

Submission to the Victorian Ministerial Taskforce on Workplace Sexual Harassment

August 2021

Introduction

The Centre for Innovative Justice (CIJ) at RMIT University welcomes the opportunity to provide a submission to the Victorian Ministerial Taskforce on Workplace Sexual Harassment.

This submission encourages the Taskforce to consider a broader, more transparent and flexible set of options and pathways than is presently generally available in response to reports and incidents of sexual harassment in the workplace. In our view, responses that are designed by reference to, and apply victim-centred, therapeutic justice and restorative justice principles are far more likely to result in meaningful engagement of all parties concerned (and therefore in meaningful behavioural and cultural change) than are those constructed primarily to drive compliance with externally imposed rules and requirements.

About the CIJ

The Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people's lived experiences. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, most of which involve direct engagement with service users, and using them to develop innovative and workable solutions.

The CIJ brings together an experienced team of multi-disciplinary researchers and practitioners to develop solutions to complex problems through research and innovation that is strategic, accessible and practical. Our approach is centred on the experiences of those people and communities who are affected and brings stakeholders together to work collaboratively on designing solutions.

The Centre's work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women's decarceration, disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes. The CIJ includes Open Circle, a service that provides restorative justice consultancy and research as well as delivering restorative justice conferences. The Centre is also co-located at RMIT University's Social Innovation Hub with two community legal centres: Youth Law and the Law and Advocacy Centre for Women.





CIJ Experience

The CIJ has conducted a variety of research regarding restorative justice approaches including:

- A [report](#) recommending the adoption of restorative approaches to sexual offending alongside the conventional criminal justice response.
- Delivery of [restorative justice processes in the context of culpable driving](#).
- Work concerning the delivery of restorative justice in [coronial](#), personal injury ([workplace](#) and [transport accidents](#)) and [sexual harassment contexts](#).

The CIJ also operates a service delivery arm, [Open Circle](#), which conducts restorative justice processes in a wide range of contexts to support people who have experienced harm address some of the unmet needs which have not been addressed by conventional justice system mechanisms.

Together, Open Circle and the CIJ are currently advising a diverse range of organisations around embedding restorative justice approaches in their work including advising a large multinational company to design a restorative engagement program that responds to sexual abuse or harassment experienced by their staff.

Our Submission

The CIJ welcomes the Victorian Government's commitment to develop a reform agenda to improve the prevention of and response to sexual harassment in Victorian workplaces.

As revealed in recent reviews and reports in Australia and internationally, the legal frameworks and responses implemented over the past several decades have not, in an overall sense, succeeded in preventing workplace sexual harassment, or adequately supporting victims of harassment.

Notably, the Australian Human Rights Commission concluded that the response to workplace sexual harassment requires a new and more holistic approach that is victim-focused and offers victims a choice of different supported options, instead of the default responses of a formal investigation or mandated training programs for staff.¹ International research has also exposed the failures of standard training programs and grievance procedures to prevent workplace sexual harassment, and has highlighted the benefits of informal reporting and resolution processes, and the importance of empowering leaders to change workplace culture.²

In the CIJ's view, the starting point for reforming the approach to workplace sexual harassment should be to engage with the responses and outcomes victims want, and to design and build processes and pathways that meet their aspirations.

Based on the CIJ's own research, consultation work and the findings of other relevant research projects and reviews, it is apparent that victims are likely to seek any one or more of the following responses and outcomes:

- To explain what happened, to be heard and believed
- To receive therapeutic, practical and financial support and any necessary workplace and career-progression adjustments
- For the behaviour in question to stop

¹ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020).

² F Dobbin & A Kalev, 'Why Sexual Harassment Programs Backfire and what to do about it' *Harvard Business Review* (May-June 2020), 45.



- To have choice and agency in the decisions that are made about the actions taken in response to the report of the incident, and in relation to whether the report is confidential, anonymous or public
- To understand the steps that have been taken by the employer in response to the report
- For the employer to understand and acknowledge the incident and harm caused, to demonstrate genuine insight, and to take responsibility for failing to create a safe, respectful and inclusive workplace
- For the employer to take steps to prevent future incidents, and to establish a safe, respectful and inclusive workplace culture in which such incidents do not occur, including by calling out and addressing the specific behaviour the subject of the report
- For the direct perpetrator of the harm to understand the ramifications of their behaviour, to acknowledge and take responsibility for the harm caused, and/or to be made accountable for their behaviour including through disciplinary measures
- To receive genuine apologies from the direct perpetrator and/or employer
- For colleagues to understand the impacts of the behaviour and to respect the victim's decision to report
- Not be to be subject to any retaliation from the direct perpetrator, colleagues or managers for having reported the behaviour in question
- To participate in initiatives aimed at preventing future incidents of sexual harassment and establishing a safe and inclusive workplace culture
- To put the matter behind them and get back to work in a safe and supportive environment.

While some of these outcomes relate to achieving primary goals of personal safety and support, many of them also relate to addressing victims' "justice needs". Victims' justice needs are the actions and outcomes victims look for when they are seeking a justice response to the harm they have experienced. Each victim will have distinct needs, but researchers (including Professor Kathleen Daly and Associate Professor Jane Bolitho, as well as the CIJ) have identified the following categories of such needs:

- **Voice:** the need or desire to tell the story of what happened and its impact
- **Validation:** to have others believe and affirm their experience
- **Information:** the need to understand more about the harm, about what happened and why, including in relation to any steps taken in response to the harm
- **Accountability:** for others to accept responsibility for what happened; this may encompass punishment, public acknowledgement, apology/expression of remorse, other forms of recompense/reparation
- **Relationships:** to restore damaged relationships with others involved in or affected by the harm, family members and the community
- **Prevention:** to address the circumstances that contributed to the harm, with the hope that what happened to them does not happen to anyone else
- **Resolution:** to feel that what needs to happen in order for the harm to be addressed has occurred.

Existing formal responses to sexual harassment have not necessarily been designed to meet victims' full range of primary goals or justice needs. Current legal frameworks and workplace practice tend to prioritise formal processes which offer narrow, inflexible or unclear outcomes for victims. In significant respects, existing processes prioritise the employer organisation's imperatives, for example, to comply with legislative requirements, to minimise or avoid legal liability and reputational damage, to establish facts according to a legal standard of proof, and to provide accused individuals with procedural fairness. In this context, victims of sexual harassment may be hesitant to report sexual harassment because (in addition to fears about reprisal and negative career ramifications) the standard organisational responses to such reports do not meet their individual needs or aspirations.



The CIJ therefore encourages the Taskforce to consider a broader, more transparent and flexible set of options and pathways than is presently generally available in response to reports and incidents of sexual harassment in the workplace. In our view, responses that are designed by reference to, and apply victim-centred, therapeutic justice and restorative justice principles are far more likely to result in meaningful engagement of all parties concerned (and therefore in meaningful behavioural and cultural change) than are those constructed primarily to drive compliance with externally imposed rules and requirements.

Such options and pathways may encompass:

- Providing victims with a clear and documented set of services, processes and pathways available to them
- Inviting victims to nominate their preferred processes and outcomes, and identify their individual needs
- Allowing victims to make anonymous reports (which could be facilitated through online reporting portals or officers independent of the employer organisation)
- Informal pathways that promote restoration, mutual understanding, prevention and cultural change
- Opportunities for victims to communicate, directly or indirectly, with senior leaders of the organisation, direct perpetrators of harassment and/or broader workplace communities, using restorative engagement and restorative justice processes
- Including victims in the design and implementation of sexual harassment programs, policies, processes and training.

Critically, such pathways should be underpinned by a clear commitment from leadership to drive cultural change, to provide a safe, respectful and inclusive workplace, to take reports of sexual harassment seriously, and to ensure staff involved in responding to reports have the knowledge and skills to support victims of sexual harms. They should also be regarded as a complement to, not a substitute for more formal processes which may still be a victim's preferred option, and the more appropriate response to egregious cases of harassment.

The CIJ is available to discuss this submission in further detail, and to expand on any of the ideas contained in it should that be helpful to the Taskforce.