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STATE PUBLIC SERVICES FEDERATION GROUP

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Dear Commissioner

National Inquiry into Sexual Harassment in Australian Workplaces

The Community and Public Sector Union (State Public Services Federation group) welcomes the opportunity to make a submission to this landmark inquiry. The CPSU SPSF is comprised of six state branches, representing state government workers around the country: CPSU Victoria, CPSU Tasmania, Public Service Association of NSW, Public Service Association of SA, Civil Service Association WA, and WA Prison Officers' Union. Our members undertake the vital work of delivering and supporting public services such as education, health, and emergency services; preserving and promoting our environment and cultural heritage; protecting vulnerable children; developing policy and programmes for the community; supporting people with disabilities; providing public housing; running our courts and justice system; and keeping our community safe.

Over sixty percent of our members are women. We know that many of them have experienced sexual harassment and other forms of gendered violence at work. Although men can and do experience sexual harassment at work, we believe it is a gendered phenomenon, driven by gender inequality and sexism more broadly, and exacerbated by factors such as the gender pay gap, budget cuts, and insecure work. It is our view that state governments should be model employers and be proactive in eliminating gendered violence and inequality in the workplace and broader community. State governments as employers have a duty to protect their workers and provide a safe workplace free from harassment and violence.

We have made a number of recommendations that go towards eliminating gendered harassment, violence and inequality in state government workplaces, and endorse the Australian Council of Trade Unions (ACTU) submission to this inquiry. Please contact National Campaigns Officer, Clare Middlemas, at [REDACTED] if you require further information about this submission.

Yours sincerely

[REDACTED]

Karen Batt
Federal Secretary
CPSU SPSF

National Inquiry into Sexual Harassment in Australian Workplaces
Community and Public Sector Union/State Public Services Federation group submission

Government is the largest employer in the country: the three tiers of government in Australia (federal, state, and local) employ almost 2 million workers.¹ State governments have the broadest responsibility for public service delivery, and hence are the largest employers - over three quarters of government workers are employed by state governments, and state governments make up 12.5% of total employment in Australia.² As such, state governments have an important role to play in being model employers and leading the way in eliminating sexual harassment and other forms of gendered violence in their workplaces.

Unfortunately, as this submission will show, state governments are falling short in meeting their responsibilities to protect members from sexual harassment and eliminate gender inequality in the workplace. This submission will begin with a discussion about sexual harassment and gendered violence more generally, give an overview of CPSU members' sexual harassment survey results, discuss the drivers of sexual harassment and gendered violence in state government workplaces, and will offer some recommendations for reform.

Sexual harassment and gendered violence

Sexual harassment is overwhelmingly experienced by women, with the 2018 national survey by the Australian Human Rights Commission reporting that 85% of Australian women and 56% of Australian men over the age of 15 have been sexually harassed at some point in their lifetime.³ The Australian Bureau of Statistics (ABS) Personal Safety Survey (2016) also confirmed that women were more likely to experience sexual harassment in their lifetime than men, with around one in two women (53%) and one in four men (25%) experiencing sexual harassment in their lifetime.⁴ The ABS survey also found that women were more likely to experience sexual harassment by a male perpetrator than female, with an estimated one in two women (52%) experiencing harassment from a male and approximately one in ten women (11%) experiencing harassment from a female. Men were as likely to be sexually harassed by a male perpetrator (16%) as a female perpetrator (16%).⁵

Sexual harassment is situated in a broader spectrum of gendered violence that women and some men face in the workplace and broader society. The Victorian Trades Hall Council (VTHC) offer the following definition of gendered violence:

Gendered violence is actions and behaviours which express power inequalities between women and men and cause physical, sexual, psychological or economic harm to women. Gendered violence is violence perpetrated against women because they are women. It also includes violence perpetrated against those

¹ Dr. Jim Stanford, 'Raising the bar: how government can use its economic leverage to lift labour standards throughout the economy', The Centre for Future Work at the Australia Institute, May 2018, p. 27.

² *Ibid*, p. 26. The Commonwealth government represents 2% of total employment, and local government 1.5%.

³ Australian Human Rights Commission (2018), 'Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces', p.18. <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/everyone-s-business-fourth-national-survey-sexual>

⁴ Australian Bureau of Statistics (2017), Personal Safety, Experience of Sexual Harassment 2016 - 4906.0, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Experience%20of%20Sexual%20Harassment~29>

⁵ *Ibid*.

who do not conform to dominant gender stereotypes or those who do not conform to socially accepted gender roles.⁶

According to the VTHC, who undertook an extensive research project with Victorian women workers in 2016, gendered violence can include actions and behaviours such as stalking, intimidation, threats, verbal abuse, ostracism, rude gestures, offensive language and imagery, put downs, sexual innuendo/insinuations, sexual suggestions or unwanted advances, sexual assault, rape.⁷ Viewing sexual harassment as part of this spectrum of behaviours and actions is crucial to understanding its drivers and causes. While men can be victims, the cause of gendered violence is gender inequality more broadly in society, in which there is an unequal distribution of power meaning women in general do not experience many of the same rights or opportunities as men.

Nature and prevalence of sexual harassment in state government workplaces

The Australian Council of Trade Unions (ACTU) conducted a survey about sexual harassment in the workplace in 2018 and received almost 10,000 responses from workers around the country. More than half of all respondents (54.8%) had experienced sexual harassment at their most recent workplace or at a previous workplace, and 64% had witnessed sexual harassment at their most recent workplace or at a previous workplace.⁸

From this survey, we have isolated the responses of CPSU members working in state government workplaces around the country. The experiences of CPSU members are similar to the broader workforce: 49% have experienced sexual harassment at their most recent workplace or at a previous workplace, and 66% had witnessed sexual harassment at their most recent workplace or a previous workplace. This harassment most commonly took the form of crude or offensive behaviour (68%), unwanted sexual attention (37%), inappropriate physical contact of a sexual nature (34%), sexually suggestive or explicit texts, emails or messages via social media (16%), and sexual coercion (11%).

Of the CPSU respondents who had experienced sexual harassment, 53% told someone about the incident, while 46% did not. Of those that told someone, 62% reported the incident to a supervisor or management; 59% told a co-worker; 40% told a friend or family member; 17% told a union delegate or representative; 3% reported the incident to police; and 3% told a lawyer or legal service; while 1% approached a government body such as the Ombudsman or Human Rights Commission.

Seventy one percent of CPSU members who experienced sexual harassment did not make a formal complaint about the incident. The overwhelming reason workers did not report the incident because they feared negative consequences for themselves (64%); had no faith in the complaints process (57%); no confidence that the complaints process would be confidential (52%); didn't think the complaint was serious enough (25%); it was already dealt with (4%); they weren't aware of how the complaints process worked (4%); they were casual (3%).

When members did complain, 38% said their complaint was ignored or not taken seriously; 29% were treated less favourably (eg. received fewer shifts or were bullied) because they made a complaint; 27% indicated that their complaint was ongoing; 18% said their complaint was investigated by their employer and resolved satisfactorily; 9% said their complaint was settled on confidential terms; 7% had mediation

⁶ Victorian Trades Hall Council (2017), 'Stop Gendered Violence at Work: Women's Rights At Work Report', p.2. https://www.unionwomen.org.au/stop_gv_resources

⁷ *Ibid.*

⁸ See the Australian Council of Trade Union (ACTU) submission to this inquiry.

with the harasser; 4% were fired or left the workplace; and for 2% a court of commission made a finding against the harasser.

Drivers of workplace sexual harassment

The survey results show that sexual harassment is prevalent in state government workplaces at a similar rate to other industries, despite the assumption that governments should be model employers. While workplace gendered violence is driven by gender inequality more broadly in society, there are particular workplace characteristics and practices that can further exacerbate gender-based violence. Budget cuts and chronic underfunding of public services leads to insecure work, and the gender pay gap and under-representation of women in senior roles – all these factors contribute to a workplace culture where gendered violence can be more prevalent. According to Lisa Heap, Adjunct Professor at Australian Catholic University:

[Gendered] violence occurs where men control positions of power at work and where women are in more vulnerable positions in the labour market or the workplace. For example, where women are in casual work or insecurely employed; if they don't speak English well; if they are visa or migrant workers; or they are new entrants to the labour market, such as young workers.⁹

Cuts and underfunding of public services

Years of budget cuts, staffing cuts, and chronic underfunding of state public services have not only damaged public service capability and productivity, they have led to a workload crisis which has fuelled a culture of workplace bullying. These factors may also fuel gendered violence in state public sector workplaces. Workload issues – constantly having to do 'more with less' - leads to increased stress and anger which can manifest in bullying, which could also drive gendered violence.

Front line workers are at particular risk of gendered violence from the community. Partly this is due to the nature of the work our members do interacting with members of the public who are experiencing hardship or difficulty, such as child protection workers who interface with families in difficult situations. State government employers must ensure that workers in the field, such as child protection workers, sheriffs, and community corrections officers, are always out in the field with another officer. Our members regularly tell us they feel they must attend home or community visits alone because workload pressures mean no other officers are available to attend. Governments need to take their duties to provide a safe workplace seriously and properly resource agencies to ensure workers can conduct their work safely.

Front line workers in transport licensing centres or public housing agencies, for example, are also at increased risk of gendered violence. Cuts and underfunding have meant that members of the public have difficulty interacting with the service, getting an outcome, or they experience long wait times and can become irate, subjecting the frontline workers to abuse.

Finally, state government departments and units established to promote gender equality, such as Offices for Women, have suffered years of budget and staffing cuts that has reduced their ability to conduct research, outreach and education both within government and to the broader community. If state

⁹ Lisa Heap, 'Sexual harassment isn't a women's issue: it's a workplace health and safety problem', Opinion, ABC News, 29/12/17, <https://www.abc.net.au/news/2017-12-29/treat-sexual-harassment-as-a-workplace-health-and-safety-issue/9222614>

governments are serious about gender equality and equity, they must properly resource these units to undertake this important work.

Recommendation 1: State governments must properly resource departments to ensure that no field worker is out alone, and that front-line service areas are adequately staffed to properly serve the public.

Recommendation 2: State governments must boost funding to departments and units to promote gender equality, both within government and in the broader community.

Insecure work

Insecure work is rife in the state public sector, in the form of fixed-term contract, casual, and labour-hire workers. In many cases insecure work is connected to government mandated staffing and budget cuts, where the agency has to reduce its budget or is unsure what its budget will be into the future, and employs workers on rolling fixed-term contracts, rather than permanently. In the case of mandated reductions in staffing numbers, departments bring in labour hire workers in a bid to lower the headcount (which is a false economy and only shifts the cost of employing staff to another part of the agency budget). Insecure workers are highly vulnerable and are at increased risk of gendered violence in the workplace and are unlikely to raise a complaint – 3% of our members cited insecure employment as the reason they did not raise a formal complaint about sexual harassment.

Recommendation 3: State governments must provide the option of conversion to permanency for workers on rolling fixed-term contracts and casual workers, and must immediately cease the use of labour hire and employ workers directly.

Gender pay gap and representation in senior roles

The gender pay gap, while generally smaller than the private sector workforce, still persists in the public sector. The gender pay gap is the difference between women's and men's earnings, expressed as a percentage of men's earnings.¹⁰ The Australian Government's Workplace Gender Equality Agency (WGEA) notes that the gap is caused by interrelated factors, including women and men working in different industries and jobs, with female-dominated industries and jobs attracting lower wages; women's disproportionate share of unpaid caring and domestic work; lack of workplace flexibility to accommodate caring and other responsibilities; women's greater time out of the workforce impacting career progression and opportunities; and discrimination and bias in hiring and pay decisions.¹¹

The data on the gender pay gap in state public services is patchy because it is not mandatory for state governments to report to WGEA. Some state governments are starting to publicly report on their own pay gap, however. The South Australian public sector conducted a gender pay gap analysis in 2017 with surprising results: while South Australia had the lowest gender pay gap in the country at 9.8% (2017 figures), its public service had 15 percent gender pay gap.¹² The Victorian government released comprehensive data on the public sector gender pay gap in 2018, noting that the median base salary in Victorian state government workplaces is \$76,487 for women and \$86,684 for men - making the gender pay gap 12 percent or \$10,197.¹³ The government is tackling the gender pay gap through a range of policies,

¹⁰ 'Gender pay gap', Workplace Gender Equality Agency, Australian Government, <https://www.wgea.gov.au/topics/gender-pay-gap>

¹¹ *Ibid.*

¹² 'Bizarre': SA public service gender pay gap worse than private sector', *In Daily*, Bension Siebert, 04/09/17 <https://indaily.com.au/news/2017/09/04/bizarre-sa-public-service-gender-pay-gap-worse-private-sector/>

¹³ '\$10,000 – the price of being a woman who works for Victoria', *The Age*, Noel Towell & Benjamin Preiss, 21/02/18 <https://www.theage.com.au/politics/victoria/10-000-the-price-of-being-a-woman-who-works-for-victoria-20180221-p4z140.html>

including that all roles are flexible, and have committed to comprehensive and ongoing gender auditing on a range of performance indicators.¹⁴

While the public sector workforce in each state is mostly women, the majority of senior executive roles are held by men.¹⁵ For example, the Victorian gender pay gap analysis showed that despite women making up 67% of the state government workforce, only 43% of senior executives were women. Measures such as the Victorian governments policy of making all roles flexible, even at the senior levels, is a big step in the right direction to reduce the gender pay gap, promote more women to supervisory and leadership roles, and to ensure family-friendly workplaces.

Recommendation 4: State government departments should measure their gender pay gap on an annual basis and report to WGEA.

Recommendation 5: Reporting to WGEA should be expanded to include incidences of sexual harassment and workers compensation cases relating to sexual harassment.

Recommendation 6: State governments should ensure all roles are flexible in order to promote family-friendly workplaces, promote more women to supervisory and leadership roles, and reduce the gender pay gap.

Reducing gendered violence in the workplace

As noted, gendered violence in the workplace is a symptom of gender inequality in society. While there are no quick fixes, the following measures should be taken by state governments to reduce the risk of gendered violence in the workplace.

Effective complaints mechanism, and protection of complainant

The ACTU's submission details the problems with the complaints process in the Sexual Discrimination Act (SDA). Given only 1% of our members responded saying they took their complaint to the Human Rights Commission or similar body, there is likely to be a lack of knowledge and/or lack of faith in the SDA complaints process.

State government workers are far more likely to have knowledge of and utilise departmental grievance processes when facing gendered violence at work, but there are many problems with these grievance processes. The onus is on the individual to pursue the matter, and pursuing a grievance can come at great personal and professional cost. As a CPSU union organiser in [REDACTED] notes,

Members come to me about [sexual harassment] but don't want to pursue it because they're scared of repercussions. From my experience it is hardly worth pursuing as the perpetrator gets a slap on the wrist and the victims get moved along.¹⁶

Anecdotally, it can sometimes be the case in the public sector that the result of a bullying or harassment grievance is that the victim is shifted to another work unit or department, while the perpetrator is able to remain. These sorts of outcomes deter other workers from lodging grievances in the future, and could help

¹⁴ 'Next steps to fix the gender pay gap in Victoria', Minister for Industrial Relations and Women, media release, 21/02/18 <https://www.premier.vic.gov.au/next-steps-to-fix-the-gender-pay-gap-in-victoria/>

¹⁵ 'Gender pay gap lower in the public sector, but some states buck the trend', *The Mandarin*, Stephen Easton, 06/09/17 <https://www.themandarin.com.au/83313-gender-pay-gap-lower-in-the-public-sector-but-some-states-buck-the-trend/>

¹⁶ Anecdotal evidence provided by CPSU/Public Service Association [REDACTED]

explain why 71% of CPSU members who experienced sexual harassment in the workplace did not lodge a formal complaint. Our ██████████ note that often workers only raise sexual harassment formally through grievance processes when it morphs into other issues, such as performance management, and because they are raising another workplace matter, the sexual harassment issue becomes sidelined.¹⁷ Forty-five percent of our members recommended in the survey that their employer should institute an effective complaints mechanism to prevent sexual harassment in the workplace.

Case Study

The ██████████ CPSU SPSF Group, described the following example of a member who had sought representation for an office relocation dispute which had arisen as a result of circumstances surrounding her sexual harassment grievance lodged years prior. This case study illustrates the unsatisfactory protection of a complainant which is so prevalent in sexual harassment cases.

The complainant and perpetrator both worked for a small to medium sized state public sector agency ██████████. Following the period of sustained sexual harassment, the complainant lodged allegations of sexual harassment with her employer. To the department's credit, the complaint was investigated and actioned promptly, resulting in most of the allegations being upheld while others were not. The complainant was then relocated to a different physical floor, while remaining within the same team or work unit as the perpetrator. This arrangement was the result of a conciliated outcome in the workplace and suited the complainant well, as it involved very limited physical proximity to the perpetrator and removal from the physical location (the office floor) where the harassment had taken place.

Approximately two years later, the complainant was formally notified that she would be transferred to a different division within the same department ██████████ ██████████, which provides state public sector departments with an unfettered power to transfer employees within or between departments. The consultation requirement of ██████████ does not provide a right to refuse the transfer however it did provide the complainant with an opportunity to voice her concerns about the transfer, which were that it would return her to the same physical floor of the building as the perpetrator, despite shifting her to a different work stream. The complainant described high levels of distress affecting her physical and mental health, at the prospect of being in close physical proximity to the perpetrator and the physical location of the harassment. Despite raising these valid concerns, the employer did not move from its position. The employer regarded the harassment as "historic" and focused on the fact that the parties had been working in the same division since that time (albeit they were physically separated on different floors of the building). The member then asked for Union representation in relation to negotiating a graduated shift to the new work area (and the former level of the building), rather than opposing the transfer altogether as she was constrained by the employer's unfettered right to transfer ██████████ 5 as well as the risk of raising mental health concerns which could then become a target for process such as fitness for work or retirement on the grounds of ill health.

¹⁷ Anecdotal evidence provided by the CPSU Tasmania branch.

This case study illuminates many of the obstacles which are faced by complainants, even those who have their claims recognised by their employer as sexual harassment. The lack of comprehensive policies and legislation on how to accommodate public sector employees working in proximity to their perpetrators is a major policy gap which can lead to adverse outcomes for complainants. For example, limiting the scope of [REDACTED] and ensuring that transfer decisions must take all relevant circumstances into account and that the employer can not unreasonably refuse the employee's requests, would protect against situations like the above. However, cultural change is what truly needs to occur to protect complainants. There needs to be greater recognition by the public sector of trauma-informed responses to workforce issues such as transfer, and solutions to accommodating complainants should not be time-limited. Comprehensive policies to assist public sector agencies to accommodate complainants and act in their best interests when it comes to solutions to workforce issues involving sexual harassment and gendered violence are not only necessary, they are long overdue.

Recommendation 7: State government departments review grievance procedures in consultation with unions to develop an effective mechanism that protects complainants confidentiality and protects complainants from negative consequences.

Make gendered violence a workplace health and safety issue

While it is important that individual workplace grievance processes and the complaints mechanism in the SDA is reformed to make it easier for individuals to navigate and reach a suitable outcome, the onus must be firmly on the employer to provide a safe workplace for all employees. The burden should not be on the individual to navigate a lengthy and often distressing complaints process, the responsibility must be on the employer to prevent gendered violence from occurring in the first place.

Gendered violence in the workplace should be treated as a workplace health and safety (WHS) issue, and incorporated into WHS legislation. WHS legislation needs to be strengthened to properly cover psychosocial risks, not just physical risks. Currently, state WHS regulators do not often investigate sexual harassment complaints, in many cases considering it to be the responsibility of other agencies. For instance, a SafeWork NSW spokesperson recently advised that sexual harassment complaints are referred to the NSW Anti-Discrimination Board, although occasionally an inspector 'might' attend a workplace to 'identify any ongoing risks to workers and review the employer's policies and systems for dealing with workplace harassment and bullying.'¹⁸

As outlined above, the SDA complaints process and government department grievance processes put the onus on the individual to make a complaint, and many workers do not make formal complaints for fear of further victimisation, other negative consequences, and a lack of faith in the process. Ensuring gendered

¹⁸ 'Harassment must be treated as major OHS issue: inquiry,' OHS Alert, 30/7/18, www.ohsalert.com.au

violence is covered by WHS legislation will give workers the ability to deal with the hazard collectively, and will put the onus on the employer to remove the hazard or mitigate the risk.

For many women, leaving the workplace is the action they take to end the sexual harassment, and once the complainant has left, the employer often considers that the issue is resolved. So ensuring that WHS laws cover sexual harassment and other forms of gendered violence will enable the issue to be dealt with once the complainant leaves the workplace.

Case Study

The [REDACTED] was involved in representing a member through a particularly disturbing and protracted matter of sexual harassment within a medium to large public sector department. This case involved a female public sector employer in middle management who was sexually harassed by a senior male perpetrator. Six allegations of sexual harassment were made by the complainant, however only one of these was sustained as it was witnessed by a third party whereas the other five incidents were alleged to have taken place with no other witnesses present.

At the conclusion of the investigation and upon receiving disciplinary action for the one proven breach of the Code of Conduct, the perpetrator went on extended unpaid leave. After some months, the perpetrator was returned to the same worksite as the victim, despite the [REDACTED] clearly stating the risks of such an action, both in terms of misconduct risks and occupational safety and health risks. Any and all attempts to manage this matter with the employer were met with a perpetrator protection stance leading to the victim requiring extended time off work and shifting rosters to avoid contact. The employer was at first unable and then unwilling to perceive the circumstances surrounding this matter as leading to an occupational safety and health hazard, despite reports from multiple occupational psychiatrists attesting that the complainant's adjustment disorder was wholly attributable to workplace factors.

The complainant ended up lodging a workers' compensation claim which was approved by RiskCover. This was a positive outcome for the complainant in so far as she was compensated for her psychological injury and provided with time off work to recover. However, had the employer been more willing to treat the aftermath of the harassment as an ongoing occupational safety and health concern and make the appropriate adjustments to mitigate risks, the complainant would have avoided further exacerbation of her injury. Unfortunately, the employer perceived the recommendation to relocate the perpetrator as disproportionate disciplinary action, rather than a reasonable and appropriate measure to discharge their duties under the [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

For this measure to be effective, State WHS regulators need to be adequately resourced to establish a separate unit to investigate incidences of gendered violence at work, produce resources, train employers, and prosecute employers for breaches. WHS inspectors and workplace representatives should be trained specifically to identify workplace risks of gendered violence.

Recommendation 8: WHS legislation must be strengthened to cover psychosocial hazards, including sexual harassment and other forms of gendered violence in the workplace.

Recommendation 9: State WHS regulators establish a properly resourced dedicated gendered violence unit to produce materials, educate, investigate, and prosecute breaches.

Employers need to be proactive

Our members strongly believe employers need to do more to prevent sexual harassment in the workplace. When asked what more their employer should do to prevent sexual harassment, 50% of our members said there should be mandatory training of all staff on preventing sexual harassment, and 47% said employers should provide more information about preventative measures, including workplace policies. Employers need to promote a 'zero tolerance' approach and have clear policies and guidelines in place, and regularly educate workers and members of the public who interact with the service about the policy.

Recommendation 10: State governments must be proactive in setting a 'zero tolerance' culture: they need to ensure they have robust policies and guidelines on gendered violence and regularly educate staff and members of the public about acceptable and unacceptable behaviour.

Recommendations

Recommendation 1

State governments must properly resource departments to ensure that no field worker is out alone, and that front-line service areas are adequately staffed to properly serve the public.

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State governments must boost funding to departments and units to promote gender equality, both within government and in the broader community.

Recommendation 3

State governments must provide the option of conversion to permanency for workers on rolling fixed-term contracts and casual workers, and must immediately cease the use of labour hire and employ workers directly.

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Recommendation 7

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WHS legislation must be strengthened to cover psycho/social hazards, including sexual harassment and other forms of gendered violence in the workplace.

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State WHS regulators establish a properly resourced dedicated gendered violence unit to produce materials, educate, investigate, and prosecute breaches.

Recommendation 10

State governments must be proactive in setting a 'zero tolerance' culture: they need to ensure they have robust policies and guidelines on gendered violence and regularly educate staff and members of the public about acceptable and unacceptable behaviour.