



Australian Education Union

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28 February 2019

Kate Jenkins
Sex Discrimination Commissioner
Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Dear Ms Jenkins

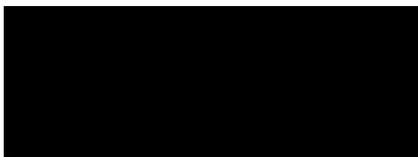
**Re: AEU Submission to the Human Rights Commission National Inquiry
into Sexual Harassment in Australian Workplaces**

Thank you for the opportunity to submit to the Inquiry into Sexual Harassment in Australian Workplaces.

Please find our submission attached.

Please contact me if you have any questions in relation to this submission.

Yours sincerely,



Susan Hopgood
Federal Secretary



Australian Education Union

Submission to the

Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces

February 2019

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Introduction

The Australian Education Union (AEU) represents 187,000 members employed in public primary, secondary and special schools and the early childhood, TAFE and adult provision sectors as teachers, educational leaders, education assistants or support staff across Australia.

The AEU welcomes the opportunity to make a submission to the National Inquiry into Sexual Harassment in Australian Workplaces on this critically important issue.

The AEU is committed to the continual improvement of conditions for public education teachers and educators across all sectors. Everyone has the fundamental right to go to work in a safe and inclusive working environment, free from all forms of discrimination and harassment.

We need nationwide change in attitudes to address the widespread problem of sexual harassment in our culture. This psychosocial risk has significant psychological and physical health and safety impacts. In education workplaces, the employer has the responsibility to put sophisticated systems in place to appropriately manage sexual harassment and support victims who experience sexual harassment in the workplace.

The AEU's submission will not comprehensively address the current federal legal framework which is covered in detail by the ACTU. The AEU supports the findings and recommendations of the ACTU's submission to the National Inquiry into Sexual Harassment in Australian Workplaces.

Currently there is minimal protection under the law which effectively deals with the harm associated with sexual harassment. Sexual harassment often goes unreported because the definition of the harm caused is powerfully shaped by whether action will be taken to address it. The lack of legal legitimacy reduces organisational efficacy to deal with sexual harassment and supports individual attitudes that both condone sexual harassment, and mute the voices of victims.

AEU National Survey on Sexual Harassment in Australian Public Education Workplaces

In the first two weeks of December 2018, the AEU conducted a national survey of our members to investigate the prevalence, impact, reporting and characteristics of those currently experiencing sexual harassment in Australian public education institutions.

The AEU national survey was conducted online, the survey was made available to the union's membership and 1,947 people provided a response. The survey was designed to address the following terms of reference:

- the prevalence, reporting and impacts of sexual harassment in public education workplaces, including
 - by individuals who are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, Aboriginal and/or Torres Strait Islander status
- the drivers of workplace sexual harassment
- existing measures and good practice being undertaken by employers,
- recommendations to address sexual harassment in the workplace.

As in any voluntary sample survey, there will inevitably be a degree of bias in the results. The first potential bias is that the sample population was constructed entirely of members of the AEU, and of people working in education.

There is also potential for the distressing theme and content of the survey to contribute to a response bias, as potential respondents may choose not to participate because they don't want to revisit traumatic experiences of harassment. The opposite of this is also possible, and those who have experienced sexual harassment may be more motivated to participate. There is also a possibility that a non-response bias results from those who do not see themselves as having experience of sexual harassment and who therefore do not see the survey as relevant to them and choose not to respond.

Despite, and with acknowledgement of these possibly limiting factors, we still believe that the results of our survey present a shocking insight into the prevalence of sexual harassment of staff in the Australian education sector, and overall prevalence found in this survey is similar to that found in other, larger recent studies of sexual harassment.

The findings of our survey present a stark picture of the prevalence of sexual harassment in school workplaces in Australia. One in four women and one in five men have experienced sexual harassment in their workplace within a public education institution. While two in three people have either directly experienced sexual harassment (as a victim) or indirectly experienced it through witnessing or managing someone who has been harassed.

Prevalence

The Australian Human Rights Commission Fourth National Survey on Sexual Harassment in Australian Workplaces found that within the Education and Training Industry Group workplace prevalence of sexual harassment was 39% in the last five years.¹

Our survey of educators asked a set of slightly different questions about whether respondents had experienced, witnessed or supervised someone subject to sexual harassment, and the combined level of prevalence of either witnessing, experiencing or supervising someone who has been sexually harassed during their entire education career was 51.7%. Combined prevalence in current employment was 33.9%.

Taking into account the difference in question framing (five years vs. current employment or entire career in education), the responses gathered in our survey appear broadly comparable with those in the AHRC survey, with five year prevalence as reported by the AHRC between a higher total prevalence figure and a lower "current job" figure in our survey.

Gender

The occurrence of sexual harassment disproportionately affects women. Women were significantly more likely to experience sexual harassment in the workplace, with 80% of respondents who have experienced sexual harassment during their career in education being women. The survey responses indicate that the majority of workplace sexual harassment was perpetrated by men.

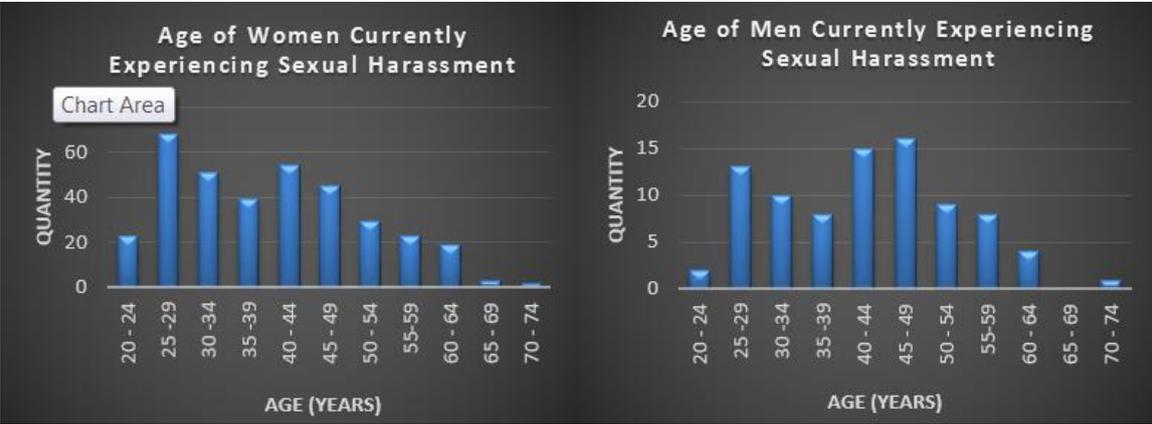
¹ Australian Human Rights Commission (2018), *Everyone's business: Fourth national survey on sexual harassment in Australian Workplaces* p.57

The gender breakdown of victim type to perpetrator type for having experienced harassment in a current or former education workplace is:

- 93% of female victims were sexually harassed by a male perpetrator.
- 31% of male victims were sexually harassed by a male perpetrator.
- 7% of female victims were sexually harassed by a female perpetrator.
- 69% of male victims were sexually harassed by a female perpetrator.

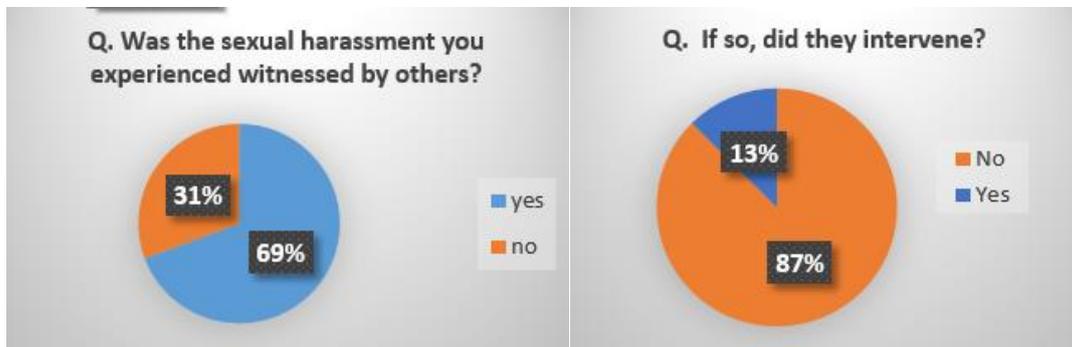


For women respondents, experience of sexual harassment was highest among those aged 25-29 years old accounting for 19% of all women who have experienced sexual harassment in their current workplace. In addition, of all women respondents aged 25-29 years nearly half (45%) have experienced sexual harassment within their current workplace in the education sector. For men, experience of sexual harassment in their current workplace was highest among those aged between 45-49 years, 19% of men in that age group.



Bystander Action

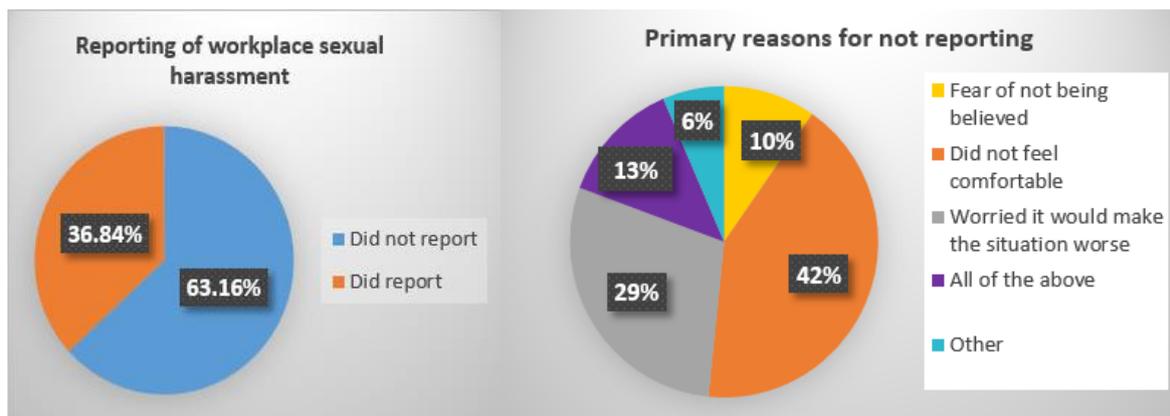
The AEU national survey specifically asked respondents about their experience of sexual harassment in their current workplace, whether it was witnessed by others and if those witnesses intervened. While the majority of sexual harassment is witnessed by others (69%), very rarely do these bystanders intervene (only 13%).



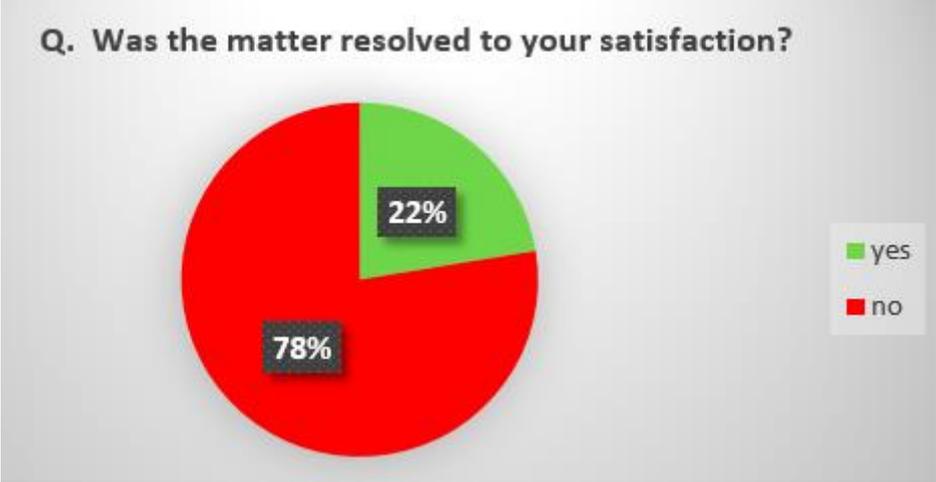
Reporting

The majority (63%) of respondents who have experienced sexual harassment in their current workplace did not report it. Anecdotal data collected indicated that most often, people did not report because they did not feel comfortable to do so, or were worried that they would make the situation worse.

Anecdotally respondents employed on casual or temporary contracts noted they did not report their experience of sexual harassment out of fear of unemployment. This was further corroborated by casual or temporary workers who did report, claiming impacts to their employment conditions included reduced hours or non-renewal of temporary contracts.

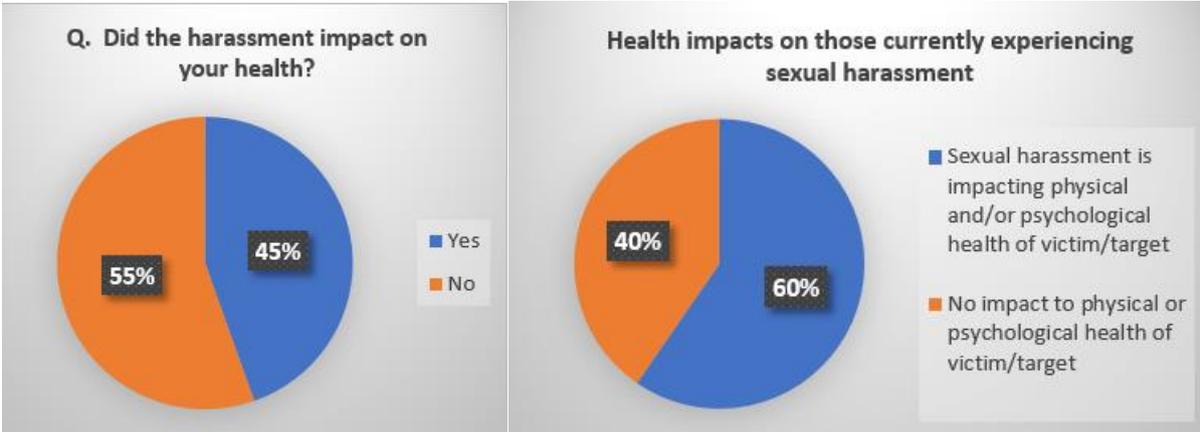


Of those respondents who have been sexually harassed in their current workplace who did report their experience, 78% of respondents disagreed when asked if the matter was resolved to their satisfaction.



Impacts

Overall, 45% of respondents had some form of physical and/or psychological impact due to their direct (having been harassed) or indirect (witnessing harassment or managing someone who was harassed) experience of sexual harassment in the workplace. However for people who have experienced sexual harassment in their current workplace, 60% have experienced associated physical or psychological health impacts.

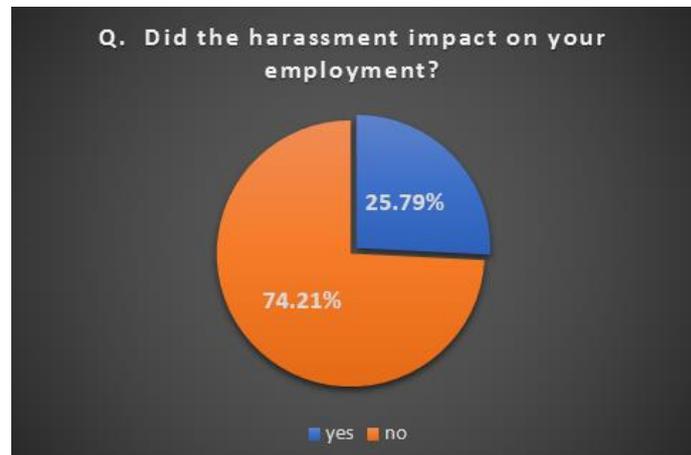


Further comments on the impacts of harassment indicated that victims suffered from mental health issues due to their experience of sexual harassment in the workplace. Frequently respondents listed psychological impacts such as stress and depression, lack of motivation, PTSD, sleeplessness, anxiety, hospitalisation from trauma, exhaustion, low confidence, panic attacks and suicidal thoughts.

The anecdotal evidence collected from the AEU national survey highlights that the impacts on those currently experiencing sexual harassment are significant and can deeply affect the victim's sense of security in their workplace.

In addition to the effect and impact to respondents' health, one quarter of those currently experiencing sexual harassment in their workplace stated that they have sustained an impact on their employment as a result of being sexually harassed. Respondents listed restriction to promotional opportunities, exclusion/ostracism at work, relocation to a different workplace and changes to current duties as the most frequent impacts on their employment conditions.

Other impacts to employment included unmotivated or decreased enjoyment at work, frustration with current work environment, fear of attending workplace alongside perpetrator, loss of professional confidence, decreased work performance and disengagement with work/colleagues.



Drivers of Workplace Sexual Harassment

There are many factors that contribute to an environment in which sexual harassment is perpetuated. As sexual harassment disproportionately affects women, many of these are due to gender inequality and are established through discriminatory practices, cultural norms and institutional structures that disadvantage women and girls in employment and in education. This disadvantage takes the form of both unconscious bias, internalised beliefs about masculinity and femininity that inadvertently privilege one group over another, but also conscious discrimination.

Counting on Change: A guide to prevention monitoring, an evidence-based best practice guide on how to measure progress towards the elimination of violence towards women including sexual harassment, establishes the most consistent predictors of violence against women associated with gender inequality including the following factors²:

- Condoning of violence against women
- Rigid gender roles
- Limits to women's independence in public life

² Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) (2017) *Counting on Change: a guide to prevention monitoring* p.52

The presence of these factors and the measurable indicators observable from data collected by the AEU national survey are as follows:

Condoning of violence against women - indicators

Attitudes that justify, excuse, trivialise, blame-shift or minimise the occurrence of sexual harassment. Qualitative data received indicates the presence of community (education institution) attitudes that condone sexual harassment.

- Community willingness to intervene. In the AEU national survey quantitative data indicates in only 13% of cases did bystanders intervene.
- Proportion of victims who disclose their experience to someone. Quantitative data indicates low rates of reporting with 63% of people who had been sexually harassed choosing not to report the harassment.

Rigid gender roles – indicators

Gender composition of the workforce by occupation/industry.

- The education sector is highly segregated by gender with an approximate gender break down of 75% women and 25% men. Occupations within the sector are further segregated with early childhood education comprising 98% women, followed by primary education 85% women, secondary education 61% women and TAFE 55% women. There are clearly gendered patterns present in the teaching occupation in particular the feminised nature of educating young children.

Limits to women's independence in public life - indicators

Women's heightened experience of violence, including sexual harassment, limits their participation at work resulting in unequal access to economic and social independence. This occurs as women modify their behaviour within the workplace to ensure and secure their safety.

This is indicated by the percentage of female employees surveyed who have experienced sexual harassment in the workplace; and perceptions of how organisations would respond to sexual harassment cases.

- In the AEU national survey, 80% of respondents who have experienced sexual harassment in the workplace were women.
- In the AEU survey, less than one quarter (22%) of respondents who reported their sexual harassment were satisfied with the organisational response. This indicates that organisations are not doing enough to prevent sexual harassment, either in the first instance or after the fact.

Current Policy and Procedures

In Australia the regulation and operation of public education is a state and territory responsibility and as such the majority of teachers and educators covered by this submission are employed by the respective Department of Education within their state or territory.

Table 1 provides an overview of each state and territory government and their respective policies relating to sexual harassment.

State/Territory Dept of Education	Formal (Stand Alone) Sexual Harassment Policy	Sexual Harassment Directly Covered Under Alternate Policy/Procedures	Policies of Note
Victoria	Yes	N/A	
New South Wales	No	<ul style="list-style-type: none"> • Staff Complaints Procedures • Toolkit Assessment Tool • Allegations of Bullying, Discrimination and Harassment 	Department of Education - Code of Conduct (does not specifically mention sexual harassment).
Queensland	No.	<ul style="list-style-type: none"> • Preventing Workplace Bullying, Sexual Harassment and Unlawful Discrimination • Managing Employee Complaints 	Department of Education - Code of Conduct (does not specifically mention sexual harassment).
Australian Capital Territory	No	<ul style="list-style-type: none"> • Teacher Code of Professional Practice • ACT Public Service Respect, Equity and Diversity Framework 	
Tasmania	No	<ul style="list-style-type: none"> • Discrimination and Harassment Policy 	
South Australia	Yes	N/A	
Northern Territory	No	<ul style="list-style-type: none"> • Bullying, Harassment and Violence • Inappropriate Workplace Behaviour By DET Employees 	
Western Australia	No	<ul style="list-style-type: none"> • Equal Opportunity, Discrimination and Harassment Policy 	<ul style="list-style-type: none"> • WA Department of Education Grievance Framework • Department of Education Code of Conduct

Table 1 - State and Territory Department of Education Sexual Harassment Policy/Procedures

Effective Policy, Procedures and Practice

Both Victoria (VIC) and South Australia (SA) currently have the best current measures, policies and procedures for dealing with sexual harassment in the workplace. Effective measures contained in these policies include:

- Extensive definition of sexual harassment:
 - SA note that sexual harassment is “uninvited behaviour” – this expands upon the common definition of sexual harassment particular to “unwanted behaviour” and engages principles of consent.
 - VIC defines the occurrence of sexual harassment as “a single incident” and does not specify sexual harassment as a form of repeated behaviour.
 - SA also include that sexual harassment is not limited to behaviour that occurs between people of another gender.
- Extensive detail of the roles and responsibilities of those involved with incidents of sexual harassment including by:
 - Employees
 - Students
 - Managers/Executives/Principals/Leaders
 - External units who respond to complaints – Ethical Conduct Unit (SA)/ Workplace Contact Officer (VIC)
 - The Department of Education
- Specified Reporting/Complaint procedures including:
 - that complaints must be acted upon immediately and managed in a sensitive confidential manner (VIC)
 - That reported complaints will be subject to an internal departmental complaint resolution process (SA)
 - The consequences of substantiated complaints including – apology, counselling, training, disciplinary action/performance management, termination of employment
 - Associated guidelines for making a complaint with reference to appropriate policy
- Coverage of policy beyond the department. In SA the Department of Education policy directly states “all secondary schools are legally required to have written policy against sexual harassment and make this readily available to students”.

Respectful Relationships Education in Schools

Respectful Relationships Education in Schools is a primary prevention method which uses the education system as a catalyst for generational and cultural change to address gender inequality.

The approach engages schools, as both education institutions and workplaces, to address the key drivers of gender based violence, gender inequality, rigid adherence to gender stereotypes and violence supportive attitudes. Respectful Relationships Education in Schools is included in the curriculum of public schools in Victoria, Queensland, Australian Capital Territory and Tasmania which includes:

- teaching students the skills to build respectful relationships, as well as recognising and challenging gender-stereotyping and violence-supportive attitudes
- creating a safe, equal and inclusive school culture for staff and students
- demonstrating appropriate and respectful behaviour to students.

Respectful Relationships Education is a whole school approach which not only provides in-class education, but addresses the school culture, policies and procedures, and promotes gender equity within the staffing body.

While Respectful Relationships Education sits in the curriculum of some states and territories, not all of them are currently resourcing a whole school approach. ‘Best practice’ Respectful Relationships Education takes a whole school approach, which requires governments to properly resource such initiatives including the resourcing of professional learning for teachers to deliver the curriculum.

Ineffective Policy, Procedure and Practice

In the AEU survey, when asked “Do you think your employer is doing enough to prevent sexual harassment in your workplace”, 75% of respondents answered “No”. The extent and degree of psychological suffering caused by the experience of sexual harassment at work, emphasises the limited efficacy of current sexual harassment procedures and further that current legislative frameworks are not sufficient to protect the victims of sexual harassment.

The majority of the state and territory Departments of Education do not have a sufficient, stand-alone sexual harassment policy that proactively prevents sexual harassment or effectively responds to the occurrence of it in the workplace.

There is a distinct lack of national consistency across state and territory Departments of Education relating to the policies employed to address sexual harassment within public education institutions. While Victoria and South Australia have good policies and procedures the practices regarding the management of the occurrence of sexual harassment is ineffective across all states and territories.

There are significant issues with the handling of sexual harassment complaints and the process of dealing with them at the local workplace level. It would be far more effective for all allegations of sexual harassment within the public education sector to be dealt with by an external unit (located within the Department of Education), staffed by experts, with the capacity to receive anonymous reporting. In this form reporting can encourage victims fearful of adverse action or lack of action due to power-imbalance of perpetrator.

Recommendations

- 1) Legislative change to the Workplace Gender Equality Act 2012 to require all state and territory Departments of Education to comply with reporting requirements regarding gender equality.
- 2) All state and territory Departments of Education must have a detailed systematic stand-alone sexual harassment policy outlining:
 - a. Comprehensive definitions;
 - b. Roles and Responsibilities of employer/employee including the Department, executives, managers and principals;
 - c. Reporting processes and complaint resolution; and
 - d. Legality under criminal law and the legislative context through various Acts such as Sex Discrimination and state Equal Opportunity legislation.

- 3) All state and territory Departments of Education should develop specific reporting procedures for incidents of sexual harassment including:
 - a. an external reporting process that is both confidential and anonymous, staffed by trained experts to support victims and provide advice about the complaints procedures
 - b. mandatory reporting included in sexual harassment policy – “responsibilities of all employees to report any incident of sexual harassment that they have experienced or witnessed”.
 - c. provisions for reporting victimisation for those who do report to protect victims from further impacts to their health and employment.
- 4) Early Childhood and TAFE employers, and state and territory Departments of Education must develop gender equity strategies that can be implemented by preschools, schools and TAFE. Funding for the development of policies, procedures and plans, resources, training and development and additional release time for teachers and educators must be provided.
- 5) State and territory Departments of Education should adopt the Respectful Relationships Education in Schools curriculum designed to teach students the underlying beliefs and attitudes that lead to gender-based discrimination and violence. Such curriculum must be accompanied by properly resourced whole of workplace strategies that create a culture of equity and model respectful relationships.
- 6) Employers must meet their legal obligations for the elimination of sexual harassment in the workplace. As previously recommended in the Sex Discrimination Act (SDA) Inquiry in 2008 the SDA should be amended to include a ‘positive duty’ for public sector organisations and educational institutions to eliminate sex discrimination, sexual harassment and promote gender equality.
- 7) All employers in preschool, schools and TAFE should implement and fund awareness training about sexual harassment, policy and reporting procedures for staff.