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28 February 2019

Australian Human Rights Commission  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002

### **Online submission**

Dear Commission

## **St Kilda Legal Service Submission to National Inquiry into Sexual Harassment in Australian Workplaces**

We welcome the opportunity to make a submission to this important inquiry.

### **About St Kilda Legal Service**

St Kilda Legal Service (**SKLS**) provides free and accessible legal services to members of the community within the Cities of Port Phillip, Bayside, Stonnington and parts of Glen Eira. The Legal Service is committed to redressing inequalities within the legal system through casework, legal education, community development and law reform activities.

We are a generalist community legal centre that provides legal advice and casework assistance on a broad range of legal issues, and often sees vulnerable clients with legal matters associated with poverty, drug addiction, mental illness and homelessness. SKLS operates four specialist programs: the Drug Outreach Program, the Family Violence Duty Lawyer Program, the Family Law and Family Violence Program and an LGBTIQ Legal Service.<sup>1</sup>

The LGBTIQ Legal Service commenced in May 2017 as a health justice partnership with Thorne Harbour Health. The LGBTIQ Legal Service is a state-wide service that provides

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<sup>1</sup> We have chosen to use the umbrella title of "LGBTIQ" to advertise our service. We seek to be inclusive all gender and sexually diverse people, however, including brotherboys, sistergirls, those who identify as asexual, pansexual and genderqueer, and those who use other terms to describe their sexuality and/or gender identity.

advice and representation to the LGBTIQ community on a wide-range of legal issues including discrimination, employment and sexual harassment matters.

## Summary

Sexual harassment in the workplace remains rampant throughout Australia.<sup>2</sup> We applaud the efforts of the Australian Human Rights Commission (**AHRC**) to shine a light on this endemic workplace issue, and to consult the broader community to develop strategies to tackle it.

We welcome the opportunity to make a submission to this inquiry to illustrate the nuanced ways in which sexual harassment affects LGBTIQ workers and volunteers across Australia.

Our submission pertains to the following Terms of Reference:

- drivers of workplace sexual harassment with a specific focus on the LGBTIQ community; and
- recommendations to address sexual harassment in Australian workplaces.

We have prepared this submission on the basis of a survey conducted from December 2018 to January 2019, and learnings gleaned from our LGBTIQ legal service casework. The scope of our research is obviously limited, given the short time period and the limited number of respondents. However, we believe that it provides an important snapshot of LGBTIQ experiences in the workplace, and we would encourage further research.

In summary, our casework and research has demonstrated that:

- to date, the focus of investigation and responses to sexual harassment in the workplace focuses on heteronormative forms of sexual harassment (predominantly cis-gendered men harassing cis-gendered women);
- the experience of the LGBTIQ community in relation to sexual harassment in the workplace has its own unique characteristics;
- sexual harassment can and does occur in all workplaces and volunteer-based organisations, including within LGBTIQ organisations; and
- sexual harassment involving LGBTIQ people requires a nuanced and peer-led response.

We have had an opportunity to review Victoria Legal Aid's submission "*Change the Culture, Change the System: Urgent Action needed to End Sexual Harassment at Work*"<sup>3</sup> and are supportive of their recommendations. SKLS is also a signatory to the joint statement "*Urgent*

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<sup>2</sup> Australian Human Rights Commission Report, 'Sexual harassment: Serious Business', *Australian Human Rights Commission* [website], 2008, page 15

<sup>3</sup> <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-submission-ahrc-national-inquiry-sexual-harassment-at-work.pdf>

*Actions Needed to Stop Sexual Harassment at Work*,<sup>4</sup> which was co-signed by over 100 organisations and individuals including a number of LGBTIQ community organisations, including the Drummond Street Services, Switchboard and Thorne Harbour Health.

## Summary of recommendations

1. The Australian Human Rights Commission should consult with Intersex Human Rights Australia in order to implement strategies for Australian workplaces that address the diverse experiences and needs of people with an intersex trait or variation.
2. The Australian Human Rights Commission template sexual harassment policy<sup>5</sup> should be amended to explicitly acknowledge the wide spectrum of conduct that constitutes sexual harassment, including harassment towards LGBTIQ people.
3. The Australian Institute of Community Directors template sexual harassment policy<sup>6</sup> (currently used by many not-for-profit organisations) should be amended to explicitly acknowledge the wide spectrum of conduct that constitutes sexual harassment, including harassment towards LGBTQ people.
4. LGBTIQ organisations should implement professional development programs focussing on developing an awareness of sexual harassment in the workplace.
5. State, Territory and Federal governments should fund targeted training for not-for-profit organisations to assist them to effectively implement sexual harassment policies and prevention strategies.
6. State, Territory and Federal governments should fund targeted peer-led research into the experiences of sexual harassment in the workplace experienced by members of the LGBTIQ community in order to ensure that all resources addressing the issue includes the experiences of LGBTIQ people.
7. The Australian Human Rights Commission should support the development of an online anonymous reporting tool for the purpose of collecting information on sexual harassment, including trends and common workplaces, with the option of providing support to victims of sexual harassment. Any reporting tools must incorporate specific questions that relate to the LGBTIQ community, developed in consultation with LGBTIQ organisations.
8. State, Territory and Federal governments should implement, and advocate for, workplace training that aims to change gendered attitudes and entrenched behaviours that lead to sexual harassment. Training should include:
  - Peer-led understanding gender identity and sexual orientation;

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<sup>4</sup> [https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/power-to-prevent-joint-statement-ahrc-inquiry-sexual-harrasment-at-work\\_2.docx](https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/power-to-prevent-joint-statement-ahrc-inquiry-sexual-harrasment-at-work_2.docx)

<sup>5</sup> <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/workplace-discrimination-and-harassment-policy>

<sup>6</sup> <https://www.communitydirectors.com.au/icda/policybank/>

- Peer-led understanding of people born with a variation of sex characteristics (intersex);
- diversity and inclusion; and
- zero tolerance approaches to homophobic, biphobic, intersexist, transphobic and queerphobic harassment in the workplace.

It is vital that any training program be run by organisations staffed by people with a lived experience of the LGBTIQ characteristic that they are running training on.

9. Funding be made available for peer-led services to support members of the LGBTIQ community who have been subject to sexual harassment. This should include counselling, legal advice, victim support and advocacy.

## **A. Background – the LGBTIQ Legal Service sexual harassment survey**

In late December 2018, the LGBTIQ Legal Service commenced an online survey of the LGBTIQ community about their experience of sexual harassment (the **survey**).<sup>7</sup> We received 182 responses. Of those responses:

- 43 identified as lesbian
- 67 identified as gay
- 31 identified as bisexual
- 17 identified as queer
- 7 identified as asexual
- 6 identified as pansexual
- 9 identified as straight
- 2 identified as questioning
- 51 had a gender identity that was different from their sex assigned at birth
- 4 disclosed having a variation of sex characteristics (intersex)

A copy of the survey questions is provided at **Annexure A** to this submission. The key findings from our survey are set out below.

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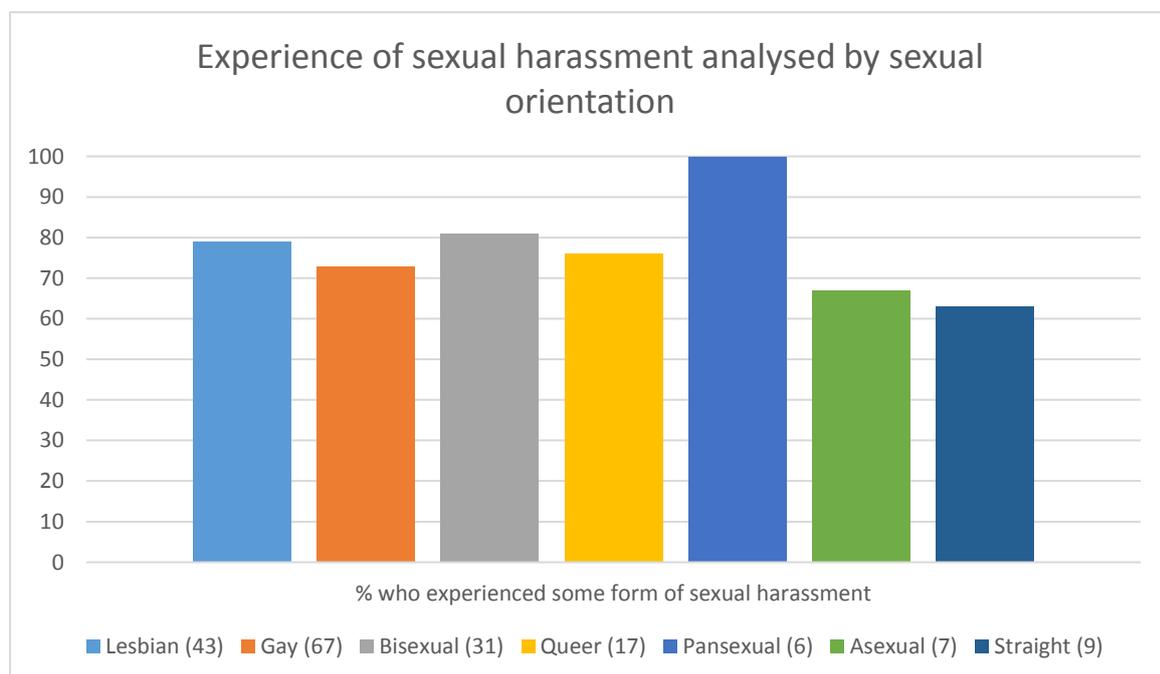
<sup>7</sup> 'LGBTIQ Community Survey of Experiences of Sexual Harassment in the Workplace' (the **survey**) was available online from 14 December 2018 to 31 January 2019 via survey monkey and advertised via the LGBTIQ Legal Service and St Kilda Legal Service Facebook pages, Star Observer and via social media cross promotion with our partner organisations and networks.

## Types of sexual harassment in the workplace

The most common forms of unwanted behaviour witnessed in the workplace included suggestive comments or jokes (85.43%) and intrusive questions or statements about someone's private life (72.85%). This pattern was reflected in responses to whether respondents had personally experienced unwanted behaviour in the workplace, with 79.56% reported having personally experienced suggestive comments or jokes and 69.34% being personally subjected to intrusive questions or statements about private life.

## The experience of sexual harassment analysed by sexual orientation

Reporting of levels of sexual harassment varied slightly between people with different LGBTIQ characteristics, as follows:



NB. Brackets indicate the number of respondents

## The experience of sexual harassment analysed by gender identity

There was no significant variation in reported experience of sexual harassment by gender identity. It is significant that all reported high levels of sexual harassment. Of the respondents who identified as:

- non-binary (27), 81.5% indicated they had experienced at least one form of sexual harassment;
- transgender males<sup>8</sup> (13) 90% indicated they had experienced at least one form of sexual harassment

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<sup>8</sup> This survey followed the gender identity data collection methodology recommended by the trans masculine peer support organisation 'PASH.tm'. We therefore specifically asked both "What sex were you assigned at birth?" and "What best describes your gender identity?" in order to determine where the respondent had a gender diverse history, without asking whether the person personally identifies as being transgender, as this

- transgender females<sup>9</sup> (11) 87.5% indicated they had experienced at least one form of sexual harassment

### **The experience of sexual harassment of people born with a variation of sex characteristics (intersex)**

All respondents who disclosed an intersex trait or variation (4) indicated that they had experienced at least one form of sexual harassment.

### **Barriers to reporting sexual harassment**

Barriers to reporting sexual harassment are a key issue for LGBTIQ workers and volunteers. Participants reported the following experiences:

- 56.6% of respondents who had witnessed or experienced sexual harassment in the workplace stated that they had experienced barriers to reporting sexual harassment (examples of barriers are outlined below)
- 74.59% of total respondents stated that they would be more likely to report workplace sexual harassment if they could remain anonymous

### **Sexual harassment within LGBTIQ organisations**

Of the 42 respondents who self-identified as working or volunteering for an LGBTIQ organisation:

- 78.6% said that they had witnessed some form of sexual harassment; and
- 71.4% said they had personally experienced some form of sexual harassment.

This survey did not ask respondents about the sex, gender or sexual orientation of their harasser.

## **B. Challenging a heteronormative conception of workplace harassment**

The sexual harassment experienced by the LGBTIQ community is compounded by an assumed heteronormative understanding of workplace dynamics. This means that workplaces may fail to notice or address the specific forms of harassment experienced by LGBTIQ workers and volunteers. Heteronormative workplace dynamics also create a significant barrier to reporting of harassment by LGBTIQ people.

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line of questioning may fail to capture the experiences of people who may have a transgender history but who do not personally identify as being a transgender person. We felt it important to report on the different experiences of trans masculine and trans feminine people, however wish to acknowledge that not everybody with these gender experiences identify as being transgender, and may well use other terms to describe their gender identity.

See PASH.tm, 'Position Statement data collection', *Grunt* [website], November 2017, <[http://www.grunt.org.au/wp-content/uploads/PASH.tm-Data-Collection\\_Nov\\_2017.pdf](http://www.grunt.org.au/wp-content/uploads/PASH.tm-Data-Collection_Nov_2017.pdf)>.

<sup>9</sup> See Ibid (footnote 8).

Our primary concern is that there is a lack of mainstream community understanding of how an individual's sex or gender identity, variation of sex characteristics, and/or sexual orientation, play a role in experiences of sexual harassment. The current discourse around sexual harassment largely fails to address the experience of people who identify as lesbian, gay, bisexual, trans or gender diverse and/or who have a variation of sex characteristics (intersex).

For the purpose of this submission, we have focussed on how an individual's sex, gender or sexual orientation may be a driver of sexual harassment. Based on the feedback we received in our survey, we have also given consideration to particular organisational factors, specifically sexual harassment within LGBTIQ organisations.

### **C. The unique experiences of LGBTIQ people**

Given the high levels of sexual harassment in workplaces across Australia,<sup>10</sup> it is unsurprising that LGBTIQ people have also experienced some form of sexual harassment. Many survey respondents indicated, by way of direct comments in their survey responses, that internal power structures, a lack of understanding, and a blasé attitude to sexual harassment complaints were all issues within workplaces.<sup>11</sup> However, it is important to recognise that LGBTIQ people, due to their sexual orientation or gender identity, have unique experiences of sexual harassment which warrant further exploration and specific, peer-led responses.

Our survey results demonstrate that jokes about sexuality and gender identity are a key issue in Australian workplaces. Relevantly, many Australian workplaces are dominated by non-LGBTIQ, cis-gendered people. In these work contexts, jokes about sexuality and gender identity are sometimes accepted as a light-hearted form of humour. For a person who may have been the recipient of such comments for many years, these experiences can lead to additional workplace stress, alienation and ultimately disengagement from the workforce altogether.

It is important to understand that not all members of the LGBTIQ community experience sexual harassment in the same way. Our examples below show the many different ways that a person can experience sexual harassment, as well as their own unique barriers to reporting.

It is also important to appreciate that for many people, their sexual orientation and gender identity are not fixed, and some will have different experiences during their working lives as their sexual orientation or outward expression of gender identity changes. For example, one respondent who identified as a transgender male wrote:

*"I've was sexually harassed as a young woman before I transitioned, (and I now) experience the most sexual harassment from lesbian and gay people while working at LGBTIQ workplaces - somehow, my body is seen as free game for discussion and it seems framed as gay people trying to figure out if they're still gay if they're attracted to me/if they'd have sex with a trans person or not, by asking me lots of questions about*

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<sup>10</sup> In accordance with the AHRC's findings in "Everyone's business: Fourth national survey on sexual harassment in Australian workplaces" (2018), 71% of Australians have been sexually harassed at some point in their lifetime.

<sup>11</sup> Examples of these responses are provided throughout our submission

*trans genitalia and surgeries and what surgeries I'm getting. The smallest request for the conversation to end is always met with aggressiveness and later bullying.”*

It can be seen from this quote that the LGBTIQ people can have a cumulative and multi-layered experience of discrimination and sexual harassment over the course of their working life.

All of these examples are often compounded by the fact that many members of the LGBTIQ community still feel compelled to hide parts of their lives due to stigma and discrimination, and have assessed that drawing explicit attention to their LGBTIQ status by reporting sexual harassment will result in them being ostracised.

### **People who identified as lesbian**

Of the 43 respondents who identified as lesbian:

- 79.1% of respondents had witnessed a form of sexual harassment
- 79.1% of respondents had personally experienced a form of sexual harassment
- The most common forms of harassment were:
  - suggestive comments or jokes;
  - intrusive questions or statements about private life; and
  - staring or leering
- 18.6% of lesbian respondents have reported sexual harassment to their workplace

Lesbian women are particularly vulnerable given that they may be subject to both sexual harassment from heterosexual men (which may be extremely homophobic in its nature), as well as other LGBTIQ women in workplaces.

Where harassment is perpetrated by men, the actions may blur the line between sexual harassment and homophobic discrimination. One lesbian respondent to the survey noted that a male co-worker displayed his penis to her and suggested that she should “*have a go at one of these*”. Another respondent reported being told by a colleague that they needed “*a dick in [them]*” to cure them of their lesbianism, and, after reporting the incident to their manager was told to “*let it go*”.

The impact of the significant rates of sexual harassment experienced by lesbian women is compounded by difficulties in reporting; as sexual harassment and education and awareness programs have typically focused on the expectation of cis-gendered men harassing cis-gendered women, other forms of harassment are less obvious and often not seen to be serious. For example, one survey respondent commented that they had previously worked for a women’s organisation and had been told “*we don’t need a sexual harassment policy here, we are all women*”.

### **CASE STUDY: Michelle\***

Michelle identifies as lesbian. During her work at an LGBTIQ health organisation Michelle was subjected to harassment, in the form of inappropriate comments about her sex life, by her lesbian manager.

Michelle said that the perpetrator thought that it was “okay” because they were both women. Had the harassment been from a male co-worker, Michelle said she would have reported it, but because it was two women, she said she “thought no one would take it seriously”.

\* names have been de-identified to protect confidentiality

### **People who identified as gay**

In our survey, 67 respondents identified as gay. Of those:

- 82.1% had witnessed a form of sexual harassment, and 73.1% had personally experienced some form of sexual harassment;
- more than half had experienced ‘suggestive comments and jokes’ or ‘intrusive questions or statements about private life’; and
- 35.82% of gay respondents said they had experienced sexual harassment which was a result of their sexual orientation.

Gay males were the highest cohort of respondents to our survey, and shared their experiences of sexual harassment from a range of people, including gay men and heterosexual female colleagues. Participants disclosed the way that their intersecting identities meant that they often experienced multiple forms of discrimination and harassment, such as homophobic bullying, racist jokes, stereotyping from within the gay male workforce, and discrimination at job interviews on the grounds of their HIV status.

One respondent stated that:

*I work in a very gay male environment and everyone makes sexual comments all day, particularly at night and at social events. It offends me when they use out of date terms like ‘rice queen’ because I have an Asian boyfriend.*

Another respondent’s experience was:

*[I experienced sexual harassment]...by two colleagues. The first was a young woman who would tell me I had a nice arse and pinch my bum when I was using the photocopier. That happened half a dozen times and after the last incident I told her what she was doing was sexual harassment. She kept her hands to herself after that. The second person was a drunk academic who forced me up against a wall and ran his hands up and down my torso whilst telling me how toned I was from swimming. I made a formal complaint and his response was to threaten to sue me.*

Another respondent disclosed the following experience:

*I was given a large range of sexually explicit gifts as a farewell present, such as a dildo and other penis related paraphernalia.*

### **People who identified as bisexual**

Studies have shown that bisexual people can experience distrust in the workplace, from both the heterosexual and gay and lesbian community, leading to “*the perception that bisexuals are often seen as unstable, unreliable, and therefore un-promotable.*”<sup>12</sup> In our survey, 31 people identified as bisexual, and of those:

- 80.6% indicated that they had experienced at least one form of the listed sexual harassment;
- 64.5% had intrusive questions or statements made about their private lives in the workplace;
- 38.71% of bisexual respondents said that they had been sexually harassed in the workplace due to their sexuality; and
- 41.95% of bisexual respondents had reported sexual harassment.

#### **CASE STUDY: Samia\***

Samia identifies as a bisexual female. She says that:

*“I would often go for drinks with other vollies after work. One guy would get blind drunk and hit on girls every time. One night he was blind drunk and said to me “I’d fuck you if you weren’t a lesbian.” It was really scary because he wasn’t asking me if I wanted to, his opinion was the only important one. I laughed it off and went to talk to someone else. A few weeks later at drinks he said it to me again, in front of my girlfriend. I never told anyone that he scared me I think because it never actually happened when we were on duty. But it is a reason I would never volunteer there again. By the way, I was 19-20, he was 35.”*

*\* names have been de-identified to protect confidentiality*

### **People who identify as asexual**

Of the 7 survey respondents who identified as asexual, we received the following responses:

- 66.67% indicated that they had experienced at least one form of the listed sexual harassment;
- 66.67% had intrusive questions or statements made about the private lives in the workplace;

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<sup>12</sup> J.Fae, ‘Survey finds different challenges for bisexuals’, *Pink News* [website], 25 October 2010, <<https://www.pinknews.co.uk/2010/10/25/survey-finds-different-challenges-for-bisexuals/>>.

- 42.86% of asexual respondents said that they had been sexually harassed in the workplace due to their sexuality; and
- 14.29% of asexual respondents had reported sexual harassment.

The asexual community is not currently well understood by the mainstream Australian community,<sup>13</sup> and the experiences of survey respondents reflected this. For example:

*I have been ridiculed by colleagues for not being interested in sex and pressured to take part in sexualised conversation I was clearly uncomfortable with.*

And:

*People at work are always asking me why I don't have a girlfriend or boyfriend, (and ask) "when am I gonna realize that I am gay?" I am just there to work, don't need people's opinions about who I should be f\*cking.*

### **People who identify as pansexual**

Of the 6 survey respondents who identified as pansexual, we received the following responses:

- 66.67% indicated that they had experienced at least one form of the listed sexual harassment;
- 66.67% had intrusive questions or statements made about the private lives in the workplace;
- 40.00% of pansexual respondents said that they had been sexually harassed in the workplace due to their sexuality; and
- No respondent who identified as pansexual had ever reported sexual harassment.

One respondent shared the following experience:

*I've been called a carpet muncher, lesbo etc. Subjected to stupid stereotypes about my life. The worst culprits are gay guys. They think it's all a joke and that they are allowed to say degrading stuff to me because they are gay.*

### **People born with a variation of sex characteristics (intersex)**

We received only a small number of responses (4) from people who were born with a variation of sex characteristics (intersex). We acknowledge the small reach of our survey and therefore, in accordance with our recommendations below, we submit that more extensive research is required into the diverse experiences of this community in partnership with peer-based organisations such as Intersex Human Rights Australia.<sup>14</sup> Nonetheless, it is pertinent that all

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<sup>13</sup> C. Warren, 'Asexuals struggle to come out in this sexed-up world', ABC News [website], 18 January 2018, <<https://www.abc.net.au/news/health/2018-01-18/being-asexual-in-a-sexually-charged-society/9304594>>.

<sup>14</sup> <https://ihra.org.au/>

of our respondents who disclosed having a variation of sex characteristics (intersex) reported that they had experienced multiple forms of sexual harassment on the grounds of their gender identity.

For example, one respondent said that:

*I was constantly asked highly inappropriate questions regarding surgery, genitals, and sex.*

Intersex Human Rights Australia have created an excellent resource with Pride in Diversity entitled “*Employers’ Guide to Intersex Inclusion*”.<sup>15</sup> At page 28, the guide recommends that workplace resources that address discrimination, sexual harassment and bullying should include examples such as “*constant commentary, innuendo and/or jokes in relation to one’s orientation, gender identity, expression or intersex status.*” The guide also recommends that workplaces provide information to staff upon commencement of employment that specifically prohibits disclosing information in relation to one’s sexual orientation, gender identity or intersex status with a view of vilifying or causing undue stress to an individual.<sup>16</sup>

**Recommendation 1:** The Australian Human Rights Commission should consult with Intersex Human Rights Australia in order to implement strategies for Australian workplaces to eliminate sexual harassment that addresses the diverse experiences and needs of people born with a variation of sex characteristics (intersex).

### **People who identify as trans and gender diverse**

Trans and gender diverse (**TGD**) people experience significantly higher rates of mental health issues and suicide rates, with transgender adults being eighteen times more likely than the general population to have thoughts of suicide.<sup>17</sup> Accordingly, it is of particular concern that these individuals are reporting high levels of sexual harassment in the workplace.

There were multiple ways in which TGD people had experienced harassment. While cis-gendered people are rarely asked such questions at work, multiple survey respondents reported intrusive questions about potential surgeries, genitalia and their sex-life. Others reported that transitioning in the workplace led to an increase in unwanted discussions about their body, clothing and appearance as well as inappropriate touching. These examples indicate that TGD people experience both sexual harassment and other forms of discriminatory conduct in the workplace on the grounds of gender identity. They also reflect

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<sup>15</sup> Pride in Diversity, ‘*Employers’ guide to intersex inclusion*’, Intersex Human Rights Australia [website], 2014, <<https://ihra.org.au/wp-content/uploads/key/Employer-Guide-Intersex-Inclusion.pdf>>.

<sup>16</sup> Ibid, p 28.

<sup>17</sup> LGBTI National LGBTI Health Alliance, ‘The statistics at a glance: the mental health of lesbian, gay, bisexual, transgender and intersex people in Australia’, LGBTI Health [website], 2016, <<https://lgbtihealth.org.au/statistics/>>.

the great deal of anecdotal evidence that trans women experience over-sexualisation and fetishization at all levels of society from the workplace,<sup>18</sup> the media<sup>19</sup> and the street.<sup>20</sup>

### Transgender males

Of the 13 survey respondents who identified as transgender male:

- 90% indicated that they had experienced at least one form of the listed sexual harassment;
- 80% had intrusive questions or statements made about the private lives in the workplace;
- 30.77% of respondents said that they had been sexually harassed in the workplace due to their gender identity; and
- 30.77% of respondents had reported sexual harassment.

One respondent provided the following example:

*Frequent questions by multiple people about my genitals, what genital surgeries I want/have, and my genitals and trans status treated as a conversation topic people are abnormally interested in speaking to me about, in front of other staff and clients.*

### Transgender females

Of the 11 survey respondents who identified as transgender female:

- 87.50% indicated that they had experienced at least one form of the listed sexual harassment;
- 68.18% had intrusive questions or statements made about the private lives in the workplace;
- 54.55% of respondents said that they had been sexually harassed in the workplace due to their gender identity; and
- 40% had reported sexual harassment.

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<sup>18</sup> M. Griffiths, 'As a transgender female I have been bullied and harassed. This ends now', *The Guardian* [website], 12 June 2018, <<https://www.theguardian.com/commentisfree/2018/jun/12/as-a-transgender-female-i-have-been-bullied-and-harassed-this-ends-now>>.

<sup>19</sup> E. Brook, 'How media reports affect trans people, and what should be done', *The Conversation* [website], 8 November 2014, <<https://theconversation.com/how-media-reports-affect-trans-people-and-what-should-be-done-32604>>.

<sup>20</sup> A. Valens, 'When we talk about sexual harassment, let's not forget about trans women', *Hello Giggles* [website], 2 November 2017, <<https://hellogiggles.com/lifestyle/sexual-harassment-dont-forget-trans-women/>>.

### **CASE STUDY: Tara\***

*I came out at work as trans recently. The following Saturday, my manager phoned me at home to enquire how the Thursday and Friday had gone and if there were any problems with other employees. Near the end of the conversation he mentioned that he'd pulled my file which had a photo of my new female self and said that looking at the photo, he'd f\*\*k me. I didn't know what to say, I think he was trying to give me a compliment but it was totally inappropriate.*

*\* names have been de-identified to protect confidentiality*

### **People who identify as non-binary**

Of the 27 survey respondents who identified as non-binary:

- 83.33% indicated that they had experienced at least one form of the listed sexual harassment;
- 79.17% had intrusive questions or statements made about the private lives in the workplace;
- 22.22% of respondents said that they had been sexually harassed in the workplace due to their gender identity; and
- 11.54% had reported sexual harassment.

### **CASE STUDY – Jo\***

Jo identifies as bisexual, non-binary. Jo is an employee in the private sector who reported having experienced harassment in the workplace due to their sexuality and gender. They have been subjected to statements such as “*you look like a lesbian*” and often overheard comments such as “*what is IT? I can't tell if THAT is a boy or a girl*”.

Jo reported that these comments make them feel targeted and unsafe at work, but also reported that they can't do anything to protect themselves.

*\* names have been de-identified to protect confidentiality*

Of our respondents who identified as TGD, those who had tried to report experiences of sexual harassment indicated that they felt their claims were often not taken seriously. For example:

*My transness and questions around it are brushed off as [a] reasonable curiosity, and I've been bullied by upper management for being a 'trans activist' in retaliation (despite not doing anything and trying to stay under the radar).*

## **D. Sexual harassment within LGBTIQ workplaces**

Another driver of workplace sexual harassment may be the culture within specific kinds of workplaces. Our survey responses indicate that LGBTIQ workplaces are also not immune

from sexual harassment. Of 182 total respondents, 42 respondents (23 %) to our survey indicated that they worked or volunteered for an LGBTIQ organisation. Of these:

- 78.6% had witnessed some form of sexual harassment;
- 71.4% had experienced some form of sexual harassment in the workplace (the most common being suggestive comments or jokes, 93.3%);
- 43.9% said the harassment was (or was presumed to be) as a result of their sexual orientation;
- 9.52% said they were harassed because of their trans or gender diversity; and
- only 26.7% of those who experienced sexual harassment had reported it.

Significantly, 73.3% of those who experienced sexual harassment (within LGBTIQ organisations) reported that they experienced barriers to reporting it. The same amount said that they would report it if they could remain anonymous (approaches to reporting are discussed in more detail below). In contrast, of those respondents who indicated they *didn't* work or volunteer in an LGBTIQ organisation, but still experienced sexual harassment, 58.88% said that they experienced barriers to reporting it. Although the survey was limited in its scope and reach, this suggests that there may be greater barriers to reporting sexual harassment in LGBTIQ organisations.

Given that the foundation of LGBTIQ organisations are, at least for some, the shared sexuality of individuals they provide goods/services to and of their employees/volunteers, this may create an environment where explicit comments about that shared sexuality are presumed to be acceptable. In some contexts, there may be a more permissive attitude to sexualised remarks in the workplace and a lack of awareness of the impact that power structures can have on people subjected to sexual harassment, no matter what their gender identity or sexual orientation. See for example the case studies of Dale (below) and Michelle above at page 9.

#### **CASE STUDY – Dale\***

Dale identifies as a bisexual, transgender man. Dale reported that in all their work experience, they have experienced the most sexual harassment from lesbian and gay people while working in LGBTIQ organisations. Dale felt that their body was seen as “*free game for discussion and it seems framed as gay people trying to figure out if they're still gay if they are attracted to (me)/if they'd have sex with a trans person or not*”. Colleagues would ask Dale lots of questions about trans genitalia and openly discuss what surgeries Dale was getting. Dale experienced bullying following requests to end any of these personal conversations.

*\* names have been de-identified to protect confidentiality*

The experiences of people like Michelle and Dale would likely be able to be addressed through targeted education, and the development of effective policies and procedures within LGBTIQ organisations.

For example, in Victoria the community education organisation Undercurrent offers a professional development program focusing on “*developing an awareness of the prevalence of violence in our community, with a particular focus on family violence, sexual violence and bullying.*”<sup>21</sup> Training of this kind could be extended to include best-practice organisational responses to sexual harassment within LGBTIQ organisations to help develop the sector’s understanding of the unique ways in which LGBTIQ people experience sexual harassment, and how LGBTIQ organisations should respond when allegations of this kind occur internally.

**Recommendation 2:** The Australian Human Rights Commission template sexual harassment policy<sup>22</sup> should be amended to explicitly acknowledge the wide spectrum of conduct that constitutes sexual harassment, including harassment towards LGBTIQ people.

**Recommendation 3:** The Australian Institute of Community Directors template sexual harassment policy<sup>23</sup> (currently used by many not-for-profit organisations) should be amended to explicitly acknowledge the wide spectrum of conduct that constitutes sexual harassment, including harassment towards LGBTIQ people.

**Recommendation 4:** LGBTIQ organisations should implement professional development programs focussing on developing an awareness of sexual harassment in the workplace.

**Recommendation 5:** State, Territory and Federal governments should fund targeted training for not-for-profit organisations to assist them to effectively implement sexual harassment policies and prevention strategies.

**Recommendation 6:** State, Territory and Federal governments should fund targeted peer-led research into the experiences of sexual harassment in the workplace experienced by members of the LGBTIQ community in order to ensure that all resources addressing the issue includes the experiences of LGBTIQ people.

## E. Preventing sexual harassment

In Victoria, it is against the law to discriminate against a person on the basis of their sex, sexual orientation and gender identity.<sup>24</sup> However, based on our research and casework, this is not enough to prevent sexual harassment.

As set out above, we support the submission made by Victoria Legal Aid, which makes extensive recommendations including calling for a stronger regulatory framework and response to prevent sexual harassment, and better support for victims of sexual harassment.

We have therefore focussed our submissions below on specific measures to address sexual harassment of the LGBTIQ community through:

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<sup>21</sup> Community Education Project Undercurrent, ‘Professional Development for Organisations’, *Under Current Victoria* [website], 2018, <<http://www.undercurrentvic.com/organisations>>.

<sup>22</sup> <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/workplace-discrimination-and-harassment-policy>

<sup>23</sup> <https://www.communitydirectors.com.au/icda/policybank/>

<sup>24</sup> *Equal Opportunity Act 2010* (Vic), Part 4.

- research;
- reporting methods;
- education; and
- support provided to victims of sexual harassment.

## Research

As discussed above, the current discourse around sexual harassment in the workplace focusses on the more heteronormative forms, i.e. cis-gendered men harassing cis-gendered women. While this is something that deserves focus, in light of the responses we received from our survey, we submit it would be valuable to conduct more specific and in-depth research into the experiences of the LGBTIQ community.

The lack of available information on the rates and issues of sexual harassment in the LGBTIQ community has been recognised by the AHRC. In its paper titled '*Violence, Harassment and Bullying and the LGBTI Communities*', the AHRC recognised that:<sup>25</sup>

*Violence, harassment and bullying are often hidden, under recorded and under reported. This makes it difficult to gain an accurate representation of the extent of the problem. Reasons for the lack of accurate statistics are multifaceted and linked with the entrenched and complex nature of violence, harassment and bully in the community. There can be considerable fear and stigma associated with reporting violence and sexual abuse. This can be exacerbated when there are not appropriate and accessible support services available.*

Any research on the experience of the LGBTIQ community needs to be:

- targeted towards the LGBTIQ community;
- peer led; and
- anonymous.

Results from research should be used to frame a comprehensive document (i.e. guidelines), which incorporates strategies for the prevention of violence against the LGBTIQ community. Similar to OurWatch's *Change the Story: A Shared framework for the primary prevention of violence against women and their children in Australia*, this document should not be limited to sexual harassment in the workplace.<sup>26</sup>

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<sup>25</sup> Australian Human Rights Commission, '*Violence, harassment, and bullying and the LGBTI Communities*', *Australian Human Rights Commission* [website], 2011, <[https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB\\_LGBTI.pdf](https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB_LGBTI.pdf)>.

<sup>26</sup> <https://www.ourwatch.org.au/what-we-do/national-primary-prevention-framework>

## Reporting methods

One of the key takeaways from our survey is the barriers experienced in reporting sexual harassment. We found that 56.6% of respondents who had witnessed or experienced sexual harassment in the workplace stated that they had experienced barriers to reporting that harassment, and 74.59% of respondents reported that they would be more likely to report workplace sexual harassment if they could remain anonymous.

In accordance with responses provided in our survey, reported barriers included:

- complaints not being taken seriously, with managers and human resources staff laughing in response to a complaint;
- fear of the negative impact a complaint may have on the victim's employment (one respondent stated they were concerned about "*wanting to be a good fit for workplace and have contracts renewed and opportunities extended to me*");
- management perpetrating the harassment; and
- a lack of clear processes or support systems in place to support those wanting to report sexual harassment often resulting in mistrust and fear of retribution.

These responses reflect the results of the 2008 Sexual Harassment National Telephone Survey conducted by the AHRC<sup>27</sup> in which it was found that "*only 16% of those who (had) been sexually harassed in the (previous) five years in the workplace formally reported or made a complaint*".

Particular concerns of the LGBTIQ community relate to feeling like their concerns would not be taken seriously as their experience did not fit the most commonly discussed pattern of a cis-gendered male harassing a cis-gendered female. For some, there was also the emotional barrier of wanting to protect one's own community, i.e. "*it seemed inappropriate to report another lesbian for harassment in a heterosexual dominant workplace*".

Without people willing or able to report instances of sexual harassment, there is unlikely to be a change to harassers' behaviour. We submit that people need to be provided with a safe way of reporting harassers without the fear of ramification.

In Victoria, victims of sexual assault are able to make anonymous reports online via [www.sara.org.au](http://www.sara.org.au)<sup>28</sup>. These reports are then forwarded to the South Eastern Centre Against Sexual Assault (**SECASA**) as a means of gathering intelligence and ultimately passed on to police (with any identifying marks of the victim removed) for the purpose of identifying trends and locate hotspots.

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<sup>27</sup> Australian Human Rights Commission, 'Violence, harassment, and bullying and the LGBTI Communities', *Australian Human Rights Commission* [website], 2011, <[https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB\\_LGBTI.pdf](https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB_LGBTI.pdf)>.

<sup>28</sup> SARA stands for "Sexual Assault Report Anonymously", and is an online tool which allows for individuals to report sexual assault anonymously to the South Eastern Centre Against Sexual Assault. The data provided to SARA is passed on to police all over Australia.

**Recommendation 7:** The Australian Human Rights Commission should support the development of an online anonymous reporting tool for the purpose of collecting information on sexual harassment, including trends and common workplaces, with the option of providing support to victims of sexual harassment. Any reporting tools must incorporate specific questions that relate to the LGBTIQ community, developed in consultation with LGBTIQ organisations.

## Education

*Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom...No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.<sup>29</sup>*

Many of the respondents to our survey reported experiencing a lack of understanding of LGBTIQ issues in the workplace. For example, as discussed in our case studies, many respondents reported that management and other colleagues laughed off comments sexualised comments as “jokes”.

Education is a key component to addressing sexual harassment in the workplace. Organisations, particularly management and human resources staff, need to have an understanding of the terminology surrounding lesbian, gay, bisexual, transgender and people born with a variation of sex characteristics (intersex).

**Recommendation 8:** That State, Territory and Federal Governments needs to implement, and advocate for, workplace training that aims to change gendered attitudes and entrenched behaviours that lead to sexual harassment. Training should include:

- peer-led understanding of gender identity and sexual orientation;
- peer-led understanding of people born with a variation of sex characteristics (intersex);
- diversity and inclusion; and
- zero tolerance approaches to homophobic, biphobic, queerphobic intersexist and transphobic harassment in the workplace.

It is vital that any training program be run by organisations staffed by people with a lived experience of the LGBTIQ characteristic that they are running training on.

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<sup>29</sup> The Yogyakarta Principles, 'Principles on the application of international human rights law in relation to sexual orientation and gender identity', *UNAIDS* [website], March 2007, Principle 3, page 11, <[http://data.unaids.org/pub/manual/2007/070517\\_yogyakarta\\_principles\\_en.pdf](http://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf)>.

Whilst these are not a legally binding set of principles, they have been used to form Australian Government Policy including the Australian Human Rights Commission paper *Sex Files* (see above footnote 2).

## Support

*Violence, harassment and bullying in the workplace can have a serious impact on the right of LGBTI people to work and to just and favourable conditions of work. An unhealthy, violent or threatening workplace may also result in the violation of other rights, such as the right to a private life and to the highest attainable standard of physical and mental health.*<sup>30</sup>

In accordance with research conducted by BeyondBlue, “non-heterosexual people face up to twice as much abuse or violence (including physical, mental, sexual or emotional) than their heterosexual counterparts”.<sup>31</sup>

In this context, we submit that support services need to be made available to members of the LGBTIQ community who have been the victim of sexual harassment. Any support services need to be peer-led to ensure that such services understand the multifaceted concerns of our communities.

**Recommendation 9:** Funding be made available for peer-led services to support members of the LGBTIQ community who have been subject to sexual harassment. This should include peer-led counselling, legal advice, victim support and advocacy.

We urge the AHRC to consider the unique ways sexual harassment manifests itself for the LGBTIQ community.

If you have any queries, please contact Sam Elkin [REDACTED]  
[REDACTED]

Yours faithfully

**ST KILDA LEGAL SERVICE CO-OP LTD**

**Agata Wierzbowski**

Principal Lawyer and Executive Officer

**Courtney Peters**

Legal Education & Law Reform Lawyer

**Sam Elkin**

LGBTIQ Outreach Lawyer

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<sup>30</sup> Australian Human Rights Commission, ‘Violence, harassment, and bullying and the LGBTI Communities’ o.p. cit., p.7.

<sup>31</sup> Beyond Blue, ‘Factors affecting LGBTI people’, *Beyond Blue* [website], <<https://www.beyondblue.org.au/who-does-it-affect/lesbian-gay-bi-trans-and-intersex-lgbti-people/factors-affecting-lgbti-people>>, accessed 21 February 2019.

## Annexure A

### LGBTIQ Legal Service Survey

The LGBTIQ Legal Service would like to gather feedback on the experiences of LGBTIQ+ people's experiences of sexual harassment.

Your feedback will form the basis of our submission to the [National Inquiry into Sexual Harassment in the Workplace](#), so that the Australian Human Rights Commission can better understand how the LGBTIQ community is affected by sexual harassment. You can also make your [own submission](#). Information collected in this survey may be drawn upon, quoted or referred to as part of the submission process. Responses are anonymous, and any information used will be de-identified. If you have any questions or concerns, please do not hesitate to contact the [LGBTIQ Legal Service](#).

If you find that completing this survey is causing you distress, you can call [1800RESPECT](#) (Ph: 1800 737 732) – National Sexual Assault, Domestic Family Violence Counselling Service or [Switchboard](#) on 1800 184 527.

#### Question Title

1 What is your age?

- Under 18
- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65-74
- 75-84
- 85 and over

#### Question Title

2 What best describes your sexual orientation?

- Lesbian
- Gay
- Bisexual
- Asexual
- Straight
- Something else (please describe)

**Question Title**

**3** What sex were you assigned at birth? i.e. the legal sex on your original birth certificate

- Female
- Male
- Prefer not to answer
- Different classification (please state)

**Question Title**

**4** What best describes your gender identity?

- Female
- Male
- Non-binary
- Prefer not to answer
- Something else (please describe)

**Question Title**

**5** Were you born with a variation of your sex characteristics (sometimes known as an intersex condition)?

- Yes
- No
- Unsure
- Prefer not to answer

**Question Title**

**6** This survey relates to your experiences in the workplace. For the purposes of this survey, are you responding as a:

- Volunteer
- Employee
- Manager
- Owner
- Other (please describe)

**Question Title**

**7** Do you work or volunteer for an LGBTIQ organisation?

- Yes
- No

**Question Title**

**8** Which sector do you work/volunteer in?

- Charitable/Not-for-profit Sector
- Public Sector
- Private Sector
- Research/Academia
- Other (please describe)

**Question Title**

**9** Have you ever witnessed any of the following unwanted behaviour in your workplace?

- Staring or leering
- Unnecessary familiarity, such as deliberately brushing up against others or unwelcome touching
- Suggestive comments or jokes
- Insults or taunts of a sexual nature
- Intrusive questions or statements about someones private life
- Displaying posters, magazines or screen savers of a sexual nature
- Sending sexually explicit emails or text messages
- Inappropriate advances on social networking sites
- Accessing sexually explicit internet sites
- Requests for sex or repeated unwanted requests to go out on dates
- Behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

**Question Title**

**10** Have you ever personally experienced any of the following unwanted behaviour in your workplace?

- Staring or leering
- Unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching
- Suggestive comments or jokes
- Insults or taunts of a sexual nature
- Intrusive questions or statements about your private life
- Displaying posters, magazines or screen savers of a sexual nature
- Sending sexually explicit emails or text messages

- Inappropriate advances on social networking sites
- Accessing sexually explicit internet sites
- Requests for sex or repeated unwanted requests to go out on dates
- Behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

**Question Title**

**11** Have you ever been sexually harassed in your workplace due to your sexual orientation (or presumed sexual orientation)?

- Yes
- No
- Unsure

If yes, please describe

**Question Title**

**12** Have you ever been sexually harassed in the workplace due to being trans or gender diverse?

- Yes
- No
- Unsure

If yes, please describe

**Question Title**

**13** Have you ever been sexually harassed in your workplace due to a variation of your sex characteristics (sometimes known as an intersex condition)?

- Yes
- No
- Unsure

If yes, please describe

**Question Title**

**14** Have you ever been sexually harassed due to another one of your personal attributes (for example your age, your race or ethnic origin, HIV status, disability or mental health condition)?

- Yes
- No
- Unsure

If yes, please describe

**Question Title**

**15** Have you ever reported sexual harassment in your workplace?

- Yes
- No

**Question Title**

**16** Have you experienced barriers to reporting sexual harassment?

- I have not witnessed or experienced sexual harassment in the workplace
- No
- Yes (please describe)

**Question Title**

**17** Would you be more likely to report workplace sexual harassment if you could remain anonymous?

- Yes
- No
- Unsure

Tell us why (optional)

**Question Title**

**18** Is there anything else you'd like to tell us?