

AUGUST 2021

SUBMISSION TO PARLIAMENTARY  
INQUIRY INTO SEXUAL HARASSMENT  
AGAINST WOMEN IN THE FIFO MINING  
INDUSTRY



CENTRE FOR  
Women's Safety  
and Wellbeing



STOPPING  
FAMILY VIOLENCE



## Executive Summary

Everyone deserves to feel safe and respected at work and to live free from gendered violence and harassment.<sup>1</sup> Gendered violence and harassment, including sexual harassment, causes harm to individual workers, to workplaces and to the Western Australian community.

The Centre for Women's Safety and Wellbeing (CWSW), Stopping Family Violence (SFV) and the WA Network of Alcohol and other Drug Agencies (WANADA) welcome the Community Development and Justice Standing Committee's inquiry into sexual harassment against women in the FIFO mining industry. Through our work, we see a culture, system and regulatory framework that fail to prevent gendered violence at work, and to adequately address it when it does occur.

Urgent reforms are needed to prevent sexual harassment and gendered violence in the FIFO mining industry and Western Australian workplaces more broadly, hold perpetrators accountable, and support victim survivors to recover and receive redress. We believe that a system-wide focus is necessary to lift the burden of achieving these goals from the individual and has the potential to drive cultural and behavioural change.

Sexual harassment and gendered violence are a serious cultural, systemic, work health and safety issue that requires evidence-based primary prevention interventions; the law reform required to prevent sexual harassment, including to Western Australia's equal opportunity and discrimination laws, work health and safety laws and the enforcement of these laws; the powers that the Western Australian Equal Opportunity Commission requires to ensure compliance with anti-discrimination laws; and the need to increase the availability of accessible, targeted support and legal services.

Gendered violence in the FIFO mining industry, including sexual harassment, must be addressed as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality.

- The FIFO mining industry must take proactive steps to prevent gendered violence including sexual harassment at work.
- Victim-survivors of sexual harassment and other forms of gendered violence working in the FIFO mining industry must be supported to recover and respond, and have easy access to specialist support services, including counselling and legal services, that are appropriately resourced and have well-trained staff.
- People who report gendered violence and harassment in the FIFO mining industry must have confidence in their employer's investigation process.
- All forms of harmful sex-based discrimination and harassment in the FIFO mining industry and beyond must be prohibited.
- Victim-survivors must be able to access fair redress for the harm they experience because of sex-based harassment and discrimination.
- The *Equal Opportunity Act* must reflect 'best practice' in equal opportunity law. Change the definitions in the WA legislation to bring it into line with other jurisdictions where they do not have the same requirement for the alleged victim to establish disadvantage. The revised law must ensure more rigorous and robust duties related to gender equality and sexual harassment; and enable a high level of compliance.

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<sup>1</sup> 'Gendered violence' refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms.

- Sexual harassment and gendered violence in the FIFO mining industry must be addressed as a serious work health and safety issue.
- Further research, evidence and data must be collected to assist us to better understand the prevalence and nature of sexual harassment and gendered violence in the FIFO mining industry and to aid us to design effective interventions.
- The FIFO mining industry must commit to creating a culture of respect, equality and inclusion and proactively prevent sexual harassment and gendered violence and respond in a victim-centred way when it occurs.

### **About the Centre for Women's Safety and Wellbeing**

The Centre for Women's Safety and Wellbeing is the leading voice for women and children affected by gender-based violence in Western Australia and the peak body for family, domestic and sexual violence services and community based women's health services in WA.

The Centre for Women's Safety and Wellbeing works to prevent domestic, family and sexual violence against women and their children; promote women's health and wellbeing; and advance gender equity. The Centre works to ensure that the evidence is taken up in policy and practice to further the safety, health and wellbeing of women and their children. We advocate for systems and structures that enable and support the safety, wellbeing and economic security of women.

The Centre for Women's Safety and Wellbeing also promotes non-violent and respectful attitudes and behaviours towards women and girls in the broader community, and community responsibility for violence prevention.

### **About Stopping Family Violence**

Stopping Family Violence (SFV) is the peak body, non-for profit organisation in Western Australia developed in order to support all the sectors and services involved responding to perpetrators of Family and Domestic Violence (FDV). SFV differs from traditional peak bodies in the sense that they do not represent a specific sector, and instead focus on an area of practice. This enables them to maintain an independent and unbiased position in the work of perpetrator response.

### **About WANADA**

The Western Australian Network of Alcohol and other Drug Agencies (WANADA) is the peak body for the specialist alcohol and other drug education, prevention, treatment and support sector in Western Australia. WANADA is an independent, membership-driven, not-for-profit association. WANADA is driven by the passion and hard work of its member organisations, which include community alcohol and other drug counselling; therapeutic communities; residential rehabilitation; intoxication management; harm reduction; peer based; prevention; and community development services.

## 1. Is there a clear understanding of the prevalence, nature and reporting of sexual harassment in FIFO workplaces?

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It is necessary to invest in data collection and analysis to build the evidence base about the prevalence and nature of sexual harassment and gendered violence in FIFO workplaces so that we can better understand the problem and design appropriate and effective solutions.

While the Australian Human Rights Commission's Everyone's Business surveys present a broad picture of sexual harassment across Australian workplaces, there is a lack of detailed data about the prevalence of sexual harassment in particular industries and types of organisations.

The findings of the *AHRC Respect@Work 2020 Report* (AHRC Report)<sup>2</sup> noted:

### Prevalence

- 2018 AHRC National 'Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)'<sup>3</sup> survey showed that sexual harassment in Australian workplaces is widespread and pervasive – one in three people experienced sexual harassment at work in the past 5 years. The survey reflected the gendered and intersectional nature of workplace sexual harassment.
- 39% of women and 26% of men have experienced sexual harassment in the workplace in the past 5 years.
- ATSI people were more likely to have experienced workplace sexual harassment than people who are non-indigenous (53% and 32% respectively).

The AHRC Report is not specific to FIFO workers; it does however identify settings where people are at a higher risk of experiencing sexual harassment, for example:

- those that are male dominated
- the over-representation of men in senior leadership roles
- the nature of the work being considered 'non-traditional' for women
- the masculine workplace culture / hierarchal structures and cultures
- Alcohol in a work context
- Working in remote and isolated places
- Gendered violence not being responded to well in the workplace

### Nature

The nature of harassment identified in the Report (which is likely to be indicative of FIFO workplaces) included:

- verbal, e.g., sexually suggestive comments/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

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<sup>2</sup>“Respect@Work: Sexual Harassment National Inquiry Report (2020) | Australian Human Rights Commission”

<sup>3</sup>“Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces (2018) | Australian Human Rights Commission”

- inappropriate physical contact, e.g., 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 or film without consent

Disturbingly, the report also stated that several victims reported experiencing workplace sexual harassment which began in verbal comments and ended in rape or sexual assault.

The FIFO mining industry sits firmly in the high-risk industries for workplace sexual harassment.

### **Reporting**

The AHRC report noted:

- There is little consistency in the collection, monitoring and reporting of data on workplace sexual harassment by anti-discrimination and other regulatory agencies
- Effective systems for collection and reporting of consistent, de-identified data on workplace sexual harassment by the Commission, state and territory anti-discrimination agencies, Fair Work, WHS and worker's compensation agencies are key to the success of the new regulatory model proposed by the Commission in the Report.

**Recommendation 1:** Build understanding of the problem of sexual harassment and gendered violence in the FIFO mining industry and effective solutions. Identify effective strategies and enable employers and primary prevention organisations to design targeted solutions to prevent sexual harassment by: Investing in research and evaluation to identify effective interventions that target or are adapted to the context of sexual harassment and gendered violence at FIFO workplaces, including by monitoring and evaluating interventions to determine their effectiveness.

### **2. Do existing workplace characteristics and practices – including but not limited to workplace cultures, rosters, drug and alcohol policies and recruitment practices – adequately protect against sexual harassment?**

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The 2013 House of Representatives *Cancer of the Bush or Salvation for Our Cities? FIFO and DIDO Workforce Practices in Regional Australia*<sup>4</sup> report talks about the damaging consequences for workers in the FIFO industry such as:

- relationship stress and breakdown;
- excessive alcohol and drug use;
- depression and violence amongst FIFO workers;
- social isolation;
- poor diet and physical inactivity;
- high-risk behaviour in their downtime (for example, higher level of STD in young men in the FIFO industry, attributed to them travelling to Asian countries in their 'down-time');
- mental health issues – depression and anxiety were consistently raised; and
- fatigue related injuries.

The AHRC Report noted more broader issues such as:

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<sup>4</sup> (House of Representatives, Standing Committee on Regional Australia)

- intersectionality of other forms of discrimination and harassment;
- workplace culture, including leadership;
- lack of understanding about what constitutes sexual harassment; and
- use of alcohol in a work context.

The AHRC Report recommended that a new holistic framework for workplaces to better prevent and respond to sexual harassment be implemented.

It is important to raise awareness about what sexual harassment is, its causes, and how to prevent and respond to it. There is a need to increase employers' and employees' understanding of what constitutes sexual harassment as it is still poorly understood. Many managers and employers that Centre for Women's Safety and Wellbeing and Stopping Family Violence have engaged with through their primary prevention of violence work report wanting more practical guidance and support on what constitutes appropriate workplace behaviour. Similarly, employers and managers require training on how to respond to sexual harassment, including reporting channels and appropriate responses to victim-survivors.

There is also a need to address the perception that sexual harassment is not serious – an attitude which is often internalised by victims and perpetrators, making women less likely to come forward with a complaint and employers less likely to take allegations seriously – by raising awareness of the significant health and economic impacts of sexual harassment and gendered violence at work.

However, it is important that the focus is on whole of organisation approaches to primary prevention to reduce its prevalence – and building staff and organisational capacity to respond appropriately when sexual harassment is reported or identified – rather than simply raising awareness. Research shows that raising awareness of a problem and its causes does not always result in behavioural change – and is unlikely to lead to long term, sustainable organisational culture change<sup>5</sup>

Gendered violence, including sexual harassment, must be addressed as part of an integrated and holistic strategy to prevent gendered violence and promote gender equality. An integral part of this strategy must involve a change in the WA FIFO mining industry's workplace culture to address underreporting and ill-informed responses. Ensuring all workers are aware of their rights and avenues for reporting and accessing support – and feel safe and confident to do so – is a critical component of primary prevention; this is because failure to respond adequately to sexual harassment contributes to an environment in which it is condoned, which is itself one of the drivers of sexual harassment.

Organisations that specialise in the primary prevention of gendered violence, such as the Centre for Women's Safety and Wellbeing and Stopping Family Violence, are well-placed to support employers to understand, prevent and address sexual harassment in their organisational context.

### ***Alcohol and Other Drug Use***

Gender is an organising structure in society, and gender inequality is the central factor behind sexual harassment. Harmful alcohol and other drug use intersect with sexual harassment and violence, and

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<sup>5</sup> Change the Story: National framework for a consistent and integrated approach to preventing violence against women and their children in Australia n 10, p 65.

domestic and family violence in gendered ways<sup>6</sup>. While alcohol and other drug use may exacerbate existing sexual harassment and violence, and domestic and family violence, it is not the cause.

We recognise that the Committee will enquire into resource industry policies regarding alcohol and other drug use, the current legislative and regulatory environment, and current actions to address the issue of sexual harassment in FIFO settings. We note that while these topics have recently been the subject of increased industry focus, previous inquiries have identified the need for further separate action. For example, the *Impact of FIFO Work Practices on Mental Health Final Report* recommended an inquiry into possible harmful drinking habits and alcohol consumption of FIFO workers<sup>7</sup>.

Focussing on resource industry activity, we recognise that there have been recent developments, including the *Code of Practice for Mentally Healthy Workplaces for FIFO Workers*, and the revision of alcohol availability policies on some mine sites.

We commend progress in these areas and note that there remains room for continued improvement. For example, there is an opportunity to:

- ensure availability of alcohol fully aligns with NHMRC guidance<sup>8</sup>
- further prevent and reduce harms associated with alcohol and other drugs by recognising that harmful use is a health issue. An important element in this regard is ensuring actions to address alcohol and other drug use do not discriminate individuals and instead promote access to specialist alcohol and other drug treatment services and support.

We note for the Committee's consideration that alcohol consumption and related harms are a population-wide issue, not isolated to mine sites. To ensure a comprehensive and effective approach to reduce alcohol related harms (including related issues exacerbated by alcohol) population-wide approaches are required. These include:

- additional State-wide investment in education, prevention, community development, harm reduction, treatment and support alcohol and other drug services, as outlined in the Mental Health Alcohol and Other Drug Services Plan 2015-2025 (and subsequent 2018 Plan Update).
- the introduction of evidenced and effective population-wide measures, such as a minimum floor price on alcohol products (as seen in the Northern Territory).

Population-wide approaches will complement and reinforce industry-specific action to address alcohol and other drug related harms. It is important that industry support both specific and population wide measures. These measures are congruent with industry responsibilities to the health and wellbeing of its workforce and local communities (an essential component of a social licence to operate).

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<sup>6</sup> Yates, Sophie. 2019. "An exercise in careful diplomacy": talking about alcohol, drugs and family violence". *Policy Design and Practice*. 2(3):258-274. DOI: 10.1080/25741292.2019.1638697

<sup>7</sup> Education and Health Standing Committee (2015) *Impact of FIFO Work Practices on Mental Health Final Report*, Western Australian Parliament, p.xv

<sup>8</sup> See <https://www.nhmrc.gov.au/health-advice/alcohol>

**Recommendation 2: Raising awareness and supporting behaviour change**

Support employers to understand, prevent and address sexual harassment in their organisational context.

**Recommendation 3: Alcohol and other drug use in the FIFO mining industry**

The Committee recognises the central gendered factor behind sexual harassment and note that alcohol and other drug use is an exacerbating, not causal, factor.

- Industry activities to address alcohol and other drug use are enhanced to reflect current and emerging evidence.
- Industry contribute to broader, State-wide efforts to address alcohol and other drug related harms.

**Recommendation 4: Resources and support to enable the FIFO mining industry to prevent sexual harassment and gendered violence.** Provide resources and support for the industry to implement whole-of-workplace initiatives to prevent gendered violence and promote gender equity within their workplaces. This should include resourcing specialist primary prevention organisations, such as the Centre for Women’s Safety and Wellbeing and Stopping Family Violence to support the FIFO mining industry to implement these approaches.

### 3. Are current legislation, regulations, policies and practices adequate for FIFO workplaces in Western Australia

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The AHRC Report states that the current legal and regulatory system is simply no longer fit for purpose and recommends a “new model that improves the coordination, consistency and clarity between the anti-discrimination, employment and WHS legislative schemes. The new model is evidence-based, victim-focused and framed through a gender and intersectional lens...”. The urgency for change is strongly emphasised in the Report.

A point discussed in the Australian Employment, Industrial Relations and Safety (EIRS) podcast<sup>9</sup> which discussed the AHRC Report is that sexual harassment should also be considered a safety issue, not just an individual civil/legal issue (safety regulators to be more involved).

***Work health and safety***

Employers should be legislatively required to take proactive and preventative steps to provide a working environment free from sex-based harassment or discrimination. It is important to treat sexual harassment as a workplace hazard and take a work health and safety approach to eliminating the risks. (while acknowledging that sexual harassment is a form of discrimination that occurs beyond the workplace and must also be addressed from an anti-discrimination perspective).

Victoria has taken a number of significant steps forward in terms of its work health and safety response to gendered violence: In March 2020 WorkSafe Victoria released the Guide: [Work-related gendered violence including sexual harassment - WorkSafe](#); and in May 2021 the Victorian Government announced that it will introduce regulations to address psychological health. We support

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<sup>9</sup> (Australian Employment, Industrial Relations & Safety)



this approach in Western Australia and argue for a WorkSafe WA commitment to recognise gendered violence and harassment at work as a psychosocial hazard that is within its regulatory remit.

The Occupational Safety and Health Act 1984 contains general duties that enable WorkSafe to regulate risks to psychological health. In addition, WorkSafe also has relevant statutory functions to promote awareness, provide incentives to reduce risk and promote education and training to make workplaces safer. However, WorkSafe does not utilise its powers in a regular or systemic way to address gendered violence or harassment at work. As a result, many Western Australians may not consider gendered violence and harassment to be a work health and safety issue, know what these terms mean, or understand their rights and obligations under the OHS Act in relation to these hazards.

An important step to encourage employers to address gendered violence and harassment at work as serious work health and safety issues is to change community perceptions. Employers and workers need to understand the systemic and cultural nature of gendered violence and harassment at work, and that they are safety hazards that can be prevented and addressed organisationally by using a work health and safety framework. There must also be an understanding that psychosocial hazards are no less harmful to workers' safety and wellbeing than physical hazards.

A significant amount of work is required to educate employers and the broader community about these issues and encourage behavioural change. It is important that WorkSafe is adequately resourced to create this cultural change within the broader community. It is essential that WorkSafe is also organisationally equipped to respond sensitively and appropriately when it receives reports of workplace gendered violence and harassment.

#### ***Equal Opportunity Act 1984***

Currently, any West Australian seeking to make a workplace sexual harassment claim must meet a 'disadvantage test' that lawyers and advocates argue is outdated. Earlier this year independent federal MP Zali Steggall introduced a Bill to close a similar 'loophole' in the Commonwealth's Sex Discrimination Act and make sexual harassment illegal in all circumstances. Lawyers and advocates are calling for changes to be pursued in Western Australia.

Under Western Australia's Equal Opportunity Act 1984, workplace sexual harassment is defined as an unwelcome sexual advance, an unwelcome request for sexual favours, or one person engaging another in unwelcome conduct of a sexual nature. But to meet the definition of sexual harassment in the Act, the person that has been harassed must also prove that objecting to the conduct disadvantaged them in connection with their employment, or they had a reasonable belief it would.

The 'disadvantage' test is not used in any other state or territory, other than the Northern Territory. This element must be satisfied for the unwelcome sexual conduct to constitute sexual harassment under the legal definition provided in the Western Australian Act. This suggests that sexual harassment only exists where there is a power imbalance between the harasser and the harassed, or where the harasser has the ability to cause disadvantage to the harassed in their employment or prospective employment. Discrimination liability sits directly with an employer, but harassment liability sits with an individual.

We support the enactment of legislation that reflects 'best practice' in this area of equal opportunity law. There has been a push for some time to change the definitions in the WA legislation to bring it into line with other jurisdictions where they do not have the same requirement for the alleged victim

to establish disadvantage. Definitions of sexual harassment in federal or other state legislation, are much easier to satisfy recognising that the behaviour alone (being unwelcome conduct of a sexual nature) in a workplace context and elsewhere is not acceptable. It is not necessary for an alleged victim to establish that they have been disadvantaged.

The state legislation does not reflect the current society we live in. In a 2007 review of the Act, Former WA Labor MP Yvonne Henderson, who introduced the Equal Opportunity Bill into WA Parliament in 1984 and later became the state's Equal Opportunity Commissioner, found the test for sexual harassment reflected "a mentality from more than 25 years ago". Ms Henderson wrote at the time: "Today, there would be few who would insist that a person must demonstrate disadvantage as a consequence of taking objection to being sexually harassed, when the real disadvantage was in the harassment itself. The Sex Discrimination Act did away with this notion years ago and now so must the Act."<sup>10</sup> Fourteen years later, another review of the Act is under way. Changes to the Act are long overdue.

Furthermore, a civil positive duty under the Equal Opportunity Act is likely to lead to more employers making greater efforts to prevent gendered violence and harassment. Pursuing sanctions should not be the primary activity of a regulator, however the threat of punishment for non-compliance can help efforts to persuade compliance with the law. As a result, it is important to have a positive duty to eliminate sexual harassment that is actually enforced, and that there is a full suite of regulatory powers to do so.

Visible enforcement and meaningful sanctions for breaches of the Equal Opportunity Act are also important to deter non-compliance and encourage preventative action by employers. The legal, social and financial penalties for contravening the Equal Opportunity Act are dependent upon a victim-survivor commencing action. We lack an effective mechanism with investigation powers, the power to enter into enforceable undertakings and issue compliance notices, and the power to seek sanctions against those who breach the Equal Opportunity Act in order to enforce compliance with the Act.

### ***Sex-based harassment***

Conduct at work that falls short of sexual harassment, including 'everyday sexism', may nonetheless constitute unlawful sex discrimination under the Equal Opportunity Act. Such sexist comments or conduct are often referred to as 'sex-based harassment'. However, as outlined by the AHRC in *Respect@Work*, the case law that supports this position may not readily be understood in the community.<sup>11</sup> The AHRC recommended that the *Sex Discrimination Act 1984* (Cth) be amended to expressly prohibit sex-based harassment to provide clarity and certainty to the law and encourage workers and employers to recognise these behaviours as potentially unlawful.<sup>12</sup>

While 'milder' incidents of sex-based harassment may not have an impact in isolation, the compounding effect of repeated slights is significant. An organisational climate that is sexist and tolerates sexual harassment also causes direct harm to the broader workforce.<sup>13</sup>

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<sup>10</sup> <https://www.watoday.com.au/politics/western-australia/why-sexual-harassment-is-not-unlawful-at-work-in-wa-unless-the-victims-meet-test-20210309-p5793k.html#comments>

<sup>11</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report n 5*, p 458.

<sup>12</sup> *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report n 5*, p 470 (Recommendation 16(b)).

<sup>13</sup> Smith, B., Schleiger, M., and Elphick, L. 'Preventing Sexual Harassment at Work: Exploring the Promise of Work Health and Safety Laws' (2019) *Australian Journal of Labour Law*, 219-249, 226, citing VE Sojo, RE Wood and AE Genat, 'Harmful Workplace Experiences and Women's Occupational Well-Being: A Meta-Analysis' (2016) 40 *Psych Women Q* 10 at p 31.

### ***Addressing hostile work environments***

It is also important to implement Recommendation 16(c) of *Respect@Work*: ‘ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.’ While this recommendation was in respect to the Sex Discrimination Act, we consider that the same amendment should be made to the Equal Opportunity Act. An environment that tolerates generalised hostility towards women causes harm even if the conduct is not directed towards any individual.

A study by Glomb et al found that ‘ambient sexual harassment’ — measured by the frequency of sexual harassment experienced by other women in a workgroup — had a detrimental impact on the psychological conditions of individuals in that workgroup. Women who are simply ]members of work groups where ambient sexual harassment is prevalent report higher levels of absenteeism, intentions to quit, and are more likely to leave work early, take long breaks, and miss meetings.<sup>14</sup>

### **Recommendation 5: Revise the Western Australian Equal Opportunity Act**

Enact legislation that reflects ‘best practice’ in equal opportunity law. Change the definitions in the WA legislation to bring it into line with other jurisdictions where they do not have the same requirement for the alleged victim to establish disadvantage. Definitions of sexual harassment in federal or other state legislation, are much easier to satisfy recognising that the behaviour alone (being unwelcome conduct of a sexual nature) in a workplace context and elsewhere is not acceptable. It is not necessary for an alleged victim to establish that they have been disadvantaged.

### **Recommendation 6: Responding to everyday sexism and sex-based hostility**

When reviewing the Equal Opportunity Act consider sexual harassment in all areas of public life to address the broader community culture that contributes to gendered violence; and environments that create or facilitate an intimidating, hostile, humiliating or offensive environment on the basis of sex in recognition that everyday sexism and sex-based hostility has a harmful impact on workers who are exposed to it, even if the conduct is not directed towards them individually.

### **Recommendation 7: Psychological health and safety guidance**

Ensure that WorkSafe is taking a responsive and victim-centred approach to addressing gendered violence and harassment at work that recognises the underlying drivers of sexual harassment.

Ensure that any regulations and ancillary guidance made to address psychological health and safety at work cover gendered violence and harassment, including sexual harassment.

### **Recommendation 8: Education for key stakeholders.**

Provide ongoing training and capacity building to WorkSafe and health and safety representatives and other stakeholders who regularly come into contact with workers reporting psychosocial work injuries, such as clinicians and community lawyers.

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<sup>14</sup> Ibid, citing RC Sorenson, MG Mangione-Lambie and RC Luzio, ‘Solving the Chronic Problem of Sexual Harassment in the Workplace: An Empirical Study of Factors Affecting Employee Perceptions and Consequences of Sexual Harassment’ (1998) 34 Cal West L Rev 457 at p 460 and TM Glomb et al, ‘Ambient Sexual Harassment: An Integrated Model of Antecedents and Consequences’ (1997) 71 Organ Behav Hum Decis Process 309 at p 322.

**Recommendation 9: Guidance for employers.**

Develop guidance for employers about taking a victim-centred approach to responding to and investigating reports of gendered violence and harassment.

**Recommendation 10: Public education.**

Conduct campaigns to educate the public and increase awareness of the need to address gendered violence at work, including sexual harassment, as a work health and safety issue.

**Recommendation 11: Social and organisational norms.**

Undertake other evidence-based strategies to shift social and organisational norms to improve sexual harassment and gendered violence prevention and response, including within a work health and safety framework.

#### 4. What actions are being taken by industry and government to improve the situation and are there any examples of good practice?

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The AHRC Report proposed approach draws upon existing policies and initiatives with five key underpinning focus areas:

- Data and research
- Primary prevention
- Legal and regulatory framework
- Workplace prevention and response
- Support, advice and advocacy

The report prioritised several areas for primary prevention, including:

- Social change/campaigns
- Interventions for high-risk populations
- Prevention initiatives for young people (in the workplace and school)
- Information and training in tertiary education
- Guidelines/practical measures to ensure responsible reporting of sexual harassment by the media.
- The development of accredited education and a set of good practice indicators for measuring and monitoring prevalence
- Investment in prevention and support services

Given the report was not FIFO specific, a more precise/explicit approach to prevention in FIFO workplaces would be necessary.

Section 7 of the Report recommends a holistic approach to support and advocacy, information and referral, legal and psychosocial support.

Our Watch's *Workplace Equality and Respect (WER) Standards* provide guidance for workplaces to promote and embed gender equality and respect in the workplace through a comprehensive organisational change process. A range of tools and resources are available to support workplaces to implement the WER Standards, which can be accessed via the Our Watch website.

We recommend that the Western Australian Government consider providing incentives and resources to support non-public sector employers to implement the WER Standards and/or undertake initiatives similar to those required of public sector organisations. This should include providing funding for organisations with specialist expertise in prevention of gendered violence to support workplaces to implement the WER Standards and promote gender equity, and deliver organisational change and capacity-building programs that are tailored to the local and organisational context. With additional funding to provide more primary prevention services, the Centre for Women's Safety and Wellbeing and Stopping Family Violence are well positioned to provide tailored support and resources for workplaces.

Supporting workplace change requires an understanding of the prevailing social norms and readiness for change within an organisation, implementation of targeted, evidence-based interventions, and monitoring and evaluation of the effectiveness of these interventions.

While the prevention of sexual harassment should be integrated into broader efforts and strategies to prevent all forms of gendered violence, and any specific initiatives should contextualise sexual harassment by emphasising the links with other forms of violence against women and the shared gendered drivers, there remains a gap in our understanding of the need for and effectiveness of programs that are adapted to focus specifically on sexual harassment and/or gendered violence at work.

While some strategies for addressing gendered violence at work have been tested, research in this area is only just emerging. CARE Australia's report [What Works? Preventing & Responding to Sexual Harassment in the Workplace: A Rapid Review of Evidence](#) discuss some evidence-based interventions that have been used to address sexual harassment.

Few studies have explored bystander interventions to prevent and respond to workplace sexual harassment,<sup>15</sup> although recent studies in the university and high school context have shown that bystander education can change social norms and increase the likelihood of staff and students intervening to prevent assaults and sexual harassment.<sup>16</sup>

VicHealth has released a number of tools to assist organisations to implement bystander intervention programs, but emphasise that these tools must be accompanied by a suite of other actions as part of a whole-of-organisation approach to change, including top-down organisational support, a clear and enforced sexual harassment policy, key metrics to track sexist and sexually harassing behaviour, and an effective reporting and resolution process.<sup>17</sup> The suitability of the tools also depends on the workforce's level of understanding of gendered violence, as bystander action cannot be taken unless a person can identify problematic conduct.

Women's Health Victoria's 2018 report [Working with Workplaces: Challenges and opportunities for workplace violence prevention and bystander programs](#) suggests that programs designed to prevent

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15 Encourage. Support. Act! Bystander approaches to sexual harassment in the workplace, Australian Human Rights Commission and McDonald P, Flood M (June 2012) (Available [here](#)).

16 Prevention Strategies, Centre for Disease Control and Prevention (February 2021) (Available [here](#)) and Take action: Empowering bystanders to act on sexist and sexually harassing behaviours, The Behavioural Insights Team and Vic Health (2019) (Available [here](#)) p 2.

17 Guide to Implementing a University-wide Bystander Email Campaign, The Behaviour Insights Team and Vic Health (2019) (Available [here](#)) and Take action: Empowering bystanders to act on sexist and sexually harassing behaviours, n 21.

family and domestic violence cannot simply be ‘re-purposed’ to focus on sexual harassment.<sup>18</sup> While the fundamental elements of programs to address all forms of violence against women should be consistent (for example, addressing the four gendered drivers), existing programs may need to be adapted and tailored to include a specific focus on workplace sexual harassment and to take into account the particular dynamics of the workplace as a setting.

Focusing on specific forms of gendered violence, such as sexual harassment encourages workplaces to engage with prevention programs. However, a broader focus on gendered violence makes clear the links between different forms of gendered violence, including those that occur within the workplace and outside of it, and encourages participants to think more broadly about the impact of gender inequality.

### ***Increased access to legal services***

Given that workplace sexual harassment is primarily experienced by working women, victim-survivors are often financially ineligible for free legal assistance. The low cost-benefit of litigation means that these matters are also rarely suited to no-win no-fee legal representation, leaving many victim survivors unable to engage a lawyer to pursue their claim.

In *Respect@Work* the AHRC found that even if the legal system relating to sexual harassment is reformed, legal aid commissions, Aboriginal and Torres Strait Islander Legal Services, and community legal centres will play an important role in advising workers about their options and which option is best suited to their circumstances, and giving support to redress power imbalances and avoid further trauma.<sup>19</sup>

The AHRC considered that legal representation may result in a fairer, more efficient process and “should be available to all victims of sexual harassment navigating legal and external complaint processes, including those who do not have the means to pay lawyers’ fees”. The AHRC concluded that: “Legal aid commissions, Aboriginal and Torres Strait Islander Legal Services, and community legal centres should be adequately resourced to enable them to provide quality advice and representation in sexual harassment matters.”

### ***Access to specialist support services***

Existing support service, such as Sexual Assault Support Services and the Sexual Assault Resource Centre should be funded to provide targeted support to victim-survivors of sexual harassment and other forms of gendered violence at work, and these services widely promoted.

### ***Addressing the gendered drivers of sexual harassment***

Sexual harassment is a community-wide issue. The prevalence of sexual harassment both within and outside workplaces, and the fact that sexual harassment shares the same drivers as other forms of gendered violence, mean that effective primary prevention of sexual harassment at work requires whole-of-community action.

The Western Australian Government must address the underlying gendered drivers of sexual harassment, as part of an integrated and holistic strategy to prevent gendered violence and promote

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<sup>18</sup> Working with Workplaces: Challenges and opportunities for workplace violence prevention and bystander programs, Women’s Health Victoria (May 2018) (Available [here](#)).

<sup>19</sup> Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report n 5, p 770.

gender equality in line with *Change the story: A shared framework for the prevention of violence against women and their children in Australia*. A Western Australian sexual violence strategy would provide an opportunity to include a stronger focus on sexual harassment and other forms of gendered violence at work. There is a need for investment in primary prevention initiatives, including both workplace-based programs and programs that aim to shift social and organisational norms in other settings, such as comprehensive whole-of-school education programs. Similarly, preventing sexual harassment and promoting gender equality in the workplace should be a priority in the next Action Plan of *Stronger Together*.

There is still much work to be done on how to design and implement sexual harassment prevention programs in workplaces and further research is needed to examine the differences and challenges for program delivery. There is also a need for further investment in building the evidence base to understand what works to prevent sexual harassment in particular industries, workplaces and workforces.

### **Recommendation 12: Prevention strategy, capacity-building and investment**

Commit to, and invest in, 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. This should include investment in scaling up interventions to prevent gendered violence and harassment at work, including both workplace-based programs and programs that aim to shift social and organisational norms in other settings, such as comprehensive whole-of-school education programs.

### **Recommendation 13: Specialist support services**

Existing support service, such as Sexual Assault Support Services and the Sexual Assault Resource Centre should be funded to provide targeted support to victim-survivors of sexual harassment and other forms of gendered violence at work, and these services widely promoted.

### **Recommendation 14: Legal Services**

Invest in legal services to assist victim-survivors on low incomes to understand their rights and options and pursue legal claims of sexual harassment and discrimination, with consideration given to establishing a dedicated Working Women's Centre or Unit in Western Australia.<sup>20</sup>

**For further information please contact Dr Alison Evans – Email address:**

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<sup>20</sup> Respect@Work: National Inquiry into Sexual Harassment in Australian Workplace Report n 5, pp 47- 48 (Recommendations 49 and 53).