

28 February 2019

National Inquiry Project Team
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

By email: SH.Inquiry@humanrights.gov.au

To Whom it May Concern

Re: National Inquiry into Sexual Harassment in Australian Workplaces

Rape & Domestic Violence Services Australia (R&DVSA) welcome the opportunity to contribute to the Australian Law Reform Commission's National Inquiry into Sexual Harassment in Australian Workplaces.

R&DVSA is a non-government organisation that provides a range of specialist trauma counselling services to people whose lives have been impacted by sexual, family or domestic violence and their supporters.

Endorsement of Unions NSW submission

R&DVSA endorse the full set of recommendations made by Unions NSW in their submission to this inquiry.

The current anti-discrimination framework which deals with sexual harassment through an individualised complaints process is not working. It places an unacceptable burden on individuals who have experienced sexual harassment to enforce their rights and hold perpetrators and employers to account. Further, it delivers severely limited remedies that have little capacity to prevent future harassment or deliver cultural change.

R&DVSA agree with Unions NSW that there must be a fundamental shift in the framing of sexual harassment – from an individualised issue which requires an individual complaints response, to a systemic issue which demands a multi-pronged preventative approach.

In line with recommendations made by Unions NSW, we urge that reforms should aim to:

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Counselling Services

24/7 NSW Rape Crisis 1800 424 017
CBA Domestic &
Family Violence Line 1800 222 387
Sexual Assault
Counselling Australia 1800 211 028
rape-dvservices.org.au

- Shift the burden from individuals to employers, by creating a positive duty on employers to prevent workplace sexual harassment enshrined in both work health and safety legislation and anti-discrimination legislation.
- Enhance external oversight and transparency, by empowering and resourcing regulators and unions to enforce the law, and requiring employers to comply with reporting obligations.
- Improve the complaints process, by establishing professional standards for workplace investigators, removing unfair restrictions in anti-discrimination legislation (including time limits, caps on compensation, and the prohibition of multiple actions), and regulating the use of confidentiality clauses in settlements.
- Expand avenues for redress, by creating a standalone civil remedy provision in the *Fair Work Act 2009*, developing a framework for alternative dispute resolution processes, and ensuring that complainants have access to anonymous reporting tools.
- Protect public disclosures, by enhancing whistleblower protections and reforming defamation laws.
- Address specific barriers to disclosure faced by vulnerable and low income workers, by reforming industrial laws to enhance job security and employment entitlements and implementing specific protections for temporary migrant workers.
- Increase support for people impacted by sexual harassment, by allocating additional funding to legal services, establishing Working Women’s Centres in all States and Territories, and ensuring the availability of specialist counselling services.

Recommendation 1: Implement the full set of recommendations made by Unions NSW in their submission to the National Inquiry into Sexual Harassment in Australian Workplaces.

A national telephone counselling service

In addition to those recommendations made by Unions NSW, R&DVSA recommend the establishment of a national telephone counselling service to provide specialist counselling support to people impacted by sexual harassment.

A national telephone counselling service could provide information, advice, counselling and referrals to people who have experienced sexual harassment, as well as bystanders, employers, and other professional or non-professional supporters.

Understanding sexual harassment through a trauma lens

R&DVSA consider that sexual harassment should be understood through the framework of trauma. This is because sexual harassment often has similar impacts on a person’s health and wellbeing as other traumatic events, including sexual assault.¹

¹ Claudia Avina and William O’Donohue, ‘Sexual Harassment and PTSD: Is Sexual Harassment Diagnosable Trauma?’ (2002) 15(1) *Journal of Traumatic Stress* 69; Mimoza Birinxhikaj and Marika Guggisberg, ‘The wide

According to Avina and O'Donohue, the reason why sexual harassment may produce trauma impacts is because it represents a threat to physical integrity. For example, sexual harassment may threaten:

- A person's financial wellbeing;
- A person's physical boundaries; and/or
- A person's control over situations that she should legitimately be able to have some control.²

In their 2013 meta-analysis, Hills and Joyce found that people impacted by sexual harassment commonly experience a multitude of psychological impacts, including symptoms of anxiety, stress, frustration, anger and self-blame.³ Avina and O'Donohue found that sexual harassment may produce PTSD symptoms in nearly a third of people who experience it.⁴

This is supported by findings from the 2018 AHRC survey on sexual harassment, which found that people who experienced sexual harassment commonly experienced negative impacts on their mental health (36%) and their self-esteem and confidence (33%).⁵

Further, in their 2008 systemic review of the literature, Cortina and Berdahl found that people impacted by sexual harassment may experience numerous physical health problems including chronic headaches, weight fluctuation, exhaustion, sleep problems, gastric problems, respiratory problems, nausea, musculoskeletal pain and cardiovascular problems.⁶

The need for specialist counselling

Given the severity of these trauma impacts, R&DVSA consider that people impacted by sexual harassment may require access to specialist counselling.

A specialist counselling service may assist someone who has experienced sexual harassment to:

- Understand and manage any impacts of trauma;
- Achieve safety, including external safety from the harasser and internal safety in relation to their personal health and wellbeing;
- Make decisions about whether to take action; and
- Access face-to-face support, including counselling, legal and other support services (such as the Working Women's Centres discussed by Unions NSW).

ranging impact of sexual harassment in the workplace: An Australian pilot study' (2017) 25(1) *International Journal of Employment Studies* 6.

² Claudia Avina and William O'Donohue, 'Sexual Harassment and PTSD: Is Sexual Harassment Diagnosable Trauma?' (2002) 15(1) *Journal of Traumatic Stress* 69,73.

³ Danny James Hills & Catherine M Joyce, 'In harm's way: The impact of workplace aggression in Australian clinical medical practice' (2012) 197(6) *Medical Journal of Australia* 336.

⁴ Claudia Avina and William O'Donohue, 'Sexual Harassment and PTSD: Is Sexual Harassment Diagnosable Trauma?' (2002) 15(1) *Journal of Traumatic Stress* 69, 71.

⁵ Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018), 59.

⁶ Lilia M. Cortina and Jennifer L. Berdahl, 'Sexual harassment in organizations: A decade of research in review', In CL Cooper & J Barling (Eds.), *The SAGE Handbook of Organizational Behavior* (Sage Publications. Los Angeles, CA, 2008).

A specialist counselling service may also assist third parties – including bystanders, employers, professional or non-professional supporters – to understand how they may best support someone who has experienced sexual harassment.

It is imperative that any counselling service providing support to people impacted by sexual harassment has a thorough grounding in the principles of trauma and its impacts. These include:

- Understanding trauma impacts and locating the source of the problem as the traumatic event, and not the client.
- Prioritising the client’s safety, including internal and external safety.
- Supporting the client to regain a sense of empowerment, choice, control and autonomy.
- Integrating care by maintaining a holistic view of the client and their recovery process.
- Understanding that recovery is aided by safe, authentic and caring relationships.

The efficacy of telephone counselling

R&DVSA submit that a national telephone counselling service could increase access to support for people impacted by sexual harassment.

Telephone counselling has been shown to be effective in a range of contexts, including managing trauma impacts.⁷ Further, telephone counselling may have several advantages over other counselling modalities, including:

- Increased accessibility. Telephone services may be more accessible than face-to-face counselling services for people who have limited financial resources, live in rural or remote locations, or experience barriers as a result of disability or trauma impacts.⁸
- Greater immediacy. Telephone services are able to provide more immediate intervention at times of significant external or internal crisis, especially as they do not usually have waiting lists like face-to-face counselling services often do.⁹
- Increased possibilities for client-led interventions. Telephone services may assist clients to regain a sense of empowerment and autonomy, by allowing clients greater control than they would otherwise have during face-to-face counselling. Clients may choose to remain anonymous, to engage in counselling at their preferred time and in a comfortable location, and to terminate the session at will by simply hanging up the phone. In this way, telephone counselling may reduce the risk of replicating abusive dynamics of power and control by the counsellor over the client.¹⁰

⁷ See, for example, R. A. Bryant, ‘An analysis of calls to a Vietnam veterans’ telephone counselling service’ (1998) 11(3) *Journal of Traumatic Stress* 589; D. Hailey, R. Roine, and A. Ohinmaa, ‘The Effectiveness of Telemental Health Applications: A Review’ (2008) 53(11) *The Canadian Journal of Psychiatry* 769; D. M. Sloan, M. W. Gallagher, B. A. Feinstein, D. J. Lee, and G. M. Prunea, ‘Efficacy of Telehealth Treatments for Posttraumatic Stress-Related Symptoms: A Meta-Analysis’ (2011) *Cognitive Behaviour Therapy* 1.

⁸ See, for example, G. A. Brenes, C. W. Ingram, and S. C. Danhauer, ‘Benefits and challenges of conducting psychotherapy by telephone’ (2011) 46(2) *Professional Psychology: Research and Practice* 543

⁹ See, for example, J. G. Perle, L.C. Langsam and B. Nierenberg, ‘Controversy clarified: An updated review of clinical psychology and tele-health’ (2011) 31(8) *Clin Psychol Rev* 1247; R. K. James and B. E. Gillard, *Crisis intervention strategies* (Belmont, CA: Wadsworth, 7th Ed, 2013).

¹⁰ Ibid.

- Greater assurance of confidentiality. Telephone services may encourage help-seeking behaviours for people who have experienced sexual harassment or other types of sexual violence, by delivering a practice framework that supports and responds appropriately to disclosure. Research shows that people who have experienced sexual violence face many barriers to disclosure, including feelings of shame, self-blame, and fear of repercussions. People impacted by workplace sexual harassment may have additional concerns about confidentiality in regards to their employer. Telephone counselling may reduce these barriers and normalise help-seeking behaviours by offering counselling on an anonymous, confidential, and non-intrusive basis.

Recommendation 2: Establish a national telephone counselling service to provide information, advice, counselling and referrals to people impacted by sexual harassment, as well as bystanders, employers, and other professional or non-professional supporters.

Recommendation 3: Fund the national counselling service to provide specialist training and support to existing face-to-face counselling services around Australia.

If you have any questions or would like to discuss further, please do not hesitate to contact me on (02) 8585 0333 or by email at karenw@rape-dvservices.org.au.

Yours faithfully,

Rape and Domestic Violence Services Australia

Karen Willis

Executive Officer