



National Inquiry into Sexual Harassment in Australian Workplaces

Australian Human Rights Commission

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About us



Consult Australia is the industry association representing consulting firms operating in the built and natural environment sectors. These services include design, engineering, architecture, technology, survey, legal and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments. We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms with combined revenue exceeding \$40 billion a year.

Some of our member firms include:



Executive summary

As the industry association representing the interests of consulting firms providing professional services for the built environment, Consult Australia's submission focuses on:

- Workplace measures to address sexual harassment in the workplace;
- The overarching importance of a positive workplace culture;
- Challenges faced when setting the tone and combatting sexual harassment in the workplace; and
- How the business community can contribute to public discussions.

Sexual harassment is a critical issue in Australia. The rise of sexual harassment over the past decade, and the fact that most victims are uncomfortable reporting incidents, suggests there is a need for our society to reflect on why this issue continues to plague Australia.¹ Our society needs to go to the issues behind sexual harassment – i.e. social attitudes that are linked to broader concerns around sexist beliefs and behaviours, which are the underpinning cause for the prevalence of incidents.² Consult Australia believes any solution to sexual harassment in the workplace must address these broader cultural and behavioural issues.

Inappropriate behaviours have no place in today's workplace. They cause hurt, marginalise people, create an unhealthy and unproductive environment, and can cascade incidents into more severe problems if left unabated. We must work together to eradicate sexual harassment from the workplace and in our wider community, and this can only be achieved through a coordinated, integrated and holistic approach. This will require a system-wide approach focused on not just the workplace: where we live, learn, work and play.

With regard to the workplace, we see a link between creating a positive workplace culture and addressing sexual harassment. A positive workplace culture is created by an investment from employees, values inclusion and diversity, and ensures staff are confident and comfortable to talk about concerns. A positive workplace culture ensures measures for preventing sexual harassment in the workplace are embraced, and removes perceived and actual barriers to the complaints process. It is underpinned and upheld by:

- A strong values system, based around trust and respect in the workplace;
- Support and model behaviour by the leadership of an organisation on a day-to-day basis; and
- A culture of accountability and calling out bad behaviours.

When looking at how we create a positive workplace culture, it is clear that gender equality and inclusion are key components. One of the key shortcomings in the current approach to gender equality is that we are not effectively engaging men. However, in order to deliver real and lasting change, we must take men along the journey as change agents, and we believe Consult Australia's Champions of Change Engaging Men Initiative has a lot to contribute on this front.

Our sector, and the wider business community, faces a number of challenges to addressing sexual harassment in the workplace. Firstly, we face a challenge from a fundamental society-wide problem around how some individuals in the community perceive women and their role in the world. Secondly, we face a number of challenges unique to our sector. These difficulties include encouraging employees to discuss inappropriate behaviour and to follow this up through the complaints handling process. This is particularly

¹ Australian Human Rights Commission, [Everyone's Business: 2018 Sexual Harassment Survey](#)

² Our Watch, [Bystander research snapshot report \(2018\)](#)

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the case in instances when employees are 'out on site' and away from the organisation's direct environment in an industry that is traditionally male-dominated.

On the whole, we believe legislative frameworks across Australia for sexual discrimination and sexual harassment in the workplace are appropriate. However, there is scope to address inconsistencies between the Commonwealth's and state and territory frameworks. These legislative frameworks also need to be underpinned by better guidance material to provide clarity on requirements, and on best practices (and the wider benefits) for the measures that employers can put in place. Legislative frameworks and best practice guidance material also need to be complemented by a strong advocacy role played by the Human Rights Commission and equivalent organisations in other jurisdictions. The Human Rights Commission should continue to play an important role by advocating for societal changes, and contributing to public discussions on relating topics; which are both critical for influencing change in the community.

We believe consulting firms providing professional services for the built environment, and the wider business community, can make important contributions to the public discussion in addressing sexual harassment across society. This includes helping to share a message through the business community's natural connections across society, helping to embed messages from public awareness campaigns, and having senior leaders as role models for the community.

Summary of recommendations

Throughout this submission, Consult Australia makes the following recommendations:

1. The Human Rights Commission investigate how a positive workplace culture can reduce incidents of sexual harassment in the workplace, and support an effective complaints handling process;
2. The Human Rights Commission's inquiry reviews the benefits of engaging men initiatives, particularly around how this approach can address broader cultural issues behind sexual harassment in the workplace and can result in real and lasting change;
3. A 'where we live, learn, work, play' approach to combating harassment across society be incorporated;
4. The Human Rights Commission develop more practical best practice guidance tools to help employers put in place reasonable measures to prevent sexual harassment incidents occurring in the workplace (and when their employees enter other workplaces), and on their positive duty requirements;
5. The Australian Government continue recent positive efforts by carrying out additional public awareness campaigns about the prevalence of sexual harassment across society and on requirements under the *Sex Discrimination Act 1984*;
6. The Australian Government work with state and territory governments to develop model legislation for sexual discrimination and sexual harassment across all Australian jurisdictions, and explore opportunities to streamline other anti-discrimination legislation; and
7. Governments to encourage the business community to contribute to a society-wide response to addressing sexual harassment by partnering with governments and contributing to public discussions on the topic.

Introduction

Sexual harassment is on the rise in Australia. As highlighted by the Human Rights Commission's *2018 Sexual Harassment Survey*, one in three workers said that they have been sexually harassed at work over the last five years. This is an increase from one in five in 2012, and one in ten in 2003. It is also clear that current reporting statistics do not represent the scale of the problem, with the survey results highlighting that 17 per cent of those who experience incidents of sexual harassment made a report or a complaint. Half of those who did make a formal complaint said nothing changed in their organisation as a result.³

While the Human Rights Commission's survey outlines the prevalence of sexual harassment in different sectors, the problem is not unique to any industry and is also pervasive across a range of science, technology, engineering and mathematic (STEM) sectors. Some of the challenges facing STEM sectors are highlighted in Professionals Australia's *All Talk: 2018 Women in STEM Professions Survey Report*:

- 27 per cent of participants had been sexually harassment, mostly in the early stages of careers.
- 47 per cent of participants indicated that they did not take any action against this sexual harassment.
- 18 per cent used a formal complaint process and 13 per cent left the industry.⁴

We believe social attitudes upholding sexist beliefs and behaviours are an underlying cause for sexual harassment across our society. While a number of incidents relate to males, the clear majority relate to women. The *Our Watch Bystander* research report released in 2018 identified worrying attitudes around gender stereotypes, the role of women and gender equality. Of those surveyed:

- 51 per cent believe that 'women are better care givers than men';
- 25 per cent believe that 'women's requests for gender equality are exaggerated';
- 19 per cent believe that 'sexist jokes are harmless fun'⁵

Changing social attitudes, particularly around gender norms, can help reduce incidents of sexual harassment across our community. A study of young Australian men on societal messages of manhood reveals that these traditional beliefs are shifting but are still prevalent. The *Man Box* study highlights that there are still many young men who believe in the need to be strong, not show vulnerability, to always be in control, and to be the primary provider. The research flags that young men who adhere to traditional gender norms are likely to have poorer mental health, are twice as likely to consider suicide, more likely to commit acts of sexual harassment, and perform acts of violence.⁶

A central theme of Consult Australia's submission is how engaging with men in a safe, non-judgmental forum, where men have the opportunity to explore the source and limitation of traditional gender norms and expectations, can:

- Drive cultural change in a workplace setting;
- Contribute to reducing incidents of sexual harassment; and
- Create a more inclusive workplace environment.

Our submission first discusses measures in place at our member firms around sexual harassment in the workplace, before turning to these points.

³ Australian Human Rights Commission, [Everyone's Business: 2018 Sexual Harassment Survey](#)

⁴ Professionals Australia, [All talk: 2018 women in STEM professions survey report](#)

⁵ Our Watch, [Bystander research snapshot report \(2018\)](#)

⁶ Jesuit Social Services, [The Man Box: A study on being a young man in Australia \(2018\)](#)

Addressing sexual harassment in the workplace

To inform our submission, Consult Australia conducted a survey of leaders at our member firms who make up our People and Human Resources (HR) Roundtable. This survey included questions on the overall approach to sexual harassment in the workplace at some of our member firms, the process for handling complaints, types of prevention measures that set out clear expectations, and the value of workplace culture in reducing concerns. The findings from this survey are outlined below.

Process for handling complaints

Feedback from our member firms highlight the benefit of having a clear, transparent and formal process in place for handling sexual harassment complaints. All respondents agreed sexual harassment in the workplace must be treated sensitively, seriously and with appropriate ongoing support. A common focus is removing perceived or actual on-the-ground barriers to making a complaint.

Other key features of processes for handling sexual harassment complaints include:

- A formal grievance policy;
- A formal investigation process;
- Managing complaints independently, including:
 - In a different location, and/or
 - Through an external organisation; and
- Engagement with business leaders and the people and human resources area of the business.

One of our member firms is introducing a new disclosure guideline where those impacted by incidents can raise concerns with anyone of their choice and have it heard in a non-judgemental way, followed by the matter being escalated to the people and HR area of the business for formal action.

Prevention measures

In addition to having an appropriate process in place for handling complaints, all Consult Australia member firms who responded to our survey indicated that they also have a formal framework and policy in place on sexual harassment in the workplace, with most also having measures focused on prevention.

These prevention measures focus on setting clear and direct expectations that sexual harassment has no place in the workplace, and include:

- Training for new starters and regular refresher training for all staff;
- Internal communications;
- Code of conduct policy;
- A targeted education programme for leaders focused on formal requirements, and their responsibility to set the right environment in the workplace; and
- An integrity hotline for discussing issues in their early stages.

Influencing behaviours in the workplace

Many Consult Australia member firms flagged that they have a number of initiatives in place focused on their organisation's broader culture. In turn, these initiatives seek to influence the behaviour of staff in the

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workplace through shared values, the organisation's 'brand', and an accepted 'way of doing things'. We believe these initiatives and their outcomes can have a significant impact on a culture in the workplace that rejects sexual harassment.

Initiatives of Consult Australia's member firms focused on building a positive workplace culture include regular team building and social events, rewards and recognition initiatives, regular surveys on engagement and workplace culture, flexible working arrangements, and regular communications with and access to senior leaders. The focus is taking deliberate steps to create a workplace that is open, supportive and collaborative. A positive culture is not created overnight, and requires effort and buy-in from all in an organisation.

Consult Australia human resource leaders noted that while a positive culture can influence behaviour at an organisational level, it cannot completely eradicate the behaviour of individuals. This is why 86 per cent of respondents to our survey on the topic believe that measures focused on a positive culture help 'to some extent' with preventing sexual harassment in the workplace. Respondents noted that a positive culture will not always control or change the behaviour of individuals who are heavily influenced in their views and behaviours before they enter the workforce. Instead, we believe these behaviours are heavily conditioned by a range of formative factors, particularly through family and the social environment, as an individual develops. This is why it is essential to provide leaders the opportunity to reflect on the implicit and explicit messages that have informed their views, and the messages imparted by key influencers.

A positive workplace culture can influence an organisation's wider behaviour. Workplace culture is determined by organisational priorities, as defined by leadership and supported by employees. It determines how much weight is placed on: raising awareness, delivering training on the impacts of sexual harassment, stamping out unacceptable behaviour, and removing barriers and increasing confidence in the reporting process.

We see a parallel between efforts to change behaviours at an organisational level and efforts to influence behavioural changes at a society level through public campaigns by governments. Seeking to influence behaviours and creating a positive organisational culture are important drivers to addressing harassment in the workplace. However, a focus on organisation's culture should only be seen as 'a' solution and not 'the' solution to society's wider problems with sexual harassment, and the need to tackle these problems at their source cannot be ignored.

The next section of our submission highlights research on the wider benefits of creating positive workplace cultures, and outlines recent initiatives by Consult Australia.

The value of a positive workplace culture

Consult Australia believes a positive culture is an important mechanism for sending a clear message that sexual harassment is unacceptable in the workplace. We encourage this inquiry to explore this correlation, broader benefits, and appropriate measures further.

A link between a positive culture and reducing sexual harassment in the workplace

A positive culture in the workplace is an environment that staff are invested in. It promotes inclusion, values diversity, and ensures employees feel comfortable and confident to speak up about concerns.

A research report titled *Antecedents and consequences of sexual harassment in organizations: A test of an integrated model* in the *Journal of Applied Psychology* highlights how culture in the workplace is a significant influence on the effectiveness of harassment training and other preventative measures. This research noted that training was ineffective when staff perceived their network in the workplace as unethical, and when they felt cynical towards the wider organisation. However, when employees perceive and witness their employers as genuinely trying to build a community and create a positive environment, they instead demonstrated more knowledge and a better attitude on sexual harassment after training.⁷ This research report highlights an important distinction between increasing knowledge and changing behaviour, with the latter only being achieved when there is buy-in from employees.

Establishing a positive workplace culture takes vision, commitment and practice over time. It requires an integrated and holistic approach by including measures into WHS, HR, wellbeing, employee assistance, and the organisation's broader strategy. To this end, we believe an organisation's approach should focus on 'protection', 'promotion' and 'support' – three key areas required to integrate a positive workplace culture into the organisation.

An integrated and holistic approach to creating a positive workplace recognises the influence of senior leaders in driving cultural change, and embedding this culture into business-as-usual behaviour. This approach has been recognised as having a significant influence in other areas, such as through ASIC's recent focus on the link between corporate culture with standards of behaviour within firms and how this ultimately leads to poor customer outcomes.⁸

Broader benefits of a positive culture in the workplace

While the Human Rights Commission's inquiry focuses on the important topic of addressing sexual harassment in workplace, we believe it should be noted that measures focused on creating a positive workplace culture also deliver wider benefits for organisations.

An organisation with a positive workplace culture is a thriving organisation. Thriving organisations allow employees to feel empowered to perform at a high level, confidently pursue challenging goals, and to comfortably balance their work into an overall healthy life. A thriving environment is also contagious – a thriving employee can positively influence others and transfer positive moods, which can lead to happier

⁷ *Journal of Applied Psychology*, [Antecedents and consequences of sexual harassment in organizations: A test of an integrated model \(1997\)](#)

⁸ Australian Securities & Investments Commission, [Reinforcing culture in a climate of low trust \(2018\)](#)

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leaders who perform better. A workplace with thriving employees can drive the organisation's performance, improve productivity and deliver a competitive edge.⁹

While the term 'thriving organisations' has become popular when discussing measures focused on improving mental health in the workplace,¹⁰ we believe it also appropriately describes a work environment that rejects inappropriate behaviour, and where people can confidently and comfortably seek support and act on concerns around harassment.

Consult Australia's activities to promote a positive culture in the workplace

Consult Australia has championed and is championing a number of initiatives to promote positive changes in the workplaces of our industry. We are proud of this work and the difference it makes. Some of our recent initiatives are included below.

- Consult Australia's Male Champions of Change (MCC) initiative is an example of the type of targeted intervention industry can take to deliver organisational change. The MCC initiative is made up of chief executives and managing directors of some of our largest member firms who have committed to advance equality within the upper echelons of the built environment consulting industry. Further details about the initiative can be found [here](#).
- Consult Australia recently published a thought leadership report, titled *Striving for mentally healthy workplaces*. The report focuses on helping member firms of all sizes to improve mental health in the workplace by sharing best practice and successful case studies from leaders in our sector. A copy of the report is available [here](#).
- We recently worked on a project with the Warren Centre of Advanced Engineering to develop video stories with our industry leaders on the importance and benefits of diversity in engineering. This was released in November 2018, and is available [here](#).
- Our next thought leadership report in this area will be on improving diversity and the quality of our future talent pipeline. The report will focus on attracting more diversity to STEM subjects at schools and improving the overall standard of STEM education. The report will be launched in mid-2019.

Consult Australia is willing to discuss these recent initiatives further with the Human Rights Commission and provide information about how they are contributing to creating positive workplace cultures in our sector.

Recommendation 1

Recommendation 1. Consult Australia recommends the Human Rights Commission investigate the connection between culture and behaviour, and how this links to reducing incidents of sexual harassment in the workplace. This investigation should develop evidence and data on the correlation and impacts on the behaviours of individuals, as this was noted by our member firms as an area of uncertainty – understanding the effectiveness of workplace measures in addressing broader cultural and society-wide problems.

⁹ University of Western Australia and PwC, [The Opportunity to Thrive \(2013\)](#)

¹⁰ Ibid.

Challenges faced setting the tone and combating sexual harassment in the workplace

This section of our submission outlines the challenges consulting firms in the built environment sector face in setting the tone and combating sexual harassment in the workplace. This includes challenges around going beyond the legislative frameworks and guidance tools to authentically engaging with men with respect to sexual harassment.

Challenges

Societal issues at play around sexual harassment creates a significant challenge for setting the right tone and addressing sexual harassment in the workplace. As highlighted by the Human Rights Commission, research shows that gender inequality and community attitudes about women and their role in society contribute significantly to sexual harassment and other forms of sexual violence.¹¹ We strongly believe the workplace has an important role in addressing attitudes that justify, excuse or shift the blame for sexual harassment, and can help address attitudes that are linked to an increased prevalence of incidents. The response of the workplace must be complimented by a broader approach across society that focuses on positively influencing where people live, learn, work and play – this broader approach will be most effective at delivering real change across society.

In addition to the above challenge around broader societal issues, Consult Australia member firms also provided feedback on more prevalent challenges our sector faces in setting the right tone and combatting sexual harassment in the workplace.

A number of our member firms noted that it is sometimes difficult to encourage employees to discuss inappropriate behaviour. This includes employees raising issues of being affected by sexual harassment in the workplace, or in circumstances when an employee witnessed an incident. It was noted by one member firm that sexual harassment is a particularly emotive topic to manage, and clearly understanding the situation can be difficult in circumstances when there is no witness. These may be factors why it is sometimes difficult to encourage employees to make complaints.

Another challenge noted for our sector is the traditionally 'blokey' culture that is sometimes prevalent in an engineering and consulting environment. While diversity in our sector has been a key priority over recent years, Consult Australia's 2018 Skills Survey Results [report](#) outlines some of the ongoing challenges. For 57 per cent of respondents, women make up less than 20 per cent of engineering and related professional roles. Furthermore, 29 per cent of respondents agreed there were not enough female graduates to meet gender diversity challenges. While many consulting firms in our sector have made significant inroads with gender diversity in their workplace, these results show the need to continue the focus on diversity and inclusion, particularly within different divisions of a business.

Member firms also highlighted some of the prevalent challenges they face with instances that occur when employees are 'out on site' and away from the organisation's direct environment. Many employees in our member firms are required to balance time in the office with being at construction sites to support the delivery of projects. This can sometimes be an environment that subjects' employees to inappropriate behaviour from people that sit outside the organisation.

¹¹ Kate Jenkins, [Sexual Harassment – Safer Workplaces \(2017\)](#)

Overcoming sexual harassment and avoiding backlash by authentically engaging with men

Rather than engaging men in exploring the source of sexist beliefs and behaviours that inhibit gender equality, and driving the eradication of sexual harassment in the workplace, we often leave males out of the conversation. In a male-dominated industry, we see engaging men as critical for delivering real and lasting change. To this end, we support a partnership approach for tackling issues that are prevalent in male-dominated industry as we see this as key for delivering real change. This partnership should be framed as a positive future based explorative approach.

The *2018 Social Attitudes Survey* in Broad Agenda highlight some areas of concern when it comes to engaging boys and men in supporting gender equality. This survey identified that nearly half (46 per cent) of Australian men believe gender equality measures do not take men into account. Furthermore, 42 per cent of Australian men believe men and boys are increasingly excluded as a result of measures to improve gender equality.¹² It is clear that we are struggling to overcome the perception that gender equality is a 'zero sum game', and, as a result, some men are dropping off on society's journey to being more diverse and inclusive.

The conversation about gender equality, and subjects such as sexual harassment in the workplace, too often does not include men in the room, or worse by naming and shaming inappropriate behaviours without consideration of how our culture contributes to, and upholds them. By not authentically engaging with men, we run the risk that measures to overcome sexual harassment will create backlash and potentially cement traditional views. Consult Australia believes to achieve meaningful change, particularly in male-dominated industries such as engineering, we must take men on the journey with us and encourage an 'aha' moment on the importance of the topic. Efforts to engage with men on gender equality have been a significant focus of Consult Australia, particularly through our Male Champions of Change's Engaging Men Initiative, outlined in the following case study.

Consult Australia's Male Champions of Change – Engaging Men Action Group

As part of broad consultation, five CEOs identified 'engaging male leaders' as the single most important factor in fostering gender equality in their firms. Whilst diversity and inclusion had been identified as a key strategic priority, progress was noticeably slow. Leadership acknowledged that male leaders and managers, unlike themselves, had limited opportunity to deeply engage – to consider the rationale, to explore the barriers to inequality, and to create practical and sustainable solutions.

Rather than a top-down, mandated approach, the chief executives introduced a personal, experiential strategy informed by cultural transformation, engaging men and brain neuroplasticity research.

Male leaders and managers were invited to take part in a half-day, interactive session where they:

- Explored the systemic and cultural barriers to gender equality and inclusion;
- Examined the implicit and explicit messages that shape one's beliefs regarding the role of men and women in the workplace, and society;
- Experienced the impact of sexual harassment, one of the key contributors to women exiting traditionally-male industries;

¹² Broad Agenda, [From girls to men: Social attitudes to gender equality in Australia \(2018\)](#)

- Considered “what’s in it for men” through a review of the mental and physical health benefits of gender equal relationships, workplaces and societies; and
- Envisioned a gender inclusive workplace and co-created concrete solutions to which they could personally and collectively contribute.

A key piece of the programme involved providing participants the opportunity to virtually experience everyday sexism. Using real life stories from women across the industry, men were invited to consider how they would feel if they were the recipients of comments such as the following:

“I hope you wear THAT to the client meeting.”

“Shouldn’t you be home with your kids?”

“I want an engineer with ‘balls’.”

“Our project completion party is this evening, but I doubt you’ll want to come. There’ll be strippers.”

“Wow, check that out.” (relentless comments made by colleagues on women in the lunchroom).

Participants acknowledged they never stopped to think how these negative or exclusionary comments would have impacted their female colleagues; they assumed it was just harmless humour—until they experienced it themselves.

Participants also had the opportunity to deeply reflect on how beliefs are formed with regard to the role of men and women at work, at home and in society. This included an overview of the implicit and explicit messages learned from key influencers - parents, coaches peers, priests, teachers, media, our collective culture and how they inform biases. Some stories shared are included below.

“My father worked; my mother stayed at home with the kids.”

“My wife worked until we had kids; she’s still at home.”

“Coaches often make disparaging remarks about women (and gay men); kids pick it up and replicate it.”

“Some of our political leaders unashamedly make sexist comments and get away with it; some of our sports heroes are not held to a very high standard in terms of treatment of women.”

Through an interactive and experiential process, participants examined whether these beliefs and messages are still relevant today and how they may be impeding progress for men and women at work and beyond.

The result of this reflection was a series of personal commitments offered by participants to support women and men in achieving equality at work and greater work-life balance. Examples include:

- “Ditch the ‘boys club’ mentality”
- “Ask the team to call me out if they witness sexist language or behaviour and give me permission to do the same with them”
- “Implement a zero-tolerance approach with regard to sexism and introduce regular anonymous surveys to track progress”
- “Challenge the ‘boys club’ (masculine) leadership style – acknowledge and highlight female contributions, be more collaborative, less directive”
- Introduce team and social events that are inclusive of both men and women

Reflections on challenging cultural norms and expectations include:

- “Don’t assume only women want to work part-time”
- “Encourage/support men looking after children”
- “Encourage young dads to take time off where I couldn’t. Such policies weren’t available”
- “Introduce better paternity benefits”
- “Eliminate discrimination when men and women return from parental leave”
- “I’m moving to a primary carer role after my current commitment, which will enable my wife to take a senior leadership role and give my kids the opportunity to see their parents in non-traditional roles.”

Outcomes of the programme

- Because solutions are co-created rather than mandated or imposed, male leaders and managers have a greater degree of personal commitment and buy-in.
- They have a deep appreciation of, and genuine commitment to overcoming barriers such as everyday sexism once they understand its impact and source.
- Male leaders and managers show greater support for and interest in enabling initiatives that contribute to gender equal workplaces (e.g. flex work, shared care, sponsorship, unconscious bias training, recruitment and promotion targets, pay gap redress, and sexism zero tolerance).
- They support one another in tackling challenges, such as:
 - Navigating client expectations while managing flexible teams;
 - Finding female candidates despite a limited STEM pipeline;
 - Introducing zero tolerance on everyday sexism; and
 - Addressing the stigma of men working flexibly or accessing primary carer leave.

Legislative frameworks and guidance tools

On the whole, Consult Australia believes the legislative frameworks on sexual harassment are appropriate. It is important these legislative frameworks are adhered to, and are underpinned by an effective enforcement framework. We believe the focus should be on making sure these legislative frameworks are working effectively and have the right guidance tools, particularly when they relate to requirements on the workplace.

We do not see the need for substantive changes to legislative frameworks, particularly around recent discussions about a prescriptive and regulatory-based approach. ‘One-size-fits-all’ regulatory requirements are blunt instruments, and we cannot regulate workplace cultures. The focus should instead be on building community expectations and demonstrating the benefits of a proactive approach in the workplace.

However, we do believe there are benefits in streamlining requirements across a range of Commonwealth and state and territory anti-discrimination legislation frameworks, noting the Australian Government’s commitment to undertake a consolidation project focused on this in their response to the Senate Standing Committee of Legal and Constitutional Affairs’ review into the ‘effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality’. We would be interested to hear progress or the outcomes of this project.

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The below includes a desktop review of the legislative frameworks and guidance tools relating to sexual harassment, identifying areas for refinement, and potential inconsistencies or areas of confusion between jurisdictions.

Commonwealth

Guidance tools on best practices could provide more practical examples of an employer providing reasonable steps to prevent sexual harassment occurring in the workplace, and on the current positive duty/obligation requirements for employers. This could include case studies for different sectors and organisation sizes, and examples of successes and failures. Guidance tools providing practical examples will be far more effective at providing clarity to employers than introducing regulatory standards, allowing sufficient flexibility to be workplace appropriate.

Guidance tools could provide advice on protecting workers from sexual harassment by customers, clients and other people, particularly outside the organisation's work environment. They could also outline how practical considerations, such as the design of the physical office space and the use of gender-neutral facilities, can assist organisations.

We believe the Sex Discrimination Commissioner and Human Rights Commission play an important role advocating for change, and contributing to the public discussion around the topic of sexual harassment. To this end, additional funding for the Human Rights Commission to carry out public awareness campaigns in relation to the *Sex Discrimination Act 1984* will help educate stakeholders on requirements.

Public awareness campaigns should be developed through a collaborative approach with key stakeholders, including the business community and state and territory governments, and monitor outcomes. We believe any public awareness campaign focused on broader societal causes for sexual harassment can help reduce downstream impacts in the workplace.

States and territories

Consult Australia believes the Australian Government should take the lead on taking a model legislation approach for discrimination and sexual harassment to provide greater consistency between jurisdictions. This approach should be developed through the Council of Australian Governments (COAG), similar to the development of model legislation for WHS.

Consistent model legislation for discrimination and sexual harassment would remove confusion around current requirements to comply with the Commonwealth legislation and the relevant state legislation, noting significant overlaps and differences in how these laws apply. The development of model legislation should focus on consolidating best practices across the existing frameworks, provide clarity for employers on their requirements without regulatory controls, and through close consultation with a wide range of stakeholders. At a starting point, we recommend the following inconsistencies be addressed:

- Definitions of sexual harassment, employment, work, work arrangements, and discrimination (direct and indirect);
- Factors considered when determining if there are reasonable and proportionate measures in place;
- Burden of proof requirements;
- Characteristics being protected;
- Single special measures (positive steps address entrenched discrimination);

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- Positive duties in the workplace (preventative measures);
- Overlaps with concepts of discrimination, harassment and vilification; and
- Complaints process.

Recommendations 2 to 6

Recommendation 2. Consult Australia recommends the Human Rights Commission's inquiry review the benefits of engaging men initiatives, particularly around how this approach could address broader cultural issues behind sexual harassment in the workplace, and can result in real and lasting change.

Recommendation 3. Consult Australia recommends a 'live, learn, work, play' approach to combating harassment across society. Workplace measures must be complimented by a broader society-wide approach that focuses on addressing attitudes that justify, excuse or shift blame for harassment, particularly at the source where these behaviours develop.

Recommendation 4. Consult Australia recommends the Human Rights Commission develop more practical guidance tools to help employers put in place reasonable measures to prevent sexual harassment incidents occurring in the workplace (and when employees enter other workplaces), and on the current positive duty/obligation requirements. Providing practical support to employers will be far more effective at providing clarity than regulatory controls, and will allow for appropriate flexibility based on the work environment.

Recommendation 5. Consult Australia recommends the Australian Government continue recent positive efforts by carrying out additional public awareness campaigns about the prevalence of sexual harassment across society and on requirements under the *Sex Discrimination Act 1984*.

Recommendation 6. Consult Australia recommends that the Australian Government work with state and territory governments to develop model legislation for sexual discrimination and sexual harassment across all jurisdictions, and explore opportunities to streamline other anti-discrimination legislation. A model legislation approach, similar to WHS, should focus on providing clear and consistent requirements (rather than regulatory controls) and be developed in close consultation with a wide range of stakeholders.

How the business community can support the general tone of society's approach to sexual harassment

The business community has a proud history of contributing to public discussions on social issues to help influence a positive outcome. To this end, we believe consulting firms in the built environment sector, and the business community at large, can help by making a contribution to how sexual harassment is perceived across our society. The Diversity Council of Australia (which includes Consult Australia member firms in its membership) serves well as an example of how the business community can support important changes around social issues, particularly the 'Yes Campaign' during the 2017 Australian Marriage Law Postal Survey. The Diversity Council of Australia has also provided a leadership role developing guidance material for the business community, such as those focused promoting diversity in the workplace to be launched on International Women's Day in 2019.

Benefits of the business community contributing to the public discussion

In our survey of some Consult Australia member firms, a number of examples of how the business community can be a leader on the public discussion around sexual harassment were identified. These are outlined below.

- The business community, given its reach across different areas of society and the number of people employed, can ensure the need to eradicate sexual harassment in the community can remain on the agenda. Businesses can also help embed important messages from public campaigns, such as the Victorian Government's 'Call It Out' campaign encouraging men to call out disrespectful and sexist behaviour.
- By helping raise the importance of addressing sexual harassment across society, the business community can help encourage victims and witnesses to speak up. Businesses can emphasise that sexual harassment is inappropriate and should not be tolerated by anyone, in the workplace or in other areas of peoples' lives. This can help with a call to action on becoming 'active bystanders' to help eradicate inappropriate behaviour.
- Lastly, senior leaders in the business community can help the public discussion by role-modelling appropriate behaviour and actively voicing their support for addressing sexual harassment across society. This can not only help influence those within an organisation but also those outside through the media and others spreading an important message.

Recommendation 7

Recommendation 7. Consult Australia recommends the Human Rights Commission inquiry review how the business community can contribute to addressing sexual harassment across society by partnering with governments and contributing to public discussions on the topic.

Contact

We would welcome any opportunity to further discuss the issues raised in this submission. To do so, please contact:

Nicola Grayson

Chief Executive

Consult Australia

nicola@consultaaustralia.com.au

James Robertson

Policy Advisor

Consult Australia

james@consultaaustralia.com.au

0448 853 144