

Understanding workplace sexual harassment:

Trends, barriers to legal assistance, consequences and legal need

Prepared by the Centre for Social Impact
The University of Western Australia
June 2023

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Acknowledgement of Country

In the spirit of reconciliation, CSI UWA acknowledges that its operations are situated on Noongar land, and that the Noongar people remain the spiritual and cultural custodians of their land, and continue to practise their values, languages, beliefs and knowledge. We acknowledge the Traditional Custodians of the country throughout Australia and their connections to land, sea and community. We pay our respect to their elders and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Suggested Citation: Flatau, P., Lester, L., Hooper, Y., Zou, S., Young, B., & Lester, R. (2023). *Workplace Respect: Final Report*. Centre for Social Impact: The University of Western Australia. <https://doi.org/10.25916/h1xx-2v75>

Keywords: *workplace respect, sexual harassment, evaluation*

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CONTENTS

Acronyms and abbreviations used in this report.....	5
Executive summary	7
1. Introduction	11
Methods	12
Structure of this report	12
2. Literature Review	14
Defining workplace sexual harassment	15
Workplace sexual harassment legal framework.....	16
Nature and prevalence of workplace sexual harassment.....	18
Vulnerable groups.....	22
Workplace industry	26
Consequences of workplace sexual harassment	28
SUMMARY: Definitions, nature and prevalence, and consequence.....	30
Reporting Workplace Sexual Harassment.....	30
SUMMARY: Reporting workplace sexual harassment	39
Responding to workplace sexual harassment	39
SUMMARY: Responding to workplace sexual harassment	42
3. Stakeholder Feedback	43
Lived Experience Feedback	43
SUMMARY: LE feedback.....	50
Organisational Survey Feedback	52
SUMMARY: Organisational survey	56
Organisational Interview Feedback	57
SUMMARY: Organisational interviews	68
4. Key Learnings.....	69
5. Recommendations	72
6. Concluding Thoughts.....	75
References	76

List of Figures

FIGURE 1. RATES OF DIFFERENT TYPES OF WSH FOR MEN AND WOMEN (AHRC, 2022).....	23
FIGURE 2. FEMALE AND MALE WSH RATES IN DIFFERENT AUSTRALIAN OCCUPATIONS (AHRC, 2022; VICTORIAN COURTS, 2021).....	27
FIGURE 3. CO-OCCURRING WORKPLACE LEGAL ISSUES OF CLC SERVICE USERS REPORTING WSH.....	55

List of Tables

TABLE 1. DEFINITIONS OF WORKPLACE SEXUAL HARASSMENT	15
TABLE 2. PERPETRATOR OUTCOMES (AHRC, 2022).....	33
TABLE 3 ORGANISATIONAL SERVICES	52

ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT

ABS	Australian Bureau of Statistics
AHRC	Australian Human Rights Commission
AUD	Australian Dollar
CARM	Culturally and racially marginalised
CLC	Community Legal Centres
COVID-19	Coronavirus Disease 2019
EOC	Equal Opportunity Commission
FDV	Family and Domestic Violence
HR	Human Resources
LE	Lived experience
LEAP	Lived Experience Advisory Panel
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer, intersex, and asexual
NDA	Non-Disclosure Agreement
OSH	Occupational Health and Safety
PTSD	Post-traumatic Stress Disorder
USA/US	United States of America
WHS	Work health and safety
WSH	Workplace Sexual Harassment

LANGUAGE NOTE

In November 2022, Circle Green held its inaugural Lived Experience Advisory Panel (LEAP) meeting. The LEAP members represent a diverse range of experiences, sectors and skills which inform the development and delivery of the Workplace Respect Project.

At the November meeting LEAP members were consulted on preferred terminology for conveying when a person has been subjected to workplace sexual harassment. “Victim,” “survivor,” “person who has experienced sexual harassment,” “victim-survivor,” and “person with lived experience” are all applicable terms serving different purposes for those who have experienced, and/or are experiencing sexual harassment.

All participating LEAP members expressed, for a variety of reasons, that they did not identify with labels such as ‘victim’ or ‘survivor’ and would like the onus to instead remain on the perpetrator’s behaviour. Advisors unanimously preferred ‘person targeted by sexual harassment’ as they felt it clearly assigned responsibility to the perpetrator, and did not feel like a limiting, fixed identity label placed upon them.

The Workplace Respect Project resources now primarily use ‘person targeted by sexual harassment’, noting that other terms may be used interchangeably where appropriate, as determined by context.

This report also generally uses the term “person targeted by sexual harassment”, although “victim”, “survivor” and “victim survivor” are sometimes used as well. It is recognised that not everyone may identify with the preferred term and the use of this term is not intended to deny or diminish anyone’s experience, where it is not the person’s preferred terminology.

EXECUTIVE SUMMARY

In May 2021, the Commonwealth announced it would be providing \$5.514 million in funding to Western Australia (WA) over a four-year period (2021-22 to 2024-25) for the provision of legal assistance services for people experiencing workplace sexual harassment or discrimination. Workplace sexual harassment (WSH) is defined by Section 28A of the Sex Discrimination Act 1984 (Cth) as “when a person makes an unwelcome sexual advance, an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to a person.” People who have experienced WSH face many systematic, personal, and legal barriers if they decide to report the perpetrator, which means that an accurate estimate of WSH is largely unknown. Earlier trends and anecdotal evidence suggest that incidence is almost certainly higher than what has been reported in any existing literature. People who experience WSH suffer trauma and other psychological harm, physical and social deficit, and reduced quality of life. Some people are unable to work and experience a loss of productivity. Further, WSH contributes to a colossal loss of resources and revenue in Australia.

Key issues identified following the review of the literature included the subjective and contextual nature of WSH explanations and the complex and confusing legal and regulatory schemes regulating WSH in Australia that survivors and employers are required to understand and navigate. Changes are required to provide greater clarity as the WA legislation inconsistently and inadequately defines and deals with WSH as an issue. If employers and regulators are to meet their responsibilities, clear and consistent definitions of concepts is essential. Failure to define sexual harassment in the regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.

What emerged while synthesising evidence was the interplay between demographics, namely, gender, sexuality, race/ethnicity, the workplace/industry, and other sociocultural variables and WSH in Australia. WSH occurs in a range of contexts, workplaces, and environments, and often, those most at risk of harm hold significantly less social privilege than the perpetrators. Women are disproportionately impacted by the issue of WSH and men are perpetrators at a disproportionately higher rate than other genders. Certain industries may be at greater risk of creating a culture of acceptance and complacency around WSH and culture change is needed to address covert and overt incidence of WSH.

Reporting of WSH becomes increasingly perilous for the person who has experienced WSH, due to the risk of retaliatory behaviour from the perpetrator, the organisation, and in some cases, the person’s wider social circle. Reasons for not reporting were vast; the majority were person/social centred (e.g., fear of reputation, loss of work) and systemic (i.e., due to the many different pieces of legislation, it becomes difficult for workers or employers to navigate). Reporting WSH is frequently re-traumatising for survivors.

Evidence suggests that workers who experience WSH value information and support from sources independent of their employer. Legal assistance services cannot prevent WSH per se, however they are in a position to offer effective, responsive care to people who have been targeted by WSH.

We noted consistency across the various sources of data presented in this report – key stakeholders discussed the same crucial themes, and these ideas were also identified in our review of the literature. Collating these data, we present key learnings and developed several recommendations for action – see below.

Organisations providing legal assistance
Recommendation 1: Ensure legal assistance services are knowledgeable about the barriers to seeking help following an incident of WSH – including how these differ across regional/rural and metropolitan areas of WA.
Recommendation 2: Ensure staff providing legal assistance to people who have experienced WSH are trauma informed.
Recommendation 3: Ensure provision of an advocate with the same cultural background (to better support CARM persons and Aboriginal and/or Torres Strait Islander people). Ensure that information is available in languages other than English.
Recommendation 4: Legal assistance services should partner and/or provide warm referrals to other services to ensure a holistic, wrap-around model of care. This includes partnering with services that the client may already have relationships with (or who are operating in the same geographical area) to avoid isolation from prior supports.
Recommendation 5: Legal assistance services should partner with services that can aid clients with legal documents (to ensure correct form or allow access to technology).
Recommendation 6: Increase knowledge about legal assistance services – for example, using online information and resources.
Recommendation 7: Ensure client is aware of the options and pathways available to them and ensure they are presented with the cost and benefit of each option (precedents, likely length of the investigation, likely outcomes, and cost).
Recommendation 8: Improve or create comprehensive internal data capture systems to collect and collate information relative to legal needs.
Recommendation 9: Integrate lived experience voices – advisory groups, peer support, etc. to more effectively support people who have experienced WSH.
Recommendation 10: Develop resources for clients to provide clarity and their understanding of processes – e.g., legal framework in layperson terms; rights; legal pathways and outcomes; information specifically for vulnerable populations (designed in consultation with lived experience).

Workplaces and employees

Recommendation 1: Ensure a safe and respectful workplace – a culture of equality, diversity, inclusivity and WSH intolerance. How this is implemented and tracked will depend on the organisation, however each workplace should be expected to uphold these values, deliver training and other relevant resources, and specify how they will measure their performance.

Recommendation 2: Educate across the whole-of-organisation about respectful behaviour and what is expected of employees to keep each other safe at work.

Recommendation 3: Ensure the organisation is aware of the nature and prevalence of WSH – which includes covert, less ‘serious’ behaviours that constitute harassment and make others uncomfortable.

Recommendation 4: Develop and implement clear policy and guidelines for WSH – including the consequences and sanctions for people who breach WSH policies. Guidelines should also present pathways to reporting WSH - for people who have experienced harm, but also for bystanders of WSH.

Recommendation 5: Create a workplace culture that ensures transparency and accountability by ensuring that managers and leadership uphold values and policies relative to WSH. This could include offering additional training and resources to employees in management roles.

Recommendation 6: Prioritise the health and safety of any employees who experience WSH (e.g., EAP, changes to working arrangements to **ensure** the person targeted by WSH and perpetrator do not share work or physical space).

Recommendation 7: Deliver compulsory training relative to WSH that is delivered at induction and thereafter, regular intervals (e.g., biannually). Training should be developed with experts, or purchased through an appropriate, credible source.

Recommendation 8: Collect and track WSH data.

Recommendation 9: Reject use of NDA in WSH cases (unless requested by the victim) as these contribute to a culture of silencing.

Recommendation 10: Ensure there are strong sanctions imposed on employers and employees who perpetrate harm or do not appropriately respond to WSH. Sexual harassment (and assault) are grounds for immediate dismissal.

Systems/legal reform

Recommendation 1: Revise definitions of WSH and ensure consistency across definitions.

Recommendation 2: Ensure that Police, lawyers and judiciary to be educated and trauma-informed.

Recommendation 3: Ensure that WSH laws explicitly prohibit WSH with guidelines, codes of conduct, and regulations.

Recommendation 4: Protection, empathy and support for people who have experienced WSH during court proceedings (e.g., peer support, service animals, advocate, etc.).

Recommendation 5: A review of the payment of legal costs.

Recommendation 6: Increase the maximum payout for a WSH.

Recommendation 7: Increase formal reporting time limits for people experiencing WSH to ensure that people are able to address social and psychological needs.

Recommendation 8: WSH criminal cases to be judge only – criminal and civil judges having trauma-informed specialist training.

1. INTRODUCTION

“Workplace sexual harassment is not inevitable. It is not acceptable. It is preventable.”

(Sex Discrimination Commissioner, Kate Jenkins)

After enduring months of torment, Jessica¹ was called into a meeting with management, in which she thought she would be able to speak about the workplace sexual harassment (WSH) she had endured, perpetrated by a co-worker in a senior role. However, what ensued was an abrupt meeting where her boss described a situation of ‘it’s either you, or him’. Despite arguing that she was a person targeted by WSH, her manager was firm, stating “the company was built by [the perpetrator] and you are expendable”. Jessica was given two weeks’ pay and removed from the workplace an hour later – she was fired because the perpetrator’s reputation was the greatest priority from the perspective of the organisation.²

While Jessica’s story is unjust and disturbing, it is not unique. WSH is a silent epidemic – not only in Australia, but across the globe. In May 2021, the Commonwealth announced it would be providing \$5.514 million in funding to Western Australia (WA) over a four-year period (2021-22 to 2024-25) for the provision of legal assistance services for people who have experienced WSH or discrimination. Circle Green Community Legal (Circle Green) is the lead agency delivering the Workplace Sexual Harassment and Discrimination Legal Services Project (referred to as “the Workplace Respect Project”) in Western Australia.

The Workplace Respect Project has the following seven objectives:

1. Identifying current or emerging legal need
2. Developing responsive intake pathways
3. Delivering legal advice and legal assistance services
4. Delivering community legal education
5. Developing pro bono resources
6. Capacity building within the legal assistance sector
7. Undertaking project outcomes measurement, impact, and evaluation

This report aims to address Objective 1, where the purpose is to identify and understand the prevalence, nature, and occurrence of WSH and discrimination in WA, but also, Australia more broadly. A synthesis of the available evidence will allow us to extrapolate current, or emerging, legal

¹ Not her real name.

² <https://www.news.com.au/finance/work/woman-fired-after-reporting-horror-sexual-harassment-from-boss/news-story/>

needs relative to WSH, and identify approaches that could assist to prioritise the provision of legal assistance services to people targeted by WSH and achieve the greatest social impact. Ultimately, this report sought to build a solid evidence base for identifying legal need (based on existing, available evidence) and how legal assistance services and other relevant organisations can position themselves to better care and respond to people who have experienced WSH. The latter parts of this report draw on the lived experiences of women in WA to better inform the identification of legal need and the role of legal assistance services.

Methods

An integrative literature review method was used to assess, critique and synthesise the existing literature relative to WSH. The synthesis of evidence comprised a comprehensive review of peer-reviewed articles, books and other published text ('grey literature') produced by both government and non-government organisations.

This evaluation consisted of a mixed-methods approach, employing both quantitative and qualitative research methods. Quantitative data comprised administration information collected between the 13th of January 2021 and the 11th of October 2022, while qualitative data was interview data collected from stakeholders with lived experience (LE) of WSH, and staff from Community Legal Centres (CLCs). Case Studies and quotes were provided by Circle Green from clients, and these have been incorporated into Chapter 3 of this report.

Structure of this report

The Workplace Respect report is structured as follows:

Chapter 1: Introduction

Chapter 1 presents the scope of work, the research methodology, and the overall structure of the report.

Chapter 2: Literature Review

Chapter 2 presents a review of the literature with respect to WSH; the nature and prevalence of WSH, reporting, structural and legal barriers, health and financial consequences for people who have experienced WSH, and responses to WSH.

Chapter 3: Stakeholder Feedback

This Chapter describes feedback obtained from people with LE of WSH, CLC staff and other organisations offering legal assistance in response to WSH and discrimination, including the consequences of not addressing unmet legal needs.

Participants discussed the personal, structural and legal barriers they, and others, have encountered when seeking help for WSH, and they discussed recommendations for organisations, CLCs and the justice system for reducing barriers to accessing legal assistance services or pursuing their legal

rights. Case studies collected by Circle Green give additional insight into the various types of WSH cases, legal assistance and outcomes resulting from WSH claims.

Chapter 4: Recommendations

Chapter 4 offers recommendations for employees, people experiencing WSH, organisations, organisations providing legal assistance, and the judicial system, based on the literature review and data collected from key stakeholders.

2. LITERATURE REVIEW

Sexual harassment can take many forms. It can be overt, covert or subtle. It can be repeated or a one-off incident (Australian Human Rights Commission [AHRC, 2022]). Sexual harassment can cause harm to the person it is directed at, as well as anyone who witnesses the behaviour. Due to the insidious and threatening nature of WSH, incidence is often not known, and people targeted by WSH do not feel safe to come forward and share their experiences (AHRC, 2020).

We utilised the findings of three key publications throughout this review: 'Enough is Enough' - Sexual harassment against women in the FIFO mining industry, hereafter, the Inquiry (a WA-specific inquiry into the Mining Industry; The Community Development and Justice Standing Committee of the Legislative Assembly of Western Australia [CDJSC WA, 2022]); Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (AHRC, 2022); and Respect@Work: Sexual Harassment National Inquiry Report (AHRC, 2020). These reports offer key statistics relative to an Australian context and highlight the severity of WSH across the country.

The WA Inquiry (CDJSC WA, 2022) is currently the only WA-specific inquiry into WSH published in our State and demonstrates the magnitude of the current problem – the severity of the WSH, the complacency of the WA fly-in-fly-out (FIFO) mining industry, key barriers to reporting, and the long-lasting consequences for people who have experienced WSH. We imagine that the mining industry are not the exception – WSH behaviour occurs everywhere; frequently, and across industries and organisations.

This review aimed to gather a better understanding of WSH in the context of WA, however, data were not made accessible, despite our requests to various agencies and organisations. Therefore, we sought to broaden the scope to a national level, with the hope that other States or Territories could provide some more context and increase our understanding of the issue. We sought to collect data relative to the prevalence and nature of WSH and discrimination, along with moderating factors; trends in relation to frequency, nature, reporting, action and barriers for people who have experienced and/or are experiencing WSH and discrimination. We also attempted to understand how services and supports external to a person targeted by WSH's organisation might best respond to their experiences of WSH.

People who have experienced WSH face many systematic, personal, and legal barriers if they decide to report the perpetrator, which means that an accurate estimate of WSH is largely unknown. Earlier trends and anecdotal evidence suggest that incidence is almost certainly higher than what has been reported in any existing literature. Evidence regarding the best approach to effectively responding to WSH is lacking. For people who choose to seek legal advice, private law firms are not easily accessible due to costs and/or other barriers. This means that legal assistance services are in a unique position to offer valuable, useful support that aims to effectively respond and reduce further harm and victimisation. To do so, evidence is needed to extrapolate the nature and prevalence of

WSH, and the current consequences faced by people if they decide to pursue a report against their perpetrator. Additionally, identifying the various barriers that people targeted by WSH face following WSH provides additional information which will inform the recommendations of this report.

Defining workplace sexual harassment

Several legal and social definitions have been stated to attempt to communicate this behaviour for perpetrators, witnesses, and people targeted by WSH. Some of these other definitions of WSH are detailed in Table 1. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex (Dahl & Knepper, 2021). For instance, sexist hostility, unwanted attention, harassment through social media, groping, assault, and offering to trade sex for favours.

The key differences in the definition in the WA legal context are between the definition in the Sexual Discrimination Act (SDA) and the EOA (Equal Opportunity Act), notably the disadvantage test in the EOA – see below.

Table 1. Definitions of workplace sexual harassment

Definition	Source
<p>For the purposes of this Act, a person sexually harasses another person (the person harassed) if:</p> <p>(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or</p> <p>(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;</p> <p>in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.</p>	<p>Section 28A of the Sex Discrimination Act 1984</p>
<p>Under the Act sexual harassment includes an unwelcome sexual advance or request for sexual favours or unwelcome conduct of a sexual nature. The harassed person must have reasonable grounds to believe that if they reject the advance, refuse the request or object to the conduct, they will be disadvantaged or they are in fact disadvantaged. Sexual harassment does not need to be repeated or continuous, it can involve a single incident.</p> <p>Sexual harassment can take many forms including, but not limited to:</p> <ul style="list-style-type: none"> • Unwelcome physical touching, hugging or kissing • Staring or leering at someone or at parts of their body • Suggestive comments or jokes • Insults or taunts based on sex • Sexually explicit pictures, e-mails or text messages • Intrusive questions about a person's private life or body. 	<p>Equal Opportunity Act 1984</p>

Sexual harassment is any unwanted, unwelcome, or uninvited behaviour of a sexual nature which could be expected to make a person feel humiliated, intimidated, or offended.	Australian Human Rights Commission (AHRC, 2022)
Sex-based and sexual behaviour that is unwelcome, unreasonable, and offensive to its recipient.	International Labour Organisation
Unwanted sex-related behaviour at work that is appraised by the recipient as offensive, exceeding her resources, or threatening her well-being.	Fitzgerald et al. (1997)
Behaviour that derogates, demeans, or humiliates an individual based on that individual's sex.	Berdahl (2007)
Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature that "explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment".	Equal Employment Opportunity Commission

Workplace sexual harassment legal framework

"All companies told us that staff safety was their highest priority. The level of sexual harassment in their companies indicates that this was not the case." (Western Australia, Parliament. Legislative Assembly).

Safe working environments without harm from WSH is a human right. Australia's legal framework with respect to WSH lends effect to broader international obligations to prevent sexual harassment and other forms of gender-based violence and discrimination. The recommendations presented in the Respect@Work: National Inquiry (AHRC, 2020) report are in line with Australia's international commitments, human rights obligations, and standards against violence and discrimination at work.

Domestically, there are three key legal and regulatory schemes regulating WSH in Australia:

- anti-discrimination laws;
- the Fair Work system; and
- work health and safety (WHS) laws.

There is also criminal law, with obvious connections to incidents of sexual assault and related offences.

Federal context

Laws prohibiting sexual harassment exist at the federal level and at each state and territory level in Australia. At the federal level, sexual harassment is prohibited in the Sex Discrimination Act 1984. The Sex Discrimination Act, together with state and territory anti-discrimination laws, provide the primary framework for understanding and addressing sexual harassment as a form of sex discrimination. The Sex Discrimination Act makes sexual harassment unlawful in certain areas of public life, and this includes employment. Employers can be held vicariously liable for sexual harassment committed by their employees or agents if they failed to take 'all reasonable steps' to

prevent the sexual harassment from occurring. A person can make a complaint of sexual harassment in employment to the Commission. If a complaint is unable to be resolved or is finalised for some other reason, a person may take the matter to the Federal Circuit and Family Court or Federal Court for determination.

In March 2023, the Fair Work Act was amended to prohibit WSH and therefore expanded the previous protections. The protection currently applies to workers, future workers, and people conducting a business or undertaking. The Commission also holds greater power to deal with WSH, including dealing with disputes using conciliation, mediation, or creating recommendations or opinions. If a dispute is unable to be resolved, the Commission may be able to deal with the problem by arbitration and make an order for compensation where arbitration is agreed by both parties. If there is no agreement (which often occurs), the applicant must pursue their claim in the Federal Circuit and Family Court of Australia or the Federal Court of Australia after a certificate has been issued.

State (WA) context

In WA, the key State legislation is the Equal Opportunity Act 1984, which establishes WA's Equal Opportunity Commission (EOC). The Act's key function is to provide an avenue to resolve and offer remedies for cases of discrimination in employment and the workplace. The EOC is limited to conciliating complaints but also acts to eliminate workplace sexual harassment. Additionally, the State Administrative Tribunal (SAT) make decisions regarding WSH if a complaint is not able to be resolved at the EOC level.

Until recently, different government entities were responsible for regulating different industries in relation to work health and safety issues. Previously, WA was an outlier in not having adopted the Model WHS laws and prior to 2020, most WA workplaces were regulated according to the Occupational Safety and Health Act 1984 (OSH Act), which set out general provisions to maintain safe, healthy and hazard-free workplaces. The WorkSafe WA Commissioner was responsible for the administration of the OSH Act and its regulations and monitored workplaces for compliance of the Act.

As well as the obvious confusing nature of legal and regulatory schemes, there is, understandably, uncertainty over what obligations should apply where, to whom, and how³, prevails. As the Inquiry (CDJSC WA, 2022) suggests, this uncertainty, and therefore, confusion, for both employers and employees, is a result of:

- sexual harassment being defined differently across Commonwealth and State anti-discrimination legislation;
- work health and safety legislation have no explicit, definite definition of sexual harassment;

³ Education and Health Standing Committee, The impact of FIFO work practices on mental health, June 2015, p. 41.

- sexual harassment was previously never considered a work health and safety issue; and
- government bodies are currently under-equipped to address the nature and scale of the issue across an industry, let alone across all sectors.

In regard to law enforcement, the WA Police Force has the primary role in investigating criminal aspects of sexual assault on work sites, but the responsibility for ensuring a safe workplace – including being free from sexual harassment and assault – sits with employers and safety regulator.

A consistent theme emerging from submissions and consultations provided to the Respect@Work Inquiry (AHRC, 2020) was that the interaction between the schemes is complex and confusing for both people targeted by WSH and employers to understand and therefore, navigate. Changes are required to provide greater clarity. Legislation providing anti-discrimination and employment processes had been amended in a bid to reduce WSH, most States and Territories follow Safe Work Australia's Model Work Health and Safety Act 2011 framework, which imposes a duty to minimise hazards to workers (which comprises WSH).

The WA legislation inconsistently and inadequately defines and deals with workplace sexual harassment as an issue. The need for clear and consistent definitions of concepts is essential if employers and regulators are to meet their responsibilities.

Nature and prevalence of workplace sexual harassment

Workplace sexual harassment is prevalent and pervasive; it occurs in every industry, across locations and at every level, in Australian workplaces. The Australian Human Rights Commission (AHRC) released the Time for respect: Fifth national survey on sexual harassment in Australian workplaces in 2022 to investigate the prevalence, nature, and reporting in Australian workplaces (where respondents felt comfortable disclosing) using a sample of over 10,000 Australians. The key findings of the survey were startling and highlighted the high frequency of WSH, but also the calculated and cunning approach

Over the past 12 months, about 1 in 5 Australians (19%) had been sexually harassed at work.

Only 17% of people reported the incident.

perpetrators employed to harass (and in some cases, assault) their colleagues.

The AHRC (2022) found rates of WSH were high in Australian workplaces - in the last 12 months, **about one in five Australians (19%) had been sexually harassed at**

work; two in five women (41%) and one in four men (26%) reporting they had experienced workplace sexual harassment in the last five years. Of those in the workforce, one in two people had been either a person targeted by or bystander of sexual harassment, and two in five people said they were aware than others in their workplace had experienced sexual harassment. In more than half of cases (51%), the sexual harassment was repeated and ongoing for more than six months. Of those who had

experienced sexual harassment in the workplace, **only 17% of people reported the incident** (AHRC, 2022).

The most common types of WSH experienced included:

- Sexually suggestive comments or jokes;
- Intrusive questions about a persons' private life or physical appearance;
- Inappropriate staring or leering that made a person feel intimidated;
- Unwelcome touching, hugging, cornering or kissing; and
- Inappropriate physical contact.

Peoples' most recent experience of WSH commonly occurred in the following places:

- Workstations or place where the person targeted by WSH works (38%); and
- Workplace social areas for employees such as breakrooms (23%).

Sexual harassment has risen to be the second highest area of complaint to the Equal Opportunity Commission (EOC) and also comprises about a quarter of complaints accepted by the Australian Human Rights Commission (AHRC, 2022) and the proportion of sexual harassment complaints had started to climb while the #MeToo movement gained traction, since this had likely empowered more people targeted by WSH to

come forward with their stories (Baum, 2019). In 2018, Safe Work Australia estimated that one in two people had been exposed to sexual harassment in the workplace over the last five years – inclusive of people targeted by WSH and bystanders⁴. Of those who had experienced WSH, **two in five (41%) reported that**

Witnessing and hearing about WSH (AHRC, 2022)

41% of respondents witnessed or heard about WSH.

People who had experienced sexual harassment themselves were more likely to witness or hear about sexual harassment of others in the workplace (possibly because of hypervigilance).

Only 1 in 3 bystanders in 2022 took action against WSH (men slightly more likely).

The most common reasons cited for not taking action were: other people were supporting and assisting the person who had experienced WSH (41%), and the person who had experienced WSH asked the bystander not to take action (21%, with women more likely to nominate this reason than men).

11% of people didn't think the incident was serious enough to intervene.

they were aware that others known to them had experienced the same form of WSH and more than half of these people reported the WSH as ongoing (more than six months).

⁴ <https://www.safeworkaustralia.gov.au/doc/workplace-sexual-harassment-statistics-infographic>

Two in five (41%) reported that they were aware that others known to them had experienced the same form of WSH.

At the State level, The Inquiry (CDJSC WA, 2022) Report shone a light on WSH committed against employees within WA FIFO mining sites. Horrendous stories about the abuse and harassment women had experienced in their workplaces were presented to parliament, continuing the conversation of WSH. What we still do not know (and are unlikely to ever identify) is an accurate estimation of the number of people who have experienced WSH in this

industry, or other industries across WA. While the inherent limitations of data collection (and the nature of the issue) make it difficult to get a precise reading of the prevalence of harassment in the workplace, the initial findings show clearly that it is a problem is serious, and it must be urgently addressed.

The Inquiry (CDJSC WA, 2022) was developed based on the submissions and testimony from 55 individuals – 47 of those being women. All 55 individuals referred to personal experiences of sexual harassment or worse in mining situations. But those people also told us about things that happened to other people on site. Many submissions⁵ were excluded from this Inquiry as their experience of WSH ‘related to events from many years ago’. The Western Mining Workers’ Alliance (WMWA) provided testimony and a submission to the Inquiry (CDJSC WA, 2022) which comprised survey findings submitted from their own workers (Champions of Change Coalition, 2022). WMWA’s survey highlighted that a significant proportion of workers were subject to a range of WSH: physical assault to unwanted sexual advances, and inappropriate conversation or behaviour. Of their survey participants, 36% of women and 10% of men said they had experienced some form of sexual harassment within the last 12 months. Most concerning, nearly **one in four female survey participants reported that they had experienced physical acts of sexual assault and two-thirds had experienced verbal sexual harassment** while working in the WA FIFO mining industry. One in four women is comparatively bad to the rate of men targeted by WSH, however this is a male dominated industry (in 2018-19 women made up merely 16% of the workforce; AHRC, 2020), meaning women are facing extremely disproportionate rates of WSH.

Nearly one in four female survey participants reported that they had experienced physical acts of sexual assault and two-thirds had experienced verbal sexual harassment while working in the FIFO mining industry.

⁵ No note of how many submissions were excluded.

The Inquiry did not set out to quantify the level of harassment in mining, or to rank that industry within the broader workforce, but present key findings relative to the nature of WSH in WA FIFO mining organisations. Some of these key findings include:

- The FIFO mining industry in WA has major risk factors for WSH including poor culture (e.g., acceptance of poor behaviour, misuse of alcohol or other drugs), gender inequity and power disparity in the workplace (i.e., managers/supervisors have unfettered power over decisions).
- Managers and supervisors sought sexual favours from women to gain promotions or permanent employment – **32% of women had received requests for sexual favours, and that 22% of women had such requests linked to their working conditions or career advancement.**
- Even when people are found to have behaved unacceptably, there has been a practice of **‘moving them on’ rather than dismissing them**, allowing them to continue in the industry.
- Risk of sexual harassment increased by excessive alcohol consumption.
- The size and arrangements at a site or in a company will influence WSH – both on the ground and how that company or site responds.
- Company processes are often ineffective; it appeared that companies were more focused on **protecting companies and their reputations** than serving the best interests of people who have been targeted by WSH.
- There is no evidence that the mining industry is adequately capturing data on third-party or bystander reporting.
- The remote nature of many the FIFO mining sites means **workers did not have the same access to support networks** – including legal supports.

Nature of WSH (CDJSC WA, 2022)

Types: The most common types of WSH were sexually suggestive jokes/comments, followed by intrusive questions, inappropriate staring and unwelcome physical contact. The more severe the sexual harassment is, the less likely it would happen. These offenses were almost always against women, compared to men.

Duration: 20% of people who had experienced repeated WSH reported that it had been ongoing for more than six months, with 35% reporting WSH for more than 2 years. Half of people harassed within the last 5 years reported ongoing harassment for more than a year.

Location: WSH predominantly occurred at the work station (38%), but was also common in social areas (23%), at social events (15%) and in meetings (7%).

Witnesses: 31% reported having a witness, but only 26% reported having a witness that intervened. Most common actions taken by witnesses were showing sympathy and empathy to the person who has experienced WSH (33%), talking to the harasser (18%), providing advice to the person who have experienced WSH (20%) and actually reporting the harassment to the employer (14%).

Impact: The proportion of people that reported a negative impact on mental health/stress in 2022 was 67%, with 57% reporting negative impact on self-esteem/confidence.

- Mining companies admitted they have **often not reported incidents** of sexual harassment and assault that have occurred in their operations and on their sites.
- WA's work, health and safety regime are complex, and until recently, the mining industry was covered by separate legislation.

Vulnerable groups

Examining factors that increase peoples' vulnerabilities to experiencing WSH is critical for devising interventions but also for ensuring affective responses by organisations and legal aid services.

Although there are certain cohorts known to be more impacted by WSH, individual differences must also be considered when ensuring organisations (especially legal assistance services) are able to effectively respond.

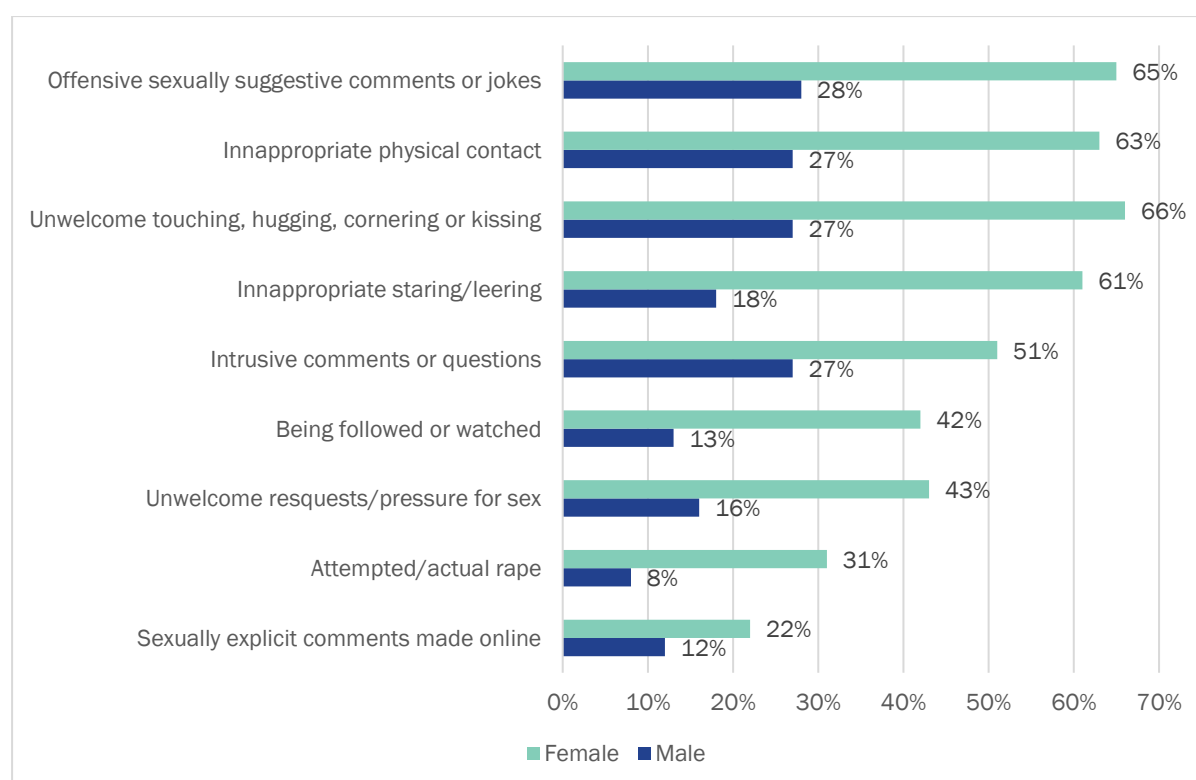
Sexual harassment and sexual violence are gendered issues. Gendered disrespect and inequality, naturally, enables a culture of violence against women, perpetrated by men. Over the lifespan, women are survivors of sexual-related harm⁶ at disproportionately higher rate than men (89% and 64%, respectively). This prevails in the workplace. Two in five women (39%) and one in four men (26%) reported to the AHRC (2022) they had experienced workplace sexual harassment in the last five years.

77% of people who had experienced WSH were harassed by a man; 91% of women and 55% of men were harassed by men.

Most harassers are men; overall, **77% of people who had experienced WSH were harassed by a man** (AHRC, 2022). Of those who experienced workplace sexual harassment in the last 5 years, 91% of women and 55% of men were harassed by men, whereas 9% of women and 44% of men were harassed by women. The AHRC (2022) presented data showing the large discrepancies between male and female employees relative to different types of WSH – see **Error! Reference source not found.** Across all types of WSH, women were more harmed than men.

⁶ Includes outside of the workplace.

Figure 1. Rates of different types of WSH experienced by men and women (AHRC, 2022)



Women were more likely than men to have been harassed by an individual harasser (64%, compared to 44% of men), and **men were more often harassed by multiple harassers** than women (14% of men, compared to 9% of women experienced two harassers; 5% of men, compared to 3% of women experienced three harassers; AHRC, 2022).

Female employees working in Australia experience gender inequality across all levels of the social ecology, with leadership positions most often dominated by men (Smith et al., 2019)⁷. Moreover, women are more often employed casually or underemployed (Australian Bureau of Statistics [ABS], 2021), face extremely high rates of discrimination in relation to pregnancy and parental leave (AHRC, 2014), operate in a highly gender segregated workforce, and suffer a significant gender pay gap (Smith et al., 2019). A significant amount of work has already been done to identify how gender inequality in work contributes to sexual harassment, for example, empirical evidence has shown that sexual harassment is more likely to occur under three interrelated conditions:

- where the workplace is male-dominated (Australian National Research Organisation for Women's Safety, 2018);

⁷ Of Australia's non-public sector employers with 100 or more employees, women comprised just 28.1% of board members, 13.7% of chairs and 17.1% of CEOs: Workplace Gender Equality Agency (WGEA), Five Years of Workplace Gender Equality Agency Data, WGEA, Sydney, 2018.

- with tolerant supervisors, such as managers who ignore the problem or discourage reporting (Smith et al., 2019); and
- in organisations with tolerant climates, where it is perceived that there is personal risk for those who complain, or that complaints won't be taken seriously (Smith et al., 2019).

The Inquiry (CDJSC WA, 2022) heard police had investigated 23 allegations of sexual assault against women on WA mines in the last two years, a male-orientated workplace with tolerant managers who discouraged reporting – a workplace with a whole-of-organisation tolerance to sexual violence against women. It was suggested that poor culture, gender inequality and power disparity in the workplace perpetuated a culture that failed to protect women.

As well as being a gendered issue, perpetrators of WSH commonly target people who have other, intersecting characteristics that increase their vulnerability to harm. Traditionally, WSH studies have focused only on gender, and have disregarded the role other variables, such as race, play in mediating risk. In other words, an intersectional approach to analysing WSH is warranted and necessary. Through an intersectional lens, everyone has multiple social identities, each with differing degrees of privilege. For example, being white, cis-gender and male will have more “privilege points” than being black, transgender and female. Thus, WSH can often be driven by both sexual, and racial discrimination (Bailey, 2020).

As well as being a gendered issue, perpetrators of WSH commonly target people who have other, intersecting characteristics that increase their vulnerability to harm.

People who face additional harm resulting from WSH include:

- Youth and younger people (aged between 15–29);
- The LGBTQIA+ community (diverse sexual orientations and gender diverse persons);
- Aboriginal and/or Torres Strait Islander peoples;
- Culturally and linguistically diverse persons; and
- People with disability.

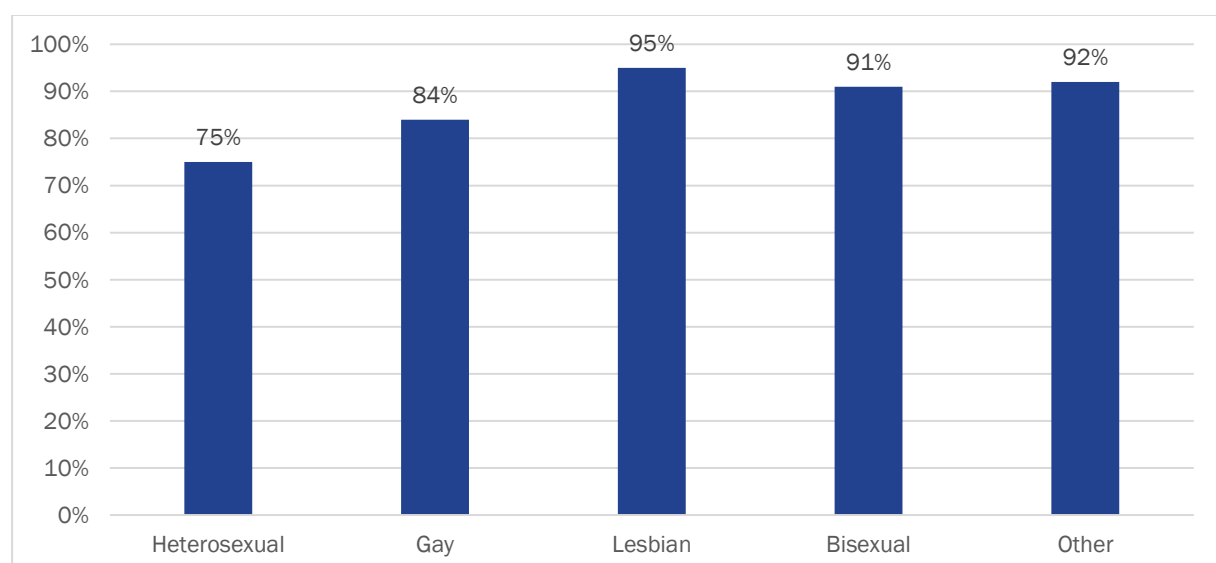
Aboriginal and Torres Strait Islander people were more likely to experience WSH than non-Aboriginal and Torres Strait Islander people,

Aboriginal and Torres Strait Islander people were more likely to experience WSH than non-Aboriginal and Torres Strait Islander people, with 55% of Aboriginal and Torres Strait Islander women and 50% of Aboriginal and Torres Strait Islander men being affected compared to 39% and 26% of non-Aboriginal and Torres Strait Islander people, respectively (AHRC, 2020). This intersection is known as sexual racism, or racial sexual harassment (Cortina & Areguin, 2021).

Intersectionality may also underpin the WSH of LGBTQIA+ people, as an intersection between sexuality and gender (Figure 3). Concerningly, **67% of LGBTQIA+ people have experienced WSH in the last 5 years**, compared to 33% of heterosexual/cis gendered people (AHRC, 2022). Women and people a part of LGBTQIA+ community (e.g. gender diverse persons) all deviate from conservative, harmful ideologies of masculinity, and thus are often targeted by offenders committing WSH. The motives behind WSH against minority groups may be partly governed by degrading those who don't exhibit or embody harmful 'traditional', heterosexual male gender roles. It has been theorised that WSH is a method of displaying power and dominance, a way of protecting the societal privileges associated with being male in a patriarchal society (Cortina & Areguin, 2021). This theory supports the high prevalence of WSH against women, and more vulnerable people, in male-dominated industries. Rio Tinto (Elizabeth Broderick and Co, 2021) and Chevron (Intersection, 2022) have each recently released an externally-conducted review, examining the prevalence and impact of sexual harassment, bullying and discrimination within their respective organisations. It was reported that 11.2% of Rio Tinto employees and 30% of Chevron employees had experienced WSH in the five years prior to collecting survey data. In the case of the Rio Tinto review (RTR), demographic factors such as **gender, age and sexual identity were shown to play a role in determining risk of WSH**, consistent with the AHRC (2022) data. These groups are often 'picked on' because of their minority status, or witness harassment towards the groups they identify with. They often feel that they need to hide their identity, as they perceive themselves as a target for harassment based on their identity (Latham, 2020).

67% of LGBTQIA+ people have experienced WSH in the last 5 years, compared to 33% of heterosexual and cis gendered people.

Figure 2. WSH rates for different sexual orientations in Australia (AHRC, 2022)



Workplace industry

Analysis by the AHRC (2022) showed the five sectors with the highest rates of harassment were:

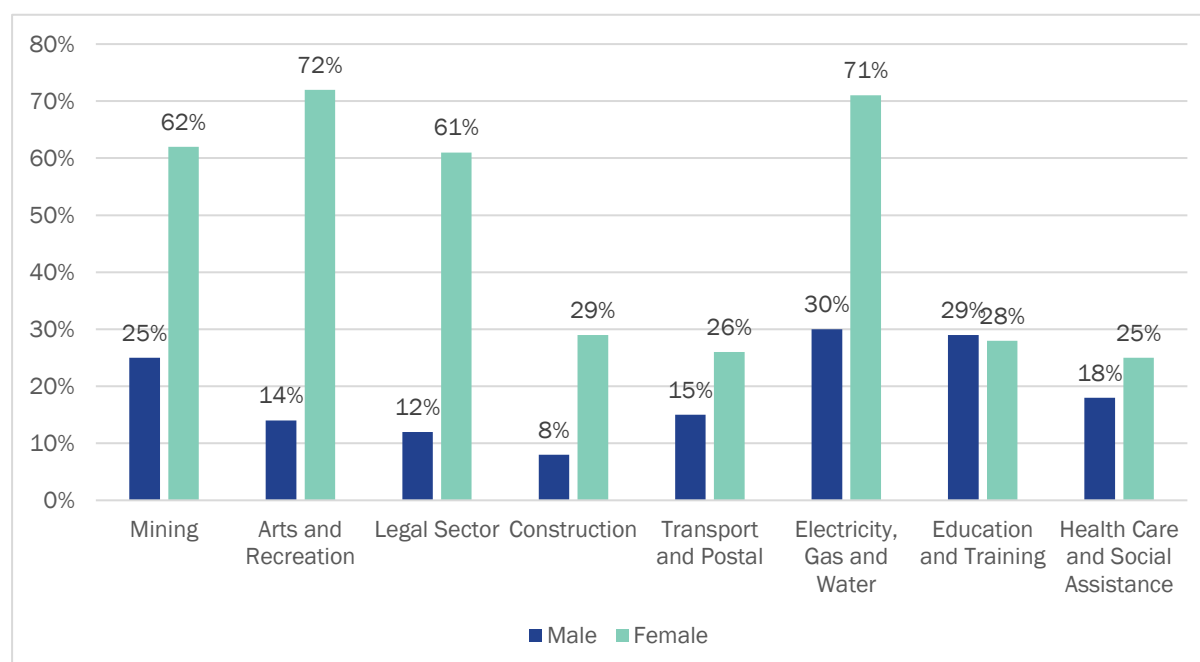
- Information, media and telecommunications (81%);
- Arts and recreational services (49%);
- Electricity, gas, water and waste services (47%);
- Retail trade (42%); and
- Mining (40%).

Similarly, the Australian parliamentary sector has experienced WSH in their workplace; at a rally outside Parliament House, Brittany Higgins avowed: *“My story was on the front page for the sole reason that it was a painful reminder to women that it can happen in Parliament House*

“My story was on the front page for the sole reason that it was a painful reminder to women that it can happen in Parliament House and can truly happen anywhere.”
(Brittany Higgins)

and can truly happen anywhere”. Indeed, 61% of women compared to 12% of men in the Australian legal sector have experienced WSH (Szoke, 2021). WSH risk factors identified in higher-education organisations were precarious work, toxic academic masculinity, a lack of active leadership and a hierarchical organisation structure (Bondestam & Lundqvist, 2020). The disparity between male and female WSH in industry highlights the issues of providing this information without regard for gender - this is shown in Figure 3. Women face far higher rates of WSH than men in certain industries and vice versa, but this information vanishes when the data is averaged.

Figure 3. Female and male WSH rates in different Australian Occupations (AHRC, 2022; Victorian Courts, 2021)



Culture

All literature examined in this review reported higher rates of WSH in male-dominated occupations or jobs. This has been **attributed to a masculine, patriarchal workplace culture that places great emphasis on power dynamics, leading to power imbalances between the person who has experienced WSH and the perpetrator** (AHRC, 2018). Dahl & Knepper (2021) state that “a lack of women in power contributes both to a more sexually hostile work environment and to an increased fear of reporting illegal behaviour due to a fear of retaliation.”

The review report, *Set the Standard*, released on 30 November 2021, revealed the highly gendered culture of Parliament House and opportunities for change (AHRC, 2021). The review found that of people currently working in such contexts, over half had ‘experienced at least one incident of bullying, sexual harassment or actual or attempted sexual assault’, with women more likely than men to experience all of these incidents. The review identified systemic problems in Commonwealth parliamentary workplaces, including power imbalances, a ‘boys club

[WSH] has been attributed to a masculine, patriarchal workplace culture that places great emphasis on power dynamics, leading to power imbalances between the person who has experienced WSH and the perpetrator.

environment’, **alcohol use and poor workplace culture**. Making Parliament House a safe workplace is fundamental to creating both a more gender-equal parliament and ensuring parliament is an exemplar of best practice for other Australian workplaces. Members of Parliament represent Australia

– they need to uphold values of respect towards women – this includes ensuring perpetrators are held responsible for harm caused.

The legal sector, academia, mining, construction and the military are all male-dominated workplaces with significant rates of WSH. The Workplace Culture Report released by Rio Tinto accepted that there was a problem in their organisation. It told of women in the company's experience of **'everyday sexism, a corrosive and demeaning phenomenon which, when allowed to flourish, can be fertile ground for more serious sexual misconduct to occur.'** Society's understanding of harassment is starting to shift to the point where far more workers are recognising the more covert, day-to-day behaviour that constitutes harassment (Brown & Battle, 2020). The day-to-day, equally insidious harassment has often been 'put up with' in the workplace, however this largely undermines peoples' wellbeing, mental health, and capacity to do their job. Without a cultural shift towards respect and intolerance of WSH, both overt and covert forms of harm are not able to be addressed.

Consequences of workplace sexual harassment

As a human rights issue, WSH can have deleterious effects. People who have experienced WSH experience depressive symptoms, anxiety, suicidal thoughts, decreased job satisfaction, lower organisational commitment, work withdrawal, and ill physical health (Hardies, 2019; Rugulies et al., 2020). Organisational withdrawal can take place in the forms of absenteeism, tardiness, challenges delivering work or the contemplation of job quitting (Cortina & Areguin, 2021). Furthermore, some people who have experienced WSH develop post-traumatic stress disorder (PTSD), and cardiovascular reactivity (Cortina & Areguin, 2021). Relative to PTSD, WSH has been found to leave a residual "scarring" effect on people, resulting in decreased earnings for extended periods of time after the incidence(s) of harassment, due to increased sensitivity to job anxiety and disappointment (Cortina & Areguin, 2021). Such impacts on mental health have also been linked to harmful alcohol abuse.

Whilst the effect of WSH on mental health has been well studied, little research has examined the links between WSH and physical health. Some studies have suggested that WSH may result in headaches, exhaustion, sleep issues, gastrointestinal problems, nausea, respiratory issues, musculoskeletal pain, and weight loss and gain (Cortina & Areguin, 2021). More research is required to better understand the physical detriments caused by WSH. Undoubtedly, WSH results in significant negative consequences on the physical, mental, financial health and employment opportunities of people who have experienced WSH (AHRC, 2022). It is also important to note that witnesses of WSH have been shown to experience symptoms parallel to those of the actual people who have experienced WSH. This has been termed "ambient sexual harassment" (Cortina & Areguin, 2021).

Furthermore, it has been shown that WSH contributes to a colossal loss of resources and revenue, costing the Australian economy \$3.8 billion in 2018 (Deloitte, 2019). Loss of productivity contributed to the most (\$2.6 billion) loss of revenue. Of this, \$1,053 was lost for every person who had experienced WSH. The breakdown of lost productivity is as follows:

- Staff turnover (32%);
- Absenteeism (28%);
- Manager time (24%); and
- Other costs (16%).

Most concerning, loss of well-being for people who have experienced WSH was estimated to be \$249.6 million, or \$4,989 for every person affected (Deloitte, 2019). The economic and social burden posed by WSH is large. Despite its prevalence and impact, inadequate action is being taken by individuals, organisations, industries and governments. Indeed, the occurrence of WSH is often blamed on the actions of the person who has experienced WSH, with sexual assault and harassment culture and rhetoric echoing, “she was asking for it”, despite all the personal health effects – including negative outcomes associated with reporting WSH.

SUMMARY: Definitions, nature and prevalence, and consequence

Two key issues were identified – the subjective and contextual nature of WSH explanations and the complex and confusing legal and regulatory schemes regulating WSH in Australia that people targeted by WSH and employers are required to understand and navigate. Changes are required to provide greater clarity. The WA legislation inconsistently and inadequately defines and deals with workplace sexual harassment as an issue. The need for clear and consistent definitions of concepts is essential if employers and regulators are to meet their responsibilities. There continues to be concerns over non-existent, deficient, or conflicting definitions of sexual harassment in various pieces of legislation. There are inconsistent legal definitions of sexual harassment in different pieces of legislation applicable to addressing sexual harassment in WA workplaces, and the Commonwealth Sexual Discrimination Act 1984 contains the most satisfactory definition of sexual harassment in current legislation. Failure to define sexual harassment in the regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.

What emerged while synthesising evidence presented about the nature and prevalence of WSH is the interplay between demographics, namely, gender, sexuality, race/ethnicity, the workplace/industry and other sociocultural variables and WSH in Australia. WSH occurs in a range of contexts, workplaces, and environments, and often, those most at risk of harm hold significantly less social privilege than the perpetrators. The underlying commonality appeared to be power – people who experience WSH are often harassed by someone who holds more social power within the workplace; whether than be role-related (i.e., perpetrators who work in senior roles), or social-related (i.e., perpetrators who are white, heterosexual, cis-males). Women, people of colour, gender diverse persons, people with diverse sexualities, and Aboriginal and/or Torres Strait Islander people are at greater risk of experiencing harm from perpetrators of WSH. Women are disproportionately impacted by the issue of WSH and men are perpetrators at a disproportionately higher rate than other genders. Certain industries may be at greater risk of creating a culture of acceptance and complacency around WSH and culture change is needed to address covert and overt incidence of WSH.

The cost of WSH is incredibly high. People who experience WSH suffer trauma and other psychological harm, physical and social deficit, and reduced quality of life. Some people are unable to work, and experience a loss of productivity. Further, WSH contributes to a colossal loss of resources and revenue in Australia.

Reporting Workplace Sexual Harassment

For those who can report a perpetrator, many workplaces adopt outdated methods of combatting the concern raised, such as form-based reporting, which has shown to be ineffective. Victim blaming and psychological distress are two common outcomes of formal WSH reporting, which is usually known to

people targeted by WSH (and often a significant barrier to deciding to report). Ultimately, form-based reporting does not address the underlying issue: a toxic, power-dynamic-obsessed workplace culture (Bailey, 2020). The consequences that arise from WSH (including reporting and/or seeking legal action) are serious, economically, but most so regarding the mental and physical well-being of those impacted by WSH. By the time a complaint reaches an external reporting body the damage is likely already done – the person targeted by WSH has approached their workplace manager and the external reporting body is the last port of call. Often, the process of making a complaint involves damage to the relationship between the person targeted by WSH and the organisation and what is needed is the opportunity to conciliate complaints and reach an agreement between parties (Bailey, 2020).

Form-based reporting does not address the underlying issue: a toxic, power-dynamic-obsessed workplace culture.

Reporting trends

Sexual harassment is under-reported in Australian workplaces, despite its legal regulation over many decades. Evidence suggests that the majority of individuals who are subject to sexual harassment at work in Australia do not make a formal report or lodge a complaint (MacDermott, 2020).

The EOC releases annual reports on its operations, giving some insight into the state of employment equality in WA. It was revealed that in 2020-2021, sexual harassment complaints comprised over 20% (72 complaints) of all employment related complaints, ranking first in the top six grounds of

Sexual harassment is under-reported in Australian workplaces, despite its legal regulation over many decades.

complaints received in 2020-2021 (EOC, 2021). Out of the 72 complaints made, women submitted 60 complaints, whereas six were submitted by men. Those aged 18-24 experienced WSH most frequently, comprising 44% of all complaints made. This was, concerningly, followed by those

aged 13-17, 20%, and finally, 25-34 years (11.5%). Furthermore, sexual harassment was the fifth most received grounds of inquiry at 5%.

The ABS, AHRC and the EOC provide the most recent Australian WSH prevalence estimates. The ABS (2021b) have put together a new series of reports, exploring the nature and prevalence of sexual assault, sexual abuse, and sexual harassment in Australia. Four percent of sexual assault incidents⁸ took place in a work environment (for women experiencing sexual assault from men), and 10% of

⁸ Sexual assault is defined by the ABS as an act of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion, including any attempts to do this. Sexual assault excludes unwanted sexual touching, which for the purposes of the ABS survey is defined as sexual harassment.

women who experienced any kind of sexual assault by a male reported changing workplaces following the incident. Whilst not pertaining to workplace specific sexual assault, 13% of women who experienced sexual assault from a man reported their most recent incident to the Police, but were more likely to do so if they were physically injured and consulted a doctor or health care professional about their injuries. Approximately one-third (34%) of women who did not report the most recent incident of sexual assault by a male perpetrator to Police said it was because they did not regard the incident as a serious offence, which is concerning in the context of WSH, which, depending on the circumstances, could be considered a less of a serious offence than sexual assault.

The second ABS report (ABS 2021c) looked at sexual harassment specifically, but has no identifiable data about workplace-specific sexual harassment. There was also minimal data about the reporting of sexual harassment (e.g., rate of reporting, success of reporting, information about the reporting process etc.). The report did however state that 53% of women and 25% of men surveyed had experienced sexual harassment in their lifetime, and the prevalence of sexual harassment had increased between 2012 and 2016, for both men and women. The final report looked at sexual perpetrators and their criminal justice outcomes but contained no information about perpetrators of workplace-specific sexual assault or WSH.

The most recent AHRC Annual Report (2021-22) stated that 298 sexual harassment complaints were received by the AHRC, which accounted for 8% of all complaints submitted, half of all complaints submitted under the Sex Discrimination Act. There was insufficient data to accurately extrapolate the number of sexual harassment complaints that were also workplace related, however, of the 597 total complaints submitted under the Sex Discrimination Act, 438 of those complaints related to or took place in a work environment (73%). Therefore, there were somewhere between 139 and 298 WSH complaints submitted from 2021 to 2022 (between 4% and 8% of all submissions). Outside of WSH, the Annual Report stated that, of the 3736 complaints submitted, 3338 were finalised and 1819 utilised conciliation processes with a success rate of 62%. The commission considered this positive in the context of encouraging successful and amicable dispute resolution (AHRC, 2021-2022). The trends in WSH since the AHRC's first WSH report in 2003 are of concern, with increases in both the proportion of individuals experiencing WSH and the frequency of negative consequences associated with reporting WSH, as well as a decrease in the proportion of bystanders that take action (AHRC, 2022).

The EOC Annual Report for 2021-22 contained the following information on the nature and prevalence of sexual harassment complaints in 2020-21:

- 63 sexual harassment *enquiries* received in 2020-21 (5% of all enquiries) compared to 30 in 2021-22 (2.1% of all enquiries).
- 12.8% of discrimination *enquiries* received by the commission in 2021-22 were about sexual harassment (sixth most common type of enquiry).

- 72 sexual harassment *complaints* received in 2020-21 (12.8% of all complaints) compared to 33 in 2021-22 (6.4% of all complaints).
- The highest amount of work-related complaints (20.4%) were lodged on the ground of sexual harassment.
- Significantly more women lodged sexual harassment complaints than men in 2021-22 (women lodged 29 complaints, men lodged 4).

The drop in complaints and enquiries from 2020-21 to 2021-22 may be due to the COVID-19 pandemic and more people working from home – or perhaps the known inefficiency of reporting. This downward trend contradicts what was observed from the AHRC, but the sample size is clearly much smaller with far fewer WSH complaints coming to the EOC, compared to the AHRC.

In the USA, an anonymous survey-based program found that despite 1 in 28 people having experienced WSH, only 1 in 11,000 reported it to the Equal Employment Opportunity Commission, illustrating an issue of rampant underreporting (Dahl & Knepper, 2021). In Australia, it is estimated that fewer than 17% of people who have experienced WSH formally reported the WSH. Of those who reported, 17%-19% were consequently labelled as troublemakers, ostracised, victimised, ignored by colleagues or resigned (AHRC, 2018). Almost half of those who reported (45%) noted that no change occurred at their workplace. Furthermore, complaints made by women (55%) were more likely to be ignored than complaints made by men (31%). Table 2 displays perpetrator outcomes – concerning, consequence and action against perpetrators remains low, despite WSH being a serious misconduct and therefore, a valid reason for immediate dismissal. The lack of reporting raises questions about whether strengthening reporting protocols is the most effective way of eliminating WSH.

Table 2. Perpetrator outcomes (AHRC, 2022)

Perpetrator outcome	
No consequence	24%
No outcome	40%
Formally warned	16%
Informally spoken to	25%
Apologised	16%
Compensation	2%
Transferred	9%

In the reports released by Rio Tinto (Elizabeth Broderick and Co, 2021) and Chevron (Intersection, 2022), the proportion of people experiencing WSH who went on to report the harassment was very low (12.8% and 10%, respectively), and even fewer reported the harassment through the formal reporting channels (4.2% and 0%, respectively). Aboriginal and Torres Strait Islander employees

highlighted a lack of cultural safety in the reporting procedures. The most common reasons for not reporting WSH were: 'I didn't think it was serious enough', 'I thought people would think I was overreacting', and 'I thought there would be repercussions'. Interestingly, in the Chevron review, the top two reasons for not reporting WSH were associated with a lack of confidence in self-assessing the severity of the inappropriate behaviour, which was not the case for any of the top reasons for not reporting bullying or discrimination. The Chevron review revealed that 31% of employees had witnessed or heard about WSH occurring in the industry. In stark opposition to this statistic, 42% of people experiencing WSH reported having multiple, direct witnesses to their offence, which suggests that many individuals were unknowingly witnessing WSH.

Aboriginal and Torres Strait Islander employees highlighted a lack of cultural safety in the reporting procedures.

Reporting WSH (AHRC, 2022)

In 2022, **36%** of people who experienced WSH sought support or advice, with between the ages of 15 to 17 and 40 to 49 were the least likely to seek advice.

In Australia, both the AHRC and the EOC allow complaints about WSH to be lodged online through their websites. The AHRC website provides information about WSH from the perspective of a person who has experienced WSH and are seeking information and support and is easy to navigate. The website includes a wide range of articles/reports that provide information of what WSH is, how one can identify it within their workplace and how to report, as well as providing a number of real-world experiences, both positive and negative, written from the perspective of people who have experienced WSH. The viewer is easily and quickly directed to a page titled "Support for workplaces to prevent and address sexual harassment" (<https://humanrights.gov.au/about/news/media-releases/support-workplaces-prevent-and-address-sexual-harassment>). This then directs the viewer to a new website called "Respect@Work" (<https://www.respectatwork.gov.au/>) which provides lots of information on causes, demographics and prevention strategies for sexual harassment, as well as how to seek help for sexual harassment targets.

The Respect@Work website was developed in response to the AHRC's National Inquiry into Sexual Harassment in Australian Workplaces, which provides a comprehensive insight into the state of WSH in Australia. To lodge a complaint through the AHRC, all one needs to do is click "make a complaint" on the "complaint" page, and you are taken directly to a very comprehensive and easy-to-navigate complaints form, in which you are given the option to select "I believe I have been sexually harassed" as the reason for submitting the complaint. The commission then directly assess the complaint, and will either contact your place of work, or contact you directly (<https://humanrights.gov.au/complaints/make-complaint>).

The EOC provides information and resources about WSH similar to the AHRC, including lots of articles/reports that provide information about WSH, how one can identify it within their workplace and how to report, as well as providing a number of real-world experiences, both positive and

negative, written from the perspective of people who have experienced WSH. The website provides a sexual harassment fact sheet that provides a concise description of the rights and responsibilities associated with WSH and how to make a complaint

(<https://www.wa.gov.au/government/publications/equal-opportunity-commission-fact-sheet-sexual-harassment>). WSH complaints can be made directly to the commission by filling out the generalised EOC Complaints Form and selecting 'sexual harassment' and 'employment/work' as the type and location of offence. This can either be done through the website-embedded complaints form or by filling out the pdf form and emailing it to eoc@eoc.wa.gov.au (<https://www.wa.gov.au/service/community-services/social-justice-and-equity/make-discrimination-and-harassment-complaint>).

Barriers to reporting

Reporting of WSH becomes increasingly perilous for the person who has experienced WSH, due to the risk of retaliatory behaviour from the perpetrator, as well as the organisation. Furthermore, the reporter's job security and livelihood may be at risk, due to the position of power held by the perpetrator (Bailey, 2020). This fear of reporting due to the threat of retaliatory behaviour creates a "climate of sexual harassment" within an organisation (Bailey, 2020). Furthermore, a survey conducted by the Victorian Courts (Szoke, 2021) found that less than one in three (28%) organisations had documented policies that addressed WSH. However, as previously discussed, the efficacy of reporting as a method of decreasing WSH has recently been brought into question due to the ineffectiveness of this approach. In 2016, Ontario Canada passed Bill 132, which mandated all organisations to have a workplace harassment policy. Unfortunately, the Bill did not achieve its desired effect, and reluctance to report remained stable (Bailey, 2020).

People reporting WSH face many person/social barriers, especially those more disadvantaged.

Personal/social barriers

People reporting WSH face many personal/social barriers, especially those more disadvantaged. WSH may also intersect with precarious employment, creating another group at risk of WSH. Precarious employment is defined as "a multidimensional construct encompassing dimensions such as employment insecurity, individualized bargaining relations between workers and employers, low wages and economic deprivation, limited workplace rights and social protection, and powerlessness to exercise workplace rights" (Benach et al., 2014). Those in precarious job situations have little to no protection from retaliatory behaviour and are at greater risk of losing their employment if they choose to report WSH. The process of making a complaint, and holding the perpetrator accountable, may also be more difficult (AHRC, 2020).

Drawing on a large survey of their members, the Champions of Change Coalition (2022) found that 48% of women believed workers were not encouraged to report sexual harassment (with 11%

unsure); and only 24% said they believed they were supported through the reporting process. The report outlines well documented reasons for the prevalence of underreporting:

- the psychological and/or emotional impact of experiencing sexual harassment;
- fear of negative impacts on personal reputations and relationships;
- fear of being victimised or labelled ‘trouble makers’;
- fears for loss of immediate shifts and income, as well as longer-term career options;
- a workplace culture that normalises sexual harassment;
- a male-dominated workplace (women comprise only 19.1% of the workforce);
- managerial structures;
- close-proximity living arrangements of FIFO work;
- a belief that complaints will be mismanaged or have no satisfactory outcome;
- a lack of secure employment, especially for contracted or labour hire workers;
- a lack of awareness of reporting options or trust in the reporting system; and
- inadequate management or leadership in an organisation.

Whilst the report doesn't represent the state of WSH across the whole of WA, it showcases the patriarchal nature of WSH, the damage it inflicts on people targeted by WSH, and highlights the importance of cultural change. We can start to understand the barriers to reporting in WA based on these findings.

Reporting WSH (AHRC, 2022):

Rate: 18% of people who experienced WSH in the last 5 years made a formal report or complaint.

Behaviours reported: Sexually suggestive comments were most reported (26%), but made up only 16% of formal reports or complaints. Most frequent offending behaviours tended to be least reported. Actual or attempted sexual assault made up 1% of cases, but 62% of formal reports.

Process of making complaints: A large proportion of formal reports or complaints were made to a direct manager or supervisor (45%).

Outcomes: The most common outcome for people who had experienced WSH and made a formal report or complaint was the perception that the harassment stopped, however, 40% experienced negative consequences resulting from making a formal report or complaint, either being labelled a trouble-maker (19%), being ostracised (18%) or resigning (17%).

The majority of formal reports or complaints of WSH in the past five years were finalised in under one month. 28% of respondents said that harassment stopped after a formal complaint was made.

Positive outcomes included employer apologies (21%) and commendations for calling out the harassment (21%). Negative outcomes included ostracization, and further victimisation by colleagues (13%), resignation (13%), and being labelled a troublemaker (12%).

Consequences for the perpetrator: In 24% of cases, there were no consequences. Being informally spoken to (25%) was more likely an outcome if the person targeted by WSH was a woman. It was also more likely for the harasser to face no consequence if the one making the formal complaint was a woman. Resignations were more common where the person targeted by WSH was a man.

Changes to the workplace: 40% reported no changes to the workplace after the formal complaint was made. Women were more likely to see no change at their organisation after a formal complaint (45% of women, compared to 30% of men).

Reasons for not reporting: The most common reason for not reporting WSH was due to people believing that others people would think that they were overreacting or because they felt that it was easier to keep quiet. 42% stated that they didn't report as they did not think the incident was serious enough to be reported. Women were more likely (46%) than men to list this as a reason (36%). A fear of overreacting was named by 31%. Overall, women were more likely than men to not report due to a belief that there would be no outcome (34% versus 18%, respectively).

Systemic barriers

Another barrier is the legal system and its processes. As previously noted, there are many different pieces of legislation, it becomes difficult for workers or employers to navigate, perhaps deterring them from pursuing legal action (AHRC, 2020). Furthermore, damages awarded to people who have experienced WSH are usually low, especially when compared with other areas such as defamation. WSH damages can range from as low as \$12,000 to \$180,000 AUD (Chapman, n.d.), whereas the maximum payout one can receive from a defamation case is \$443,000 AUD (Graham, n.d.). Indeed, Australian defamation laws may actively deter people who have experienced WSH from seeking compensation due to the risk of being countersued for defamation if their WSH claim is not upheld.

Concerns have also been raised regarding the lack of protection for people who have experienced WSH in court proceedings where they are witnesses, where their experiences have been made public when they have not given permission for this to happen (AHRC, 2020). Police and judicial responses towards people who have experienced WSH have been

Australian defamation laws may actively deter people who have experienced WSH from seeking compensation due to the risk of being countersued.

reported as lacking in sensitivity and understanding, re-traumatising, and forcing them to recount often humiliating experiences. Hence, 45% of people believe it to be easier to not report WSH.

Additionally, WHS laws do not explicitly prohibit WSH, but instead, impose on employers a duty to prevent WSH. The AHRC has determined that the lack of WHS guidelines, code of conduct, or regulation has led to WSH not being addressed uniformly or robustly by WHS regulators or employers (AHRC, 2020). The use of Non-Disclosure Agreements (NDAs) in the settling of WSH cases was another topic of contention. NDAs can protect the privacy and confidentiality of people who have

45% of people believe it to be easier to not report WSH.

experienced WSH, but can also protect the reputation of the perpetrator or business, thus contributing to the maintenance of a culture of WSH silence (AHRC, 2020).

Ultimately, the approach to WSH needs to change from a reactive, complaints-based approach to one centred around prevention, education, and positive organisational cultural change. This can protect the reputations and career prospects of people who have experienced WSH (AHRC, 2020). The current legal approach to WSH cases provides the person who has experienced WSH minimal protection and support; re-traumatisation often occurs at the hands of police, lawyers, and court judges. Furthermore, should a WSH case fail, the person who has experienced WSH is then vulnerable to a defamation countersuit.

SUMMARY: Reporting workplace sexual harassment

It is predicted that WSH is grossly underreported. This is likely because form-based reporting is onerous and challenging for people who have experienced WSH. Reporting does not address the cause or ongoing impact of WSH, often it increases distress because there is a lack of clarity around this process, and often, perpetrators are not held responsible for their behaviour.

Although reporting does not reflect actual WSH incidence, trends support the gendered nature of harassment in the workplace. In 2020-2021, sexual harassment complaints comprised over 20% (72 complaints) of all employment related complaints, ranking first in the top six grounds of complaints received in 2020-2021 (EOC, 2021). Out of the 72 complaints made, women submitted 60 complains, whereas six were submitted by men.

The most recent AHRC Annual Report (2021-22) was insufficient in accurately extrapolating the number of sexual harassment complaints that were also workplace related, however, of the 597 total complaints submitted under the Sex Discrimination Act, 438 of those complaints related to or took place in a work environment (73%).

Reporting of WSH becomes increasingly perilous for the person who has experienced WSH, due to the risk of retaliatory behaviour from the perpetrator, the organisation, and in some cases, the person's wider social circle. A survey suggests 48% of women believed workers were not encouraged to report sexual harassment (with 11% unsure); and only 24% said they believed they were supported through the reporting process. Reasons for not reporting were vast, majority were person/social centred (e.g., fear of reputation, loss of work) and systemic (i.e., due to the many different pieces of legislation, it becomes difficult for workers or employers to navigate). Reporting WSH is frequently re-traumatising for people who have been targeted by WSH.

Responding to workplace sexual harassment

The current legal and regulatory system is simply no longer fit for purpose. Coordination, consistency and clarity between the antidiscrimination, employment and work health and safety legislative schemes is needed. Models need to be framed through a gender and intersectional lens, based on existing legal frameworks to avoid duplication, ambiguity, and undue burden on employers. However, there is also a need to recognise the complementary and mutually reinforcing nature of the three schemes, while also recognising their distinctive features (AHRC, 2020). Without reporting processes developed through a trauma-informed lens, the chances

Coordination, consistency and clarity between the antidiscrimination, employment and work health and safety legislative schemes is needed. Models need to be framed through a gender and intersectional lens, based on existing legal frameworks to avoid duplication, ambiguity, and undue burden on employers.

of change and positive outcomes for people who've been targeted by WSH are reduced (and individuals will continue to be intimidated by the reporting process). As data suggest, most people who experience WSH never report it; the current process is almost certainly intimidating for people who've been targeted by WSH. Another issue raised was the lower trends of union membership how this may have contributed to lower awareness among workers of their workplace rights, less collective action and support between workers, and less representative complaints and advocacy by trade unions (AHRC, 2020). People do not feel empowered to seek legal remedies (AHRC, 2022). This suggests that more education is needed to ensure that reporters are aware of these independent services.

A review of the existing literature shows there has been attempts to define and enact approaches and frameworks for preventing WSH and responding to incidents of WSH within organisational settings (e.g., Campbell & Chinnery, 2018; Cortina & Areguin, 2021; Intersection, 2022; MacDermott, 2020). Evidence suggests that reduction of WSH relies on organisation cultural change, pivoting from a hierarchical, patriarchal structure to one based on acceptance and equality. This can often be achieved through high-quality education (training procedures) and organisational restructuring.

What is currently missing is an effective, valuable approach to responding to WSH, beyond the organisation, where people are protected from further harm and victimisation.

Legal assistance centres can not necessarily prevent WSH, but they are in a unique position to empower people targeted by WSH and ensure access to legal assistance following harm in the workplace.

Legal assistance centres can not necessarily prevent WSH, but they are in a unique position to empower people targeted by WSH and ensure access to legal assistance following harm in the workplace. Additionally, the WA Inquiry (AHRC, 2022) heard that workers who had experienced sexual harassment valued getting information and support about their options from a source independent from their employer.

Literature focused on organisational interventions (e.g., frameworks, approaches) in response to WSH could offer approaches for legal assistance services (and other services, separate from the person targeted by WSH's workplace) to best meet the needs of people who have been targeted by WSH. This includes: a trauma-informed approach, the integration of LE voices, ensuring communication and clarity, addressing needs (beyond legal need), and providing education about WSH. Legal assistance services are important because they will address the gap in access to justice left by private firms that are not accessible to people who cannot afford the cost associated with these services (an additional barrier faced by people targeted by WSH who wish to pursue legal action).

Experiencing and recalling bullying, WSH and sexual assault can commonly result in trauma. A trauma-based approach to investigating incidents of WSH means that the person providing support is

aware of the implications of trauma caused by sexual harassment and acts to prevent re-traumatisation or further harm (Bent-Goodley, 2019). An example of how best practice responses can be informed is the contemporary framework of Trauma Informed Care and Practice (TICP)⁹, a strength-based framework that ensures physical and psychological safety for both the provider and the person targeted by WSH. Trauma-informed responses are applicable to individuals, Directors/Managers, organisations, and assistance services (e.g., legal assistance services).

Collaboration between people with LE and carers, policy makers and service providers can assist to ensure a more appropriate response applied across service systems (NSW Mental Health Coordinating Council n.d.)¹⁰. Seeking LE is considered a vital component of quality, recovery-focused mental health services, however, is also applicable to other supports who service vulnerable people because it provides unique knowledge to help others who have experienced a similar situation. Utilising LE can comprise the following paid roles: advocacy groups, LE researchers, LE engagement coordinators, and peer support workers. In a community legal sector, LE roles can provide expertise to process and practice, develop/deliver training, build connections with other organisations, and contribute to government policy and projects/law reform/social policy relative to WSH (Byrne et al., 2021).

⁹ Principles identified and adapted based on knowledge about trauma, its prevalence and impact. Findings of the Co-Occurring Disorders and Violence Project - Moses, DJ, Reed, BG, Mazelis, R & D'Ambrosio, B 2003.

¹⁰ <https://www.mhcc.org.au/resource/ticpot-stage-1-2-3>

SUMMARY: Responding to workplace sexual harassment

The current obstacles to addressing WSH are multifaceted. Complaints and reporting process needs to be reviewed to allow for a streamlined, simple procedure.

The first obstacle is the current legal and regulatory system, which is no longer fit for purpose. Coordination, consistency and clarity between the antidiscrimination, employment and work health and safety legislative schemes is needed.

Secondly, incidence of WSH are, more often than not, not reported. People targeted by WSH need to be aware of their rights, feel safe to make a complaint, and know what support options are available. Legal services are positioned to offer aid, however, there needs to be a clear pathway to accessing this support. Currently, onus is placed on the reporter to progress incidents of WSH, though this creates additional stress and burden.

Evidence suggests that workers who experience WSH value information and support from sources independent of their employer. Legal assistance services cannot prevent WSH per se, however they are in a position to offer effective, responsive care to people targeted by WSH. Much of the literature focuses on interventions and responses within the organisation where the WSH occurs, and less so on the efficiency of external supports after the event has occurred. However, some of these strategies for managing WSH within the organisation are applicable to external services, including a trauma-informed approach, the integration of LE voices, ensuring communication and clarity, addressing needs (beyond legal need), and providing education about WSH. Legal assistance services are important because they will address the gap in access to justice left by private firms that are not accessible to people who cannot afford the cost associated with these services (an additional barrier faced by people targeted by WSH pursuing legal action).

To effectively help people targeted by WSH who report or disclose WSH, the focus needs to turn to identifying how to best respond and avoid further harm. This includes recognising the barriers to seeking support and understanding what currently works.

3. STAKEHOLDER FEEDBACK

Utilising LE perspectives provides additional knowledge and insight. In the context of legal assistance services in WA, this information was vital, as literature examining people targeted by WSH's and other stakeholders' experiences of WSH is currently lacking. We wanted to understand some of the barriers faced, what does/does not work, and what might be helpful to others. Feedback was sought from people with LE of WSH, Community Legal Centres (CLCs) staff and other organisations offering legal assistance. Circle Green provided case studies of WSH claims which gave insight into the varied types of WSH cases, the legal assistance services offered, and the outcomes from WSH claims.

Lived Experience Feedback

Five women with LE of WSH were interviewed to discuss the delivery of legal assistance in relation to WSH and discrimination and the consequences of not addressing legal needs. The interviewees responded to questions regarding their experiences of what worked well, what could

"It [the WSH] has ended my career."

have worked better, what the priorities of organisations delivering legal services should be, and recommendations for the delivery of legal assistance. The interviewees also discussed the personal, structural, and legal barriers they and others had encountered when they sought help for WSH within their organisations and from outside, legal assistance organisations, and made recommendations for organisations around reducing barriers to vulnerable workers accessing legal assistance services or pursuing their legal rights.

All interviewees reported mental and physical health impacts resulting from WSH and the impact on their career trajectories, with WSH affecting both their personal and professional lives.

"It [the WSH] has ended my career."

"I do wonder– it was at such a sort of formative time in my career– what could have that been if I'd had been a different version of myself because I wasn't subject to WSH. Where would I be now? I don't know that."

Barriers to help-seeking

Interviewees cited many barriers to seeking assistance in the workforce and through legal means including culture, race, sexuality, mental and physical health, financial cost, trust of the judicial system, understanding of legal assistance (including the existence of legal assistance options for WSH), timeframes in which to take action, and their perception of likely, "disappointing" judicial outcomes (e.g., a lack of accountability for the perpetrator).

One major theme was the difficulty in navigating a patriarchal culture that disregards people who have experienced WSH unless those in power themselves are affected – a feeling of being misunderstood. One interviewee described feeling unsupported and judged by the men addressing her concerns, before even sharing her experience of WSH:

“I went into the meeting knowing he didn’t care and they don’t care because it doesn’t impact on them - it doesn’t impact on middle-aged men.”

Demographic factors of the people targeted WSH also seemed to create a culture of silencing surrounding WSH within workplaces. Those from culturally and linguistically diverse backgrounds faced additional challenges relative to language and culture – for example, fear of bringing shame to their family by being a person targeted by WSH. People facing additional social challenges, or those holding less social privilege, are likely to find it especially challenging to seek support for WSH due to power imbalances.

Mental health is arguably one of the largest barriers to legal assistance (Hardies, 2019; Rugulies et al., 2020). Many people experiencing WSH are unable to take legal action, as they “cannot function” after the traumatising event and are left feeling unable to ask for help. Further, if ignored by their organisations, people experiencing WSH may not have the self-

“It leaves fundamentally a trauma, and that trauma is long lasting, and it’s complex.”

esteem or energy necessary to seek legal assistance. Interviewees raised the importance of the ‘first step’ in taking action against their experience of WSH – and how initial workplace responses can have a significant effect on the trajectory of their self-worth and the meaning they make of their experience:

“There are two things. One is how seriously they took my case - you know that they didn’t fire him -so why would it be taken any more seriously externally? I didn’t have the energy to go through it all again and then the other aspect and this is again probably ignorance, but I didn’t think it was a big enough deal. It was just like It was just words as opposed to rape. I didn’t think it was a significant enough crime to pursue something.”

“My workplace reiterated that I’m just a token female hire and they didn’t take me seriously. I just felt insignificant and unvalued. My self-esteem was shattered.”

“Apparently I have to live with PTSD (for) the rest of my life.”

“It leaves fundamentally a trauma, and that trauma is long lasting, and it’s complex.”

WSH is a spectrum and can range from inappropriate comments to sexual assault; a judicial understanding of the seriousness of the offence does not adequately predict the impact on women who experience WSH. Regardless of the offence, those who experience WSH are often significantly affected by their experiences, and are at risk of developing mental health issues (Cortina & Areguin, 2021).

Interviewees were also deterred from reporting WSH due to a fear of retributive action and backlash. Many waited until *“they can’t cope anymore”* before accessing help. One interviewee described a co-worker who was exploited by her harasser. The harasser’s behaviour was known to the organisation for over 20 years, his behaviour was normalised by the workplace, hence her hesitance to make a report. Another interviewee explained that she was hesitant to report to Human Resources (HR), as once the statement was submitted, she would have no control over it, and it may *“backfire”*. She feared how she *“would always work for old men”*, and that she may be branded as *“sensitive”*, someone that they may need to *“tiptoe”* around which would affect her career prospects.

“I never went to police as I didn’t think that was a pathway for me as I never felt it was serious enough - I mean it wasn’t rape or anything.”

Interviewees often downplayed their experiences due to fear of judgement, or feeling unsure about the ‘seriousness’ or significance of their experience(s). One interviewee feared being seen as *“sensitive”*, so she didn’t report behaviour from a superior that made her uncomfortable. However, *“accepting and normalising that sort of [behaviour] paved the way for the more sinister stuff to build up.”* Another interviewee noted that she thought one could only pursue legal action if it was *“something very severe and like criminal”*. She also stated that she didn’t have the self-esteem to think that her case was important. Taken together, victimisation leading to self-defeating beliefs about the ‘seriousness’ of their experiences, as well as preconceptions and a lack of education about the requirements of pursuing legal action, were significant barriers raised by the women interviewed.

Some interviewees did not access legal help or report the WSH to external authorities as they were unaware and untrusting of the process of reporting. All interviewees reported having issues trusting the police and the judicial process. One interviewee noted that she didn’t trust the legal system, as the *“law is really bad at handling the issue [of sexual harassment/assault]”*. Criminal law, civil law, human rights, and equal opportunity are all concerned with WSH; for people who have experienced WSH, it becomes confusing to navigate the various legal avenues. There was also an atmosphere of fear and intimidation surrounding one taking legal action. This could stem from a fear of retributive action, negative career consequences, and/or the impact on mental health. Taking legal action may also result in disempowerment, as people experiencing WSH have to navigate a legal system working to protect the perpetrator:

“I didn’t actually want to submit to Fair Work because I thought that’s going to make it worse.”

“They want to tell the story in a particular way, and that particular way disempowers you.”

Case Study 1 – Molly

Molly is a young woman, who is completing an apprenticeship in a male-dominated industry with a national system employer. She attended a work-related event and went out for some drinks with work colleagues after the event. During the evening, one of Molly's supervisors hugged her tightly, and kissed her on her neck. Molly was shocked and embarrassed. When she went to work afterwards, she felt uncomfortable being around her supervisor.

Molly made a complaint to the employer's HR department. The employer said that Molly could return to work, and that her supervisor would not be allowed to talk to her anymore. Molly still felt uncomfortable, so asked to transfer to a different working location, which the employer agreed to. Molly ultimately decided to leave her job, as she was not satisfied with the employer's response to her complaint and didn't feel that they were taking her complaint seriously. In particular, no substantive action was taken in relation to her supervisors' employment.

Molly was referred to Circle Green by the Fair Work Commission. Circle Green advised Molly on her various claim options. Molly decided to pursue a legal claim and Circle Green assisted her to do so. Circle Green represented Molly at her claim conciliation. Molly and the employer came to a settlement, which included financial and non-financial outcomes, including the implementation of a sexual harassment policy and training.

Molly was very appreciative of Circle Green's ongoing support in her matter, and expressed that she would not have been able to reach this outcome without their assistance.

The Case Study above showcases one example where being made aware of the existence of a legal assistance service can result in several positive outcomes. Molly felt heard, validated, and was supported by Circle Green to take action against her offender. Merely having someone in her corner made the difference – and given the taxing process of pursuing a legal claim, having access to Circle Green made a significant difference to her life. Once linked into legal services, these organisations can help to address some of the key barriers faced by people targeted by WSH. Molly was able to reach settlement which included not only financial compensation, but policy and training changes, which was likely validating and reassuring.

What worked well?

Interviewees identified that the presence of a mediator from outside their organisation whilst navigating the legal process was something that worked well, as the mediator allowed them to have a voice, and fostered unprejudiced communication between the legal team and the organisation. Having an objective, impartial person in the room helped to make the legal process much smoother.

...the presence of a mediator from outside their organisation whilst navigating the legal process was something that worked well.

While most of the women interviewed declined legal action (and had decided to not progress a claim or negotiate a settlement due to structural and cultural barriers), it was noted that they perceived the act of seeking legal action to force organisations to take people who have experienced WSH more seriously by “*elevating*” the situation. For one interviewee, seeking legal action also allowed them to avoid any interaction or attempted mediation with their offender. Additional feedback, provided by clients of Circle Green also highlighted that the legal assistance enabled people to feel ‘*confident*’ and ‘*at ease*’ while providing unbiased information in a ‘*clear and concise manner*’. Therefore, when people feel safe and able to seek help from legal services, they feel that their experiences are valid – and it also offers them a means of protection against the perpetrator.

Case Study 2– Luisa

Luisa is from a culturally and linguistically diverse background and has no family in Australia. She is the sole income earner in her household and suffers from PTSD.

Luisa worked casually for a national retailer. Luisa lodged a complaint with her employer after her manager targeted her with sexual harassment including intrusive questions about her personal life and unwelcome touching. Luisa’s manager also teased her about her last name and repeatedly showed her racist videos mocking stereotypes about her cultural background.

Luisa reported her manager’s behaviour to her employer, who conducted an investigation. The employer told Luisa that she would need to return to work and continue working with her manager. The employer would not confirm what the outcome of Luisa’s complaint was or provide any insight into any action taken against Luisa’s manager.

Luisa was referred to Circle Green by Legal Aid WA. Circle Green provided Luisa with advice about her legal options. Luisa decided that she wanted to pursue legal action and Circle Green assisted by drafting Luisa a without prejudice letter in an attempt to settle the matter informally. As Luisa did not receive a satisfactory response, Luisa decided to pursue a legal claim and Circle Green assisted her to do so. Circle Green has agreed to represent Luisa at her upcoming conciliation conference.

The Case Study above illustrates the process of pursuing a legal claim with the support of Circle Green. Luisa was offered ongoing support and she was able to state that she was not satisfied with the response of her organisation. With external, legal assistance, she was able to continue the momentum towards settling her WSH incident.

As well as addressing legal matters, one interviewee felt that taking care of their mental health was helpful, obtaining a mental health plan through her workplace and accessing a psychologist through the Employee Assistance Program (EAP). Supporting people to seek additional help, along with legal assistance, can improve outcomes for people targeted by WSH.

What didn’t work: in the organisation

Many interviewees commented that organisations often act to mitigate their level of risk to the organisation, instead of addressing the needs of the person targeted by WSH, or the bigger issue of

WSH within the company. Some interviewees reported being forced to work with perpetrators for prolonged periods of time, even after requesting to be reassigned. By being in such close proximity, one interviewee became “*hypervigilant*”, and was unable to concentrate due to the presence of the perpetrator, which impacted their performance and therefore risking her career.

“My boss kept making us work together because he didn't know any different and for a good three, six months we still had to keep working together... I talked to my boss about personality differences and that I would rather not work with him, but that's not a good enough reason for business to change their work structure. It got to the point of my boss asking him for my performance review feedback and I didn't want him involved in something that was critical to my trajectory at such a junior age.”

Reporting WSH behaviour to management and HR was a negative experience for all the women interviewed, with many describing the experience as ‘*re-traumatising*’. One interviewee went through a mediation process, where the offender was able to “*appease his guilt*”. The interviewee had to write down

Reporting WSH behaviour to management and HR was a negative experience for all the women interviewed, with many describing the experience as ‘*re-traumatising*’.

recommendations for herself such as “*speak up sooner*”, which she described as “*victim blaming*”.

Another was forced to speak about her experiences to an all-male executive team twice, without having the benefit of a support person. Evidently, these organisations lacked the knowledge, understanding, and empathy required to effectively respond to the employees reporting WSH. In these cases, the shortcomings of each organisation had a devastating impact on the people targeted by WSH.

Additionally, enforcing the signing of NDAs can have harmful and isolating effects on people who have experienced WSH. One interviewee was separated from her team due to the presence of her offender (rather than the organisation removing the perpetrator) and as a result, was disadvantaged as she became disconnected from her team, causing detriment to her career. The perpetrator did not suffer any consequences.

"I was just unable to concentrate because he was always around, but similarly through these 6 weeks because I was so worried about the implication for myself and it was a really lonely, isolating experience".

Case Study 3– Aisha

Aisha was sexually assaulted by the director of her former employer. Aisha left that job and took a full-time role with a large employer in the animal care industry. A few months into her new job, Aisha discovered that the perpetrator had been hired by her new employer on a casual basis. The perpetrator made himself known to Aisha by leaving documents on her desk. The perpetrator had no work-related reason to be at Aisha's desk or anywhere near her workspace.

Aisha went to her manager, explained the situation, and asked for the employer to work with her to ensure she would not have contact with the perpetrator. The manager told Aisha that he would 'try' not to roster them on together, but there was a skill shortage in his role. Aisha was not satisfied with this response and sought legal advice.

Aisha was referred to Circle Green by Legal Aid WA. Circle Green provided Aisha with advice about her options and assisted her in drafting correspondence to her employer formalising her concerns, proposing a number of measures to ensure her safety and scheduling a discussion to put a plan in place.

The above Case Study further illustrates the issues noted by interviewees – often, organisations fail to act following reports of WSH. However, it also highlights the utility of legal assistance where information can be provided, and action can be taken to ensure safety. In this Case Study, Aisha was given a voice and she had an advocate.

What didn't work: taking legal action

Legal action was described as a *"double edged sword"* and the legal framework was described as *"disappointing"*. One interviewee engaged with the legal process through a private legal firm without the likely outcomes, and precedents being

explained to her. The legal team didn't fulfil their legal obligation, and duty of care to the interviewee. Legal action is seen to be only taken as a last resort, due to workplace ignoring WSH. Whilst this specific example occurred through a private legal firm, it still

highlights the importance of proper communication of outcomes and expectations for any CLC or legal firm.

Legal action was described as a *"double edged sword"* and the legal framework was described as *"disappointing"*.

"It wasn't really well explained to me that the precedent of cases going to court is appalling and the outcome is equally appalling, and that wasn't communicated to me right at the start, so I found that really disappointing."

SUMMARY: LE feedback

Barriers

Consistent with the literature, key barriers raised by the women we interviewed were both personal/social and systemic. Specifically, interviewees reported feeling misunderstood – they noted concerns about how others would perceive them if they reported their experience, which included in the workplace, among their family, and within the wider community. Self-esteem and mental health were often severely impacted, which made seeking legal support much harder.

There were also concerns for employment. The women felt that reporting the WSH would result in judgement, loss of employment, or related backlash in the workplace.

There was a tendency for women to downplay their experiences of WSH which created self-doubt and likely reduced drive to seek legal support. Interviewees also expressed distrust and fear in response to reporting. They felt that it would make their situation worse, or result in other, unintended consequences. Often this stemmed from lack of information about support options and outcomes.

What worked

Interviewees expressed a sense of comfort from having an external person help with the legal process. This gave them a voice.

Of note, most of the interviewees had not sought legal action, and although the reasons for this likely varied, there was the perception that seeking legal assistance can be validating via elevating their concerns. Additional information provided by Circle Green suggests that, when people are able to seek legal assistance, this creates confidence and ease, provided that information is unbiased, clear and easy to understand.

Additionally, seeking mental health supports was also noted as being important in managing experiences of WSH, irrespective of whether a person has sought legal assistance.

What didn't work

Concerningly, many interviewees' organisations handled their experience of WSH incredibly poorly. This included having to continue working with the person who perpetrated the WSH (where the organisation did not respond to reports of WSH), and victim blaming or further harm/trauma.

As aforementioned, many of the interviewees did not seek legal assistance following the WSH resulting in insufficient data to make inferences about what is not helpful/working. One interviewee who sought support through a private legal firm was disappointed with the outcome and they were unable to fill their legal obligations.

More evidence is needed to identify any unique challenges faced by people who decide to seek legal assistance services.

Consequences

The consequence of WSH for organisations is immense. If WSH is not addressed, this places more employees at risk of harm. This negatively impacts productivity and results in loss of resources.

Organisational Survey Feedback

CLCs were approached to complete an online survey which focussed on the prevalence, nature, trends, reporting, action, barriers, available legal assistance, and referral pathways of WSH and discrimination data.

A total of nine CLC organisations responded to the survey. Of the organisations who responded, one organisation serviced all regions in WA. Four CLC organisations serviced the Perth region only, an additional one in the Kimberly, one in the Gascoyne, one in the Mid-West, one in the Peel, and one in the South-West. As part of their service, all surveyed CLC organisations provided information, referrals, legal advice, legal task, non-legal discrete and ongoing support, court/tribunal representation, ongoing legal support, advocacy, community education and outreach (Table 3). Five CLC organisations provided a duty lawyer service, three dispute resolution, five other representation services and one facilitation resolution process. Other services provided by CLC organisations included Elder Rights Service and Law reform. Six CLC organisations provided services for WSH. All six of these organisations provided information and referrals.

Table 3 Organisational services

	All organisations (N ¹¹ =9)		Organisations that provide services for WSH (N=6)	
	n	%	n	%
Information	9	100	6	100
Referrals	9	100	6	100
Legal advice	9	100	3	50.0
Legal task	9	100	2	33.3
Duty lawyer service	5	55.5	-	-
Non-legal support service discrete	9	100	3	50.0
Non-legal support service ongoing	9	100	2	33.3
Dispute resolution representation service	3	33.3	1	16.7
Court/Tribunal representation service	9	100	2	33.3
Other representation service	5	55.5	2	33.3
Ongoing legal support service	9	100	2	33.3
Facilitation resolution process	1	11.1	-	-
Advocacy	9	100	3	50.0
Community education	9	100	3	50.0
Outreach	9	100	2	33.3
Other (please state)	2	25	2	33.3

¹¹ N = sample size.

Referral pathways

Organisations were asked what referral pathways were provided for WSH. Organisations reported they referred to specialist community legal services such as Circle Green, Law Access or Legal Aid, EOC, pro-bono legal support, and specialist non-legal supports such as Family and

“We refer to Circle Green Community Legal (we try to prioritise warm referrals over cold ones) and make people aware of the resources on their website.”

Domestic Violence (FDV), sexual assault counselling and support services, financial counselling and emergency relief. All organisations that did not provide an employment law service, would refer to Circle Green.

Legal barriers to reporting

Organisations described many barriers to reporting WSH, often focusing on cultural and societal barriers rather than legal barriers. Cultural and societal barriers included:

- Lack of knowledge around WSH and respectful behaviour.
- Victim blaming and minimisation.
- Underreporting, with people experiencing WSH worried about the impacts on employment such as losing their job or a compensation claim limiting future employment opportunities.
- Fear of retribution and of being ostracised by colleagues.
- Lack of information on where to go for help and advice.
- Lack of appropriate trauma-informed knowledge by the employer on their role and responsibility.
- Internal complaints mechanisms do not effectively offer external recourse.
- Power imbalance between staff and management, as people who have experienced WSH tend to be subordinates.
- Gendered inequality and systems bias/abuse.
- Language, cultural and visa/migration issues whereby people don't know their rights and/or are unable to communicate them/understand.
- Perceived lack of confidentiality.

Of those who notes legal barriers, these included:

- Trauma suffered by people experiencing WSH not wanting to expose themselves further through a legal process.
- The EOC is based in Perth meaning the legal process has to be conducted by phone which many people experiencing WSH are not comfortable with doing.
- Limited capacity within the legal service to support people experiencing WSH from start to finish.
- Onus on complainant in report and burden of proof.

Service users

Due to current data collection procedures within CLCs, a lot of information on service users is either unable to be easily retrieved, or is not collected, resulting in limited information being recorded for each service user. Seven of the nine organisations reporting a total of 10,470 service users (min=745, max=3,013) in the last financial year (2021/22), with 67 service users (76% females, 13% males, 4%

“Females particularly do not trust management of these companies to fully support them, and they are concerned for the security of their jobs and their well-being at the workplace if they make a report.”

non-binary, 7% unknown) presenting with WSH claims. Of those presenting with WSH claims, age information was collected for 61 service users; 49% were aged 18-34, and 30% were aged 35-49. Two service users were known to be from outer regional areas and one from a remote region. Fourteen service users were employed casually, and 21 service users had permanent employment.

Two-thirds of service users presenting with WSH claims were considered to have a financial disadvantage, 16% did not have English as their first language, 13% had a disability or mental illness, 3% were experiencing FDV and 3% required translating and interpreting services.

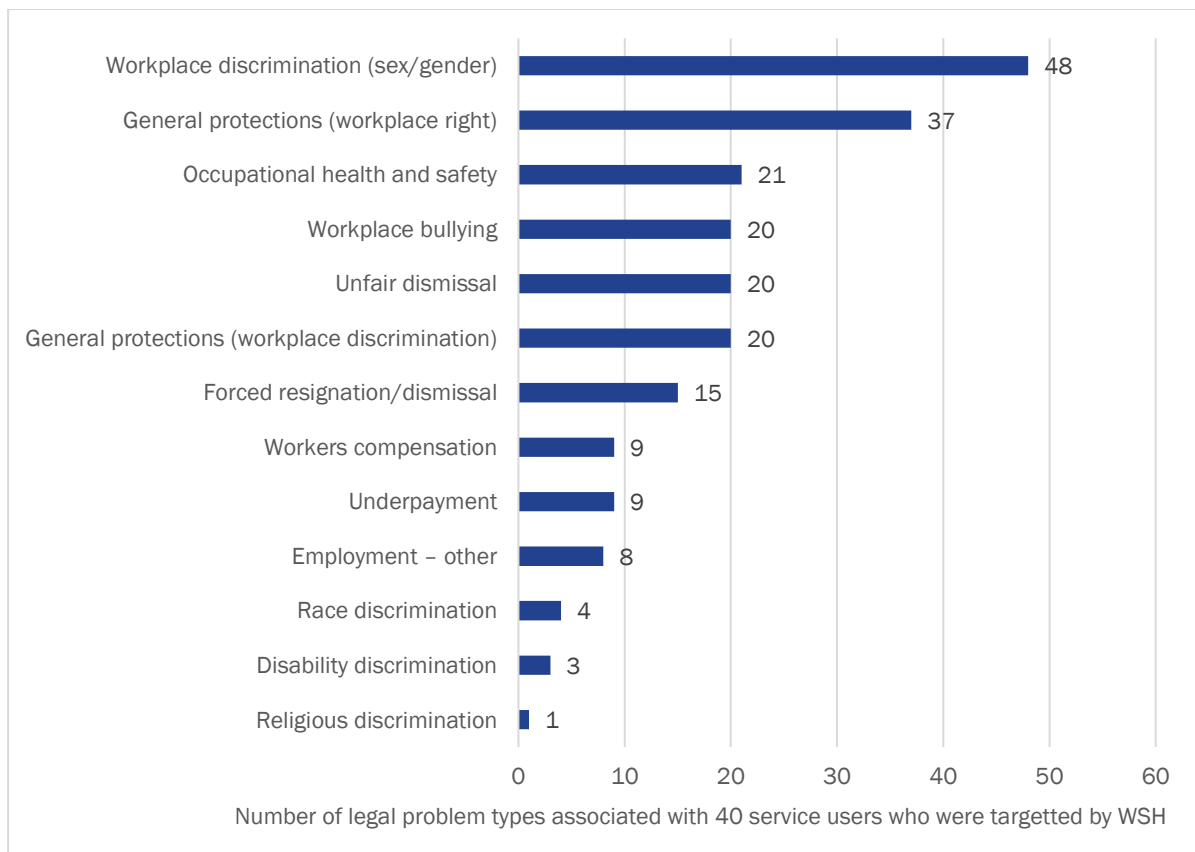
Service users presenting with WSH claims described their relationship with their harasser/s as co-worker, boss/employer, supervisor/manager, client/customer, and other people associated with the workplace. While it is unknown how long the majority of service users had been employed with the organisation, approximately one-third had been employed for less than a year. With respect to industry, service users were from a range of industries: agriculture, forestry, fishing; mining; construction; retail; accommodation, cafes and restaurants; transport and storage, education; and health and community services.

For the majority of service users, the type of harassment experienced was not identified. Six service users identified the following types of workplace sexual harassment: inappropriate physical contact (n=1), inappropriate staring or leering (n=1), insults or taunts of a sexual nature (n=1), requests for sexual favours (n=1), sexual gestures, indecent exposure or inappropriate display of the body (n=1), and sexually suggestive comments or jokes (n=1). The only reported workplace action that occurred after service users reported WSH was no changes within the organisation.

Co-occurring workplace legal issues included workplace discrimination against sex/gender (72%), general protections of workplace rights (55%), occupational health and safety (30%), workplace bullying (30%), general protections against workplace discrimination (30%), and unfair dismissal (30%) – see Figure 4.

There was no information recorded on whether complaints were reported and if not why not, and the consequences of reporting.

Figure 4. Co-occurring workplace legal issues of CLC service users reporting WSH



SUMMARY: Organisational survey

Referral pathways

Organisations often referred to specialist community legal services such as Circle Green. All organisations that did not provide an employment law service, would refer to Circle Green.

Barriers

Barriers noted in the organisational survey were consistent with what was presented in the existing literature, and those noted in the LE interviews – both personal/social and systemic.

Service users

Information about service users either unable to be easily retrieved, or is not collected, resulting in limited information about who presented with WSH claims. Of the information available:

- 76% females, 13% males, 4% non-binary, 7% unknown.
- 49% were aged 18-34, and 30% were aged 35-49.
- n = 2 service users were known to be from outer regional areas and n = 1 from a remote region.
- n = 14 service users were employed casually, and n = 21 service users had permanent employment.
- Two-thirds of service users presenting with WSH claims were considered to have a financial disadvantage, 16% did not have English as their first language, 13% had a disability or mental illness, 3% were experiencing FDV and 3% required translating and interpreting services.
- Approximately one-third had been employed for less than a year.
- Service users were from a range of industries.
- For the majority, the type of harassment experienced was not identified.
- Co-occurring workplace legal issues included workplace discrimination against sex/gender (72%), general protections of workplace rights (55%), occupational health and safety (30%), workplace bullying (30%), general protections against workplace discrimination (30%), and unfair dismissal (30%).

Organisational Interview Feedback

Six organisations were selected to be interviewed with respect to the delivery of legal assistance in relation to workplace sexual harassment and discrimination. One organisation who was primarily a telephone counselling service was interviewed regarding their referral pathways. Organisations were asked to comment on their priorities with respect to WSH and for the delivery of legal services, and recommendations they have for the delivery of legal assistance. Organisations were asked about trends in relation to the frequency, nature, reporting, action, and barriers (structural, legal, other) for people who have experienced or are experiencing workplace sexual harassment and discrimination, and what recommendations they have for reducing these barriers to allow vulnerable workers to safely access legal assistance services and pursue their legal rights.

Barriers to accessing legal assistance

Barriers to accessing legal assistance for WSH differed for regional and metropolitan services.

Barriers across all organisations included reporting time limits and the size of the organisation. Barriers specific to regional/rural areas included a perceived lack of privacy and confidentiality, isolation, and normalised workplace culture.

Barriers to accessing legal assistance for WSH differed for regional and metropolitan services.

Reporting time limits

CLCs report the time limit for formal WSH complaints to be made (within 12 months to EOC and 6-24 months to the AHRC, depending on when the WSH took place) to be a major barrier for people experiencing WSH. Trauma, and fear of re-traumatisation, delay formal complaints. People experiencing WSH may have other priorities, such as the maintenance of their mental health.

“You may be looking at losing your home either because it's connected to your employment or because you've lost your job, or your hours have been reduced. The priorities shift. You know if you're sexually harassed, you need to deal with your trauma. You need to deal with your financial difficulties that can flow on from that. You need to deal with maybe your homelessness issues that could follow from that. They will become the pressing priorities as opposed to taking legal action and by the time you've addressed some of the some of those issues you may have reached the time limit for making a formal complaint.”

Size of organisation

Cultural change may be more difficult to achieve in smaller organisations. This may be blamed on a lack of resources or personal biases of the leadership in the management of WSH cases. It is also more difficult in smaller organisations to hold the perpetrator accountable.

“They'll continue to go almost shrug their shoulders at it, and it's almost worse than shrugging their shoulders - they'll actually believe that it's outside of their power and outside of their control. It's not until the organisations get bigger and management system thinking kicks in, that you get the understanding that you can actually adjust workplace behaviours, that you can adjust workplace culture.”

Privacy and confidentiality

While regional services agree WSH is an issue in their regions with knowledge of WSH incidents spread anecdotally, little to no people experiencing WSH report it formally or seek legal assistance. There are many structural and cultural barriers which prevent regional people experiencing WSH from coming forward including the nature of a small town, where confidentiality and privacy are not assured, and workplace complaints can jeopardise job prospects.

“We know anecdotally that it's going on in our community and we also know how people are choosing to address the issue, but it's not through formal means.”

“We know it happens. People have talked about it, but they don't like making it formal because everyone knows everyone down here. Even if you know they're not meant to say something, someone will say something and people are worried about their job prospects. Some will come in for the information to know what their rights are but choose not to proceed with anything.”

“People are looking for ways to protect themselves within their work environment without actually addressing the inappropriate behaviour, and then leave quietly once alternative employment is obtained without ever speaking up formally about it.”

Isolation

The more isolated an area, the more likely it is for a single company to monopolise an industry, thus people experiencing WSH put their entire livelihoods at risk by taking action. Some towns have large companies that provide housing for employees, so reporting cannot only jeopardise employment and future job prospects, but also housing.

“One company has the monopoly in the industry locally. If you're a difficult person in your workplace you don't have another workplace to go...even if you transfer it to a different industry word gets around town very quickly. If you're one of the troublemakers, you might not get a good reference and so people tend to grin and bear it”

Formal processes in isolated communities are undertaken through phone or video linkups, which can be a difficult process due to poor reception. It was also noted that people in rural areas may prefer meeting face to face.

Cultural barriers

Within rural and regional communities, there still exists a high level of acceptance of WSH, where it may be normalised within the workplace through comments by workmates and trivialisation of experiences.

“There is the culture where you are the trouble; if you speak up, you're the troublemaker. You're the pain in the arse, you're the whinger, and it becomes very difficult to continue in that employment. There's a lot of victimization that then goes on.”

“The female supervisor told the owner of the business what was going on and the harassment the younger woman was experiencing, it was like “oh well, you know he doesn't bother us old ducks” sort of thing. Those kinds of comments trivialise and normalize WSH. “

“The people that are perpetrating these behaviours try and make excuses for the behaviour, which then makes victims trivialise it “It's just me overreacting. He didn't mean anything by it.” The whole system almost gaslights.”

“The level of acceptance of these behaviours as normal is a big problem, and certainly the more remote you get and the smaller the communities, the higher the level of normal normalisation of WSH.”

It was also felt that certain races, ethnic groups or linguistically diverse people would be less likely to report WSH due to lack of knowledge of what is acceptable, or not wanting to draw attention to themselves, “if they can afford it, they would just quietly leave rather than make a fuss”.

Case Study 4– Sabine

Sabine is from a non-English speaking background. She worked for a mid-sized mining industry employer. As part of her role, Sabine was required to work on remote sites in regional Western Australia. It would often take her around 3 hours to drive to site.

During one car trip to site, Sabine's colleague placed his hand on her leg and rubbed her inner thigh. This made Sabine really uncomfortable, particularly as she would have to stay in accommodation next to this person in a remote location.

Sabine raised her concerns with her supervisor, who told her "he didn't mean anything rude" and that Sabine should just talk to him. Despite her requests, Sabine's supervisor made her share a car with the perpetrator for the drive back to Perth. Sabine resigned a short time later and lodged a general protections (dismissal) application with the Fair Work Commission.

Circle Green provided Sabine with two extended advice appointment to provide her with advice about her application and the conciliation process. Circle Green also provided Sabine with further assistance by drafting her conciliation conference speaking notes. Sabine expressed her gratitude for Circle Green's advice and further assistance.

The Case Study above illustrates a culture of normalcy surrounding WSH. Sabine's employer made excuses for the perpetrator's behaviour. Further, Sabine's safety was disregarded.

Organisations' current priorities

WSH was not a priority for the regional CLCs due to lack of demand. A lack of demand also means regional legal services are unequipped to handle WSH cases due to a lack of staff trained in this area. Many CLCs are currently working at full capacity without having a demand for WSH legal assistance.

One metropolitan-based CLC is the only one that specialises in workplace discrimination and employment law, and WSH is therefore a high priority. Demand increases have been seen over the past couple of years, with an increase jumping with public awareness about WSH. Awareness and reporting of WSH were likened to the increase in awareness of FDV, where public figures speaking out spurs people to report. If the increases in demand are not met, WSH will persist to be an issue.

"Brittany Higgins, the March for Justice, those types of things I think really spurred a lot of especially young women on to look at what their options were in terms of pursuing a legal claim for what had happened to them."

"WSH is an emerging area. It can be likened to the awareness around where domestic violence was 10 years ago. It was very much a hidden issue, no one spoke about it. Not many people reached out for help. Public figures speaking out, such as Rosie Batty who was Australian of the Year, made the movement huge. I think we are going to potentially see a similar trajectory for WSH and discrimination."

“These types of complex traumas, it can manifest in other physical health issues that we might not think are directly related like chronic fatigue syndrome or autoimmune diseases, and have indirect health consequences for the individual and their ability to participate in society.”

“Unmet demand will have economic consequences in terms of lost productivity for people not participating in the workforce or needing time out of the workforce as a result of experiencing WSH.”

Another metropolitan CLC prioritised reviewing work health and safety practices, including respectful behaviour, and psychological risk in the wake of WA's new harmonising Work Health and Safety Act (WHS 2020), implemented in March 2022.

“An initial drive was obviously the harmonisation laws that are a result of upgrades to work, health and safety. We've always needed to ensure a safe workplace, but what that has done is really made us look at the workplace and what we're doing. As a result we're actually going through a complete review of our work health and safety practices and that includes respectful behaviour, psychological risk and things like that.”

Another metropolitan CLC had one staff member who ran advisory sessions with clients for six hours a week. Clients were referred from regional areas such as Broome and Kununurra. However, if the staff member was on leave, sessions did not run. The service provided was described as ‘*not very comprehensive*’.

Resourcing can also deter legal services from taking on WSH cases, as it may be difficult for some understaffed, regional services to keep track of set time frames, follow-ups, and actions to be lodged. Additional time and training for staff are needed. One regional legal service interviewed instead referred WSH cases to Circle Green, due to the aforementioned issues.

“The upskilling of staff to be able to do that on top of already existing demands just wasn't the right business call. Knowing that Circle Green has that specific stream we refer through to them.”

Recommendations proposed

Legal assistance services

Partnering with other services

Partnering with services that the client may already have relationships with, or are operating in the area, maybe a method of providing wraparound support and also combatting issues associated with geographical isolation. It may also be valuable to partner with services that can aid clients with legal documents, as there are often issues with sending them through in the appropriate form, or access to technology.

“I think if there can be a bit more partnering around services that already have a working relationship with clients will help the client’s experience.”

“We’re here to help with a person’s legal issues, but often they can be facing other social issues that will impede their ability to be able to actually pursue a legal issue. Often there’s a real need to access medical and counselling support or seek assistance around financial hardship and housing. There is a real need for there to be wrap-around support.”

When referrals are given, it may be helpful to guide clients through the process and offer a ‘warm’ referral.

“We tend to find there’s a slightly better uptake where we can make a warm referral rather than just giving someone the number to call so they can be followed up in case there can be a bit of anxiety about having to make that call and building up to it and chickening out. We see that with a number of people across different issues in general.”

Education

It is imperative that people experiencing WSH are presented with different pathways, and that they are educated on the pros and cons of each pathway.

“I’ve heard that from quite a few women that to be presented with different pathways, whether they report it within the organisation, report it outside the organisation, report it to Work Safe, respect that it would be good to know all the positives and negatives of going down each pathway.”

“Something that needs to be considered in each individual circumstance, is to help people weigh up what their options are and set them on the right path for pursuing what justice looks like to them or as close to as what our justice system can offer at the moment.”

“People seem quite aware of criminal law pathways for a sexual assault, but they’re less aware of what they can do to seek individual justice for human rights, anti-discrimination matters or employment law matters through a civil law pathway.”

It was recommended for more information be made available online, where people experiencing WSH may gain some “good basic information.” This may also allow people experiencing WSH to understand likely outcomes, thus preventing them from becoming disillusioned if they do choose to undertake legal action, an issue identified through lived experience interviews. Being able to book appointments online may also simplify the process.

“There needs to be greater awareness of what services exist. A lot of people may not want to reach out and talk to anyone about it, but if they can look stuff up and get some good basic information as a starting point, that can be quite useful.”

“Experiences from our service have shown that when we have introduced a request for appointments online we’ve found that used quite a lot, with most requests coming in out of hours because that’s when people have the time.”

Client statistics

An organisation noted their current case management system captured very little about employment and discrimination matters in terms of specifying WSH matters. Thus, CLCs should use more specific/customised fields to adequately identify WSH services provided (including referrals).

Organisations and workplaces

Recommendations for organisations in general included primary prevention, cultural change around silencing, data tracking, having clear WSH policies and processes, and consequences and sanctions for breaching WSH policies.

Primary prevention through education and training

Increased investment in primary prevention of WSH through education and workplace cultural change, will aid in reducing WSH, and also informing and supporting those experiencing WSH.

“Primary prevention will hopefully avoid the problems, but also better inform and support people who have experienced the problem. It kind of starts there, as it always does.”

There is also a need for “messaging” and increased campaigning against WSH in rural areas. It is felt the messaging often does not reach the communities that are most in need of it.

“The workplaces that are the most problematic aren’t getting the information about it.”

It was recommended for yearly WSH inductions to be compulsory. The yearly inductions may provide information on updates to the Work Health and Safety Act and other pieces of relevant legislation. By having a comprehensive WSH training program, the organisation also protects itself, and its employees.

“The courts will actually look at the employer to see what training that person has had, how many times they’ve had it, and also because it will then split the vicarious liability.”

Due to the vulnerability of young people, one organisational employee suggested education needed to start very early within schools with students being advised on acceptable workplace behaviour and help-seeking pathways. Employment law also needed to be part of MBA degrees, and business owners, senior managers and executives need to be made aware of their responsibilities to their employees.

One organisation commented on the importance of education around the definition of a workplace – that it is not “just a corporate environment” and what WSH could look like in different environments.

“There's a need to untangle sexual attraction from sexual harassment and really understand what harassment can look like in a non heteronormative environment.”

Cultural change around silencing

Current best practice guidelines rely on employers leading the way in making a cultural change about silencing. Many employers are not willing to settle unless there are NDA obligations on the people experiencing WSH. This is proving to be a big barrier to settlement as people experiencing WSH want the ability to be able to speak about what has happened to them.

“We need some law reform in terms of people being able to reach a satisfactory outcome and being able to move on with their lives without feeling like they're being silenced.”

Data tracking

A lack of WSH data complicates the creation of effective work health and safety practices. An issue raised by one organisation concerns inefficient and confusing data tracking pathways. For example, one issue raised may be sent to several managers or supervisors, thus it becomes difficult to ascertain duplicate issues, or keep track of issues raised. Therefore, a lack of managerial accountability contributes towards the difficult capturing and analysing of trends.

“One of the problems that we've got at the moment is that our work health and safety practices are just quite underdeveloped. So we wouldn't even see trends at this point because we're just not collecting enough information around the data that is coming in.”

A lack of WSH data is a major issue, as people experiencing WSH have reported feeling “like the first person to ever have made a complaint.” If organisations are able to provide statistics on WSH, it may reduce feelings of isolation and ostracisation of people experiencing WSH. One organisation recommended the Work Safe's 5-element plan as a framework for workplace health and safety practices: (1) management commitment, (2) planning, (3) consultation and reporting, (4) hazard management and (5) training and supervision. They recommended a focus be on ‘lead’ indicators rather than ‘lag’ indicators. For example, instead of only analysing the number of incidents (lag),

possible precautions such as expert engagement or cultural change indicators also need to be examined. The organisation has started the discussions but they have yet to “materialise into actual workplace practices”.

“A key element for us is to be able to look at lead indicators, ie are we having regular conversations around safety? Are we engaging experts from outside the organisation? Is there a consultative well-engaged workforce that is feeding information into identifying hazards?”

Clear WSH policies and processes

WSH policies are thought to be underdeveloped in many workplaces. Best management practice systems allow for the implementation of proper WSH mechanisms and processes which can help with problem identification and eradication. Strong policies and procedures were identified as crucial in rural areas, where “social overlap” between work and rest occurs.

“If we develop, well-defined, best practice management systems, then it takes a lot of the personality out of it. When those systems don't work, we don't necessarily have to blame individuals. We can actually go through the management system to identify that it didn't work. We go back through that continuous improvement cycle that loop.”

Consequences and sanctions

A recommendation was for there to be stronger sanctions imposed on employers, as “workplaces that don't properly support people when they speak out, and in fact, actively, you know, victimise them”. Whilst reporting pathways exist, the backlash people experiencing WSH receive for doing so is “devastating”.

“There need to be some consequences for failing to do better as well. And that, I think generally helps people, from boards to executive leaders to realise that it's a serious issue. Once there's a penalty for failing to provide a safe workplace, then people go ‘OK yeah, we need to do this’, and then it doesn't take long before the compliance mindset filters down.”

Legal reform recommendations

A couple of CLC employees interviewed recommended for sexual assault trials to be judge only, and for the judge to have received trauma informed specialist training. This removes the many personal biases that may be associated with the jury to allow for a more impartial trial. The recent outcome of Brittany Higgin's case exemplifies this. The employee also stressed the importance of explaining to people experiencing WSH the likely outcomes of the trial, and the media scrutiny and character assassination associated with a high-profile sexual harassment case.

“What actually happens in detail if this matter went up to a District Court, the Supreme Court or the High Court? This is what's going to happen, their lives are going to be literally scrutinised, their social media, their mobiles, and what they posted on Instagram. All that information will be in the public.”

“We need more legal assistance to be supportive of the person that's actually making that complaint about the other party, but they need to know their rights very early on in the piece.”

One CLC commented on system changes that are needed to make it easier for public engagement with legal services. Law reform also needs to include a review of the payment of legal costs.

“A potential starting point for a victim centred approach is the way people who have experienced WSH have to give evidence and be cross-examined. The cross-examination prospect is extremely daunting for someone who's experienced WSH to have a lawyer grill them in a public hearing about their experiences, and undermining their recollections, their experience and their credibility”.

“If someone pursues a WSH claim through the Australian Human Rights Commission, the federal legislation, or through the federal court, they're obviously faced with a very adversarial process. But additionally, they face the risks that if they lose their claim or if they're not successful, they'll have to pay the employers legal costs. Employers are often much better resourced than self-represented individuals that have faced this issue, particularly considering disadvantaged or marginalized individuals are more likely to experience this issue because of the inherent power imbalance. Often the prospect of facing tens of thousands of dollars in legal costs is sometimes too great a risk for someone that's already got so little.”

SUMMARY: Organisational interviews

Interviews with organisations suggests many barriers are experienced across all regions of WA, but several barriers are exclusive to rural areas. Specifically, reporting time limits and the size of the organisation were experienced in both metropolitan and regional locations. Barriers specific to rural areas included a perceived lack of privacy and confidentiality, isolation, and normalised workplace culture. Reporting limits are a barrier because many people targeted by WSH need to address their mental health before they can pursue legal procedures. Further, in smaller organisations, culture change towards intolerance of WSH may be more difficult due to lack of resources or biased leadership. Regional services highlighted the issue of confidentiality and privacy, noting that workplace complains can risk job prospects and therefore resulting in a limited number of people seeking legal assistance. Additionally, in regional areas, a single company is more likely to monopolise an industry and people face more risks by taking action against WSH and, anecdotally, regional and rural workplaces are more likely to tolerate a culture of acceptance of WSH.

We also found that there were discrepancies across regional/rural and metropolitan CLCs relative to areas of priority. Namely, regional and rural CLCs did not have the resources or capacity to prioritise WSH.

Interviewees made recommendations for legal services, workplaces, and legal systems to address some of the key priority areas regarding WSH. For legal assistance services, this included the use of warm referrals, ensuring education and clarity around process and pathways to reporting, and more effective data collection procedures. Recommendations for organisations included: education, culture change, training, data tracking, development of clear WSH policies and processes, and well-defined consequences and sanctions against those who perpetrate acts of WSH.

4. KEY LEARNINGS

Synthesis of existing literature sought to identify the frequency, nature, needs, and barriers associated with WSH in Australia. Initially, we hoped to understand the issue of WSH from a WA perspective, however, organisations are often not forthcoming with data. Although there are bound to be legal needs unique to each Australian State and Territory, we relied on national evidence to identify the current priorities associated with WSH.

The overall aim of this report was to gather evidence to identify current or emerging legal need to effectively respond to incidents of WSH in WA. The key findings of the report are presented below, based on our review of the existing literature and engagement with key stakeholders.

Key findings: Trends

- 1:** Women are disproportionately impacted by WSH and men are perpetrators at a disproportionately higher rate than other genders.
- 2:** Women, people of colour/Aboriginal and Torres Strait Islander people, CARM persons and people with diverse sexual orientations and gender identities are more vulnerable to perpetrators of WSH.
- 3:** People who experience WSH are often harassed by someone who holds more social power within the workplace; role-related (i.e., perpetrators who work in senior roles), and/or social-related (i.e., perpetrators who are white, heterosexual, cis-males).
- 4:** Certain industries report more WSH than others. Male dominated industries and a toxic workplace culture, including complacency and victim-blaming facilitates the occurrence and acceptance of this behaviour, heightens the risk of WSH.
- 5:** WSH is grossly underreported, likely because form-based reporting is onerous and challenging for people targeted by WSH and can have consequences for employment, career, relationships, and mental health.
- 6:** In 2020-2021, sexual harassment complaints comprised over 20% (72 complaints) of all employment related complaints to the EOC, ranking first in the top six grounds of complaints received in 2020-2021 (EOC, 2021).
- 7:** Information about service users is either unable to be easily retrieved, or is not collected, resulting in limited information about who presented with WSH matters.
- 8:** Addressing WSH in workplaces means enacting primary prevention measures, prompting culture change, and having clear WSH policies and processes (including consequences and sanctions for breaching WSH policies).

Key findings: Barriers to legal assistance

Structural barriers

- 1:** The WA legislation inconsistently and inadequately defines and deals with workplace sexual harassment as an issue. The need for clear and consistent definitions of concepts is essential if employers and regulators are to meet their responsibilities.
- 2:** Failure to define sexual harassment in the regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.
- 3:** Many barriers to accessing legal assistance are experienced across all regions of WA, but several barriers are exclusive to regional/rural areas.
- 4:** Time limits to reporting and the size of the organisation are barriers experienced in both metropolitan and regional locations.
- 5:** Barriers specific to regional/rural areas are a perceived lack of privacy and confidentiality, isolation, and a more complacent workplace culture.
- 6:** Clients are often unaware of the legal pathways available to them, and the benefits and consequences of each pathway/option.

Personal/social barriers

- 7:** The psychological and/or emotional impact of WSH are the primary person barriers faced to seeking legal assistance, including the onset of mental health issues.
- 8:** People fear the negative consequences of reporting, such as harm to personal or professional reputation and relationships.
- 9:** People fear loss of employment, shifts, or income.
- 10:** There is a belief that complaints will be mismanaged or have no satisfactory outcome.
- 11:** There is a lack of awareness about reporting options or trust in the reporting system.

Key findings: Consequences of WSH

- 1:** People who have experienced WSH suffer trauma and other psychological harm, physical and social deficit, and reduced quality of life.
- 2:** Some people who have experienced WSH are unable to work and experience a loss of productivity.
- 3:** WSH contributes to a colossal loss of resources and revenue in Australia.

For those who experience WSH, reporting or disclosing the incident(s) is often incredibly difficult. This means that support services need to ensure that those who come forward are effectively cared for. Private legal firms are not available to all Australians, often because of the costs associated with their services, however, legal assistance service providers (such as community legal centres) bridge this

gap and are in a unique position to deliver accessible legal support. Legal assistance service providers can not necessarily prevent WSH, but they are in a unique position to empower people targeted by WSH and ensure access to legal assistance following harm in the workplace.

Key findings: Legal need

- 1:** People who have experienced WSH are unaware of the supports and services available who can assist with legal procedures.
- 2:** Navigating the system of reporting and disclosing WSH alone is onerous and confusing.
- 3:** People who have experienced WSH are often responsive to external legal assistance services and supports.
- 4:** People who have experienced WSH need a voice. They often feel taken advantage of by their organisation and this tends to result in self-blame and a lack of confidence and self-esteem.
- 5:** People who have experienced WSH would benefit from referrals to other support services in conjunction with legal assistance (i.e., mental health supports).
- 6:** Pursuing legal action is often burdening and re-traumatising for people who have experienced WSH.
- 7:** There is limited knowledge about the reporting pathways available for both people who have experienced WSH and bystanders/witnesses of WSH.
- 8:** Clients of legal services are often facing other social or psychological issues that impede their ability to pursue a legal issue. Wrap-around support is needed.
- 9:** The integration of LE voices within an assistance centre can improve service delivery to people who have experienced WSH.

5. RECOMMENDATIONS

In recent years, global scrutiny of gender inequality, sexual violence and harassment has burgeoned. With this, WSH came under the spotlight. Costing Australia nearly \$4 billion a year, with numerous, severe personal health effects, WSH is a workplace health hazard. Yet, workplace inspectors, employers and managers often do not know how to approach WSH cases, often re-traumatising people who have experienced WSH in the rare case that they report. Reporting poses great risks for the person who has experienced WSH, jeopardising their social position, employment, and mental, physical and financial health. Governments and organisations often laud reporting as the “cure-all” for WSH, despite global empirical evidence proving its ineffectiveness.

Recommendations based on the evidence presented in this report are presented below; collected from the current literature and engagement with stakeholders – including LE and CLCs. These recommendations aim to address the key findings (see Key Learnings) and are displayed distinctly – (1) organisations who provide legal assistance, (2) workplaces, and (3) wider, legal and judicial systems.

Recommendations: Organisations providing legal assistance

Recommendation 1: Ensure legal assistance services are knowledgeable about the barriers to seeking help following an incident of WSH – including how these differ across regional/rural and metropolitan areas of WA.

Recommendation 2: Ensure staff providing legal assistance to people who have experienced WSH are trauma informed.

Recommendation 3: Ensure provision of an advocate with the same cultural background (to better support CARM persons and Aboriginal and/or Torres Strait Islander people). Ensure that information is available in languages other than English.

Recommendation 4: Legal assistance services should partner and/or provide warm referrals to other services to ensure a holistic, wrap-around model of care. This includes partnering with services that the client may already have relationships with (or who are operating in the same geographical area) to avoid isolation from prior supports.

Recommendation 5: Legal assistance services should partner with services that can aid clients with legal documents (to ensure correct form or allow access to technology).

Recommendation 6: Increase knowledge about legal assistance services – for example, using online information and resources.

Recommendation 7: Ensure client is aware of the options and pathways available to them and ensure they are presented with the cost and benefit of each option (precedents, likely length of the investigation, likely outcomes, and cost).

Recommendation 8: Improve or create comprehensive internal data capture systems to collect and collate information relative to legal need.

Recommendation 9: Integrate LE voices – advisory groups, peer support, etc. to more effectively support people who have experienced WSH.

Recommendation 10: Develop resources for clients to provide clarity and their understanding of processes – e.g., legal framework in layperson terms; rights; legal pathways and outcomes; information specifically for vulnerable populations (designed in consultation with LE).

Recommendations: Workplaces and employees

Recommendation 1: Ensure a safe and respectful workplace – culture of equality, diversity, inclusivity and WSH intolerance. How this is implemented and tracked will depend on the organisation, however each workplace should be expected to uphold these values, deliver training and other relevant resources, and specify how they will measure their performance.

Recommendation 2: Educate across the whole-of-organisation about respectful behaviour and what is expected of employees to keep each other safe at work.

Recommendation 3: Ensure the organisation is aware of the nature and prevalence of WSH – which includes covert, less ‘serious’ behaviours that constitute harassment and make others uncomfortable.

Recommendation 4: Develop and implement clear policy and guidelines for WSH – including the consequences and sanctions for people who breach WSH policies. Guidelines should also present pathways to reporting WSH - for people who have experienced harm, but also for bystanders of WSH.

Recommendation 5: Create a workplace culture that ensures transparency and accountability by ensuring that managers and leadership uphold values and policies relative to WSH. This could include offering additional training and resources to employees in management roles.

Recommendation 6: Prioritise the health and safety of any employees who experience WSH (e.g., EAP, changes to working arrangements to ensure the person targeted by WSH and perpetrator do not share work or physical space).

Recommendation 7: Deliver compulsory training relative to WSH that is delivered at induction and thereafter, regular intervals (e.g., biannually). Training should be developed with experts, or purchased through an appropriate, credible source.

Recommendation 8: Collect and track WSH data.

Recommendation 9: Reject use of NDA in WSH cases (unless requested by the person targeted) as these contribute to a culture of silencing.

Recommendation 10: Ensure there are strong sanctions imposed on employers and employees who perpetrate harm or do not appropriately respond to WSH. Sexual harassment (and assault) are grounds for dismissal.

Recommendations: Systems/legal reform

Recommendation 1: Revise definitions of WSH and ensure consistency across definitions.
Recommendation 2: Ensure that Police, lawyers and judiciary are educated and trauma-informed.
Recommendation 3: Ensure that WSH laws explicitly prohibit WSH with guidelines, codes of conduct, and regulations.
Recommendation 4: Protection, empathy and support for people who have experienced WSH during court proceedings (e.g., peer support, service animals, advocate, etc.).
Recommendation 5: A review of the payment of legal costs.
Recommendation 6: Remove compensation caps.
Recommendation 7: Increase formal reporting time limits for people experiencing WSH to ensure that people are able to address social and psychological needs.
Recommendation 8: WSH criminal cases to be judge only – criminal and civil judges having trauma-informed specialist training and no personal bias towards cases of WSH.

6. CONCLUDING THOUGHTS

The primary goal of this report was to identify current or emerging legal needs and therefore recommend how legal assistance services can more effectively support and service people who have experienced WSH. However, without other organisations and legal systems adopting similar ideologies and values, change cannot transpire. The current report conveyed the need for a collective responsibility to protect people against the harm of sexual harassment in the workplace and identify the ways in which different stakeholders can contribute to a culture of workplace safety and respect. Australia is struggling to address the issue of WSH. Reporting and legal structures rely on incidences of harassment to have already happened – and it also requires the person harmed to take responsibility for making a complaint. This, understandably, results in more distress. Proactive measures deal with the broader workplace structures that create harmful cultures where WSH is permitted. The solution is not bigger (or ‘better’) reporting systems; these require people targeted by WSH to retell and relive, creating a great burden. Instead of continuing to place these unreasonable demands on people who have experienced WSH, we need organisations to implement bold, enduring change to protect staff – an environment of genuine respect, no matter their gender, ethnicity, sexuality.

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