

18 October 2021

Via email: women.victoria@dffh.vic.gv.au

To whom it may concern,

Re: Victorian Gender Equality Strategy

The Victorian Pride Lobby welcomes the opportunity to provide a response to the consultation paper on the Victorian Gender Equality Strategy.

The Victorian Pride Lobby is a community based advocacy group that works towards equality, social justice and advancing human rights for lesbian, bisexual, queer, gay and same-gender attracted Victorians.

We do not speak in the place of trans and gender diverse, intersex and asexual community members, but rather work constructively, cooperatively and respectfully with transgender, intersex, asexual and other community organisations to achieve social change for the whole community.

Our submission calls on you to prioritise legislative and policy reforms that move beyond mere recognition of LGBTIQ+ communities towards genuine inclusion in employment strategies, pathways to leadership, and mentoring and networking schemes.

We have also attached our submission to the discussion paper on workplace sexual harassment, as this provides further recommendations on how to deal with this issue.

We welcome any opportunity to work together to ensure that the Strategy responds to the needs of LGBTIQ+ communities.

Yours sincerely,

Nevena Spirovska and Evie Potter
Co-Convenors, Victorian Pride Lobby

Background

It is important to remember that gender inequality is often underpinned by social and structural inequalities that are often exacerbated according to sexual orientation, gender identity or sex characteristics.

LGBTIQA+ communities report high rates of discrimination in the workplace, including being subjected to inappropriate and intrusive comments and questions from managers and colleagues, being forced to use a toilet they do not feel comfortable using, or simply not being hired at all. Workplace gender affirmation policies and leave entitlements would contribute to safer and more diverse workplaces. All organisations, and particularly those who receive government funding, should be required to ensure their policies, forms and practices are safe, inclusive and responsive for all people according to their sexual orientation, gender identity or sex characteristics. It is important that there is also a safe and responsive workplace culture beyond policies and procedures.

In addition to discrimination within the workplace, LGBTIQA+ communities face significant challenges and complex barriers when seeking employment. We therefore encourage the inquiry to prioritise employment strategies that include both legislative and policy reform. In addressing the ongoing discrimination and disadvantage experienced by LGBTIQA+ communities, we encourage the Strategy to move beyond mere recognition of our communities to include us in employment strategies, pathways to leadership, and mentoring and networking schemes.

Safety

Positive duty to eliminate harassment

The Australian Human Rights Commission's *Respect @ Work* report recommended the express prohibition of sex-based harassment.¹ However, one of the weaknesses of this recommendation is that only includes harassment on the ground of sex. This does not include sexual orientation, gender identity or intersex status, despite the report finding that people of diverse sexual orientations and intersex variations experienced higher instances of harassment in the workplace.²

With the Commonwealth Government legislating to outlaw sex-based harassment,³ this is an ideal opportunity for the Victorian Government to legislate.

¹ Australian Human Rights Commission, *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 28.

² Australian Human Rights Commission, *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 22-28.

³ Sex Discrimination and Fair Work (Respect At Work) Amendment Bill 2021 (Cth).

We recommend that the Victorian Government amend the *Equal Opportunity Act 2010* to prohibit harassment (or unwelcome conduct of a demeaning nature) on the basis of any attribute and impose a duty (including on employers) to eliminate harassment.

Remove the onus on individuals bringing complaints

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) has an important role in enforcing human rights legislation. The *Equal Opportunity Act 2010* needs reforms in general to increase the powers of the VEOHRC and undo the Equal Opportunity Amendment Act 2011, which took away some of the Commission's powers to conduct public inquiries into systemic discrimination, issue compliance notices and enter into enforceable undertakings.

This was recently recommended by the Legislative Assembly's Legal and Social Issues Committee.⁴ As Mr Jamie Gardiner surmised in his evidence to the Committee, "putting the onus of dealing with improper conduct on the victim of that conduct is wrong."⁵

We recommend that the Victorian Government amend the *Equal Opportunity Act* to restore the powers of the VEOHRC to investigate systemic discrimination, conduct public inquiries, issue compliance notices and enter into enforceable undertakings, similar to provisions in the *Conversion Practices Prohibition Act*.

Vilification reforms

The Legislative Assembly's Legal and Social Issues Committee also recommended that anti-vilification protections be extended to cover the attributes of gender and/or sex, sexual orientation, gender identity and/or gender expression and sex characteristics and/or intersex status, amongst others.⁶

We support the expansion of anti-vilification laws to address vilification based on those attributes which are currently protected attributes under the *Equal Opportunity Act 2010*.

We recommend that the Victorian Government expand anti-vilification protections to address vilification based on sexual orientation, gender identity, gender expression, gender, sex, sex characteristics and HIV/AIDS status.

⁴ Legislative Assembly Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (2021) 141.

⁵ Legislative Assembly Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (2021) 140.

⁶ Legislative Assembly Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (2021) 58.

Respect Victoria

To prevent harassment, vilification and discrimination occurring, there is a need to ensure that primary prevention initiatives take account of the needs of LGBTIQA+ people.

We recommend that the Victorian Government develop an expert advisory group within Respect Victoria to guide and support all future work pertaining to the primary prevention of violence against people from LGBTIQA+ communities.

Legal services

There have been significant advances in the rights of the LGBTIQA+ community in recent years that are important milestones in the arc towards justice. Yet, the historical and ongoing discrimination experienced by the LGBTIQA+ community has a significant impact on their ability to access justice and address their legal needs. On a range of social indicators, LGBTIQA+ people experience poorer outcomes which make them more likely to experience issues that can necessitate a legal response and, at the same time, impact their ability to access legal services in order to address such needs.

The LGBTIQ Legal Service based at the St Kilda Legal Service collects intake data, which shows that 78% of clients are unemployed at that time and 73% earn less than \$400 per week. The Service also surveyed the broader LGBTIQA+ community and found that most prevalent legal issues were employment law followed by discrimination law. Similar findings have been echoed in Victoria Legal Aid's Midsumma survey, which found that 45% of participants had been treated badly by a current or potential employer on the basis of their gender/sexual identity.

The Victorian Government's Access to Justice Review identified the LGBTIQA+ community as one of the groups that experiences particular issues in having their legal needs met. The review recommended that:

The Victorian Government should include legal triage and services in the proposed Pride Centre, in order to provide tailored and specialist legal information, education, referrals, and legal advice to lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) people and to deliver LGBTI cultural competency training to legal service providers.

In its response to the review, the Victorian Government agreed with this recommendation. It is yet to be enacted.

We recommend that the Victorian Government fund a permanent community-controlled LGBTIQA+ legal service based in the Pride Centre, which includes specialised employment legal services.

We recommend that the Victorian Government increase ongoing funding to legal services providing LGBTIQ+ specific clinics, including St Kilda Legal Service and others.

Economic equity

Trans employment strategies

There is also a need to provide tailored support to LGBTIQ+ people seeking employment, particularly trans and gender diverse people who face higher levels of unemployment. Unemployment for trans people is about four times that of the general population, unemployment for gender diverse people can be as high as eight times that of the general population, and 95% of trans workers affirming their gender in the workplace leave their job.⁷

We recommend that the Victorian Government formulate and implement an employment strategy to address barriers to employment for trans and gender diverse people, modelled off the ‘Every opportunity’ employment strategy for people with disability, that includes:

- **research into barriers to workplace participation for trans and gender diverse people; and**
- **employment programs that support employment for trans and gender diverse people, similar to the WorkingOUT program for LGBTIQ+ job seekers with a disability.**

Transition leave

The Victorian Government can also play a leadership role on inclusive LGBTIQ workplaces through its public sector industrial relations policies.

We recommend that the Victorian Government include a model clause on leave of absence for medical treatment for transgender workers during gender affirmation in Industrial Relations Victoria’s Public Sector Industrial Relations Policies.

Ethical procurement

There is a risk that when the Victorian Government is outsourcing work and service delivery, it is outsourcing to organisations that discriminate against LGBTIQ+ people. This must be prevented.

⁷ Australian Civil Liberties Union, ‘Gay, Lesbian, Bisexual, Transgender and Intersex Rights’ in *Your Rights* (2001).

We recommend that the Victorian Government include a clause in the Victorian Common Funding Agreement and any service agreements that stipulates that any service-provider cannot discriminate against LGBTIQ+ people in service delivery or employment.

Leadership and representation

LGBTIQ+ Taskforce

The Victorian Government's peak consultative body on LGBTIQ+ issues is its LGBTIQ+ Taskforce. The Taskforce has expert advisory groups on intersex, trans and gender diverse issues, but not on issues affecting bisexual people. Furthermore, there is a need for the Taskforce to understand the issues facing different people in different parts of the state.

We recommend that the Victorian Government establish a bisexual expert advisory group to the LGBTIQ+ Taskforce and its working groups to ensure the specific needs of bisexual people, their partners and families are met in all government LGBTIQ+ campaigns.

We recommend that the Victorian Government establish regional advisory councils to the LGBTIQ+ Taskforce to keep the Taskforce and its working groups informed about the issues that matter in particular regions.

Reforming the LGBTIQ Leadership Program

The Victorian Government has established and funded an LGBTIQ Leadership Program through Leadership Victoria, and made great strides in the inclusion of culturally and linguistically diverse and Aboriginal people in this program and more can be done in including rural and regional people, women and people with a disability. One of the limits of the Program is that it is only for people 18 or over. There should be a similar program for LGBTIQ+ Victorians under 18.

We recommend that the Victorian Government mandate that a certain percentage of participants in the LGBTIQ Leadership Program be:

- women;
- people with a disability;
- culturally and linguistically diverse people;
- Aboriginal people; and
- rural or regional Victorians.

We recommend that the Victorian Government provide secure, ongoing funding to Minus18's Young Leaders Program.

Mentoring program

The Victorian Government has set a target for 50% of all new appointments to major boards to be women. To achieve this target, more needs to be done to support women of diverse sexual orientations, gender identities or sex characteristics to stand for boards.

We recommend that the Victorian Government expand the LGBTIQ Leadership Program's mentoring program beyond individuals selected for the Program and to also include governance and board mentoring, potentially through moving graduates of the LGBTIQ Leadership Program on to the Women's Board Leadership Program.

Networking

Networks allow people of similar interests to engage with one another and identify mentoring opportunities.

We recommend that the Victorian Government establish a formal network for graduates of the LGBTIQ Leadership Program.

Ministerial Taskforce on Workplace Sexual Harassment
Department of Justice and Community Safety

Via email: workplacesafetyreform@justice.vic.gov.au

CC: The Hon. Ingrid Stitt, Minister for Workplace Safety
Todd Fernando, Acting Commissioner for LGBTIQ+ Communities

25 June 2021

To whom it may concern,

Re: Discussion paper - Workplace sexual harassment

Thank you for the opportunity to provide feedback on the discussion paper on workplace sexual harassment.

The Victorian Pride Lobby is a community based advocacy group that works towards equality, social justice and advancing human rights for lesbian, gay, queer, bisexual and same-sex attracted Victorians. We work constructively, cooperatively and respectfully with transgender, intersex, asexual and other organisations that support our organisation's mission and vision.

Our submission calls on government and employers to acknowledge that lesbian, gay, bisexual, trans and gender diverse, intersex, queer and asexual (LGBTIQ+) workers experience disproportionately high levels of sexual harassment, including in specific industries. It further calls on employers to develop and implement robust and comprehensive sexual harassment prevention plans, developed in consultation with LGBTIQ+ workers, that acknowledge and respond to the particular barriers LGBTIQ+ workers experience when seeking to make complaints and include specific consequences for breaches, including disciplinary sanctions and alternative ways to hold perpetrators to account.

We would welcome the opportunity to meet to discuss our submission further and to work together to create equitable and inclusive workplaces.

Yours sincerely,

Nevena Spirovska and Evie Potter
Co-Convenors, Victorian Pride Lobby

Understanding the issue

The Australian Human Rights Commission's *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces* found that lesbian, gay, bisexual, transgender, intersex or queer/questioning (LGBTIQ) workers are more likely to experience sexual harassment in the workplace.¹

It reported results from *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*:

- 47% of people who identify as gay or lesbian have been sexually harassed in the workplace in the last five years,² and 83% over the course of their lifetime;³
- 57% of people who identify as bisexual have been sexually harassed in the workplace in the last five years,⁴ and 90% over the course of their lifetime;⁵
- 55% of people who identify as pansexual, queer, asexual, aromantic, undecided, not sure or questioning have been sexually harassed in the workplace in the last five years,⁶ and 81% over the course of their lifetime;⁷ and
- 77% of people with an intersex variation have been sexually harassed in the workplace in the last five years,⁸ and 90% over the course of their lifetime.⁹

However, there is a lack of research on the factors that lead to greater exposure to sexual harassment for LGBTIQ workers.¹⁰ One factor could be a lack of mainstream understanding of sexual orientation, gender diversity and variations in sex characteristics.¹¹ As a result much of the discussion around workplace sexual harassment is heteronormative and assumes a male harasser and female victim.¹² Intersex experiences are also elided. This excludes experiences of LGBTIQ workers.

Furthermore, LGBTIQ people may find it harder to report sexual harassment due to fear, stigma and experiences of discrimination.¹³ A survey conducted by the St Kilda Legal

¹ Australian Human Rights Commission, *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 19, 299, 352, 653.

² Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) 26.

³ *Ibid* 22.

⁴ *Ibid* 26.

⁵ *Ibid* 22.

⁶ *Ibid* 26.

⁷ *Ibid* 22.

⁸ *Ibid* 28.

⁹ *Ibid* 23.

¹⁰ Australian Human Rights Commission, *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 22, 174, 198, 301.

¹¹ *Ibid* 177.

¹² *Ibid* 178.

¹³ *Ibid* 92, 177, 769.

Service found that LGBTIQ workers would be more likely to report workplace sexual harassment if they could remain anonymous.¹⁴

The Commission recommended that consistent information and education should be provided through a wide range of channels to ensure that guidance on workplace rights relating to sexual harassment is accessible, culturally appropriate and more effectively reaches LGBTIQ workers.¹⁵ It also recommended that education and training programs and initiatives to address sexual harassment be accessible and tailored for LGBTIQ workers.¹⁶

Police

The Victorian Equal Opportunity and Human Rights Commission's *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police* found that lesbian, gay, bisexual, transgender and intersex (LGBTI) employees have and continue to experience sexual harassment.¹⁷ However, formal complaints of sexual harassment are low.¹⁸ This is due to particular barriers LGBTI employees experience when seeking to make complaints,¹⁹ including the hypermasculine and paramilitary hierarchical power structure of the organisation, which forms both a barrier to reporting and a culture for sexual harassment to flourish.²⁰

In 2014, Michael Maynes, a former gay police officer who experienced 'unwarranted and inappropriate comments and behaviours by certain members of Victoria police' took his own life.²¹ The Commission noted that sexual harassment has a profound and cumulative effect on those that experience it and the impacts are often lasting, staying with them throughout their career and even after they have left the organisation.²²

The Commission reported results from its *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase One Report* that an employee's sexual orientation is a risk factor for sexual harassment, in particular:

¹⁴ *Ibid* 698.

¹⁵ *Ibid* 395-396.

¹⁶ *Ibid* 676.

¹⁷ Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police*, 8.

¹⁸ *Ibid* 8, 36.

¹⁹ *Ibid* 13.

²⁰ *Ibid* 39 referencing Nicole Buchanan, Isis Settles, Angela Hall and Rachel O'Connor, 'A Review of Organisational Strategies for Reducing Sexual Harassment: Insights from the U.S. Military' (2014) 70(4) *Journal of Social Sciences* 688-689.

²¹ Tammy Mills, "'We are deeply sorry': Victoria police apologises for what happened to Michael Maynes', *The Age* (17 January 2018).

²² Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police*, 25, 31.

- gay men are six times more likely than men overall to have been sexually harassed by a colleague in the past five years;²³ and
- lesbian women have rates of sexual harassment a third higher than women overall.²⁴

The Commission recommended a review of policies on sexual harassment to use inclusive language and provide clear guidance to employees, managers and supervisors on the complaints process, confidentiality, protections from victimisation, responsibilities to take complaints seriously, available supports and bystander action.²⁵ It also recommended that responsible staff are trained to respond to sexual harassment.²⁶ Finally, it recommended that the promotion of organisation-wide messaging that sexual harassment is not tolerated, including by leadership.²⁷

Ambulance services

Whilst we are awaiting the Victorian Equal Opportunity and Human Rights Commission's report of its independent review of Ambulance Victoria, research on the Queensland Ambulance Service found that its sexual harassment policy and procedures were not explicitly inclusive of intersex status, did not provide explicit examples of LGBTIQ+ harassment, did not provide specific training for managers to respond to LGBTIQ+ harassment and did not list confidential contacts specifically trained for LGBTIQ+ staff.²⁸

Courts and tribunals

Dr Helen Szoke's *Review of Sexual Harassment in Victorian Courts: Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT* found that sexual harassment is disproportionately experienced by those who identify as lesbian, gay, bisexual, transgender and gender-diverse, intersex and queer (LGBTIQ+).²⁹

Despite reports of men fetishising lesbian lawyers' personal lives and judicial officers directing disrespectful commentary to transgender litigants, the report acknowledged the

²³ Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase One Report* (2015) 13, 71, 90.

²⁴ *Ibid* 90-91.

²⁵ Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police*, 9, 46.

²⁶ *Ibid* 9, 50.

²⁷ *Ibid* 10, 53.

²⁸ Courtenay Wakefield, *An exploration of how LGBTQ+ paramedic experiences of inclusion and exclusion can inform policy and cultural safety in a state funded ambulance service* (Masters Thesis, Queensland University of Technology, 2021) 148.

²⁹ Helen Szoke, *Review of Sexual Harassment in Victorian Courts: Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT* (2021) 57.

failures of current discourse around sexual harassment to address the experience of people who identify as LGBTIQ+. ³⁰

Whilst Dr Szoke recommended that the courts and VCAT find practical ways to recognise and support LGBTIQ+ people and ensure these staff can thrive, ³¹ she acknowledged that her recommendations did not specifically address sexual harassment of LGBTIQ+ people, ³² and that further initiatives to address the specific issues faced by LGBTIQ+ people will be required. ³³

Legal professionals

The Victorian Legal Services Board and Commissioner's *Sexual Harassment in the Victorian Legal Sector: Report of Findings* found:

- 73% of people who identified as queer experienced sexual harassment; ³⁴
- 60% of people who identified as bisexual experienced sexual harassment; ³⁵ and
- 55% of people who identified as lesbian experienced sexual harassment. ³⁶

However, the Board and Commissioner did not specifically address sexual harassment of LGBTIQ+ people.

Public servants

The Victorian Auditor-General's Office's *Sexual Harassment in the Victorian Public Service: Independent Assurance Report to Parliament* found that lesbian, gay, bisexual, trans and gender-diverse, intersex and queer/questioning (LGBTIQ) persons are at much greater risk of sexual harassment:

- 13% of LGBTIQ persons experienced sexual harassment; ³⁷ and
- 26% of non-binary people experienced sexual harassment. ³⁸

Despite this, it found that departments do not have plans in place to address the higher risk of sexual harassment of LGBTIQ employees, ³⁹ including targeted support. ⁴⁰ Notably,

³⁰ *Ibid* 45.

³¹ *Ibid* 57.

³² *Ibid* 66.

³³ *Ibid* 67.

³⁴ Victorian Legal Services Board and Commissioner, *Sexual Harassment in the Victorian Legal Sector: Report of Findings* (2019) 28.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ Victorian Auditor-General's Office, *Sexual Harassment in the Victorian Public Service: Independent Assurance Report to Parliament* (2019) 11.

³⁸ *Ibid*.

³⁹ *Ibid* 14, 62.

⁴⁰ *Ibid* 51.

the Victorian Government's guidance on LGBTIQ workforce inclusion contains no information on sexual harassment.⁴¹

The Auditor-General's recommendations do not specifically address sexual harassment of LGBTIQ people.

Local government staff and councillors

The Victorian Auditor-General's Office's *Sexual Harassment in Local Government: Independent Assurance Report to Parliament* found that lesbian, gay, bisexual, trans and gender diverse, intersex, queer/questioning and asexual (LGBTIQA+) were at greater risk of sexual harassment and 48% of LGBTIQA+ persons experienced sexual harassment in the last twelve months.⁴² It found that gender inequality and stereotypes, as well as homophobic, transphobic and hyper-masculine work environments, can put LGBTIQA+ individuals at greater risk of sexual harassment.⁴³

The Auditor-General's recommendations do not specifically address sexual harassment of LGBTIQA+ people.

Developing appropriate responses

Two key guides by WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission provide guidance on addressing sexual harassment in the workplace.

WorkSafe Victoria

WorkSafe Victoria's *A Guide for Employers: Work-related Gendered Violence including Sexual Harassment* defines work-related gendered violence as 'any behaviour, directed at any person, or that affects a person, because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety' and includes violence targeted directly at someone specifically because they identify as lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQA+).⁴⁴

The guide recommends that employers, managers and controllers develop policies and procedures that include clear expectations about behaviours, attitudes and language that disrespect or exclude people based on gender, gender identity, sexual orientation or assumptions about dominant gender stereotypes and socially prescribed gender roles,

⁴¹ Victorian Government, 'LGBTIQ+ workforce inclusion plans' (18 September 2020) <<https://www.vic.gov.au/lgbtiq-workforce-inclusion-plans>>.

⁴² Victorian Auditor-General's Office's *Sexual Harassment in Local Government: Independent Assurance Report to Parliament* (2020) 5, 28, 30.

⁴³ *Ibid* 30.

⁴⁴ WorkSafe Victoria, *A Guide for Employers: Work-related Gendered Violence including Sexual Harassment* (2020) 1.

and that specify examples of types of behaviours that are and are not allowed.⁴⁵ Furthermore, these workplace standards should be included in induction and workplace training.⁴⁶

Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission's *Guideline: Preventing and Responding to Workplace Sexual Harassment* acknowledges that lesbian, gay, bisexual, trans and gender-diverse, intersex and queer/questioning (LGBTIQ) people experience disproportionately high levels of sexual harassment.⁴⁷ This is attributable to homophobia, transphobia, and hypermasculine and heteronormative gender and cultural norms,⁴⁸ as well as structural inequality and discrimination.⁴⁹ The impacts of sexual harassment include mental, physical and emotional impacts as well as career impacts.⁵⁰

The guideline recommends the development and implementation of an effective sexual harassment prevention plan, developed in consultation with LGBTIQ employee networks.⁵¹

Charting a way forward

Raising awareness

Government and employers must acknowledge that lesbian, gay, bisexual, trans and gender diverse, intersex, queer and asexual (LGBTIQA+) workers experience disproportionately high levels of sexual harassment, including in specific industries. Sexual harassment is a subset of gendered violence, which can also take the form of jokes, snide remarks about a worker's physical characteristics, put-downs, isolation or failing to use a worker's preferred name and pronouns.⁵²

Sexual harassment of LGBTIQA+ workers is attributable to a number of factors, including prejudice; hypermasculine and heteronormative gender and cultural norms; structural inequality and discrimination; and a lack of mainstream understanding of sexual orientation, gender diversity and variations in sex characteristics. It is gendered violence that underpins much of the sexual harassment of LGBTIQA+ people.

It may be useful to frame sexual harassment through the lens of gendered violence.

⁴⁵ *Ibid* 11.

⁴⁶ *Ibid*.

⁴⁷ Victorian Equal Opportunity and Human Rights Commission, *Guideline: Preventing and Responding to Workplace Sexual Harassment* (2020) 17.

⁴⁸ *Ibid* 20.

⁴⁹ *Ibid* 64.

⁵⁰ *Ibid* 28.

⁵¹ *Ibid* 52.

⁵² Victorian Pride Lobby, *Guide for Union and Employer Representatives on LGBTI Issues*, 7 [3.1].

It is important to also acknowledge the profound and cumulative effect of sexual harassment on LGBTIQ+ workers. It can affect work performance and may cause LGBTIQ+ workers to feel isolated at work.⁵³ It can also include mental, physical, emotional and career impacts that are often lasting, staying with workers throughout their career and even after they have left employment.

There is a need to respond to industry specific issues. In this regard, we recommend that:

- **Victoria Police** update its policies on sexual harassment to accord with the matters in this submission, ensure that responsible staff are trained to respond to LGBTIQ+ sexual harassment, and disseminate organisation-wide messaging that sexual harassment of LGBTIQ+ workers is not tolerated, including by leadership;
- the **Victorian Equal Opportunity and Human Rights Commission** acknowledge and include the experiences of LGBTIQ+ workers of its independent review of **Ambulance Victoria**;
- **Court Services Victoria** develop a sexual harassment policy that accords with the matters in this submission and addresses the specific issues faced by LGBTIQ+ workers;
- **Fairer Victoria** update its guidance on LGBTIQ+ workforce inclusion to provide information on sexual harassment that accords with the matters in this submission;⁵⁴
- the **Victorian Public Sector Commission** update its Model Policy for the Prevention of Sexual Harassment in the Workplace to accord with the matters in this submission; and
- **all Victorian councils** introduce a standalone sexual harassment policy that accords with the matters in this submission.

Preventing sexual harassment from occurring

Employers must develop and implement robust and comprehensive sexual harassment prevention plans, developed in consultation with LGBTIQ+ workers.

Though the Victorian Equal Opportunity and Human Rights Commission recommends that such plans be developed in consultation with LGBTIQ employee networks,⁵⁵ problems arise where pride networks are wrongly seen to represent all LGBTIQ+ workers (especially in cases where pride networks may not include trans or intersex workers), and where the employer talks exclusively to pride networks rather than consulting unions on LGBTIQ+ equality. Employers can consult with pride networks,

⁵³ *Ibid.*

⁵⁴ Victorian Government, 'LGBTIQ+ workforce inclusion plans' (18 September 2020) <<https://www.vic.gov.au/lgbtiq-workforce-inclusion-plans>>.

⁵⁵ Victorian Equal Opportunity and Human Rights Commission, *Guideline: Preventing and Responding to Workplace Sexual Harassment* (2020) 52.

while ensuring that the role of the unions and their right to be consulted continues to be recognised. Pride networks do not replace unions; consultation requirements are not satisfied through simply consulting pride networks on workplace changes that are likely to have an effect on LGBTIQ+ workers and avoiding consultation with unions. Any charter, plan or relevant document constituting a pride network should include a statement that the union will be consulted on issues relating to LGBTIQ+ workers.

Similarly, there should be no obligation on LGBTIQ+ workers, whether in a pride network or not, to educate co-workers or managers about their rights. Pride network leaders should be treated as volunteers and not assessed in regards to their role as pride network leaders as part of workplace performance appraisals.

The sexual harassment prevention plan must:

- use language that is explicitly inclusive LGBTIQ+ workers;
- include clear and explicit expectations about behaviours, attitudes and language that disrespect or exclude people based on gender identity, sexual orientation or sex characteristics, recognising that there are specific issues facing each population group within the LGBTIQ+ acronym;
- include a statement that deliberately disclosing information in relation to a worker's sexual orientation, gender identity or intersex status with intent to vilify or cause undue stress to that worker is unacceptable;⁵⁶
- include positive steps to prevent sexual harassment of LGBTIQ+ workers by managers, co-workers, service users and the public;
- be disseminated through a wide range of channels to ensure that it more effectively reaches LGBTIQ+ workers;
- be complemented by compulsory induction and workplace training on LGBTIQ+ sexual harassment;
- be complemented by organisation-wide messaging that sexual harassment of LGBTIQ+ workers is not tolerated, including by leadership; and
- be regularly monitored and reviewed in consultation with LGBTIQ+ workers and their unions.

In addition, workplaces can provide positive representations of LGBTIQ+ people across resources, materials and guides, and use posters, stickers and similar materials to signal support and increase visibility for LGBTIQ+ workers.⁵⁷

Supporting workers to report sexual harassment

In order to support LGBTIQ+ workers to report sexual harassment, it is important to acknowledge and respond to the particular barriers LGBTIQ+ workers experience when

⁵⁶ Victorian Pride Lobby, *Guide for Union and Employer Representatives on LGBTI Issues*, 8 [3.5].

⁵⁷ Victorian Trades Hall Council, *End Divide Through Pride: A Resource for Workers, Unions and Employers*, 30.

seeking to make complaints. Many LGBTQA+ workers fear making a complaint because they don't think it will be taken seriously or fear it will make the situation worse.⁵⁸ They might also fear outing themselves.⁵⁹ Those LGBTQA+ who do complain can face stigma and discrimination, including accusations of being over-sensitive, having no sense of humour, taking things the wrong way or bringing it on themselves by not hiding their sexual orientation, gender identity or intersex status at work.⁶⁰ Some may sign non-disclosure agreements to avoid outing themselves or a colleague. Straight, cisgender or non-intersex co-workers may fear reprisals if they complain about homophobia, biphobia, transphobia or anti-intersex prejudice directed towards colleagues,⁶¹ in part due to hypermasculine and hierarchical power structures within workplaces.

To promote victim-centred responses to sexual harassment, the sexual harassment prevention plan must provide clear guidance to workers on:

- the **complaints process**, including clear and easy to understand reporting options;
- **confidentiality provisions** that enable LGBTQA+ workers to make a complaint without fear of reprisal or outing themselves to anyone apart from the designated person/people, who should be someone other than their direct manager;
- **protections from victimisation** and responsibilities on the employer to take complaints seriously, in order to give LGBTQA+ victims and bystanders the confidence to report sexual harassment;
- **available supports**, including confidential contacts specifically trained to support LGBTQA+ workers; and
- **bystander action**, including an obligation on workers who witness an LGBTQA+ worker being sexually harassed to take appropriate action to report this behaviour.

In addition, employers should appoint and train harassment contact officers to provide confidential and impartial information and support to help workers make an informed decision about how to try to resolve an issue.⁶² Harassment contact officers should not be charged with resolving problems, but providing practical and effective advice to workers. Harassment contact officers should be paid an appropriate allowance.

Furthermore, counselling services should be made available to workers affected by bullying and harassment through the relevant employee assistance program.⁶³ The workplace's employee assistance program should provide access to specialist support for LGBTQA+ workers, such as that provided by Switchboard and QLife.

⁵⁸ Victorian Pride Lobby, *Guide for Union and Employer Representatives on LGBTI Issues*, 7 [3.2].

⁵⁹ *Ibid* 8 [3.4].

⁶⁰ *Ibid* 7-8 [3.2].

⁶¹ *Ibid* 8 [3.2].

⁶² *Ibid* 8 [3.7].

⁶³ *Ibid* 8 [3.9].

Enforcing compliance

The sexual harassment prevention plan should include specific consequences for breaches, including disciplinary sanctions and alternative ways to hold perpetrators to account, such as targeted behavioural change programs.

Furthermore, records should be kept of the number of complaints of harassment from LGBTIQ+ workers and the outcome of these complaints, and reported on annually.⁶⁴ This will hold employers to account where their obligation to prevent workplace sexual harassment has not been fulfilled. It should be remembered, however, that an absence of complaints does not mean there is no harassment. Indeed, it can suggest a culture where such harassment is so common that workers don't think to complain.

Whilst there is an obligation on defined entities to undertake workplace gender audits that assess progress in relation to sexual harassment in the workplace, this obligation only extends to organisations that fall under the *Gender Equality Act 2020*.⁶⁵ There is a gap in the legislative framework that excludes private companies from reporting incidents of sexual harassment. Extending this legislative obligation to private companies would promote accountability and transparency and assist in enforcement efforts.

One option could be to mandate employers to report all incidents of sexual harassment to WorkSafe,⁶⁶ through either an amendment to *Occupational Health and Safety Act 2004*,⁶⁷ or the *Occupational Health and Safety Regulations 2017*.

⁶⁴ *Ibid* 8 [3.8].

⁶⁵ *Gender Equality Act 2020* s 11.

⁶⁶ Sumeyya Ilanbey, "It's all secret and silent": Confidentiality agreements that silence victims to be investigated', *The Age* (7 June 2021).

⁶⁷ *Occupational Health and Safety Act 2004* s 37.