



OVERWHELMED AND FRUSTRATED

**EXPERIENCES OF WORKPLACE SEXUAL HARASSMENT AND
DISCRIMINATION; THE BARRIERS FACED WITH THE LEGAL SYSTEM**

**JOBWATCH AND RMIT SURVEY AND DATA ANALYSIS REPORT
SEPTEMBER 2023**

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Background

About JobWatch

JobWatch Inc (JobWatch) is a not-for-profit employment rights community legal centre based in Victoria and operating across Victoria, Queensland and Tasmania. Established in 1980, JobWatch is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged.

JobWatch’s Telephone Information Service (TIS) provides over 16,000 callers every year with tailored legal information and referrals about their workplace issues. The vast majority of TIS callers are not union members and cannot afford to get legal assistance from a private lawyer.

With over 240,000 caller records in our comprehensive database, JobWatch has insight and an acute understanding of trends in point-in-time workplace issues, and experiences of workers across three states.

About the issue

JobWatch’s comprehensive database captures point-in-time information about employment law issues experienced by workers who call the TIS, however there is a notable gap in justice system data about the non-legal and legal actions that are taken by workers after being provided with information about their issue.

“There is currently little consistency in the collection, monitoring and reporting of data on workplace sexual harassment by anti-discrimination and other regulatory agencies.”
(Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020, Australian Human Rights Commission)

There are a number of reasons for this gap, including but not limited to:

1. Victim-survivor reluctance to pursue a legal claim that can be counted in agency and court data:

“The disparity between the number of complaints received by discrimination agencies, and the findings of the AHRC are just one indication that, despite the prevalence of pregnancy discrimination at work, few women go on to lodge a formal legal claim.”
(Dominique Allen and Adriana Orifici, Understanding Pregnancy Discrimination: A pilot study of Victorian women’s experiences at work, 2022, Monash Business School, Monash University, Victoria.)

2. Settlement agreements that prevent applicants from speaking out:

“The Taskforce noted non-disclosure agreements (NDAs) are often misused to silence victims, protect employer reputations and avoid full liability. NDAs can also be used to hide serial offending and offenders.”
(Victorian Ministerial Taskforce on Workplace Sexual Harassment Recommendations, 2022)

3. Lack of transparency in employer performance in relation to their management of sexual harassment and discrimination complaints:

“...the 2018 National Survey found ... of those who made a formal complaint, almost half (45%) said nothing changed at their workplace as a result.”
(Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020, Australian Human Rights Commission)

To address this information gap, JobWatch undertook a survey of TIS callers who had reported experiences of workplace sexual harassment and discrimination, to better understand what non-legal and legal actions they had taken, and the outcomes of these actions.

The decision was made to focus on workplace sexual harassment and discrimination for this survey, as federal and state anti-discrimination laws offer different protections, and applicants could consider alternative avenues through industrial laws. Understanding that the sensitivity of the subject matter and the complexity of this system could deter some applicants, it made sense to capture relevant data about how it could be improved.

About the survey

The questions and format of the survey conducted by JobWatch were reviewed by Professor Georgina Heydon of RMIT University. JobWatch thanks Professor Heydon for her time and expertise.

In October and November 2022, JobWatch contacted just over 2,600 Victorians who had called the TIS since 2017 about an issue relating to workplace sexual harassment and discrimination, inviting them to complete this survey about their experience, and the actions they took.

In contacting these callers via email, JobWatch explained:

We are conducting this survey to find out the actions people took after raising issues of workplace sexual harassment and discrimination and being presented with their legal options – e.g. whether they put in discrimination claims, resolved things informally with their employer, or left their employment.

This will help to inform us on how we deliver our services and how our services may be improved. It will assist us to advocate for more government funding to provide more dedicated legal advice and representation services. We also expect to release a research report on our findings in 2023.

227 people voluntarily responded to the survey invitation, representing approximately 8.5 per cent of those invited to participate.

Due to this sample size, the findings are representative of potential trends or issues experienced by Respondents who have self-reported issues relating to workplace sexual harassment and discrimination. Further large-scale research would provide a greater statistical dataset to improve understanding of people's experiences.

About this report

Of the 227 survey Respondents, 202 people consented to have their response included in this research report. As such, this report provides a statistical summary of these 202 Respondents to the JobWatch 2022 Workplace Sexual Harassment and Discrimination Survey.

The report provides first a general summary of response data, then more detailed analysis of Respondents' experiences of non-legal and legal action and outcomes, categorised by the type of workplace sexual harassment and discrimination they reported experiencing.

A subsection has been included in the 'Sexual Harassment' chapter with detailed data analysis provided by academics Jessica Oldfield (RMIT) and Dr Rachel Loney-Howes (University of Wollongong). We thank them for their expertise and considerable contribution.

Each section of this report includes all responses to the particular type of discrimination, even where the Respondent has reported experiencing multiple forms of discrimination. As such, there is some duplication across the report – e.g. where a Respondent has reported experiencing disability, race and sex discrimination, they have been included in all three sections of the report.

Multiple answers were possible to some questions – for instance, where we asked Respondents what non-legal and legal actions they took. This is reflected in the data. Case studies are also provided to illustrate 'typical' cases in each category and have been de-identified to protect Respondents' identities.

The report concludes with recommendations on how the legal system can be improved to better support people who have experienced workplace sexual harassment and discrimination, with further useful resources and referrals.

About Discrimination

Generally, discrimination is when a person or people with a legally protected attribute are treated unfavourably because of that attribute.

In this report, we focus on discrimination based on age, disability, sex, parental, carer and family status, race and pregnancy and breastfeeding.

A note on language

The 202 survey responses captured in this report will be referred to as 'Respondents'.

JobWatch uses the term 'workplace sexual harassment and discrimination' to represent what has been reported by Respondents. However, it should be noted that a range of sexually harmful, abusive and violent experiences were disclosed by Respondents which have implications in criminal law.

The report refers to 'experiences of' workplace sexual harassment and discrimination as reported by the Respondents. This is based on Respondents' answers and does not reflect legal findings, if any.

The term 'employer' refers to the business entity for whom the Respondents worked.

The term 'perpetrator' refers to the alleged perpetrator or perpetrators named by the Respondents.

Quotes from survey responses have been provided in this report. Where needed, these quotes have been deidentified to remove employer and perpetrator names, and edited to correct spelling and grammar only.

Thank you

Most importantly, JobWatch thanks all Respondents for their time and generosity in sharing their experiences. Opening up and speaking up about potentially traumatic experiences can be difficult. That 227 people were willing to do so to help improve the system for others is powerful.

"Hopefully my response helps [create] change and allows many others who are experiencing [this] like me to access help easier."
(Survey Respondent, via email)

JobWatch thanks Professor Georgina Heydon, Sophie Hindes, Jessica Oldfield and Dr Leila Afshari from RMIT University, and Dr Rachel Loney-Howes from University of Wollongong, for their expertise in reviewing the survey and their significant contribution and data analysis to this report.

JobWatch acknowledges our funders, the Commonwealth of Australia's Attorney-General's Department, the Victorian State Government, and Victoria Legal Aid for their ongoing funding of our critical work in supporting the most vulnerable workers, including through our special legal project – the Workplace Sexual Harassment and Discrimination Project.

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Executive Summary

With the high volume of sexual harassment and discrimination calls to the JobWatch Telephone Information Service, JobWatch was interested in understanding the gap in justice system data about the non-legal and legal actions that are taken by workers after being provided with information about their issue. To address this information gap, JobWatch undertook a survey of these TIS callers.

227 people responded to the JobWatch 2022 Workplace Sexual Harassment and Discrimination Survey and 202 people consented to share their response in this research report.

Demographics

There were more female Respondents (147 Respondents, 72.77 per cent) than male (52 Respondents, 25.74 per cent), and non-binary Respondents (3 Respondents, 1.46 per cent).

Older people were statistically more likely to respond, but the highest number of responses were from those aged 35 – 59.

There was representation across both metropolitan Melbourne and regional Victoria, and from people identifying as Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ+, and living with disability, with ratios generally consistent with census statistics.

Work Status

Respondents were most likely permanent full-time (127 Respondents, 62.87 per cent) or permanent part-time (45 Respondents, 22.28 per cent) workers working for medium to large employers with over 15 employees (173 Respondents, 85.64 per cent). They were more likely to work in junior entry-level positions (42 Respondents, 20.79 per cent) or as individual contributors (90 Respondents, 44.55 per cent).

This difference in power, status and standing in the workplace when compared to the position of the perpetrators of the workplace sexual harassment and discrimination is stark.

Respondents reported that the perpetrators were primarily management, as supervisors or middle managers (56 Respondents, 27.72 per cent), senior managers (59 Respondents, 29.21 per cent), or directors / executives (69 Respondents, 34.16 per cent).

The power imbalance was a contributing factor to the experiences reported.

Experiences

Respondents reported a variety of different experiences of discrimination. 118 Respondents (58.42 per cent) reported experiencing a single type of discrimination, with the other 84 Respondents (41.58 per cent) reporting multiple types of discrimination.

The most common types of discrimination reported include:

- **Disability discrimination:** 68 Respondents (33.66 per cent)
- **Sexual harassment, assault and offence:** 48 Respondents (23.76 per cent)
- **Age discrimination:** 44 Respondents (21.78 per cent)
- **Parent, carer and family status discrimination:** 37 Respondents (18.32 per cent)
- **Sex discrimination:** 36 Respondents (17.82 per cent)
- **Race discrimination:** 30 Respondents (14.85 per cent)
- **Pregnancy and breastfeeding discrimination:** 11 Respondents (5.45 per cent)

191 Respondents (94.56 per cent) experienced discrimination either multiple times, or by multiple perpetrators.

Through their experience of discrimination, nearly 3 in 4 Respondents (72.77 per cent) reported multiple adverse outcomes including loss of job opportunities, financial reward, position and work, as well as harassment and bullying. Other Respondents reported single adverse outcomes from their experience.

Actions Taken by Respondents

Respondents were highly likely to have taken multiple non-legal actions to try to resolve their situation, with 147 Respondents (72.77 per cent) choosing two or more actions including internal complaints, seeking advice and support from non-legal professionals, negotiating other working arrangements, or choosing to leave for other opportunities.

Alarming, less than 3 per cent of Respondents reported positive outcomes from their non-legal actions.

Respondents were likely to have taken multiple legal actions to try to resolve their situation, with 118 Respondents (58.42 per cent) choosing two or more actions including seeking assistance from JobWatch and the Fair Work Ombudsman, making claims through either the anti-discrimination, industrial relations, or workplace health and safety jurisdictions.

Respondents expressed frustration with trying to navigate the legal system on their own, with many either giving up or seeking paid legal assistance.

Outcomes

Of the 144 Respondents who made an internal complaint, 97 of these Respondents (67.36 per cent) indicated that no changes were made to the workplace or their working conditions, and 95 of these Respondents (65.97 per cent) were actually treated badly or worse after speaking up, indicating that over 3 in 5 employers are not taking internal complaints seriously and acting to protect their employees from discrimination in the workplace.

Positive outcomes from legal actions taken were few and far between.

Only 42 Respondents (20.79 per cent) were able to reach a financial settlement with their employer, whereas many more were either unable to resolve the situation (27.72 per cent), or had chosen to move on from their employment in order to escape the situation.

In free text responses, many Respondents also provided commentary on the mental and emotional toll of their experiences, with many people talking about the stress, anxiety, poor mental health and even hospitalisation that resulted from their experiences.

KEY TAKEAWAYS

Respondents have told us about the impact of their experiences of workplace sexual harassment and discrimination.

They've told us about the mental and emotional toll of their experiences, and the financial and other losses they've incurred.

They've told us about the legal and non-legal actions they've taken to try to resolve the situation, and the overwhelmingly poor responses from employers in responding to complaints and claims.

They've told us about their interactions with the legal system, which have been primarily negative, complicated, and favoured the employer.

The system must be changed to better support people who are experiencing workplace sexual harassment and discrimination.

Reporting should be simplified and standardised, people should receive better support through the process, employers should be held to account, and the service providers who can assist should be funded appropriately to ensure a claim is properly made and determined.

People are loathe to and struggle to take legal action and see it through to conclusion. It is expensive, time consuming and often detrimental to well-being.

1. Representation from vulnerable communities

A high survey response rate from Aboriginal and/or Torres Strait Islander people, the LGBTIQ+ community, people with disability, and culturally and linguistically diverse people, reflects the significant community outreach work conducted by JobWatch over the years in liaising with vulnerable communities to communicate and educate about employment rights, and to promote the TIS as a source of legal assistance. More can always be done to support these communities.

2. Barriers in accessing the legal system.

Respondents provided many comments on the complexity and lengthy delays of the legal system, the difficulty of short time limits for claims, and the toll on mental and emotional health.

Lack of information and knowledge about their legal rights was highlighted by some Respondents as a barrier to taking action – by the time they knew what to do, the time limit for making a claim that best suited their circumstances had lapsed.

Fear, stress, and lack of resources were also cited as barriers to reporting or disclosing. For some, pursuing justice was perceived as an overwhelmingly challenging process, which they were not mentally prepared to endure. Others seemed interested in pursuing justice but felt they lacked sufficient means to do so.

3. Free and confidential legal assistance is critical.

Even those who pursued legal action and had more positive outcomes noted that it was only partially positive, and only due to receiving legal help.

"I was compensated half the amount but I wouldn't of been able to do anything without JobWatch."
(Survey Respondent)

4. Silenced by Confidentiality clauses

Multiple Respondents noted that they were effectively silenced from speaking about their experience through the use of Confidentiality clauses. To properly address the issue of workplace sexual harassment and discrimination, there needs to be clearer data on the prevalence of the issue and the workplaces in which it occurs.

RECOMMENDATIONS

1. Standardise time limits across all jurisdictions to 24 months for initiating all forms of discrimination claims.

2. Expand the positive duties and vicarious liability provisions in anti-discrimination law to better address shared workspaces.

3. Fund and actively regulate and monitor compliance with the positive duty in the *Equal Opportunity Act 2010* (Vic) and other anti-discrimination legislation across the country.

4. Reduce and regulate the use of Confidentiality clauses in settlement agreements, to be used only on request by the applicant in proceedings.

5. Require employers to undergo mandatory anti-discrimination training and implementation of appropriate policies and procedures at the conclusion of any discrimination claim.

6. Fund duty lawyers for conciliations and mediations through both anti-discrimination and industrial relations claims.

7. Fund the development and promotion of legal education resources for the general community and secondary contacts.

8. Increase funding to community legal centres to deliver dedicated workplace sexual harassment and discrimination legal services.

9. Create a 'Discrimination Information Statement' to be provided to all employees on the commencement of a new job, similar to the 'Fair Work Information Statement'.

10. Create a leading-practice recognition program like Workplace Gender Equality Agency's 'Employer of Choice' to promote best practice amongst employers who demonstrate an active commitment to eradicating discrimination and sexual harassment in the workplace.

Survey Response Summary

"First they demoted my role, and refused to consider opportunities that would benefit both parties. I felt all autonomy was taken from me and my role, then when I tried to discuss mental distress about my situation (as it was affecting my personality), my manager refused to get a 3rd party mediator even though I explained my legal rights."

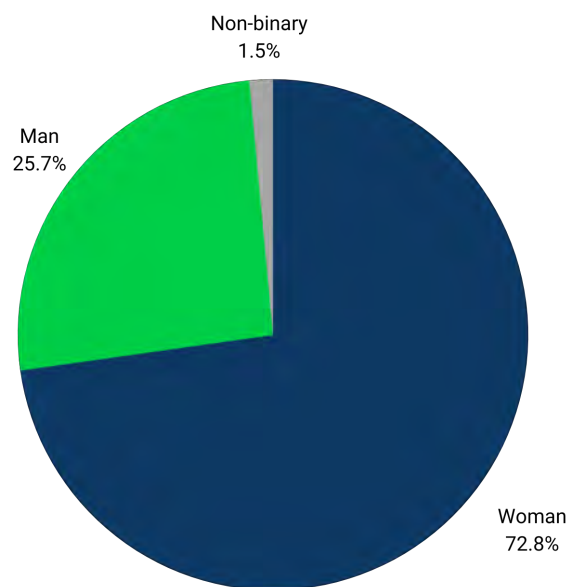
(Survey Respondent)

Gender

The survey invitation had been sent out to 65.05 per cent women TIS callers, 34.48 per cent men TIS callers, and 0.47 per cent other TIS callers.

While JobWatch TIS statistics do show that more women use the service than men (56.2 per cent in FY2022), a large proportion of survey invitations went to women TIS callers reflecting the fact that there are types of discrimination that are statistically more likely to be experienced by women (sexual harassment and sex, pregnancy, breastfeeding, parental / carer / family responsibilities discrimination).

Further skewing results, final survey results demonstrated an increased likelihood of responses from women to the survey (147 Respondents, 72.77 per cent). There were 52 men Respondents (25.74 per cent), and 3 non-binary Respondents (1.46 per cent).



This gendered survey response result is consistent with social research which has concluded that women are more likely to engage in online activity characterised by communication and exchanging of information (e.g. completing a survey) whereas men are more likely to engage in online activity characterised by seeking of information¹.

¹ Jackson, L. A., Ervin, K. S., Gardner, P. D., & Schmitt, N. (2001). Gender and the Internet: Women Communicating and Men Searching. *Sex Roles*, 44(5), 363.

Age Group

The table below illustrates the ages of those who received an email invitation to complete the survey, those who responded, and the response rates for each age group.

Age Range	Survey invitation recipients	Survey Resp's	Response rate
15 - 18	13	0	0%
19 - 24	201	3	1.49%
25 - 34	816	28	3.43%
35 - 44	724	66	9.12%
45 - 59	751	74	9.85%
60+	227	31	13.66%
Not provided / other	55	0	0%

The results demonstrated that the older the individual, the more likely they were to respond to the survey invitation.

This may be a surprising result given common assumptions about older people's experiences using digital platforms for things like survey completion. However, when examining responses from those in the 60+ age group, it is evident that many Respondents felt particularly motivated to participate in a desire to facilitate 'justice' for their experience.

"Bullies flourish when no one makes a stand."

"I did this for myself and others in the workplace."

"It's demeaning for a disabled ex-service veteran to have to beg for help and to then be blamed for being persistent and determined to see justice done."

(Survey Respondents)

JobWatch hypothesises that another contributing factor for this age-dependent response rate may be the length of tenure, and likelihood of securing another job.

Over 4 in 5 of the 60+ Respondents (28 Respondents – 87.5 per cent) had worked in the job for over 2 years – compared to only 32.14 per cent of those aged 25 – 34.

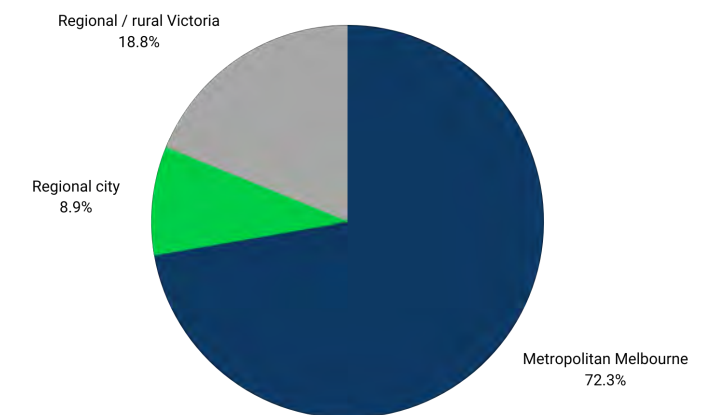
Having a longer tenure and being statistically less likely to secure a new job as an older worker, may mean that Respondents were more likely to dwell on their experiences and want to speak up through participating in a survey.

Location

The Australian Bureau of Statistics reports that 77 per cent of Victorians live within Greater Melbourne, with 23 per cent residing outside Greater Melbourne². This is generally consistent with JobWatch TIS statistics, with 80.14 per cent of Victorian TIS callers between 2019 and 2021 residing in Greater Melbourne.

Proportionately, there was slightly less representation from Respondents residing within Metropolitan Melbourne – 146 Respondents (72.28 per cent). 18 Respondents (8.91 per cent) further identified as being from a regional city, and the remaining 38 Respondents were from regional / rural Victoria (18.81 per cent).

The difference is only slight, but notable, and speaks to regional and rural Victorians being more likely to respond to a voluntary survey.



² Australian Bureau of Statistics 2018a, 3101.0 - Australian Demographic Statistics, June 2018, ABS, Canberra.

Intersecting Forms of Discrimination

Intersectionality refers to the ways in which systems of inequality based on, for example, gender, disability, sexuality, race and ethnicity, class, overlap to create unique and intersecting forms of discrimination and marginalisation. Survey Respondents provided information about different parts of their identity that may expose them to these intersecting systems of inequality, as follows:

- 5 of 202 Respondents (2.48 per cent) identified as Aboriginal and/or Torres Strait Islander
- 16 of 202 Respondents (7.92 per cent) identified as LGBTIQ+
- 54 of 202 Respondents (26.73 per cent) identified as culturally and linguistically diverse
- 56 of 202 Respondents (27.72 per cent) identified as living with disability

There was some overlap, with 14 Respondents (6.93 per cent) identifying as at least two of the above.

However, it is notable that proportionately, these statistics exceed current estimates of the relevant cross-sections of the Victorian population where 1 per cent are Aboriginal and/or Torres Strait Islander³, over 1 in 20 are LGBTIQ+⁴, 30.2 per cent households using a non-English language⁵, and 17 per cent have a disability⁶.

JobWatch believes that this reflects the significant community outreach work conducted over the years in liaising with vulnerable communities to communicate and educate about employment rights, and to promote the TIS as a source of legal assistance.

The TIS experiences high volumes of calls from these communities, who are statistically more vulnerable to exploitation in the workplace.

Intersectionality was further demonstrated in this survey, with 84 out of 202 Respondents (41.58 per cent) indicating that they experienced multiple forms of discrimination and/or sexual harassment in the workplace.

³ Australian Bureau of Statistics 2021, Indigenous status (INGP), ABS, viewed 29 November 2022, <<https://www.abs.gov.au/census/guide-census-data/census-dictionary/2021/variables-topic/aboriginal-and-torres-strait-islander-peoples/indigenous-status-ingp>>.

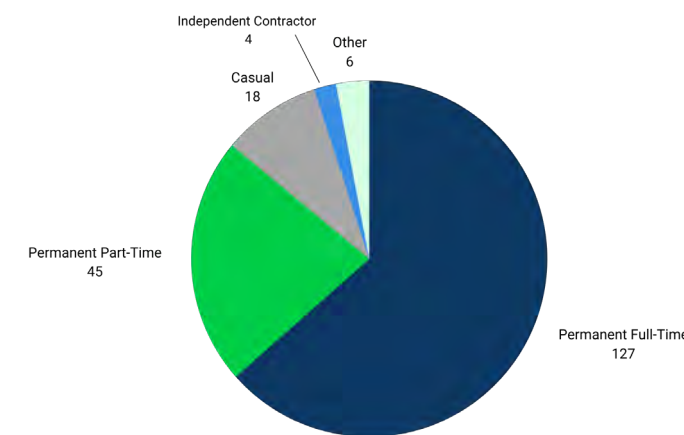
⁴ Victorian Government 2022, Pride in our future: Victoria's LGBTIQ+ strategy 2022-32, viewed 29 November 2022, <<https://www.vic.gov.au/victorian-lgbtqi-strategy>>.

⁵ Australian Bureau of Statistics 2021, Language used at home (LANP), ABS, viewed 29 November 2022, <<https://www.abs.gov.au/census/guide-census-data/census-dictionary/2021/variables-topic/cultural-diversity/language-used-home-lanp>>.

⁶ Australian Bureau of Statistics 2018, Disability, ageing and carers, Australia: summary of findings, Australian Government, Canberra.

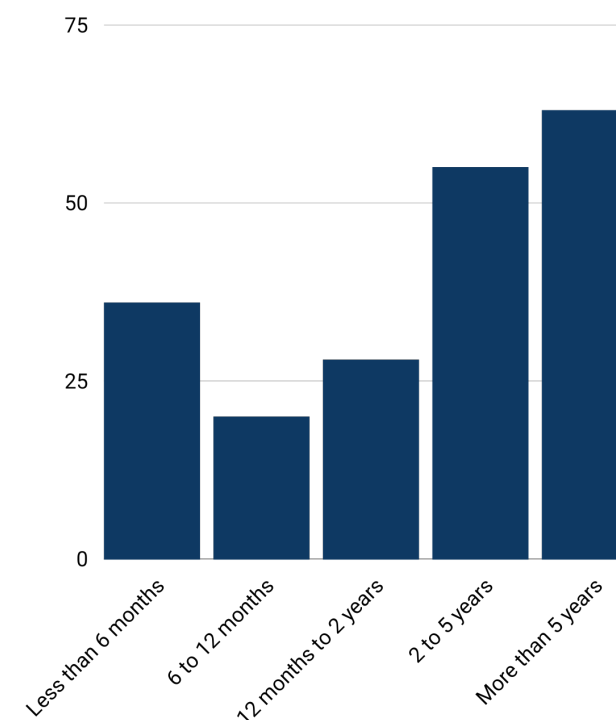
Work Status

The most common work type reported by 127 Respondents (62.87 per cent) was permanent full-time, followed by 45 working permanent part-time (22.28 per cent), 18 working casually (8.91 per cent), 4 independent contractors (1.98 per cent), and 6 other workers (2.97 per cent) (e.g. fixed term contracts, jobseekers, students, and volunteers).



There was no clear trend in the length of tenure reported by Respondents before they experienced the workplace sexual harassment and discrimination.

36 Respondents (17.82 per cent) had been in their position for less than 6 months, 20 (9.90 per cent) had been there for 6 to 12 months, 28 (13.86 per cent) had been there for 12 months to 2 years, 55 (27.23 per cent) had been there for 2 to 5 years, and 63 (31.19 per cent) had been there for more than 5 years.



However, when you examine the Respondents with the shortest and longest lengths of tenure and match it to their demographics and experiences, some interesting trends emerge.

- Those with less than 6 months tenure were more likely to experience sexual harassment (18 of 36 Respondents, 50 per cent) and more likely to be female (31 of 36 Respondents, 86.11 per cent).
- Those with more than 5 years tenure were primarily (46 of 63 Respondents, 73.02 per cent) above 45 years of age and working full-time (44 of 63 Respondents, 69.84 per cent).

Respondents were more likely to work in junior positions than senior positions with more authority.

42 Respondents were entry-level (20.79 per cent) and 90 were individual contributors (44.55 per cent), totaling 65.35 per cent. Conversely, there were 46 Respondents (22.77 per cent) working as supervisors / middle managers, 20 (9.90 per cent) as senior managers, and only 4 (1.98 per cent) at a director / executive level.

Employment Type	Survey Respondent	Perpetrator
Entry-level	42	3
Individual contributor	90	15
Supervisor / middle manager	46	56
Senior Manager	20	59
Director / Executive	4	69

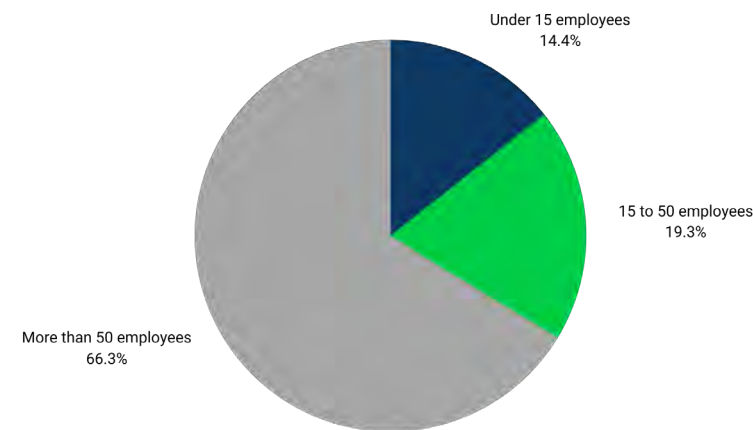
When compared to the status of the perpetrator in the table above, the difference in power, status, and standing within the workplace is stark, and highlights a sentiment echoed by many Respondents in their responses:

“He was unable to be disciplined due to his position in the company.”

“As a result of speaking up I lost my job and he is now a partner of the firm as he was more valuable to the company to keep than me.”
(Survey Respondents)



29 Respondents (14.36 per cent) worked for small business employers of under 15 employees (as defined in s.23 of the *Fair Work Act 2009*), 39 (19.31 per cent) worked for employers with 15 to 50 employees, and 134 (66.34 per cent) worked for large employers with more than 50 employees.



While the definition of 'small business' in the *Fair Work Act 2009* does not exactly mirror the definition used by the Australian Bureau of Statistics which is fewer than 20 employees, using the statistic that 4.8m⁷ out of 13.5m workers work for a small business, the estimate is that approximately 35.55 per cent of Australians work for a small business.

The difference between this estimated 35.55 per cent and the 14.36 per cent represented in the Respondents is notable, and perhaps reflective of those working for small employers feeling like they don't have many options open to them to raise complaints about their experiences.

"I don't believe the perpetrator was ever held responsible due to being the business owner and chairman and HR having little power to take action in the family business."

(Survey Respondent)

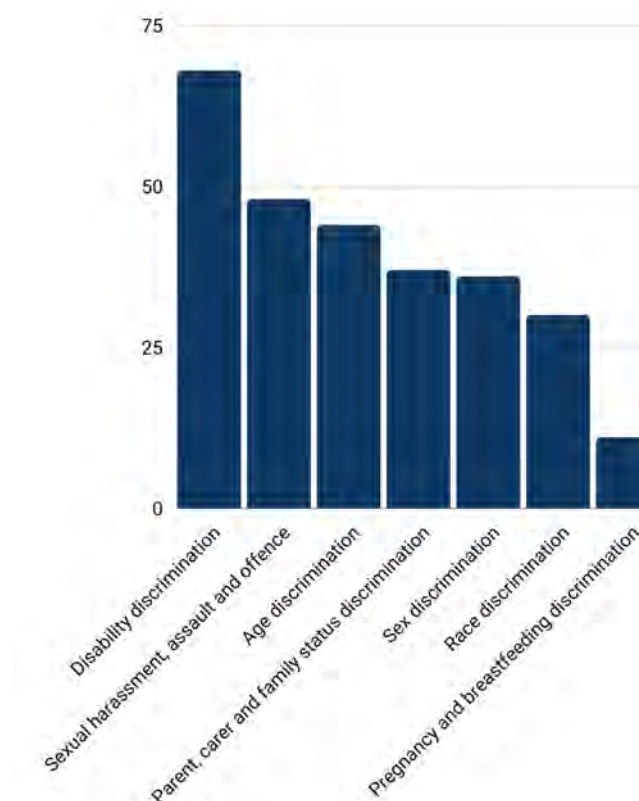
⁷ Gilfillan, G 2018, Small business sector contribution to the Australian economy, viewed 29 November 2022, <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/SmallBusinessSector>

Experiences

Respondents reported a variety of different experiences of discrimination. 118 Respondents (58.42 per cent) reported experiencing a single type of discrimination, with the other 84 Respondents (41.58 per cent) reporting multiple types of discrimination.

The most common types of discrimination reported include:

- **Disability discrimination:** 68 Respondents (33.66 per cent)
- **Sexual harassment, assault and offence:** 48 Respondents (23.76 per cent)
- **Age discrimination:** 44 Respondents (21.78 per cent)
- **Parent, carer and family status discrimination:** 37 Respondents (18.32 per cent)
- **Sex discrimination:** 36 Respondents (17.82 per cent)
- **Race discrimination:** 30 Respondents (14.85 per cent)
- **Pregnancy and breastfeeding discrimination:** 11 Respondents (5.45 per cent)



Responses relating to these types of discrimination have been examined in detail in subsequent sections of this report.

A number of Respondents chose to provide free text responses to this question, including responses such as criminal record discrimination, religious discrimination and discrimination after exercising workplace rights. These responses have not been examined further in this Report given the small sample size.

Respondents commonly experienced discrimination multiple times with only 35 Respondents (17.33 per cent) experiencing discrimination once in the workplace.

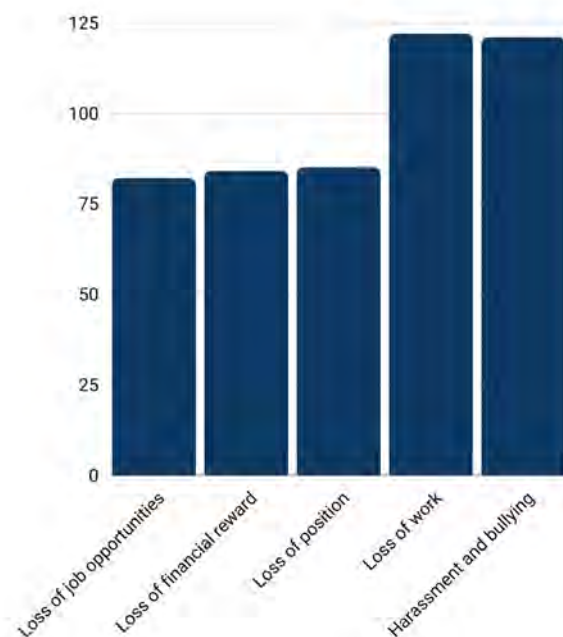
Of these 35 Respondents, only 11 of them (31.43 per cent) experienced discrimination from a single perpetrator.

In 94.56 per cent of cases (191 Respondents), Respondents were either in workplaces where the workplace culture facilitated multiple instances of discrimination, or experienced discrimination by multiple perpetrators, as demonstrated in the table below.

	1 perp's	2-3 perp's	4-5 perp's	More than 5 perp's	TOTAL
Once	11	21	2	1	35
2 - 5 times	24	32	10	4	70
6 – 10 times	5	13	4	3	25
More than 10 times	11	28	13	20	72
TOTAL	51	94	29	28	202

Through their experience of discrimination, Respondents reported the following outcomes:

- **Loss of job opportunities (e.g. denied a promotion):** 82 Respondents (40.59 per cent)
- **Loss of financial reward (e.g. pay rises):** 84 Respondents (41.58 per cent)
- **Loss of position (e.g. demotion, moving to casual instead of permanent):** 85 Respondents (42.08 per cent)
- **Loss of work (e.g. losing shifts, redundancy, dismissal):** 122 Respondents (60.40 per cent)
- **Harassment and bullying, including verbal attacks:** 121 Respondents (59.90 per cent)



There was significant overlap in the above outcomes, with 147 Respondents (72.77 per cent) reporting multiple adverse outcomes from their experiences of discrimination.

Respondents were also particularly keen to provide additional detail in their answers to this question, with multiple references to physical and mental wellbeing outcomes including stress, anxiety, mental anguish and being on WorkCover.

“Currently off work for past 6 months on WorkCover for stress/anxiety.”

“His action caused the destruction of my life leaving me now with a mental issue.”

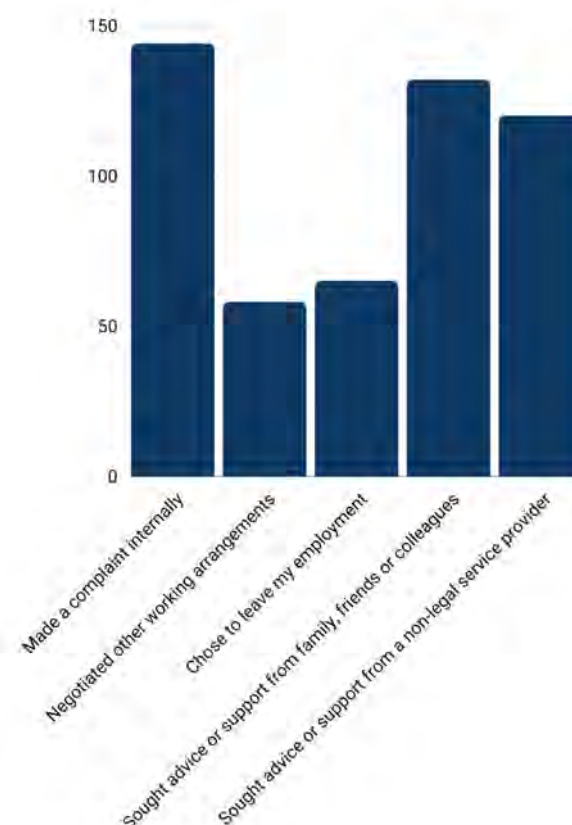
“Anxiety and mental health challenges.”

“Stress and anxiety regarding job security.”
(Survey Respondents)

Non-legal actions taken

Respondents were highly likely to take a variety of non-legal actions to try to resolve their situation at work, with only 8 Respondents (3.96 per cent) taking no non-legal action at all. The most common non-legal actions taken include:

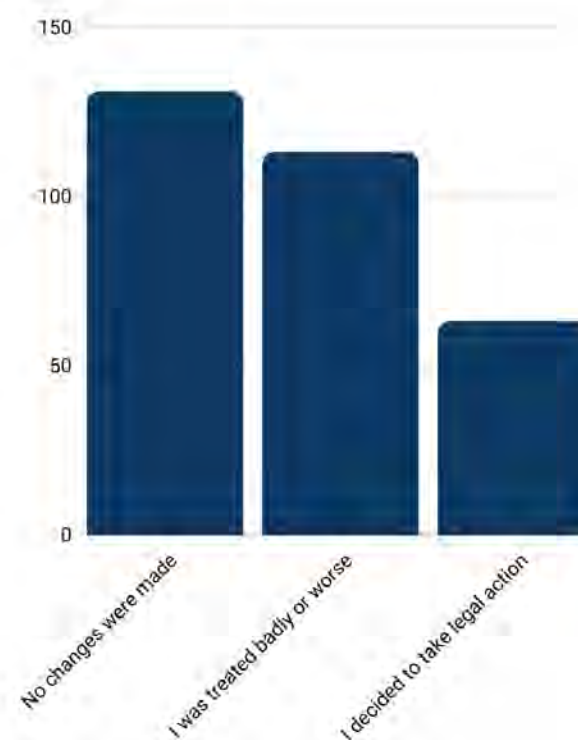
- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 144 Respondents (71.29 per cent)
- **Negotiated other working arrangements to protect myself:** 58 Respondents (28.71 per cent)
- **Chose to leave my employment for another opportunity:** 65 Respondents (32.18 per cent)
- **Sought advice or support from family, friends or colleagues:** 132 Respondents (65.35 per cent)
- **Sought advice or support from a non-legal service provider (e.g. mental health professional):** 120 Respondents (59.41 per cent)



Respondents were highly likely to have taken multiple non-legal actions to try to resolve their situation, with 147 Respondents (72.77 per cent) choosing two or more of the above actions.

After taking these non-legal actions, Respondents reported experiencing the following outcomes:

- **No changes were made to the workplace or my working conditions:** 131 Respondents (64.85 per cent)
- **I was treated badly or worse at work after speaking up:** 113 Respondents (55.94 per cent)
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 68 Respondents (33.66 per cent)



Most alarming, only 6 Respondents (2.97 per cent) responded positively to the options ‘I was able to recover lost job opportunities, financial reward, position, or work’ and/or ‘My employer made changes to the workplace to keep me safe’.

5 Respondents (2.48 per cent) responded positively to the options ‘My employer took disciplinary action against the perpetrator (e.g. stood them down from work, made them go to anti-discrimination training)’ and/or ‘My employer introduced sexual harassment and discrimination policies and provided staff training’, demonstrating that non-legal actions like internal complaints rarely have a net positive outcome for the individual.

Respondents also provided additional detail about the outcomes they experienced, with a number referencing job loss through resignation, redundancy (including non-genuine redundancy), and more:

“I lost my position but was able to negotiate another position with less hours.”

“I have negotiated severance agreement.”

“I left the job as I was having a difficult pregnancy and could not deal with the stress of taking legal action against them.”

“I lost my job and so did all of the other females working there.”

“I negotiated a redundancy.”

“I was dismissed.”

“I was made redundant.”
(Survey Respondents)

Examining these statistics in more detail, of the 144 Respondents who made an internal complaint to their boss, HR, or someone else in the workplace, 97 of these Respondents (67.36 per cent) indicated that no changes were made to the workplace or their working conditions, and 95 of these Respondents (65.97 per cent) were actually treated badly or worse after speaking up.

These outcomes are highly concerning, given that all the employers are subject to the positive duty in the *Equal Opportunity Act 2010* (Vic), which requires them to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, harassment and bullying.

If over 3 in 5 employers are not taking internal complaints seriously and acting to protect their employees from discrimination in the workplace, it is imperative that the legislation and associated regulatory powers be reviewed and revised to facilitate compliance by employers.

Legal actions taken

Respondents were highly likely (175 Respondents, 86.63 per cent) to take a variety of legal actions to try to resolve their situation at work, with only 27 Respondents (13.37 per cent) taking no legal action at all. The most common legal actions taken include:

- Sought assistance from JobWatch, the Fair Work Ombudsman (FWO), or another legal service: 158 Respondents (78.22 per cent)
- Made a discrimination claim to the Australian Human Rights Commission (AHRC): 19 Respondents (9.41 per cent)
- Made a discrimination claim to the Victorian Civil and Administrative Tribunal (VCAT): 13 Respondents (6.44 per cent)
- Made a discrimination claim to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC): 21 Respondents (10.40 per cent)
- Made a General Protections or Unfair Dismissal claim with the Fair Work Commission (FWC): 22 Respondents (10.89 per cent)
- Made an Order to Stop Bullying with the FWC: 7 Respondents (3.47 per cent)
- Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim: 7 Respondents (3.47 per cent)
- Reported to WorkSafe Victoria: 47 Respondents (23.27 per cent)
- Reported to the police or other agency: 13 Respondents (6.44 per cent)

Respondents were likely to have taken multiple legal actions to try to resolve their situation, with 118 Respondents (58.42 per cent) choosing two or more of the above actions.

It is notable that Respondents were more likely to try pursuing legal action through industrial and workplace health and safety laws rather than anti-discrimination laws.

The number of those who opted to go through workplace health and safety mechanisms (WorkSafe Victoria) were more than double that of those who tried making a discrimination claim through either the state or federal jurisdictions.

Some Respondents expressed frustration with trying to figure out their best option for taking legal action, and trying to navigate the legal system on their own.

- “I didn’t know what options were available to me at the time.”
- “Called numerous places could not find out a lot about my rights and options.”
- “I call all of the above, they sent me to try one of the other above agencies.”
- “I complained to everyone possible, not one of them did anything except blame me or try to ignore me!”
(Survey Respondents)



Other Respondents gave up trying to navigate the system by themselves, and sought out paid legal assistance instead.

- “Got advice from a solicitor.”
- “Consulted a lawyer from a private legal firm. Also sought advice from union rep.”
- “Sought advice from private employment lawyer.”
- “Sought legal action with a Workplace Discrimination Lawyer.”
(Survey Respondents)

After taking legal actions (if any), Respondents reported experiencing the following outcomes:

- I was able to recover lost job opportunities, financial reward, position, or work: 10 Respondents (4.95 per cent)
- I chose to discontinue my claim before a conciliation / mediation could take place: 18 Respondents (8.91 per cent)
- I reached a financial settlement with the employer: 42 Respondents (20.79 per cent)
- I reached a non-financial agreement with the employer: 18 Respondents (8.91 per cent)
- I was unable to reach an agreement with the employer, and the situation is unresolved: 56 Respondents (27.72 per cent)
- A regulatory agency investigated my employer: 13 Respondents (6.44 per cent)
- A regulatory agency declined to investigate my employer: 9 Respondents (4.46 per cent)
- My employer introduced sexual harassment and discrimination policies and provided staff training: 4 Respondents (1.98 per cent)

Most commonly, when Respondents provided additional information on the outcomes after taking legal action, they reported dissatisfaction with



the legal system, disillusionment about access to justice for individuals when compared to access for employers, and ongoing distress about their situation.

- “WorkSafe investigation was done but I wasn’t satisfied with the outcome.”
- “I was told by the Workplace that I had left it too long to make a complaint and that I needed to make a complaint shortly after leaving that workplace.”
- “Fair Work advised the claim had been rejected – liquidation.”
- “I’m still waiting for my case to be heard through VCAT.”
- “It’s been ongoing nine months now, not resolved.”
- “I do not have the financial means to go head-to-head against [LARGE EMPLOYER].”
(Survey Respondents)

It’s clear that there is a real gap in the legal system, where people who have experienced workplace sexual harassment and discrimination find it difficult to navigate their legal options on their own.

The financial capacity of victim-survivors to pursue a claim and legal representation when compared to the financial capacity of an employer, leads to a significant power imbalance which impacts access to justice.

Further funding is required for dedicated pro-bono legal service (advice and representation), and community legal education and resources.

Outcomes

The survey provided Respondents with an opportunity to provide commentary on how satisfied they were with the outcomes of their actions. These comments were largely negative – Respondents were frustrated, upset, traumatised, and dissatisfied with the outcomes.

“It’s been the hardest, most isolating and damaging experience I have ever been through. There’s little to no support and feels like I’ve been fighting a losing battle since the day I made the initial report to my employers. I was completely naive as to how much of an impact this would have/has had on my entire life. Mentally, emotionally and physically it still weighs on me and I don’t think I will ever fully recover.”

“I wasn’t happy because the law is in favour of the employers as they have money to go to court and hire better lawyers, but individuals with no money cannot afford the legal service.”

“Every legal option exposed me financially and the workplace made it known they would fight. I felt there were really no guarantees and therefore no recourse. Everything I looked at just seemed fruitless.”
(Survey Respondents)

Some Respondents highlighted the importance of speaking up and taking action to ensure that other people would not have to go through the same experience.

“As difficult and stressful as it was, the organisation took this matter seriously and did all that it could for prevention of future occurrence. It is always good to speak up for change for the better.”

“I feel I stood up for pregnant woman everywhere, adding to the statistics as to how terrible pregnant woman are treated and hope this brings about change.”

“I did this for myself and others in the workplace.”
(Survey Respondents)

To conclude this Survey Response Summary chapter, a direct quote from a survey Respondent:

“There’s rarely ‘satisfaction’ in these circumstances. No one ‘wins’. It was awful.”
(Survey Respondent)

There are improvements that can and should be made to the system to better support people who experience workplace sexual harassment and discrimination. The chapter “Opportunities for legal system reform” in this report explores these options in greater detail.



SEXUAL HARASSMENT

Sexual harassment in the workplace is a serious problem and it is against the law. It is prohibited in the *Fair Work Act 2009*, and under federal and state anti-discrimination laws.

- A person is sexually harassed at work if, while at work, one or more individuals:
- makes an unwanted sexual advance or unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature towards the person; AND
 - this conduct occurs in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the person harassed being offended, humiliated or intimidated.

48 of 202 Respondents (23.76 per cent) said that they had experienced sexual harassment, sexual assault or sexual offence in the workplace with 31 of these Respondents (64.58 per cent) reporting experiences of multiple types of discrimination – primarily race, and parental / carer / family status discrimination.

“I experienced sexual harassment/rape from someone in a higher position than me. As a result of speaking up I lost my job and he is now a partner of the firm as he was more valuable to the company to keep than me.”
(Survey Respondent)

Demographics

- 41 were female and 7 were male
- 2 were aged 19-24, 13 were aged 25-34, 17 were aged 35-44, 13 were aged 45-60 and 3 were aged 60+
- 38 lived in Metropolitan Melbourne, 3 lived in a regional city, and 7 lived in regional/rural Victoria
- 1 identified as Aboriginal and/or Torres Strait Islander
- 13 identified as culturally and linguistically diverse
- 7 identified as LGBTIQ+
- 15 identified as living with disability

Work Status

- 4 were casuals, 2 were independent contractors, 25 were permanent full-time, 16 were permanent part-time, 1 was a postgraduate student
- 13 were entry-level, 19 worked as individual contributors, 11 were supervisors/middle management, 4 were senior managers, and 1 was a director/executive
- 18 worked for less than 6 months, 5 for 6-12 months, 6 for 12 months – 2 years, 8 for 2-5 years, and 11 for more than 5 years
- 10 worked for small employers with under 15 employees, 8 worked for employers with between 15-50 employees, and 30 worked for large employers with more than 50 employees

Experiences

- 6 reported experiencing sexual harassment, assault or offence once, 10 experienced it 2-5 times, 10 experienced it 6-10 times, and 22 experienced it more than 10 times
- There was a sole perpetrator in 20 cases, 2-3 perpetrators in 12 cases, 4-5 perpetrators in 7 cases and more than 5 perpetrators in 9 cases
- 2 perpetrators were entry-level, 5 were individual contributors, 13 were supervisors/ middle management, 16 were senior managers, and 12 were directors/executives

Respondents reported experiencing:

- Loss of work: 29
- Loss of position: 23
- Loss of job opportunities: 20
- Loss of financial reward: 16
- Harassment and bullying: 9

Respondents also provided further detail about other impacts of the discrimination experienced, with many noting the significant impact of the perpetrator’s actions and their employer’s mismanagement on their mental and emotional health, and in one case, on the completion of their related studies:

“His action caused the destruction of my life leaving me now with a mental issue.”

“I had to be on Workcover for mental health and the company and the management, HR treated me like I overreacted ... They didn’t care about my mental health and didn’t tell me he returned to work while I was working.”

“I was a student/visitor so the employee perpetrator got to stay. It put my project back 6 months.”
(Survey Respondents)

Non-legal pathways taken

- Respondents took a variety of different non-legal actions to try to resolve their situation:
- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 43
 - **Sought advice or support from family, friends or colleagues:** 41
 - **Sought advice or support from a non-legal service provider:** 38
 - **Chose to leave my employment for another opportunity:** 22
 - **Negotiated other working arrangements to protect myself:** 20

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 4 Respondents taking a single non-legal action.

Respondents reported the following outcomes after they took non-legal action:

- **I was treated badly or worse at work after speaking up:** 36
- **No changes were made to the workplace or my working conditions:** 34
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 18
- **My employer took disciplinary action against the perpetrator:** 3
- **My employer introduced sexual harassment and discrimination policies and provided staff training:** 3
- **I was able to recover lost job opportunities, financial reward, position or work:** 1
- **My employer made changes to the workplace to keep me safe:** 1

Some Respondents provided additional detail, with multiple references to having to leave their employment or make other changes to keep themselves safe:

“I changed my working hours.”

“I contacted WorkSafe and ended up on WorkCover.”

“Retaliation and had to leave for safety reasons.”

“I negotiated a redundancy.”

“I was granted an IVO but this was used to deny me access to resources necessary for my project.”
(Survey Respondents)

Other Respondents noted that their employers failed in their obligation to provide a safe working environment for them:

“I was forced to work with him even though I didn’t feel safe.”

“It was forgotten - they redid the desks and tried to sit me next to him and then laughed it off.”

“[The Perpetrator] left and now returned with a pay increase because they can’t find a chef.”
(Survey Respondent)

Legal pathways taken

Respondents took a variety of different legal actions to try to resolve their situation:

- **Sought assistance from JobWatch, the FWO or another legal service:** 40
- **Reported to WorkSafe Victoria:** 17
- **Reported to the police or other agency:** 9
- **Made a discrimination claim to the VEOHRC:** 7
- **Made a discrimination claim to the AHRC:** 6
- **Made a General Protections or Unfair Dismissal claim with the FWC:** 5
- **Made an Order to Stop Bullying with the FWC:** 2
- **Made a discrimination claim to the VCAT:** 2
- **Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim:** 1

Most Respondents took multiple legal actions to try to resolve the issue, with only 2 Respondents taking a single legal action.

Some Respondents commented on the difficulty of understanding their legal rights when it came to workplace sexual harassment, and in making a decision to take action on this sensitive issue.

“I didn’t know what options were available to me at the time.”

“I contacted a few government agencies for advice but HR and the management treated me like I was causing problems. I decided not to take legal actions.”
(Survey Respondents)

- Respondents reported the following outcomes after taking legal action (if any):
- **I was unable to reach an agreement with the employer, and the situation is unresolved:** 12
 - **I reached a financial settlement with the employer:** 7
 - **I chose to discontinue my claim before a conciliation / mediation could take place:** 6
 - **A regulatory agency investigated my employer:** 6
 - **I reached a non-financial agreement with the employer:** 4
 - **A regulatory agency declined to investigate my employer:** 2
 - **My employer introduced sexual harassment and discrimination policies and provided staff training:** 2
 - **I was able to recover lost job opportunities, financial reward, position, or work:** 1

Some Respondents were disappointed with the way their employer handled their complaints and failed to keep them safe while protecting the perpetrator(s):

“They spoke to the perpetrator and then I was ignored, sniggered at and bullied.”

“The perpetrators got promotions.”
(Survey Respondents)

A note on Confidentiality clauses

Multiple Respondents noted that they were effectively silenced from speaking about their experience:

“Being restricted by Confidentiality clauses at conciliations continues to silence the victims, and does not depict the true crisis & numbers that sexual harassment in the workplace affects. It continues to suppress my empowerment to recover, whilst they remain minimally affected. Their identity remains largely confidential. The perpetrator remains protected by a cone of silence.”

“I was told to either sign a Confidentiality agreement or a bonus that was previously been provided but not paid would not be paid.”
(Survey Respondents)

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported ongoing mental and emotional injury and trauma from their experience, disappointment at the lack of support they received, and the difficulty of navigating regulatory and legal systems.

“It’s been the hardest, most isolating and damaging experience I have ever been through. There’s little to no support and feels like I’ve been fighting a losing battle since the day I made the initial report to my employers. I was completely naive as to how much of an impact this would have/has had on my entire life. Mentally, emotionally and physically it still weighs on me and I don’t think I will ever fully recover.”

“I’m left with PTSD. I felt unsupported and did not know where to go. By the time I left I was broken and overwhelmed without the energy to fight after 13 years of workplace sexual harassment. I wish I had stood up to expose the organisation’s culture. I had to self-fund my recovery.”

“I learned through this experience that the organisations who are supposed to exist to help people in situations like this don’t really do that, they just exist to check a box. I learnt not to trust HR departments or senior management and that companies do not actually have an interest in protecting their workers or making workplaces safe, again they only have policies in place to check a box but don’t even follow their own policies.”
(Survey Respondents)

Only a handful of people ended up having a partially positive resolution to the issues faced:

“I am because I made them realise that sexual harassment against women is not OKAY.”

“He lost his job, I got a house deposit, albeit with a bit of trauma from the legal proceedings.”
(Survey Respondents)



Case study: Darika

“As an international worker, I don’t know much about laws in workplaces. There’s no proper information about work rights, eligible entitlements like sick leave, holidays, superannuation, and tax. We don’t seek help because we feel lonely, lack support, not knowing that we’ve been exploited, and a lot of rumors that we will be sent back to home country, or ‘who will listen to you, because no one cares about foreign labourers like us.’

I’ve experienced sexual harassment in the workplace by employers, coworkers, and customers. Because I work in the massage industry, I’m often asked for ‘happy ending, or do you do extra?’ from clients. I’ve been forced to have sex by an employer and sexually harassed by coworkers at a farm job. I blamed myself for putting myself out there, blaming my own appearance and character - being friendly but not knowing how to protect oneself when being assaulted. I couldn’t believe that things like this could happen to me, I didn’t know what to do, felt ashamed, and just let it go.

Recently, I experienced it all together again at a new employer. The employer did not take action on the coworker who harassed me over six months, including unwanted touch, asking for dates, pushing me against the wall, asking for sex, sexual talk, and etc. Instead, the employer asked me to protect myself and said it’s not their responsibility and not what they can do.”

Darika, 20s (Regional/Rural Victoria)

Note – Darika sought both non-legal and legal advice, made internal complaints, and changed jobs to try to keep herself safe. She has a case open with the Fair Work Ombudsman on an underpayments matter, and is also preparing a sex discrimination claim with the help of a community legal centre.

Sexual harassment data analysis by RMIT



Report prepared by:

- Jessica C. Oldfield, RMIT
- Dr Rachel Loney-Howes, University of Wollongong

Note on data – this data analysis by RMIT examines 43 out of the 48 total responses which reported an experience of workplace sexual harassment. This data discrepancy is due to a small number of Respondents who chose not to have their de-identified responses provided to RMIT researchers and only wanted their responses used in JobWatch research and in advocacy and law reform activities.

Note on language – the term ‘victim/survivor’ has been used throughout this section. This refers to Respondents who have reported experiences of workplace sexual harassment. This is based on Respondents’ answers and does not reflect legal findings, if any.

Overview of report

We undertook an inductive and deductive qualitative and quantitative analysis of the survey data noting limitations to our analysis based on a) sample size and b) survey design. Given the sample size used in our analysis, the findings are not statistically reliable and should only be used to indicate potential trends or issues.

The quantitative analysis drew on descriptive statistics with cross-tabulations. Our qualitative data analysis was thematic. We used the survey questions to guide our deductive data analysis. We also undertook an inductive analysis of the data by reviewing the data set as a whole.

Combined, we identified five broad themes around which our findings below are presented. These include:

1. The nature of the workplace sexual harassment reported;
2. The impact of workplace sexual harassment on the victim/survivor;
3. Actions taken to address the harm;
4. Navigating the disclosure or reporting process and;
5. Outcomes.

Workplace sexual harassment is a serious socio-legal harm which can result in significant emotional, physical and financial consequences for victim/survivors, and impacts individuals, families and communities⁸. Information about the prevalence of workplace sexual harassment is sparse due to low reporting rates, and sexual

8 Birinzhikaj, M. and Guggisberg, M. (2017). The wide-ranging impact of sexual harassment in the workplace: An Australian pilot study. *International Journal of Employment Studies*, 25(1), pp.6-26.

harassment as a concept and socio-legal harm is not well understood within the community and workplaces⁹.

Although the dataset analysed in this report is small, it confirms findings from previous research, namely the power imbalances underscoring the perpetration of workplace sexual harassment¹⁰, the challenges many, if not most, victim/survivors face in seeking to report workplace sexual harassment¹¹, and the lack of meaningful outcomes for victim/survivors of workplace sexual harassment¹².

9 Charlesworth, S., McDonald, P. and Cerise, S. (2011). Naming and claiming workplace sexual harassment in Australia. *Australian Journal of Social Issues*, 46(2), pp.141-161.

10 MacKinnon, C.A. (1979). *Sexual harassment of working women: A case of sex discrimination*. Yale University Press, Connecticut.

Uggen, C. and Blackstone, A. (2004). Sexual harassment as a gendered expression of power. *American Sociological Review*, 69(1), pp.64-92.

11 Hart, C.G., (2019). The penalties for self-reporting sexual harassment. *Gender & Society*, 33(4), pp. 534–559. McDonald, P. (2012). Workplace sexual harassment 30 years on: A review of the literature. *International Journal of Management Reviews*, 14(1), pp.1-17.

12 Willness, C.R., Steel, P. and Lee, K. (2007). A meta-analysis of the antecedents and consequences of workplace sexual harassment. *Personnel Psychology*, 60(1), pp.127-162. Herscovis, M.S., Vranjes, I., Berdahl, J.L. and Cortina, L.M. (2021). See no evil, hear no evil, speak no evil: Theorizing network silence around sexual harassment. *Journal of Applied Psychology*, 106(12), pp.18-34.

These findings can contribute to improving responses to workplace sexual harassment by informing the development of policies within workplaces and organisations to address and prevent sexual harassment.

The nature of workplace sexual harassment

We identified four key areas of interest regarding the nature of the sexual harassment Respondents reported experiencing. The first relates to the relationships between the victim/survivor and the perpetrator(s), the range of violence experienced, the employment status of victim/survivors, and the frequency of workplace sexual harassment.

1. Relationships between victim/survivor and perpetrator(s)

Table 1 below illustrates the relationship between the victim/survivor and the perpetrator of workplace sexual harassment.

Most Respondents reported that their perpetrator occupied a more senior position in the workplace than them (n=32), and nine Respondents experienced sexual harassment from a perpetrator who worked in an equivalent position to them. There was one instance where the Respondent reported working in a more senior position than the perpetrator, however in that case; the Respondent was not the victim/survivor but rather the victim/survivor’s manager, who sought assistance from JobWatch after attempting to help the victim/survivor report their experiences to their employer.

Issues related to power imbalances between the victim/survivor and the perpetrator were highlighted by several Respondents:

“He was unable to be disciplined due to his position in the company and my inability to prove it 100%.”

“The perpetrator was my employer and owner of the company, so nothing changed!!!”

“I experienced sexual harassment/rape from someone in a higher position than me. As a result of speaking up I lost my job and he is now a partner of the firm as he was more valuable to the company to keep than me.”
(Survey Respondents)

2. Range of violence experienced

The survey responses show that most Respondents experienced multiple forms of sexual harassment, abuse, harm and discrimination. Only five people experienced sexual harassment alone. There was a nearly even split between people who reported experiencing sexual violence – encompassing sexual harassment, sex-based discrimination, and sexual assault (n=20), and those subjected to multiple, intersecting forms of violence (n=23). Of those subjected to intersecting forms of violence, the most common co-occurrence was with disability discrimination (n=13), followed by race discrimination (n=8).

Table 1: Perpetrator role in the organisation and victim/survivor role in the organisation

		What level was the primary perpetrator’s role in the workplace?					Total
		Director or Executive	Entry-level	Individual contributor	Senior manager	Supervisor or Middle manager	
What level was your role in the workplace?	Director or Executive	1	0	0	0	0	1
	Senior manager	2	0	0	2	0	4
	Supervisor or Middle manager	2	1	0	4	2	9
	Entry-level	3	1	1	3	3	11
	Individual contributor	3	0	3	6	6	18
Total		11	2	4	15	11	43

3. Employment status

Our analysis shows that most Respondents were securely employed, as demonstrated in **Table 2** below:

Table 2: Employment status

	Frequency	Percent
Postgraduate student	1	2.3
Independent Contractor	2	4.7
Casual	4	9.3
Permanent part-time	13	30.2
Permanent full-time	23	53.5
Total	43	100.0

Table 2 shows most Respondents were in permanent part-time or full-time employment, which suggests the Respondents were in secure work at the time of reporting and perhaps felt they were more likely to be protected than casual staff – it may also be indicative of these staff knowing their rights in the workplace.

The lack of data on casual staff is significant and illustrates the need to find better ways to capture information about precariously employed people subjected to workplace sexual harassment, and to provide them with appropriate support.

4. Frequency of workplace sexual harassment

Most victim-survivors were subjected to workplace sexual harassment more than once – and nearly half the Respondents (n=21) indicated they had been subjected to this over ten times. In addition, we cross-tabulated how long the victim-survivor had been employed and the frequency of the harassment, abuse or violence.

Table 3 illustrates that Respondents were more likely to experience higher levels of workplace sexual harassment if they had been employed for less than six months.

When we consider how long someone had been in their role when they were subjected to workplace sexual harassment cross-tabulated against the size of the organisation, the data illustrates higher levels of workplace sexual harassment in larger organisations with 50 or more employees, as shown in **Table 4** below.

Table 3: Length of time in the role and number of instances of workplace sexual harassment

		I experienced this:				
		Once	2 - 5 times	6 - 10 times	10+ times	Total
How long had you been in the role when you experienced the WSH&D?	Less than 6 mths	0	6	6	5	17
	6 – 12 mths	0	0	0	5	5
	12 mths – 2 yrs	2	1	1	1	5
	2 – 5 yrs	2	0	0	4	6
	More than 5 yrs	1	2	1	6	10
Total:		5	9	8	21	43

Table 4: Length of time in the role and number of employees

		Size of employer			
		Under 15 employees	15-50 employees	50+ employees	Total
How long had you been in the role when you experienced the WSH & D?	Less than 6 mths	3	4	10	17
	6-12 mths	2	1	2	5
	12 mths – 2 yrs	0	0	5	5
	2-5 yrs	2	2	2	6
	More than 5 yrs	1	1	8	10
Total		8	8	27	43

Furthermore, the data shows that the larger the organisation, the increased frequency of sexual harassment, as illustrated in **Table 5**.

Alarminglly, the data reveals that most Respondents were subjected to workplace sexual harassment multiple times involving multiple perpetrators.

Even more concerning, the data also indicates an increase in the number of times someone was subjected to workplace sexual harassment when multiple perpetrators were involved, as shown in **Table 6** below.

Given that the data in **Table 5** above indicates that victim/survivors reported being subjected to sexual harassment more than 10 times in larger organisations (50+ employees), **Table 6** suggests

that the number of perpetrators also likely increases in these settings.

The frequency of perpetration and the involvement of multiple perpetrators indicates a toxic workplace culture enabling such behaviour, likely coalescing around problematic attitudes towards gender, sexuality, ability, and ethnicity.

Indeed, **Table 7** highlights that people living with a disability and people who identified as culturally and linguistically diverse were more likely to be subjected to workplace sexual harassment.

While the data analysed is only indicative due to the limited sample size, the trends are concerning and warrant further investigation into workplace safety and culture.

Table 5: Employer size and frequency of workplace sexual harassment

		Employer size			
		Under 15 employees	15 – 50 employees	50+ employees	Total
I experienced this:	Once	1	1	3	5
	2 - 5 times	1	1	7	9
	6 - 10 times	1	3	4	8
	More than 10 times	5	3	13	21
Total		8	8	27	43

Table 6: The number of incidents and the number of perpetrators

		How many people (perpetrators) were responsible for your experience?				
		1	2 - 3	4 - 5	5+	Total
I experienced this:	Once	5	0	0	0	5
	2 - 5 times	5	3	1	0	9
	6 - 10 times	3	4	0	1	8
	More than 10 times	4	5	4	8	21
Total		17	12	5	9	43

Table 7: Intersectional identities and frequency of workplace sexual harassment

		I experienced this:				
		Once	2 - 5 times	6 - 10 times	10+ times	Total
Do you identify as (select all that apply):	No response provided	3	3	1	8	15
	Culturally and linguistically diverse (CALD);	2	4	2	1	9
	CALD; LGBTIQA+;	0	0	1	1	2
	LGBTIQA+;	0	0	1	2	3
	LGBTIQA+; Living with a disability (LWD);	0	0	0	1	1
	LWD;	0	2	3	6	11
	LWD; CALD; Aboriginal and/or Torres Strait Islander;	0	0	0	1	1
	LWD; LGBTIQA+;	0	0	0	1	1
Total		5	9	8	21	43

The impact of workplace sexual harassment on the victim/survivor

Our analysis identified three ways workplace sexual harassment impacted victim-survivors: employment status, work opportunities, and mental health.

1. Employment status

25 out of 43 Respondents reported that they were no longer in the job they experienced sexual harassment due to either resigning (n= 19) or having their employment terminated (n=6).

2. Work opportunities

Several Respondents highlighted concerns about their future employability and noted that these concerns influenced their choices to report their experiences of sexual harassment. For some, this resulted from direct communication from their workplace—for instance, one person was told, “If I say anything, they will tell senior management not to give me a reference”. For others, this came from a more implicit belief that pursuing justice would have negative career ramifications: “I was concerned I wouldn’t be able to secure another position without their recommendation”.

Many Respondents (n= 32) also noted that they experienced reduced work opportunities due to reporting workplace sexual harassment, including reduced shifts, a demotion, or missing out on a promotion.

3. Mental health

Ten Respondents explicitly discussed how their experiences had negatively impacted their mental health.

Some of these accounts were very serious—one Respondent reported being suicidal, and another experienced a crisis admission to the hospital due to their mental health issues.

There were four reports of depression, three of PTSD, and two of anxiety.

It also bears noting that adverse mental health consequences could be gleaned from other responses without being explicitly stated. For instance, one Respondent said they felt like they were in an “abusive relationship... I did not have the confidence or self-esteem to leave for another workplace at the time”. Another noted that they were “afraid to return to work” due to their experiences, and another victim/survivor reflected that “mentally, emotionally and physically, it still weighs on me, and I don’t think I will ever fully recover”.

Actions taken to address violence/harm

The actions that victim/survivors took to address their experiences of workplace sexual harassment can be broadly divided into two categories: non-legal and legal.

1. Non-legal actions

Most Respondents reported that they had made an internal complaint to their workplace about their experiences of sexual harassment (n= 38) and sought support or advice from friends, family or co-workers (n=38). These were the most common actions taken to address the sexual harassment participants experienced. Thirty-four Respondents reported seeking support from other non-legal support services, such as mental health professionals, and 17 Respondents said they had changed their working arrangements to address the issue.

As will be elaborated on further in the section on outcomes, it bears noting that many victim-survivors reported that these efforts to achieve non-legal justice were largely unsuccessful, with one Respondent noting that “the way my workplace handled it caused far more distress than the incident itself”.

2. Legal actions

Out of the 43 Respondents, 26 reported undertaking legal action in response to their experiences of workplace sexual harassment. This ranged from making a report to agencies such as WorkSafe or the Fair Work Commission, making a claim with the Australian Human Rights Commission, or reporting to the police and pursuing a legal case through to completion.

Navigating the reporting/disclosure process

Overall, only a few Respondents discussed the reporting/disclosure process. Further, of those that did, there was some blurring in the data between their views and experiences with internal workplace reporting and external legal processes. For this reason, we have not drawn sharp distinctions between non-legal and legal justice approaches in this section. Nonetheless, there were some interesting points flagged by some Respondents. The first relates to the barriers or challenges they experienced when attempting to report or disclose, the second to uncertainty about where or how to report or disclose, and the final point relates to the status of their efforts to report or disclose.

1. Barriers to reporting/disclosing

Seven Respondents noted their challenges when attempting to report or disclose their experiences of workplace sexual harassment. Fear, stress, and lack of resources were the most cited barriers to reporting or disclosing noted by Respondents.

For some, pursuing justice was perceived as an overwhelmingly challenging process, which they were not mentally prepared to endure: “By the time I left, I was broken and had overwhelm (sic) without the energy to fight”. Others seemed interested in pursuing justice but felt they lacked sufficient means to do so: “I do not have the financial means to go head-to-head against [EMPLOYER].”

2. Uncertainty about how to report/disclose

Five Respondents highlighted their uncertainty regarding the options available to them when reporting or disclosing their experiences of workplace sexual harassment:

“I don’t know what else I can do now it’s been 2 years”

“I felt unsupported and did not know where to go”

“I didn’t know what options were available to me at the time”
(Survey Respondents)



3. Status of efforts to report/disclose

Of those Respondents who did report their experiences of workplace sexual harassment and went on to pursue some form of justice (n=29), their outcomes were as follows:

- Seven were still involved in ongoing processes
- Four had discontinued their claims
- Nine had completed their claim and reached an agreement with their workplace (financial or otherwise)
- Nine had been unable to reach an agreement with their workplace

As discussed in the following section on outcomes, these findings are particularly interesting when considered alongside Respondents' reported satisfaction with the reporting outcome. Of those who reached an agreement with their workplace, the majority reported feeling dissatisfied with the process. As one Respondent said, "There's rarely 'satisfaction' in these circumstances. No one 'wins'. It was awful."

Outcomes

The most common responses were that people were treated worse after speaking up (n=34), observed no changes being made to their workplace after reporting (n=36), and experienced some form of negative impact on their work opportunities due to speaking up (n=33). Most Respondents (n=30) reported being dissatisfied with their experiences overall. This reported dissatisfaction fell into three interrelated categories, which will now be discussed: personal outcomes, workplace outcomes, and perpetrator outcomes. A brief discussion of the impact of Confidentiality clauses is also included in this section, illustrating the complex consequences of the outcomes experienced by Respondents.

1. Personal outcomes

This corresponded to their overall experience, encompassing the violence they experienced at work and their experiences seeking assistance afterwards. Thirty-four out of the 43 Respondents reported being poorly treated or worse after speaking out. Overall, 30 out of 43 Respondents clearly and directly expressed their dissatisfaction with their experiences. Many responded to the question about satisfaction with a 'no'; however, some provided elaborating details, enabling us to parse their reasons for dissatisfaction into the two categories below.

Two Respondents also expressed ambivalence about their outcome—with one noting that while they had received a payout as compensation, signaling some understanding of wrongdoing on the part of their employers, they felt that their perpetrator was treated "like he never did anything wrong". Four Respondents reported being satisfied with their outcome, with one noting that the financial compensation they received allowed them to place a deposit on a house, albeit "with a bit of trauma from the legal proceedings".

Those that reported the most unambiguous satisfaction with their outcomes received financial compensation from their employers.

It also bears noting that the most unambiguously satisfied Respondent was a man sexually harassed by another man.

2. Workplace outcomes

In discussing their satisfaction with the outcomes, many Respondents specifically highlighted their dissatisfaction with their workplace's response to their experiences.

Thirty-three out of 43 Respondents reported that no changes were made to their workplace in response to their experiences.

This was the most common explanation for Respondents' overall dissatisfaction, with 17 Respondents highlighting their issues with their workplace's insufficient response to the violence they experienced and their perceptions that the workplace culture that enabled their sexual harassment/ discrimination was continuing. One Respondent noted that "the way my workplace handled it caused far more distress than the incident itself", and another said that "zero training or responsibility was taken by my employer for the disgusting way the situation was handled".

3. Perpetrator outcomes

The second most common reason given for Respondents' dissatisfaction related to the consequences (or lack thereof) for their perpetrators.

For many Respondents, a key reason for their dissatisfaction was that their perpetrator could continue working in their role and received little or no disciplinary action.

The perpetrator was only fired in three out of 43 cases. While in one of these cases, the Respondent indicated that they were ultimately satisfied with the outcome of their experience (this was the man discussed in the section above concerning personal outcomes), the other two Respondents (both women) reported ambivalence about the outcome, with one noting that "it wasn't worth continuing to fight the injustice once the worker had been fired", and the other ultimately resigning from her job anyway, emphasising the significant negative impact of the experience on her mental health.

Crucially, the data shows that for a victim-survivor to be truly satisfied, they needed to feel that progress had been made or justice achieved in all three of the above areas. Even if Respondents received some level of personal justice—such as financial compensation or reaching some other agreement with their workplace—if they did not feel as though there had also been sufficient adjustments to the workplace's culture, or if they did not feel as though the perpetrator had been disciplined sufficiently, they did not report satisfaction with the outcome from their experience.

This was often linked to a concern that others would experience something like them - as one Respondent said, "the process is going to let predators continue... if [PERPETRATOR] isn't punished no one will be safe".

4. Confidentiality clauses and the restricting of victim/survivors' voices

A further point was flagged by two Respondents relating to the impacts of Confidentiality agreements, with one Respondent commenting on how:

"Being restricted by Confidentiality clauses at conciliations continues to silence the victims, and does not depict the true crisis & numbers that sexual harassment in the workplace affects. It continues to suppress my empowerment to recover, whilst they remain minimally affected. Their identity remains largely confidential. The perpetrator remains protected by a cone of silence."

These concerns about Confidentiality clauses reflect the limitations of sexual harassment and discrimination settlements, which restrict victim-survivors from speaking out - like sexual assault victim-survivors - and prevent meaningful organisational and structural change seeking to address workplace sexual harassment. These concerns echo those raised in the Respect@Work report¹³, and highlight the ongoing challenges in managing workplace sexual harassment.

¹³ Australian Human Rights Commission. (2020). Respect@Work: National inquiry into sexual harassment in Australian workplaces. Australian Human Rights Commission, Sydney.



DISABILITY DISCRIMINATION

For the purposes of disability discrimination, 'disability' includes a disability that presently exists, previously existed, that may exist in the future or is imputed to a person, including:

- Total or partial loss of bodily function;
- Presence in the body of organisms that may cause disease;
- Total or partial loss of a part of the body;
- Malformation or disfigurement of a part of the body;
- Malfunction of a part of the body, which includes a mental or psychological disease or disorder or a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder;
- Also includes behaviour that is a symptom or manifestation of a disability.

68 of 202 Respondents (33.66 per cent) said that they had experienced disability discrimination in the workplace with 30 of these Respondents (44.12 per cent) reporting experiences of multiple types of discrimination – including sex, age and race discrimination.

“Was let go from my job the day after I disclosed to my Manager that I was being assessed for Autism Spectrum Disorder and had asked about the possibility of an accommodation if I provided documentation from my GP and Psychologist. Manager said no to any possibility of an accommodation, and I lost my job the next day.”
(Survey Respondent)

Demographics

- 42 were female, 23 were male, and 3 were non-binary
- 1 was aged 19-24, 13 were aged 25-34, 16 were aged 35-44, 29 were aged 45-60 and 9 were aged 60+
- 50 lived in Metropolitan Melbourne, 6 lived in a regional city, and 12 lived in regional/rural Victoria
- 2 identified as Aboriginal and/or Torres Strait Islander
- 13 identified as culturally and linguistically diverse
- 4 identified as LGBTIQ+
- 38 identified as living with disability¹⁴

¹⁴ Note – we believe the discrepancy between those reporting experiences of disability discrimination (68), and those who self-identify as living with disability (38) may be due to the temporary nature of some disabilities, e.g. some injuries, illnesses and conditions.

Work Status

- 7 were casuals, 1 was on a fixed term contract, 2 were independent contractors, 37 were permanent full-time, 19 were permanent part-time, 1 was a volunteer, and 1 was a jobseeker
- 18 were entry-level, 29 worked as individual contributors, 18 were supervisors/middle management, and 3 were senior managers
- 14 worked for less than 6 months, 9 for 6-12 months, 8 for 12 months – 2 years, 15 for 2-5 years, and 22 for more than 5 years
- 7 worked for small employers with under 15 employees, 10 worked for employers with between 15-50 employees, and 51 worked for large employers with more than 50 employees

Experiences

- 10 reported experiencing disability discrimination once, 23 experienced it 2-5 times, 8 experienced it 6-10 times, and 27 experienced it more than 10 times
- There was a sole perpetrator in 11 cases, 2-3 perpetrators in 32 cases, 4-5 perpetrators in 13 cases and more than 5 perpetrators in 12 cases
- 2 perpetrators were entry-level, 5 were individual contributors, 17 were supervisors/middle management, 22 were senior managers, and 22 were directors/executives

Respondents reported experiencing:

- Harassment and bullying: 46
- Loss of financial reward: 29
- Loss of job opportunities: 32
- Loss of position: 36
- Loss of work: 50

Respondents also provided further detail about other impacts of the discrimination experienced, with many noting the impact on their mental and emotional health:

- Currently off work for past 6 months on WorkCover for stress/anxiety
- Anxiety and mental health challenges
- Significant distress
- Stress and anxiety regarding job security

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- **Sought advice or support from family, friends or colleagues:** 51
- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 50
- **Sought advice or support from a non-legal service provider:** 50
- **Negotiated other working arrangements to protect myself:** 28
- **Chose to leave my employment for another opportunity:** 19

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 9 Respondents taking a single non-legal action, and 3 Respondents taking no non-legal action at all.

“It was recommended by my psychologist to end the situation as soon as possible to protect myself from more severe conditions as it continued for more than 4 years.”
(Survey Respondent)

Respondents reported the following outcomes after they took non-legal action:

- **No changes were made to the workplace or my working conditions:** 41
- **I was treated badly or worse at work after speaking up:** 39
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 29
- **I was able to recover lost job opportunities, financial reward, position or work:** 3
- **My employer took disciplinary action against the perpetrator:** 1
- **My employer introduced sexual harassment and discrimination policies and provided staff training:** 1

One Respondent noted that the start of the COVID-19 pandemic inadvertently helped to resolve their situation as the lockdowns meant that everyone started working from home, which was what they had sought to help manage their medical condition.

Some Respondents provided additional detail, with references to internal processes that failed to protect their rights:

“HR Manager was creating the issues and gaslighting - I was told no changes to formal documents would be made, no support was available and I was imagining things. I resigned.”

“My employer created changes that excluded me from other EBA entitlements. When I refused they found other ways to hassle me.”
(Survey Respondents)

Legal pathways taken

Respondents took a variety of different legal actions to try to resolve their situation:

- **Sought assistance from JobWatch, the FWO or another legal service:** 52
- **Made a General Protections or Unfair Dismissal claim with the FWC:** 16
- **Reported to WorkSafe Victoria:** 16
- **Made a discrimination claim to the VEOHRC:** 10
- **Made a discrimination claim to the AHRC:** 8
- **Made a discrimination claim to the VCAT:** 7
- **Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim:** 4
- **Reported to the police or other agency:** 3
- **Made an Order to Stop Bullying with the FWC:** 2

Most Respondents took multiple legal actions to try to resolve the issue, with only 14 Respondents taking a single legal action, and 10 Respondents taking no legal action at all.

Some Respondents mentioned seeking assistance from private lawyers or unions because they found it difficult to understand their options without more legal support and guidance:

“Called numerous places could not find out a lot about my rights and options and I joined a union.”
(Survey Respondent)

Respondents reported the following outcomes after taking legal action (if any):

- **I was unable to reach an agreement with the employer, and the situation is unresolved:** 22
- **I reached a financial settlement with the employer:** 12
- **I chose to discontinue my claim before a conciliation / mediation could take place:** 7
- **I was able to recover lost job opportunities, financial reward, position, or work:** 5
- **I reached a non-financial agreement with the employer:** 5
- **A regulatory agency investigated my employer:** 3
- **A regulatory agency declined to investigate my employer:** 2

Respondents provided many comments on the complexity and lengthy delays of the legal system, the difficulty of short time limits for claims, and the toll on mental and emotional health:

“I was advised by discrimination lawyer that I didn’t have any options.”

“I was told by the workplace that I had left it too long to make a complaint and that I needed to make a complaint shortly after leaving that workplace.”

“The employer will not offer me a fair appeal.”

“While attempting to prepare a submission to AHRC in 2020, I suffered from a mental health breakdown and required my first ever crisis admission to hospital. I am still investigating and potentially intending to submit an application to AHRC. I have been receiving Workcover since 2020.”

“I’m still waiting for my case to be heard through VCAT.”

“It’s been ongoing nine months now, not resolved.”

“Legal process yet to be finalised. Continue on Workcover.”

“Nothing other than I was ignored and my complaints dismissed, 9 years later and I am slowly getting to the truth, but the toll has been massive.”
(Survey Respondents)

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported varying levels of frustration with their employer and the legal system combined with ongoing mental and emotional injury and trauma from their experience.

“I’ve been off work on Workcover for stress and anxiety for over 6 months as nothing is resolved or changed at work. I don’t know what the future holds at my current employer.”

“The emotional and financial toll were prohibitive.”

“There was no legal avenue to pursue the matter due to cost combined with the mental impact the process was creating.”

“This was too distressing to follow up on legal action, which would have jeopardised my future work opportunities.”

“I stopped legal action due to mental health and cut my losses.”
(Survey Respondents)

Only a handful of people ended up having a positive resolution to the issues faced:

“I was able to continue to perform my role once reasonable adjustments were agreed with my employer.”

“I was able to recover what I was liable for.”
(Survey Respondents)

Case study

“I live with a permanent spinal condition and almost lost my job when I told my boss that I would need some days off for back brace appointments.

I was a casual employee at this stage, and they stood me down for a month while the doctors decided what was needed. I had to get two letters from doctors for them to allow me to recommence work. I also had to complete a physical fitness exam before returning, to make sure I was medically fit enough for the job.

I’m not allowed a seat to rest my legs and back, but there are others doing my exact same job who are allowed a seat. When I asked for a seat, I was told to take a few days off and go to the doctor on the premise that I had sore feet. I was also reminded that I am required to be medically fit enough to perform my duties.”

Marie, 40s (Regional/Rural Victoria)

Note – Marie sought both non-legal and legal advice, made internal complaints, and reported her employer to WorkSafe Victoria. Her situation remains unresolved.



AGE DISCRIMINATION

People of all ages and age groups can experience age discrimination in the workplace.

44 of 202 Respondents (21.78 per cent) said that they had experienced age discrimination in the workplace with 33 of these Respondents (75 per cent) reporting experiences of multiple types of discrimination – primarily sexual harassment, disability discrimination, and parental / carer / family status discrimination.

“During COVID-19 I was prevented from working because of my age, even though I’m in perfect health, until vaccinations were available. I was told they would find me work in another part of the organisation which did not occur. I was asked if I would be homeless if I did not work and when no work was forthcoming, the organisation harassed me to apply for the old age pension which I do not qualify for.”

(Survey Respondent)

Demographics

- 33 were female and 11 were male
- 1 was aged 19-24, 7 were aged 25-34, 6 were aged 35-44, 12 were aged 45-60 and 18 were aged 60+
- 30 lived in Metropolitan Melbourne, 3 lived in a regional city, and 11 lived in regional/rural Victoria
- 1 identified as Aboriginal and/or Torres Strait Islander
- 14 identified as culturally and linguistically diverse
- 3 identified as LGBTIQ+
- 11 identified as living with disability

Work Status

- 3 were casuals, 28 were permanent full-time, and 13 were permanent part-time
- 10 were entry-level, 18 worked as individual contributors, 12 were supervisors/middle management, and 4 were senior managers
- 7 worked for less than 6 months, 4 for 6-12 months, 5 for 12 months – 2 years, 10 for 2-5 years, and 18 for more than 5 years
- 8 worked for small employers with under 15 employees, 7 worked for employers with between 15-50 employees, and 29 worked for large employers with more than 50 employees

Experiences

- 5 reported experiencing age discrimination once, 10 experienced it 2-5 times, 10 experienced it 6-10 times, and 19 experienced it more than 10 times
- There was a sole perpetrator in 9 cases, 2-3 perpetrators in 20 cases, 4-5 perpetrators in 8 cases and more than 5 perpetrators in 7 cases
- 2 perpetrators were entry-level, 2 were individual contributors, 15 were supervisors/middle management, 15 were senior managers, and 10 were directors/executives

Respondents reported experiencing:

- Harassment and bullying: 30
- Loss of work: 28
- Loss of position: 20
- Loss of financial reward: 17
- Loss of job opportunities: 16

Respondents also provided further detail about other impacts of the discrimination experienced, with some noting the impact on their confidence and self-worth in the workplace:

- Loss of confidence
- Loss of self-esteem and value in the workplace
- Anxiety and mental health challenges

One Respondent noted that the difficulty of experiencing age discrimination towards the end of their working life effectively ensured an early retirement:

“My reputation and my confidence and well-being has been decimated.”
(Survey Respondent)

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 32
- **Sought advice or support from family, friends or colleagues:** 30
- **Sought advice or support from a non-legal service provider:** 27
- **Chose to leave my employment for another opportunity:** 15
- **Negotiated other working arrangements to protect myself:** 13

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 11 Respondents taking a single non-legal action. Only 1 Respondent took no non-legal actions.

Respondents reported the following outcomes after they took non-legal action:

- **No changes were made to the workplace or my working conditions:** 30
- **I was treated badly or worse at work after speaking up:** 24
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 15
- **My employer took disciplinary action against the perpetrator:** 1
- **My employer introduced sexual harassment and discrimination policies and provided staff training:** 1
- **I was able to recover lost job opportunities, financial reward, position or work:** 1
- **My employer made changes to the workplace to keep me safe:** 1

Multiple Respondents specifically mentioned losing their jobs through non-genuine redundancies, termination or resignation, or having to take extended leave to ‘escape’ the workplace.

“Weak laws provide protection to these perpetrators. They keep getting promotions and we suffer and experience difficulty in getting another job.”
(Survey Respondent)

Legal pathways taken

- Respondents took a variety of different legal actions to try to resolve their situation:
- **Sought assistance from JobWatch, the FWO or another legal service:** 31
 - **Reported to WorkSafe Victoria:** 14
 - **Made a General Protections or Unfair Dismissal claim with the FWC:** 7
 - **Made a discrimination claim to the VEOHRC:** 5
 - **Made a discrimination claim to the AHRC:** 3
 - **Made an Order to Stop Bullying with the FWC:** 2
 - **Made a discrimination claim to the VCAT:** 2
 - **Reported to the police or other agency:** 2

Most Respondents took multiple legal actions to try to resolve the issue, with only 14 Respondents taking a single legal action. 9 Respondents took no legal action at all.

- Respondents reported the following outcomes after taking legal action (if any):
- **I was unable to reach an agreement with the employer, and the situation is unresolved:** 11
 - **I reached a financial settlement with the employer:** 8
 - **I chose to discontinue my claim before a conciliation / mediation could take place:** 2
 - **A regulatory agency investigated my employer:** 4
 - **I reached a non-financial agreement with the employer:** 3
 - **A regulatory agency declined to investigate my employer:** 2
 - **My employer introduced sexual harassment and discrimination policies and provided staff training:** 1
 - **I was able to recover lost job opportunities, financial reward, position, or work:** 1

Some Respondents expressed disappointment with the process of making claims, and their access to justice:

“I was bound to accept token money. I was told by the Fair Work mediator that this is the only option to avoid costly legal proceedings.”

“Fair Work was not very helpful nor present in assisting despite there being written evidence of threats made to me.”
(Survey Respondents)

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported distress at not understanding their legal rights, having their claims and enquiries ignored, and not having sufficient support to navigate the legal system.

- “I now wish I had sought legal advice about unfair dismissal and taken action.”**
- “I should have taken legal action and reported to police and WorkSafe.”**
- “I am being stone walled at every turn and nobody will take my concerns seriously.”**
- “I had to let it go because no one would help me with my enquiry.”**
- “WorkSafe were not responsive to my claim, claim ignored, I felt lost without support from any agency, I was devastated that I had to resign.”**
- “I wasn’t guided to resolve the issue and instead was told to just ignore it.”**
- “The issue wasn’t addressed & they refused to recognise my claim. The amount I accepted only covered my legal costs which ran into the thousands & I was literally broke.”**
- “Seemed all too hard to pursue.”**
(Survey Respondents)

Only a handful of people ended up having a positive resolution to the issues faced:

- “Extremely satisfied. I was able to substantiate that HR was completely at fault suggesting I should resign and go and find another job without any entitlements.”**
- “I was offered more than I would have asked for.”**
(Survey Respondents)

Case study

“The company I worked for as a bus driver sent me a text telling me not to come into work at the beginning of COVID-19 because I was in a certain older age group. It was a harsh short message and it made me feel unwelcome, unwanted and as if I was a risk to myself but personally I think they thought I was a risk to others. There was no explanation.

A few days later I found out through a friend that I could sign a form to say I accept the risks, and the company had no option but to reinstate me. They wanted me to take my annual leave when they sent the text. It was a terrible experience, they had no mandate to discriminate on age and it has left me with a permanent scar.”

Sandra, 60s (Regional city)

Note – Sandra sought both non-legal and legal advice to get herself reinstated into her position. She says that without this support “I might still be unemployed by them today”.



PARENT, CARER AND FAMILY STATUS DISCRIMINATION

A 'carer' is a person on whom someone else is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care or attention wholly or substantially on a commercial basis.

A 'parent' includes being a stepparent, adoptive parent, foster parent or guardian.

'Parental status' means the status of being a parent or not being a parent.

37 of 202 Respondents (18.32 per cent) said that they had experienced parent, carer and family status discrimination in the workplace with less than half of these Respondents (18 Respondents, 48.68 per cent) reporting experiences of multiple types of discrimination – primarily sex, pregnancy, and breastfeeding discrimination.

"I was denied a flexible working arrangement that took into account my duties as a parent and also my duties as carer to my elderly and disabled mother. I was offered a flexible working arrangement that cut down hours (and therefore pay) instead of a flexible working arrangement that allowed work from home. In other words, some lip service was offered knowing full well it was not suitable."

(Survey Respondent)

Demographics

- 31 were female, 5 were male, and 1 was non-binary
- 3 were aged 25-34, 17 were aged 35-44, 15 were aged 45-60 and 2 were aged 60+
- 27 lived in Metropolitan Melbourne, 3 lived in a regional city, and 7 lived in regional/rural Victoria
- 1 identified as Aboriginal and/or Torres Strait Islander
- 10 identified as culturally and linguistically diverse
- 2 identified as LGBTIQ+
- 7 identified as living with disability

Work Status

- 1 was a casual, 25 were permanent full-time, 11 were permanent part-time
- 6 were entry-level, 18 worked as individual contributors, 11 were supervisors/middle management, and 2 were senior managers
- 3 worked for less than 6 months, 5 for 6-12 months, 4 for 12 months – 2 years, 12 for 2-5 years, and 13 for more than 5 years
- 7 worked for small employers with under 15 employees, 10 worked for employers with between 15-50 employees, and 20 worked for large employers with more than 50 employees

Experiences

- 8 reported experiencing parent, carer and family status discrimination once, 17 experienced it 2-5 times, 2 experienced it 6-10 times, and 10 experienced it more than 10 times
- There was a sole perpetrator in 6 cases, 2-3 perpetrators in 22 cases, 4-5 perpetrators in 6 cases and more than 5 perpetrators in 3 cases
- 1 perpetrator was an individual contributor, 9 were supervisors/middle management, 12 were senior managers, and 15 were directors/executives

Respondents reported experiencing:

- Loss of work: 25
- Harassment and bullying: 21
- Loss of position: 20
- Loss of financial reward: 19
- Loss of job opportunities: 17

Respondents also provided further detail about other impacts of the discrimination experienced, with resulting impacts on family.

"Inability to care properly for my mother and child how I would like to."

"Denied better work life balance."
(Survey Respondents)

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 24
- **Sought advice or support from family, friends or colleagues:** 25
- **Sought advice or support from a non-legal service provider:** 19
- **Chose to leave my employment for another opportunity:** 14
- **Negotiated other working arrangements to protect myself:** 11

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 7 Respondents taking a single non-legal action. 2 Respondents took no non-legal actions.

Respondents reported the following outcomes after they took non-legal action:

- **No changes were made to the workplace or my working conditions:** 25
- **I was treated badly or worse at work after speaking up:** 22
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 11
- **I was able to recover lost job opportunities, financial reward, position or work:** 2
- **My employer made changes to the workplace to keep me safe:** 2
- **My employer took disciplinary action against the perpetrator:** 1
- **My employer introduced sexual harassment and discrimination policies and provided staff training:** 1

Some Respondents provided additional detail, with multiple references to needing to negotiate with their employer to get the outcome they wanted:

"I have negotiated a severance agreement."

"I was given the opportunity eventually after a lot a backwards and forwards to have flexible working arrangements."

"Negotiated full payout."
(Survey Respondents)

Legal pathways taken

Respondents took a variety of different legal actions to try to resolve their situation:

- Sought assistance from JobWatch, the FWO or another legal service: 29
- Reported to WorkSafe Victoria: 6
- Made a General Protections or Unfair Dismissal claim with the FWC: 5
- Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim: 4
- Made a discrimination claim to the VEOHRC: 3
- Made a discrimination claim to the AHRC: 2
- Reported to the police or other agency: 2
- Made an Order to Stop Bullying with the FWC: 1
- Made a discrimination claim to the VCAT: 1

Most Respondents took multiple legal actions to try to resolve the issue, with only 15 Respondents taking a single legal action. 8 Respondents took no legal action.

Respondents appeared to prefer pursuing claims (if any) through industrial law mechanisms (e.g. General Protections claims) over discrimination claims.

One Respondent noted that her union representative advised against making a complaint to VEOHRC:

“Spoke with the [UNION] who urged me to go to mediation and then make a complaint to the Equal Opportunity Commission but they changed their mind and said that as there was no precedent we would be unsuccessful.”
(Survey Respondent)

Respondents reported the following outcomes after taking legal action (if any):

- I was unable to reach an agreement with the employer, and the situation is unresolved: 13
- I reached a financial settlement with the employer: 9
- I chose to discontinue my claim before a conciliation / mediation could take place: 4
- I reached a non-financial agreement with the employer: 4
- A regulatory agency declined to investigate my employer: 3
- I was able to recover lost job opportunities, financial reward, position, or work: 2
- A regulatory agency investigated my employer: 2
- My employer introduced sexual harassment and discrimination policies and provided staff training: 1

Some Respondents remarked that they felt the legal system was too hard to navigate, and instead chose to give up their position and find other employment:

“I just sought information and felt unable to take any action. My previous employer still has not been held accountable and continues to mistreat their staff. I felt I had no option but to seek new employment and am lucky this worked out for me.”
(Survey Respondent)

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, the majority of Respondents voiced their disappointment with the power imbalance in pursuing a claim against a large employer.

“Every legal option exposed me financially and the workplace made it known they would fight. I felt there was really no guarantees and therefore no recourse. Everything I looked at just seemed fruitless.”

“This was too distressing to follow up on legal action, which would have jeopardised my future work opportunities.”

“I was very sad my old workplace didn’t do the right thing in conciliation.”

“The employer did not take responsibility for their actions, they paid out my three month notice period and I was forced to resign even though it clearly was a demotion and should have been a redundancy. I was not happy as I don’t think that they will not do it again.”

“They got what they wanted [and I didn’t] after 15 years of loyal employment.”
(Survey Respondents)

Case study

“I was micro-managed by my manager and I felt bullied like there was a target on my back. Questioned about my time off with family and medical appts, I was even made to put in annual leave for 10 minutes.

He wanted me to sign a new contract, which I didn’t want to, so I was denied a pay increase. I was given a written warning because a customer complained when I was working remotely to answer the door to my child with ADHD. I was verbally attacked when I tried to tell him how he was making me feel.

After being taken to hospital with chest pains one night, which was due to stress, I had an anxiety panic attack. At that point I just resigned and walked away. The HR department backed up my management. I felt forced out and like I had no choice.”

Anita, 40s (Metropolitan Melbourne)

Note – Anita sought non-legal advice, made internal complaints, and ended up resigning when the discrimination began to affect her health. She has found a new job, but spent some weeks unemployed and under financial stress.



SEX DISCRIMINATION

Sex discrimination can happen to anyone, but is more likely to happen to those who are female.

36 of 202 Respondents (17.82 per cent) said that they had experienced sex discrimination in the workplace with 26 of these Respondents (72.22 per cent) reporting experiences of multiple types of discrimination – including sexual harassment and parent / carer / family status discrimination.

“I was the only woman that worked in any of the technical roles and was treated unfairly at all times, not considered for growth opportunities and excluded from social circles.”

(Survey Respondent)

Demographics

- 33 were female, and 3 were male
- 1 was aged 19-24, 11 were aged 25-34, 14 were aged 35-44, and 10 were aged 45-60
- 26 lived in Metropolitan Melbourne, 5 lived in a regional city, and 5 lived in regional/rural Victoria
- 2 identified as Aboriginal and/or Torres Strait Islander
- 10 identified as culturally and linguistically diverse
- 8 identified as LGBTIQ+
- 11 identified as living with disability

Work Status

- 3 were casuals, 25 were permanent full-time, and 8 were permanent part-time
- 5 were entry-level, 16 worked as individual contributors, 9 were supervisors/middle management, 5 were senior managers, and 1 was a director/executive
- 10 worked for less than 6 months, 5 for 6-12 months, 3 for 12 months – 2 years, 9 for 2-5 years, and 9 for more than 5 years
- 6 worked for small employers with under 15 employees, 10 worked for employers with between 15-50 employees, and 20 worked for large employers with more than 50 employees

Experiences

- 5 reported experiencing sex discrimination once, 9 experienced it 2-5 times, 4 experienced it 6-10 times, and 18 experienced it more than 10 times
- There was a sole perpetrator in 11 cases, 2-3 perpetrators in 15 cases, 4-5 perpetrators in 4 cases and more than 5 perpetrators in 6 cases
- 3 perpetrators were individual contributors, 9 were supervisors/middle management, 13 were senior managers, and 11 were directors/executives

Respondents reported experiencing:

- Harassment and bullying: 24
- Loss of financial reward: 19
- Loss of work: 19
- Loss of job opportunities: 18
- Loss of position: 18

Respondents also provided further detail about other impacts of the discrimination experienced, with some noting the impact on their mental and emotional health through being ‘overworked’ and being ‘isolated’.

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- **Made a complaint internally to my boss, to HR, or to someone else in the workplace:** 28
- **Sought advice or support from family, friends or colleagues:** 27
- **Sought advice or support from a non-legal service provider:** 21
- **Chose to leave my employment for another opportunity:** 15
- **Negotiated other working arrangements to protect myself:** 12

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 7 Respondents taking a single non-legal action, and 1 Respondents taking no non-legal action at all.

Respondents reported the following outcomes after they took non-legal action:

- **No changes were made to the workplace or my working conditions:** 24
- **I was treated badly or worse at work after speaking up:** 21
- **I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider:** 12
- **My employer took disciplinary action against the perpetrator:** 1

Some Respondents provided additional detail, with most referencing losing their employment as a result of speaking up:

“I lost my job and so did all of the other females working there.”

“I was made redundant.”

“Made redundant following a WorkCover claim;
(Survey Respondents)

Legal pathways taken

Respondents took a variety of different legal actions to try to resolve their situation:

- **Sought assistance from JobWatch, the FWO or another legal service:** 24
- **Reported to WorkSafe Victoria:** 8
- **Made a General Protections or Unfair Dismissal claim with the FWC:** 6
- **Made a discrimination claim to the VEOHRC:** 4
- **Reported to the police or other agency:** 3
- **Made a discrimination claim to the AHRC:** 1
- **Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim:** 1
- **Made an Order to Stop Bullying with the FWC:** 1

Most Respondents took multiple legal actions to try to resolve the issue, with only 12 Respondents taking a single legal action, and 8 Respondents taking no legal action at all.

Respondents reported the following outcomes after taking legal action (if any):

- **I was unable to reach an agreement with the employer, and the situation is unresolved:** 12
- **I reached a financial settlement with the employer:** 6
- **I chose to discontinue my claim before a conciliation / mediation could take place:** 3
- **I reached a non-financial agreement with the employer:** 2
- **A regulatory agency investigated my employer:** 3
- **A regulatory agency declined to investigate my employer:** 1

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported dissatisfaction because of unresolved issues, or other problems with the legal system:

- “I needed to keep my job so didn’t argue the issue any further.”
- “I left the job after been told I needed to travel 2.5 hours each way to work. I got pushed out.”
- “No one wanted to listen to me only listened to the big company legal team.”
- “Fair Work is not about identifying bad employers but resolving issues before they go to hearing and support the employer.”
(Survey Respondents)

Even those who had more positive outcomes noted that it was only partially positive, as the employer frequently didn’t take more preventative action:

- “I wanted them to acknowledge what they had done was wrong. By reaching a financial agreement, they know they did the wrong thing.”
- “Those who discriminated against me are working as though nothing ever happened.”
(Survey Respondents)



Case study

“Providing project management on a small site, my company hired a site manager who would not take direction, treated me disrespectfully multiple times, told me I did not belong and was not part of the project because I wasn’t ‘one of the guys’.

I placed a complaint with my direct manager, and the matter was investigated by the general manager. After the investigation, I was called to a meeting to say that I would be demoted and placed on another project to resolve the situation. I told my direct manager and general manager that I would resign if this was to be implemented. The general manager begrudgingly moved the site manager to another project, and told me after the fact ‘don’t think you’ve won’.

After this occurred, I was instructed to move on site full time, communication and support was withdrawn from the senior manager, subjected to a high level of criticism, and isolated from my team. Once the project had been completed, I was moved into another section of the company to perform work I was not qualified for, and given no explanation of when I would be joining another project. I then received a formal written warning noting that subcontractors had complained about me on my previous project, and if my behaviour did not improve I would be fired.

The subcontractors confirmed with me that they had not complained, and when I called a meeting with the general manager to address these issues, I was provided a written response confirming the ‘errors’ contained in the formal warning.

No further action was taken, nor was the formal warning withdrawn. I continued to have to work in an area I was unqualified for, continued to be frozen out by the senior and general manager, and individuals in the team who were less qualified and experienced than myself were being given opportunities more in line with my working experience.”

Melia, 30s (Regional city)

Note – Melia sought both non-legal and legal advice, and made internal complaints. She ended up leaving her employment as the situation could not be resolved.

“I believe I did everything I possibly could in my power to address the situation.”



RACE DISCRIMINATION

Race includes colour, descent, ancestry, nationality, national origin, ethnicity, ethnic origin or any characteristics associated with a particular race.

30 of 202 Respondents (14.85 per cent) said that they had experienced race discrimination in the workplace with 18 of these Respondents (60 per cent) reporting experiences of multiple types of discrimination – including sex discrimination and sexual harassment.

“I was bullied constantly and called a coconut which was extremely hurtful.”
(Survey Respondent)

Demographics

- 21 were female, and 9 were male
- 5 were aged 25-34, 15 were aged 35-44, 9 were aged 45-60, and 1 was aged 60+
- 22 lived in Metropolitan Melbourne, 4 lived in a regional city, and 4 lived in regional/rural Victoria
- 3 identified as Aboriginal and/or Torres Strait Islander
- 18 identified as culturally and linguistically diverse
- 3 identified as LGBTIQ+
- 4 identified as living with disability

Work Status

- 2 were casuals, 22 were permanent full-time, and 5 were permanent part-time, and 1 was a jobseeker
- 6 were entry-level, 12 worked as individual contributors, 6 were supervisors/middle management, 3 were senior managers, and 3 were a director/executive
- 6 worked for less than 6 months, 5 for 6-12 months, 8 for 12 months – 2 years, 2 for 2-5 years, and 9 for more than 5 years
- 5 worked for small employers with under 15 employees, 5 worked for employers with between 15-50 employees, and 20 worked for large employers with more than 50 employees

Experiences

- 1 Respondent reported experiencing race discrimination once, 5 experienced it 2-5 times, 6 experienced it 6-10 times, and 18 experienced it more than 10 times
- There was a sole perpetrator in 9 cases, 2-3 perpetrators in 6 cases, 4-5 perpetrators in 7 cases and more than 5 perpetrators in 8 cases
- 2 perpetrators were individual contributors, 11 were supervisors/middle management, 6 were senior managers, and 11 were directors/ executives

Respondents reported experiencing:

- Harassment and bullying: 24
- Loss of work: 16
- Loss of job opportunities: 15
- Loss of position: 13
- Loss of financial reward: 11

Respondents also provided further detail about other impacts of the discrimination experienced, with some noting ‘sabotage’ of their position and entitlements:

“He undermined my ability to be successful by saying I should ‘pull back and work only 90%’ of my capability. This could backfire on me easily as he can turn around and say I wasn’t performing well.”

“Theft of wages - didn’t want to provide formula of commissions, unpaid super.”
(Survey Respondents)

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- Made a complaint internally to my boss, to HR, or to someone else in the workplace: 27
- Sought advice or support from family, friends or colleagues: 20
- Sought advice or support from a non-legal service provider: 20
- Chose to leave my employment for another opportunity: 9
- Negotiated other working arrangements to protect myself: 9

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 7 Respondents taking a single non-legal action.

Respondents reported the following outcomes after they took non-legal action:

- No changes were made to the workplace or my working conditions: 24
- I was treated badly or worse at work after speaking up: 21
- I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider: 12
- My employer introduced sexual harassment and discrimination policies and provided staff training: 1

Legal pathways taken

Respondents took a variety of different legal actions to try to resolve their situation:

- Sought assistance from JobWatch, the FWO or another legal service: 26
- Reported to WorkSafe Victoria: 13
- Made a General Protections or Unfair Dismissal claim with the FWC: 9
- Made a discrimination claim to the AHRC: 7
- Made a discrimination claim to the VEOHRC: 3
- Reported to the police or other agency: 2
- Made a discrimination claim to the VCAT: 2
- Made an Order to Stop Bullying with the FWC: 2
- Made an underpayments claim through a Letter of Demand, FWO assistance, or court claim: 1

Most Respondents took multiple legal actions to try to resolve the issue, with only 8 Respondents taking a single legal action, and 2 Respondents taking no legal action at all.

Respondents reported the following outcomes after taking legal action (if any):

- I was unable to reach an agreement with the employer, and the situation is unresolved: 8
- I reached a financial settlement with the employer: 5
- I reached a non-financial agreement with the employer: 4
- I chose to discontinue my claim before a conciliation / mediation could take place: 3
- A regulatory agency investigated my employer: 2
- A regulatory agency declined to investigate my employer: 1
- My employer introduced sexual harassment and discrimination policies and provided staff training: 1

Respondents noted the potentially prohibitive cost (financial and otherwise) of pursuing legal action in influencing their decision:

“Accessing the Fair Work service and taking the matter to court would take min. \$10,000, which I was told by Fair Work person.”

“I haven’t taken legal action because of lack of hard evidence I’ve been told after consulting a lawyer.”

“I was told I have to bring them to Courts as criminal offences and breach of contract is involved.”
(Survey Respondents)

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported dissatisfaction with the process of reporting race discrimination, of pursuing race discrimination claims, and the seemingly difficult task of holding employers to account.

“I wasn’t happy because the law is in favour of the employers as they have money to go to court and hire better lawyers, but individuals with no money cannot afford the legal service.”

“I lost my job, have been unable to find employment since August 2021, feel like I have been black banned within the area. I received no financial settlement. HR wrote on my file that I resigned.”

“I wasn’t satisfied as the nepotism and bullying continues to exist in the company without them being punished for what they have done and are doing.”

“FWC process are not helpful and legal support is very expensive. FWC should have legal support available for people earning below certain level.”

“No, they were still trying to bully me through legal proceedings and they also accused me of many things that I did not do.”
(Survey Respondents)

Even those who had more positive outcomes noted that it was only partially positive, and only due to receiving legal help.

“Although the employer did not take any responsibility for their adverse actions, the JobWatch lawyer was extremely helpful and supportive.”

“Legal advice was very helpful. Case is ongoing.”

“I was compensated half the amount but I wouldn’t of been able to do anything without JobWatch.”
(Survey Respondents)

Case study

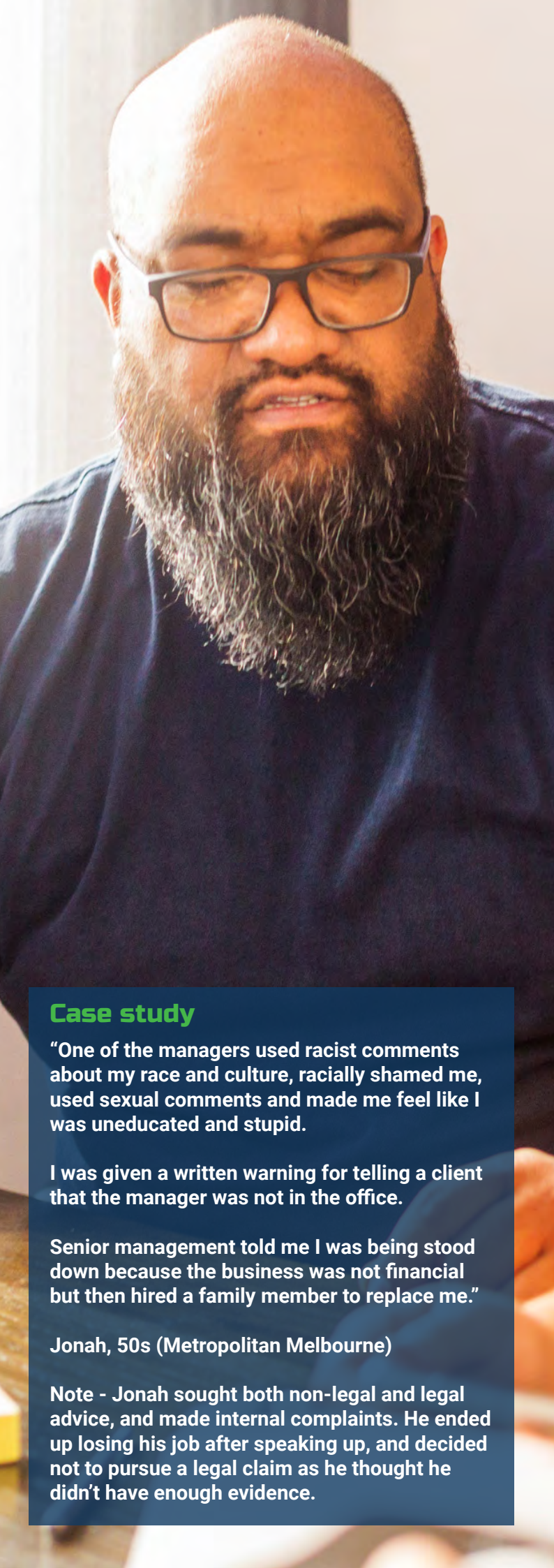
“One of the managers used racist comments about my race and culture, racially shamed me, used sexual comments and made me feel like I was uneducated and stupid.

I was given a written warning for telling a client that the manager was not in the office.

Senior management told me I was being stood down because the business was not financial but then hired a family member to replace me.”

Jonah, 50s (Metropolitan Melbourne)

Note - Jonah sought both non-legal and legal advice, and made internal complaints. He ended up losing his job after speaking up, and decided not to pursue a legal claim as he thought he didn’t have enough evidence.



PREGNANCY AND BREASTFEEDING DISCRIMINATION

It is unlawful to discriminate against a person because they are pregnant or might become pregnant, or because they are breastfeeding a child or expressing milk.

11 of 202 Respondents (5.45 per cent) said that they had experienced pregnancy and breastfeeding discrimination in the workplace with 9 of these Respondents (81.82 per cent) reporting experiences of multiple types of discrimination – primarily parental / carer / family responsibilities discrimination and sex discrimination.

“I was removed from the roster when I disclosed my pregnancy and asked for a safe job.”

(Survey Respondent)

Demographics

- All 11 respondents were female
- 1 was aged 19-24, 1 was aged 25-34, and 9 were aged 35-44
- 9 lived in Metropolitan Melbourne, 1 lived in a regional city, and 1 lived in regional/rural Victoria
- 5 identified as culturally and linguistically diverse
- 2 identified as LGBTIQ+
- 3 identified as living with disability

Work Status

- 1 was casual, 8 were permanent full-time, and 2 were permanent part-time
- 2 were entry-level, 4 worked as individual contributors, 3 were supervisors/middle management, and 2 were senior managers
- 1 worked for less than 6 months, 3 for 6-12 months, 2 for 12 months – 2 years, 2 for 2-5 years, and 3 for more than 5 years
- 4 worked for small employers with under 15 employees, 1 worked for employers with between 15-50 employees, and 6 worked for large employers with more than 50 employees

Experiences

- 1 Respondent reported experiencing pregnancy and breastfeeding discrimination once, 2 experienced it 2-5 times, 3 experienced it 6-10 times, and 5 experienced it more than 10 times
- There was a sole perpetrator in 2 cases, 2-3 perpetrators in 6 cases, 4-5 perpetrators in 1 case and more than 5 perpetrators in 2 cases
- 1 perpetrator was entry-level, 2 were supervisors/middle management, and 7 were directors/executives

Respondents reported experiencing:

- Harassment and bullying: 9
- Loss of work: 8
- Loss of position: 7
- Loss of financial reward: 6
- Loss of job opportunities: 3

Non-legal pathways taken

Respondents took a variety of different non-legal actions to try to resolve their situation:

- Sought advice or support from family, friends or colleagues: 10
- Sought advice or support from a non-legal service provider: 7
- Made a complaint internally to my boss, to HR, or to someone else in the workplace: 6
- Chose to leave my employment for another opportunity: 4
- Negotiated other working arrangements to protect myself: 3

Most Respondents took multiple non-legal actions to try to resolve the issue, with only 1 Respondent taking a single non-legal action.

Respondents reported the following outcomes after they took non-legal action:

- No changes were made to the workplace or my working conditions: 9
- I was treated badly or worse at work after speaking up: 6
- I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider: 5

Legal pathways taken

Respondents who had experienced pregnancy and breastfeeding discrimination were much less likely when compared to other Respondents in this survey to try different legal actions to resolve their situation.

One Respondent gave the following explanation:

“I left the job as I was having a difficult pregnancy and could not deal with the stress of taking legal action against them.”

(Survey Respondent)

Where they did choose to take legal action, Respondents reported doing the following:

- Sought assistance from JobWatch, the FWO or another legal service: 9
- Reported to WorkSafe Victoria: 2
- Made a General Protections or Unfair Dismissal claim with the FWC: 3
- Made a discrimination claim to the AHRC: 1
- Made a discrimination claim to the VEOHRC: 1

2 Respondents took no legal action at all, and 6 Respondents only spoke to JobWatch, the FWO or another legal service before deciding to not take any further legal action.

It is clear that for most women experiencing pregnancy and breastfeeding discrimination, there is a real barrier to taking legal action on their workplace issue – time limits, complexity of the system, and new demands on their time as they go through their pregnancy and new parenthood, all play a part.

Respondents reported the following outcomes after taking legal action (if any):

- I was unable to reach an agreement with the employer, and the situation is unresolved: 4
- I reached a financial settlement with the employer: 3
- I chose to discontinue my claim before a conciliation / mediation could take place: 1

Outcomes

When asked whether they were satisfied with the results of their legal and non-legal actions, Respondents mostly reported dissatisfaction with the complexity of reporting pregnancy discrimination and the added stress at an already emotionally turbulent time.

“No. I was at a vulnerable stage in my pregnancy and did not have the ability to continue talking to the perpetrator who became a bully, who was talking aggressively in emails. She was both my director and boss and the company was so small there was no HR.”

“I was pregnant and it wasn’t worth the stress to my family and health.”

“I was not helped by any organisation and lost confidence and my job. It has taken me years to start to recover from this.”

(Survey Respondents)

One person did report a positive result, primarily as she hoped her case would help to bring about systemic change for all pregnant women.

“I feel I stood up for pregnant woman everywhere, adding to the statistics as to how terrible pregnant woman are treated and hope this brings about change.”

(Survey Respondent)



Case study

“Employer fired me as I wouldn’t date him. Before this happened, there were lots of other issues. He didn’t pay me properly, and he also took advantage of the government payments (JobKeeper) fraudulently.

He was also racist with my children who are of Islander decent. He told me to wear more sexy clothes, and he told me to stop breast-feeding as he was a ‘boob man’ and my boobs were a distraction.”

Eva, 30s (Regional city)

Note - Eva sought both non-legal and legal advice, and made internal complaints. She ended up pursuing a number of legal claims including discrimination and unfair dismissal. Unfortunately, she was unable to reach an agreement with the employer, and the situation is unresolved.

“The process is horrendous and ... if it doesn’t resolve and [EMPLOYER] punished, no one will be safe.”

Opportunities for legal system reform

The information provided by Respondents has highlighted several areas for potential reform in the legal system. In this chapter, JobWatch provides ten recommendations for improving access to justice for people who have experienced workplace sexual harassment and discrimination.

Recommendation 1: Standardise time limits across all jurisdictions to 24 months for initiating all forms of discrimination claims.

Time limits for initiating discrimination claims varies across state and federal jurisdictions across the country, from 6 months, 12 months or 24 months, depending on the type of discrimination and in which jurisdiction the claim is being filed.

These variances create confusion for individuals seeking to make a claim, and in many cases the shorter time frames fail to recognise the complex reasons why an applicant may be delayed in making a claim immediately.

“Having to find my way through, I have not known the correct body to lodge complaints and so were never resolved, also due to time limitations.”

(Survey Respondent)

To simplify the process of making a discrimination claim for applicants, JobWatch proposes that time limits for initiating discrimination claims should be standardised to 24 months across all states, territories and federally.

Note – JobWatch also believes that time limits for dismissal claims (unfair dismissal, General Protections Dispute – Termination) should be extended as 21 days is prohibitively short for many people. However, for the purposes of this report, we are focusing only on time limits for discrimination claims.

This longer time frame takes into account reasons why applicants might be delayed in making a claim, and provides more time for them to make a claim:

- the impact of the sexual harassment and discrimination on their mental state
- fear of victimisation
- lack of awareness of their legal rights or where to go to seek assistance
- where they are awaiting the outcome of an internal workplace investigation
- in some cases of discrimination (e.g. pregnancy discrimination, parental and carer status discrimination), the life upheaval associated with pregnancy, childbirth and parenting or with the diagnosis of a serious medical condition (e.g. disability discrimination).
- cost and time implications
- overwhelming aspect of making a claim
- uncertainty of outcome
- fear of repercussions for future employment
- implications for family

Further, while it is possible to change a discrimination claim from the federal jurisdiction to the state jurisdiction, the reverse is not possible. These restrictions on transferring between jurisdictions compound the impact of the existing short time frames given irrevocable election of jurisdiction may need to be made and with incomplete information.

Legislation should be amended to allow applicants to change their discrimination claim from the state jurisdiction to the federal jurisdiction as well.

Recommendation 2: Expand the positive duties and vicarious liability provisions in anti-discrimination law to better address shared workspaces.

While most Australian anti-discrimination legislation defines ‘employer’ more expansively than the common law (and/or engage broader concepts such as ‘principal’), the definitions are not uniform. The manner in which different laws apply to workspaces shared by multiple organisations in particular is often partial, unclear, and inconsistent.

A particular area of concern is how these expanded definitions, where they exist, can and should apply in shared workspaces and to discrimination/harassment by persons with different employers. While some Australian equal opportunity legislation, for example, expressly covers common workspaces, the manner in which they do so differs significantly, while other legislation does not directly address how, if at all, the provisions apply to such circumstances.

JobWatch recommends that, to the extent this has not already occurred, protections against discrimination and harassment should be expressly extended to cover work and workplaces which are common to an alleged victim and alleged perpetrator. In particular, protections should apply where, for example, the alleged victim and alleged perpetrator are employed by separate entities that share a common worksite, including in respect of labour-hire arrangements. Positive duties to eliminate discrimination or workplace sexual harassment as far as practicable, for example, should apply to persons with control of a business undertaking or workplace.

Relatedly, vicarious liability provisions should extend liability for instances of discrimination and harassment by the employees of a principal against workers from other organisations at least where this occurs within common workspaces. While tribunals have at times sought to give equal opportunity legislation ‘fair, large and liberal’ interpretations which best promote statutory objectives by imposing vicarious liability on employers where their employees have harassed employees of other organisations, the jurisprudence in this area is limited and both business and workers would likely benefit from the introduction of clearer, express protections in this domain.

Recommendation 3: Fund and actively regulate and monitor compliance with the positive duty in the Equal Opportunity Act 2010 (Vic) and other anti-discrimination legislation across the country.

While the *Equal Opportunity Act 2010* (EOA) imposes a positive duty on organisations to eliminate discrimination, sexual harassment and victimisation as far as possible, the reality is that this is usually not enforced unless a complaint is raised. VEOHRC has the legislative power to conduct investigations, yet in the past few years has only conducted one non-complaint driven investigation into employer compliance with its positive duty (Bakers Delight Holdings, August 2022).

JobWatch recommends significantly increasing funding to VEOHRC to enhance their investigation function so that if two or more discrimination complaints are received about a single employer, VEOHRC has the capacity to not only facilitate the resolution of the complaints but also conduct a small scale investigation into the employer more generally, with the view to entering a Compliance Agreement with the employer should it be found that the employer has not complied with its positive duty.

Recommendation 4: Reduce and regulate the use of Confidentiality clauses in settlement agreements, to be used only on request by the applicant in the matter.

It is widely accepted, and also noted by Respondents to the survey that Confidentiality clauses in settlement agreements primarily protect the perpetrator and the employer with very little, if any, benefit to the applicant.

“Being restricted by Confidentiality clauses at conciliations continues to silence the victims, and does not depict the true crises & numbers that sexual harassment in the workplace affects. It continues to suppress my empowerment to recover, whilst they remain minimally affected. Their identity remains largely confidential. The perpetrator remains protected by a cone of silence.”

(Survey Respondent)

They can serve to hide workplace cultures where these discriminatory behaviours flourish, and other individuals continue to be at risk of experiencing workplace sexual harassment and discrimination from the same perpetrators, at the same workplace.

To better hold employers and perpetrators to account, JobWatch proposes that Confidentiality clauses in settlement agreements should only be used when requested by the applicant in the matter, and only where private legal advice has been obtained (funded by the employer), per recommendations of the Victorian Ministerial Taskforce into Workplace Sexual Harassment.

This includes reviewing and updating the standard Terms of Settlement used by agencies such as the FWC and VEOHRC to remove these Confidentiality clauses. Further, any financial settlement should not be contingent upon these clauses being included.

If an applicant feels as though they are being placed under duress to include these clauses, they can appeal to an appropriate agency (e.g. FWC, VEOHRC) to mediate.

Recommendation 5: Require employers to undergo mandatory anti-discrimination training and implementation of appropriate policies and procedures at the conclusion of any discrimination claim.

Further to Recommendation 4, including a standard clause in settlement agreements requiring employers to undergo mandatory anti-discrimination training and implementation of appropriate policies and procedures at the conclusion of any discrimination claim will help to address an issue raised by many Survey Respondents – that employers ‘just get away with it’ and that things will stay the same.

“Zero training or responsibility was taken by my employer for the disgusting way the situation was handled.”

(Survey Respondent)

The scope of this training and review should be informed by the nature of the claim – for instance, if the incidents in the claim occurred at one store of a national organisation, it may be sufficient that a thorough review be conducted at that one store. Guidelines for determining the scope of training and review should be developed.

Further, to ensure long-term systemic changes rather than just short-term reactions to an issue, employers should be obliged to commit to reviewing their internal policies and procedures, and ensuring that all their employees are aware of the obligations. For those employers without a dedicated HR function, standardised resources and training should be provided for them to access, adapt and implement.

Recommendation 6: Fund duty lawyers for anti-discrimination and industrial relations claims.

“Accessing the Fair Work service and taking the matter to court would take min. \$10,000, which I was told by the Fair Work person. I wasn’t happy because the law is in favour of the employers as they have money to go to court and hire better lawyers, but individuals with no money cannot afford the legal service.”
(Survey Respondent)

For many matters including child protection, criminal and family law matters, duty lawyers are available at a number of courts and tribunals across Victoria. JobWatch suggests that a duty lawyer system should be made available for discrimination and industrial relations claims as well, with the level of help provided ranging from information, advice or representation, depending on the person’s circumstances and any vulnerabilities they are experiencing.

This recognises the fact that employment is integral to the individual and our community as a whole. Secure and safe employment ensures financial security, housing security, mental and emotional wellbeing, and general health. Insecure employment or loss of employment negatively impacts these areas and our community as a whole.

Providing a duty lawyer service for employment law matters will have a preventative effect on the negative outcomes that can be experienced by individuals going through these claims and facilitate a more efficient legal process.

Recommendation 7: Fund the development and promotion of legal education resources for the general community and secondary contacts.

“I didn’t know what options were available to me at the time.”
(Survey Respondent)

Lack of information and knowledge about their legal rights was highlighted by some Respondents as a barrier to taking action – by the time they knew what to do, the time limit for making a claim that best suited their circumstances had lapsed (e.g. an individual only has 21 days to submit a General Protections Dispute – Termination claim).

JobWatch recommends that funding should be allocated to the development and promotion of legal education resources both for the general community, and for secondary contacts who can provide appropriate legal information to the target audience – e.g. maternal child health nurses can be equipped with asking questions about a new parent’s employment to see if they need legal assistance relating to pregnancy / breastfeeding / parental status discrimination.

Recommendation 8: Increase funding to community legal centres to deliver dedicated workplace sexual harassment and discrimination legal services

Survey Respondents have clearly demonstrated that there is ongoing need for dedicated legal services for workplace sexual harassment and discrimination matters.

The need in the community is currently significantly higher than the capacity of legal services to respond. Navigating the legal process is costly and complex; meeting strict time limits and choosing appropriate jurisdictions is challenging. Many cannot afford to make a claim or understand the process. Access to properly funded legal services is their only hope to access justice.

Without this support, workers are aggrieved and disillusioned with negative impacts filtering through to community and government.

“I was very satisfied with the results...the JobWatch lawyer was extremely helpful and supportive.”
(Survey Respondent)

Increased funding to community legal centres is required to meet the need*, more than was promised to sexual harassment matters through the federal government’s response to the Respect@Work Report as discrimination matters also need to be addressed.

Recommendation 9: Create a ‘Discrimination Information Statement’ to be provided to all employees on the commencement of a new job, similar to the ‘Fair Work Information Statement’.

“There was absolutely no support or information available.”
(Survey Respondent)

Further to Recommendation 7, JobWatch recommends that the Fair Work Ombudsman be responsible for creating a ‘Discrimination Information Statement’ which will be required to be provided to all employees when they commence employment with a new employer. This Statement can be provided at the same time as, or otherwise incorporated into, the ‘Fair Work Information Statement’ which is already required to be provided, so there is no extra effort required from the employer.

***Note** - JobWatch acknowledges the ongoing funding of our Workplace Sexual Harassment and Discrimination Project, which is funded to assist clients with legal advice and representation.





Recommendation 10: Create a leading-practice recognition program like Workplace Gender Equality Agency's 'Employer of Choice' to promote best practice amongst employers who demonstrate an active commitment to eradicating discrimination and sexual harassment in the workplace.

The Workplace Gender Equality Agency's 'Employer of Choice' citation has been proven by research to be successful in driving improved gender equality outcomes in Australian workplaces.

Implementing a similar leading-practice recognition program for anti-discrimination will allow workplaces to benchmark their performance and create concrete plans for improving workplace culture and protection against discrimination and sexual harassment.

There will be a strong commercial driver to being part of this program. Providing strong public recognition of an organisation's focus on anti-discrimination, supports them in their ability to attract and retain the best possible talent to build a high-performance workforce. Taking it one step further, it could become a requirement that an organisation be part of this program in order to be eligible for bidding for government tenders or receiving government grants.

Appendix 1: Survey Questions

Thank you for taking part in the JobWatch 2022 Workplace Sexual Harassment and Discrimination Survey.

You have received an invitation to complete this survey because you have called JobWatch's Telephone Information Service in the last five years with a query about workplace sexual harassment and discrimination (WSH&D).

We are conducting this survey because we're seeking to understand what actions people choose to take after raising issues relating to WSH&D and being presented with their legal options.

This will help inform how we deliver our services, and may help us advocate for more government funding to provide more dedicated legal advice and representation services. We also expect to release a research report on our findings in 2023.

Completing this survey will take between 5 and 10 minutes, depending on your answers. All your answers will be de-identified before publication, and you do not need to provide your contact details unless you wish to.

If you have any questions about this survey, please contact amandac@jobwatch.org.au.

If you have further questions about your workplace rights following completion of this survey, we encourage you to contact our Telephone Information Service for legal assistance:

- Melbourne Metro – (03) 9662 1933
- Regional VIC, QLD, TAS – 1800 331 617

Page 1: About You

These questions relate to you as the person who called JobWatch. Providing us with this information will help us better target our services to particular demographics and community groups.

1. What is your gender?

- Female
- Male
- Non-binary
- Other (please specify)

2. What is your age range?

- Under 15
- 15 – 18
- 19 – 24
- 25 – 34
- 35 – 44
- 45 – 60
- 60+

3. Where are you located?

- Metropolitan Melbourne
- Regional city
- Regional/rural Victoria

4. Do you identify as (select all that apply):

- Culturally and linguistically diverse
- Living with disability
- Aboriginal and/or Torres Strait Islander
- LGBTIQ+

Page 2: About the job

These questions relate to the job where you experienced the workplace sexual harassment and discrimination (WSH&D).

5. What type of employee were you?

- Permanent full-time
- Permanent part-time
- Fixed-term
- Casual
- Independent Contractor
- Other (please specify)

6. What level was your role in the workplace?

- Entry-level
- Individual contributor
- Supervisor / Middle manager
- Senior manager
- Director / Executive

7. How long had you been in the role when you experienced the WSH&D?

- Less than 6 months
- 6 – 12 months
- 12 months – 2 years
- 2 – 5 years
- More than 5 years

8. How large was your employer (please consider the whole employer not just your jobsite – e.g. if they were national with multiple sites)?

- Under 15 employees
- 15 – 50 employees
- More than 50 employees

Page 3: About your experience

These questions relate to your experience of workplace sexual harassment and discrimination (WSH&D) which led you to call JobWatch.

In this section, you have the option of providing a written narrative about your experience, before we then ask questions that are designed to capture general data. Any written narratives will only be used publicly after de-identification – e.g. if you include the employer’s name in your summary, we will edit your narrative to exclude this detail.

9. Please provide a summary of your experience (optional).

- Free text option

10. I experienced (select all that apply):

- Sexual harassment
- Sexual assault
- Sexual offence (e.g. image-based sexual abuse)
- Sex discrimination
- Pregnancy / breastfeeding discrimination
- Parental / carer / family responsibilities discrimination
- Disability discrimination
- Age discrimination
- Race discrimination
- Other (please specify)

11. I experienced this:

- Once
- 2 – 5 times
- 6 – 10 times
- More than 10 times

12. How many people (perpetrators) were responsible for your experience?

- 1
- 2 – 3
- 4 – 5
- More than 5

13. Thinking about the primary perpetrator (the main person) responsible for your experience of WSH&D, what level was their role in the workplace?

- Entry-level
- Individual contributor
- Supervisor / Middle manager
- Senior manager
- Director / Executive

14. Through my experience of discrimination, I experienced (select all that apply):

- Loss of job opportunities (e.g. denied a promotion)
- Loss of financial reward (e.g. pay rises)
- Loss of position (e.g. demotion, moving to casual instead of permanent)
- Loss of work (e.g. losing shifts, redundancy, dismissal)
- Harassment and bullying, including verbal attacks
- Other (please specify)

Page 4: About your actions

These questions relate to any actions you took because of your experience of workplace sexual harassment and discrimination (WSH&D). These actions may have been taken either before or after your call to JobWatch.

15. Because of my experience, I took the following non-legal actions: (select all that apply)

- Made a complaint internally to my boss, to HR, or to someone else in the workplace
- Negotiated other working arrangements to protect myself
- Chose to leave my employment for another opportunity
- Sought advice or support from family, friends or colleagues
- Sought advice or support from a non-legal service provider (e.g. mental health professional)
- No non-legal action taken

16. What happened after you took this non-legal action? (select all that apply)

- I was able to recover lost job opportunities, financial reward, position, or work
- My employer took disciplinary action against the perpetrator (e.g. stood them down from work, made them go to anti-discrimination training)
- My employer made changes to the workplace to keep me safe
- My employer introduced sexual harassment and discrimination policies and provided staff training
- No changes were made to the workplace or my working conditions
- I was treated badly or worse at work after speaking up
- I decided to take legal action after receiving advice or support from family, friends, colleagues or a non-legal service provider
- Other (please specify)

17. Because of my experience, I took the following legal actions: (select all that apply)

- Sought assistance from JobWatch, the Fair Work Ombudsman, or another legal service
- Made a discrimination claim to the Australian Human Rights Commission
- Made a discrimination claim to the Victorian Civil and Administrative Tribunal
- Made a discrimination claim to the Victorian Equal Opportunity and Human Rights Commission
- Made a General Protections or Unfair Dismissal claim with the Fair Work Commission
- Made an Order to Stop Bullying with the Fair Work Commission
- Made an underpayments claim through a Letter of Demand, Fair Work Ombudsman assistance, or court claim
- Reported to WorkSafe Victoria
- Reported to the police or other agency
- No legal action taken
- Other (please specify)

18. What happened after you took this legal action? (select all that apply)

- I was able to recover lost job opportunities, financial reward, position, or work
- I chose to discontinue my claim before a conciliation / mediation could take place
- I reached a financial settlement with the employer
- I reached a non-financial agreement with the employer
- I was unable to reach an agreement with the employer, and the situation is unresolved
- A regulatory agency investigated my employer
- A regulatory agency declined to investigate my employer
- My employer introduced sexual harassment and discrimination policies and provided staff training

19. Were you satisfied with the results of your actions? Why, or why not?

- Free text option

Page 5: About this research

These questions relate to how you wish your answers to this survey to be used. Please note that all responses will be de-identified.

20. I consent for: (select all that apply)

- JobWatch to use my answers for the purposes of advocacy and government law reform
- JobWatch to use my answers for the purposes of a research report
- JobWatch to share my answers with RMIT University researchers who are investigating reporting options for victim-survivors of sexual assault and sexual harassment

21. I am happy to be contacted by JobWatch for more in-depth research interviews if required. (optional)

- Name
- Email
- Phone Number

Thank you page

Thank you for participating in the JobWatch 2022 Workplace Sexual Harassment and Discrimination Survey.

We appreciate your contribution, which will help in our advocacy and government law reform efforts, as well as influence how we deliver our services.

We understand that providing us with information about your experience may have been difficult. We encourage you to seek mental health assistance if required:

- Beyond Blue: 1300 22 4636
- Lifeline: 13 11 14
- 1800RESPECT: 1800 737 732
- Sexual Assault Crisis Line: 1800 806 292

If you have further questions about your workplace rights following completion of this survey, we encourage you to contact the JobWatch Telephone Information Service for legal assistance about your rights at work:

- Melbourne Metro – (03) 9662 1933
- Regional VIC, QLD, TAS – 1800 331 617

Or, you can visit our website at www.jobwatch.org.au.

Appendix 2: Email invitation to complete survey

Dear <FIRST NAME>,

You are receiving this email because you have called JobWatch's Telephone Information Service in the last five years with a query about workplace sexual harassment and discrimination (WSH&D).

We trust that we were of assistance to you.

As a caller to JobWatch we would be grateful if you could take part in the JobWatch 2022 Workplace Sexual Harassment and Discrimination Survey.

We are conducting this survey to find out the actions people took after raising issues of workplace sexual harassment and discrimination and being presented with their legal options – e.g. whether they put in discrimination claims, resolved things informally with their employer, or left their employment.

This will help to inform us on how we deliver our services and how our services may be improved. It will assist us to advocate for more government funding to provide more dedicated legal advice and representation services. We also expect to release a research report on our findings in 2023.

Completing this survey will take between 5 and 10 minutes, depending on your answers. All your answers will be de-identified before publication, and you do not need to provide your contact details unless you wish to.

If you have any questions about this survey, please contact amandac@jobwatch.org.au.

If you have further questions about your workplace rights following completion of this survey, we encourage you to contact our Telephone Information Service for legal assistance:

- Melbourne Metro – (03) 9662 1933
- Regional VIC, QLD, TAS – 1800 331 617

Regards,

<JobWatch signature here>



**Produced by: Job Watch Inc
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