically the largest data-set with sexual harassment experiences in the last 5 years.

⁴ The Fourth National Survey found that 25% of women experienced this form of sexual harassment and was also the most common form.

The most common form of sexual harassment experienced by the RRR Network women was of 'Intrusive questions about private life and or physical appearance' at 20.35% in the last five years. Sexual harassment of this nature is very difficult to prove because it becomes a situation of, 'he said/she said', and while onus of proof lies with the accuser, overcoming this situation remains a significant challenge.

"Client rep kept hassling me to let him give me a massage (I am a FIFO worker). He also did it to other women on site. I was once stuck in a car with him on site and he started telling me about his sex life which made me very uncomfortable. I refused to be alone with him after that"

7 What of the Economic Cost?

Economically, bullying is estimated to cost up to \$36 billion annually in Australia (Productivity Commission, 2010)⁵ but what of sexual harassment? At the time of writing this report, we were unable to find any clear data relating to the actual economic impact and real cost of sexual harassment, only of an increase in complaints and therefore an increase in pay-out claims.

Our data highlights the economic impacts with 16% taken time off work to avoid certain people or situations and 15% have considered resigning because of sexual harassment. We recommend a Commission to ascertain this data to both explain and influence employers on the economic loss if sexual harassment is not sufficiently managed.

8 Recommendations

The RRR Network has tirelessly deliberated over possible solutions to mitigate sexual harassment in Western Australia. Whilst prevention is always the best approach, we stress that women who have experienced sexual harassment in most cases want the three A's:

- Acknowledgment sexual harassment occurred;
- Apology; and
- Assurance it will not happen again.

8.1 Recommendation 1

To achieve the above, we suggest a third-party mediation consultant that employers fund if a sexual harassment issue occurs. This avenue would need to be included in an organisation's Sexual Harassment Policy, so that employees are empowered with the

⁵ <https://www.safeworkaustralia.gov.au/system/files/documents/1705/bullying-and-harassment-in-australian-workplaces-australian-workplace-barometer-results.pdf>

knowledge that if they were sexually harassed, that there was an avenue for them that encouraged a confidential, timely and satisfactory resolution.

We know that when worker's compensation matters dealt with using independent conciliation approaches that over 80% of cases are settled within 90 days. The Productivity Commission has found that in finalising these types of matters through the courts typically takes four and half years.⁶

Restorative approaches in sexual harassment matters can offer low cost, informal, timely and effective ways to deal with the complaints and in a way that alleviates further trauma for all involved. Sexual harassment complaints that are managed 'in-house' or 'behind closed doors' by human resources or management can add to the distress and disengagement experienced by those involved.

Current processes create a "winner' and a 'loser" and staff line-up and take sides. There is a very real, often unmeasured impact on staff morale, productivity and organisational culture. In some cases, both the complainant and the subject of the complaint may take extended sick leave/ stress leave – or may simply leave the organisation, increasing the costs of recruitment and training. There is a real cost to organisations experiencing unresolved conflict.

8.2 Recommendation 2

The above recommendation is a practical method, however relying on businesses funding mediation consultants could pose a challenge for some business owners and so increasing public awareness of what constitutes sexual harassment is required. We find that some people are just simply not aware of what is sexual harassment, and, in some cases, it is a matter of "What has changed, I've always behaved this way – never been a problem before?".

We highly recommend public sexual harassment awareness campaigns focusing on the work-place. It is also important to include a message that empowers the by-standers to sexual harassment. For example, a witness can learn how to support, defend or even stop the behaviour without adversely risking their own relationships or even employment. We also suggest including the women who are now aged 45 plus to advocate for those

⁶ In 2016 economists from the University of Canberra, Emeritus Professor Anne Daly and Greg Barrett, undertook a cost benefit analysis of independent conciliation of worker's compensation matters. They found that as compared to common law approaches these services delivered significant savings in court and litigation costs and that by reducing delays and facilitating more respectful treatment of injured workers independent conciliation processes can assist in faster returns to work along with better health outcomes. They also found that improved productivity can also extend to the injured workers' families through reducing stress, freeing carers' time and better educational outcomes for injured workers' children.

experiencing sexual harassment and reinforce the message to younger women ‘that we do not want you to be us in ten years’ time’.

8.3 Recommendation 3

Individuals need to be empowered at time of employment to **ask** for a Sexual Harassment Policy. Raising this issue immediately sets the tone for both employer and employee that such behaviours are not expected and should not be tolerated. If employers are found to not have a sexual harassment policy, they may feel obligated to provide one. Again, this message could be included in any public awareness campaigns.

8.4 Recommendation 4

Employers need to be financially liable for not providing sexual harassment policies and protections to their staff. There needs to be strong compliance measures that can result in fines. We are accustomed to protecting online data, personal identity, signing internet policies, allowing bank accounts to be audited for potential money laundering, ensure we meet compliance and so on, and yet processes and policies that protect emotional and physical safety at the work-place are casually treated. If employers knew that failing to supply a sexual harassment policy resulted in an upfront fine, it would become an immediate priority.

In this scenario, it would be necessary for the government or another body to provide such policy documents online for a minimal or no cost to small businesses who do not have the resources to do so, along with resources to assist businesses contextualise template documents to their organisation and identify gaps that need to be addressed to comply with the policy they are implementing. This approach would also require a body that is dedicated to the monitoring and compliance of enforcing a sexual harassment policy at work-places.

8.5 Recommendation 5

To encourage the above recommendation the economic loss needs to be clearly understood. We recommend the Productivity Commission conducting this work. If found that there is a considerable economic loss due to sexual harassment, employers may naturally shift their thinking and organisational approach to mitigate and protect their own businesses. When it comes to money, people notice!

8.6 Recommendation 6

A review of current WA legislation given the ‘Sex Discrimination Act’ is dated in 1984 and needs updating to ensure that legislation covers all industries, employees and it adequately reflects the present-day context.

8.7 Recommendation 7

Review and improve the language that connects the complaint path-way for sexual harassment victims. Words of 'human rights', 'equal opportunity' and 'discrimination' do not resonate with sexual harassment victims. In addition, such words and the agencies they represent symbolise extreme thinking, action and 'no turning back' consequence. The current complaint pathway acts as a deterrent for sexual harassment reporting.

8.8 Recommendation 8

Create Third-Party Strategies for employers to adopt if they discover sexual harassment is occurring from this group. It is imperative for employers to feel that they can manage or mitigate against sexual harassment and maintain both customer and employee satisfactorily.

9 Conclusion

We conclude with an urgent message on behalf of the women we represent, and that is that we need action and change now.

Data and surveys have been conducted for years and all showing similar statistics. So, what are we going to do about it? Women today, and women years on from their sexual harassment experiences are all saying similar things. We should be supporting and showing the very women who have shared their personal stories to date, that it has not been for nothing and something concrete will come of it. 80% of our survey participants welcomed the recent surge in public discussion on sexual harassment. This shows us that it the right time socially to adopt practical changes within the work-place with a goal of eliminating sexually harassing workplace cultures.

Lastly, and sadly, the rural context will remain problematic with deeply ingrained cultures and inequalities. However, if more broadly the attitudes to sexual harassment are highlighted in the public domain to be out-dated, wrong, distasteful and not tolerated – women may feel empowered to speak up and men may review and amend what they say and how they behave.