

Understanding Workplace Sexual Harassment (WSH)

*Trends, barriers to legal assistance,
consequences and legal need*

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Respect@Work

Recommendation 53:

All Australian governments provide increased and recurrent funding to:

- community legal centres,
- Aboriginal and Torres Strait Islander Legal Services, and
- legal aid commissions

to provide legal advice and assistance to vulnerable workers who experience sexual harassment, taking into account the particular needs of workers facing intersectional discrimination.



In 2021 \$5.514 million in funding was allocated to Western Australia (WA) over a four-year period (2021/22 to 2024/25) for the provision of legal assistance services for people who have experienced WSH or discrimination.

Circle Green Community Legal is the lead agency delivering the Workplace Respect Project in WA.

Project Activities



Lived Experience Advisory Panel



Track legal need

Deliver WSHD legal services



Facilitate capacity building

Influence legal and cultural change

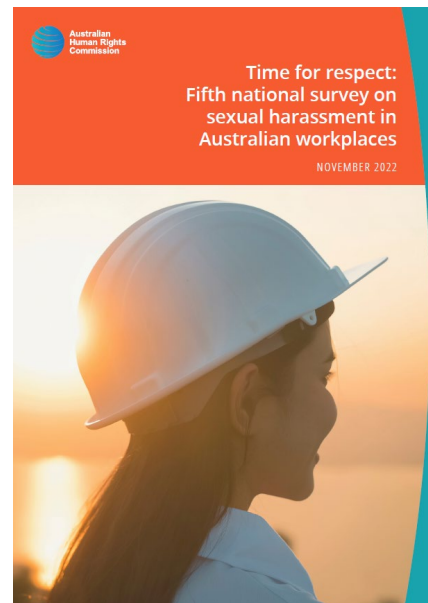
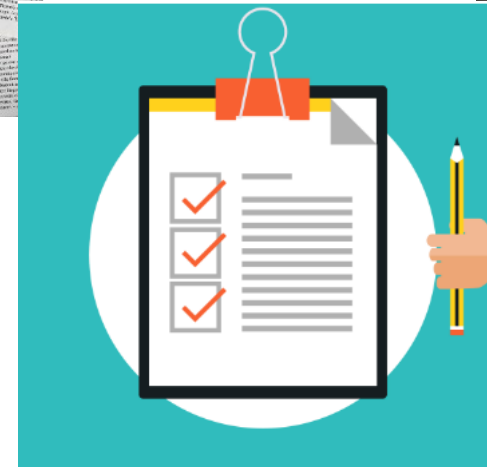
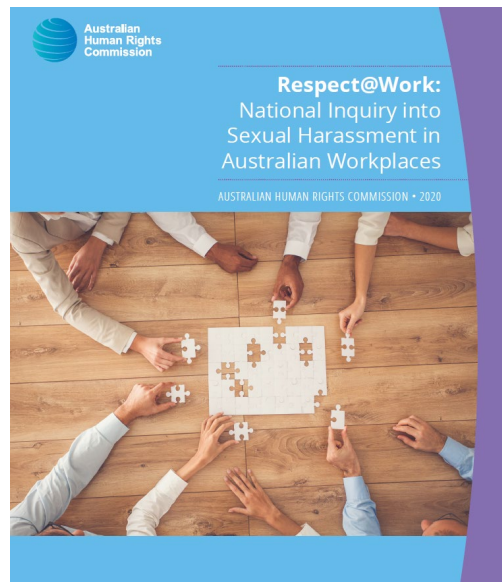


Centre for Social Impact Review



Western Australian Government response to the
Community Development and Justice Standing Committee Report 2:
'Enough is Enough'
Sexual harassment against women in the FIFO mining industry

September 2022



Definition of WSH

Section 28A of the *Sex Discrimination Act 1984*

For the purposes of this Act, a person sexually harasses another person (the person harassed) if:

(a) the person makes an **unwelcome sexual advance**, or an **unwelcome request for sexual favours**, to the person harassed; or

(b) engages in other **unwelcome conduct of a sexual nature** in relation to the person harassed;

in circumstances **in which a reasonable person**, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be **offended, humiliated or intimidated**.

- Subjective and contextual nature of WSH
- Difficulty in navigating legal and regulatory schemes
- Inconsistent legal definitions of sexual harassment in different pieces of legislation applicable to addressing sexual harassment in WA workplaces

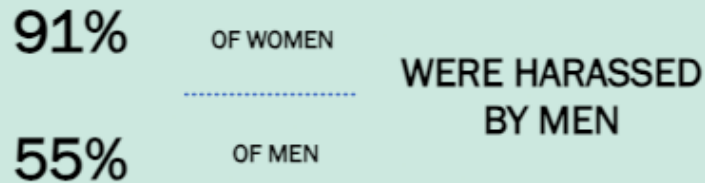
Failure to define sexual harassment in the regulations represents a missed opportunity to remove ambiguity and confusion about the specific workplace safety risks it poses.



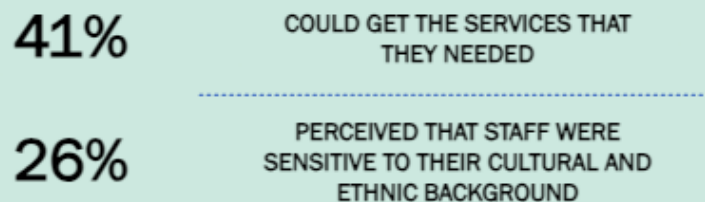
Prevalence of WSH

- It occurs in every industry, across locations and at every level, in Australian workplaces.

OVER THE PAST 12 MONTHS:



EXPERIENCED WORKPLACE SEXUAL HARASSMENT IN THE LAST FIVE YEARS



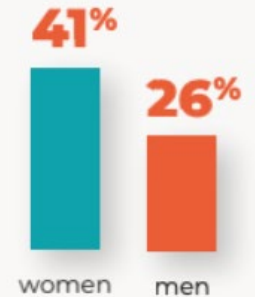
Incidence of workplace sexual harassment

In the last 12 months

About **1 in 5** people
(19%) have been sexually harassed at work.

In the last 5 years

About **1 in 3** people
(33%) have been sexually harassed at work (41% of women and 26% of men).



The most common types of WSH experienced included

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

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

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

Consequences of WSH



- Trauma
- Psychological harm
- Physical and social impacts
- Reduced quality of life
- Financial costs
- Loss of resources/revenue

Why is it still occurring?



- Male-dominated, patriarchal power structures
- Culture of acceptance/complacency

Workplace culture change is needed to address covert and overt incidence of WSH.

Reporting WSH

- WSH is **grossly underreported**
- Forms are **burdensome/challenging**
- Reporting does **not address the cause/impact**
- Can perpetuate **psychological harm**
- **Lack of clarity** around the reporting process
- Absence of **perpetrator responsibility**
- **Risk of retaliation** (personal, socially, systematically)
- **Fear** of loss of reputation, loss of work
- Systemic – different pieces of **legislation makes it difficult** for workers or employers to navigate



WSH complaints **ranked #1** of complaints received in 2020-2021

83%

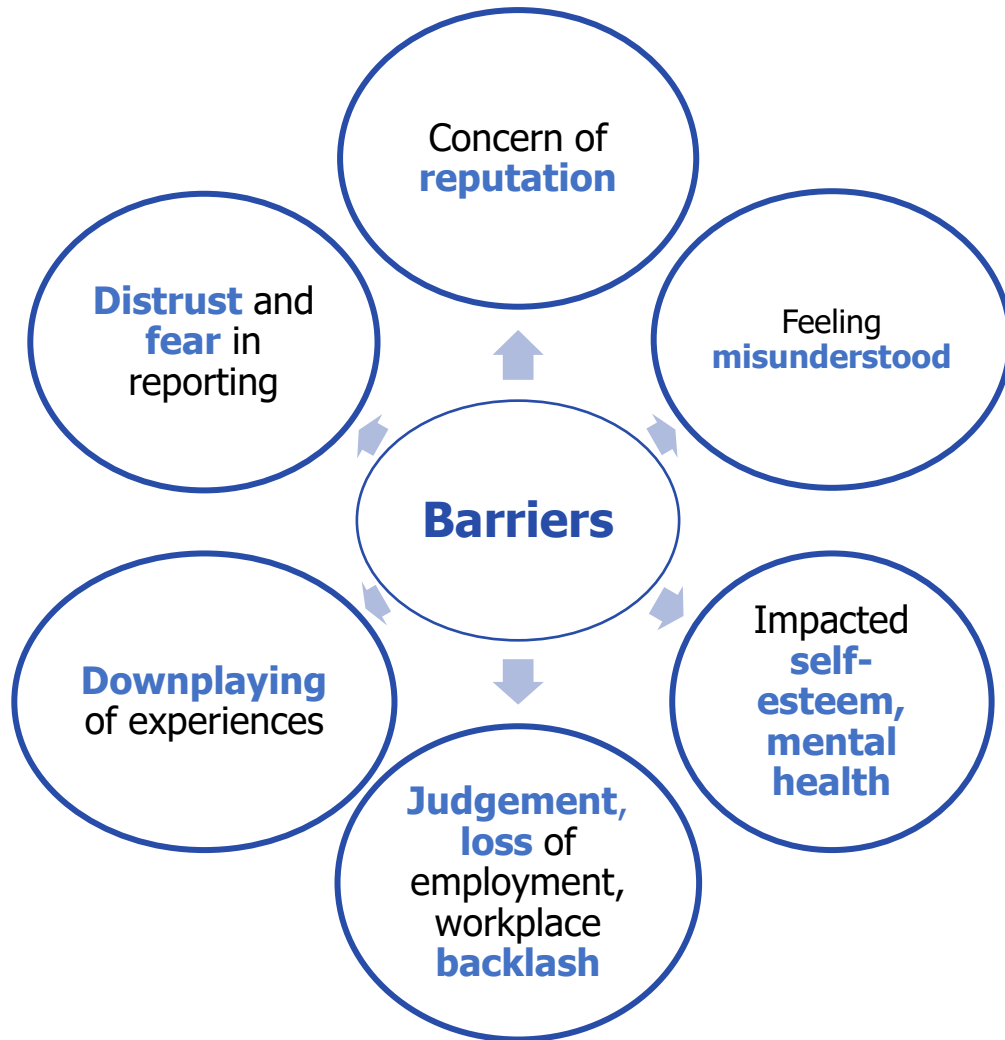
OF COMPLAINTS WERE FROM WOMEN

20%

OF ALL EMPLOYMENT RELATED COMPLAINTS ARE COMPRISED OF WSH COMPLAINTS

REPORTS DO NOT ACCURATELY REFLECT WSH INCIDENCE

Lived Experience Feedback



*"My workplace reiterated that I'm just a **token female hire**, and they didn't take me seriously. I just felt insignificant and unvalued. My **self-esteem was shattered**."*

*"It leaves fundamentally a trauma, and that **trauma is long lasting**, and it's complex."*

Lived Experience Feedback

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



What worked

- External support person provides comfort
- Seeking legal assistance is validating
- Unbiased and easy to understand support
- Mental health support
- Warm referrals
- Education/clarity of process/pathway
- Effective data collection procedures



What didn't work

- Internal reports resulted in continuing to work with perpetrator, victim blaming, and further harm/trauma
- NDAs

Many did not seek legal assistance, so sufficient inferences cannot be made

→ Those who did were disappointed with the outcome

Organisational Feedback



DEMOGRAPHICS

76%

FEMALES

16%

DID NOT HAVE ENGLISH AS THEIR FIRST LANGUAGE

13%

MALES

13%

HAD A DISABILITY OR MENTAL ILLNESS

4%

NON-BINARY

3%

WERE EXPERIENCING FDV

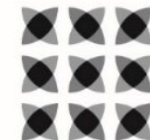
7%

UNKNOWN

3%

REQUIRED TRANSLATING AND INTERPRETING SERVICES

TWO-THIRDS OF SERVICE USERS PRESENTING WITH WSH CLAIMS WERE CONSIDERED TO HAVE A FINANCIAL DISADVANTAGE

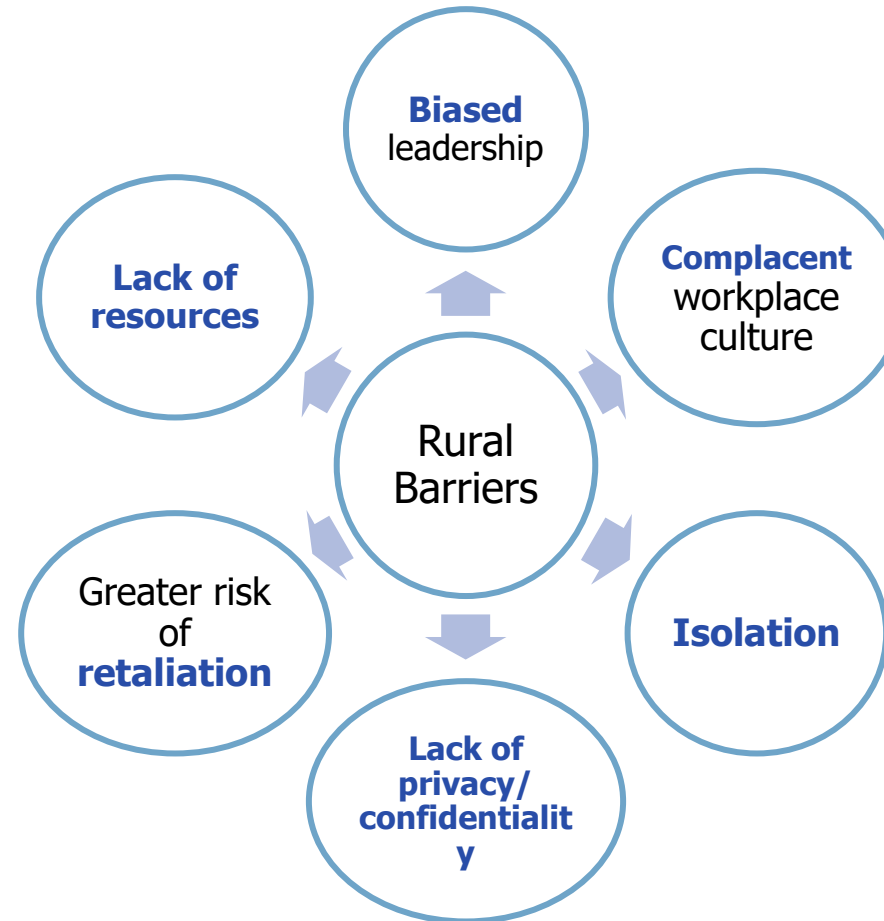


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AUSTRALIA

Organisation Feedback



Barriers noted by organisations **were consistent** with lived experiences/existing literature.

Recommendations

Workplaces and employees

1. Ensure a safe and respectful workplace – **culture** of equality, diversity, inclusivity and WSH intolerance.
2. Create a workplace culture that **ensures transparency and accountability** by ensuring that managers and leadership uphold values and policies relative to WSH
3. **Educate** employees about respectful behaviours
4. Ensure the organisation is **aware** of the nature and prevalence of WSH
5. Develop and implement clear **policy and guidelines** for WSH
6. Prioritise the **health and safety** of any employees who experience WSH
7. Deliver **compulsory training** relative to WSH that is delivered at induction and thereafter, regular intervals
8. Collect and track WSH **data**
9. Reject use of **NDA** in WSH cases
10. Ensure there are **strong sanctions** imposed on employers and employees who perpetrate harm or do not appropriately respond to WSH

*"All companies told us that staff safety was their highest priority. The level of sexual harassment in their companies indicates that **this was not the case.**"*

(Western Australia, Parliament. Legislative Assembly).

Recommendations

Organisations providing legal assistance

1. Knowledge of barriers against seeking help
2. Staff are trauma-informed
3. Advocate matched with cultural-background and information available in languages other than English
4. Holistic, wrap-around model of care (service partnerships and warm referrals)
5. Partnerships with services that can aid clients with legal documents
6. Increase knowledge about legal assistance services eg online information and resources
7. Clients are aware of options/pathways, costs and benefits
8. Comprehensive internal data capture systems
9. Inclusion of lived experience voices
10. Resources to improve clarity/understanding of processes

Recommendations

Systems/legal reform

1. Revise **definitions** of WSH
2. Police, lawyers, and judiciary are **educated and trauma-informed**
3. **Laws** explicitly prohibit WSH
4. **Protection, empathy and support**
5. Review of payment of legal **costs**
6. Removal of **compensation caps**
7. Increase of formal reporting **time limits**
8. WSH criminal cases to be **judge only**

Current legal and regulatory systems are no longer fit for purpose.

Concluding Thoughts

What is needed

- **Coordination, consistency and clarity** between anti-discrimination, employment and WHS legislative schemes is required
- Victims must feel **safe, be aware of rights, know support options, and have clear pathways** to access support
- **Reduced sole responsibility** of victim to progress complaints
- **Information and support** from sources independent of employer
- Legal assistance services must offer **effective, informative and responsive care**



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Trends, barriers to legal assistance, consequences and legal need



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

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Summary report

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

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<https://www.csi.edu.au/research/understanding-workplace-sexual-harassment/>

Responding to the recommendations

Organisations providing legal assistance (AKA Circle Green)

- Pleased to discover that we already have established practices relating to some of the recs
- Trauma informed training
- WSHD hub
- Focus on awareness-raising to transcend barriers to reporting / help-seeking behaviour
- Potential to improve data tracking



Responding to the recommendations

Workplaces and employees

- Respect@Work portal
- Positive Duty



Responding to the recommendations

Systems / law reform

- Continued policy and law reform advocacy re Respect@Work implementation and related issues
- Test case potential

