

Wednesday, 27 February 2019

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DIVERSITY  
COUNCIL  
AUSTRALIA

By email: [SH.Inquiry@humanrights.gov.au](mailto:SH.Inquiry@humanrights.gov.au)

### **National Inquiry into Sexual Harassment in Australian Workplaces**

Dear Commissioner,

Thank you for the opportunity to provide a submission in response to the *National Inquiry into Sexual Harassment in Australian Workplaces*. **We have also been delighted to be able to facilitate your engagement with our members and appreciate you taking the time to present to them on 12 December 2018 at DCA's Gender Equality Network.**

Diversity Council Australia is passionate about stopping the scourge of sexual harassment at work, and we believe a key way to do this is by highlighting the work being done on this by DCA members.

To inform our submission we designed a survey for D&I practitioners, legal teams and other interested parties to tell us about the policies and programs DCA members have in place, and what resources would be helpful for organisations to prevent sexual harassment at work.

The responses to that survey are presented in this submission.

Please feel free to contact myself or Cathy Brown, Manager, Policy & Government Relations ([cathy@dca.org.au](mailto:cathy@dca.org.au)) should you require any further information about this matter.

Yours sincerely

**Lisa Annese**  
**Chief Executive Officer**

# I. ABOUT DIVERSITY COUNCIL AUSTRALIA

## Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

## Our mission

In partnership with our members, our mission is to:

- Lead debate on diversity in the public arena;
- Develop and promote the latest diversity research, thinking and practice; and
- Deliver innovative diversity practice resources and services to enable our members to drive business improvement.

## What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

Over 535 Australian based organisations are members of DCA, many of whom are Australia's business diversity leaders and biggest employers. Some of our founding members include ANZ Bank, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.

DCA works in partnership with members to generate ground breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

- **DCA resources are ahead of the curve.** They establish leading diversity and inclusion thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.
- **DCA resources drive business improvement.** They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.
- **DCA resources are practice focused.** They respond to the information needs of industry leaders and the people they employ.
- **DCA resources speak to the Australian context.** DCA projects generate leading diversity and inclusion thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.
- **DCA resources considers all diversity dimensions.** The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, and work organisation.

## II. SUMMARY

DCA is the leading workplace diversity and inclusion adviser in Australia. This submission looks at the understanding workplaces have about the definition and nature of sexual harassment, and the resources that workplaces need to address this issue. We explore what DCA's existing research tells us about the experiences of Australian workers and evidence-based interventions.

DCA conducted an online survey of our members about the work their organisation undertakes to respond to and prevent sex-based and sexual harassment, as well as asking our members for examples of good practice.

In surveying our members, a number of clear themes emerged:

- Currently, many workplaces have a number of misunderstandings and misconceptions about what sex-based and sexual harassment is, the impact it has, and how to deal with it when it happens.
- Understanding these misconceptions can help us to develop training and responses to challenge those misconceptions and also enable practitioners to better understand areas that need specific training, research or interventions.
- There is a 'gender gap' when it comes to understanding what constitutes harassment (i.e. many men underestimate how prevalent sexual harassment against women is and believe that sexual harassment is over-reported when this is not the case).
- Under the current system, there is an over reliance on complaints mechanisms to deal with sexual harassment, and a lack of focus on prevention. We need better education, at a workplace and community level, about what sex-based and sexual harassment is.
- Workplaces have a range of responses to online and technology based harassment. As the number of incidents perpetuated via technology increases, workplaces should ensure that they actively monitor if sexual harassment is occurring through technology.
- Our respondents indicated younger workers, particularly women, but also those from culturally diverse backgrounds, those with disability, those who are Aboriginal and / or Torres Strait Islander peoples, or those who are LGBTIQ+, were more likely to experience sexual harassment. However, despite this, the experiences of particularly vulnerable groups are not always being recognised in training and policy frameworks.
- Gender inequalities, historical work practices that allow inequality, power imbalances, a lack of education and awareness about sexual harassment, and a general fear of making a complaint are characteristics that can increase the risk of workplace sexual harassment.
- Australian workplaces have a good understanding of existing resources, but believe these could be updated more regularly, more targeted for specific issues, and better communicated.

**Sexual harassment is costly for Australian business and individuals. Many businesses in Australia have policy, training and complaint mechanisms.**

**But it is clear that ‘more of the same’ isn’t working. Workplaces can no longer rely on ‘existing measures’ alone.**

Our submission also puts forward a [number of recommendations](#) to address some of the issues that workplaces currently experience in dealing with sexual and sex-based harassment.

However, we have two overarching observations:

**1. Inclusive workplaces have lower rates of harassment and discrimination**

DCA’s *Inclusion@Work Index* [[Appendix 2](#)] demonstrates that workers in inclusive teams are significantly less likely than workers in non-inclusive teams to experience harassment or discrimination.

As part of any workplace prevention strategies, organisations should work towards creating inclusive workplaces: that is, workplaces where a diversity of people are respected, connected, progressing and contributing to organisational success.

**2. Myths and misconceptions about sexual harassment are an issue for workplaces**

We know from the experiences of DCA members that a critical stumbling block for organisations are the myths and misconceptions about what sexual harassment is, its impact on organisations and individuals, and what we can do stop it.

For International Women’s Day 2019, DCA is releasing a myth busting guide on how to challenge misconceptions about sexual harassment using evidence, as well as specific strategies that can be employed at a workplace and community level. This will be available to all DCA members and includes frameworks for action [See: [Appendix 1](#)].

### III. RECOMMENDATIONS

#### *Understanding workplace-related sexual and sex-based harassment*

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1. **Preventing sexual harassment requires education**, at a workplace and community level, about what sex-based and sexual harassment is.
2. To **counter the misconception that what may have been meant as a joke was experienced as offensive, insulting, intimidating or unwelcome**, workplace policies and training should draw on specific examples of inappropriate comments or jokes that constitute sexual harassment and show the costs both personal (to victims) and to organisations.
3. **Workplace training should recognise the ‘gender gap’**. Workplace training should address issues that can lead to men misunderstanding the prevalence of sexual harassment, and common misconceptions, as well as actions men can take such as standing up to sexist jokes, or saying something about sexually harassing behaviour (which not only stops the behaviour from happening, it can empower more men to speak out).
4. **Workplace guidance should emphasise that sexual harassment can occur outside of the physical workplace**, e.g. at work functions, on work trips and online.
5. **Educate employees about all the types of behaviour that constitute workplace sexual harassment, particularly non-physical behaviours**. Training should include specific examples of non-physical interactions that can be harassment.
6. **Workplaces need better education around consent, specifically that sexual harassment is not interaction, flirtation or friendship that is mutual or consensual**. Before embarking on a workplace relationship, individuals must understand, among other things, the power dynamics at play. Workplace training should take this into account.
7. **Workplaces need guidance for educating their employees to better understand the impact of their actions on other people**, and a clear understanding of the ‘reasonable person’ test.
8. **Policy, training and tools should include case studies or examples of types of behaviours that are appropriate or inappropriate, and detail on how context is important**.
9. **Messaging around sexual harassment should counter the misconception that sexual harassment is over-reported**.
10. **Raise awareness that sexual harassment happens to men and LGBTIQ+ people**, and challenge the attitudes that discourage men from reporting sexual harassment.
11. **Complaint processes need to be overhauled to make the process simpler and more transparent**. Under the current system, there is an over reliance on complaints mechanisms to deal with sexual harassment, and a lack of focus on prevention.

*TERM OF REFERENCE 2: Online workplace-related sexual and sex-based harassment and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment*

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12. Given the increasing number of incidents perpetuated via technology, **workplaces should ensure that they actively monitor if sexual harassment is occurring through technologies.**

*TERM OF REFERENCE 4: The drivers of workplace sexual harassment, including whether:*

*(a) Some individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability*

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13. **Workplace sexual harassment prevention strategies should recognise that power shows up in lots of ways** and role imbalances, or financial and job security, are specifically recognised as factors that must be considered when determining if something is sexual harassment.
14. **Workplaces should support efforts to create gender-balanced leadership** as this can reduce harassment. Where there is gender disparity in power in an organisation, sexual harassment increases. Men sometimes use sexual harassment as a tool against women in power. But, when power is shared across gender, harassment decreases. The best way to deal with this sort of power play is to ensure that your organisation has equal leadership of men and women.
15. From DCA's '[Cracking the Glass-Cultural Ceiling](#)': **Introduce a 'courage to call it' campaign** to encourage staff to call out and address workplace banter that excludes or discredits culturally.
16. From DCA's '[Out at Work](#)':
- Workplaces should have zero tolerance for sexual harassment and **make sure training recognises the experiences of LGBTIQ+ people.**
  - Workplaces should ensure that **sexual harassment training includes examples of sexual harassment of LGBTIQ+ people** so that the message is clear that it will not be tolerated towards anyone.
17. **Policies and training must be inclusive.** They need to recognise the specific experiences of different groups. Given the higher prevalence of sexual harassment of people, particularly women, who have an intersectional identity (e.g. women with disability, non-heterosexual women, and Aboriginal and/or Torres Strait Islander women) workplace policies and training should be tailored to specifically recognise the experiences of these groups.

*TERM OF REFERENCE 4: (b) Some workplace characteristics and practices are more likely to increase the risk of sexual harassment*

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18. Recommendation from [Cracking the Glass-Cultural Ceiling](#): **Diversify socialising events** and activities to go beyond alcohol-based evening/weekend events or physically demanding sporting activities.

*TERM OF REFERENCE 5: The current legal framework with respect to sexual harassment*

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19. DCA members suggested that the Australian Human Rights Commission's guidelines on 'Effectively preventing and responding to sexual harassment' could be better promoted through a targeted advertising and awareness campaign, as well as through workplace training and via existing D&I organisations.
20. DCA Members have a good awareness of existing resources to help workplaces understand legal obligations in relation to sexual harassment, but believe that they could be improved with:
  - Case studies;
  - Multi-language and multicultural resources (understanding cultural differences); and
  - Better communication of guidelines.

*TERM OF REFERENCE 6: Existing measures and good practice being undertaken by employers in preventing and responding to workplace sexual harassment, both domestically and internationally the impacts on individuals and business of sexual harassment, such as mental health, and the economic impacts such as workers compensation claims, employee turnover and absenteeism*

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21. **Focus on workplace inclusion** as a key part of any prevention framework. Utilise evidence-based guidelines to build inclusive organisations, and train inclusive leaders.
22. **Organisations should ensure that workplace anti-sexual harassment training is based on evidence.** Research shows that the most impactful training is at least four hours, in person, interactive and tailored for the particular workplace and presented by an employees' supervisor or an external expert (not an HR official with no direct oversight).
23. **Invest in a bystander intervention** to identify – and prevent – unacceptable behaviour, and motivate employees who witness or hear about inappropriate behaviour to speak up.
24. **Empower bystanders to be agents of change** by:
  - Asking questions such as, "How could we let this happen?" and "How can we prevent it from happening again?"
  - Making perpetrators accountable – not their targets, and
  - Providing bystanders with the words to say to a perpetrator such as, "What you said earlier really bothered me" or "I wonder if you realise how that comes across?"
25. **Train bystanders.** This equips everyone in the workplace to stop harassment, instead of offering people two roles no one wants: harasser or victim. A U.S. study found that soldiers who received the training were significantly more likely than those who did not to report having taken action when they saw assault or harassment.

## IV. INTRODUCTION

DCA is the leading workplace diversity and inclusion adviser in Australia. In response to this Inquiry we explored what understanding workplaces have about sex-based and sexual harassment, how Australian workplaces are currently responding, and what are the gaps between what workplaces are doing and what evidence tells us about sexual harassment.

To do this DCA conducted an online survey of our members about the work their organisation undertakes to respond to and prevent sex-based and sexual harassment, as well as asking our members for examples of good practice.

### DCA MEMBER CONSULTATION

As a member-based organisation, it is extremely important to DCA that our submission reflects the views of the DCA membership.

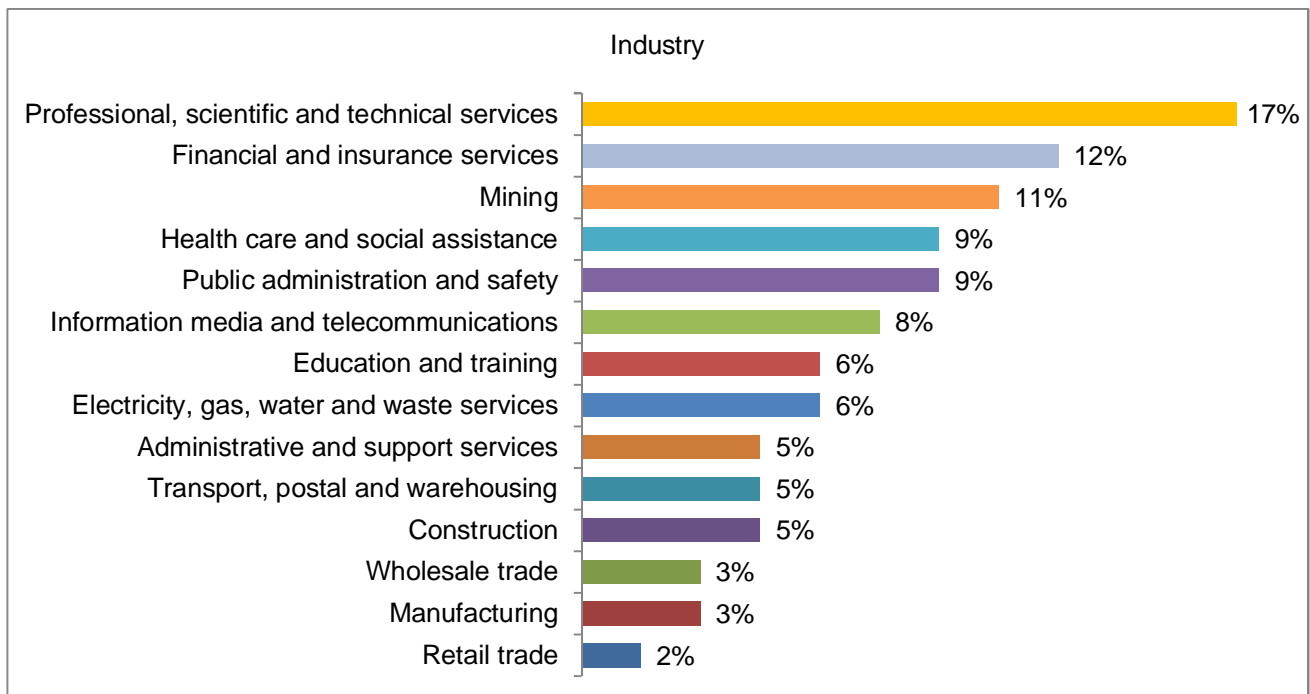
We surveyed our members from 1 November 2018 to 18 January 2019. Initially we asked for identifying details of respondents, but after feedback from our membership, we amended the survey to allow for anonymous responses due to the sensitive nature of this inquiry.

**Overall, there were 64 responses.** Questions in the survey were non-compulsory which is reflected in the number of responses for each question.

Respondents came from a range of industries.

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### DCA respondents by industry





# Understanding workplace-related sexual and sex-based harassment

Currently, DCA member workplaces have a number misunderstandings and misconceptions about what sex-based and sexual harassment is, the impact it has, and how to deal with it when it happens.

Under the current system, there is an over reliance on complaints mechanisms to deal with sexual harassment, and a lack of focus on prevention. We need better education, at a workplace and community level, about what sex-based and sexual harassment is.

## Misconceptions

DCA members are at the forefront of responding to and preventing sexual harassment in organisations across Australia.

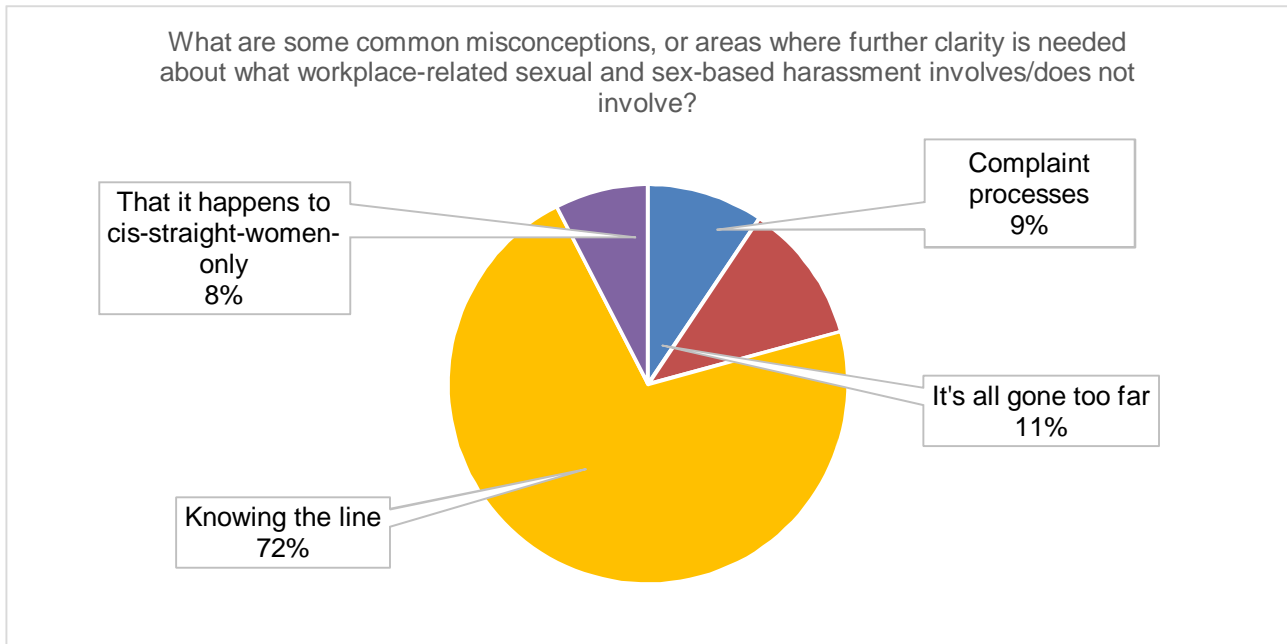
The experience of our members is that a critical stumbling block for organisations are the myths and misconceptions about what sexual harassment is, its impact on organisations and individuals, and what we can do to stop it.

**For International Women’s Day 2019, DCA is releasing a myth-busting guide for DCA members on how to challenge misconceptions about sexual harassment using evidence, as well as specific strategies that can be employed at a workplace and community level [See: [Appendix 1](#)].**

We know from research that Australians’ understanding of sexual harassment is limited.<sup>1</sup> Research also shows there is a ‘gender gap’ when it comes to understanding what constitutes harassment, with many men greatly underestimating how prevalent sexual harassment against women is,<sup>2</sup> half of men believing that women mistakenly interpret ‘innocent’ remarks or acts as being sexist,<sup>3</sup> and men being less likely to recognise behaviours as serious or threatening.<sup>4</sup>

Understanding the misconceptions that workplaces have about what constitutes sexual harassment can help us to develop training and responses to challenge those misconceptions and also enable practitioners to better understand areas that need specific training, research or interventions.

**We asked our members to describe the common misconceptions that they encountered in their workplaces about what sexual harassment involved and did not involve.**



**53 respondents** provided open-ended answers to this question which were then coded. These answers were grouped together in themes that came through the answers. The chart above highlights some of the key themes that came through in responses.

### Knowing 'the line'

The vast majority of respondents (almost three-quarters, 72%) told us that the most common misconception they encountered in their organisations was that there was lack of understanding among other employees about '*knowing the line*', that is, understanding what does and what does not constitute sex-based harassment.

*"We need to just keep re-enforcing the definitions of acceptable versus unacceptable behaviour in the workplace."*

### DCA RECOMMENDATION:

***Preventing sexual harassment requires education, at a workplace and community level, about what sex-based and sexual harassment is.***

Within this broader category, there were a number of common themes:

#### a) *Inappropriate jokes*

**Inappropriate jokes** or comments were highlighted as needing further clarity in workplaces.

*"People still think it is OK, if the offensive comments were meant as a joke."*

Furthermore, respondents suggested that people are sometimes surprised when they are reproached when a 'joke' was experienced as offensive, insulting, intimidating or unwelcome:

*"People are shocked when they are pulled up on examples which are not acceptable."*

Research shows that nearly one quarter of Australians see no harm in telling **sexist jokes**.<sup>5</sup> This is concerning because research shows that exposure to frequent small incidents such as sexist jokes or

comments cause just as much damage as other experiences that are considered more extreme (e.g. unwanted touching, threatening retaliation for lack of sexual favours) and have a cumulative dripping-tap effect.<sup>6</sup> All these forms of sexism are equally harmful to women's occupational wellbeing – mental and physical health problems, lower life satisfaction, dissatisfaction with jobs, organisations and relationships with colleagues were the result.<sup>7</sup>

What's more, there is a strong link between sexism and violence against women: sexist and sexual jokes may provide a 'gateway' to sexual harassment and sexual assault.<sup>8</sup>

### **b) Inappropriate comments**

Our respondents also told us that they felt some people in their workplaces were confused about where 'the line' was in relation to what was an **inappropriate comment**:

*"Another common misconception is that light-hearted banter, 'innocent' comments which were not intended to offend anyone, or the circulation of sexually explicit material alone, cannot amount to sexual harassment."*

This reflects findings of the Australian Human Rights Commission's *Fourth National Survey on Sexual Harassment in Australian Workplaces*<sup>9</sup> that jokes and inappropriate comments were actually some of the most common behaviours encountered, but were the least likely to be reported.

A further respondent highlighted how jokes could also lead to indirect harassment:

*"Indirect behaviours (e.g. a suggestive joke to an individual where s/he doesn't find it offensive but others that over-hear the joke do)."*

### **DCA RECOMMENDATION:**

**To counter the misconception that what may have been meant as a joke was experienced as offensive, insulting, intimidating or unwelcome, workplace policies and training should draw on specific examples of inappropriate comments or jokes that constitute sexual harassment and show the costs both personal (to victims) and to organisations.**

### **c) Everyday sexism**

Another misconception raised by respondents was how casual or **everyday sexism** actually can be sexual harassment.

*"That casual sexism is ok and everyone just lets it go. No one speaks up, everyone is just a passive bystander. Norms are created by a few but followed by all."*

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*"Sexist remarks about position descriptions due to gender, e.g., when a female co-worker answers a colleague's phone and transfers the call 'that was my secretary' 'she's a good looking sort'. ...Expecting females to take on menial tasks, either administratively or alternatively, in the kitchen, because they are female is entirely unacceptable."*

DCA's *Engaging Men on Gender Equality* report explains how casual or everyday sexism<sup>10</sup> is actually built into the systems and structures of workplaces policies and decision-making practices, and through norms and customs.

These sort of deeply entrenched ideas about sexism and behaviour require concerted efforts across society to create change.

Men have an especially important role in this change. Research shows that men receive more positive reactions and experience fewer negative consequences than women when confronting sexism.<sup>11</sup>

What's more, most men overestimate the level of approval from other men of sexist behaviour. So standing up to sexist jokes, or saying something about sexually harassing behaviour not only stops the behaviour from happening, it can empower more men to speak out as well.

When it comes to harassment, research has found that:

- Many men greatly underestimate how prevalent sexual harassment against women is,<sup>12</sup>
- Men often have a poorer understanding of sexual harassment than women do, in fact, half believe that women mistakenly interpret 'innocent' remarks or acts as being sexist,<sup>13</sup> and men are also more likely to believe sexual harassment is a form of sexual flirtation, and less likely to recognise behaviours as serious or threatening,<sup>14</sup>
- Men who witness inappropriate behaviour can be more reluctant to intervene than women, particularly in front of other men, as they can overestimate other men's comfort with problematic behaviour,<sup>15</sup> and
- This lack of understanding of the extent of sexual harassment is holding back organisations' efforts to address it.

### **DCA RECOMMENDATION:**

***Workplace training should recognise the 'gender gap'. Workplace training should address issues that can lead to men misunderstanding the prevalence of sexual harassment, and common misconceptions, as well as actions men can take such as standing up to sexist jokes, or saying something about sexually harassing behaviour (which not only stops the behaviour from happening, it can empower more men to speak out).***

#### **d) A one-off incident can be harassment**

Other respondents raised the idea that there needs to be a pattern of behaviour to prove a claim of sexual harassment, when in fact any complaint should be investigated.

*"That it needs to be a pattern of behaviour, rather than a one off incident."*

#### **e) Incidents off-site and/or in tech spaces can be harassment**

That it has to happen at the physical workplace:

*"People often make the mistake of assuming that sexual harassment which takes place at work social events, on work travel or via social media does not count."*

According to the Australian Human Rights Commission's *Fourth National Survey on Sexual Harassment in Australian Workplaces*, close to one-fifth (18%) of incidents of sexual harassment occurred at a work social event.<sup>16</sup>

### **DCA RECOMMENDATION:**

***Workplace guidance should emphasise that sexual harassment can occur outside of the physical workplace, e.g. at work functions, on work trips and online.***

#### **f) Non-physical interactions can be harassment (e.g. comments, jokes, visual images)**

Finally, the notion that sexual harassment must include inappropriate touching, indecent assault or sexual assault, or the harassment isn't real, was raised by two respondents.

*"A common misconception is that physical touch has to occur to warrant sexual harassment."*

Non-physical behaviours can be just as insidious to individuals and can cost businesses lots of money.

Sexual harassment isn't only physical. In fact, the most common forms of workplace sexual harassment over the past year were offensive, sexually suggestive comments or jokes and intrusive questions or statements about a person's private life.<sup>17</sup>

Most people actually don't report these behaviours, often because they don't realise that they can.

In order to stop sexual harassment at work, we need to ensure that employees are educated about the full range of behaviours that can constitute sex-based and sexual harassment.

### **DCA RECOMMENDATION:**

**Educate employees about all the types of behaviour** that constitute workplace sexual harassment, particularly non-physical behaviours. Training should include specific examples of non-physical interactions that can be harassment.

#### **g) Mutually consenting relationships are not harassment**

Some respondents indicated that there was confusion about relationships between colleagues.

*"Relationships between colleagues and inviting people on dates/for coffee etc."*

But the law is very clear: *Sexual harassment involves any unwelcome sexual advances, requests for sexual favours or other conduct of a sexual nature, which can be physical or not.*

Sexual harassment is **not** interaction, flirtation or friendship that is mutual or consensual. Consensual relationships happen in the workplace every day.

### **DCA RECOMMENDATION:**

**Workplaces need better education around consent**, specifically that sexual harassment is not interaction, flirtation or friendship that is mutual or consensual. Before embarking on a workplace relationship, individuals must understand, among other things, the power dynamics at play. Workplace training should take this into account.

#### **h) It's impact not intent**

Some respondents highlighted that there is confusion around **impact** and **intent**:

*"It is not the intention of the person making the comments or demonstrating the behaviour which matters but rather how the person on the receiving end perceives those comments or the behaviour."*

The **intent** of a harasser is not the measure by which an action will be judged:

*"The perception of the harasser is irrelevant... if the harasser thinks [a] joke is funny (for example) – the question is not whether the harasser (or someone who works with the harasser) thinks the conduct is acceptable, but whether a 'reasonable' person in our society would anticipate that someone would be offended, humiliated or intimidated by the conduct. We quite often hear from the harasser 'but it wasn't intended that way...' – which is irrelevant."*

It's important that workplace policy and training addresses understanding how the impact will be judged, that is, that the behaviour *'must be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated'*. This is obviously important in addressing issues around vexatious complaints and how important it is

when thinking about behaviour to 'walk in someone else's shoes'. For example, as one respondent pointed out:

*"...culturally there are still things that I would consider sexual harassment that many would feel is social interaction. People do not get the context of how it makes me feel, regardless of the intent of the person doing it - the level of discomfort I feel should not be diminished because doing the same thing to another person does not get the same reaction."*

### **DCA RECOMMENDATION:**

***Workplaces need guidance for educating their employees to better understand the impact of their actions on other people, and a clear understanding of the 'reasonable person' test.***

#### ***i) Context makes a difference***

Another clear misconception to emerge from respondent's answers was the idea that **context** matters, that an interaction that was appropriate with one colleague would not automatically be appropriate with another (e.g. hugging a colleague hello):

*"That something that was intended to be friendly, or complimentary, can be overfamiliar and make some people feel very uncomfortable."*

### **DCA RECOMMENDATION:**

***Policy, training and tools should include case studies or examples of types of behaviours that are appropriate or inappropriate, and detail on how context is important.***

#### ***j) Power makes a difference***

Other respondents highlighted the role that power imbalances play:

*"It is about power, not sex or gender."*

Sexual harassment is a form of dominance, control and power that shows up at work in many ways.<sup>18</sup> And while it's almost always about power, that doesn't mean that gender does not play an important part in that relationship. For example, we know from research that harassment flourishes in workplaces where men dominate in management and women have little power.<sup>19</sup> In these workplaces, women have less ability to speak up and influence change and men feel pressure to accept other men's sexualised behaviour.<sup>20</sup>

### **It's all gone too far**

In the era of #MeToo, some people may fear that any interaction at work could be construed as sexual harassment:

*"There still seems to be some confusion (mainly by men) about what is and is not appropriate in the workplace. Since the #MeToo movement I have noticed comments like 'oh, I hope I am allowed to do that' when a man and woman shake hands (comment from the man). I think this undermines the importance of appropriate workplace behaviours, and also shows a real lack of understanding about what harassment is and what is not."*

And by extension, men (in particular) feel unable to give compliments:

*"...even comment that someone's hair looks nice or outfit looks nice [for fear that it] may be considered offensive."*

This is also a subtle way of telling people, women in particular, that they should just tolerate certain behaviours because responding to and preventing sexual harassment is actually unnecessary:

*“That addressing workplace-related sexual and sex-based harassment is mere political correctness and unnecessary.”*

Underlying this notion is an idea that complaints about sexual harassment are out of control, when the facts generally show otherwise.

Less than one in five victims complain to their company.<sup>21</sup> Victims are much more likely to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure the behaviour.<sup>22</sup>

What’s more, the Australian Human Rights Commission’s *Sex Discrimination Complaint Statistics*<sup>23</sup> indicate only 1.4% of claims made are found to be trivial, vexatious, frivolous, misconceived, or lacking in substance.

#### **DCA RECOMMENDATION:**

***Messaging around sexual harassment should counter the misconception that sexual harassment is over-reported.***

#### **That it happens to cis-straight-women-only**

A number of respondents highlighted how even though sexual harassment disproportionately impacts young women, men can be sexually harassed too, and the prevalence of sexual harassment is higher for LGBTIQ+ people.

*“People do not always realise that sexual harassment can be against someone of the same sex or that it is something that men can be subjected to as well as women (although evidence shows that women are more likely to be subjected to sexual harassment).”*

#### **DCA RECOMMENDATION:**

***Raise awareness that sexual harassment happens to men and LGBTIQ+ people, and challenge the attitudes that discourage men from reporting sexual harassment.***

(See below for specific recommendations in relation to LGBTIQ+ people).

#### **Complaint processes are misunderstood**

Respondents also pointed out the complaint processes are misunderstood, confusing and lack transparency:

*“It is important that the mechanics of how to make a workplace behaviour complaint are clearly spelled out, including on the organisation’s intranet. Moreover, complainants should feel comfortable in withdrawing from the process at any time.”*

#### **DCA RECOMMENDATION:**

***Complaint processes need to be overhauled to make the process simpler and more transparent. Under the current system, there is an over reliance on complaints mechanisms to deal with sexual harassment, and a lack of focus on prevention.***

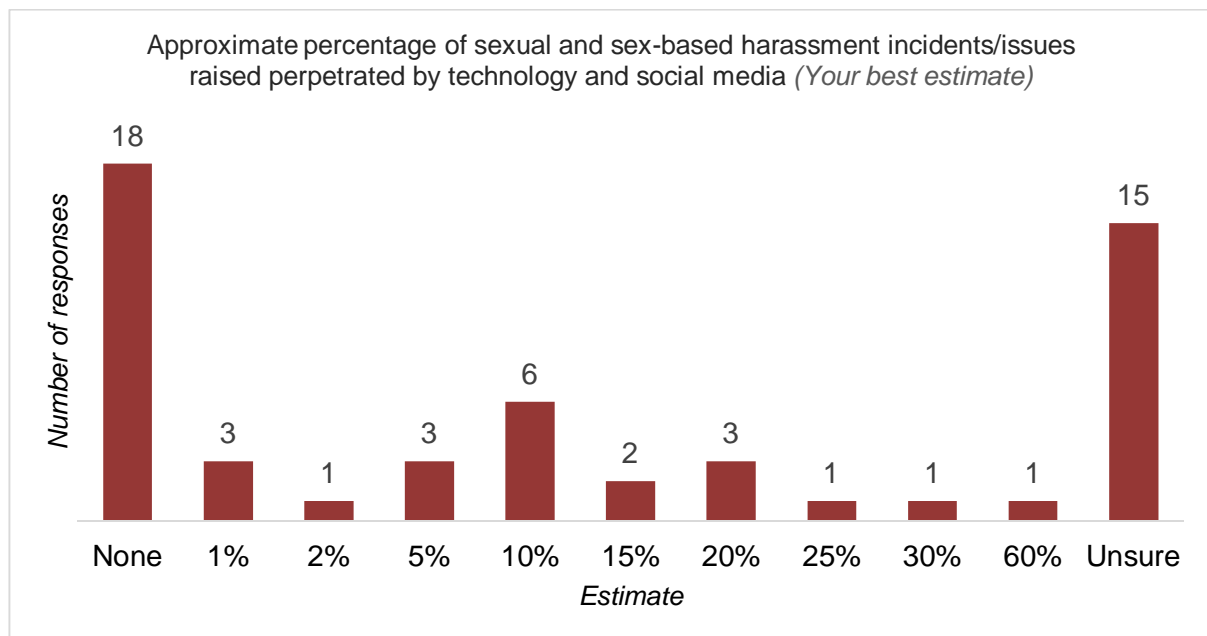


## V. DCA RESPONSE TO THE TERMS OF REFERENCE

### TERM OF REFERENCE 2: Online workplace-related sexual and sex-based harassment and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment

Workplaces have a range of responses to online and technology based harassment. As the number of incidents perpetrated via technology increases, workplaces should ensure that they actively monitor if sexual harassment is occurring through technology.

To understand the use of technology and social media to perpetuate sexual harassment at work, we asked DCA members to provide an estimate of the *'approximate percentage of sexual and sex-based harassment incidents/issues raised in your organisation are perpetrated by using technology and social media'*.



**54 respondents** answered this question. 39 respondents estimated how many complaints related to harassment perpetrated by technology, while 15 respondents (27%) indicated that they were unsure.

**The average estimate was that about 7% of sexual harassment complaints were perpetrated using some form of technology.** (This average was clearly impacted by one respondent estimating 60%).

**The median of these estimates was 1%.**

21 respondents (more than half of all estimates) estimated that technology and social media related incidents that were **raised in their organisation** less than 1% of the time.

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On average, DCA member's estimated that about 7% of issues or incidents raised in their workplaces related to harassment that occurred via some form of technology.



This is roughly in line with the ‘types of workplace sexual harassment’ reported in the Australian Human Rights Commission’s *Fourth National Survey on Sexual Harassment in Australian Workplaces* which found<sup>24</sup> that harassment, specifically via email, social networking, and other technologies, collectively, account for about 8% of workplace sexual harassment.<sup>i</sup>

However, it is also important to consider that slightly more than a quarter of our respondents were unaware or unable to provide an estimate of the percentage of issues raised at their organisation that related to technology and social media. Clearly, then, many workplaces are not actively monitoring this information.

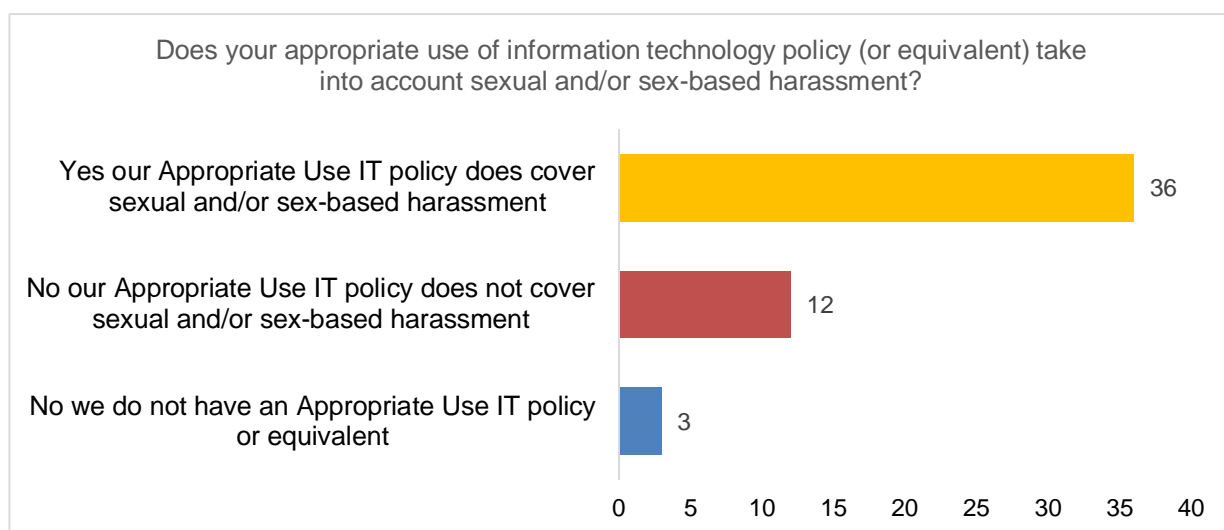
### DCA RECOMMENDATION:

*Given the increasing number of incidents perpetuated via technology, workplaces should ensure that they actively monitor if sexual harassment is occurring through technologies.*

## Using technology to prevent and respond to harassment

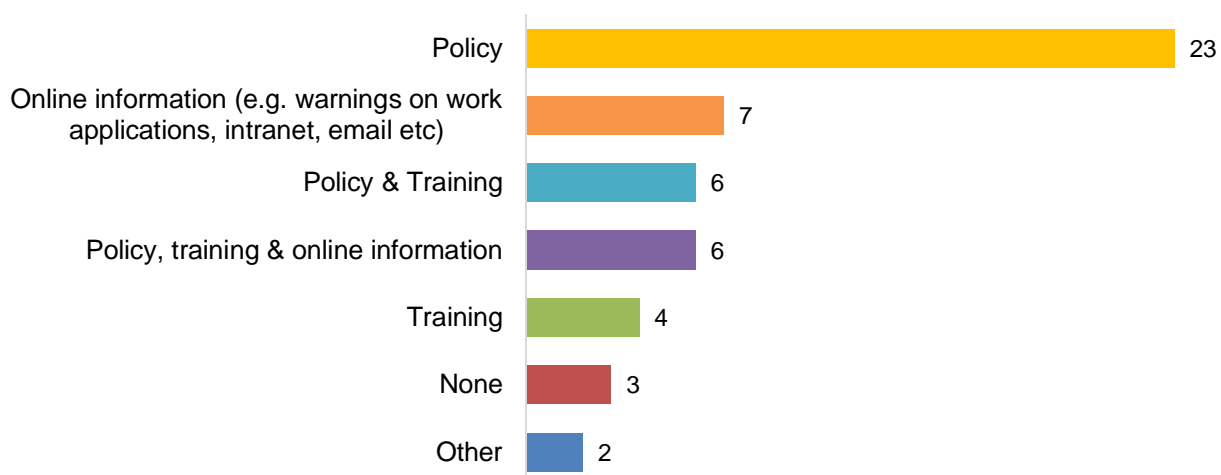
To understand what workplaces were putting in place to prevent use of technology to enable harassment, we asked our members if their ‘appropriate use of information technology policy (or equivalent) take into account sexual and/or sex-based harassment?’

We had **51 responses** to this question. More than two-thirds (70%, 36 responses) indicated that their Appropriate Use IT Policy covers sexual and/or sex-based harassment.



<sup>i</sup> See Figure 16: Types of workplace sexual harassment (by gender).

How does your organisation prevent and/or respond to workplace sexual and sex-based harassment which is online and/or perpetrated by using technology and social media



We also asked DCA members about how their organisations prevent and/or respond to workplace sexual and sex-based harassment which is online and/or perpetrated by using technology and social media.

**51 respondents** provided an answer to this question. The most common form of prevention was through policy, while the vast majority of the DCA members who responded to this question (90%) indicated that their workplace uses a combination of policy, training and/or online information.

## TERM OF REFERENCE 4: The drivers of workplace sexual harassment, including whether:

- a. Some individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability

Our respondents indicated that younger workers, particularly women, but also those from culturally diverse backgrounds, those with disability, those who are Aboriginal and/or Torres Strait Islander peoples, or those who are LGBTIQ+, were more likely to experience sexual harassment. However, despite this, the experiences of particularly vulnerable groups are not always being recognised in training and policy frameworks.

In order to respond to *'the drivers of workplace sexual harassment, including whether... some individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability'* we asked respondents to tell us which groups were more likely to experience sexual harassment. This was an open-ended question.

**56 members responded** to this question. Our respondents indicated that younger workers, particularly women, but also those from culturally diverse backgrounds, those with disability, those who are Aboriginal and/or Torres Strait Islander peoples, or those who are LGBTIQ+, were more likely to experience sexual harassment.

The word cloud below shows that respondents felt that young employees, in particular younger women, were most likely to be subjected to sexual harassment.

men Anyone workers Younger inexperienced vulnerable members  
younger Junior Younger females backgrounds  
female power younger people Possibly age

Respondents highlighted a number of reasons for this. Some noted that **young women** could be vulnerable because of inexperience in the workplace:

*"Possibly younger women or new starters in the company who don't want to jeopardise their career."*

Though sexual harassment can occur to workers of all ages, statistics show that young workers experience the highest levels, with three in four between the ages of 18 and 29 experiencing sexual harassment over the course of their lifetime.<sup>25</sup> Workplace inexperience and vulnerability are key reasons for this. Younger workers are often at the beginning of their careers or in non-permanent work, usually in lower positions of power that make them more prone to harassment and less confident to speak out against their harasser/s.<sup>26</sup>

Others noted that young women may be **physically isolated** in the office layout due to specific roles that women are more likely to hold:

*“Young female colleagues are more likely to experience sexual harassment. I find in particular those of are front of house/reception and are isolated from the rest of the colleagues (in terms of office layout) are more likely to experience this harassment.”*

Research shows that workers who are physically isolated or have few opportunities to work with others (such as cleaners working alone, people attending to hotel rooms alone, and agricultural workers) can also be at a higher risk of harassment.<sup>27</sup> This is often because harassers can easily access such workers and there are no witnesses to the harassment or bystanders who could intervene.

Others raised physical isolation in a **male-dominated workforce**:

*“An additional vulnerable group is our areas of the business where females are the most under-represented and may lack support of other women (e.g. remote operations / field).”*

Again, this is reflected in research which suggests harassment is common in organisations where few women hold the ‘core’ jobs – female firefighters, police officers, construction workers, and miners, as well as women in the tech industry are frequently harassed because they’re outnumbered.<sup>28</sup>

Another issue raised was how workplaces should deal with sexual harassment perpetuated by **clients and customers**.

*“Higher risk on certain client sites, or joint ventures where the culture is very different to that at our organisation.”*

According to one U.S. study, about 10% of women who are sexually harassed at work were harassed by a client, customer, or patient.<sup>29</sup> The U.S. study also suggests that these figures can be even higher in particular industries such as healthcare or retail.

The old adage that “the customer is always right” can create a one-sided power imbalance, so particularly in the context of large contracts, clients or customers can believe that they are entitled to behave in sexually harassing and aggressive ways.

## **AN EXAMPLE OF GOOD PRACTICE FROM A DCA MEMBER: CLIENTS**

“We have put in place specific safeguards to support our staff who go on secondment to client offices. In particular, we give one-to-one training to the individual being seconded which equips them to deal with any issues that may arise during their time on secondment given that they will be operating in the client’s working environment. There is also express provision within the secondment agreement signed by the client that the client will address any issues which may arise under *the Equality Act 2010* and will keep the firm informed of the complaint or concerns and any actions that are taken to address them.”

The impact of **societal attitudes towards younger people**, particularly women, i.e. that they are less capable than others, was also raised:

*“Younger females predominately, but also younger males - there is a level of unwanted engagement for both, but as a female I notice the subtle stuff like glances, willingness to help or listen or perceiving a young female as somehow lesser aware or educated even though they have a degree.”*

One respondent also highlighted how harassment could impact **older workers**, because of particular vulnerabilities they might have:

*“Perhaps older workers too who are too scared that they could lose their jobs.”*

Another respondent highlighted the **harassment of powerful women by more junior men**, which is also borne out in research which shows that men sometimes use sexual harassment as a tool against women in power.<sup>30</sup> This sort of sexual harassment often occurs because of because some sort of insecurity prompts them to want to undermine a woman's position in the social hierarchy.

*"Women in senior positions within an organisation."*

### DCA RECOMMENDATION:

**Workplace sexual harassment prevention strategies should recognise that power shows up in lots of ways** and role imbalances, or financial and job security, are specifically recognised as factors that must be considered when determining if something is sexual harassment.<sup>31</sup>

**Workplaces should support efforts to create gender-balanced leadership as this can reduce harassment.** Where there is gender disparity in power in an organisation, sexual harassment increases. Men sometimes use sexual harassment as a tool against women in power. But, when power is shared across gender, harassment decreases. The best way to deal with this sort of power play is to ensure that your organisation has equal leadership of men and women.<sup>32</sup>

## What DCA research can tell us about the experiences of people with particular characteristics

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Respondents also noted that **intersectionality creates a double-jeopardy** for women:

*"Younger females particularly where intersectionality applies are the most vulnerable in general."*

But also being from any **minority group** made people vulnerable:

*"Young workers, workers from culturally, linguistically and religiously diverse backgrounds, LGBTIQ workers, workers with disabilities, workers from lower socio economic backgrounds."*

These observations are backed up by DCA's own research into the experiences of particular groups at work.

### Cracking the Glass-Cultural Ceiling<sup>33</sup>



This research explored why culturally diverse women are notably under-represented in leadership ranks.

What DCA found was that culturally diverse women experience a 'double jeopardy' when accessing leadership roles due to their gender and cultural background. This double jeopardy results in a 'glass-cultural ceiling' in which invisible organisational barriers lock out culturally diverse women from accessing leadership positions in their workplaces.

One of the issues raised by interviewees was **amplified bias**, where gender and cultural biases have a compounding or 'amplifying' effect on culturally diverse women and their lack of career progress and opportunities.

Explicit bias was evident in racist and sexist comments and offensive 'jokes', as well as 'pushback' when the women indicated such comments and jokes weren't welcome.

#### **Bias in Banter.**

*"He said, 'Why are Asian women's feet so small? So they can stand closer to the sink!' Then he got angry when I didn't like it and said, 'Why are you so uptight? You're misconstruing what I'm saying.' But it's not that, it's just that I want to be treated with respect."*

#### **DCA RECOMMENDATION:**

**From DCA's 'Cracking the Glass-Cultural Ceiling':** Introduce a 'courage to call it' campaign to encourage staff to call out and address workplace banter that excludes or discredits culturally.

#### **Out at Work: From Prejudice to Pride<sup>34</sup>**



In 2018, DCA explored the experiences of LGBTIQ+ people at work in Australia. Something that was raised repeatedly was how sexual harassment impacts LGBTIQ+ people:

#### **Bisexual Workers**

Our research found that workers who are bisexual are least likely to be out at work – only 16% of bisexual people being out to everyone at work.

We also found that there is clearly a gendered angle to this, impacting bisexual men and women in different ways. For women, experiences of sexual harassment (also detailed above) and gendered attitudes towards bisexual women led some bisexual women to conceal that they were bisexual from colleagues.

*"Individual attitudes among some (male) colleagues dissuade me from being open about my bisexuality in their presence. I think this is more a function of straight male attitudes to bisexual women than specific structures in the workplace."*



## **Gender and Sexuality**

The intersection between gender and sexuality was particularly complicated for women. Some women experienced sexual harassment as a result of being fetishized for their sexuality:

*"Men just tend to get a bit creepy around bisexual women, I find it's much easier / safer to disclose as lesbian." (Bisexual woman)*

*"I had sexual overtures that came as a consequence of coming out at work."  
(Lesbian woman)*

## **Sexual Harassment**

Gay, lesbian and bisexual participants in particular recounted numerous experiences of sexual harassment such as being taken to strip clubs, being asked inappropriate questions.

Some of the comments from our focus group included:

Bisexual women being propositioned for threesomes and told "you'll enjoy it".

*"I've been taken to strip clubs for a joke by colleagues."*

*"They sexualise our relationships."*

*"People just see us as sexual beings. But being LGBTI isn't about sex."*

*"One of the female senior personnel received a gift with swallows (birds) on it, she called me out in front of the entire group, 'you know what to do with this' ."* (Gay man)

*"Almost every year at the Staff Christmas/End of Year Party, someone will come up to me after a few drinks and ask me 'Are you top or bottom?' or 'So what's gay sex feel like?'"*

*"It was our whole of office staff party at a Karaoke Bar and I was on stage singing with a microphone and got asked in front of everyone, 'Are you top or bottom?'"*

## **Minimising risk**

Australian LGBTIQ+ workers are almost 50% more likely to have experienced harassment and/or discrimination in the past year than non-LGBTIQ+ workers (31% versus 21%). This risk can be significantly reduced by working in inclusive teams – workers in inclusive teams were close to seven times less likely to have experienced discrimination in the preceding year than those in non-inclusive teams (7% versus 47%).

LGBTIQ+ employees who are out to everyone at work are 47% more likely than workers who are not, to disagree that their organisation unfairly discriminates against LGBTIQ+ workers (50% of employees who are out to everyone strongly disagreed versus 34% of workers who are not).

## **DCA RECOMMENDATION:**

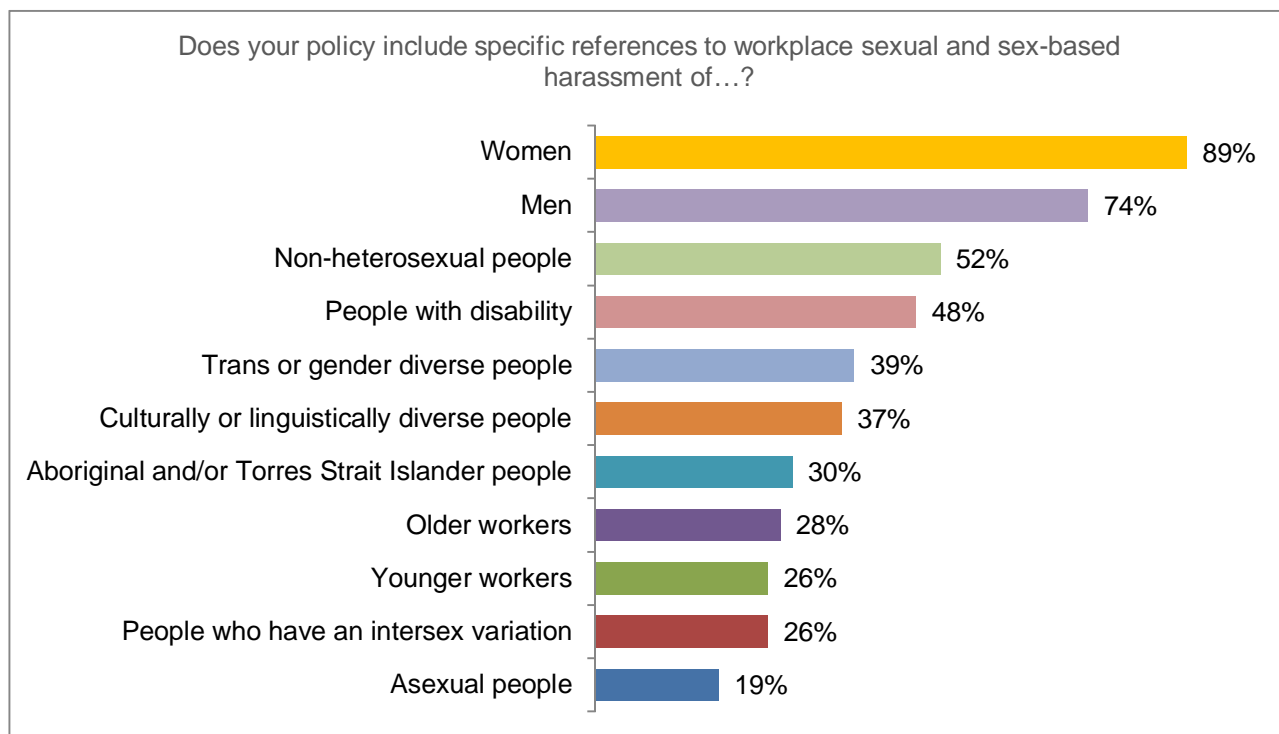
### **From DCA's 'Out at Work':**

- *Workplaces should have zero tolerance for sexual harassment and make sure training recognises the experiences of LGBTIQ+ people.*
- *Workplaces should ensure that sexual harassment training includes examples of sexual harassment of LGBTIQ+ people so that the message is clear that it will not be tolerated towards anyone.*

## Workplace Policies and Training

Given that certain individuals, particularly those with intersectional identities, are more likely to experience sex-based and sexual harassment, we asked DCA members about whether their policy or training addresses specific groups.

### Policy inclusion



**54 respondents** answered this question.

**Women and men:** Most workplace policies specifically referenced women (48 respondents) and men (40 respondents).

**LGBTIQ+:** 28 respondents indicated that their workplace policies specifically reference non-heterosexual people (i.e. people who are gay, lesbian, bisexual, pansexual, queer etc.), more than the number (21) that included specific mentions of harassment relating to someone because of their trans / gender diverse status, intersex status (14), or asexuality (10 responses).

**Disability:** Just under half of respondents (26) stated their workplace policies specifically referenced people with disability.

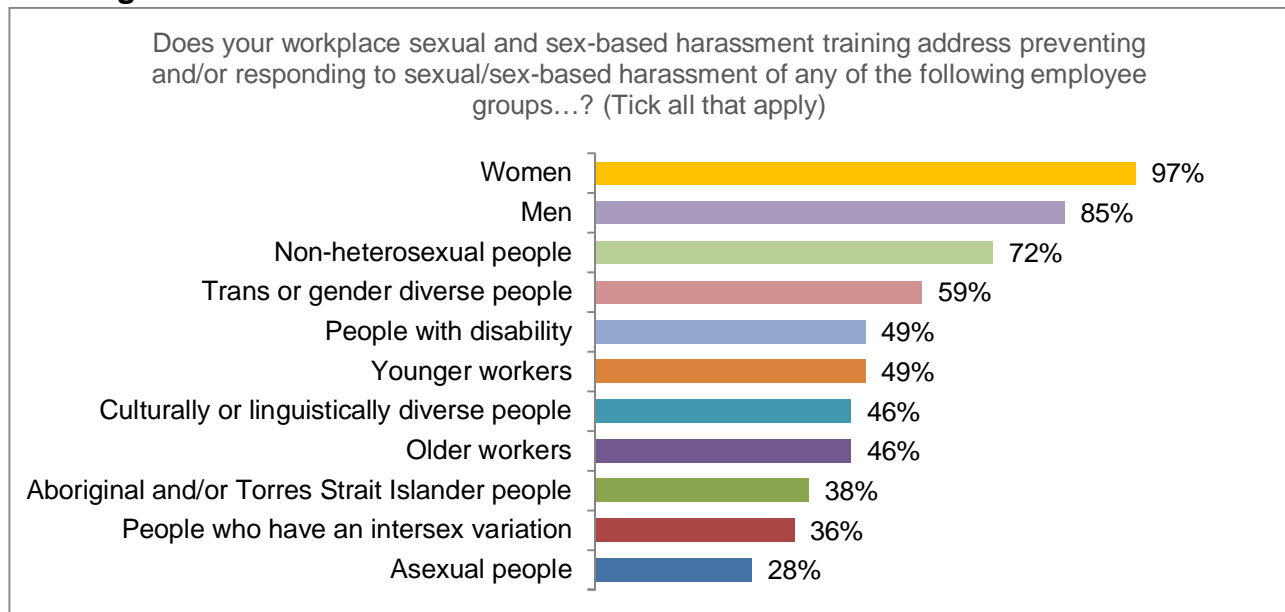
**Cultural diversity:** 20 respondents indicated their workplace policy references culturally or linguistically diverse people.

**Age:** Just under a third of respondents indicated their policies address age, with slightly more (15) addressing older workers, than younger workers (14).

**Aboriginal and/or Torres Strait Islander people:** 16 respondents indicated their workplace policy referenced Aboriginal and/or Torres Strait Islander people.



## Training inclusion



**40 respondents** answered this question.

**Women and men:** Workplace training was most likely to specifically address harassment of women (38 responses, 95%) and men (33, 82%).

**LGBTIQA+:** About three quarters of respondents (72%, 28 responses) indicated that their workplace training addresses **non-heterosexual** people (i.e. people who are gay, lesbian, bisexual, pansexual, queer etc.), while just more than half (59%, 23 responses) addressed experiences of **trans or gender diverse** people (e.g. includes specific mentions of harassment relating to someone because of their trans / gender diverse status). Only one third of respondents said that their workplace training addressed experiences of people who have an **intersex variation** (36%, 13 responses), and one quarter addressed **asexual** people (28%, 11 responses).

**Disability:** Just under half of respondents (49%, 19 responses) indicated their training includes experiences of people with disability.

**Age:** Workplace training was slightly more likely to mention the experiences of younger workers (49%, 19 responses) than older workers (46%, 18 responses).

**Cultural diversity:** Fewer than half of respondents (46%, 18 responses) indicated their training mentioned culturally or linguistically diverse people.

**Aboriginal and/or Torres Strait Islander people:** Just over one third (38%, 15 responses) of respondents said their workplace training specifically addressed Aboriginal and/or Torres Strait Islander people.

### DCA RECOMMENDATION:

What these responses indicate is that those groups most likely to experience sexual or sex-based harassment at work, were not universally mentioned in workplace policies or training materials.

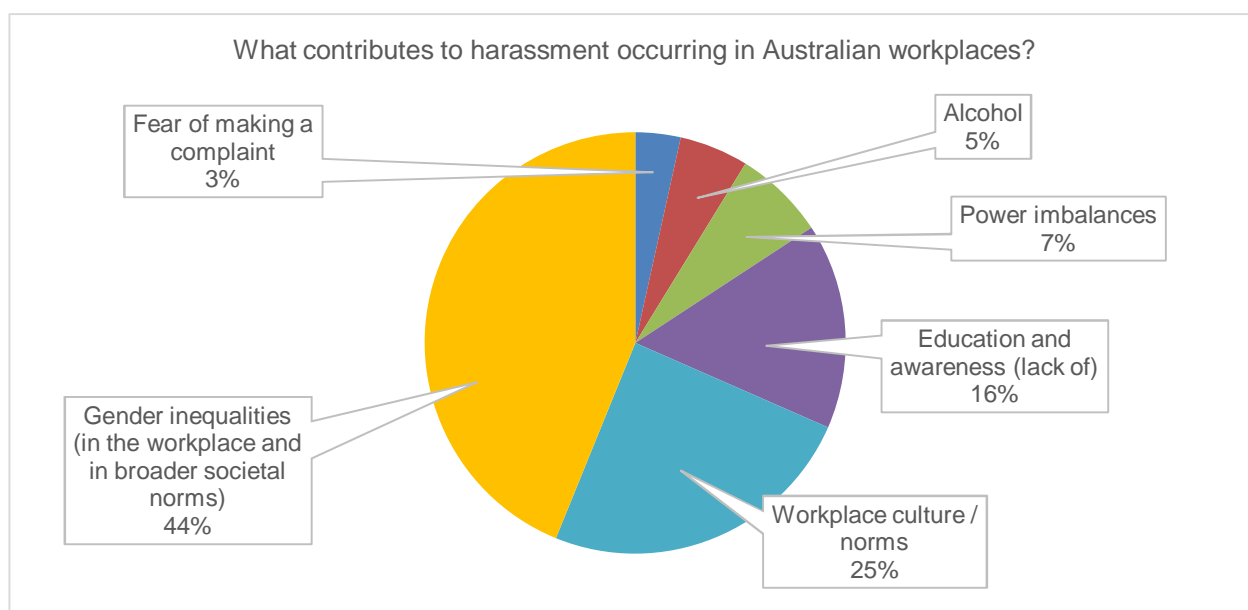
***Policies and training must be inclusive. They need to recognise the specific experiences of different groups. Given the higher prevalence of sexual harassment of people, particularly women, who have an intersectional identity (e.g. women with disability, non-heterosexual women, and Aboriginal and/or Torres Strait Islander women) workplace policies and training should be tailored to specifically recognise the experiences of these groups.***

## b. Some workplace characteristics and practices are more likely to increase the risk of sexual harassment

Gender inequalities, historical work practices that allow inequality, power imbalances, a lack of education and awareness about sexual harassment, and a general fear of making a complaint are characteristics that can increase the risk of workplace sexual harassment.

In order to explore 'the drivers of workplace sexual harassment, including whether... some workplace characteristics and practices are more likely to increase the risk of sexual harassment' we asked respondents to provide an open-ended response to what contributes to harassment occurring in Australian workplaces.

There were **57 response** to this question which were categorised by DCA into common themes.



### Gender inequalities (in the workplace and in broader societal norms)

*"Accepted behavioural norms in our society. Heavily male dominated environments where poor behaviour encouraged at times by peers."*

Not surprisingly, gender inequalities both in workplaces and social norms more broadly was raised by almost half (45%) of the responses to this question. Gender inequalities manifested in a different ways. For example through:

*"Gender norms, societal stereotypes and people not feeling able to call things out (usually out of fear). Acceptance of the more minor infractions also contributes. Expecting the woman in the room to take the film off the sandwiches and take the minutes, all contribute to the ongoing ingrained gender roles in our organisations."*

As one respondent explained, these gendered inequalities actually contribute to creating a climate for sexual harassment to be normalised, something which is also borne out in research:

*"Everyday sexism, i.e. jokes, demeaning comments, exclusionary behaviour, assumptions etc. lead to an environment/culture in which women and other underrepresented or minority groups are marginalised and put up with or get used to poor treatment. Then when things get worse or continue over a period of time sexual harassment has become so normalised people put up with it and don't speak up."*

How gender inequalities impact men, was also raised, and is an important point in understanding how workplaces can and should design interventions. DCA's research shows that men actually underestimate the tolerance or support of other men in response to sexist jokes and comments. Understanding this is a key to empowering more men to intervene as bystanders:

*"Males being easily swayed by male colleagues and pack mentality of a workplace. Men not feeling they should or could speak up. Men not understanding the affects and effects of sexist behaviour. Men lacking leadership by fellow men to understand what is right and what is inappropriate. Male ego. Women continually not having a voice, or support from their leaders with regards to sexism in the workplace. Women weighing up the importance of their careers, verses speaking out again a male dominant work culture."*

## **Workplace culture / norms**

*"A culture that "tolerates" and doesn't have the right performance disciplines in place. A culture that doesn't encourage victims to speak up for fear of retribution."*

Workplace culture / norms differed to general social norms in that respondents identified a specific "company culture" or "historical work practices" that have been left to fester in particular organisations. The idea of "this is how things are done around here", as distinct from broader social norms that preference men over women.

## **Education and awareness (lack of)**

*"Lack of education, training, policy, consultation, awareness of the topic. Lack of tools available and resources to help people work through issues."*

Another theme that emerged was that employees simply did not have a high level of awareness and understanding of what actually constitutes sexual harassment and that education was needed to make it clearer both in workplaces and more broadly in society.

*"Lack of clarity on what constitutes sexual harassment."*

This idea was emphasised in a number of the misconceptions raised earlier. Respondents suggested that interventions need to take into account this lack of clarity:

*"Everyone needs to be clear on what type of conduct could amount to sexual harassment so that the behaviour can be stopped. This means that policies need to be clear and accessible and training needs to use examples that bring the policies to life and help people to gain a better understanding."*

## **Alcohol**

Consumption of alcohol was also raised by three respondents as something that contributes to sexual harassment at work:

*"Australian culture of drinking, joking / banter."*

A lesson from DCA's *Cracking the Glass-Cultural Ceiling* report is also relevant here.

## **DCA RECOMMENDATION:**

**Recommendation from *Cracking the Glass-Cultural Ceiling*<sup>35</sup>: Diversify socialising events and activities to go beyond alcohol-based evening/weekend events or physically demanding sporting activities.**

## **Fear of making a formal complaint**

As with misconceptions about the complaints process, the issue of making a complaint was raised by a number of respondents as a workplace characteristic that allows sexual harassment to fester:

*"The other serious issue is the understanding that if you speak up you are causing trouble, may not be believed, that it will impact your career and an organisation is more likely to protect a more senior, powerful, financially valuable worker."*

Research shows that most people don't report workplace sexual harassment. Some don't want to take the risk alone; fear retaliation; don't know whom to report it to; or don't think anything will be done. Our respondents also noted that there are career consequences for those who complain:

*"Fear in relation to ongoing employment, career development and advancement."*

## **Power imbalances**

*"Power differences. Poor behaviour being unaddressed."*

Workplaces that permit sexist behaviour, by tacitly approving or 'turning a blind eye', are highly likely to find themselves with much more serious (and expensive) harassment issues to manage down the track.

Sometimes employers experience issues with 'superstar' performers who assume they can get away with harassment because they are important to an organisation (think high-earning traders who bring in big clients).<sup>36</sup>

In fact, research shows that 'superstar' status can actually be a breeding ground for harassment – such powerful status can reduce 'superstars' inhibitions,<sup>37</sup> any sexist personality traits,<sup>38</sup> and result in them being more likely to engage in inappropriate treatment of women.<sup>39</sup>

## TERM OF REFERENCE 5: The current legal framework with respect to sexual harassment

Australian workplaces have a good understanding of existing resources, but believe these could be updated more regularly, be more targeted for specific issues, and be better communicated.

Most DCA members utilise resources prepared by the Australian Human Rights Commission to understand the existing legal framework with respect to sexual harassment.

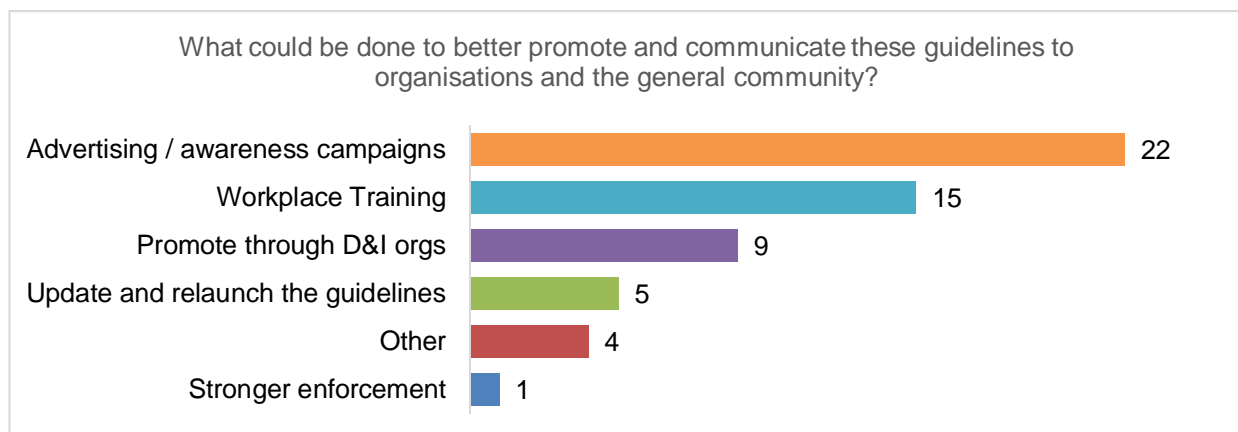
Therefore, we asked respondents about their awareness of the Australian Human Rights Commission's existing guidelines [Effectively preventing and responding to sexual harassment: A Code of Practice for Employers](#) (2008)<sup>40</sup> and whether they felt it provided adequate information about an employer's legal obligations in relation to workplace-related sexual and sex-based harassment.

### Awareness of existing resources



**62 respondents** answered this question. Almost three quarters of our respondents are aware of the Commission's existing guidelines on 'Effectively preventing and responding to sexual harassment: A Code of Practice for Employers'.

In addition, we asked what could be done to better promote these resources.



**56 respondents** provided open-ended responses to this question. The suggestions are summarised below.

## **Advertising / awareness campaigns**

More than half (27) of the responses suggested that the Commission should create advertising and awareness campaigns to help spread the guidelines:

For example:

*"Community announcements via multiple media such as TV, advertisements, sponsored programs, social media such as FB/Twitter/Instagram/LinkedIn."*

Some specifically suggest that awareness campaigns should involve education in schools:

*"Active government support and advertising and funding - linked campaigns through all community groups Continued education awareness training in schools, sporting groups, community groups for the prevention of sexual harassment and inappropriate behaviour/actions instilling a zero tolerance to sexual harassment for all workers and all groups, regardless of race, gender, culture, age, position, industry group Promotion through social media Accountability for reporting breaches and redial action taken Compulsory training for all workers and regular updated training Advertising campaigns."*

And some suggested that campaigns should have a whole-of-community approach:

*"Need to be adopted, modelled and lead by example, leaders of the community. Government leaders, federal, state and local."*

*"Advertised."*

*"Taught in schools."*

*"Distributed to the community with the suggestion to discuss during family meals and with friends."*

## **Workplace training**

About a quarter of respondents (13) said the guidelines should be included as part of workplace training:

*"Organisations should include reference to the guidelines in their Sexual Harassment training."*

## **Promote through D&I orgs**

Three responses suggested partnering with existing organisations in the diversity and inclusion space such as DCA, WGEA, AHRI, etc., to help communicate the guidelines more broadly and provide updates.

*"Partner with other organisations to help spread communication updates e.g. AHRI, AusIMM etc."*

## **Update and relaunch the guidelines**

Four people had specific suggestions about changes to the guidelines, and relaunching them.

One suggested using plain English:

*"Easier title and short simple language messages."*

One suggested that they need to be updated as there have been significant changes since 2008:

*"I think they are pretty dated now - when people see a 2008 date they do not give as close attention as something more recent. An updated version that was launched would work well - which could then also be launched internally within our organisations."*

One suggested making a summary version:

*"Summarised version of guidelines (10 pages), raise awareness on social media."*

And one response suggested regular updates which could be shared with employers regularly:

*"Update the guidelines regularly and push them out to employers in particular. Social media campaigns run regularly would help raise awareness in the community."*

### **Stronger enforcement**

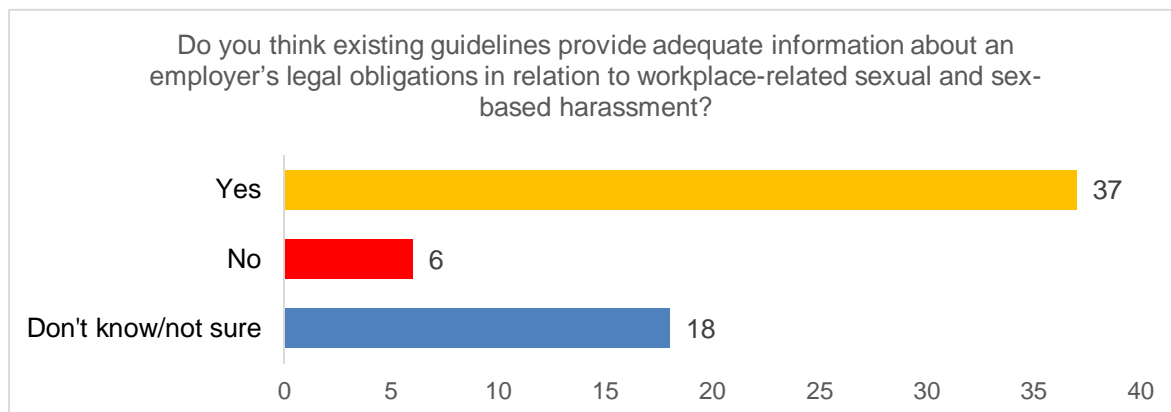
One respondent suggested stronger penalties for non-compliance.

*"Greater emphasis on coercive, rather than normative or mimetic, techniques in enforcement and prosecution."*

### **DCA RECOMMENDATION:**

*DCA members suggested that the Australian Human Rights Commission's guidelines on 'Effectively preventing and responding to sexual harassment' could be better promoted through a targeted advertising and awareness campaign, as well as through workplace training and via existing D&I organisations.*

### **Employer understanding of legal obligations**



**58 respondents** answered this question.

37 respondents (60%) agreed the existing guidelines provided adequate information. Six respondents disagreed. Almost one-third (18 respondents, 30%) were unsure.

While a majority of respondents indicated that they felt existing resources provided good information, respondents also provided suggestions on how these could be improved.

### ***How could these be improved?***

Of those who said that the existing guidelines **do** provide adequate information about an employer's legal obligations, suggestions for improvement included:

- *Increasing awareness - current guidelines are comprehensive but poorly known or understood.*
- *Written in Multi languages aligned with cultural differences; i.e. some culture may accept a certain behaviour against women but not in Australia.*
- *Maintain frequency (every two years), perhaps in the interim year release additional scenarios - what does it look like in real life.*
- *The guidelines are quite lengthy. For larger organisations I expect it is easier for them to understand and implement, however for smaller businesses it may be more challenging given everything else they need to be across.*
- *The focus on whether a complaint is formal or informal often leads to processes that are very specific but also complex and sometimes intimidating - putting people off making a complaint rather than encouraging it. There could be more focus in the guidelines about encouraging people to seek support through various avenues and cultural programs to encourage positive culture rather than prescriptive policies and procedures.*
- *8 pages for a quick guide is long. Leaders these days are getting more and more time-poor. Is there a way to condense the info (and still be meaningful?).*
- *Case studies always help people to understand these concepts better.*
  - *Advice on how to best approach different scenarios (i.e. when employee is much more junior) - How to handle situations as a bystander*
- *Provision of anonymous hotline or advice line for organisations or individuals.*

Of those who said that the existing guidelines **do not** provide adequate information about an employer's legal obligations, suggestions for improvement included:

- *Further education.*
- *Quick fact sheet.*
- *More details about what is and isn't acceptable.*
- *Make it compulsory for staff training inductions etc.*
- *More clarity around sex based harassment as being bullied and denigrated by virtue of being female without a sexual element is still a fuzzy area.*
- *These obligations are found/contained in more than one place, and are often vague. While there will always be shades of grey, more clarity (including examples) is needed for both employers and employees.*

Of those who were **unaware** or unsure, the most common response indicated they were yet to read the guidelines.

### ***Better communication of guidelines***

Interestingly, when we asked about misconceptions in our survey, a number of respondents also raised communication of guidelines as an issue that is misunderstood, commenting that while the policy and legislative framework may be clear, there was a disconnect with how this is actually communicated to staff:



*“Legal and workplace guidelines are very clear but are not often well communicated to staff, who may not understand or appreciate what behaviours are inappropriate or why.”*

**DCA RECOMMENDATION:**

*DCA Members have a good awareness of existing resources to help workplaces understand legal obligations in relation to sexual harassment, but believe that they could be improved with:*

- Case studies;*
- Multi-language and multicultural resources (understanding cultural differences); and*
- Better communication of guidelines.*

**TERM OF REFERENCE 6: Existing measures and good practice being undertaken by employers in preventing and responding to workplace sexual harassment, both domestically and internationally the impacts on individuals and business of sexual harassment, such as mental health, and the economic impacts such as workers compensation claims, employee turnover and absenteeism**

Sexual harassment is costly for Australian business and individuals. Many businesses in Australia have policy, training and complaint mechanisms. But workplaces can no longer rely on 'existing measures' alone.

DCA's *Inclusion@Work Index* demonstrates that workers in *inclusive teams* are significantly less likely than workers in non-inclusive teams to experience harassment or discrimination.

Australian organisations must focus on workplace inclusion as a key part of any prevention framework. Organisations should utilise evidence-based guidelines to build inclusive organisations, and train inclusive leaders.

## **The impacts on individuals and business of sexual harassment**

Sexual harassment has serious and damaging effects on a workplace. Organisations and individuals pay a high price. This includes:

- **Costs to complainant personally:** People who are sexually harassed experience damage to their reputation, self-esteem, health, and wellbeing,<sup>41</sup>
- **Risk of retaliation:** 75% of people who formally complain about sexual harassment say they face retaliation,<sup>42</sup> which in turn leads to people avoiding raising any future concerns and so harassment being 'swept under the carpet',
- **Costs to career progression and pay:** Pay inequity and sexual harassment are linked as women often leave their jobs rather than take action against a harasser.<sup>43</sup> US research has shown that in most cases, women tend to make lateral moves or take pay cuts, creating a 'predator tax' in their career progression,<sup>44</sup> and
- **Costs to bystanders:** Sexual harassment not only affects victims – witnesses of sexual harassment can also experience 'bystander stress'.<sup>45</sup> Negative outcomes associated with bystander stress include lower health satisfaction, increased occupational stress, increased team conflict, and lower financial performance.<sup>46</sup>

## **Creating inclusive workplaces leads to lower rates of harassment**

In 2017, DCA's *Inclusion@Work Index*<sup>47</sup> found that workers in *inclusive teams*<sup>ii</sup> were significantly less likely than workers in non-inclusive teams to experience harassment or discrimination.

This is a significant finding, and clearly demonstrates that workplace inclusion must be a key element of prevention.

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<sup>ii</sup> DCA's *Inclusion@Work Index* explains that an "inclusive team is one where a diversity of people (e.g. from different ages, cultural backgrounds, genders) feel that they are respected and valued team members, who are able to be themselves and contribute and progress at work."

## INCLUSION@WORK MINIMISES RISK

In the past year, close to one in three (30%) Australian workers have witnessed and/or personally experienced harassment or discrimination at work.

THE GOOD NEWS is that if you work in an inclusive team or report to an inclusive manager, you are significantly less likely to personally experience, or observe, workplace harassment or discrimination.



If you work in an inclusive team, you are nearly **seven times less likely** than your colleagues in non-inclusive teams to have personally experienced harassment



Many businesses in Australia have policy, training and complaint mechanisms as part of their requirements under anti-discrimination legislation. But workplaces can no longer rely on 'existing measures' alone.

Instead, organisations should work towards creating **inclusive workplaces**: that is, workplaces where a diversity of people are respected, connected, progressing and contributing to organisational success.

Building an inclusive workplace, creating inclusive teams, and developing inclusive managers is not a simple task. DCA has conducted research into inclusion over a number of years and has a range of evidence based guidelines for Australian businesses. See for example:

- *Building Inclusion: An Evidence-Based Model of Inclusive Leadership*  
<https://www.dca.org.au/research/project/building-inclusion-evidence-based-model-inclusive-leadership>
- *WordsAtWork: Building inclusion through the power of language*  
<https://www.dca.org.au/research/project/wordsatwork-building-inclusion-through-power-language>

### DCA RECCOMENDATION

**Focus on workplace inclusion** as a key part of any prevention framework. Utilise evidence-based guidelines to build inclusive organisations, and train inclusive leaders.

## Existing measures and good practice being undertaken by employers

To understand what 'existing measures' were being used in Australian organisations, we asked respondents to indicate what were the most important considerations when developing an organisation's response to sexual harassment using a Likert scale (selecting from Very important, Somewhat important, Neutral, Somewhat unimportant to Not important).

The most important consideration for workplaces were mental and physical health impacts, followed by social justice imperatives, business reputation and legal considerations.



Respondents also raised other considerations, including:

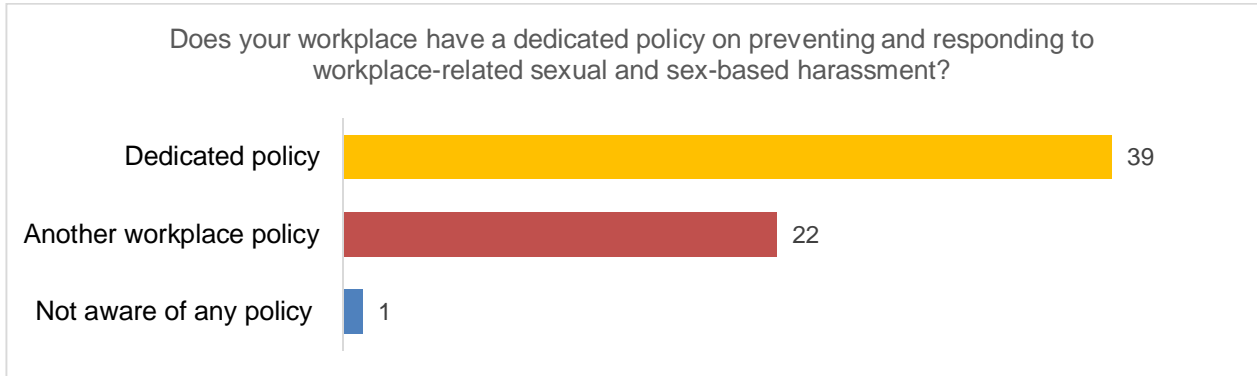
- *Ensuring there is a fair and just process to look after all parties involved*
- *Alignment with company values*
- *Gender equity*
- *Provide a supportive and safe work environment for an inclusive workplace and support an increase in female representation in our industry.*
- *Inclusive culture*
- *Safety of crews working in remote areas*
- *May impact promotion prospects*

## Policy Approaches

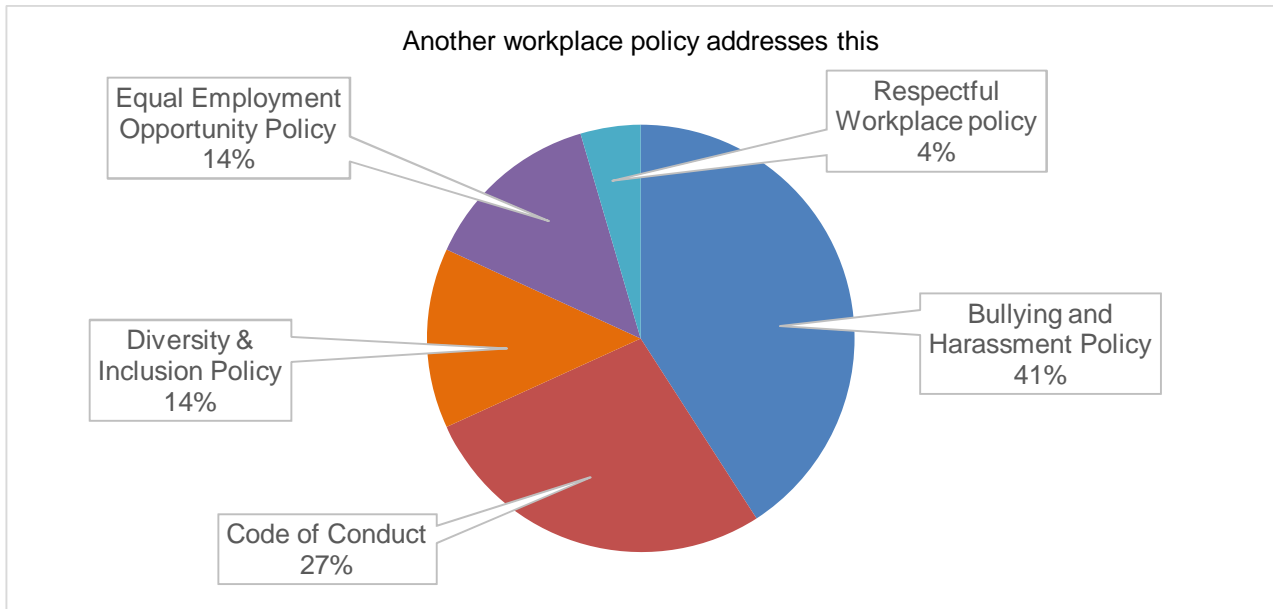
We also asked respondents about the policy approach taken by their workplace to addressing sexual harassment.

**62 respondents** answered this question. Overall, 98% of respondents indicated that they had an awareness of the organisation's policy.

The majority of organisations (63%, 39 responses) indicated that they had a dedicated policy on responding to and preventing workplace-related sexual and sex-based harassment. 22 respondents indicated their organisation incorporated sexual harassment in another workplace policy. One respondent was not aware of any workplace policy.



Where sexual harassment was addressed within **another workplace policy**, nine respondents indicated it was part of workplace anti-bullying and harassment policies, six within the workplace Code of Conduct, three within diversity and inclusion policies, three within their organisation's Equal Employment Opportunity Policy and one in a Respectful workplace policy.



## AN EXAMPLE OF GOOD PRACTICE FROM A DCA MEMBER: SEXUAL HARASSMENT AT WORK POLICY FRAMEWORKS

“We have a Global Dignity at Work – Equal Opportunities, Bullying and Harassment Policy (**DAW Policy**) which makes it clear that the firm is committed to creating a work environment where everyone is treated with dignity and respect, free from harassment, bullying and discriminatory behaviour of any kind. Examples of sexual harassment are given within the DAW Policy so that everyone is clear what type of conduct could amount to sexual harassment. Staff are encouraged to raise any concerns they have either informally or formally under the firm's grievance procedure (the **Grievance Policy**). Staff are encouraged to report any concerns about sexual harassment in the knowledge that those concerns will be taken seriously and dealt with appropriately. The DAW principles and conduct requirements contained in the DAW Policy expressly apply to all partners and members of staff, including consultants, agency workers and contractors, whether temporary or permanent in all our offices worldwide. The principles also apply to how we are expected to treat third parties such as clients, suppliers or visitors to all our offices.

We also have a Global Code of Conduct, which codifies our commitment to creating a professional work environment where everyone is treated with consideration, dignity and respect, free from harassment, bullying and discrimination. Within it, we make it clear that everyone is encouraged to do the right thing, within a culture of integrity and honesty, which includes speaking up about any potential wrongdoing, misconduct or inappropriate behaviour that people are concerned about, assured that their worries will be listened to and acted upon. The Global Code of Conduct sets a standard of behaviour that we expect from all within the firm.

To underline our commitment to the values enshrined by the Global Code of Conduct, we have 3 Values Partners, in various locations across the globe. The Values Partners are responsible for ensuring that the principles set out in our Global Code of Conduct are upheld. Staff are able to approach the Values Partners directly for guidance and advice should they have any concerns at all about potential issues that arise in their day-to-day working environment, including sexual harassment.

The DAW Policy and the Global Code of Conduct (along with the other policies in place) are located on our Global Policy Portal which is accessible by all staff through our intranet.

We also have our local Australia Diversity and Inclusion policy, one of the aims of which is to create a culture where everyone feels valued and respected and to ensure equal opportunities for all staff regardless of gender, sexual orientation, age, race, nationality, ethnic origin, religion or disability.”

## Monitoring workplace sexual and sex-based harassment

We asked about how organisations are monitoring workplace sexual and sex-based harassment. **55 respondents** answered this question.

Does your organisation...?	% of responses	# of responses
Collect information about formal complaints in relation to workplace sexual and sex-based harassment	81.82%	45
Have a dedicated complaints process in relation to workplace sexual and sex-based harassment	76.36%	42
Collect information about the location of workplace sexual and sex-based harassment incidents/complaints (e.g. on-site/off-site, event etc.)	50.91%	28
Collect information about informal incidents/complaints in relation to workplace sexual and sex-based harassment	40.00%	22
In surveys ever ask whether employees have personally experienced workplace sexual and sex-based harassment	30.91%	17
In surveys ever ask whether employees are aware of the workplace sexual and sex-based harassment-related policy	29.09%	16
In surveys ever ask whether employees are comfortable raising concerns about workplace sexual and sex-based harassment with management	29.09%	16
Other form of monitoring workplace sexual and sex-based harassment incidents, awareness or resolution please specify)	25.45%	14
Collect information on the gender identity, age, sexual orientation, intersex status, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability of the person who has been sexually harassed	21.82%	12
In surveys ever ask how satisfied employees are with how workplace sexual and sex-based harassment-related issues are managed	20.00%	11

Fourteen respondents indicated their workplace undertakes some other form of monitoring workplace sexual and sex-based harassment incidents, awareness or resolution, including:

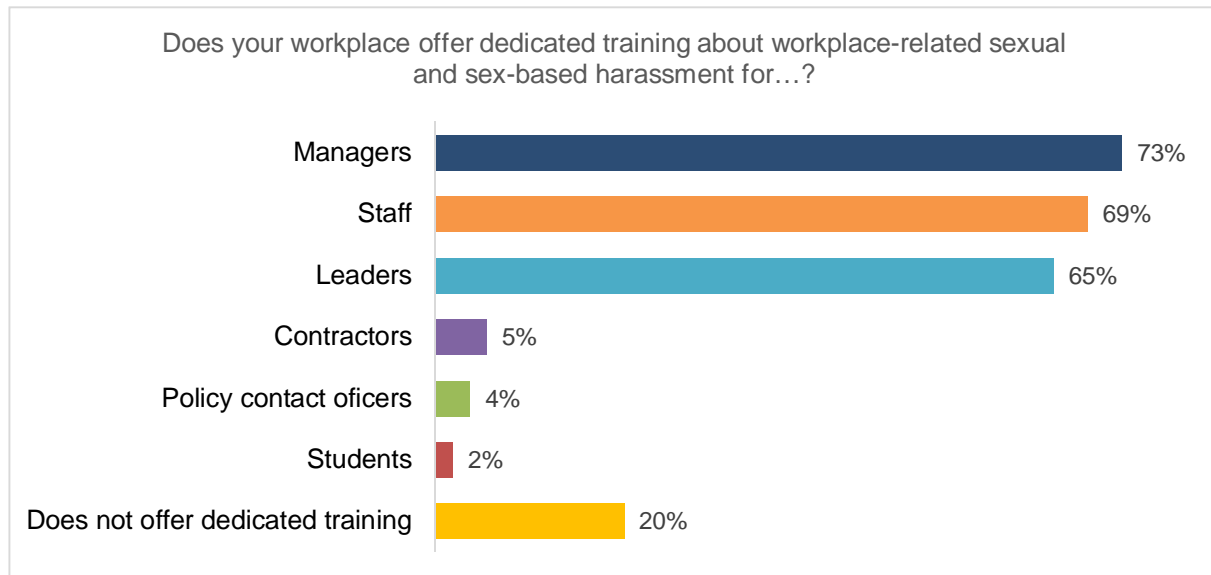
- *Recording participation in training programs*
- *HR Team / Whistle-blower line*
- *We ask the question whether employees are comfortable to raise concerns re workplace issues*
- *Education sessions*
- *We ask about sex-based harassment not being tolerated*
- *Network of contact officers enabling informal complaints*
- *General approach of discussing it with your line leader*
- *Action plan, education and monitoring of behaviour post-investigation*

## Training

We wanted to understand what sort of training is currently being offered in Australian organisations.

### *Who is given dedicated training?*

We asked who was given dedicated training in organisations. **55 respondents** answered this question.

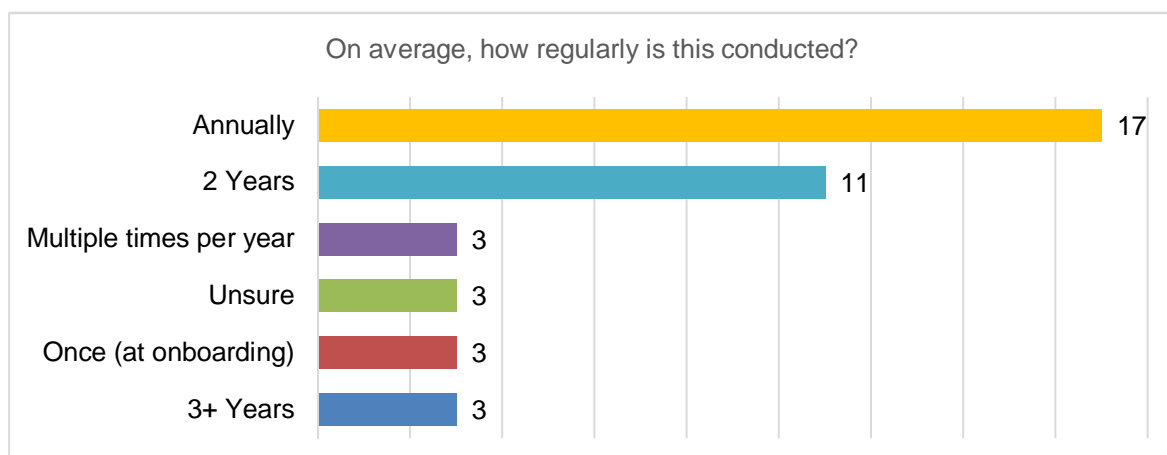


About three quarters of respondents offer training for managers (73%), and about two-thirds for staff (69%) and leaders (65%).

Some respondents indicated that their workplace offers training for consultant or contract staff (5%), specific policy contact officers (e.g. the contact officer for the Bullying and Harassment Policy, 4%), and in one case students.

**One fifth of respondents (20%) indicated that their organisation does not undertake any dedicated sexual harassment training.**

### *How often is training conducted?*



There were **40 responses** to this question.

Other respondents indicated training was provided every three years, once only as part of onboarding, or were unsure.

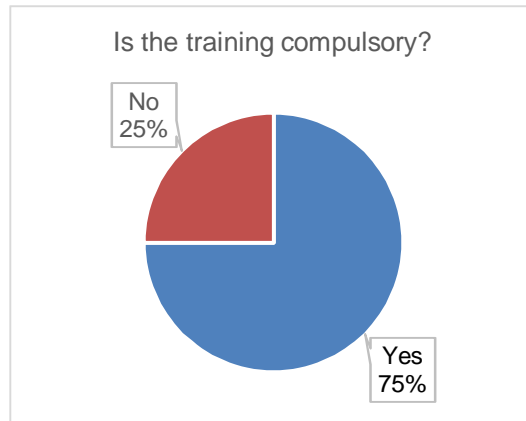


Is training compulsory?

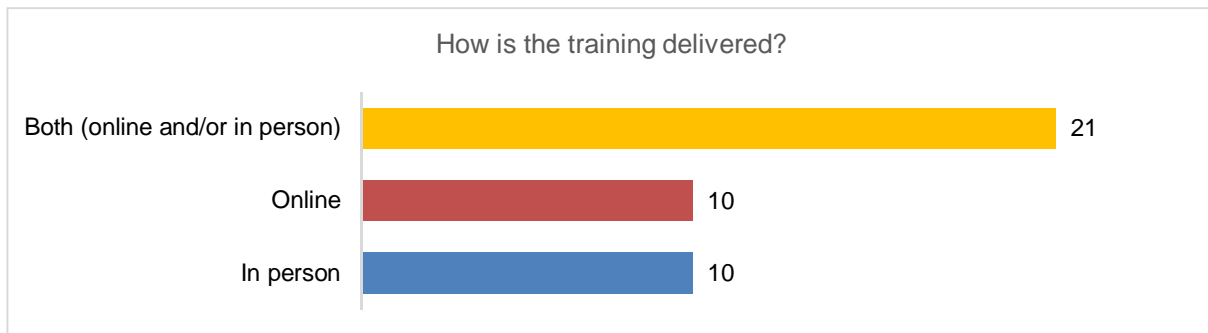
**40 respondents** answered this question.

Three quarters (30) indicated that their workplace's training was compulsory.

**One quarter of respondent's do not have compulsory sexual harassment training.**



**Format**



**41 respondents answered this question.** About half (21) offer training in person and online, about one quarter each offered training in person, and online, respectively.

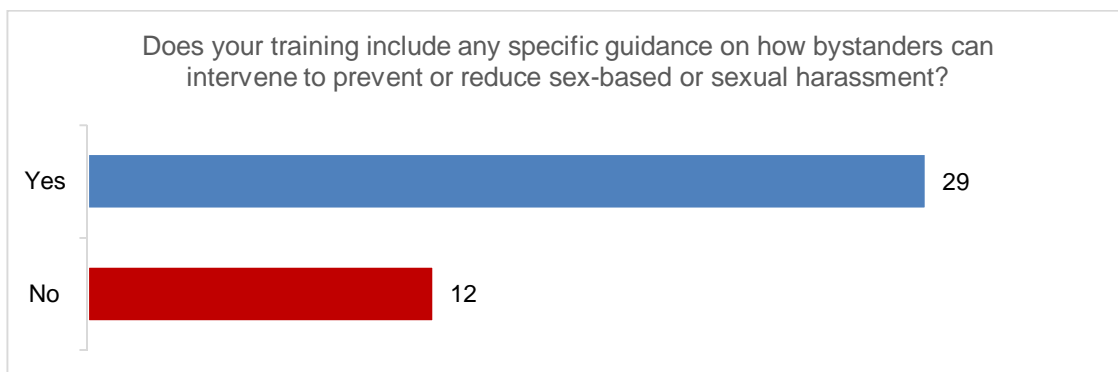
**DCA RECOMMENDATION:**

**Organisations should ensure that workplace anti-sexual harassment training is based on evidence.** Research<sup>48</sup> shows that the most impactful training is at least four hours, in person, interactive and tailored for the particular workplace and presented by an employees' supervisor or an external expert (not an HR official with no direct oversight).

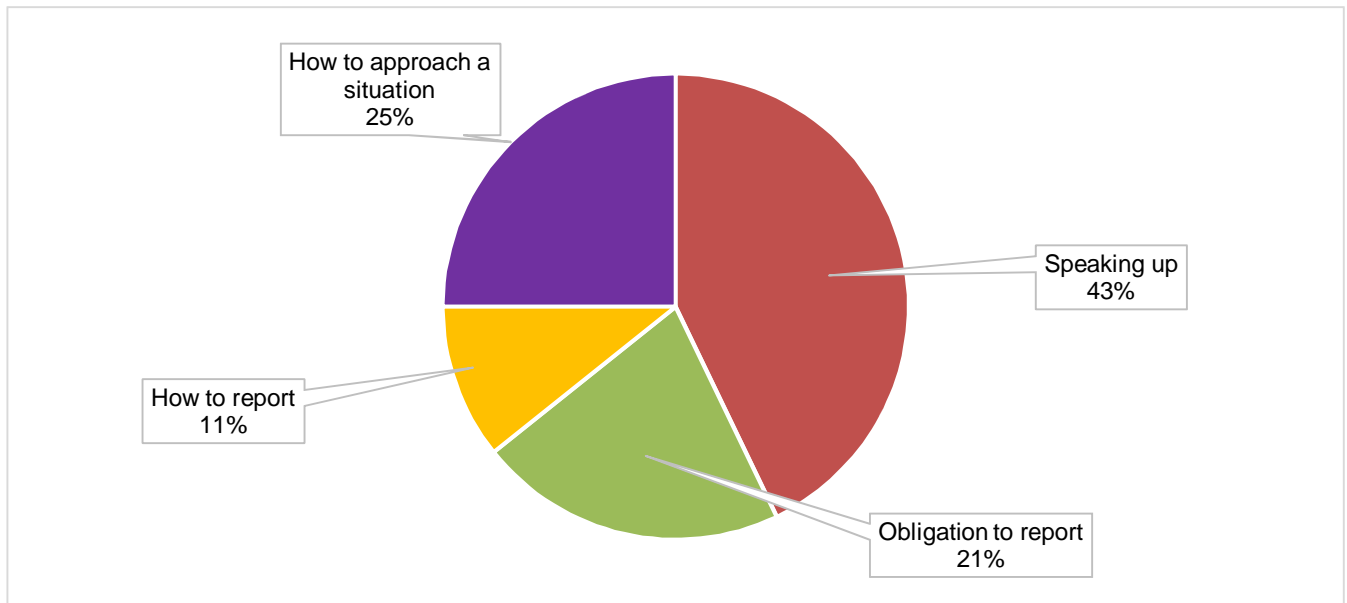
**Bystander interventions**

Research suggests that an effective way to prevent work-based sexual harassment is through empowering bystanders, so we sought to understand if DCA members were including bystander interventions in their training, and if they were, what sort of interventions.

**41 respondents** answered this question. 29 indicated that their workplace training included information about bystander interventions, while 12 did not.



Of those who indicated their workplace did provide bystander training, the following were the most common responses.



Two-fifths of workplaces provided training about **speaking up**:

*“Our training discusses the need to call out behaviours that are observed that are not condoned. The negative impact of passive bystanders in a context where colleagues are being harassed or subjected to casual sexism is specifically referenced and discouraged. Staff are encouraged to call out unacceptable behaviours they witness and report such behaviours. The inadvertent loss of confidence and trust that arises from the bystander effect is explained in detail.”*

One quarter taught **how bystanders should approach a situation**:

*“Explain the options available for bystanders / explain the duty as a bystander / explain the power of language when intervening effectively to reduce impact on ‘victim’.”*

Including encouraging bystanders to **speak with the victim before taking any other action**:

*“Bystanders are encouraged to speak with the victim about the issue, and are encouraged to have zero tolerance for unacceptable behaviour of others and report any incidence. Bystanders are encouraged to raise matters directly with the victim, or with their Manager/Partner or HR.”*

Just over one-fifth trained bystanders that staff have an **obligation to report** an incident that they witness either as a responsibility under the Code of Conduct:

*“Indicates that bystanders have a responsibility under our code of conduct to report.”*

Or because of workplace liability:

*“There will often be situations where a manager thinks or knows that harassment is occurring, but a complaint has not been filed. Or, an employee may come to the manager, and they may determine together that harassment is occurring, but the employee may choose not to file a complaint. The manager may even be hearing repeated gossip about harassment. Remember, it is always best to err on the side of caution. Turning a blind eye to a potential harassment problem can open your company up to lawsuits. Report it to a manager. The manager should take it seriously, even if it may be just a rumour. Manager to speak to the individual and see how they are going. If evidence there that sexual harassment has happened, they should initiate a formal complaint. The incident can then be*

*investigated and dealt with under normal procedures. The investigator should send a letter to the victim detailing the complaint and the process that will be followed."*

About ten per cent taught employees **how to report**:

*"Where to go with a concern: Employee Hotline for anonymous reporting."*

### **DCA RECOMMENDATION:**

***Invest in a bystander intervention*** to identify – and prevent – unacceptable behaviour, and motivate employees who witness or hear about inappropriate behaviour to speak up.

***Empower bystanders to be agents of change*** by:

- Asking questions such as, "How could we let this happen?" and "How can we prevent it from happening again?"

- Making perpetrators accountable – not their targets, and

- Providing bystanders with the words to say to a perpetrator such as, "What you said earlier really bothered me" or "I wonder if you realise how that comes across?"

***Train bystanders.*** This equips everyone in the workplace to stop harassment, instead of offering people two roles no one wants: harasser or victim. A U.S. [study found](#) that soldiers who received the training were significantly more likely than those who did not to report having taken action when they saw assault or harassment.

## **AN EXAMPLE OF GOOD PRACTICE FROM A DCA MEMBER: BYSTANDER INTERVENTIONS**

“In our training we encourage individuals to call out any inappropriate behaviour, even where they are not subject to that behaviour directly themselves but instead are witness to it.

We recognise that it may not always be possible or appropriate to deal with complaints informally so our DAW policy sets out both informal options and a formal process for raising complaints.

Enshrined in our Global Code of Conduct (and reiterated in our DAW Policy) is the right of all staff to "speak up" if they have any concerns in the workplace – whether they relate to them or others around them. There are many ways to do this. Staff can raise a formal grievance under our Grievance Policy or can speak to:

- a partner or line manager
- HR
- one of our 3 Values partners who have been trained to deal with any concerns reported
- our Global Head of Risk
- our Global Head of ER
- our Global Director of HR
- our independent third party speaking up service provider – a service which was launched in October 2018. This enables partners and staff to raise any concerns they may have about their workplace which, for whatever reason, they may not feel comfortable raising through the normal channels. It will give everyone 24/7 access to independent whistleblowing specialists who are trained to handle concerns in a sensitive way and in all languages.

Our employee relations (ER) team has oversight of all complaints of sexual harassment and works closely with our Compliance Officer for Legal Practice. The team are trained to investigate and deal with such complaints. Our partners, line managers, Values partners and Human Resources staff are advised to refer all matters to the ER team and they ensure that our support pathways are put in place for the individual who has made the complaint.

Anyone who has raised a complaint of sexual harassment will have an HR/ER adviser assigned to them to support them throughout the process and to answer any questions that they may have. In addition, our occupational health team can provide any necessary medical support, including counselling. By regularly checking in with the individual, we aim to ensure that there is no victimisation or retaliation and, where appropriate, our ER team will work with the individual's manager to ensure that there is no retaliation against the individual.

The firm also provides the Employee Assistance Programme, a free advice service which can be accessed 24 hours a day, 7 days a week, 365 days a year. This offers confidential practical support, information and resources across a range of topics, including health and emotional wellbeing. Consequently, any member of staff affected by sexual harassment who felt unable to discuss the impact with their usual contacts within the firm could access these services for practical advice and support.”

## TERM OF REFERENCE 7: Recommendations to address sexual harassment in Australian workplaces.

Understanding workplace-related sexual and sex-based harassment

**Preventing sexual harassment requires education**, at a workplace and community level, about what sex-based and sexual harassment is.

**To counter the misconception that what may have been meant as a joke was experienced as offensive, insulting, intimidating or unwelcome**, workplace policies and training should draw on specific examples of inappropriate comments or jokes that constitute sexual harassment and show the costs both personal (to victims) and to organisations.

**Workplace training should recognise the 'gender gap'**. Workplace training should address issues that can lead to men misunderstanding the prevalence of sexual harassment, and common misconceptions, as well as actions men can take such as standing up to sexist jokes, or saying something about sexually harassing behaviour (which not only stops the behaviour from happening, it can empower more men to speak out).

**Workplace guidance should emphasise that sexual harassment can occur outside of the physical workplace**, e.g. at work functions, on work trips and online.

**Educate employees about all the types of behaviour** that constitute workplace sexual harassment, particularly non-physical behaviours. Training should include specific examples of non-physical interactions that can be harassment.

**Workplaces need better education around consent**, specifically that sexual harassment is not interaction, flirtation or friendship that is mutual or consensual. Before embarking on a workplace relationship, individuals must understand, among other things, the power dynamics at play. Workplace training should take this into account.

**Workplaces need guidance for educating their employees to better understand the impact** of their actions on other people, and a clear understanding of the 'reasonable person' test.

**Policy, training and tools should include case studies or examples of types of behaviours that are appropriate or inappropriate**, and detail on how context is important.

**Messaging around sexual harassment should counter the misconception that sexual harassment is over-reported.**

**Raise awareness that sexual harassment happens to men and LGBTIQ+ people, and challenge the attitudes that discourage men from reporting sexual harassment.**

**Complaint processes need to be overhauled** to make the process simpler and more transparent. Under the current system, there is an over reliance on complaints mechanisms to deal with sexual harassment, and a lack of focus on prevention.

TERM OF REFERENCE 2: Online workplace-related sexual and sex-based harassment and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment

Given the increasing number of incidents perpetuated via technology, **workplaces should ensure that they actively monitor if sexual harassment is occurring through technologies.**

TERM OF REFERENCE 4: The drivers of workplace sexual harassment, including whether:

- a. Some individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability

**Workplace sexual harassment prevention strategies should recognise that power shows up in lots of ways** and role imbalances, or financial and job security, are specifically recognised as factors that must be considered when determining if something is sexual harassment.

**Workplaces should support efforts to create gender-balanced leadership as this can reduce harassment.** Where there is gender disparity in power in an organisation, sexual harassment increases. Men sometimes use sexual harassment as a tool against women in power. But, when power is shared across gender, harassment decreases. The best way to deal with this sort of power play is to ensure that your organisation has equal leadership of men and women.

**From DCA's 'Cracking the Glass-Cultural Ceiling':** Introduce a 'courage to call it' campaign to encourage staff to call out and address workplace banter that excludes or discredits culturally.

**From DCA's 'Out at Work':**

- Workplaces should have zero tolerance for sexual harassment and make sure training recognises the experiences of LGBTIQ+ people.

- Workplaces should ensure that sexual harassment training includes examples of sexual harassment of LGBTIQ+ people so that the message is clear that it will not be tolerated towards anyone.

**Policies and training must be inclusive. They need to recognise the specific experiences of different groups.** Given the higher prevalence of sexual harassment of people, particularly women, who have an intersectional identity (e.g. women with disability, non-heterosexual women, and Aboriginal and/or Torres Strait Islander women) workplace policies and training should be tailored to specifically recognise the experiences of these groups.

b. Some workplace characteristics and practices are more likely to increase the risk of sexual harassment

Recommendation from Cracking the Glass-Cultural Ceiling: **Diversify socialising events and activities to go beyond alcohol-based evening/weekend events or physically demanding sporting activities.**

TERM OF REFERENCE 5: The current legal framework with respect to sexual harassment

DCA members suggested that the Australian Human Rights Commission's guidelines on 'Effectively preventing and responding to sexual harassment' could be better promoted through a targeted advertising and awareness campaign, as well as through workplace training and via existing D&I organisations.

DCA Members have a good awareness of existing resources to help workplaces understand legal obligations in relation to sexual harassment, but believe that they could be improved with:

- Case studies;
- Multi-language and multicultural resources (understanding cultural differences); and
- Better communication of guidelines.

TERM OF REFERENCE 6: Existing measures and good practice being undertaken by employers in preventing and responding to workplace sexual harassment, both domestically and internationally the impacts on individuals and business of sexual harassment, such as mental health, and the economic impacts such as workers compensation claims, employee turnover and absenteeism

**Focus on workplace inclusion** as a key part of any prevention framework. Utilise evidence-based guidelines to build inclusive organisations, and train inclusive leaders.

**Organisations should ensure that workplace anti-sexual harassment training is based on evidence.** Research shows that the most impactful training is at least four hours, in person, interactive and tailored for the particular workplace and presented by an employees' supervisor or an external expert (not an HR official with no direct oversight).

**Invest in a bystander intervention** to identify – and prevent – unacceptable behaviour, and motivate employees who witness or hear about inappropriate behaviour to speak up.

**Empower bystanders to be agents of change** by:

- Asking questions such as, "How could we let this happen?" and "How can we prevent it from happening again?"

- Making perpetrators accountable – not their targets, and

- Providing bystanders with the words to say to a perpetrator such as, "What you said earlier really bothered me" or "I wonder if you realise how that comes across?"

**Train bystanders.** This equips everyone in the workplace to stop harassment, instead of offering people two roles no one wants: harasser or victim. A U.S. study found that soldiers who received the training were significantly more likely than those who did not to report having taken action when they saw assault or harassment.

TERM OF REFERENCE 7: Recommendations to address sexual harassment in Australian workplaces.

TERM OF REFERENCE 8: In conducting the National Inquiry the Commission will have regard to the economic impact of sexual harassment in the workplace, drawing on economic modelling.

**TERM OF REFERENCE 8:** In conducting the National Inquiry the Commission will have regard to the economic impact of sexual harassment in the workplace, drawing on economic modelling.

**Direct costs to business**

The most easily calculated costs for employers are the legal bills associated with legal action and settlements.

***Payout against an employer for sexual harassment* **\$330,000****

[Collins v Smith \(Human Rights\) \[2015\] VCAT 1992 \(23 December 2015\)](#)

A woman was awarded more than \$330,000 for being repeatedly sexually harassed by her employer over 4-5 months, the owner and manager of a post office.

The conduct included: requests for sex, inappropriate touching and an attempt to kiss, sexual comments, and sexualised text messages.

***Payout against employer for the actions of a client* **\$1.5 million****

A social worker was assaulted by a client and awarded damages of \$1.5m because she subsequently suffered a serious psychiatric injury.

[Brisbane Youth Service Inc v Beven \[2017\] QCA 211 \(22 September 2017\)](#)

***Sexual harassment and termination of employment* **\$466,000****

A 42 year old was repeatedly sexually harassed in her workplace and then sacked because of her complaints was awarded \$466,000.

The conduct included: comments about her breasts, receiving numerous emails requesting sex from male colleagues, inappropriate text messaged, and unwanted physical contact.

The Hickinbotham Group also had no formal policy for dealing with complaints of sexual harassment or sexual discrimination

[Poniatowska v Hickinbotham \[2009\] FCA 680 — 23 June 2009](#)

***Largest settlement for sexual harassment* **\$850,000****

<http://www.austlii.edu.au/au/journals/EqTimeNSWADBNlr/2011/2.html>

The complainant alleged the CEO of David Jones has sexually assaulted her and made a claim in the Federal Court for \$37 million.

This case demonstrates the cost to an employer of failing to prevent or deal effectively with sexual harassment and other forms of discrimination, harassment or bullying.

The complainant accepted a settlement of \$850,000 made up of a contribution from both the company and the CEO. No other details of the settlement are available.



## Indirect costs of sexual harassment in the workplace

Indirect costs include lower productivity and morale, higher turnover and absenteeism, and reputational harm to an organisation's public image.<sup>49</sup>

- Stress-related absenteeism and 'presenteeism' are costing Australian employers \$10.11 billion annually.<sup>50</sup>
- The most recent study analysing the costs of sexual harassment in the workplace is a 1988 US study, which found that a typical Fortune 500 company **lost \$6.7 million a year** owing to absenteeism, increased health-care costs, poor morale, low productivity and staff turnover resulting from sexual harassment. By estimates this would equate to over US\$ 14 million in 2017, there has been no recent studies since.<sup>51</sup>

## VI. CONCLUSION

Sexual harassment has been unlawful in Australian workplaces since 1984 and for well over three decades, employers have invested in policies, awareness raising, training, bystander interventions and complaint mechanisms.

This submission outlines the work that leading Australian organisations are undertaking to prevent and respond to sexual harassment. This work is making an impact, but workplaces can no longer rely on 'existing measures' alone.

Despite all the interventions, rates of sexual harassment are increasing, particularly for vulnerable groups.

It is clear then that more of the same won't work.

In this submission we make a number of recommendations. However, we have two overarching observations:

### **3. Inclusive workplaces have lower rates of harassment and discrimination**

DCA's *Inclusion@Work Index* demonstrates that workers in inclusive teams are significantly less likely than workers in non-inclusive teams to experience harassment or discrimination.

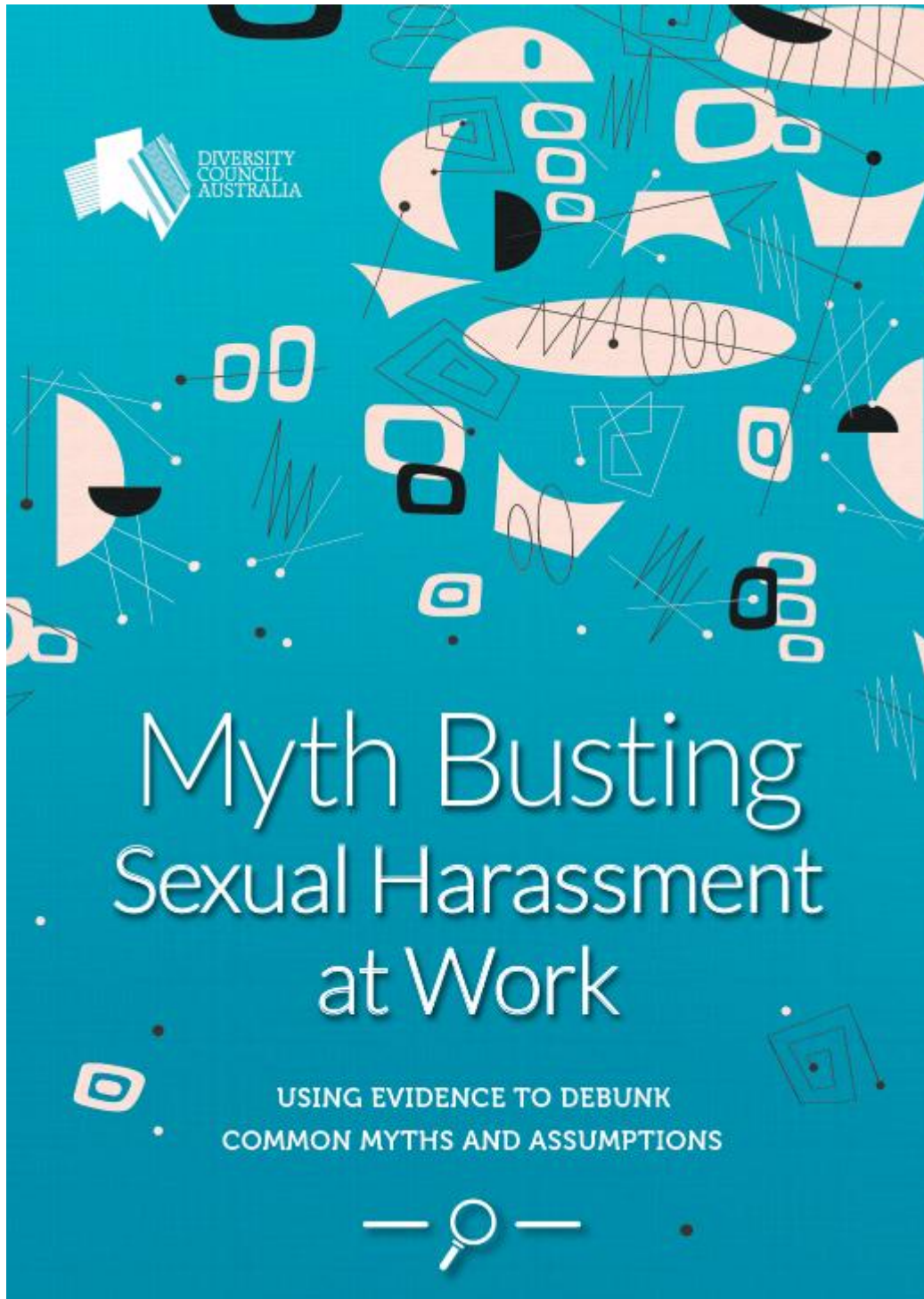
As part of any workplace prevention strategies, organisations should work towards creating inclusive workplaces: that is, workplaces where a diversity of people are respected, connected, progressing and contributing to organisational success.

### **4. Myths and misconceptions about sexual harassment are an issue for workplaces**

We know from the experiences of DCA members that a critical stumbling block for organisations are the myths and misconceptions about what sexual harassment is, its impact on organisations and individuals, and what we can do stop it.

In response, DCA has developed a guide for our members that uses research to debunk some of those common myths and misconceptions. And we provide frameworks for action so that employees and workplaces can stand up for safety and respect at work.

VII. APPENDIX 1: EXCERPT FROM DCA's *Myth Busting Sexual Harassment At Work: Using Evidence to Debunk Common Myths and Assumptions*.





MYTH #1

PEOPLE WHO GET OFFENDED JUST **CAN'T TAKE A JOKE** OR ARE TOO SENSITIVE

REALITY: IT'S NOT FUNNY IF IT'S AT SOMEONE ELSE'S EXPENSE



MYTH #2

IT'S JUST **BOYS BEING BOYS**

REALITY: ACTUALLY, BOYS ARE BETTER THAN THAT



MYTH #3

YOU SHOULD TAKE IT AS **A COMPLIMENT**

REALITY: IF IT'S NOT WELCOME, IT'S NOT A COMPLIMENT



MYTH #4

BUT THEY'RE ONE OF OUR **TOP PERFORMERS...**

REALITY: LACK OF ACTION NOW WILL COST US MORE DOWN THE TRACK



MYTH #5

IT'S ALL GONE TOO FAR – WE CAN'T SAY OR DO ANYTHING THESE DAYS!

REALITY: IF IT'S RESPECTFUL AND SAFE, IT'S OK



MYTH #6

I DON'T WANT TO GET INVOLVED – IT'S **NONE OF MY BUSINESS**

REALITY: IT'S EVERYONE'S BUSINESS – THE STANDARD WE WALK PAST IS THE STANDARD WE ACCEPT



MYTH #7

IT ONLY HAPPENS TO **(STRAIGHT-CIS) WOMEN**

REALITY: IT HAPPENS TO PEOPLE OF ALL GENDERS AND ALL SEXUAL ORIENTATIONS



MYTH #8

IT'S MAINLY **JUST SENIOR MEN** TAKING ADVANTAGE OF THEIR **SECRETARIES**

REALITY: SEXUAL HARASSMENT IS ABOUT POWER; AND POWER AT WORK ISN'T JUST ABOUT SENIORITY



# VIII. APPENDIX 2: DCA'S INCLUSION@WORK INDEX



**'Inclusion'** is more than just the latest buzzword; it has benefits for business and workers too. The DCA-Suncorp Inclusion@Work Index 2017-2018, which surveyed 3000 working Australians, found that Inclusion@Work matters to Australian workers – it fuels team performance and boosts employee satisfaction, success and security, while also minimising the risk of harassment and discrimination.

### Inclusion@Work matters to Australian workers



**3 out of 4** Australian workers support or strongly support their organisation taking action to **create a workplace which is diverse and inclusive**



**Only 3%** oppose or strongly oppose their organisation taking action

### Inclusion@Work is good for business

If you work in an inclusive team<sup>1</sup> you are:



**10 times more likely** to be **highly effective** than workers in non-inclusive teams<sup>2</sup>



**9 times more likely** to **innovate**



**5 times more likely** to provide excellent **customer/client service**

### Inclusion@Work is good for employees

If you work in an inclusive team, you are:



**19 times more likely** to be very **satisfied with your job** than workers in non-inclusive teams



**4 times more likely** to **stay** with your current employer

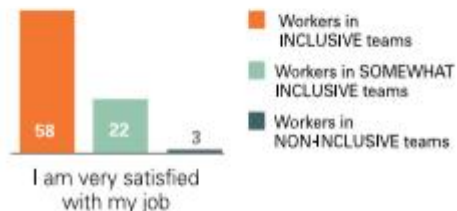


**2 times more likely** to receive regular career development opportunities

### Even a little Inclusion@Work helps



Working in a **somewhat inclusive team** also **boosts employee satisfaction, success and security, and team performance** – just to a smaller degree than working in a highly inclusive team



## Inclusion@Work minimises harassment and discrimination

If you work in an inclusive team, you are:



**Almost 7 times less likely** than workers in non-inclusive teams to have personally experienced **harassment** and/or **discrimination** in the past year

## Inclusion@Work benefits EVERYONE



In organisations taking action to create a **more diverse and inclusive workplace**, a similar proportion of female and male workers were very satisfied with their jobs (43% women, 45% men) – and **significantly more satisfied** than men and women in organisations where no action was being taken (28% women, 23% men)



### What is Inclusion@Work?

Inclusion occurs when a diversity of people (i.e. from different ages, cultural backgrounds, genders) are respected, connected, progressing, and contributing to organisational success.

### The state of inclusion



**Almost one in two** Australians work in an **inclusive team** or for an **inclusive manager**<sup>1</sup>



**One in five 5 (22%)** Australians have personally experienced **harassment** and/or **discrimination** at work in the past year



**38% of Aboriginal and/or Torres Strait Islander Australians** have personally experienced **harassment** and/or **discrimination** in the past 12 months – the highest rate of workplace discrimination and harassment of any demographic group

### Leading industries vs Lagging industries

**+**  
Financial and Insurance Services  
Education and Training



**-**  
Manufacturing  
Information, Media and Telecommunications

- Inclusive Teams* = Respondents scored their team on average 4 or above out of 5 (where 5 = highly inclusive, 3 = neither inclusive or non-inclusive, 1 = not inclusive at all). *Somewhat Inclusive Teams* = Respondents scored their team on average between 3 and 4. *Non-Inclusive Teams* = Respondents scored their team on average less than 3.
- Where we have indicated that inclusive teams/ leaders were "X times more likely" than non-inclusive teams/managers to be effective, innovative, stay etc. for ease of reading we have rounded up or down the original number to be a whole number (e.g. 9.7 times has been rounded up to 10 times).
- Inclusive Managers* = Respondents scored their manager on average 4 or above out of 5 (where 5 = highly inclusive, 3 = neither inclusive or non-inclusive, 1 = not inclusive at all).

## IX. ENDNOTES

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