



**Submission to the Australian Human Rights
Commission's National Inquiry into Sexual Harassment
in Australian Workplaces**

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Women with Disabilities Victoria acknowledges the traditional owners of the land on which this publication was produced, the lands of the Kulin Nations. We acknowledge Aboriginal and Torres Strait Islander people's connection to this land and acknowledge that sovereignty was never ceded. We pay our respects to community members and Elders past, present and emerging.

A note about language

Many people with disabilities have come to refer to themselves as 'targeted' and 'at risk' rather than 'vulnerable.' This change of language shifts the focus away from a blaming tone towards the victim/survivor – and on to the people who choose to abuse people with disabilities and the social conditions that make this common. Where relevant, this language should be adopted over language which paints women with disabilities as powerless.

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Table of Contents

- About Women with Disabilities Victoria..... 4**
- Executive summary 5**
- List of recommendations to address sexual harassment in Australian workplaces 8**
- Introduction 10**
- The drivers of workplace sexual harassment..... 12**
 - An intersectional and human rights approach 12
 - What is sexual harassment?..... 13
 - Perpetrators of harassment..... 14
 - Gender inequality and discrimination..... 14
 - Disability inequality and discrimination 15
 - Getting a full picture of intersectional disadvantage 17
- Workplace characteristics and practices 19**
 - Sheltered work environments and institutional violence 19
 - Australian Disability Enterprises 19
 - Women with disabilities, institutional settings and violence 22
- The current legal framework for sexual harassment..... 26**
 - An individual and reactive complaints system..... 26
 - Navigating the legal system 26
 - Emphasising primary prevention 27
- Existing measures and good practice 28**
 - Primary prevention of violence against women (PVAW)..... 28
 - Examples of good or ‘promising’ practices approaches 28
- Conclusion 30**
- References 31**

About Women with Disabilities Victoria



Pictured: Women with Disabilities Victoria members, associate members, board, staff and supporters.

Women with Disabilities Victoria is an organisation run by women with disabilities for women with disabilities. Our members, board and staff live across the state and have a range of disabilities, lifestyles and ages. We are united in working towards our vision of a world where all women are respected and can fully experience life. Our gender perspective allows us to focus on areas of particular inequity to women with disabilities: access to women's health services, gendered National Disability Insurance Scheme (NDIS) services and safety from gender-based violence. We undertake research and consultation. We provide professional education, representation, information and leadership programs for women with disabilities.

We have dedicated particular attention to the issue of men's violence against women with disabilities, due to its gravity and prevalence in our lives. Since 2009 we have had a Senior Policy Officer, funded by the Victorian Government, to focus on violence against women with disabilities. This has been a valuable resource for the community sector and government. Our representation at the Royal Commission into Family Violence in Victoria (RCFV) contributed to sixteen RCFV recommendations with specific disability content, and our representation to the Victorian Parliamentary Inquiry into Abuse in Disability Services resulted in a chapter on gender in the Committee's final report.

In 2014, we published 'Voices Against Violence'.¹ This was the result of a two year research project with partners Office of the Public Advocate Victoria (OPA) and Domestic Violence Resource Centre Victoria (DVRCV). The seven papers of the project examined the intersecting forms of gendered and disability-based violence experienced by women with disabilities, studying literature, OPA files and legislation.

¹ D. Woodlock Delanie, L. Healey, K. Howe, M. McGuire, et al, (2014), 'Voices Against Violence Paper One: Summary Report and Recommendations.' Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014.

Executive summary

The issue of the high rates of violence, abuse and neglect of people with disabilities in Australia has led to many groups, community organisations, advocates and activists calling for a specific Royal Commission into violence and abuse against people with disability for many years. The violence people with disability experience, both structural and institutional, occurs in a range settings, including education, the justice system, housing, group homes, aged care and employment. In particular, the high prevalence of violence against women with disabilities in Australia has been the subject of recent UN and civil society reports into human rights violations.² Women with disabilities are often invisible, and the violence, harassment and abuse we experience is often not taken seriously by governments or wider society.

"I want everyone to remember people with disabilities are people of worth.

We have a right to be treated with respect. We have a right to safety."

Jane, WDV member

Men are most often the perpetrators of workplace sexual harassment - for example, a national survey found that 79% of harassment (of men and women) was by a man.³ Research and reports show that people with disability experience higher rates of sexual harassment than those without disability.⁴ Studies also show that women with disabilities experience higher rates of sexual harassment than men with disabilities. In terms of the workplace, the Fourth National Survey on Sexual Harassment in Australian Workplaces found that nine out of ten (89%) women with disability, compared to almost seven out of ten (68%) men with disability had been sexually harassed in their lifetimes. One of the findings from the National Survey, as part of the *Change the Course* report, was that disability status impacts on experiences of sexual harassment in Australian universities. The report shows that students with disability were found to be more likely to have been sexually harassed than students without disability.

Women with disabilities are also more likely than women without disabilities to experience sexual harassment.⁵ Although women with disabilities sit at the intersection of both sex and disability

² See: Australian Human Rights Commission, (2012), Visit of the UN Special Rapporteur on Violence Against Women: Australian study tour report, Australian Human Rights Commission, Sydney; Human Rights Law Centre, (2014), Torture and Cruel Treatment in Australia: Joint NGO Report to the United Nations Committee Against Torture, Human Rights Law Centre, Melbourne; S. Browne, (2012), How have global services addressing violence against women with disabilities understood their needs and what are the lessons for the next generation of practice?, The United Nations Women, Global Virtual Knowledge Centre to End Violence against Women and Girls; Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities, (2012), Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations, Australia.

³ Australian Human Rights Commission (2012), 'Working without fear: results of the 2012 Sexual harassment national telephone survey, (Australian Human Rights Commission, Sydney).

⁴ Australian Human Rights Commission, (2018), Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces, (2018), p. 8.

⁵ Australian Bureau of Statistics, Personal Safety Survey, Australia: User Guide, 2016 (cat. no. 4906.0.55.003). Men with a disability or long-term health condition were statistically just as likely to experience sexual harassment in the 12 months

discrimination, there is a fairly low level of awareness and understanding of this within the broader Australian community. On all measures of social and economic participation (housing security, income, employment and education), women with disabilities are disadvantaged compared to women and men without disabilities. However, the mainstream community is generally unaware about the higher rates of violence against women with disabilities. In the 2013 National Community Attitudes towards Violence against Women Survey (NCAS), only 4 in 10 Australians were aware of the greater risk of violence experienced by women with disabilities, with men less likely to know this than women.⁶ This is particularly concerning, as there is growing evidence that women with disabilities are more likely to be targeted for violence.⁷ Numerous studies show that women with disabilities face a higher risk of physical and sexual assault than other women,⁸ with women and girls with disabilities being twice as likely as women and girls without disabilities to experience violence throughout their lives.⁹ This demonstrates that there is a concerning, but widespread disbelief that women with disabilities would be victims of violence.

There is also limited peer-reviewed research on women with disabilities' experiences of sexual harassment in the workplace and those who choose to harass them. Although it is known that women with disabilities experience significant disadvantages in accessing employment and reports of disability discrimination are common, our experiences of sexual harassment have been largely overlooked. Reasons for a lack of research and awareness could be linked to the wider societal stereotypes about women with disabilities, that we are viewed as either asexual or hypersexual; the assumption that our low labour force participation means we do not experience sexual harassment, or that our experiences of sexual harassment are exactly the same as women without disabilities (or men with disabilities). Poor data collection is also an issue, as there is no standard national data collection that includes the experiences of sexual violence amongst adults with a disability, or more specifically, the experiences of women with a disability.¹⁰ Additionally, the available data only looks at the extent of violence against non-institutionalised women with disabilities. It is likely that underreporting and limited access to accessible legal services and support means we do not know the full picture of the circumstances and conditions under which women with disabilities in Australia are experiencing sexual harassment.

prior to the survey as men without a disability or long-term health condition (10% or 293,600 and 8.7% or 543,600 respectively). The 2016 Personal Safety Survey (PSS) results found that women with a disability or long-term health condition were more likely to experience sexual harassment in the 12 months prior to the survey than women without a disability or long-term health condition (19% compared to 17%).

⁶ VicHealth, (2014), *Australians' attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)*, Victorian Health Promotion Foundation, Melbourne, Australia.

⁷ Australian Bureau of Statistics, *Personal Safety Survey, Australia: User Guide, 2016* (cat. no. 4906.0.55.003).

⁸ Healey, L., (2015), *Briefing paper on violence against women with disabilities in disability care*, Melbourne, Australia.

⁹ Krnjacki, L., Emerson, E., Llewellyn, G., Kavanagh, A.: 'Prevalence and risk of violence against people with and without disabilities: Findings from an Australian population-based study', *Australia and New Zealand Journal of Public Health*, (2016) 40(1), pp. 16 - 21.

¹⁰ Australian Institute of Family Studies, 'Sexual assault and adults with a disability: enabling recognition, disclosure and a just response', (2008), ACSSA Issues No. 9, September.

To understand why women with disabilities are more likely to experience sexual harassment in Australian workplaces, an intersectional feminist approach is required. Gender-based and disability-based discrimination increases the risk of violence, abuse and harassment for women with disabilities. For us, an end to sexual harassment also means an end to forms of disability harassment and disability discrimination. It involves, firstly, employing us, supporting us in the workplace and creating safe workplaces that are free from all kinds of harassment. Women with disabilities have a right to realise our right to work on an equal basis with others under the United Nations Convention on the Rights of Person with Disabilities (UNCRPD). Our economic participation can build independence and provide opportunities for community inclusion, but we cannot experience these benefits when our workplaces are unsafe.

Under the current anti-discrimination legislation, victims are placed in an individualised framework in which to seek redress for sexually discriminatory behaviours and practices. To seek redress, women with disabilities are required to navigate complex legal processes, which are often slow, time consuming, unaffordable and inaccessible. Because women with disabilities often lack access to resources, community connections or support, and are a marginalised group in society, we often experience significant power disparities in navigating these systems. Those of us who initiate formal processes are often re-traumatised by the process, and most do not make a formal complaint, or access the legal system.

The impacts of sexual harassment in the workplace are well documented: lower job satisfaction, inability to gain future employment, a long-lasting psychological or traumatic impact on victims (including lowered confidence and self-blame), social isolation and financial impacts.¹¹ Because evidence suggests sexual harassment is an ongoing and common occurrence in Australian workplaces, it also affects a number of bystanders in the workplace, and the families and friends of those who are harmed. Gender and disability discrimination and inequality means that women with disabilities are often targeted for gender and disability-based harassment and discrimination. This is the result of actions done by people who choose to perpetrate harassment and hold discriminatory views and biases. The current law around sexual harassment provides a limited, inaccessible means of redress and does not effectively provide a framework for preventive measures that will change attitudes, cultures and structural inequalities.

Action and reform on this issue for women with disabilities means, a commitment to creating inclusive, non-discriminatory workplaces, supporting us in the workplace and ensuring that gender equity campaigns represent and reach us. WDV hopes that the increased momentum and awareness gathering around this issue will result in meaningful reforms that include women with disabilities. We call for a stronger regulatory and primary prevention focus, with positive legal duties on workplaces and public bodies to create inclusive, safe and sexual harassment-free environments.

¹¹ Birinxhikaj, M. and Guggisberg, M., (2017), 'The wide ranging impact of sexual harassment in the workplace: an Australian pilot study', *International Journal of Employment Studies*, Vol. 25, No. 1, pp. 6 - 26.

List of recommendations to address sexual harassment in Australian workplaces

1. Political leadership and recognition that sexual harassment is sex discrimination and a form of violence against women through supporting primary prevention programs.

Addressing sexual harassment must acknowledge that sexual harassment is a gendered issue and is a form of violence against women. Sexual harassment is both discrimination and violent behaviour. Appropriate action on this includes well-funded specialised primary prevention programs to shift attitudes, behaviour and practices. This can be done through looking to Our Watch's national framework for the primary prevention of violence against women, [Change the Story](#).

2. More sophisticated reporting tools and improved data collection.

This includes providing an accessible anonymous online reporting tool to support people to report and address problem behaviour and seek support.

3. Increase funding for free legal assistance services.

Increased funding for women's centres, community legal centres, specialist low cost legal services and Legal Aid can work to ensure these services are accessible to women with disabilities and have the resources to provide advice and assistance on sexual harassment matters.

4. Provide more training for conciliators.

Conciliators in sexual harassment disputes should receive extensive training in sexual harassment, including techniques in mitigating power imbalances, such as those around disability and gender, in conciliation processes.

5. Provide counselling and mental health support for victims of sexual harassment.

Anyone who has experienced sexual harassment should be able to access a central service, which is appropriately trained and resourced and can provide good referrals to other support services, such as legal services.

6. Positive legal duties on workplaces and enforcement powers.

Legislation must be amended to establish positive legal duties on all employers, educational institutions and other service providers, including across disability services, to eliminate sex discrimination and sexual harassment and promote gender equality.

7. Strengthen regulation.

Greater oversight and regulation of laws prohibiting sexual harassment is required to remove the burden on the victim as a complainant to protect their rights and pursue legal action. Appropriate regulatory bodies should have a broader range of enforcement powers that can be used if the duty has been breached.

8. Statutory deadlines for the resolution of a claimant's matter.

For those who seek formal responses to the harm they have endured as a result of workplace sexual harassment, there should be clear limits on the timeframes for the resolution of their matter.

9. Increase legislative timeframes for people to take action.

Increase the time frames for making a complaint under the *Sex Discrimination Act* 1984 (Cth).

10. Fund research on women with disabilities' experiences of harassment.

More research on the experiences of women with disabilities experiencing harassment, particularly in sheltered workplaces, is needed. Funding for research should also aim to collect information about the people who harass women with disabilities in order to help build a more accurate picture and develop the evidence base and primary prevention approaches.

11. Acknowledgement of intersectional approaches to understanding disadvantage.

That the AHRC endorse and adopt intersectional approaches to understanding discrimination law, including an express ability for claims of harassment and/or discrimination to more easily involve multiple discriminatory factors, including on the basis of race, sex, age and/or disability. That AHRC develop training and public education for conciliators, lawyers and judges around intersectional discrimination.

12. Increase access to employment opportunities for women with disabilities in open employment.

More open employment opportunities are required for women with disabilities to be able to equally participate in the workforce and address disability discrimination. Relevant and appropriate training for organisations and businesses about disability inclusion and workforce matters should be managed and delivered by women with disabilities.

Introduction

Women with Disabilities Victoria welcomes the opportunity to contribute to the Australian Human Rights Commission's (AHRC) National Inquiry into Sexual Harassment in Australian Workplaces. In the recent #MeToo spotlight, it is encouraging to see renewed efforts to understand and address this issue and an increased understanding that sexual harassment is gendered, driven by gender inequality and is a form of violence against women. Governments, employers and civil society organisations all have a role to play in eradicating these unlawful behaviours from Australian workplaces.

We know that sexual harassment in Australia is prevalent and that women are overwhelmingly the victims of sexual harassment. More than half (53%) of Australian women have experienced sexual harassment during their lifetime¹² and recent Victorian studies have found that over 60 per cent of women surveyed report experiencing some form of violence at work.¹³ We also know that the workplace is just one place where women experience sexual harassment: we also experience it on the street, school, in the community¹⁴ and in higher education.¹⁵ Underreporting also means we can expect that the issue is much larger than what most reports and studies show. Based on the numbers of surveyed women who identify as having experienced sexual harassment, we know that many women are often forced to 'just put up' with harassment and unsafe workplaces, rather than face the consequences if they seek a formal response. Only 1 in 5 victims of sexual harassment make a formal report.¹⁶ For those who do seek a formal response, long waiting times for their matter to be dealt with, further victimisation and employer retaliation or even surveillance by their employer, is not unlikely.

Like women without disabilities, we too experience sexual harassment. However, numerous studies suggest that women with disabilities can actually experience higher rates of sexual harassment. This is not surprising, as research demonstrates that women with disabilities experience other types of gender-based violence, such as sexual assault and family violence, at higher rates. However, little to no research has been done on the specific experiences of women with disabilities when it comes to harassment in the workplace. But as women with disabilities, we

¹² Australian Bureau of Statistics, Personal Safety Survey, Australia: User Guide, 2016 (cat. no. 4906.0.55.003).

¹³ Chung, D., Zufferey, C. and Powell, A., (2012), Preventing violence against women in the workplace (An evidence review: full report), Victorian Health Promotion Foundation, Melbourne, Australia.

¹⁴ See: The Australia Institute, (2015), Everyday sexism: Australian women's experiences of street harassment, Briefing Note. Survey by the Australia Institute found 87% of Australian women surveyed have experienced at least one form of verbal or physical street harassment.

¹⁵ See: Australian Human Rights Commission, (2017), Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities, (Australian Human Rights Commission: Sydney). Around half of all university students (51%) were sexually harassed on at least one occasion in 2016, and 6.9% of students were sexually assaulted on at least one occasion in 2015 or 2016. A significant proportion of the sexual harassment experienced by students in 2015 and 2016 occurred in university settings.

¹⁶ Powell, A., Sandy, L. and Findling, J. (2015), Promising Practices in Workplace and Organisational Approaches for the Prevention of Violence against Women, Report prepared for Our Watch, (Melbourne: RMIT University), p. 11.

know that our experiences of sexual harassment overlap with our experiences of harassment, abuse, discrimination and workplace bullying, on the basis of our disabilities.

When working in open employment, we are often working in non-inclusive and inaccessible workplaces. Those of us who are young, in junior roles, or in precarious employment (which, as women with disabilities, is many of us) are often more easily made the targets of sexual harassment.¹⁷ However, a significant number of women with disabilities do not work in open or 'mainstream' employment. Some women with disabilities work in sheltered environments or workshops, such as Australian Disability Enterprises (ADEs) or social enterprises, forms of supported employment. Sheltered workshops are often male-dominated work environments.¹⁸ Because of this, women with disabilities are likely to be exposed to greater risk of sexual harassment, as we know that sexual harassment is more likely to occur in male-dominated workplaces.¹⁹ The sheltered or 'hidden' nature of these workplaces and a lack of independent oversight means it is difficult for women to speak up about violence, harassment or abuse in their workplace, make a complaint, or seek information or assistance. These women are often invisible in the conversation about sexual harassment in the workplace.

Action and reform on this issue for women with disabilities means, firstly employing us, a commitment to creating inclusive, non-discriminatory workplaces, supporting us in the workplace and ensuring that gender equity campaigns represent and reach us. WDV hopes that the increased momentum and awareness gathering around this issue will result in meaningful reforms that include women with disabilities. We call for a stronger regulatory and prevention focus, shifting the burden from the individual and instead onto workplaces, public bodies and communities to create inclusive, safe and sexual harassment-free environments, which include women with disabilities.

"Go to a... women's organisation (or someone you can trust) that is likely to believe you. 'Cause that's the first thing you want... There's nothing worse than going to somebody and they don't believe you, and then you often stop there and you don't follow it through. The other thing, for people with disabilities, be strong in yourself and know that what you're feeling, if it's feeling wrong, then it is wrong." – Michelle

Source: WWDA, UNSW & PWD, 'Stop the Violence: Improving Service Delivery for Women and Girls with disabilities', 2013.

¹⁷ Australian Human Rights Commission, (2012) 'Working without fear: results of the 2012 sexual harassment national telephone survey', (Australian Human Rights Commission, Sydney).

¹⁸ There are about 20,000 people with disabilities in sheltered workshops nationally (with gender breakdown not made publicly available). The male dominated nature of sheltered workshops (ADEs) is based on qualitative information, the accounts provided by women with disabilities. See Wong, L. 'Women with intellectual disabilities inspiring others to find work', ABC News, accessed 12 Feb 2019, accessible at: <<https://www.abc.net.au/news/2018-03-08/women-intellectual-disabilities-workforce-employment-job/9524936>>; Aubusson, K., 'Push for a royal commission into disability sector: the endemic, hidden crisis facing women', Sydney Morning Herald, 23 Feb, 2019, accessible at: <<https://www.smh.com.au/national/push-for-a-royal-commission-into-disability-sector-the-endemic-hidden-crisis-facing-women-20190218-p50ymy.html>>.

¹⁹ Saunders, S., Eastal, P., (2013), 'The nature, pervasiveness and manifestations of sexual harassment in rural Australia: does 'masculinity' of workplace make a difference?', *Women's Studies International Forum*, 40, pp. 121 – 131.

The drivers of workplace sexual harassment

An intersectional and human rights approach

We stress the importance of taking an intersectional and human rights-based approach to understanding the drivers of sexual harassment for women with disabilities. Taking an intersectional approach includes acknowledging that inequalities and disadvantage are never the result of a single or separate factor such as race, class or gender.²⁰ Intersectional feminist theory understands the multi-layered and intersecting nature of disadvantage.

Disability discrimination, combined with sex discrimination, raises the level of risk for women with disabilities in experiencing violence, harassment and abuse. When we experience two kinds of discrimination, it can be said that we experience **intersectional discrimination**, new and discrete forms of discrimination.²¹ For women with disabilities, experiences of sexual harassment also relate to experiences of disability harassment and discrimination. This can take the form of experiencing, for example, both sexual harassment from a colleague, coupled with workplace bullying, insults or comments about a woman's disability, refusals to take into account requests for reasonable adjustments, denial of necessary flexible working arrangements or a change in treatment from managers or colleagues after disclosing a disability.

Intersectionality has grown out of a rich history of black feminist theory and activism in the United States, beginning in the 1960s and 70s, directly as a result of looking at the way that discrimination law operates. Theories of intersectionality described the way that for black women, the discrimination often faced was on combined grounds of discrimination, on the basis of both sex *and* race. The federal anti-discrimination legislation in Australia covers four separate pieces of legislation (the *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Sex Discrimination Act 1984*), where each law is designed to address discrimination on the basis of only one type of 'difference' or 'characteristic'. This structure is not designed for taking into account any variations on the experience of sex discrimination, such as discrimination on the grounds of both sex *and* disability.

The case law in Australia demonstrates that legal claims by women in these categories, who are affected by multiple discrimination grounds, are rarely litigated.²² This is likely to be a result of multiple and overlapping forms of marginalisation, but the reality is that discrimination, harassment and victimisation in the workplace often relates to multiple 'characteristics' and power dynamics. We draw attention to this overall legal structure for federal anti-discrimination

²⁰ Chen, J. (2017) *Intersectionality Matters: A guide to engaging immigrant and refugee communities in Australia*. Multicultural Centre for Women's Health. Melbourne.

²¹ Maher, J. et al., (2018), 'Women, disability and violence: Barriers to accessing justice. Key findings and future directions', (Sydney: Australian National Research Organisation for Women's Safety), ANROWS Compass, Issue 02, p. 3.

²² Commonwealth of Australia, (2008), *Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality report*, Chapter 4: Scope of the Act, p. 42.

legislation, as this structure deals poorly with effectively addressing discrimination on multiple or intersecting grounds.²³

A human rights approach is also of particular importance for effectively addressing gender-based violence. Human rights approaches uphold the rights of women with disabilities to enjoy the full range of human rights without discrimination, which includes discrimination on the basis of disability and the right to a life free from violence. Of particular relevance is the Convention on the Rights of Persons with Disabilities (CRPD), adopted by the Australian government in 2008, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and in Victoria, the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.²⁴

What is sexual harassment?

Sexual harassment is 'unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated'²⁵ and can be both physical and non-physical. It is a form of violence against women, which according to the United Nations definition, refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.²⁶ This makes sexual harassment a broad term and can include many kinds of acts. Some forms of unwanted sexual behaviour that occur in the workplace, for example, those involving unwanted sexual contact, can also constitute criminal acts such as sexual assault and/or indecent assault. Sexual harassment is part of the continuum of violence against women, which also includes what might be considered to be 'more serious' forms of gender-based violence. In the workplace, sexual harassment can be understood as comprising four distinct practices:

- sexual hostility - explicitly sexual verbal and non-verbal behaviours;
- sexist hostility - insulting verbal and non-verbal behaviours that are not sexual, but are based on gender;
- unwanted sexual attention - unwelcome, offensive interest of a sexual nature; and
- sexual coercion - requests for sexual cooperation in return for job benefits.²⁷

²³ Ibid, p. 41.

²⁴ For a human rights approach to disability, see Section 4 in G. Dimopolous with E. Fenge, (2013) in *Voices against Violence Paper 3: A Review of the Legislative Protections Available to Women with Disabilities who have experienced Violence in Victoria*, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, Melbourne.

²⁵ Australian Human Rights Commission (2012), 'Working without fear: Results of the sexual harassment national telephone survey', (Sydney: Australian Human Rights Commission).

²⁶ United Nations Declaration on the Elimination of Violence against Women, 1993.

²⁷ See: O'Leary-Kelly, A. M., Bowes-Sperry, L., Bates, C. A., and Lean, E. R., (2009), 'Sexual harassment at work: A decade (plus) of progress', *Journal of Management*, 35(3), pp. 503 - 536.

The perpetrators of harassment

Research suggests that heightened susceptibility to violence, harassment and abuse is the result of a perpetrator targeting those they perceive to be more 'vulnerable'.²⁸ Internalised expectations and pervasive stereotypes mean that women with disabilities are often perceived to be 'powerless', physically helpless, inherently vulnerable, unreliable witnesses, compliant and either asexual or hypersexual. Men who harass women know how to target women who are more likely to be isolated and who are easier to discredit. Therefore, the 'risk' of harassment arises from characteristics of the perpetrators who choose to target individuals.²⁹

Women with particular kinds of impairment or disability in the workforce are also likely to be at a higher risk of experiencing harassment. Research has consistently demonstrated that people with disabilities, particularly people with an intellectual disability, cognitive, communication and/or sensory impairments, high support needs, are much more likely to experience abuse, including physical and sexual assault, than the general population.³⁰

There is also a growing awareness that perpetrators of violence against women, particularly sexual violence, specifically target women with cognitive disabilities, because perpetrators perceive these women as those that will not report what has happened or will not be believed.³¹ While there are a limited number of studies on the people who perpetrate violence and harassment against women with disabilities in the workplace specifically, the targeting of women with disabilities on the basis of a perceived ability to act with impunity is strongly evidenced in the literature around intellectual disability and gender.³²

Gender inequality and discrimination

All forms of violence against women are driven through gender inequality. [Our Watch's research](#) documents the underlying drivers of violence against women as:

- the condoning of violence against women;

²⁸ A large Canadian population-based dataset of just over 7,000 heterosexual women, including women with disabilities living in the community, found that perpetrator characteristics alone accounted for the elevated risk of women with disabilities being targeted. It suggests that perpetrators' use of coercive control (such as controlling access to medication, mobility and external supports) is fueled by compounding ableist and sexist views, which leads them to seek out partners they view as submissive or deserving of abuse because of their disability. See: D. Brownridge, 2009, *Violence against Women: Vulnerable Populations*, (Routledge, New York) and L.C. Copel, (2006), 'Partner Abuse in Physically Disabled Women: A Proposed Model for Understanding Intimate Partner Violence Perspectives', *Psychiatric Care*, 42.

²⁹ Healey, L., (2013), *Voices Against Violence: Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities* (Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria).

³⁰ Barr, L. C. (2012), 'Safeguarding People's Right to be Free from Abuse: Key considerations for preventing and responding to alleged staff to client abuse in disability services' (Occasional Paper No.1, Disability Services Commissioner).

³¹ Elman, A. (2005), *Confronting the Sexual Abuse of Women with Disabilities*, (Harrisburg, PA), VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition against Domestic Violence.

³² See: Maher, J. et. al., (2018), 'Women, disability and violence: Barriers to accessing justice, Australian National Research Organisation for Women's Safety (ANROWS), Horizons: Issue 02, Research Report, (Sydney: ANROWS).

- men’s control of decision making and limits to women’s independence;
- stereotyped constructions of masculinity and femininity; and
- disrespect towards women and male peer relations that emphasise aggression.

These factors are explained in greater detail in Our Watch’s Change the Story, the national shared framework for primary prevention of violence against women in Australia. All of these factors are part of workplace structures and cultures – even when it goes unnoticed. Workplaces are not separate spheres removed from broader, structural and societal gender and disability inequality. Workplace inequalities include gender pay inequality, disadvantage and discrimination due to caring responsibilities and having significantly lower superannuation balances compared to men. On all these accounts, women with disabilities are worse off than women without disabilities.

Women with disabilities in the workplace experience the inequality all women experience. But, our experiences of harassment are also driven by the same pervasive stereotypes and biases that people have about women with disabilities, which can have the effect of reinforcing dehumanising and infantilising ideas, or excluding and isolating us and fueling other kinds of discriminatory practices. The stereotypes about women with disabilities reinforce behaviour that targets women with disabilities for forms of violence. It is important that workplaces understand this, and while employers may think these issues would not occur in their workplace, they do not exist outside the social, systemic and cultural world, including ‘everyday sexism’, that constantly devalues all women. Similarly, many non-disabled colleagues and employers are likely to hold stereotyped understandings or have adopted the negative narratives about disability.

Disability inequality and discrimination

It is not possible to understand the experiences women with disabilities have of harassment in the workplace without looking at the widespread systemic issue of disability employment discrimination. In recent years, the labor force participation of people with disabilities with “severe or profound limitation” has actually declined.³³ While the transition to the National Disability Insurance Scheme (NDIS) is set to create more employment opportunities for some people with disability, only approximately 10% of the national population of people with disability are set to receive direct support through the NDIS.³⁴

In Australia, the employment discrimination of people with disabilities remains a widespread systemic problem. Complaints about disability discrimination remain the largest category of discrimination reported to the AHRC and the numbers have been steady for around the past 20 years.³⁵ Although the *Disability Discrimination Act 1992* (Cth) makes it unlawful to discriminate against people with disabilities in employment, women with disabilities still experience

³³ Australian Institute of Health and Welfare, (2017), *Disability in Australia: Changes over time in inclusion and participation in employment*, Cat. No. DIS 68, (Canberra: AIHW).

³⁴ The Productivity Commission study report on NDIS costs estimated that at full scheme about 475,000 people with disability would receive individual support plans. See: Australian Government, Productivity Commission, (2017), *National Disability Insurance Scheme (NDIS) Costs, Study Report: Overview*.

³⁵ See most recent complaints data, published in the AHRC 2016 – 2017 Annual Report.

discrimination right from the beginning of the recruitment process, or when we disclose our disabilities. Community organisations and businesses are not legally required to develop (or update and implement) Disability Action Plans (DAPs), leaving attitudinal and physical barriers within workplaces unaddressed.

People with disabilities are much more likely to experience greater pay inequity, job insecurity and underemployment than those without disabilities.³⁶ But women with disabilities are disadvantaged across all areas of employment compared to men with disability and compared to workers without disabilities. As women with disabilities, due to our rates of living in poverty and economic insecurity, when we have jobs, we are often made to feel grateful for having employment in the first place. This makes it difficult for us to speak up about what has happened due to fears of losing our jobs, being unable to get a positive reference, the potential for further victimisation and our prospects of finding alternative employment.

Disclosing disabilities means women risk facing a change in attitude and treatment from their co-workers and employer. Being subject to discrimination, stereotypes and negative assumptions has the cumulative effect of undermining self-confidence, motivation and, in turn, work performance. The Scope 1 in 4 Poll of 761 Australians with a disability found that negative attitudes towards disability were identified as the single biggest cause of disadvantage.³⁷ Prevailing negative cultural norms and stereotypes about disability and other sources of discrimination can also feed men's sense of entitlement and superiority over women with disabilities. A lack of understanding about disability in the workplace means many women with disabilities in the workforce battle both negative assumptions and inaccessible, non-inclusive workplaces. The sexual harassment of women with disabilities happens in the context of both gender inequality and disability inequality. Women with disabilities are often in a position of having to constantly raise awareness about access and equity issues in the workplace, which can have the unintended effect of putting them into an oppositional relationship with their employer.

³⁶ Milner, A., King, T. L., LaMontagne A. D., Aitken, Z., Petrie, D. and Kavanagh A., (2017), Underemployment and its impacts on mental health among those with disabilities: evidence from the HILDA cohort, *Journal of Epidemiology and Community Health*, 29.

³⁷ 1 in 4 Poll (2013), the 1 in 4 Poll, Scope and Deakin University.

Negative stereotypes: the ‘ideal worker model’ in workplace cultures

A prevailing stereotype that negatively affects workplace cultures and is a barrier to inclusivity and diversity in workplaces is the ‘ideal worker model’. The ideal worker has been described as employees who are available at any time and have unbroken career records. They are typically a man, aged 18 – 50 years old, with no caring responsibilities, health conditions, mental illnesses or disabilities.

Often these implicit assumptions are held by employees, employers, and society more broadly. These ideas percolate throughout workplace cultures. Women with disabilities often do not, or cannot, live up to this ideal worker model. Workplaces that normalise gender inequality, or are male dominated spaces, and are not inclusive and inaccessible environments, can reinforce the devalued position of women with disabilities in the workplace.

Source: Australian Human Rights Commission, ‘Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability’ (2016).

Getting a full picture of intersectional disadvantage

A full picture of the intersectional disadvantage we face as women with disabilities in the workplace takes many forms:

- Some young women with disabilities grow up without the opportunities to take on the same types of temporary, casual or part-time work we often do as girls and young women, which can mean we do not develop the networks, skills and professional experience, as women without disabilities;
- In the mainstream employment market, we are more concentrated in precarious, informal, subsistence and vulnerable employment, in insecure work³⁸ and are negatively affected by trends like under-employment, the dilution of workplace protections and working conditions, aspects of the gig economy and increasing casualisation, all of which mean an increased exposure to sexual harassment. In turn, this can also mean we are less likely to be union members, as employees working on a casual and/or part-time basis are less likely to be unionised than full time workers and permanent employees;³⁹
- Our workplaces are often inaccessible, and our employers rarely provide the support, reasonable adjustments and flexible working arrangements we need to stay in our jobs;
- We are often denied and overlooked for employment in hiring processes on the basis of our disability and many of us struggle to gain suitable employment as a result;
- Because of our high rates of unemployment and poverty, we are often made to feel lucky or grateful for simply being given a job – and may need stay in it, even if it is an unsafe environment;

³⁸ Victorian Council of Social Services (VCOSS), (2015), ‘Insecure work creates vulnerability and increases inequality: VCOSS Submission to the Victorian inquiry into the labour hire industry and insecure work’.

³⁹ Australian Bureau of Statistics, 6333.0 - Characteristics of Employment, Australia, August 2016.

- Many of us have caring responsibilities, for our families and children, on top of our working lives;
- We are paid lower wages than our male counterparts - women with disabilities in segregated work environments are paid particularly low wages;
- We are less likely to be in, or have opportunities to advance in our careers into, more senior roles and have less superannuation over time;
- Some of us work in sheltered environments or in industries that are highly gender segregated, with strong stereotyped constructs of masculinity and femininity, which put us at higher risk of experiencing sexual harassment and violence at work;
- We are less likely to have a good understanding of our rights at work, less likely to be supported to seek help, initiate a complaint and know where to get help or professional advice.

This picture adds up to one of devaluation, disempowerment and marginalisation in the workplace, making it harder for us to speak up about the violence and harassment we experience at work. Our experiences of gender and disability discrimination are normalised. We begin experiencing many of the negative community attitudes, behaviours and stereotypes about us in other spheres of life, before we enter the workforce. The compounded nature of both disability inequality and gender inequality means that women with disabilities, as women, and as people with disabilities, experience already disadvantaged working lives and disempowerment in the workplace.

Workplace characteristics and practices

Sheltered work environments and institutional violence

It is important to take into account the variety of places where women with disabilities work, and the variety of experiences we have in employment. So far, we have mostly talked about women with disabilities in the mainstream or 'open' employment market. However, we know that people with disability generally are under-represented in the mainstream workforce compared to people without disabilities. Many experience underemployment, wish to re-enter the workforce, are in insecure employment or participate in volunteering. Some are required to attend Job Active meetings as part of receiving Newstart Allowance, or are assisted by a Disability Employment Service (DES). Some people with disability can also be in forms of 'supported employment' and might work in a social enterprise or supported employment program.

Some people with disability also work in sheltered or congregate settings and environments. These have been branded as 'Australian Disability Enterprises' (or ADEs).⁴⁰ The particular workplace characteristics and practices of sheltered workplaces mean that they are sites where women with disabilities are exposed to a higher risk of violence. We make the choice to refer to these environments as sheltered or segregated, as they are workplaces only for people with disability. Many Disabled Peoples Organisations' (DPOs) advocacy groups and individual advocates with disabilities argue for increased open employment options instead, as evidence shows a higher quality of life for those working in open employment.⁴¹ Taking a human rights-based view also prioritises the rights of women with disabilities to work on an equal basis with others, to just and favourable conditions of work, including work of equal value, safe and healthy working conditions, including protection from harassment.⁴²

Australian Disability Enterprises

There are currently about 200 or so ADEs that provide employment opportunities to around about 20,000 people with a disability in Australia.⁴³ ADEs have grown out of what were commonly known as sheltered workshops in the 1950s and 1960s. These were set up to be separate from the open

⁴⁰ Sometimes, but not always, these workplaces or employment relationships, could fall under the specified areas of life covered under the *Sex Discrimination Act* 1984 (Cth). Independent contractors and volunteers may not be protected from sex discrimination and sexual harassment because they may not be able to demonstrate that they fall within the provisions protecting employees. Those unable to establish an employment relationship can be left without a remedy and fall outside the provisions of the *Sex Discrimination Act* 1984 (Cth).

⁴¹ Disability Employment Australia, 'Improving Australia's Disability Employment Performance: 20 Recommendations for Government'.

⁴² United National Convention on the Rights of Persons with Disabilities (UNCRPD), Article 27 (1) (b).

⁴³ For a comprehensive overview of ADEs, see: Meltzer, A., Bates, S., Robinson, S., Kayess, R. Fisher, K.R. and Katz, I. (2016). What do people with intellectual disability think about their jobs and the support they receive at work? A comparative study of three employment support models: Final report (SPRC Report 16/16). Sydney: Social Policy Research Centre, UNSW Australia. Commissioned by the Department of Social Services (DSS), the UNSW Centre for Social Policy Research Centre interviewed 51 people with intellectual disability working in three types of employment: open, ADEs and social enterprises.

employment market and were founded in a belief that people with disabilities needed to be hidden from society under policies of institutionalisation.

ADEs often provide employment for people with 'moderate to severe' disability who face barriers to working in the open labour market. They notoriously pay very low wages, as rates of pay are determined through an assessment of the employee's productivity.⁴⁴ Often, but not always, ADEs provide employment for people with intellectual disabilities and employees are primarily dependent on the Disability Support Pension.⁴⁵ Although the Department of Social Services, the department currently responsible for ADEs, reports that ADEs act as a link and help people with disability to gain training and experience to step into open employment, according to the Department of Social Services in 2017, less than 1% per year transition to open employment.⁴⁶ Most importantly, employees of ADEs do not have the same level of access to industrial protections as other workers. Because ADEs are commercial businesses which can remain hidden from the wider community, they are often gate kept work environments. All these factors leave ADE employees, particularly women, open to abuse and exploitation.

The kind of work and tasks performed by people with disability in ADEs often includes manual labour, such as packaging, assembly, production, recycling, screen printing, plant nursery, garden maintenance, landscaping, cleaning services and laundry services. Because of the type of work involved and the level of gender segregation, these environments can be male-dominated and are more likely to have a stronger adherence to strictly stereotypical 'masculine' or 'feminine' gender roles based on stereotypes. Because of their sheltered nature, there is very limited oversight of the daily workplace practices and instances of harassment, violence and abuse in ADEs. ADEs are not subject to the same levels of external oversight and regulation as mainstream workplaces.⁴⁷ One of the key differences is that sheltered workshops operate under federal and state industrial relations regulations, but are exempt from national minimum wage regulations. Instead sheltered workshops are required under the *Disability Services Act* 1986 to pay supported

⁴⁴ In December 2012, the Full Federal Court ruled that the Business Services Wage Assessment Tool (BSWAT) used to set wages for employees with intellectual disability in ADEs was unlawful under the Disability Discrimination Act (DDA). In May 2013, the High Court of Australia agreed that BSWAT disadvantaged employees with intellectual disability. In November 2013, the United Nations (UN) recommended Australia immediately stop using BSWAT.

⁴⁵ People with Disability Australia (PWDA), Submission in response to an application by the Department of Social Services for an additional exemption from the Disability Discrimination Act 1992 to use the Business Services Wage Assessment Tool in Australian Disability Enterprises, July 2015, p. 6.

⁴⁶ Luke Michael, Pro Bono News, 'Disability Groups Divided Over Support for Australian Disability Enterprises', accessed on 11 Feb, 2019, accessible at: <https://probonoaustralia.com.au/news/2019/01/disability-groups-divided-support-australian-disability-enterprises/>; Catia Malaquias and Jackie Softly, Starting with Julius, 'Time to Stop Defending the Low Ground – Moving from Segregated to Open Employment', accessed on 11 Feb, 2019, accessible at: <http://www.startingwithjulius.org.au/time-to-stop-defending-the-low-ground-moving-from-segregated-to-open-employment/>

⁴⁷ In Australia, sheltered employment is explicitly excluded from standard labour legislation, unless there was an enterprise agreement or an "award" in the branch of activity in question. See: Visier, L., (1998), 'Sheltered employment for persons with disabilities', *International Labour Review*, Vol. 137, No. 3, p. 351.

employees' wages that are 'adjusted' using a wage assessment tool. As reported in 2017, the average hourly rate in sheltered workshops was \$5.61 an hour.⁴⁸

The 'behind closed doors' nature of harassment and violence means victims have limited access to means of reporting violence and no reason to believe anything will be done about it due to limited external oversight. Because of their sheltered nature, we know little about the individual experiences of women with disabilities in ADEs specifically, and rarely are ADEs seen from the perspective of their employees. However, we know that much of the violence experienced by people with disability in Australia occurs within institutional settings, such as in group homes, residential institutions, schools, psychiatric facilities, hospitals and correctional facilities. Despite successive policies of deinstitutionalisation, many people with disability continue to live or work in institutions, or settings with institutional characteristics. These services tend to be provided by non-government organisations, both for-profit and not-for-profit.⁴⁹ In an employment context, new entrepreneurial and for-profit initiatives are likely to increase with the maturation of the NDIS marketplace. The ADE sector is also currently undergoing a process of reform and restructuring as the funding of ADEs gradually transitions to the National Disability Insurance Scheme (NDIS).

Experiences of women in sheltered workshops

"In 1982 a woman in a sheltered workshop was angered that she had been put off because of body odour. In late 1982 she was reinstated due to a medical certificate stating that it was a physical disability.

In 1982 a woman came to the union stating that she had been raped by a fellow worker. It was dismissed by management, claiming that she was prone to lying. She was forced to take medication and she was later reinstated.

In 1983 a woman was dismissed by management for striking a staff member after constant physical provocation.

In 1983 a woman was sacked after complaining that a male staff member had often fondled her breasts. She was never reinstated and is still unemployed.

In 1984 a woman was sacked after being bashed by two or more staff after work. She was reinstated after 8 months with only one staff member being sacked."

Source: 'Women in Sheltered Workshops' by Jodie Emerson. From: *Women and Disability – An Issue*. A Collection of writings by women with disabilities. This booklet was produced by the Melbourne based Women with Disabilities Feminist Collective in the late 1980's. The exact publishing date is unknown. Copyright – Women with Disabilities Australia (WWDA). Available online at: <<http://wwda.org.au/poems/personalstories/womdis/womdis13/>>

⁴⁸ Disability Employment Services Monthly Data, March 2017, accessible at:

<<http://lmip.gov.au/default.aspx?LMIP/Downloads/DisabilityEmploymentServicesData/MonthlyData>>

⁴⁹ Cadwallader, J. Robyn, Spivakovsky, C. Steele, L., Wadiwel, D., 'Institutional Violence against People with Disability: Recent Legal and Political Developments', (2018) *Current Issues in Criminal Justice*, 29(3), 259.

Women with disabilities, institutional settings and violence

We know from our experience of working with women with disabilities, that women who live or work in disability-related settings are at a heightened risk of violence, abuse and harassment. In some disability-settings, violence, harassment and abuse can go unaddressed, as acts which would otherwise be deemed criminal matters, are not addressed as such, with inadequate reporting mechanisms and recording of 'incidents'. We know anecdotally and qualitatively that it is not unusual for criminal activities or events, such as assaults, sexual assaults and violence, to occur without a police response or full investigation. Abuse can be covered up through the very language used, for example, the euphemistic terms like 'incidents', 'maltreatment', 'misconduct' and 'allegations' (as opposed to disclosures). When women with disabilities are removed or isolated from the broader community, as they often are in an ADE work setting, there are also fewer opportunities for creating positive community connections in a non-disability setting or environment. Unfortunately, disability services can often lack a sophisticated understanding of gender and appropriate preventive measures (or 'safeguards').

Women with disabilities in institutional settings are often not provided with education on how to recognise violence or abuse, where to get for help, are prevented from freely accessing this information by gatekeepers⁵⁰ and are generally unaware of their human rights. We know that education about what constitutes violence does not routinely occur in disability settings, rendering women at a loss to both recognise violence, harassment and abuse. For women with disabilities, this can mean that we have long personal histories of experiencing abuse, neglect and violence in multiple areas of life. As found in Women with Disabilities Victoria's own research, conducted in partnership with the Office of the Public Advocate (OPA) and the Domestic Violence Resources Centre Victoria (DVRCV), many women with disabilities have experienced multiple forms of abuse, from multiple perpetrators over their lifetime.⁵¹ Women with intellectual disabilities, psychosocial disabilities, severely limiting impairments, communication impairments, or who are living in institutional settings, are at greater risk of sexual assault, in particular.⁵²

⁵⁰ Cockram, J. (2003), *Silent voices: Women with disabilities and family and domestic violence*, Western Australia, People with Disabilities (WA) Inc.

⁵¹ Guardian case files involving women that were audited by the OPA for the Voices against Violence research project. See: M. McGuire, (2013), *Voices against Violence Paper 4: A Review of the Office of the Public Advocate's Records on Violence against Women with Disabilities*, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, (Melbourne).

⁵² The challenges in gathering data that puts gender, violence and disability and findings from significant studies in Australia together as well as findings from the major international and Australian studies on the extent of violence against women with disabilities are extensively discussed in L. Healey, 2013, *Voices Against Violence Paper 2: Current Issues in Understanding and Responding to Violence Against Women with Disabilities*, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, Melbourne, pp 28-41. See also K. Hughes, M.A. Bellis, L. Jones et al, 2012, *Prevalence and Risk of Violence Against Adults With Disabilities: A Systematic Review and Meta-analysis of Observational Studies*, *Lancet*, < [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(11\)61851-5/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)61851-5/abstract)>; Office of the United Nations High Commissioner for Human Rights (OHCHR), 2012,

Because our experiences of sexual harassment in the workplace are diverse, and the range of employment relationships women with disabilities can have is similarly diverse, it is vital that prevention strategies target all employers, across all levels, and all kinds of workplaces in Australia. Prevention strategies for preventing the sexual harassment of women in Australia workplaces will need to particularly focus on reaching those places where they often are not heard, including the employment relationships and environments that are easily forgotten, hidden from view, or are made invisible.

What is institutional violence?

The term 'institutional violence' is often used by disability advocates. Institutional violence includes the forms of violence that institutions are allowed to use, support and make lawful (including restrictive practices), as well as those instances of violence within institutions which, while not strictly lawful, are not typically subject to intervention due to the characteristics of the institution and its actors.

For example, the Disability Acts of most Australian jurisdictions allow disability service providers, such as ADEs, to use restrictive practices to contain and control people with disability receiving their services. In practice this means that it is legally permissible for people with disability living in group homes or attending day services to be physically or mechanically restrained, forcibly sedated and/or secluded. Outside of these settings, such acts would be recognised as violence, or as criminal matters.

Source: Cadwallader, Jessica Robyn; Spivakovsky, Claire; Steele, Linda; Wadiwel, Dinesh --- "Institutional Violence against People with Disability: Recent Legal and Political Developments" [2018]. *CICrimJust* 5; (2018) 29(3) Current Issues in Criminal Justice 259.

Changing nature of the 'workplace' under the NDIS

The introduction of personalised funding models through the NDIS is having an impact on the relationship between disability support workers and the people they support. Employment relationships under the NDIS and the very nature of home-based support and home-care provision, does not meet the typical idea of the traditional 'workplace'. This is particularly pronounced for NDIS participants who self-manage and employ independent contractors or self-employed support workers directly under their NDIS plan.

The disability support workforce is currently being influenced by trends like the gig economy, or the 'uberisation' of work, wherein organisations or individual people with disabilities, contract independent workers for short-term periods. This interaction is normally facilitated by social media or technology based companies. Increasingly, support workers are more likely to be precariously employed, as casual workers make up two-fifths of the workforce, a share which has been increasing.⁵³ It is unclear what level of protections the *Sex Discrimination Act 1984* (Cth), and

Thematic Study on the Issue of Violence Against Women and Girls and Disability. All of these studies, however, are about women with disabilities living in the community.

⁵³ National Disability Services, Australian Disability Workforce Report, February 2018, pp. 11.

other legislative and regulatory protections, can provide to recipients of services, or workers, as defined in the Act, particularly in light of the steady growth of self-employed disability support workers, a largely unregulated form of work.

The vulnerability that arises from insecure and unregulated work arrangements, makes this an employment context with characteristics that can leave both parties at a heightened risk of violence, abuse and harassment. The nature of disability support work is also highly gender segregated. As reported in National Disability Services' Australian Disability Workforce Report in February 2018, about 70% of disability support workers are women.⁵⁴ With such a highly feminised workforce, it is not unlikely that that women with disabilities also make up a part of the support worker workforce. We also know that women with disabilities are more likely to be represented in forms of insecure and casual work, and that the disability workforce is a large and growing casual workforce.

Some WDV members have reported benefits to the flexibility and level of choice in arranging disability supports through social networks or third party websites and their ability to change a worker at any time. Others prefer their workers to be registered, regulated and managed by a trusted third party or accreditation system, while some like a combination of the two approaches. Changes to disability service provision, increasing marketisation and privatisation, are delivering more flexibility to many service users – but there are also real risks to women with disabilities as users specifically – who often experience psychological, physical and sexual violence at extremely high rates. Although the NDIS Code of Conduct, the NDIS Quality and Safeguarding Framework, Consumer Affairs Victoria and disability advocacy services can assist, many protections focus on registered workers, as opposed to unregistered workers.

In this system, workplace rights, protections, employment conditions and responsibilities remain unclear. Characteristics of the employment relationship, including increased insecurity, employment vulnerability, increasing casualisation and a lack of clear legal and regulatory protections, means that both disability support workers and women with disabilities receiving support, could be at a higher risk of abuse and harassment. Independent contractors and workers with limited supervision and poor training may find themselves unsupported and under resourced to respond to difficult situations, such as being harassed or assaulted themselves; or knowing how to adequately respond if witnessing family violence (including emotional, verbal or physical violence) in a client's home.

Studies to date have found that support workers providing assistance to NDIS participants are experiencing inadequate training, inadequate supervision and support, low pay, issues associated with split shifts, unsocial working hours, extended work days and weeks and casual conditions. Some have also reported experiencing verbal and physical abuse from clients they support.⁵⁵ More

⁵⁴ National Disability Services, Australian Disability Workforce Report, February 2018, pp. 1 – 42.

⁵⁵ Bentham, E., Macdonald, F. (2017), 'Disability support work under the NDIS: Initial analysis of worker's experiences', Centre for People, Organisation and Work, Working Paper No. 2017-1, pp. 1 – 20.

attention to this employment particular workplace context and the potential risks for harassment is going to be vital to ensure support workers and women with disabilities requiring support are protected from violence, abuse and harassment. While we recognise that the market-based system of the NDIS provides some challenges and some benefits for women with disabilities, adequate protections need to be available to both parties and will play a role in ensuring that women with disabilities, and those who support them, are able to live and work free from harassment.

The current legal framework for sexual harassment

An individual and reactive complaints system

At present, the legal framework for sexual harassment provides redress through a private enforcement mechanism, with limited sanctions and potential compensation for victims. The effectiveness of legal protections for sexual harassment is hampered by the individual, complaints-based nature of the current system. Most victims do not make a complaint or take other formal action after experiencing harassment, whether it is through the court system or through internal workplace processes.

Sexual harassment at work goes largely unreported in Australia, with the AHRC survey finding that only 17% of those who had experienced sexual harassment made a formal complaint.⁵⁶ Many in the 2018 AHRC survey cited feeling that it would be seen as an overreaction, or that it would be easier for them if they stayed quiet.⁵⁷ Despite legal protections in place, many women who experience sexual harassment are aware that formal reporting is likely to result in ostracism, exclusion, damage their career or threaten their relationships and future employment. Although it is unlawful for an employee to be disadvantaged because they've reported sexual harassment, in reality, victimisation after making a complaint is common and surveillance by the perpetrator (or employer) often occurs. As women with disabilities, we are often aware that we are less likely to be believed and see justice delivered when we experience violence and harassment.

Navigating the legal system

The current individual complaints-based model for upholding rights and providing redress under the *Sex Discrimination Act 1984 (Cth)* relies on victims to stand up for their rights and seek social change, often at a great cost to the victim. Enforcement for non-compliance with the law is limited to victims and the dispute resolution and confidential conciliation mechanism means that breaches of the law are kept out of public view, which can have the effect of limiting the conflict to one between individuals, rather than a matter of public or community concern.⁵⁸

Victims under anti-discrimination legislation are, by the very nature of the legislation, members of disempowered and marginalised groups. Many women with disabilities experience multiple and intersecting forms of oppression. Expecting us to identify breaches, press claims, and enforce outcomes and attend the dispute resolution system, is often too large a burden, as many women with disabilities do not have the resources available. Applicants in discrimination matters,

⁵⁶ Australian Human Rights Commission, (2018), *Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces*, (2018).

⁵⁷ Heap, L., (2018) 'Women don't speak up over workplace harassment because no one hears them if they do', *The Conversation*.

⁵⁸ Smith, B. (2006), 'A regulatory analysis of the Sex Discrimination Act 1984 (Cth): Can It effect equality or only address harm?', *Labour Law and Labour Market Regulation – Essays on the construction, constitution and regulation of labour markets and work relationships*, pp. 105 - 124, C. Arup, et al, eds., (Federation Press: Sydney Law School), Research Paper No. 07/56.

particularly women with disabilities, often have limited financial resources and are often members of marginalised groups, and have low social and economic power, limiting our ability seeking redress through the legal system.⁵⁹

Conciliation processes play a paramount role in resolving sexual harassment disputes, where the power differentials and inequalities between women with disabilities and their employers are significant. Protracted conciliations in an arbitrary legal system is often re-traumatising, intimidating, costly and exhausting.⁶⁰ The process of navigating the potential avenues of making a complaint under federal legislation or claims under state or territory anti-discrimination legislation in the case of employment discrimination, makes the process overly complex, particularly for those who are self-representing, or receiving minimal legal support.

Emphasising primary prevention

We recommend that the best method of managing the risks of sexual harassment is through prevention. Although good policies are essential for workplaces to avoid vicarious liability, there needs to be a greater onus on workplaces to take proactive and preventative steps by ensuring that there is a commitment to gender equality and disability inclusion in their workplaces. The content of the law does not currently assist employers to understand what sexual harassment is and despite vicarious liability provisions, there is no positive legal duties placed on employers to ensure sexual harassment does not occur.

⁵⁹ Nawaz, M., Cody, A., Golledge, E. (2018), 'Having my voice heard: fair practices in discrimination conciliation', Kingsford Legal Centre, University of New South Wales, p. 31.

⁶⁰ Nawaz, M., Cody, A., Golledge, E. (2018), 'Having my voice heard: fair practices in discrimination conciliation', Kingsford Legal Centre, University of New South Wales, p. 11.

Existing measures and good practice

Primary prevention of violence against women (PVAW)

Recent policy and research has shown an increasing focus on the primary prevention of violence against women. Primary prevention refers to strategies that target the underlying causes, or determinants of violence, before it occurs, rather than focus on the response after it has occurred.⁶¹ There is a growing evidence base that suggests that the primary prevention of violence against women is an effective strategy to reduce the significant and preventable burdens associated with the widespread problem of violence against women.⁶²

Any primary prevention specialist work for the prevention sexual harassment in Australian workplaces should be consistent with, and informed by, Australia's national framework for the prevention of violence against women, *Change the Story*. *Change the Story* is influenced by an intersectional approach, which involves challenging not only gender inequalities, but other kinds of structural inequalities and discrimination, such as Aboriginality, disability, class and socio-economic status, ethnicity, religion, sexual identity and refugee status.⁶³

Primary prevention work means working to change the underlying causes of the problem of violence against women, in the different environments where people live and work. Primary prevention strategies include things such as social marketing and school-based programs that work to promote positive and equitable workplace cultures. While all employers should have clear policies, procedures, provide ongoing training, the focus should be on the prevention of violence against women in workplaces and creating inclusive workplaces by committing to ensure non-discriminatory recruitment and retention practices.⁶⁴

Examples of good or 'promising' practices approaches

As *Change the Story* notes, we still have more to learn about precisely what types of prevention strategies are most effective. Several techniques that have been either proven or show promise as effective models for prevention strategies include: direct participation programs, community mobilisation and strengthening, organisational development, communications and social marketing and community-based advocacy.⁶⁵ Below are some examples of good, or promising

⁶¹ Victorian Health Promotion Foundation, (2007), *Preventing Violence Before It Occurs: A Framework and Background Paper to Guide the Primary Prevention of Violence against Women in Victoria*. VicHealth. Melbourne.

⁶² Chung, D., Zufferey, C. & Powell, A. (2012), *Preventing violence against women in the workplace (An evidence review: full report)*, *Victorian Health Promotion Foundation*, (Melbourne, Australia), p. 4

⁶³ Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth (2015), *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch, (Melbourne, Australia), p. 37.

⁶⁴ Chen, J. (2017), *Intersectionality Matters: A guide to engaging immigrant and refugee communities in Australia*, (Multicultural Centre for Women's Health: Melbourne).

⁶⁵ *Ibid.*, p. 29.

practice approaches to the prevention violence against women, particularly women with disabilities.

Women with Disabilities Victoria – Gender and Disability Workforce Development Program

Women with Disabilities Victoria's Gender and Disability Workforce Development Program is designed to change culture across whole organisations, working with clients, staff, managers and executives. The aim of the program is to improve gender equitable service delivery as a strategy for increasing women's wellbeing and reducing gender-based violence. The program is co-delivered by women with disabilities and professionals from relevant sectors. Ongoing communities of practice within the pilot organisations support and sustain the project. Participant feedback on the program feedback includes:

- *"I have observed a marked difference in staff approaches to working with women with disabilities, in particular between staff who have completed the training and those that have not. Moving from managing one residential service to another has highlighted this for me."*
- *"We lose insight of gender issues in 'individual person centred planning'. It needs to remain at the forefront."* - Disability Service Manager.
- *"Now when we have conversations, we introduce concepts of gender; it's actually discussed as a point in decision making. There has been a shift in our conversations since the training."* – Manager.
- *"It was confronting and informative."* - Disability Support Worker.
- *"It opened my eyes. It flicked a switch and made me more aware."* - Disability Support Worker.
- *"Reaffirmed the amount of power we have over our clients and how we must be mindful (constantly) how we use it."* - Disability Worker.

Our Watch – The Workplace Equality and Respect Program

The Victorian government, in conjunction with Our Watch, has developed the 'Workplace Equality and Respect Program' aimed at ending violence against women. The program focusses on a workplace's self-audit of risks and the adoption of Gender Equality Action Plans. The project was led across four workplaces: La Trobe University, Connections UnitingCare, Carlton Football Club and North Melbourne Football Club. These organisations are working with Our Watch to produce guidance for workplaces on key actions to prevent violence against women.

Women's Health Victoria (WHV) - Take a Stand

Women's Health Victoria's 'Take a Stand' program supports workplaces to become leaders in taking a stand against sexism and promoting a respectful and safe workplaces. Take a Stand leads the way as a workplace bystander program to prevent domestic violence and other forms of violence against women. Take a Stand recognises that workplaces are significantly affected by domestic violence and violence against women. Workplaces can also play a key role in changing the culture that allows it to occur. Take a Stand engages all levels of the workplace in preventing and addressing domestic violence. Evaluations show that the program is achieving outcomes in equipping managers and human resources staff to support employees affected by domestic

violence, increases employees' understandings and confidence to discuss domestic violence with their colleagues and managers and is providing employees with the skills to act as positive bystanders so they can take a stand against sexist actions and attitudes in the workplace that support violence against women.

Conclusion

Women with disabilities are in every workplace. Although we are often invisible, we are everywhere. Our workplaces and other public settings are key sites for the primary prevention of violence against women, and this prevention work must also include women and men with disabilities. Ending sexual harassment in Australian workplaces will require whole-of-community action and legislative change. For this action and change to occur we need to see a clear duty on employers and organisations to promote gender equitable workplaces, policies and practices and cultures of respect. WDV thanks the Australian Human Rights Commission for the opportunity to contribute to this Inquiry, and we would welcome further consultation on any of the matters raised in this submission.

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