

SUBMISSION IN RESPONSE TO ISSUES PAPER 49 JUSTICE RESPONSES TO SEXUAL VIOLENCE

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Prepared for

Australian Law
Reform Commission

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Submission in response to Issues Paper 49: Justice Responses to Sexual Violence

Dear Commissioners and Review Team,

Thank you for this opportunity to respond to the Issues Paper produced to inform the Australian Law Reform Commission's Justice Responses to Sexual Violence Inquiry.

This submission has been prepared by Professor Kate Fitz-Gibbon (Monash University) and Dr Stefani Vasil (Australian Catholic University). We would welcome the opportunity to discuss any aspects of this submission and our wider program of research on workplace sexual harassment with members of the Commission to inform your review.

Kind regards,

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¹ This submission is authored by Professor Kate Fitz-Gibbon in her capacity as Professor of Social Sciences in the Faculty of Arts at Monash University. It is wholly independent of Kate Fitz-Gibbon's role as Chair of Respect Victoria.

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Submission outline

This submission is focused specifically on victim-survivor experiences of workplace sexual harassment in Australia. Reflecting Questions 1 and 2 in the Issues Paper, we recognise the Inquiry's interest in how victim-survivors can be best supported to safely report their experience of sexual violence, including understanding who victim-survivors contact to disclose, whether they had sufficient information available to them to help them decide who to tell and what to do; and what supports they needed at the time, whether they were inadequate and how they could be improved.

Drawing on data from our national survey of victim-survivors of workplace sexual harassment, in Section 1 of this submission we provide a response to these questions specifically in relation to experiences of disclosing and formally reporting, and in Section 2 we present data on responses to disclosures and formal reports of workplace sexual harassment.

In Section 3, our submission focuses specifically on responding to the Issues Paper section on 'Workplace Laws', including providing a response to: Question 50: If you are a victim survivor who experienced sexual violence in connection with a workplace, which factors led you to take legal action, or not take legal action, regarding the violence?

The Issues Paper also notes that there have been significant reports in recent years focusing on sexual harassment in the context of work and that these have involved a range of previous recommendations. From the different recommendations listed, in Section 4 of this submission, we have provided responses related to:

- establishing safe disclosure mechanisms,
- the positive duty for all employers to take reasonable measures to eliminate sexual harassment, and
- ensuring awards of damages reflect contemporary understandings of the harms arising from sexual harassment.

In this submission we have not made recommendations specifically, but rather offer this analysis of data from our national study to inform the findings of the Inquiry.

About our Study

This submission draws heavily from data collected as part of a national study entitled, *Workplace sexual harassment: A national study to inform new prevention and early intervention strategies*.² Data collection for that study was led by Dr Nicola Helps (in her former role as a postdoctoral research fellow with the Monash Gender and Family Violence Prevention Centre), and also involved colleagues Professor Steven Roberts, Dr Rebecca Stewart and Dr Anna Genat. Here we provide an overview of the scope of that study and breadth of data collected to contextualise the information provided in this submission (see also Helps et al., 2023a).

The national study sought to contribute to building the evidence base on the prevention of, and early interventions for, workplace sexual harassment. The project had four key aims:

1. To examine opportunities to better identify, prevent and respond to workplace sexual harassment.
2. To build the evidence base on victim-survivors' views on opportunities for early intervention and improved responses to workplace sexual harassment.
3. To examine the impact of workplace culture and the role of bystanders on early intervention and responses to workplace sexual harassment.
4. To generate new insights and workplace focused recommendations to support improved policy and practice.

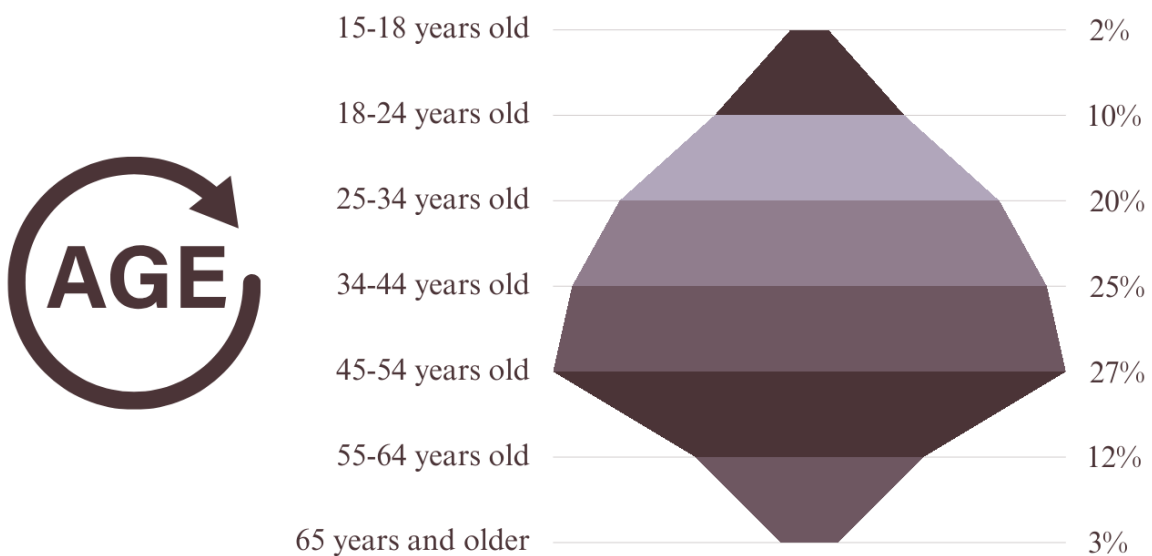
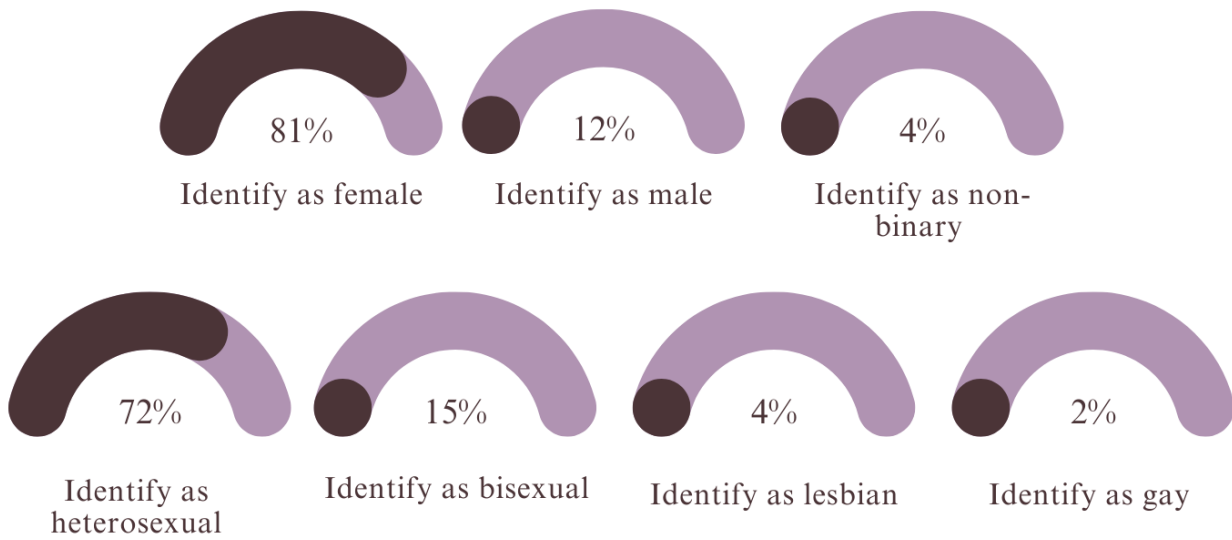
In order to fulfill these aims, the study utilised a large-scale national survey. The survey was conducted in late 2022 and distributed via social media and a range of Australian organisations. The survey was available in English, Arabic, Vietnamese, Punjabi, Nepali and simplified Chinese.

1,465 individuals responded to the survey, including 1,412 victim-survivors of workplace sexual harassment. The survey included a series of closed and open text questions. Participants provided insights into their experiences of workplace sexual harassment, including the nature and impact of the harassment experienced, the response(s) received, as well as opportunities for improved prevention and early intervention.

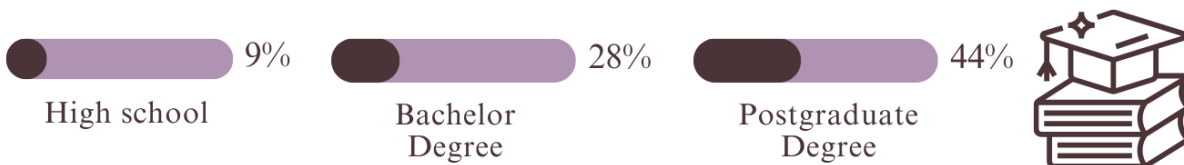
² Funding acknowledgement: this study formed part of the Safe and Equal @ Work program funded at Monash University via the State Government's Victorian Higher Education State Investment Fund (VHESIF).

Our participant sample³

Of the 1,412 victim-survivors of workplace sexual harassment surveyed:

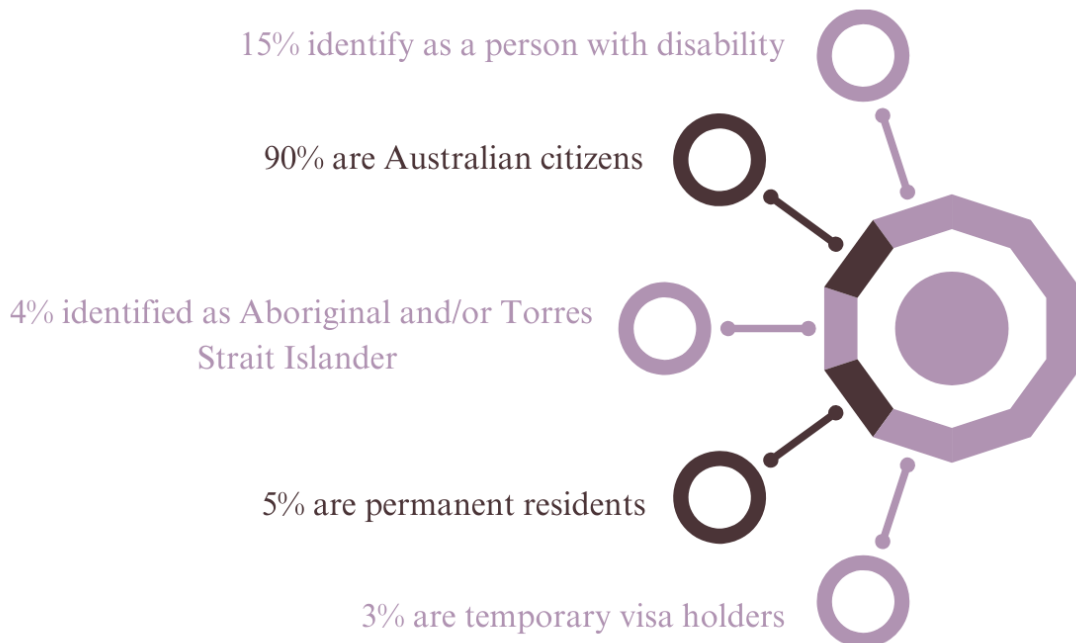
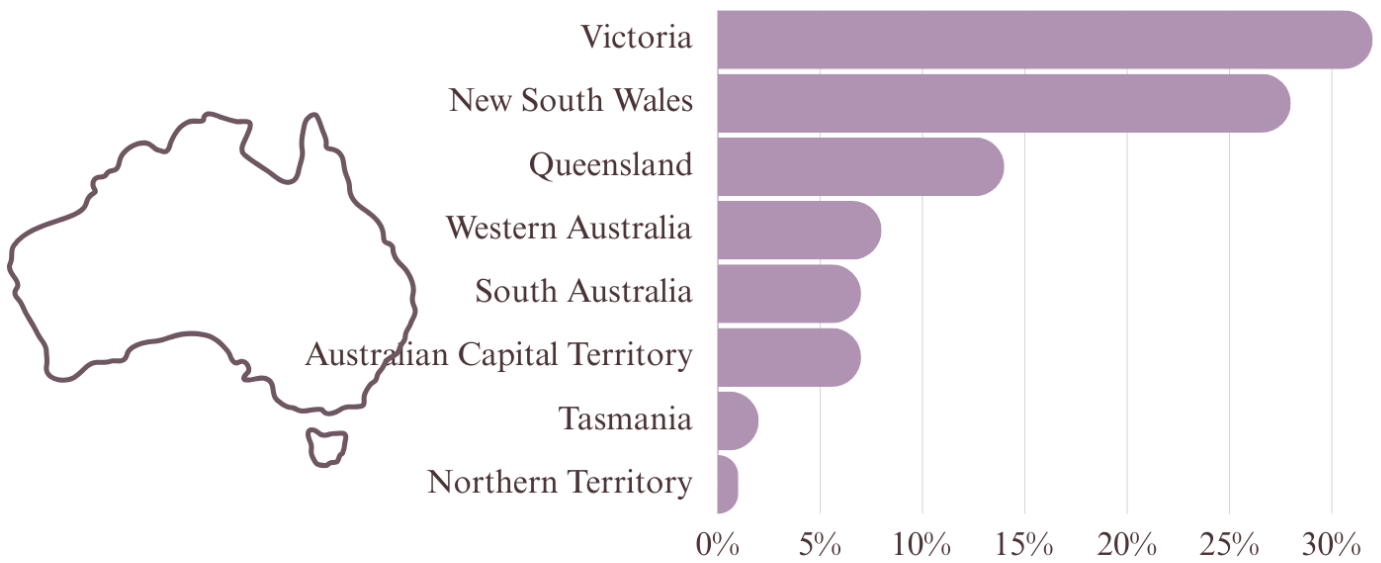


HIGHEST LEVEL OF EDUCATION COMPLETED:



³ The participant demographics presented here are based on the number of survey responses received for each survey question. The survey design permitted participants to skip over any questions. As such the total number of responses for each question may not reflect the full sample. See also Helps et al., 2023b. In addition, we acknowledge the high proportion of participants from the state of Victoria where the research team was based at the time the study was conducted.

SURVEY RESPONDENTS WERE BASED IN:



THE TOP 4 INDUSTRIES REPRESENTED WERE:

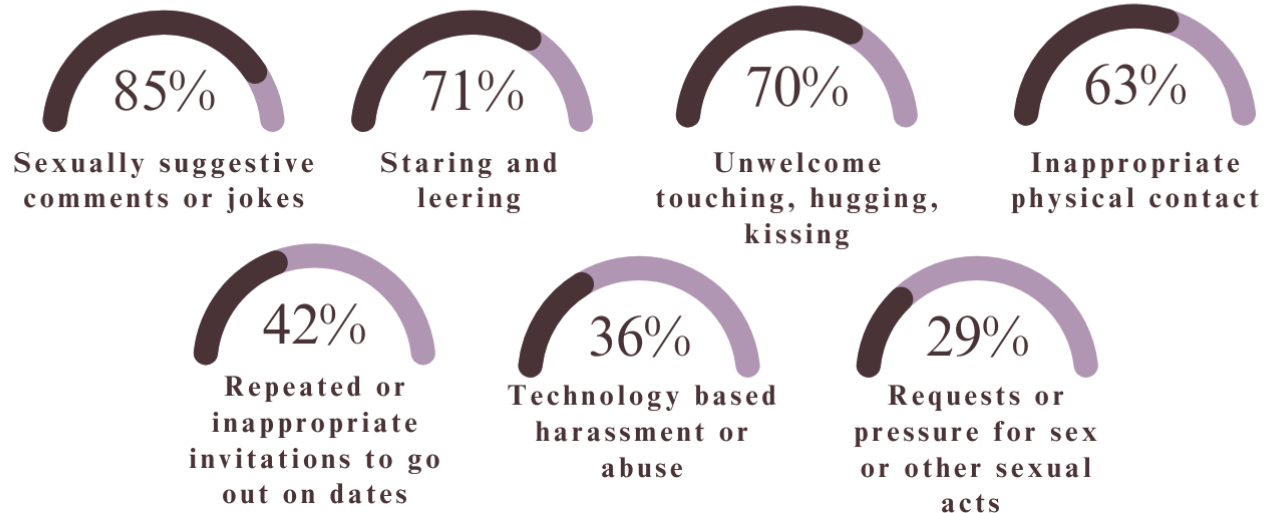


- Education and training 14%
- Accommodation and food services 12%
- Health care & social assistance 11%
- Retail Trade 11%

38% Of victim-survivors experienced workplace sexual harassment for more than a year

60% Of victim-survivors experienced workplace sexual harassment weekly or more often than weekly

Reported experiences of workplace sexual harassment included:



Among the survey participants, workplace sexual harassment was most likely to be perpetrated by one person (66%), who was male (90%), and the victim-survivor's direct manager or supervisor (27%).



54% of incidents were witnessed by at least one other person in the workplace.



33% of incidents were witnessed by 4 or more people.

Section 1. Victim-survivor experiences of reporting workplace sexual harassment

Our survey included 10 questions specifically focused on victim-survivors' help-seeking behaviours, including whether they reported their experience of workplace sexual harassment, who they told, whether they made a formal report or complaint following the incident(s), what the outcome of their reporting was, what (if anything) was the outcome for the harasser, and how satisfied they were with the response received from their workplace. In this section we examine the quantitative and qualitative findings to each of these questions in order to respond to Question 1 from the Issues Paper, which centres on disclosures of workplace sexual harassment.

Reporting workplace sexual harassment

In our survey, 1,106 respondents answered the question, 'did you tell anyone about your experience of workplace sexual harassment'. Of those, 78% (n=863) had disclosed their experience, while 21% (n=231) did not tell anyone about their experience of workplace sexual harassment.⁴

Table: Who victim-survivors disclosed their experience of workplace sexual harassment to (n=863)

Who victim-survivors disclosed to	N	%
Friends or family	642	74
A co-worker or peer at the same level	407	47
Direct manager or supervisor at work	266	31
A co-worker more senior than you	207	24
Another manager or supervisor at work	173	20
The HR manager or equivalent at work	166	19
A counsellor or psychologist	159	18
The head of their workplace or organisation (ie. CEO or business owner)	151	18
A junior co-worker	95	11
Other	75	9
A union or employee representative	49	6
The internet (including search engines such as Google and Yahoo)	47	5
A lawyer or legal service	40	4.5
Social media/forums/online support	30	3.5
An Equity or Sexual Harassment Contact Officer at work	28	3
Police	28	3
Fair Work Ombudsman	10	1
Australian Human Rights Commission or a State or Territory anti-discrimination agency	9	1
A community-based or religious organisation	6	1

As the table above shows, among the 863 victim-survivors that responded to this question less than 5 per cent disclosed their victimisation to a justice professional (ie. lawyer) or agency (ie. police). While

⁴ There were 12 respondents (1%) that selected 'prefer not to say' in response to this question.

we understand the Inquiry's focus on justice system responses to sexual violence, and the critical need to improve the safety and effectiveness of responses among justice system agencies, these findings emphasise the need for a whole of system response to workplace sexual harassment. There is a need to ensure effective reporting pathways and responses outside the realm of the justice system, recognising that, as our findings show, victim-survivors are most likely to disclose their experiences to friends or family (74%) and/or a co-worker or peer at the same level as them (47%). Our findings also suggest that victim-survivors may disclose to more than one person at their workplace. There is a need to ensure that for the smaller number of victim-survivors who do seek a legal remedy that the reporting pathways are trauma-informed and victim-centred in a way that prioritises safety and holds perpetrators to account.

Understanding victim-survivors' decisions not to report

As noted above, 1 in 5 victim-survivors who responded to this survey identified that they had not disclosed their experience of workplace sexual harassment (n=231, 21%). Understanding the reasons why victim-survivors do not report their victimisation is critical to building safe disclosure mechanisms. In this study victim-survivors reported a number of barriers to disclosing their experiences of workplace sexual harassment. First and foremost, where there was not a supportive workplace culture, victim-survivors did not feel that reporting was a genuine option. As one victim-survivor explained:

I do not feel supported to make a complaint in any form. I felt like a pathetic, young girl who was complaining too much about a "lovely man" who was senior within the organisation.

For other victim-survivors the consequences of reporting were deemed to outweigh any benefits to their own personal safety. As one victim-survivor explained:

It happened in an isolated regional environment our work was our home. So, if I complained I would lose my job and my home.

The issue of personal safety also intersected with victim-survivor concerns regarding economic security, as this excerpt highlights:

I was uneasy about my safety however I was on a short-term contract and need[ed] the salary so I stayed until my term ended.

Several victim-survivors described the modifications they made to their own behaviour and actions in lieu of reporting – including how they avoided individuals involved in the harassment in their day-to-day interactions at work, did not seek out opportunities or supports, and avoided physically attending the workplace. This viewpoint is captured in the remarks of two victim-survivors:

I actively avoided the manager, did not seek supervision when I required it and did not seek career progression as I did not want them to see it as a further opportunity to "mentor" me.

I avoided coming into the office to avoid the harasser, which was possible because of the pandemic, and many colleagues were choosing to work at home during the era of rolling lockdowns.

The normalisation of workplace sexual harassment, alongside other forms of gender-based violence, was also influential in dissuading victim-survivors from reporting their experience. As one survey respondent described:

I viewed it as an inevitable part of life as a young female at the time. I experienced unwanted sexual attention & harassment in many areas of life – frequently in social settings and just going about everyday activities like walking down the street, with neighbours, in shops, on public transport etc.

Building on this, there were a number of victim-survivors who did not report their experience and reflected in the survey that they had ‘just learned to deal with it’, and ‘had to just get over it and move on’. Other victim-survivors who did not report, described how the experience permeated their thoughts in an ongoing way. Two victim-survivors described:

I thought about it often for a year. I still question my judgement or recollections about whether it happened even though I know that it did. I have to interact with the people involved as I did not want to complain, that would have gone badly for me only given their snr [senior] roles.

I didn't process it properly, I tried to shrug it off as stupid men but that was not the greatest idea. I think it ended up coming out in a pretty significant distrust of men and I've been diagnosed with anxiety.

Given the focus within the National Plan to end Violence against Women and Children 2022-2032 (DSS, 2022) on the recovery and healing of all victims-survivors of gender-based violence there is a need to ensure that all victims of sexual violence – including those who do not formally report – are supported to recover and heal from their experience.

Section 2. Workplace responses to disclosures of sexual harassment

Following their disclosure of workplace sexual harassment, a number of victim-survivors reported negative experiences reflecting the ongoing proliferation of myths surrounding sexual violence and problematic gendered stereotypes. As shown in the table below, for 1 in 3 of the victim-survivors surveyed, their disclosure was met with a response that sought to deny, minimise or deflect responsibility for the harassment perpetrated against them.

Table: Responses received following disclosure of workplace sexual harassment (n=863)

Responses received	N	%
Had someone construct the harassment as a compliment, as harmless, playful or flirtatious	343	40
Being told "I'm sure they didn't mean what they said or did"	298	34.5
Told not to "be too sensitive" or that you were overreacting	298	34.5
Being made to question whether the harasser meant what they did	274	32
Being made to feel that you were "overthinking it"	268	31

The nature of the responses received, as shown in the table above, is reflective of a broader cultural context where the act of disclosing in itself can be experienced by victim-survivors as unsafe and/or lead to unhelpful responses, particularly where victim-survivors are met with a response that undermines their experience of harassment. The responses are also indicative of the types of underlying harmful attitudes that continue to require attention within workplaces to ensure an environment that is supportive of victim-survivor disclosures moving forward.

In addition to their experience of problematic stereotypes and responses following their disclosure of workplace sexual harassment victim-survivors reported experiencing a range of different outcomes, both within and outside of the workplace. Of the 863 victim-survivors that disclosed, as shown in the table below, for just over 1 in 4 victim-survivors, *none* of the following outcomes were experienced:

Table: Outcomes experienced following disclosure by victim-survivors of workplace sexual harassment (n=863)

Outcomes experienced	N	%
Discouraged from making a formal complaint	213	25
Labelled a trouble-maker	184	21.5
Resigned	181	21
Discouraged from discussing or disclosing the harassment with someone else (e.g., a co-worker, union, etc.)	174	20
Ostracised, victimised, ignored by colleagues	155	18
The harassment stopped	145	17
There were other consequences experienced	136	16
Denied workplace opportunities, such as training or promotion	109	12.5
Employer apologised for failing to prevent the harassment	86	10

Received positive feedback for making the complaint	75	9
Dismissed or lost their job	68	8
Shifts were changed	47	5.5
Transferred	44	5
Disciplined	41	5
Employer paid victim-survivor compensation because of the harassment	34	4
Demoted	28	3
Consequences for the victim-survivor's visa or residency status	5	0.5
None of the above outcomes occurred	233	27

As shown in the table above, approximately 3 in 4 reported that a negative outcome followed their disclosure, which, in many instances, impacted their experience at work. For some, this manifested in ways that saw the victim-survivor being discouraged from taking the issue further, being ostracised from their colleagues, as well as being denied workplace opportunities, including with respect to promotion. These findings are demonstrative of the types of workplace conditions and responses that further compound the impacts of workplace sexual harassment for victim-survivors.

Our survey found that very few outcomes for victim-survivors were positive, with only a small number of victim-survivors stating that they received positive feedback for making the complaint (9%), an apology from the employer (10%) or a payment of compensation because of the harassment (4%). While it is appreciated that the focus of this Inquiry is on justice system responses to sexual violence, we note that an effective and trauma-informed justice system response is critical but so too are individual workplace-based responses and remedies for sexual harassment. This is not an either/or – there is a need for a whole of system response to best meet the diverse needs of victim-survivors.

Victim-survivor experiences of making formal complaints or reports

While 863 victim-survivors identified that they had told someone about their experience of workplace sexual harassment, only 268 victim-survivors (31%) surveyed identified that they made a formal report or complaint following their experience. The lower level of formal reporting is unsurprising given that 1 in 4 victim-survivors who disclosed their experience of workplace sexual harassment reported being discouraged from making a formal complaint (see table above).

Of those victim-survivors who made a formal report, the survey invited them to identify who the formal complaint or report was made to.

Table: Who victim-survivors made a formal complaint or report to (n=268)

Who victim-survivors made a formal complaint or report to	N	%
Direct manager or supervisor at work	125	46.5
The HR manager or equivalent at work	121	45
The head of their workplace or organisation (ie. CEO or business owner)	97	36
Another manager or supervisor at work	58	21.5
A union or employee representative	33	12.5
An Equity or Sexual Harassment Contact Officer at work	23	8.5

A lawyer or legal service	22	8
Police	18	7
Other	17	6.5
Fair Work Ombudsman	11	4
Australian Human Rights Commission or a State or Territory anti-discrimination agency	10	5

While we recognise that this Inquiry is focused on improving justice system responses to sexual violence, the findings from our survey show the multiple levels of reporting that victim-survivors often navigate instead of, or prior to engaging with the justice system. Indeed, for victim-survivors of workplace sexual harassment in this study, while less than 1 in 10 victim-survivors reported to a lawyer or to police, nearly half of the victim-survivors surveyed made a formal complaint to their manager or supervisor at work, or to the HR manager in their workplace. These findings highlight the importance of ensuring that managers are equipped with the specialist training required to adequately respond to formal reports of workplace sexual harassment.

Noting the focus of this Inquiry, 3 per cent of victim-survivors that participated in this survey had reported their experience to the police (n=28). Reflecting historical patterns of poor policing responses to different forms of gender-based violence, among those victim-survivors that did describe the outcomes of police reporting, they were predominately negative. As one victim-survivor commented:

The cops didn't care, and refused to pursue it, despite the man admitting it.

Where reports to police resulted in inaction, the consequences for victim-survivors at work were significant. As one victim-survivor explained:

They reprimanded me for going to the police when they refused to do anything. I felt nervous and shameful every time I was at work. I eventually quit.

For another victim-survivor, the fear of police inaction served as a barrier to reporting. They explained:

I was too scared to go to the police given that reaction from my manager. I felt it would be pointless.

These findings echo what is already known from several decades of research on police responses to diverse forms of gender-based violence, including domestic, family and sexual violence. This includes negative attitudes towards incidents of domestic violence, including victim-blaming, police inaction, and policing responses that are based on misplaced assumptions about the best interests of victim-survivors (see, among others, Commission of Inquiry into Queensland Police Service responses to domestic and family violence, 2022; Hoyle & Sanders, 2000; Royal Commission into Family Violence, 2016; Segrave et al., 2018).

The survey also asked victim-survivors whether they were aware of any outcomes experienced by the alleged harasser(s) after they made their complaint. As shown in the table below, for nearly 40 per

cent of the 268 victim-survivors who made a formal complaint, they believed there were no consequences for their harasser(s). This is a significant finding owing to the diversity of victim-survivors surveyed, who were employed across a variety of industries when the workplace sexual harassment took place.

Table: Outcomes experienced following disclosure by alleged perpetrators of workplace sexual harassment (n=268)

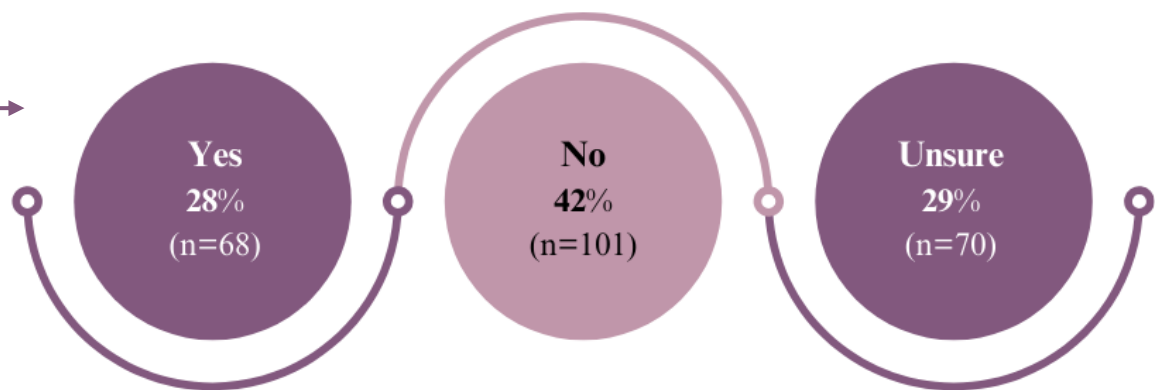
Outcomes experienced by the alleged perpetrator	N	%
There were no consequences for the harasser(s)	103	38.5
The harasser was informally spoken to	80	30
The harasser faced some other consequences	65	24.5
The harasser was formally warned	46	17
The harasser was disciplined	34	13
The harasser was dismissed or lost their job	22	8
The harasser apologised	19	7
The harasser was transferred	17	6.5
The harasser resigned	15	5.5
The harasser had their shifts changed	14	5
The harasser paid the victim compensation	9	3.5

Where victim-survivors made a formal complaint and there was an outcome, in 30 per cent of cases the harasser was spoken to informally while 17 per cent of victim-survivor reported that the harasser received a formal warning. A further 24.5 per cent noted that there were other consequences for the harasser. Less than 15 per cent of victim-survivors reported more immediate outcomes for the harasser, including consequences that impacted the nature of their employment, such as disciplinary action (13%), a dismissal (8%), transfer (6.5%), resignation (5.5%) or a payment of compensation (3.5%). These findings provide important insights into the ways employees accused of workplace sexual harassment are responded to by Australian workplaces, with a definite tendency towards either no response or the adoption of an informal response such as speaking with the harasser without consequence to their employment or standing within the workplace.

How victim-survivors can be best supported to safely report experiences of sexual violence

Safe reporting necessitates information to be readily available to victim-survivors on how to report both within and beyond their workplace. As part of our survey, we asked victim-survivors, ‘To your knowledge, did your workplace have formal processes for reporting workplace sexual harassment?’. As shown in the results below, of the 241 victim-survivors that responded to this question there were a significant portion of victim-survivors that either did not know or were unsure what formal processes for reporting workplace sexual harassment were available in their workplace.

Figure: Victim-survivor knowledge of whether their workplace has formal processes for reporting workplace sexual harassment?



These findings are useful to consider in relation to the introduction of the positive duty requirements (see Section 4) as they raise questions about the readiness of Australian workplaces to embed reasonable measures to prevent workplace sexual harassment. While workplaces may have a suite of best practice policies in place to address workplace sexual harassment, it is absolutely critical that staff are aware of these policies, which necessitates socialisation and accessibility of the policies. The burden should not be on the individual staff member to search out such information. Rather, widespread awareness of response and prevention policies in this area is a key component of driving cultural change, whereby organisations normalise a culture within which victim-survivors know they can report any harassment or abuse, are supported to do so, and perpetrators are held to account.

Satisfaction with the response received from the victim-survivor’s workplace

Our survey asked victim-survivors about their level of satisfaction with the workplace’s response to sexual harassment. Of those who responded to this question (n=1077), it is notable that just over half were either somewhat dissatisfied (12.5%) or extremely dissatisfied (40%) with the response received from their workplace. A further 10 per cent reported that they were either somewhat satisfied (6.5%) or extremely satisfied (3.5%) with the response received.

Table: Victim-survivor satisfaction with the response from their workplace (n=1077)

Victim-survivor level of satisfaction with the workplace response	N	%
Extremely dissatisfied	430	40
Somewhat dissatisfied	134	12.5
Neither satisfied nor dissatisfied	282	26
Somewhat satisfied	71	6.5
Extremely satisfied	38	3.5
Prefer not to say	122	11.5

Victim-survivors’ qualitative responses to our question on satisfaction shed further light on the types of issues often encountered. When reflecting on their workplace’s response and the way it impacted them, several victim-survivors drew attention to the absence of procedures and clear processes, the

limited adherence to procedures where they were in place, as well as a lack of transparency more broadly. As three victim-survivors stated:

The only way I found out that action had been taken was another colleague told me.

I think they probably should have fired the employee as he had done it with a previous employee but they needed him and all the other employees took it seriously so basically it all ended up [okay].

My workplace, a major University, didn't even have a current sexual harassment policy ... the uni[versity] itself was complicit in causing further harm.

Other victim-survivors reflected on the presence of a relevant workplace policy but noted that the mere presence of a policy did not easily translate to an enhanced feeling of safety where such policies were not embedded alongside broader cultural change. As one victim-survivor described:

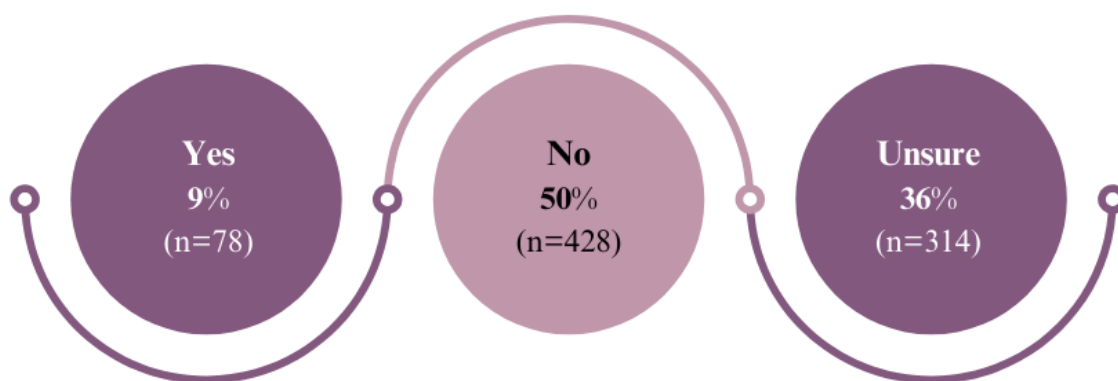
Despite a new policy in place, the workplace still felt unsafe and behaviours continued.

This viewpoint highlights the importance of the culture within which legislative and policy changes are introduced. Toxic workplace cultures, regardless of the policies in place, can dissuade victim-survivors from reporting and can compound the impacts of trauma. As Australian states and territories progress an agenda of reform which aims to improve whole of system responses to gender-based violence there is a need to ensure that the institutions within which such change are implemented – be it the police or an individual workplace – commit to a broader program of work to implement trauma and DFV-informed workplace training, which seeks to build awareness and understanding across the workplace of how to respond appropriately and be sensitive to disclosures of gender-based violence.

Section 3. Workplace laws

In our survey, we asked victim-survivors (n=863) whether in the time since their workplace became aware of the workplace sexual harassment, they were aware of anything their workplace had done or changed to detect, prevent or better respond to future acts of workplace sexual harassment. In total, 50 per cent of survey respondents (n=428) said that they were not aware of any changes, while approximately 1 in 3 were unsure (n=314). Only 9 per cent (n=78) stated that they were aware of specific changes within their workplace to detect, prevent or better respond to workplace sexual harassment.

Diagram: Victim-survivor awareness of whether their workplace has made any changes to detect, prevent or better respond to future acts of workplace sexual harassment (n=863)



We also asked respondents whether there were any specific changes to relevant workplace policy and practice that they were aware of following their disclosure. As shown in the table below, of the 863 victim-survivors who responded to this question, 61.5 per cent (n=532) said that there were no changes at the workplace following their disclosure and/or formal complaint.

Table: Changes at work following disclosure of workplace sexual harassment (n=863)

Changes at work	N	%
There were no changes at the organisation following your disclosure and/or complaint	532	61.5
There were some other changes at your organisation following your disclosure and/or complaint	106	12.5
Your employer implemented training or education	41	5
Your employer changed a practice or procedure - for example, the complaints procedure	31	3.5
Your employer developed or changed the existing policy on sexual harassment	26	3
Unsure	155	18

While workplaces could not be expected to implement changes following each individual report of workplace sexual harassment, there is a need to proactively address evolving risks and ensure that the safety needs of all employees are met.

Section 4. Previous recommendations on workplace laws

Establishing safe disclosure mechanisms

Safe disclosure mechanisms require a culture where victim-survivors are believed. This is a necessity regardless of the mechanism implemented. In the qualitative responses received throughout the survey, victim-survivors repeatedly emphasised the importance of genuinely being listened to and being believed. As captured in the following quotes:

Listen to victims better.

Believe people who report. Create processes for people to report about incidences themselves but also how to report when they have witnessed something.

LISTEN to people when they speak up ... People do not speak up because we think what is the point if nothing will be done about it – it will only cause trouble for me. If they show a strong policy on sexual harassment and follow it, victims will speak up.

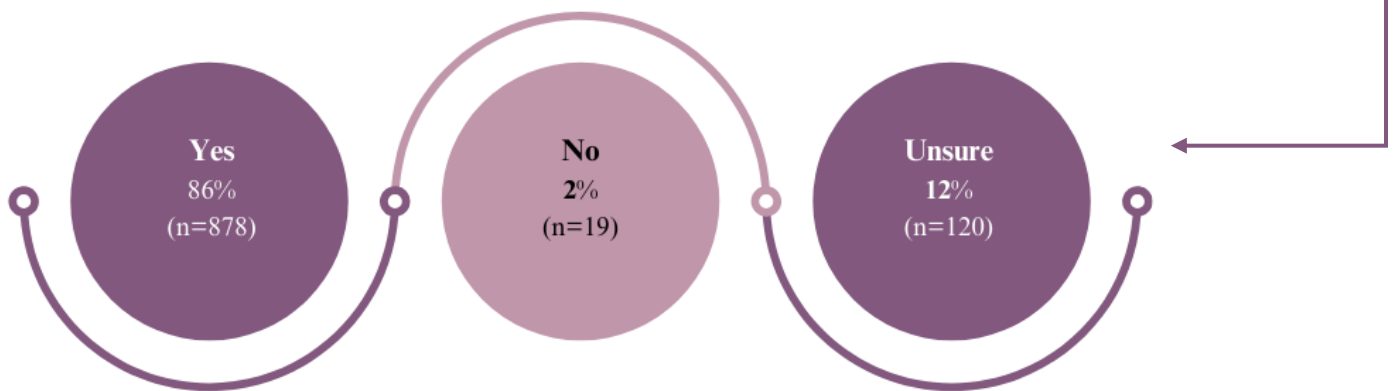
Being believed, listened to and action being taken against the perpetrator.

As captured here, listening, believing and taking action were positioned by victim-survivors as the core components of any safe disclosure mechanism for workplace sexual harassment. Connected to this was the need to ensure that these sentiments were accompanied by practical steps to address the harms of the harassment, as well as ensure that workplace-specific issues were addressed to prevent repeat victimisation. This involved setting up effective disclosure mechanisms and transparent procedures, as well as addressing the broader issue of workplace culture. The related issues of perpetrator accountability and workplace responsibility were also positioned as key to creating the conditions within which victim-survivors would feel supported to report incidents of harassment and where bystanders would be supported to call out specific behaviours rather than remain silent.

The positive duty for all employers to take reasonable measures to eliminate sexual harassment

This survey was conducted in the period immediately prior to the introduction of the positive duty for all employers to take reasonable measures to eliminate sexual harassment. There were two questions included within the survey related to the positive duty. Specifically, the survey asked victim-survivors if they supported the recommendation made by the Respect @ Work Sexual Harassment National Inquiry Report (2020) to introduce a positive duty into the *Sex Discrimination Act 1984*. The positive duty requires employers to take reasonable and proportionate measures to eliminate certain forms of unlawful sex discrimination, including sexual harassment, as far as possible. As shown in the results below, the vast majority (86%) of survey respondents (n=1,017) supported the introduction of the positive duty.

Figure: Victim-survivor support for the introduction of a positive duty into the *Sexual Discrimination Act*.



Of those survey respondents that indicated they supported the introduction of the positive duty the survey invited them to explain why. For several of these respondents, the positive duty was viewed as an opportunity to create greater certainty that workplaces would definitively respond to allegations of workplace sexual harassment. For example, victim-survivors explained:

Because it would have given the victim a platform to make the incident known.

They would have been legally forced to deal with us.

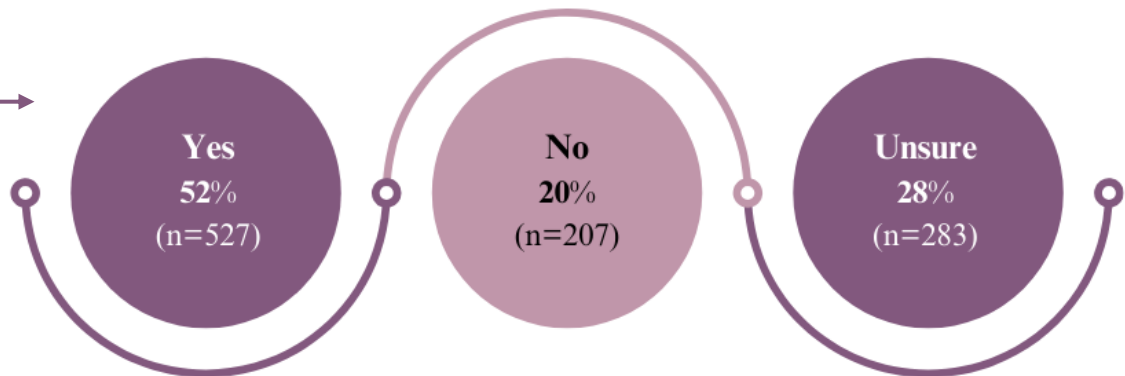
Most workplaces will never act on this unless required to with meaningful consequences for their in action.

There was however a smaller number of victim-survivors that held great scepticism as to the potential for the positive duty to create an actual change in practice. As one victim-survivor commented:

They had a positive duty to pay us correctly, and that didn't happen. They have a positive duty already to provide a safe workplace, and that didn't happen. Only workers and their unions can create the kind of world where work doesn't hurt.

While retrospective questions can be fraught, it is worth noting that when asked whether they thought their experience of workplace sexual harassment could have been prevented had there been a positive obligation on their employer at the time of their victimisation, 1 in 2 survey respondents said yes. 1,1017 survey respondents provided a response to this question, the responses are shown below.

Figure: Victim-survivor views' on whether their experience of workplace sexual harassment could have been prevented had there been a positive obligation on your employer at the time of their victimisation.



For those victim-survivors that were ‘unsure’ as to how the positive duty would have impacted their own experience of workplace sexual harassment, there was often an expressed sense of uncertainty as to what the positive duty requires and a lack of understanding as to how it may change practice. As three victim-survivors described:

I'm an employer and I have no idea how I could implement such an Act.

I don't know what it means. If it means another 30-minute online learning module everyone ignores, then that is not great.

Seems great in theory, but I'm not sure how it could work in practice.

These victim-survivor views highlight the importance of broader education on the embedding of the positive duty in order to ensure this world leading legislation meets its objectives in practice. As the findings from our survey highlight, any review of the implementation and embedding of the new legislative requirements must seek the views of individuals with lived experience of workplace sexual harassment.

Ensuring awards of damages reflect contemporary understandings of the harms arising from sexual harassment

We are pleased to see in the Issues Paper recognition of previous recommendations and actions that have included ensuring that awards of damages reflect contemporary understandings of the harms arising from sexual harassment. This is absolutely critical. The awarding of damages needs to take into account the immediate and shorter-term impacts of sexual harassment victimisation as well as the longer terms impacts for victim-survivors. In our survey, victim-survivors were invited to detail how their experience of workplace sexual harassment had impacted them. Across the 1,412 victim-survivors, the impacts were profound – with impacts experienced in both their professional and personal lives, including impacts on work and career, physical and mental health, family and relationships, financial as well as the everyday impacts of heightened fear.

The range of impacts experienced by victim-survivors in this study included:

- An immediate loss of their sense of safety,
- Feelings of discomfort and insecurity in the workplace,
- Loss of self-esteem, and confidence,
- Heightened experiences of depression, anxiety and sleep disturbance,
- Experiences of fear and the perceived need to be hypervigilant,
- Health impacts, including sleep disorders, mental and physical health impacts, and post-traumatic stress disorder,
- Social and relational impacts, including loss of trust in people, distrust in their intimate partner relationships, social anxiety and fear of public spaces,
- Work and career impacts, including loss of confidence and sense of safety in the workplace, career disruptions, loss of employment, change of industry or role, and
- Financial impacts, including economic impacts of seeking medical supports, and long-term impacts of subsequent employment insecurity.

One of the distinct shifts in policy in recent years has been a clear recognition of the need to support the recovery and healing needs of victim-survivors of gender-based violence. This is embedded in the National Plan to end Violence against Women and Children 2022-2032 (Department of Social Services, 2022), of which the federal government and all state and territory governments are a signatory. Understanding the full range of impacts of workplace sexual harassment, as overviewed here, is critical to ensuring that the awarding of damages takes into consideration the range of services that may be required to support an individual's immediate safety needs, as well as their longer-term recovery and healing needs.

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