

LITERATURE SCAN of international best practice about preventing and responding to workplace sexual harassment

Ministry for Women

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The Ministry for Women commissioned this literature scan to inform discussion. The findings included in this report do not represent government policy.

Executive summary

Introduction

The Ministry for Women (the Ministry) is contributing to cross-agency work on preventing and responding to sexual harassment in the workplace. The Ministry has commissioned this literature scan to inform that work.

1. The scan focuses mainly, but not exclusively, on public information and literature from 13 countries with similar legal systems to New Zealand: Australia, Belgium, Canada, Denmark, France, Germany, Iceland, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom (UK) and the United States (US). Publications from international organisations such as the Organisation for Economic Co-operation and Development (OECD), the International Labour Organisation (ILO) and the United Nations (UN) have also been included. The review has drawn primarily on material published in the past 10 years.
2. There is no agreed definition of sexual harassment, but there is agreement that its key characteristics are: it is unwelcome, offensive and the intentions of the perpetrator are irrelevant. A guideline produced by the New Zealand State Services Commission provides a useful, if broad, working definition for this paper, although it does not specifically cover a hostile environment, third party harassment or the fact that harassment can be a one-off incident or form part of a pattern:

Sexual harassment is unwelcome or offensive sexual behaviour that is repeated or is significant enough to have a harmful effect on an individual's employment, job performance or job satisfaction. Unwelcome means behaviours that are not solicited or invited and are regarded by a person as undesirable or offensive at the time.
(State Services Commission 2015, page 2).

Description of current arrangements to prevent and respond to sexual harassment

Context

3. A 2017 OECD survey showed that, over the past four years, 19 countries have introduced new measures aimed at eliminating sexual harassment in the workplace. The new measures have typically taken one of two forms:
 - new or stronger laws or regulations governing sexual harassment, and/or
 - information or awareness-raising campaigns around what constitutes sexual harassment and the right to a life free from sexual harassment.

Countries are also collecting more data on harassment and violence against women, but large data gaps remain (OECD 2017).

4. At the international level, trade unions and employers' federations and government agencies have begun to come together to take action against violence and harassment at work through framework agreements, manuals, policy documents, guidelines, training and campaigns. The International Training Centre of the ILO (ITC) (2014) notes that:

Working together, employers, trade unions and global or local NGOs/women's organizations can bring different perspectives, experiences and roles to eliminating sexual harassment and violence in the world of work. Broad national alliances can be very effective in promoting change.

5. All players recognise that sexual harassment is a complex issue to deal with, which is exacerbated by intersectionality, power imbalances and the need for cultural change.

The role of legislation

6. Numerous reviews stress the importance of countries having a strong legislative framework for addressing sexual harassment. This should be based on six principles:
 - a comprehensive definition of violence and harassment
 - a statement of the right of all workers to a violence and harassment-free world of work
 - a call for the prohibition in national law of all forms of violence and harassment in the world of work, including all forms of gender-based violence
 - a call for the establishment in national law of systematic prevention measures and the inclusion of psychosocial risks, violence and harassment under Occupational Safety and Health Management Systems (OSH–MS)
 - a call for the establishment in national law of enforcement and monitoring mechanisms, including safe and accessible complaints mechanisms for violence and harassment
 - a call for the establishment of sanctions for perpetrators, and remedies and support for victims.

Issues relating to legislation

- Compliance and effectiveness: The lack of compliance with or effectiveness of current arrangements, even in countries where the legislative framework is relatively strong, is a major concern for researchers and commentators.
- Inclusive legislation: Legislation is inconsistent as to who is covered, and where and when. Contractors, domestic and casual workers, volunteers and interns are often excluded; strategies need to be developed to address third party harassment and harassment off site.
- Confidentiality agreements: These need to be reviewed to ensure they are not used to help hide the true extent of sexual harassment at a workplace, shield a serial harasser from accountability or prevent other victims from coming forward.
- Timeframes and the burden of proof: Victims need to have sufficient time to report sexual harassment, given the trauma many have to deal with. A high burden of proof such as 'beyond any reasonable doubt' can prove particularly obstructive to sexual harassment claims.
- Safe disclosure and freedom from further harassment: Complainants need some assurance that they will be free from harassment (including revenge harassment) following disclosure: 'safe disclosure' is an issue.

Primary prevention, and secondary and tertiary interventions

7. **Primary prevention** refers to activities that take place before any injustice has occurred to prevent any initial harm. It aims to stop violence from happening in the first place. Strategies include attending to the root and structural causes of violence through:
 - the promotion of gender equality, women's empowerment and their enjoyment of human rights

- making the home and public spaces safer for women and girls
 - ensuring women's economic autonomy and security
 - increasing women's participation and decision-making powers—in the home and relationships, as well as in public, at work and in politics (UN Women 2015)
 - working with men and boys so that they can begin to challenge the deeply rooted inequalities and social norms that perpetuate men's control and power over women and reinforce tolerance for violence against women and girls
 - using media and social media to raise awareness and mobilise the community to act against harassment.
8. Employers can help prevent sexual harassment by establishing a safe and positive work culture, having and promoting a code of conduct, providing training and showing strong and committed leadership.
 9. Partnerships between governments, employers, trade unions and non-governmental organisations (NGOs) can also be effective in promoting change.
 10. **Secondary intervention** covers immediate responses after sexual harassment has occurred. It aims to deal with the short-term consequences of sexual harassment and prevent further perpetration. Organisational grievance procedures are the most common mechanism through which employee rights are enacted but research suggests that they are often ineffective. That will only change when employees feel safe and trust that their complaints will be taken seriously and dealt with quickly.
 11. **Tertiary intervention** refers to long-term response strategies that aim to deal with any ongoing consequences of the problem by providing counselling and support for victims, and specialised services for perpetrators to minimise the possibility of re-offense.
 12. The literature has focused almost exclusively on primary prevention and secondary interventions. The conceptual framing of sexual harassment as an individual problem, rather than one with causes and consequences at a systemic level, has limited the development of effective government and organisational responses. More work needs to be done on strategies and programmes for changing the behaviour of sexual harassers.

Impacts

13. Sexual harassment has a wide range of negative outcomes, including psychological and physical harm, sometimes lasting several years, as well as reductions in workplace productivity. Third party harassment is associated with an increase in depressive symptoms. Women who have been sexually harassed are more likely to change jobs, move to a different industry or reduce their working hours. Women may lower their career aspirations and accept negative economic consequences to avoid harassment. While both men and women experience sexual harassment, it is primarily a problem for women, and younger women in particular.
14. There is a dearth of literature on the impact of the behaviour on those who harass, in the form of penalties and/or successful efforts to change their behaviour.
15. The scan identified no examples of interventions specifically designed to change perpetrators' behaviour, although programmes designed for family violence offenders can provide useful models. In some of the countries reviewed it remains the norm for offenders to keep their jobs.

16. Bystander stress is not only common in workplaces; it also causes a range of negative health and occupational outcomes similar to those experienced by primary victims. There is a small but growing body of evidence demonstrating that supporting bystander intervention strategies can increase the willingness of people to take action, their sense of efficacy in doing so and their actual participation in bystander behaviour. For example, apps for mobile phones such as Callisto and Stymie enable and support bystander actions.

Effectiveness

17. The literature on programme effectiveness is weak and inconclusive. While researchers agree that training programmes can increase participants' knowledge and awareness, there is little evidence that sexual harassment training works to lower the number of incidents in a workplace or shift its culture to one that takes the issue seriously.

18. The lack of strong findings signals the need for careful programme design and implementation. Researchers suggest that an effective harassment-training mandate should apply to all employers in both the public and private sectors, and require all employees to participate, with possible additional training for supervisors, managers and team leaders. Training should be given regularly, when an employee is hired and at reoccurring intervals thereafter.

19. There is very little agreement on what sexual harassment training should cover. One model proposes that it should:

- be developed from information gathered from organisational assessments
- raise awareness and clarify misconceptions about what constitutes sexual harassment while highlighting and reinforcing acceptable behavioural norms
- include conflict management training for managers, including managing emotions and facilitation techniques
- challenge gendered organisational cultures
- protect complainants from further harassment.

20. The literature suggests a blended learning approach to training is preferable. This involves a combination of quality videos, eLearning, classroom training, role-playing, group techniques and workshops. Programmes need to incorporate elements related to empathy, perspective taking and the emotions of or impacts on victims. Post-training activities can include refresher courses, training audits or incentives for implementing the training into the workplace.

21. Determining the cost effectiveness of programmes has proved challenging. Researchers agree that simpler methodologies are needed at the organisational level to help employers estimate the costs of work-related stress and psychosocial risks in the workplace. This would contribute to a stronger business case for the management of work-related psychosocial risks.

Links with other initiatives

22. There is a strong and growing link between initiatives to prevent workplace harassment and initiatives to respond to family violence and gender-based harassment in other settings, both in New Zealand and internationally, supported by a call for a co-ordinated and inclusive approach (see, for example, Our Watch 2015).

Key similarities and differences

23. The key similarity between the countries reviewed is that almost all expect or require employers to have a sexual harassment policy and grievance procedures in place. Denmark has no mandatory requirements but has recently issued guidelines for employers. The key differences lie in the strength of these requirements. The countries with the strongest and most comprehensive requirements are Belgium and Sweden. They have clear lines of accountability and monitoring. Other countries limit their requirements by the size of the organisation (Iceland, US), the need to meet only 'reasonable expectations' (US, UK, the Netherlands and Switzerland) and by the absence of a requirement to monitor progress.

New initiatives and promising strategies

24. The principles and strategies shown to constitute best practice in violence prevention more generally also apply to preventing sexual harassment in the workplace. These include:

- adopting multiple strategies to address the problem behaviour, in multiple settings and at multiple levels
- demonstrating a sound understanding of both the problem—of the workings and causes of sexual harassment itself—and of how it can be changed
- invoking educational, communication and other strategies known to create change—use effective teaching methods and be long and intense enough to produce change
- developing interventions that have regard to the context (i.e., the social and structural constraints and the operating beliefs and norms)
- involving a comprehensive process of impact evaluation that is integrated into programme development.

Conclusion

25. This scan began as a search for international best practices in preventing and/or responding to sexual harassment in the workplace. The literature suggests that well-intentioned good practice, such as mandatory policies about and complaints procedures for dealing with sexual harassment, are ineffective if they are not well implemented, monitored and evaluated and if the culture of workplaces is unsupportive. Strong leadership, inclusive policy development and proactive role-modelling from senior staff need to sit alongside the promotion of respectful relationships throughout the organisation.

26. Sexual harassment in the workplace does not occur in isolation. It is facilitated by communities and workplaces that tolerate such behaviour. Sexual harassment at work can be seen in the wider context of anti-violence activity, gender equality initiatives and acceptance of more flexible gender roles for both men and women.

27. The literature agrees that sexual harassment can have severe and lasting consequences for victims, harassers, bystanders and others in the workplace, physically, emotionally and mentally as well as economically and in terms of career development. There was little positive evidence of ongoing support for those affected. Indeed, those who raised concerns were often ignored, or had their cases dismissed, adding to their distress.

28. There is a growing awareness of the intersectionality of violence. It happens in different settings—at home, at work and in public places—and some groups are more at risk than others because of their ethnicity, gender, sexuality or physical or mental abilities.
29. Governments and organisations internationally have taken steps to improve their response. These include: organisational surveys; a national inquiry; new training approaches focusing on respectful relationships; new partnerships between government, employers, trade unions and NGOs; new gender equity agencies; accredited businesses; an advocacy toolkit; and social media campaigns and union-led initiatives.
30. A multi-pronged approach is the most effective in changing attitudes, as well as behaviour. This means collecting better information and building on the activities and strategies that the government, employer organisations, professional bodies, trade unions and national and local anti-violence organisations already have in place.

1. Introduction

The Ministry for Women is contributing to cross-agency work on preventing and responding to sexual harassment in the workplace. The work aims to:

- identify actions that promote workplace cultures that help prevent sexual harassment and respond to it appropriately when it does occur
- review the regulatory framework and identify guidance, training, work practices and institutional arrangements that help promote safe workplaces.

The Ministry has commissioned this literature scan to inform that work.

Scope of the literature scan

The scan focuses mainly, but not exclusively, on literature and public information from 13 countries with similar legal systems to New Zealand: Australia, Belgium, Canada, Denmark, France, Germany, Iceland, the Netherlands, Norway, Sweden, Switzerland, the UK and the US.¹ Publications from international organisations such as the OECD, the ILO and the UN have also been canvassed. With a few exceptions, the review has drawn on material published in the past 10 years. Most of the material was sourced through the internet and Massey University supplied additional material.

Limitations

Given the wide scope of the research questions, the limited time frame and the relative lack of literature, it has not been possible to explore all the research areas fully. While it is possible to identify the legal requirements in most countries, there is very little information about how effective these are or how well employing organisations actively comply with them. It is apparent following the high profile and effectiveness of the #MeToo movement, that governments and organisations in several countries are identifying gaps or weaknesses in current practice and are in the process of reviewing their laws, policies and procedures for dealing with sexual harassment in the workplace.

Research questions

The review was asked to look at four main areas, each of which had numerous subsections:

1. An introduction, including a working definition of sexual harassment.
2. A description of present arrangements to prevent and respond to sexual harassment:
 - an overview of national approaches, particularly those involving an integrated approach
 - national or international legislative frameworks and their importance
 - role of government, industry groups, employers, trade unions and others across different types of initiatives and programmes.
3. Impact and effectiveness:
 - the social impacts and costs of sexual harassment including impacts on those harassed, those who harass, on bystanders and others in the workplace
 - long-term (e.g., career path/promotions) versus short-term impacts

¹ Some countries, like Italy, were excluded because existing law is poorly enforced and no new initiatives are proposed.

- to what extent impacts are gendered
- efficacy of interventions in preventing or mitigating harms
- cost effectiveness
- the extent to which sexual harassment interventions are connected to other programmes combatting gender-based harassment in other settings
- key similarities and differences between strategies in different countries.

4. New initiatives and promising strategies.

1.1 Definitions of sexual harassment

While there is no universally agreed definition of sexual harassment in the workplace, there is strong consensus about its key characteristics:

- It is **unwelcome**: A key characteristic of sexual harassment is that it is unwelcome and unwanted by the recipient. It is the unwanted nature of the conduct that distinguishes sexual harassment and harassment from friendly behaviour which is welcome and mutual.

Although there is general agreement about what can constitute sexual harassment, the experience of it is subjective. This makes it difficult to quantify workplace sexual harassment, partly due to problems of identification.

- It is **offensive**: The behaviour must also be reasonably regarded as offensive, humiliating or intimidating to the employee.
- The **intention** of the perpetrator is irrelevant. The fact that the perpetrator has no intention of sexually harassing or harassing the employee is no defence. The effect of the behaviour on the employee is what is important (Advisory, Conciliation and Arbitration Service (ACAS) 2018; The Equality Authority 2002).

The law prohibiting sexual harassment in the UK is set out in the Equality Act 2010. This protects all employees and many other types of workers from harassment at work that is related to any of various protected characteristics, including sex.

A general definition of sexual harassment covers any unwanted conduct which is based on sex, and which has either the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This definition is broad enough to cover a wide range of conduct, from one-off sexist comments or jokes right up to serious sexual assaults.

It is also harassment if the harasser treats the victim less favourably because of the victim's rejection of or submission to this conduct. This covers the situation where a person's career is damaged when they either give in to or refuse sexual advances from a more senior employee:

It is not necessary for a victim to have made it clear in advance that harassing conduct was unwanted, and the harasser may still be liable for harassment even if he/she was not aware of the effect of the behaviour. The victim's reaction to the behaviour must be reasonable, so a purely subjective perception that seemingly innocent behaviour is harassment will not necessarily meet this test. Such behaviour may, however, become harassment if the conduct is repeated after the victim has asked for it to stop. (Lister 2017:1)

A Trade Union Congress report (TUC 2016) goes further, pointing out that a hostile working environment can in itself be a form of harassment:

It is important to note that a perpetrator's claim that a comment or action was meant in jest or as a compliment is not a defence in a sexual harassment case. Nor does the harassment have to be directed at the person complaining about it. For example, the display of pornography in a work environment or sexual comments directed at others may create a degrading, intimidating or hostile working environment for workers even if they are not intended as the object of the comments. It is also harassment to treat someone less favourably because they have rejected or submitted to unwanted sexual conduct. (TUC 2016:6)

The most recent reviews of sexual harassment take the impact of the #MeToo and #Time'sUp movements into account.

#MeToo is a movement that deals specifically with sexual violence and gained national attention after allegations of sexual assault and harassment by Hollywood producer Harvey Weinstein began dominating the headlines. According to the movement's website, "#MeToo is about giving people a voice". The movement wants to see a cultural transformation by encouraging millions to speak out about sexual violence and harassment. Time'sUp shares a similar vision for women's empowerment with #MeToo, but it has some different, specific goals. The organisation's aim is to create concrete change, leading to safety and equity in the workplace.

A US review (ThinkHR 2018) suggests that sexual harassment can be divided into two categories:

The first is unwelcomed sexual conduct that is either an explicit or implicit term or condition of employment, such as offering an employee a promotion or pay increase for agreeing to sexual demands, or terminating an employee who refuses a sexual advance. This is known as quid pro quo (this for that) sexual harassment.

The second form of sexual harassment is unwelcome sexual conduct that unreasonably interferes (on purpose or in effect) with an individual's work performance or creates an intimidating, hostile, or offensive working environment. This is known as hostile or offensive work environment sexual harassment.

Harassing behaviour can include sexual advances, requests for sexual favours, other verbal or physical conduct of a sexual nature or offensive remarks about a person's appearance. While the recent accusations appear to focus primarily on sexual harassment directed at women, both men and women may be sexually harassed and harassment can occur between members of the same sex (ThinkHR 2018).

The literature agrees that a wide range of behaviours can be included under the rubric of workplace sexual harassment. The Irish Equality Authority spells these out in a Code of Practice associated with the Employment Equality Act with the proviso that "*the list is illustrative rather than exhaustive and a single incident may constitute sexual harassment*"; although it is commonly assumed that sexual harassment follows a pattern rather than being a one-off incident. Examples include:

- unwelcome sexual advances, including unnecessary touching, patting, pinching or brushing against another employee's body, assault and coercive sexual intercourse
- proposition or pressure for sexual activity

- offensive flirtations, leering, whistling, making sexually suggestive gestures, sexual jokes, unwanted sexual looks
- continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome, suggestive remarks, innuendos or lewd comments
- unwanted letters, telephone calls or materials of a sexual nature, sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- asking intrusive questions about someone's personal life, including their sex life
- any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (Cela 2015; Lister 2017; The Equality Authority 2002; ThinkHR 2018).

A European Framework Agreement on Harassment and Violence at Work (European Social Partners (ESP) 2007:1) recognises that harassment and violence can potentially affect any workplace and any worker, irrespective of the size of the company, field of activity or form of the employment contract or relationship. It can:

- be physical, psychological and/or sexual
- be a one-off incident or a more systematic pattern of behaviour
- be among colleagues, between superiors and subordinates or by third parties such as clients, customers, patients and pupils
- range from minor cases of disrespect to more serious acts, including criminal offences, which require the intervention of public authorities.

In Canada, behaviour does not have to meet the legal definition of sexual harassment to be seen as unacceptable by the public, and public attitudes about what behaviour is unacceptable are shifting more quickly than the law can keep up with (Human Resources Professionals Association (HRPA) 2018).

In New Zealand, sexual harassment is covered under the Employment Relations Act 2000 and the Human Rights Act 1993. The Employment NZ website² says:

An employee is sexually harassed if their employer (or a representative of their employer):

- *asks the employee for sex, sexual contact or other sexual activity, with:*
 - *a promise (it can be implied) of better treatment in their employment, or*
 - *a threat (it can be implied) either of worse treatment or about current or future job security*
- *subjects (either directly or indirectly) the employee to behaviour that they don't want or is offensive to them (even if they don't let the employer or the employer's*

² <https://www.employment.govt.nz/resolving-problems/types-of-problems/bullying-harassment-and-discrimination/harassment/>

representative know this) and which either is so significant or repeated that it has a negative effect on their employment, job performance or job satisfaction:

- *by using (in writing or speaking) sexual language, or*
- *by using sexual visual material (e.g. pictures, diagrams, photos, videos, etc.), or*
- *through sexual physical behaviour.*

Sexual harassment can happen to and by someone of any sex. It can be subtle or more obvious.

Whether a behaviour was sexual harassment is viewed objectively, considering whether the conduct was unwelcome or offensive, from the perspective of the complainant.

A guideline produced by the New Zealand State Services Commission provides a useful, if broad, working definition, although it does not specifically cover a hostile environment, third party harassment or the fact that harassment can be a one-off incident or form part of a pattern:

Sexual harassment is unwelcome or offensive sexual behaviour that is repeated or is significant enough to have a harmful effect on an individual's employment, job performance or job satisfaction. Unwelcome means behaviours that are not solicited or invited and are regarded by a person as undesirable or offensive at the time. (State Services Commission 2015)

Numerous authors point to the implications of a lack of an agreed definition. An international review on sexual harassment in academia found that such research:

Has several challenges concerning inadequate definitions, samples, survey methods and underreporting. (It also) lacks coherent theoretical perspectives. Instead, research is conducted on the basis of legal definitions of sexual harassment. (Swedish Research Council 2018, page 7)

2. Description of current arrangements to prevent and respond to sexual harassment

2.1 The context

Addressing workplace sexual harassment is an active policy area with many countries reviewing their current approach or developing new strategies. This activity has been largely driven by a resurgence in feminist or gender analysis of social issues, illustrated by the emergence of the #MeToo movement. The result has been a renewed focus on gender discrimination against women, the gaps in the pay they receive, their under-representation in many roles and positions of power and discrimination when they become pregnant (see <https://theconversation.com/metoo-is-not-enough-it-has-yet-to-shift-the-power-imbalances-that-would-bring-about-gender-equality-92108>). The campaign has also affected the environment of sexual violence prevention, including sexual harassment at work. There is now:

- a wider understanding of the prevalence of sexual harassment and assault, in work environments and other settings
- much greater credibility offered to victims

- more public discussion that a range of behaviour is sexual harassment, which in turn is part of a larger cluster of abuse and violence against women:
 - *Rape and murder might be the extreme end...but the spectrum they sit on stretches right back to 'harmless' casual sexism, the rape 'jokes' and threats that proliferate online and the attitude expressed towards women on a daily basis by groups of men who've been socialised to view themselves as superior. These toxic behaviours don't manifest one day out of nowhere. They are cultivated* (see <https://www.theguardian.com/australia-news/2018/jun/19/eurydice-dixon-death-male-rape-australia-women-men-attitudes>)
- a stronger public expression that this behaviour is unacceptable, will no longer be tolerated and is likely to be publicised in future
- more awareness that men are the predominant perpetrators, with calls for men to take responsibility for both the systems and cultures that permit sexual harassment, and for changing them
- a greater discussion of the dynamics of sexual violence and understanding that sexual harassment persists because of three factors: the sense of entitlement that some men feel toward the women they work with; the presumption that women won't report it or fight back; and the presumed support—even tacit support in the form of not calling out bad behaviour—of other men (see <https://hbr.org/2018/01/getting-men-to-speak-up>)
- more awareness that intersectionality³ puts some people at greater risk of being harassed or assaulted.

Rights and wellbeing

Over the years, sexual harassment at work and in society as a whole has been addressed in a wide range of international and regional legal frameworks and conventions. These typically draw on either a human rights (anti-discrimination) or a wellbeing (health and safety) approach. In a study of 100 countries, Hersch (2015) found that 78 had laws regulating workplace sexual harassment. Depending on the country, sexual harassment was covered under a range of legal principles, sometimes in combination:

- as employment discrimination on the basis of sex
- under labour law protections against unfair dismissal
- under human rights law
- under health and safety laws requiring provision of a safe working environment
- under criminal law (especially for sexual assault)
- as a tort (an intentional act for which courts can award damages)
- under contract law (such as breach of contract due to unfair dismissal).

Among the 13 countries reviewed for this paper, Australia, Germany, Iceland, the Netherlands, Sweden, Switzerland and the US have legislation drawing on a rights or anti-discrimination approach, while Belgium, Canada, Denmark, France, Norway and the UK put

³ The theory that the overlap of various social identities, such as race, gender, sexuality and class, contributes to the specific type of systemic oppression and discrimination experienced by an individual (from <http://www.dictionary.com/browse/intersectionality?s=t>).

a greater emphasis on health and wellbeing. A paper prepared by Numhaus, page 2, er-Henning (2012) for the European Institute for Gender Equality draws attention to the growing conflation of these two aspects and the emergence of what she calls the “double approach”, where both aspects are included. In New Zealand, as in other countries, both approaches are referred to or implicit in legislation or guidelines.

The United Nations Division for the Advancement of Women handbook for legislation on violence against women (Thomas, Park, Ellingen, Ellison, Menanteau and Young 2011) identifies several key areas that laws related to sexual harassment should address. They cover both discrimination and wellbeing. In particular, the handbook suggests that legislation should:

- criminalise sexual harassment
- recognise sexual harassment as a form of discrimination
- recognise sexual harassment as a violation of women’s rights with health and safety consequences
- recognise that harassment occurs in both vertical (such as between teacher and student or between manager and employee) and horizontal power relationships (such as between employees at the same level)
- provide effective criminal, civil and administrative remedies for victims.
- address harassment in multiple sectors including public places, employment (formal and informal sectors), education, housing, commercial transactions, provision of benefits and services and sporting activities (Thomas et al 2011, page 14).

Similarly, the Charter of Fundamental Rights of the European Union, which came into effect in 2009, specifically enshrines workers’ right to be free from discrimination on the basis of sex, and Article 23 obliges states to ensure equality between men and women in all areas. This principle has since been elaborated through several directives dealing with sexual harassment, which require member states to incorporate a number of principles into national law, including encouraging employers to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.

Signs of change

Nineteen countries responding to an OECD Employment, Labour and Social Affairs Committee survey reported that, since 2013, they had introduced new measures aimed at eliminating sexual harassment in the workplace, making this an active policy area with a relatively large number of changes. The new measures have typically taken one of two forms:

- new or stronger laws or regulations governing sexual harassment, and/or
- information or awareness-raising campaigns around what constitutes sexual harassment and the right to a life free from sexual harassment.

Austria, Costa Rica, France, Iceland, Israel, Korea, Mexico, Portugal and Slovenia are among the countries that introduced or reinforced anti-harassment laws. In contrast, the Russian Federation partially decriminalised domestic violence in 2017. Belgium, Denmark, Estonia, Greece, Israel, Korea, Lithuania, the Netherlands and Portugal have all conducted, or are conducting, awareness-raising about definitions of sexual harassment, ways to prevent sexual harassment, and legal rights (for victims) and obligations (for employers)

when harassment occurs. Other countries, like the Czech Republic, have embedded sexual harassment within larger national strategies on gender equality or gender-based violence. Countries are also increasingly collecting data on harassment and violence against women, but large data gaps remain (OECD 2017).

Increased collaboration

Another trend is for increased collaboration. At the international level, trade unions and employers' federations have increasingly come together to take action against violence and harassment in the world of work, through framework agreements, manuals, policy documents, guidelines and campaigns.

In 2007, for example, the European Social Partners (ESP)⁴ signed an autonomous Framework Agreement on violence and harassment at work. This required the member federations of signatory parties to co-operate on improving working conditions by establishing and promoting mechanisms to identify, prevent and manage problems of harassment and violence occurring at the workplace. The stated goals of the social partners in negotiating the agreement were to:

- increase the awareness and understanding of employers, workers and their representatives of workplace harassment and violence
- provide employers, workers and their representatives at all levels with an action-oriented framework to identify, present and manage problems of harassment and violence at work.

The UK members of ESP also stress the importance of involving multiple players in designing appropriate procedures and policies:

Employers should involve workers—and where recognised, trade unions—in establishing procedures to deal with harassment and violence. Together, they may agree how to prevent harassment and violence and, where employers recognise trade unions, this could be done through established channels of collective bargaining or through consultation with health and safety representatives. (ESP: UK Partners n.d.:5)

In 2008, the International Trade Union Confederation (ITUC) issued a manual for trade unions on gender equality, which included guidance for unions on how to deal with sexual harassment in the workplace (ITUC 2008).

A complex situation

The authors of the OECD report note that the extent to which countries are able and willing to change depends in part on the procedures and practices specific to management and labour in each country; the nature of pre-existing legislation, collective agreements, guidance and tools to deal with harassment in the workplace; and the coverage of the respective instruments chosen.

Carta, Frenzel, Maillart, Weber and Wukovits (2015) came to a similar conclusion in their overview of existing legislation in European Union (EU) and European Economic Area (EEA) countries. They recognise that assessing the effectiveness of national legislation approaches in protecting workers from harassment and violence at work is challenging given the number of legal sources that have to be taken into account:

⁴ Business Europe, the European Association of Craft, Small and Medium-sized Enterprises (EAPME), Central Europe Energy Partners (CEEP) and the European Trade Union Council (EUTC).

It should be noted that there are two legal paradigms regarding the care and welfare/well-being of the worker. While the employer has a general contractual duty of care towards the worker (employment contract), the degree of liability and protection of well-being of the worker depends on the inter-connection of employment law and health and safety law. (Carta et al 2015:39)

They conclude that, in countries where implementation actions may be considered to be relatively weak, further capacity building measures may be required to increase organisational capacity and strengthen effective co-operation. They found some evidence, over time, of increasing capacity among social partners at a national level to deal with the implementation of such agreements:

But [this] tends to depend on membership coverage and the strength of local organisational structures. (Carta et al 2015:viii)

Awareness of power dynamics

The high profile of perpetrators in recent cases of sexual harassment has led to more discussion of the importance of power dynamics and unsupportive cultures in both the workplace and in society as a whole. The Victorian Trades Hall Council (VTHC) (2017) in Australia, for example, recognises the need for change because:

- *Women have lower social and economic power. They are more likely to be in more vulnerable positions in the labour market. This is particularly the case for women in lower paid and/or precarious work.*
- *Cultures of sexism and gender inequality (inside and outside of work) re-enforce norms and behaviours that accept and trivialise the violence women experience.*
- *Women are over represented in occupations where workers are more likely to be exposed to violence such as in domestic work, health and social care, garment or textile industries and some agricultural/farm work and service roles.*
- *Gendered violence is often also perpetrated against those who do not conform to society's gender stereotypes including those who identify as gay, lesbian, bisexual, intersex, transgender or queer.*
- *Women who experience multiple forms of discrimination and inequality are particularly vulnerable to gendered violence in the workplace. Aboriginal and Torres Strait Islander women, culturally and linguistically diverse (CALD) women, refugee and migrant women and women with disabilities are at greater risk and often experience higher levels of gendered violence at work. (VTHC 2017:5)*

McKinsey and Co's report on Women in the Workplace (McKinsey and Co 2018) notes that, while around a third of women in corporate America have experienced sexual harassment at some point in their careers, for some women, the experience is far more common. Fifty-five percent of women in senior leadership, 48 percent of lesbian women and 45 percent of women in technical fields report that they have been sexually harassed. Women who are the 'only woman in the room or team' are also more likely to experience harassment.

Inequities in power are also apparent within the workplace, where women tend to be underrepresented in leadership or managerial positions, and HR departments may be closer and more responsive to management than to staff. Scheiber and Creswell (2017) point out that the recent wave of sexual harassment allegations highlights a conflict of interest for HR officials addressing these complaints. They must balance managing personnel issues with protecting their company's interests and their own careers.

A study by the Equal Employment Opportunity Commission (Feldblum and Lipnic 2016) reported that, of all the options available to workers experiencing harassment—avoiding the harasser or consulting with family members, for instance—the least common response of either men or women was to take some formal action.

2.2 Role of legislation

Numerous reviews stress the importance of countries having a strong legislative framework as the ‘starting point’ for addressing sexual harassment. A European Union review (European Agency for Safety and Health at Work (EASHW) 2011) pointed out that:

The existence of regulation and legislation has many advantages: it makes the problems of violence and harassment at work more visible; increases the awareness and recognition of the problems; and encourages and increases discussion in organisations. Law also increases the workers’ feeling of security. Laws are a force that obliges organisations to take action to prevent and handle the violence problems but they give also a justification to different kinds of activities in the workplaces. They also give authorities a tool to oblige organisations to take the first step in the process of taking action against harassment and violence. (EASHW 2011:41)

In Iceland, Llana (2018) cites the new law requiring large companies to earn official certification that they offer equal pay as an example of the vital role that top-down accountability plays in effecting lasting change. She quotes Rósa Guðrún Erlingsdóttir, head of the equality unit at Iceland’s Ministry of Welfare:

Our experience shows us how important legal measures are, because gender equality doesn’t happen of its own accord, it simply doesn’t. If politicians decide to wait until the people are ready, or until nobody is going to oppose some legislative changes, nothing will happen. (Llana 2018)

2.3 Issues relating to legislation

Compliance and effectiveness

Having policies and procedures is one thing; being willing and able to implement them is another. One of the most striking aspects of the #MeToo and similar campaigns is the way they appear to have highlighted the lack of compliance with or effectiveness of current arrangements, even in countries where the legislative framework appears to be strong. Routine monitoring is rare. Checks only happen, if they happen at all, when a problem is disclosed.

The Government of Sweden (2018) acknowledges that in the area of work environment and discrimination there are already many tools and relevant legislation, but the power and size of the petitions (to the #MeToo campaign) show that there are serious deficiencies in compliance.

Belgium has also experienced issues with compliance, despite a high level of collective bargaining and union involvement in prevention campaigns. In a country review, Pillinger (2017a) pointed out that, although all workplaces are required by law to have policies and procedures in place, the trade union confederations do not monitor the implementation of workplace policies and agreements. This makes it difficult to gauge how effectively issues of sexual harassment have been addressed in workplace policies and related procedures. In

addition, there are no data available on the types and numbers of cases supported by the ‘person of confidence’⁵ in the workplace, as these remain confidential.

A similar situation has been noted in Iceland where laws against sexual harassment are strong, with a new ordinance coming into effect in 2015 that increased the pressure on employers to actively prevent sexual harassment. However, one commentator noted that:

We get calls about sexual harassment and know it’s going on, but the problem is that the employers don’t do anything. There is a need for more money to make employers better aware of how they should act. They need support in their prevention efforts. Employers that violate the law should face direct financial consequences, or else there is no incentive to prioritise these issues. (NIKK Nordic Information on Gender 2018)

Legislation needs to be more inclusive

While countries are increasingly opting for more inclusive labour laws, agencies such as the ILO (2018:96) have identified a major gap in legislation relating to their scope; namely, who is covered, and where and when they are covered. Domestic workers, for example, often have greater vulnerabilities to workplace violence and harassment because they work in their employers’ home, but they are not always covered by relevant legislation. Contractual arrangements may also limit coverage. Violence and harassment provisions cover jobseekers in only a few cases, despite the fact that they can also face harassment, particularly sexual harassment.

A survey by Edison Research (2018:3) found that the ‘gig’ economy, where workers participate in a series of short-term assignments or freelance work as independent contractors, sees a much higher percentage of those who have experienced sexual harassment in the workplace.

A study by Shaw, Hegewisch and Hess (2018) also found that people working for tips are particularly at risk as are those working in an isolated context such as female janitors, domestic care workers, hotel workers and agricultural workers, those working in a male-dominated job and those lacking legal immigration status or having only a temporary work visa.

Similarly, while a number of countries have an expanded definition of workplace, some labour laws define the concept of ‘workplace’ very narrowly, often limiting it to the physical place of work. Violence and harassment can occur while commuting to and from work, at work-related social events and via technology that blurs the line between workplaces, domestic places and public spaces.

A paper by the National Women’s Law Centre in the US (Raghu and Surianai 2017) makes a similar point:

Title VII and state antidiscrimination laws provide important protections against workplace sexual harassment—but only for some employees. Individuals deserve to be protected from sexual harassment on the job regardless of the size of the establishment where they work or their employment classification. Title VII’s protections only apply to employers with fifteen or more employees. For those employees working for a business with less than fifteen employees, there is no federal remedy for workplace sexual harassment. Reducing the employer size threshold for harassment laws and other antidiscrimination laws, as several states have already done, would ensure that

⁵ A person available to employees to discuss sexual harassment concerns.

employees working for small businesses will no longer be left without recourse when they are harassed.

Title VII and most state antidiscrimination laws by their terms only protect 'employees' from sexual harassment on the job. This leaves the growing segment of workers classified as 'independent contractors' without protection from workplace harassment. Employers' misclassification of people as independent contractors in an attempt to limit their liability under labour and employment laws also threatens many individuals' ability to avail themselves of sexual harassment protections. (Raghu and Surianai 2017:2)

The nature of sexual harassment also needs to be inclusive. Johnston (2018) notes that, in the US:

Courts have too narrowly defined sexual harassment when it involves a hostile environment under Title VII of the Civil Rights Act of 1964. It's only deemed illegal when it involves unwelcome sexual conduct sufficiently 'severe or pervasive' to alter the employee's employment conditions.⁶ (Johnston 2018:2)

Volunteers and interns need to be covered

In New Zealand, the Human Rights Act 1995 uses a definition of 'employment' that includes volunteers. The same is true in Australia. For example, the laws relating to sexual harassment that apply in the State of Victoria are contained in the Equal Opportunity Act 2010 and Sex Discrimination Act 1984 (Cth). In 2011, the sexual harassment laws were changed to explicitly apply to volunteers. This means volunteers in Victorian organisations have the same legal rights and protections against sexual harassment as paid staff.

In the US, legislation to protect unpaid interns and volunteers from sexual harassment and discrimination in the workplace was signed by the Governor of California in 2018. It expands current protections against sexual harassment and discrimination for employees, unpaid interns and volunteers. New York, Oregon and the District of Columbia passed similar laws protecting unpaid interns. While no such legislation has been passed at the federal level (The Daily Californian 2014), district courts have allowed volunteers for non-profit services to sue for sexual harassment and discrimination under the employee protection provisions of Title VII of the Civil Rights Act (Kramer 2013).

Should third party harassment be a separate issue?

A report prepared for the European Commission (EC) (2011) notes increasing concern about the impact of third party violence on employees because it not only undermines an individual's health and dignity, but also has a very real economic impact in terms of absences from the workplace, morale and staff turnover. Third party violence can also create an environment that is unsafe and even frightening to the public and service users and therefore has a wide negative social impact.

The authors argue that the issue of third party violence (e.g., from clients, customers, patients or students) is sufficiently distinct from the question of violence and harassment (among colleagues) in the workplace, and sufficiently significant in terms of its impact on the health and safety of workers and its economic impact, to warrant a distinctive approach. The multi-faceted nature of third party violence means that policies must be tailored to each work environment. At the same time:

⁶ Note that the requirement that sexual harassment needs to be sufficiently serious to affect an employee's working conditions is similar to requirements in the State Services Commission guidelines on sexual harassment in the public service.

Although there are sectoral and organisational differences with regard to third-party violence faced by workers in different occupations and workplaces, the key elements of good practice and steps to tackle it are common to all working environments. These elements are: a partnership approach; clear definitions; prevention through risk assessment, awareness raising training; clear reporting and follow-up; and appropriate evaluation. (EC 2011:2)

A report by the European Agency for Sexual Harassment at Work (EASHW) (2011) also found that the way harassment and third party violence are defined in legislation varies between the EU member states, starting from more general law that covers all aspects of work, without mentioning third party violence or harassment at work, to more specific definitions where, for example, bullying and harassment are also separated by the law. Like others, the Agency highlights the need for a more comprehensive approach:

The effectiveness of a regulatory approach to combating harassment at work is still unknown. In order to be successful, legal interventions must be accompanied by well-informed, trained and motivated employers and trade unions who, in collaboration, are willing to deal with the problem proactively on an organisational level, as well as responding to individual cases when they occur, supported by an enforcement agency or inspectorate which is equipped and geared up for its role. (EASHW 2011:41)

Breaking the silence

Confidential settlements can be problematic. Raghu and Surianai (2017) note that, in the US, employers sometimes use employment agreements to forbid employees from speaking out about sexual harassment and assault. Provisions can also prohibit employees from going to court to enforce their rights. Instead, they force employees to litigate sexual harassment and assault claims in private arbitration, which is frequently designed, chosen and paid for by the employer or corporation, and conducted and resolved in secret, possibly without long-term consequences for the perpetrator. They add that:

Nondisclosure clauses in settlement agreements also often operate to prevent harassment victims from speaking out publicly about the harassment they experienced, the fact of settlement, the settlement terms, or the identity of the parties as a condition of their settlement with a harasser or employer. Here too secrecy can help hide the true extent of sexual harassment at a workplace, shield a serial harasser from accountability, and prevent other victims from coming forward. Accordingly, regulation of nondisclosure clauses in settlements must be carefully calibrated to balance these competing interests, restoring power to a victim to decide what should be confidential. (Raghu and Surianai 2017:5)

The Equality and Human Rights Commission report (EHRC) (2018) recommended that the UK Government introduce legislation making any contractual clause that prevents disclosure of future acts of discrimination, harassment or victimisation void. They suggested that the statutory code of practice on sexual harassment and harassment at work should set out:

- The circumstances in which confidentiality clauses preventing disclosure of past acts of harassment will be void.
- Best practice in relation to the use of confidentiality clauses in settlement agreements including that the employer should, for example:
 - Pay for the employee to receive independent legal advice on the terms of the agreement, including the reasonable costs of agreeing changes to the terms.

- Give the employee a reasonable amount of time to consider the terms of a settlement agreement before it will become effective.
- Allow the employee to be accompanied by a trade union representative or colleague when discussing the terms of a settlement agreement (EHRC 2018:16).

Timeframes and responsibility

In a recent opinion piece in the *Sydney Morning Herald*, Williams (2018) commented that, in the wake of the #MeToo movement, experts have identified ‘real gaps’ in the federal laws surrounding sexual harassment in the workplace. A particular problem is the six-month time limit to lodge complaints with the Australian Human Rights Commission (AHRC). The timeframe for lodging complaints with the AHRC—on all issues, including sexual harassment—was cut from 12 months to six months in 2017, but advocates argue that there might be a range of reasons why women are unable to come forward about sexual harassment. They may think they are not going to be believed, have fears about job security or be experiencing trauma, embarrassment and fear.

In New Zealand, complainants have 90 days to take a personal grievance under the Employment Relations Act 2000 and up to 12 months to take a case to the Human Rights Commission.

In Norway, the national Equality and Anti-Discrimination Ombudsman handles complaints of discrimination and harassment. People can report harassment related to the established grounds for discrimination, such as ethnicity and sexual orientation, to the ombudsman, but not sexual harassment. Commentators argue that:

If the equality and anti-discrimination ombudsman also administered and investigated sexual harassment, the system would become more legally secure. The most obvious change would be that sexual harassment would be equated with and administered as other forms of harassment. It would also contribute to important case law on sexual harassment in the workplace, which is currently missing in Norway...The present situation is not sustainable. The requirements imposed on employers exist only on paper. Nobody is monitoring them or ensuring that they really work proactively with this issue (NIKK Nordic Information on Gender 2018).

The burden of proof

Proving sexual harassment claims can be difficult, given that the harassment frequently occurs without witnesses. As a result, a high burden of proof such as ‘beyond any reasonable doubt’ can prove particularly obstructive to sexual harassment claims. A Nordic Union (2016) review concluded that:

The Nordic countries need to review existing legislation and policies dealing with sexual harassment so as to make laws and policies more relevant and efficient, especially in terms of:

- *The types of harassment covered (verbal)*
- *The identity of the perpetrator (third-party harassment)*
- *The scope (cyber harassment)*
- *The level of sanctions and penalties*
- *The duration of legal procedures*

- *The burden of proof for incidents.* (Nordic Union 2016:15)

A similar issue has been reported in Switzerland. While Swiss law provides victims of harassment with numerous protections, the reality is that cases are rarely pursued in court. From 2004 to 2015, there were only 35 cases of sexual harassment in the cantonal courts and only 18 percent of these resulted in a favourable outcome for the person who was harassed. Some of the key obstacles were that the requirements for the burden of proof are very high and sexual harassment is not very well known in the judicial system. Many courts do not investigate whether employers actually put in place appropriate preventative measures (Pluss 2017). Low likelihood of success after a long court case deters many people from coming forward in the first place.⁷ The literature suggests victims also feel ashamed and fear that the harasser will retaliate or that they will face a backlash from colleagues, especially if the accusations result in the dismissal of a well-respected, high-performing colleague.

Safe disclosure and freedom from further harassment

The literature suggests that, in order to come forward, complainants need assurance that they will be free from harassment (including revenge harassment) following disclosure.

2.4 Responsibilities in the areas of primary prevention and secondary and tertiary interventions

This paper uses the public health model for prevention/intervention strategies. Under this model:

- Primary prevention refers to activities that take place before any injustice has occurred to prevent any initial harm.
- Secondary intervention incorporates immediate responses after the event has occurred.
- Tertiary intervention refers to long-term response strategies that aim to deal with any ongoing consequences of the problem (McDonald, Charlesworth and Graham 2015).

Primary prevention

Primary prevention strategies aim to:

- circumvent violence
- remove the causes or determinants of violence
- prevent the development of risk factors associated with violence
- enhance protective factors against violence (McDonald et al 2015:42).

Primary prevention is often framed in terms of the social ecological model, which highlights the need for strategies to operate right across the social spectrum, preferably in a co-

⁷ This is similar to the findings of the NZ Law Commission's (2015) report: *The Justice Response to Victims of Sexual Violence*. This report cited a 2009 study that found that just 31% of sexual violence incidents that are reported to Police are prosecuted, and only 13% of sexual violence incidents reported to Police ultimately resulted in a conviction. This same study suggested that, of those sexual violence incidents that are reported to Police and that result in charges being filed, a large proportion fail to advance through to a completed trial (attrition). The low resolution rate in itself may deter victims, alongside procedural concerns about the nature of the adversarial trial system.

ordinated fashion, with many participants or stakeholders having responsibilities at more than one level.

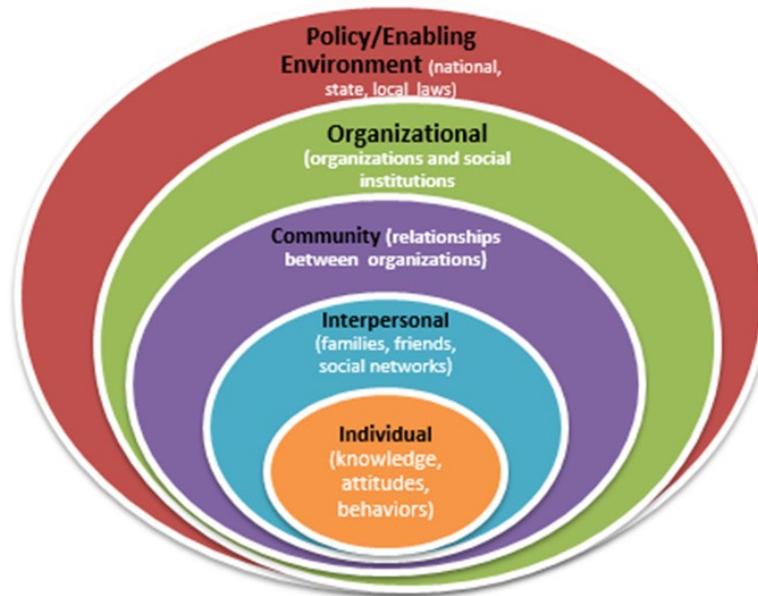


Figure 1. The Social Ecological Model

Source: Adapted from the Center for Disease Control and Prevention (CDC), The Social Ecological Model: A Framework for Prevention (<http://www.cdc.gov/violenceprevention/overview/social-ecologicalmodel.html>).

Policy or enabling environment —mainly a government responsibility

The United Nations (UN Women 2015) points out that violence against women and girls is rooted in gender-based discrimination and social norms and gender stereotypes that perpetuate such violence. Addressing these issues requires a high-level, co-ordinated approach, led by government:

The best way to end violence against women and girls is to prevent it from happening in the first place by addressing its root and structural causes. Prevention can occur through:

- *the promotion of gender equality, women’s empowerment and enjoyment of human rights*
- *making the home and public spaces safer for women and girls*
- *ensuring women’s economic autonomy and security*
- *increasing women’s participation and decision-making powers—in the home and relationships, as well as in public life and politics.* (UN Women 2015)

Strategies to promote change include:

- working with men and boys so that they can begin to challenge the deeply rooted inequalities and social norms that perpetuate men’s control and power over women and reinforce tolerance for violence against women and girls

- using media and social media to raise awareness and mobilise the community to act against harassment.

Australian authors, Chung, Zufferey and Powell (2012) also draw attention to the importance of addressing gender inequality across the board in an integrated fashion:

The involvement of workplaces in the prevention of violence against women has predominantly involved regulatory approaches and partnership-based programs. To date, the practice and research about the role of workplaces in the primary prevention of violence against women has received limited research attention. Furthermore, the underlying social conditions that reproduce gender inequality and are associated with the occurrence of violence against women have not been addressed with a cohesive strategy generally or specifically in targeting workplaces. For example, women’s economic inequality has traditionally been addressed in a separate policy arena from that of violence against women. (Chung et al 2012:16–17)

This approach would ensure that practical protections against work-related violence and harassment reach all workers, including those working in private homes, in the informal economy, and in small and medium-sized enterprises. (ILO 2018:95)

The ILO has identified six principles that could form the basis of a convention to address violence and sexual harassment in the workplace. They are:

- comprehensively defining violence and harassment
- stating the right of all workers to a violence- and harassment-free world of work
- calling for the prohibition in national law of all forms of violence and harassment in the world of work, including all forms of gender-based violence
- calling for the establishment in national law of systematic prevention measures and the inclusion of psychosocial risks, violence and harassment under Occupational Safety and Health Management Systems (OSH–MS)
- calling for the establishment in national law of enforcement and monitoring mechanisms, including safe and accessible complaints mechanisms for violence and harassment
- calling for the establishment of sanctions for perpetrators, and remedies and support for victims.

The authors set these principles out in diagrammatic form:

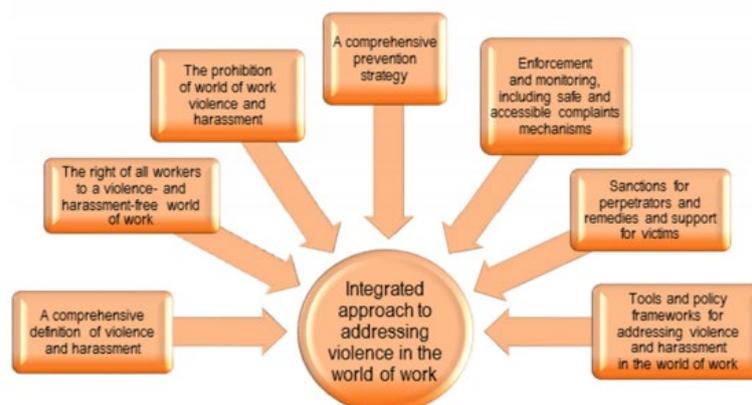


Figure 2. Principles for an inclusive and integrated approach to addressing violence and harassment against women and men in the world of work (ILO 2018:100)

In Australia, the Victorian Trades Hall Council (2017) put forward a proposition setting out eight indicators of a society where gendered violence is understood as a serious health and safety issue. These set out the roles that government agencies, employers and unions can take in addressing sexual harassment. The eight indicators are:

1. *Employers and WorkSafe recognise the violence women experience by including gendered violence and harassment in the definition of workplace violence.*
2. *Employers and WorkSafe take gendered violence seriously and act to prevent it and to minimise the harm that it causes when it does occur.*
3. *Health and Safety representatives are trained, resourced and confident to tackle gendered violence as a workplace health and safety issue.*
4. *The Victorian Government leads the way by tackling gendered violence in the public sector, supporting initiatives to overcome gendered violence in private sector workplaces and using procurement and funding policies to drive change.*
5. *The extent and nature of gendered violence is documented and this data is publicly available to inform public policy and to stop gendered violence in our workplaces.*
6. *Urgent action is taken by WorkSafe, the Victorian government and unions to stop the gendered violence experienced by particularly vulnerable workers.*
7. *The workplace dimensions of family violence are widely understood. Workplaces support victims of family violence. All Victorian workers have workplace rights, including additional paid leave, if they are subjected to family violence. No adverse action is taken against them as a result of them being a victim of family violence.*
8. *Union members, delegates and officials understand the dimensions of gendered violence and are taking action to stop gendered violence at work. (VTHC 2017:9)*

Primary prevention—an employer's responsibility in the organisational environment and interpersonal relationships

If governments are largely responsible for setting the broader policy environment and for supporting nationwide anti-violence campaigns, employers are primarily responsible for establishing a safe and positive work culture, which is essential to preventing sexual harassment in the workplace.

A recent report from the US claims that:

By far, the greatest predictors of the occurrence of sexual harassment are organisational. Individual-level factors (e.g. sexist attitudes, beliefs that rationalize or justify harassment, etc.) that might make someone decide to harass a work colleague, student, or peer are surely important. However, a person who has proclivities for sexual harassment will have those behaviours greatly inhibited when exposed to role models who behave in a professional way as compared with role models who behave in a harassing way, or when in an environment that does not support harassing behaviours and/or has strong consequences for these behaviours. (Johnson, Widnall and Benya 2018:46)

While most countries have laws encouraging or requiring employers to have sexual harassment prevention policies in place, relatively few focus on the need for employers to

foster a positive organisational culture where harassment is not tolerated, and where respect and civility are promoted (Feldblum and Lipnic 2016).

Resources are starting to emerge to support employers. One of the most recent publications by Catalyst (Daley, Travis and Shaffer 2018) provides a four-part model with suggestions for organisations and leaders committed to making change.

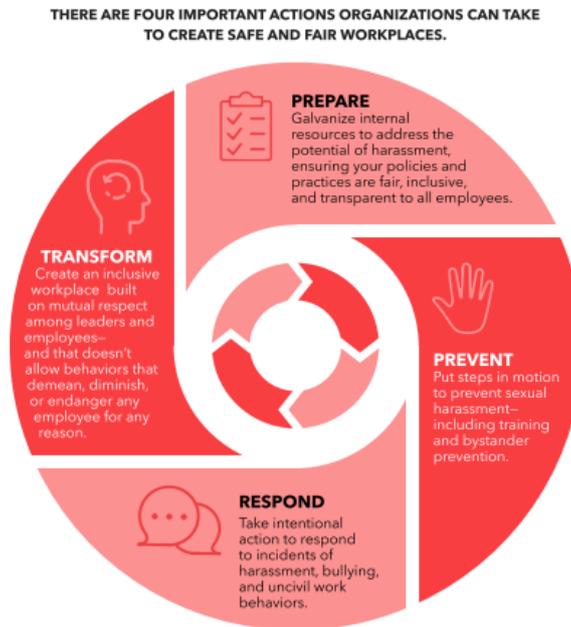


Figure 3. Model from *Sexual Harassment in the Workplace: How Companies Can Prepare, Prevent, Respond, and Transform Their Culture* (Daley et al 2018:2)

Under 'Prepare', the model gives some detail on:

- cultivating a zero-tolerance policy for sexual harassment
- taking proactive steps to make this policy and the company's commitment visible
- setting guidelines to help employees understand appropriate norms for human interaction and affection in the workplace
- creating processes to consider how sexual harassment affects women of colour and other marginalised groups in the organisation
- educating yourself (as CEO) about your organisation's policies and procedures for when the board should be involved with or notified of sexual harassment complaints
- galvanising across functions to help employees have quick access to resources.

Under 'Prevent', the model recommends:

- accelerating parity in representation of women at all levels, including the board of directors
- educating and training leaders on forms of sexual harassment—including how to escalate
- focusing on effective anti-sexual harassment training.

Suggestions under 'Respond' include:

- reinforcing your company's zero-tolerance policy for sexual harassment and retaliation
- investigating all claims promptly and fairly
- honouring the target of sexual harassment and following up accordingly
- allowing space for support, understanding and, ultimately, compassion—particularly during times of trauma.

The final section, 'Transform', involves:

- building a climate of respect and accountability
- evaluating the company's dominant business culture for norms and practices that promote shaming and silence
- addressing heavy alcohol consumption at work functions.

As yet, there is little evidence of routine monitoring for effectiveness, although some countries like Belgium, Denmark and Sweden do have a labour inspectorate similar to WorkSafe New Zealand.

Businesses can also demonstrate their commitment by supporting organisations and initiatives working to prevent or address sexual harassment and violence in community settings.

Primary prevention—responsibility at the community level

Trade unions and NGOs have also played a growing role in promoting awareness and advocating for change (e.g., through the #Time'sUp and #MeToo campaigns). NGOs can and often do work alone in seeking to prevent sexual harassment but they are more likely to work in partnership with government, trade unions and/or employer organisations (e.g., the New Zealand White Ribbon campaign, which works in the community but receives government funding).

A paper by the Nordic Union for the hospitality and tourism sectors (Nordic Union 2016) argues that sexual harassment in the workplace is an issue that trade unions should actively engage in:

Trade unions have a great responsibility for their members and must put sexual harassment on the agenda as it is a serious health and safety issue as well as a gender equality issue, especially in our sector. They can do so in various ways:

- *Lobbying for improved legislation: Trade unions should actively seek to influence governments and other public authorities and encourage them to review existing sexual harassment legislation, exposing inconsistencies and gaps in implementation.*
- *Taking up cases: Trade unions need to take sexual harassment cases to court in order to demonstrate the consequences to the harasser and establish a clear employer liability.*
- *Raising awareness and training trade unions representatives: Trade unions must actively raise awareness among their representatives and provide them with training that enables them to handle and prevent sexual harassment at the workplace.*

- *Negotiating with employers on the issues: It is important to include provisions on how to prevent sexual harassment at work in collective agreements.*
- *Influencing vocational schools' curriculum: Trade unions should emphasise the importance of including psychosocial risks as part of the health and safety curriculum at hotel and restaurant schools.*
- *Encouraging more research on the issue within the sector. (Nordic Union 2016:15)*

As noted earlier, partnerships of various kinds are becoming the norm in primary prevention. Chung et al (2012) report positively on this development:

One approach that has been successful to date involves government and regulatory bodies working in partnership with workplaces and key stakeholders. Another form of partnership is the collaboration between violence-against-women services and workplaces. Partnerships with local intimate partner violence or sexual assault support services can be particularly useful in smaller organisations, which may have insufficient human resources or employee assistance structures to take on prevention work. These services can provide expert advice and training to support prevention of violence against women in the workplace. Such models further promote a work practice of inclusion and community responsibility. (Chung et al 2012:40)

In a resource prepared by the International Training Centre of the ILO (2014) the authors also support a partnership approach:

Working together, employers, trade unions and global or local NGOs/women's organisations can bring different perspectives, experiences and roles to eliminating sexual harassment and violence in the world of work. Broad national alliances can be very effective in promoting change.

- *Trade unions have significant experience in gaining access to the workplace but in some cases, male-dominated structures can mean that sexual harassment and violence are not always high on the collective bargaining agenda.*
- *Employers can bring a valuable business perspective and through social dialogue make the links between eliminating sexual harassment and improving productivity and competitiveness.*
- *NGOs and women's organisations are often in contact with women in the community and have built trusted relationships with women in the area of gender-based violence but have limited access to the workplace and may not have adequate industrial relations experience.*
- *By representing workers, trade unions can create a dialogue in the workplace about ending violence against women. They have an important role to play in documenting women's experiences of violence. Trade unions increasingly campaign against violence against women in the workplace. (International Training Centre of the ILO 2014:Section 5)*

Secondary intervention—an employer's responsibility at the organisational, interpersonal and individual level

Secondary intervention involves an immediate response after sexual harassment has occurred. It aims to prevent further perpetration and deal with short-term consequences, including the victimisation of those at risk. It is primarily the responsibility of employers,

backed by appropriate legislation and supported, in some cases, by partnerships with trade unions, government agencies and NGOs.

With sexual harassment, organisational grievance procedures are the most common mechanism through which employee rights are enacted. However, a substantial body of work suggests that procedures for raising and responding to a complaint of sexual harassment are often ineffective, largely because of a lack of trust between staff and management:

Indeed, there is strong evidence to suggest that employees often perceive grievance processes to be:

- *adversarial and hostile*
- *lacking confidentiality*
- *risky in terms of isolation or reprisal from the workgroup, and*
- *likely to fall on deaf ears.* (McDonald et al 2015:46)

Three examples illustrate this point. A recent Dutch survey (Pieters 2018) found that one in 10 'internal confidential counsellors' had been ignored by their employer at least once when speaking up for a victim of sexual harassment. The same was true for 23 percent of confidential counsellors who worked outside the company. The survey also found that over 80 percent of confidential counsellors would like to have a stronger legal position which would mean that they could help victims more effectively, because they would not have to worry about losing their jobs.

In Australia, one of the striking features of complaints made to Human Rights Commissions and, albeit rarely, to courts and tribunals, is that these complaints are much more about the failure of the employing organisation to respond adequately to the original complaint of sexual harassment than about the harasser (Charlesworth 2017).

Data compiled by the Equal Employment Opportunity Commission (EEOC) reveal that half of all formal claims of sexual harassment in the US do not result in any charges. Cases are hard to win, and victims may be afraid to come forward, anticipating defamation lawsuits, intimidation and the burden of coming up with corroborating witnesses. Time is not on the side of victims: the EEOC reports that the average wait time for a complaint to be addressed was 295 days in 2017 (Parramore 2018).

An Irish Code of Practice on Sexual Harassment (The Equality Authority 2002) recognises that, while the code is intended to be applicable to all employments, employment agencies and trade unions, employer bodies and professional bodies that are covered by the Employment Equality Act, some employers may need to adapt its provisions to suit their particular situation. Such flexibility should not compromise the quality of policies and procedures:

It may be relevant for small and medium sized enterprises to adapt some of the practical steps to their specific needs. Any adaptations that are made however, should be fully consistent with the code's general intention. (The Equality Authority 2002:3)

Tertiary intervention—an employer's responsibility at the individual and organisational level

Tertiary prevention addresses the lasting consequences of victimisation (e.g., by providing ongoing counselling for victims) and the provision of specialised sex offender treatment and management to the perpetrators of sexual violence to minimise the possibility of re-offending (ACAS 2018). Tertiary interventions are relevant to sexual harassment because of the

significant negative psychological, health and job-related consequences that targets have been found to experience. McDonald et al (2015) note that sexual harassment is often seen as an individual problem which may limit the development of a broader approach:

The conceptual framing of sexual harassment as an individual problem, rather than one with causes and consequences at a systemic level has limited the development of effective organisational responses. The development of comprehensive response frameworks that address workplace sexual harassment has also been conceptually limited in that the sexual harassment literature has developed as largely distinct from other potentially relevant perspectives on workplace misconduct and injustice.
(McDonald et al 2015:42)

The authors conclude that interventions detailed in the literature have been almost exclusively focused on primary and secondary levels, with tertiary interventions relatively neglected. The literature that does exist lays the responsibility for tertiary prevention on employers.

3. Impacts and effectiveness

The literature suggests that having policies and procedures in place alone is not enough to prevent sexual harassment from happening. They need to be supported by a positive workplace culture, which begins with strong leadership, and is implemented through ongoing workforce training tailored to the individual company's needs. Part 3 looks at the impacts of sexual harassment and the effectiveness of different approaches to or programmes for preventing or mitigating harm from sexual harassment.

3.1 Social and health impacts of sexual harassment

Impacts on those harassed

The literature makes an important case for taking all forms of sexual harassment in the workplace seriously. Sojo, Wood and Genat (2016) found that frequency of exposure to gendered and sexualised maltreatment strongly undermines women's occupational well-being:

Sexual coercion and unwanted sexual attention are traumatic for the people involved, and more likely to result in court cases and public reporting. However, in many work settings, these intense experiences are low-frequency events. Norms, leadership, or policies that reduce intense harmful experiences may lead managers to believe that they have solved the problem of maltreatment of women in the workplace. However, the more frequent, less intense, and often unchallenged gender harassment, sexist discrimination, sexist organisational climate, and organisational tolerance for sexual harassment appeared at least as detrimental for women's well-being. They should not be considered lesser forms of sexism. (Sojo et al 2016:31)

Those who are sexually harassed report a wide range of negative outcomes (Hersch 2015; Shaw et al 2018). Feldblum and Lipnic (2016b) summarise these as:

- psychological harm: depression, anxiety, PTSD, negative mood, eating disorders, self-blame, anger, substance abuse
- physical harm: headaches, exhaustion, sleep problems, nausea, weight changes, cardiovascular issues, gastric issues, respiratory issues

- workplace productivity: decreased productivity, job dissatisfaction, work withdrawal, disengagement, tardiness, excessive absenteeism and work time spent discussing the harassment.

In their review, Sojo et al (2016) found that all of the harmful workplace experiences and job stressors had negative relations with the full range of attitudinal and health measures for women. Harmful experiences that are specifically targeted at an individual, including general harassment, sexual harassment and sexist discrimination, were negatively related to all measures of women's work attitudes and health. A sexist organisational climate also had negative effects across the full range of attitudinal measures and all health indicators except physical health.

Benya (2019) and McLaughlin, Uggen and Blackstone (2017) agree that sexual harassment can have deleterious consequences for mental and physical health, sometimes over many years. Sexual harassment has also been linked to other aspects of mental health, including anger and self-doubt, which may influence people's future employment experiences. The latter authors conclude that:

Given these serious health effects, it is not surprising that sexual harassment affects immediate work outcomes, such as reduced job satisfaction, increased absenteeism and work withdrawal, and deteriorating relationships with co-workers. Organisational commitment may also wane if employers fail to adequately address harassers or protect targets... When employers fail to take action, or when targets are labelled 'troublemakers' who harm productivity or the organisation's reputation, loyalty and trust may also be jeopardised. (McLaughlin et al 2017:335)

Third party harassment

In a large Danish study, Friberg et al (2017) also draw attention to the effects of harassment by clients or customers compared to harassment by other employees:

In this study we found that sexual harassment from clients or customers, which is more prevalent than harassment from other employees, is associated with an increased level of depressive symptoms. This is important as some workplaces, for example in person-related work like care work or social work, may have an attitude that dealing with sexual harassment by clients or customers is 'part of the job'. (Friberg et al 2017:3)

The authors suggest that it is important to investigate sexual harassment from clients or customers and sexual harassment by colleagues, supervisors or subordinates as distinct types of harassment and to identify methods to prevent sexual harassment and the development of depressive symptoms.

Career and economic impacts

McLaughlin et al (2017) have produced one of the few recent pieces of research on how sexual harassment impacts women economically. The researchers, focusing specifically on women who were targeted early in their careers, found that women who had been harassed were far more likely to change jobs than those who had not. Overall, 80 percent of women who experienced severe sexual harassment left their jobs within two years.

Such women were also more likely to move to a different industry and reduce their work hours following incidents. Women also experienced far more serious effects from interruptions to their work path than men. Sexually harassed women reported greater financial distress two years later than those who were not targeted and were more willing to accept negative economic consequences in order to escape sexual harassment. They often

endured financial strain due to unemployment, career uncertainty, diminished hours or pay and anxiety about starting a new job.

The authors found that many women suffered long-term career effects as they lowered their aspirations and narrowed their field of opportunity to avoid a repeat of the degrading experience. Those who stood up to hostile work environments, meanwhile, were often penalised with career stagnation and being ostracised, even if they were not themselves the targets of the harassment.

Edison Research (2018:5–6) reports that over half (55 percent) of those who had experienced sexual harassment in the workplace agreed that the experience had hurt their career. Of those who had experienced sexual harassment, it was higher for men (64 percent) than for women (50 percent). Around half of both men and women said the harassment had caused them to change jobs.

A new report released by the National Academies of Sciences in the US (Johnson et al 2018:3) reported that four aspects of the science, engineering and medical academic workplace tend to silence targets of harassment as well as limit career opportunities for both targets and bystanders: (1) the dependence on advisors and mentors for career advancement; (2) the system of meritocracy that does not account for the declines in productivity and morale as a result of sexual harassment; (3) the 'macho' culture in some fields; and (4) the informal communications network, through which rumours and accusations are spread within and across specialised programmes and fields.

Shaw et al (2018) make a similar point, noting that, in many occupations, advancement depends on on-the-job instruction or mentoring and harassment may limit these opportunities. Women may give up tenure opportunities, advancement to leadership positions or step down from major projects to avoid the perpetrator.

In 40 percent of French harassment cases, the person who complained, rather than the accused, was punished by management. Some women were blocked as they tried to seek higher positions while others did not have their contracts renewed or were fired. That puts victims in a difficult situation and can mean that their harassment may continue or even worsen once a complaint is made. The situation has been particularly difficult for women trying to break into traditionally male jobs in the French government bureaucracy (Daley et al 2018).

Parramore (2018) concludes that the financial and economic burdens borne by women themselves, while undoubtedly significant, are difficult to quantify:

We need to know more about the effects of sexual harassment (and retaliation for reporting it) on things like wages, job performance, and career opportunities, not least because targets who pursue legal action are asked to show measurable harm, which requires reliable data.

The work of distinguishing sexual harassment and its specific impact on women of colour, trans people, from other forms of harassment they are subject to, and accounting for their effects is critical. (Parramore 2018:4)

Applying intersectionality means recognising that women of different identities (gender, race, class, sexuality, citizenship, age or disability) experience their oppressions/lived realities in different ways depending on their identities. In regards to sexual harassment, people of different identities experience sexual harassment, reactions to their harassment, reporting and outcomes in different ways. To achieve an intersectional approach, Education International concluded that:

Someone's life situation can always be characterised as multi-faceted: for instance specific gender, age and sexual orientation characteristics are the 'hard facts' of a person embedded in familial and cultural socialisation as well as a certain occupational position and level of education. All these personal dimensions lead to a unique interdependency which can—but not inevitably—lead to unexpected discrimination.

An intersectional approach should include a twofold strategy: On the one side political activities need to be directed at specific target groups such as women, disabled persons or immigrants, otherwise their effort would have no impact. On the other side a closer look should be taken at the differences within those groups. A few examples: Women have different demands depending on whether they are employed part-time, full-time, on a temporary or permanent basis, or stay at home. People with mental and/or physical disabilities face quite diverse needs as well as societal impairments. The country of origin and the associated cultural characteristics can confront immigrants with varying opportunities and problems. (Education International 2010 page 6)

Another form of intersectionality refers to crossovers between different types of sexual violence; for example, family violence at home and its effects in the workplace, sexual harassment at work and its effects at home, and a crossover between sexual harassment and bullying.

Equinet, the European Network of Equality Bodies, suggests that a gender equality agency could usefully lead this work:

National equality bodies can cooperate with women's organisations, civil society, employers and trade unions, schools and labour inspection. They can promote positive examples and proactive approaches to make visible their work and role in the fight against harassment and sexual harassment. This should include attention to the intersectionality of harassment. (Equinet 2014:5)

[Impact on those who harass](#)

There is a dearth of literature about the effects on perpetrators of harassment. Some research shows that men may not recognise how painful sexual harassment can be, and learning about the negative impact may be important to raise awareness and lead to behavioural change.

The evidence shows that employees prone to sexually harassing behaviours may actively tune out, ignore or misinterpret an individual's reactions or perspectives, making inaccurate judgements about the negative impact of these behaviours. Increasing empathy and taking the perspective of someone who has experienced sexual harassment are linked to a reduction in harassing behaviours in the workplace. Being able to accurately understand another's perspective and emotional reaction is a critical skill for developing empathy (Daley et al 2018).

While many of the men recently accused of offenses in the US and UK have been forced to resign, in France it remains the norm in both the public and private sectors for those accused of offences to stay in their jobs (Rubin 2017).

The literature suggests men with a strong sense of fair play (i.e., an understanding of how fairness and inequality impact others in society) are more aware of gender bias, more likely to be committed to gender-equality initiatives and more likely to be champions in the workplace.

Bystanders and others in the workplace

The impact of sexual harassment or violence on bystanders and their role in addressing such behaviour has drawn increasing attention over the past 10 years. An influential paper by McDonald and Flood (2012) for the Australian Human Rights Commission is a recent example. Earlier papers by Raver and Gelfand (2005) and Miner-Rubino and Cortina (2007) also drew attention to the effects on team members and co-workers. This phenomenon is known as 'bystander stress'.

According to McDonald and Flood (2012), bystanders are individuals who observe sexual harassment first hand, or are subsequently informed of the incident. In the workplace, bystanders can include managers or supervisors, human resource employees, workplace ombudsmen and/or equity/harassment contact officers to whom sexual harassment is reported. Reporting can be either formal, where policies and grievance procedures are implemented, or informal, where targets seek support or request advice. Co-workers, who are informed of sexual harassment through the workplace grapevine or targets seeking emotional support and advice, are also bystanders.

McDonald and Flood cite strong evidence that witnessing or otherwise hearing about sexual harassment is not only frequent in workplace contexts, but also causes a range of negative health and occupational outcomes similar to those experienced by the targets.

In the 2018 Australian Human Rights Commission (AHRC) national survey (AHRC 2018:10) only one in three people (35 percent) who witnessed or heard about the sexual harassment of someone else in the workplace took action to prevent or reduce the harm of this harassment. Most commonly (in 71 percent of cases), the action taken by the bystander was to talk with or listen to the victim about the incident. In less than half of cases (47 percent) the bystander reported the harassment to the employer. The most common reason for bystanders not taking action was knowing that other people were supporting and assisting the victim (41 percent). In one quarter (25 percent) of cases, the bystander did not take action because they did not want to make things worse for the victim.

In 2007, Miner-Rubino and Cortina, for example, found that the more both male and female employees observed uncivil and sexually harassing behaviour directed toward female co-workers, the lower their psychological wellbeing and job satisfaction. Declines in psychological wellbeing and job satisfaction, in turn, related to lower physical wellbeing, higher job burnout and more thoughts about quitting. Perceived organisational unresponsiveness to sexual harassment was related to lower job satisfaction and, in turn, to increased withdrawal behaviours and lower organisational commitment for employees. Results also suggested that observing or perceiving the mistreatment of women in the workplace affects men and women similarly.

McDonald and Flood (2012) noted that the extent to which bystanders are motivated to act can vary depending on factors such as the characteristics of the bystander, their relationship with the target, perceptions of the situation and/or conduct and norms within the workplace. Other relevant factors include:

- *the level of personal threat or benefit to the workplace they perceive (e.g. male bystanders can also feel reluctant to take action for fear of being seen as weak, gay and/or un-masculine by their male peers)*
- *the extent to which they perceive sexual harassment to be either an injustice or acceptable behaviour*

- *the extent to which the workplace supports people's advocacy or responds once a complaint is made. In workplaces without a credible system in place for voicing bystander responses, employees may resort to counterproductive behaviours and responses. These include reduced productivity, absenteeism and sabotage, which can incur significant costs to the organisation (McDonald and Flood 2012:11).*

There is a small but growing body of evidence that demonstrates that supporting bystander intervention strategies can increase the willingness of people to take action, their sense of efficacy in doing so and their actual participation in bystander behaviour (McDonald and Flood 2012:12).

In a survey by Hiscox Inc (2018), 85 percent of respondents said they believed that people are more likely to report harassment today due to the influence of the #MeToo and #TimesUp movements. Of those who had been harassed, 65 percent said they would report the incident if it happened today, an increase of 5 percent over the number who reported it originally.

Papers by McDonald and Flood (2012) and Powell (2014) describe the basic principles underpinning bystander interventions and give examples of programmes. See: https://www.humanrights.gov.au/sites/default/files/content/sexualharassment/bystander/bystander_june2012.pdf

<https://aifs.gov.au/sites/default/files/publication-documents/acssa-issues17.pdf>

Apps such as Callisto and Stymie for mobile phones enable and support bystander actions. Stymie (<http://www.abc.net.au/news/2018-02-19/children-reporting-harmful-behaviour-anonymous-website-stymie/9455422>) is used in schools in Australia so that students can anonymously report bullying. Callisto takes a similar idea to bystander interventions in colleges in the US in cases of sexual harassment and sexual violence (<https://www.projectcallisto.org/>).

The extent to which adverse impacts are gendered

The literature is in strong agreement that women are more likely than men to be targets of sexual harassment and discrimination. According to a 2014 poll in Canada, 43 percent of women have been sexually harassed in their workplace. Women were also more than twice as likely as men to say they had experienced unwanted sexual contact while at work (20 percent, compared with 9 percent) (Canadian Women's Foundation 2016:4). Recent studies in Victoria, Australia found that over 60 percent of women surveyed reported experiencing some form of violence at work and 75 percent reported experiencing unwanted or unwelcome sexual behaviour at work (Chung et al 2012).

A 2015 study by the Federal Anti-Discrimination Agency in Germany (Sullivan 2017) found that between one-third and half of all women in the workplace had experienced forms of sexual harassment. Many men had also experienced workplace sexual harassment, whether that be through hearing the 'macho', sexist remarks of other colleagues (known as men 'policing' other men) or through suffering direct harassment themselves, almost exclusively from male perpetrators.

In the fourth national survey of sexual harassment in Australian workplaces, the Australian Human Rights Commission (AHRC 2018) concluded that:

It is also clear that the nature and type of sexual harassment experienced by Australians differs by demographic profile such as age, disability, sexual orientation and Aboriginal and/or Torres Strait Islander status.

- 71% of Australians have been sexually harassed at some point in their lifetimes.
- More than four in five (85%) Australian women and over half (56%) of Australian men over the age of 15 have been sexually harassed at some point in their lifetimes (not necessarily at work).
- The most common forms of sexual harassment experienced were: » offensive sexually suggestive comments or jokes: two thirds of (59%) women and one quarter (26%) of men » inappropriate physical contact: just over half of women (54%) and one quarter (23%) of men, and » unwelcome touching, hugging, cornering or kissing: just over half of women (51%) and one in five (21%) men.

The majority of workplace sexual harassment was perpetrated by men. Harassers were most often a co-worker employed at the same level as the victim and in the majority of cases, had sexually harassed others in the same workplace in a similar manner. (AHRC 2018:8)

In another Australian study, O'Neil (2018) reported that, compared to men, women who experience sexual harassment are twice as likely to show persistent psychological distress two years later. They also have worse physical health symptoms and satisfaction with their health. O'Neil argues that workplace sexual harassment is a public health issue and should be treated as such.

The adverse impacts of sexual harassment appear greater in male-dominated work contexts and when sexism is widely accepted as the norm (Herschcovis and Barling 2010; Masci and Sanderson 2016; Sojo et al 2016):

Although researchers initially believed that the reason for this was that more men in the company of fewer women would naturally lead to higher levels of harassment, recent research has shown that sexual harassment occurs more frequently in these organisations because male-dominated organisations generally involve careers that are traditionally held by men (e.g., construction workers, military)... This body of research suggests that a key underlying motivation for sexual harassment from men toward women is the threat to male social identity. (Herschcovis and Barling 2010:875)

A recent report (Heilman and Barker 2018) describes five harmful masculine norms and the way they shape the likelihood of men and boys experiencing or perpetrating violence. They help shed some light on the gendered nature of sexual harassment. The five norms are:

1. *Achieving socially recognised manhood: Often at the core of masculine gendering is the demand that male-identifying persons must achieve and continually re-achieve their manhood.*
2. *Policing masculine performance: The process of withholding the social status of 'being a man' is held in place by the continual policing of men and boys' performance of gender.*
3. *'Gendering' the heart: Around the world, men are typically encouraged to refrain from showing emotional vulnerability and monitored to show only a limited range of emotions.*
4. *Dividing spaces and cultures by gender: Ideas about manhood and womanhood are also created and reinforced by dividing up spaces into those that may be considered 'male' or 'female'. Social spaces (and even 'microcultures') associated with men often become places where violence is rehearsed and reinforced.*

5. *Reinforcing patriarchal power: Violence is ultimately about processes that serve to reinforce power structures that advantage all men over all women, as well as particular men over other men.* (Heilman and Barker 2018:9)

Masci and Sanderson (2016) found that some males experience sexual harassment, in some situations more often than females, and that when addressing the dilemma of sexual harassment in any workplace, males need to be included as possible victims. Masci and Sanderson further found that the majority of sexual harassment experienced by males was from other males, and that harassment training should include scenarios of same sex as well as opposite sex harassment.

3.2 Effectiveness

Although the literature on programme effectiveness is relatively weak, a recent review (Roehling and Huang 2018) concluded that training can play an important role in contributing to the prevention or reduction of sexual harassment if:

- it is conducted in accordance with science-based training principles
- the organisational context is supportive of the sexual harassment training efforts.

They found that:

The reviewed studies were relatively consistent in finding that training increased trainees' knowledge of and/or sensitivity to what constitutes sexual harassment, and although (this) does not guarantee that sexual harassment will be prevented, it can play an important role in facilitating trainees' ability to bring their behaviour in line with legal and/or organisational standards. (Roehling and Huang 2018:12)

Feldblum and Lipnic (2016a) cite a study by Antecol and Cobb-Clark (2003) which found that participation in training was associated with an increased probability, particularly for men, of considering unwanted sexual gestures, remarks, touching and pressure for dates to be a form of sexual harassment. The training seemed particularly successful in clarifying for men that unwanted sexual behaviour from co-workers, and not just from supervisors, can be a form of sexual harassment. The researchers also found that the proportion of agency staff receiving training was positively related to an individual employee having a definition of sexual harassment that includes these forms of unwanted sexual behaviour. Widespread training within the agency also had an effect over and above that attributable to the individual's receipt of training itself.

Others are less positive, suggesting that training can increase knowledge, but without changing attitudes. In a sexual harassment programme for staff and faculty employees at a metropolitan university, for example, Bingham and Scherer (2016) found that participants showed more knowledge about sexual harassment than non-participants and had a stronger attitude that sexual behaviour at work is inappropriate. However, men continued to have more favourable attitudes toward sexual behaviour at work than women did and were less likely to perceive coercive sexual harassment, less willing to report sexual harassment and more likely to blame the victim.

Magley and Grossman (2017) also found that "remarkably little research has been performed on the effectiveness of employers' efforts to raise awareness" and only one research study (Magley et al 1999) looked at the effectiveness of training in preventing sexual harassment (with negative results).

Organisational culture also factors into training effectiveness. A study reported by Magley and Grossman (2017) found that knowledge and personal attitudes were changed for employees who perceived that their work unit was ethical, regardless of their personal sense of cynicism about whether the training might be successful. However, employees who already believed that their employers tolerated sexual harassment took that cynicism into training sessions and were less motivated to learn from it. That sense of futility affected their belief about whether training would be useful, more even than their own personal beliefs about sexual harassment.

Rawski (2016) and Gelhaus (2017) agree that researchers do not have much evidence that sexual harassment training works to lower the number of incidents in a workplace or helps to shift its culture toward one that takes the issue seriously.

Finally, Parramore (2018) concludes that, at best, training succeeds in teaching people basic information, like the definition of harassment and how to report violations. At worst, it can make them uncomfortable, prompting defensive jokes or reinforcing gender stereotypes, potentially making harassment worse. Either way, it usually fails to address the root problem—that is, it does not prevent sexual harassment from happening in the first place.

The need for well-designed training

These mixed findings underpin the need for careful programme design, based on open communication and debriefing throughout the design and implementation stages. Raghu and Surianai (2017) agree that, at the very least, an effective harassment training requirement should apply to all employers in both the public and private sectors, and require all employees to participate, with possible additional training for supervisors. The training requirement should also ensure that training is given regularly, when an employee is hired and at reoccurring intervals thereafter, and specify the content that must be included in the training.

Daley et al (2018:7) suggest that effective anti-sexual harassment training does not just restate companies' policies and reporting procedures. Rather, it should be mandatory for all staff and updated regularly to keep up with best practices and current issues. It should also include a focus on increasing empathy and perceptual accuracy, so participants can better understand the real-life consequences for people who are sexually harassed. Finally, effective training should show employees how they can intervene as empowered bystanders; corresponding bystander reporting policies and procedures should also be enacted and shared.

Magley and Grossman conclude that:

Employers should institute training with clear goals in mind. Is training expected to change employee attitudes? In some ways, it is not surprising that training does not alter long-held beliefs about and behaviours toward women. But training should not be crafted around a goal that is unattainable—or its content should be changed to increase the likelihood of achieving it. Is training supposed to convey the employer's commitment to maintaining a non-discriminatory work environment? Or is it merely calculated to minimise the employer's exposure to liability? There is no reason to expect that all sexual harassment prevention training will produce the same results, nor that those results will necessarily lead to a reduction in discriminatory behaviour. (Magley and Grossman 2017:2)

Rawski (2016) points out that, in the US at least, programmes are often intended to minimise an employer's own legal and financial liability, rather than to create change and very few

employers actually check whether or not they work. Others suggest that the paucity of data on training effectiveness is a direct result of organisations lacking an incentive to conduct internal evaluations, or self-studies, of their prevention training:

Specifically, if data reveal that training was ineffective, employers are concerned that these insights would enhance their liability -and, so, they just don't gather these data. (Magley and Grossman 2017)

Content of training

There is very little agreement on what sexual harassment training should cover. A model proposed by McDonald et al (2015:45) provides a useful framework. They propose that sexual harassment training should be based on four principles:

1. Training should be developed from information gathered from organisational assessments.
2. Training should raise awareness and clarify misconceptions about what constitutes sexual harassment while highlighting and reinforcing acceptable behavioural norms.
3. Training for managers should include conflict management, including managing emotions and facilitation techniques.
4. Training should challenge gendered organisational cultures.

Needs assessment

Needs assessments involve assessing early risk factors which requires organisations to:

- identify situations in which sexual harassment is more likely to occur
- gauge women's roles, statuses and positions in the organisation
- conduct regular and anonymous attitude surveys that include measures of sexual harassment.

Chung et al (2012) believe that a planned approach is essential to enable a response that is comprehensive and takes account of the individual workplace type and composition:

A workplace survey and audit can provide valuable information about worker experiences and can involve their participation in identifying responses. This requires ongoing commitment to an action plan for changes. It is critical that actions are taken and communicated effectively across the workplace. (Chung et al 2012 page 40)

A planned approach assumes a level of commitment on the part of boards and senior management. A study in Canada suggests this may be lacking. The study revealed that 94% of Canadian executives surveyed believed that sexual harassment was not a problem in their workplace; 93 percent thought they had a corporate culture that prevented it (Human Resources Professionals Association 2018).

Another challenge is that, while the internet and the literature have many examples of how to carry out a needs assessment or a survey on experiences of sexual harassment, no evaluations of the effectiveness of such assessments were found.

What constitutes acceptable behaviour?

Most training programmes aim to educate employees about the employer's sexual harassment policies and procedures, including complaints procedures, as well as the conduct and behaviours that constitute harassment. As noted above, they can be successful in this, but there are risks.

In a study of managers, who are increasingly required to undergo mandatory training, Magley and Grossman (2017) found that trained managers were no more able to identify proper responses to harassment after training than untrained managers and, post-training, they tended to identify scenarios as sexual harassment that really were not. Awareness training may even have negative effects. In one case, for example, men who attended training tended to come out of it with their gender biases reinforced, associating men with power and women with a lack of it.

Training for managers

There is a growing emphasis on providing specific training for managers, supervisors and advocates to improve the overall culture of the workplace and reduce the risk of sexual harassment. McDonald et al (2015), for example, cite an earlier study by Harlos (2001), who recommended including communication and emotional skills training to ensure that managers can demonstrate empathy, actively listen and probe effectively, and help them to deal with the tendency to become defensive or to deny the legitimacy of complaints:

Training managers in conflict management is also thought to successfully address not only the fears of sexual harassment targets about retaliation after making a complaint, but also negative outcomes that may not be anticipated. (McDonald et al 2015:45)

Daley et al (2018) stress the importance of protecting complainants from retaliation and disclosure. This can be done by taking action to ensure that the harassment does not continue; for example, by making changes to employee schedules, keeping in mind that the complainant should not face any adverse measures. Taking claims of harassment or assault seriously and investigating them fairly can create a culture intolerant of sexual harassment and may ultimately serve as a deterrent to that behaviour.

Training for advisors

Others suggest that organisations could usefully employ a network of trained advisors as an effective way to handle complaints from staff. These 'decentralised complaint handlers' would be responsible for outreach, education and dispute resolution, with other employees who are trained in assisting with informal solutions spread widely through all levels of management (e.g., low-key conversations with harassers to stop the behaviour). Trained advisors may be particularly important in cases where an employee is being sexually harassed by their line manager and therefore may find it difficult to register a complaint through the normal channels (Hunt, Davidson, Fielden and Hoel 2010).

The practice of having a 'trusted person' to respond to sexual harassment is already quite common in Europe. Both the Netherlands and Belgium have such a position; in Belgium, appointees must undertake a five-day training course and have an annual evaluation.

Conciliation or mediation can also be a component of training (McDonald et al 2015:48). Programmes can be offered by administrative agencies and courts, as well as employer-based systems.

Challenging gendered organisational cultures

There is strong agreement that organisational tolerance of sexual harassment is the most important influence on whether sexual harassment occurs in a workplace but there has been little empirical research on which policies, procedures and programmes are most effective in creating an organisational climate in which sexual harassment is not tolerated (Hunt et al 2010).

The report by the National Academies of Sciences, Engineering and Medicine in the United States (Johnson et al 2018) goes on to say:

The evidence suggests that the workplace climate is seen as intolerant of sexual harassment when targets of sexual harassment are supported and protected; instances of harassment are investigated fairly and in a timely way—with due process for both targets and alleged harassers; those found to have committed harassment are punished appropriately; and the campus community is regularly informed about how the institution is handling/attending to claims and disciplining those who have violated policies. These are important ways to demonstrate and declare that sexual harassment is taken seriously and is unacceptable under any circumstances. (Johnson et al 2018:46)

In other related contexts, such as increasing gender equality in companies and/or gender diversity on boards, there is a strong emphasis on the importance of leadership.

In the gender equality context, reports recommend that companies have a strong and committed management, which is convinced of and fully endorses the company's gender strategy. They recommended that the management is responsible for implementing the corporate strategy. Managers also act as role models and multipliers within and outside the company (Bank of New Zealand 2014). Deloitte (2011) makes an even stronger statement:

Companies also need to have a corporate strategy that sets the framework for doing business and determines the internal work culture. The concept of gender equality has to be an integral part of the overall corporate strategy. The diversity strategy, talent strategy and business strategy must be seamlessly integrated and directionally consistent. (Deloitte 2011)

Hart, Crossley and Correll (2018a, 2018b) demonstrated the pivotal role that leaders play in shaping the reality of sexual violence in an organisation:

People are more likely to consider sexual assault or harassment a high priority problem when the leader of the organisation emphasises the problem and less likely to do so when the leader downplays the problem. (Hart et al 2018a:9)

How training is delivered

There has been more commentary on appropriate delivery mechanisms than on the content of sexual harassment training.

Studies suggest that universal training has an effect on organisational cultures over and above the impact of individual training in that it leads to a greater recognition of sexual harassment.

The implication is that education sessions should be conducted regularly and universally, at all sites and across all hierarchical levels and not only to targeted groups or those who attend voluntarily. Sexual harassment training can also be included in orientation or induction programmes for new employees, with 'booster-shots' to ensure harassment is recognised and addressed (McDonald et al 2015).

There is some debate over whether training is best delivered by in-house personnel or outside 'experts'. One organisation sums up the pros and cons (see https://www.sexualharassmenttraining.biz/sexual_harassment_training_Avoiding-Mistakes-in-Sexual-Harassment-Prevention-Training.html):

The advantages of in-house HR or training personnel include cost and the fact that such staff are knowledgeable about the particular workplace, the employees being trained, and the particular business or industry.

On the other hand, harassment prevention is a topic in which knowledge is necessary but not sufficient as some of the most challenging components for instructors are anticipating and responding to the challenging questions and negative attitudes of course attendees. Additionally, because of the natural resistance many employees and managers initially feel towards this subject matter, they are more likely to question the 'agendas' of in-house trainers, no matter how neutral or objective they may strive to be.

Harassment prevention training specialists—whether internal or external—should be able to offer: legally accurate and up-to-date analysis as well as practical and realistic programming; lively, interactive presentations; appropriate educational techniques; and a variety of formats, follow-up and curriculum options. One thing is clear; educational research indicates that adult learners learn better with a live teacher—especially one they can respect.

Others agree that a blended learning approach to training is preferable. This involves a combination of quality videos, eLearning, classroom training, workshops and performance support after the fact (Feldblum and Lipnic 2016a; Hunt et al 2010):

Training that happened in-person and lasted longer than four hours produced a bigger effect; short and virtual trainings had less of an impact. Training that asked participants to interact with each other worked better than straight lectures. Participants learned more from training led by their supervisor or an external expert, and less when the leader was a colleague without direct authority over their day-to-day work—for example, an HR official. (Feldblum and Lipnic 2016a)

Studies have highlighted the importance of modelling and rehearsal in clarifying misconceptions around sexual harassment. These techniques include case studies used in role playing, enabling participants to practise interpersonal skills in challenging situations; role negotiation, a technique designed to clarify expectations of supervisors and co-workers; and group techniques that encourage mutual respect in work environments and employee responsibility for enacting and enforcing change. The use of modelling and rehearsal in training is thought to develop not only resolution-handling skills, but also sensitivity to behaviours that might be interpreted as sexual harassment (McDonald et al 2015).

Prevention training programmes need to incorporate elements related to empathy, perspective taking and the emotions of, or impacts on, victims. According to Daley et al (2018), empathy—the ability to understand the experiences, feelings and thoughts of someone else—is an often overlooked but important leadership skill. Workplace cultures that lack empathy are often cultures that will tolerate gender inequality and sexual harassment (Hirsch 2018). Roehling and Huang (2018) found that training intended to promote empathy toward targets of sexual harassment consistently changed trainees' sexual harassment attitudes in the desired direction. Even where there were no changes in attitudes, trainees still acquired more knowledge or skills, thus:

Providing further evidence that significant attitude change is relatively difficult to accomplish. (Roehling and Huang 2018:144)

Daley et al (2018) recommend developing post-training activities and audits to maximise training success. They cite research by Perry, Kulik, Bustamante and Golom (2010) showing that post-training follow-up activities—such as training to refresh employee familiarity with

policies, conducting training audits or offering incentives for implementing the training into the workplace—are linked to a reduced frequency of sexual harassment complaints and a perception of greater training success:

This is particularly salient for organisations that use their anti-sexual harassment training programs not only to protect the organisation from liability, but to create a more inclusive culture, where both pre-training and post-training activities have a greater impact on effectiveness than the training activities themselves. (Daley et al 2018:9)

Few studies have provided cross-national comparisons of the prevalence of specific training features in sexual harassment programmes. One study by Bainbridge, Perry and Kulik (2018) compared training in Australia and the US. The authors noted that, in the US, sexual harassment training is increasingly compulsory, which has a positive flow-on effect on the quality of training:

As more states mandate sexual harassment training, greater attention will likely be given to what it includes and how it is conducted. For example, some legal experts observe that US state laws mandating sexual harassment training set forth ‘a relatively high standard for training methods’ and recommend a greater emphasis on sexual harassment training evaluation. This pushes employers towards approaches that more closely follow best practice. By contrast, Australian organisations seem to place less importance on sexual harassment training best practices. This is illustrated by the finding that 65% of Australian organisations indicated that they took an ‘anti-discrimination’ approach to addressing sexual harassment issues. This approach is widely regarded as less effective than the proactive diversity management approaches that are more typical in the United States. (Bainbridge et al 2018:126)

Raver and Gelfand (2005) look at the issue from a team point of view. They propose that sexual harassment training should address team dynamics related to harassment, and that team effectiveness training should also directly incorporate issues of harassment. Training segments could be developed to help change group norms regarding sexual harassment. For instance, emphasis could be placed on the negative outcomes of sexual harassment for entire teams so that members realise they may be harming everyone on their teams when they perpetrate harassment:

Team members might then think twice about engaging in such harmful behaviours or might be more willing to confront their fellow team members about discontinuing harassment. Such training could also encourage team members who have witnessed or heard about harassment to use formal or informal channels to report their experiences and thus help prevent negative repercussions such as conflict, low cohesion, or impaired performance. (Raver and Gelfand 2005:395)

Cost-effectiveness

Given the poor state of research into programme effectiveness, it is not surprising that estimating the cost effectiveness of interventions is extremely difficult. Costs include the actual costs to companies, including legal bills, settlements with staff and payment of staff costs for counselling and support, as well as estimates of the cost of absences, high staff turnover, reduced productivity and brand damage. Work-related stress and psychosocial issues lead to increased absenteeism and staff turnover rates, along with decreased productivity and performance. Methods to estimate the cost at the organisational level are few and exact figures for the financial burden are rare (EASHW 2014) and there is no information on efforts to assess comparable costs in NGOs or government departments.

Hersch (2015) agreed. She noted that, until recently, much of the attention to the economic impact of sexual harassment has centred on the cost to companies. Hersch referred to a study of sexual harassment of US government workers, which estimated the costs of sexual harassment over a two-year period at \$327 million, including job turnover, sick leave, and individual and workgroup productivity, with 61 percent of the total cost due to reduced workgroup productivity. Beyond the expense of providing sexual harassment training and protocols, the most obvious costs are those incurred in legal settlements and lawsuits. Beyond these costs are the indirect costs of problems like lower individual and group productivity, higher turnover, absenteeism and reputational harm, as well as loss of managerial time to investigate complaints. Hersch acknowledged that methodological issues relating to calculating the cost of sexual harassment can be daunting.

Five studies reviewed by the European Agency for Safety and Health at Work (EASHW 2014:14) are examples of attempts to calculate the cost-effectiveness of taking action. The five studies summarised below all relate to the cost-effectiveness of workplace stress or psychosocial hazard interventions, which includes sexual harassment. None refers specifically to sexual harassment, so they are indicative only:

1. A report prepared by Matrix (2013 cited in EASHW 2014) examined the cost-effectiveness of different types of interventions focusing on mental health promotion and mental disorder prevention in the workplace, including improvements in the work environment, stress management and psychological treatment. The findings, based on figures obtained in selected European countries, show that every €1 of expenditure in promotion and prevention programmes generated net economic benefits over a one-year period of up to €13.62.
2. In the Netherlands, the total cost of workplace interventions targeting psychosocial risks in the police sector over a period of four years was calculated at €3 million. As a result, the number of reported psychosocial risks decreased, with courses to handle violence and aggression perceived as the most effective measure implemented. A 3 percent reduction in absenteeism was observed, with the associated savings estimated at €40 million (Houtman and Jettinghoff 2007 cited in EASHW 2014).
3. LaMontagne et al (2007 cited in EASHW 2014) reviewed 90 studies of the effectiveness of stress management intervention, of which eight included a cost-benefit analysis. All eight demonstrated a financial benefit from the intervention used, with outcome measures including sickness absence costs, sales revenue and productivity.
4. In another study highlighted by LaMontagne et al (2007 cited in EASHW 2014), sales staff attended stress management training and formed work groups to identify and reduce psychosocial hazards. Three months after the intervention, measures of perceived stress, depressive symptoms and negative effects were lower among the intervention group than in a control group. Furthermore, among workers exposed to the interventions, sales revenue increased by 23 percent (compared with 17 percent in the control group) and absenteeism decreased by 24 percent (compared with 7 percent in the control group).
5. Finally, Hamberg-van Reenen et al (2012 cited in EASHW 2014) reviewed the evidence on the cost-effectiveness of and financial returns accruing from workplace mental health interventions in the US. Of four economic evaluations on the prevention or treatment of mental health problems (such as stress and depression), three had low to moderate methodological quality but all four showed a positive cost-

benefit ratio. Net benefits after one year ranged from US\$29 to US\$61 per employee, while returns per employee over longer time periods were US\$257 after two years and up to US\$257 after five years. However, of six interventions targeted at getting employees to return to work, only one demonstrated a positive cost effectiveness.

The EASHW concludes that simpler methodologies are needed at the organisational level to help employers estimate the costs of work-related stress and psychosocial risks in the workplace. This would contribute to a stronger business case for the management of work-related psychosocial risks.

Hirsch (2018) makes the point that boosting the maximum damages awarded for sexual harassment would, in the US at least, create appropriate economic incentives for organisations to deter sexual harassment.

3.3 Links with initiatives to combat gender-based sexual harassment in other settings

There is a strong and growing link between initiatives to prevent workplace harassment and initiatives to respond to family violence and gender-based harassment in other settings, both in New Zealand and internationally.

One strand of work promotes the workplace as a suitable site for addressing family violence at home. An issues paper prepared for the Family Violence Clearinghouse at Auckland University notes that:

There is a growing body of evidence suggesting that as well as the potential for breaking the cycle of domestic violence, the introduction of workplace protections for people affected by domestic violence both saves employers costs (recruitment, retention, re-training, health and safety) and increases productivity. (Rayner-Thomas, Fanslow and Dixon 2014:7)

In 2015, two booklets supported this approach. One was put out by the It's Not OK campaign on supporting staff affected by family violence (New Zealand Government 2015), the other—*Workplace Responses to Domestic and Family Violence: Playing our Part*—was published by Male Champions of Change in Australia (2015).

[Support for a co-ordinated approach between sexual harassment and violence against women](#)

The #MeToo campaign has also expanded its original focus on workplace harassment to include a focus on violence against women more generally. Bove (2018) suggests that the movement could usefully promote the United Nations Sustainable Development Goals (SDGs), and SDG 5 on gender equality and women's empowerment in particular:

SDG 5 promises to reach gender equality and empowerment for all women and girls. It consists of nine targets such as ending all forms of discrimination, eliminating all forms of violence (including sexual violence) against women and girls in public and private spheres, as well as harmful practices such as child, early, and forced marriage, and female genital mutilation. It also pushes for the recognition of unpaid care and domestic work, as well as the full and active participation and equal opportunities for women's leadership at all levels of decision-making. Basically, it's a roadmap for women to enjoy their full human rights, including a life of safety free from any form of violence. A promise by 193 governments to end violence against women once and for all.

Bove suggests this can be achieved by aligning goals and narratives, sharing champions and building strong alliances.

An Australian proposal (Our Watch 2015) sets out a detailed framework for a combined approach based on the following model:



Figure 4. Addressing violence against women across sectors (Our Watch 2015)

The European Parliament (2018) has also linked harassment in the workplace, public places and political life and supports a co-ordinated and inclusive approach:

Sexual harassment/violence against women (and some men) in various arenas of life are interrelated and its presence in one area fuels its presence and reproduction in others. Paradoxically, sexual harassment also represents a substantial problem in countries which otherwise have achieved a high degree of gender equality. Whilst sexual harassment is primarily a problem for women, young women in particular, more men than previously suggested are exposed to sexual harassment. Members of protected groups, in particular young people, disabled, lesbians, gay men and bisexuals, are over-represented among those reporting bullying and unfair treatment. (European Parliament 2018:8)

Organisations such as the New Zealand and Australian Human Rights Commissions also offer support for people who experience sexual harassment in:

- employment (including unpaid work)
- education and vocational training
- provision of goods and services
- land, housing and accommodation
- access to public places, vehicles and facilities
- government services.

Chung et al (2012) support using a community strengthening approach, which would involve mobilising and supporting communities to address violence against women and the social norms that make it acceptable:

These strategies can also be used to increase community access to the resources required for action and to address broader community-level risk factors for violence against women. In the workplace, this may involve organisations forming partnerships with community stakeholders (such as specialist violence against women services) to enable a joint or collaborative approach to responding to the issue (including consultation on development of workplace actions and staff training). (Chung et al 2012:33)

They also favour business involvement in advocacy to raise awareness of the issue of violence against women and to encourage governments, organisations, corporations and communities to act together to reduce the problem:

In the workplace, individuals including senior management and business leaders can lend their public endorsement of the importance of preventing violence against women as well as championing workplace actions. (Chung et al 2012:34)

3.4 Key similarities and differences across countries

The key similarity between countries is that 11 of the 13 reviewed required employers to have a sexual harassment policy and grievance procedures in place for dealing with harassment complaints. Denmark has no mandatory requirements but it has recently produced guidelines for all employers.

The key differences are in the strength of these requirements. The countries with the strongest and most comprehensive requirements—Belgium and Sweden—are inclusive, proactive and responsive. They have clear lines of accountability and monitoring and promote a partnership approach.

Four countries—the Netherlands, Switzerland, the UK and the US—limit requirements to measures organisations ‘could reasonably be expected to take’; Iceland and the US limit requirements to organisations with 25 or more, or 15 or more employees respectively. Only Australia, Belgium and Germany explicitly require employers to train staff on how to prevent, identify and deal with sexual harassment; only France explicitly requires a needs/risk assessment.

4. Promising emerging measures to combat workplace sexual harassment

4.1 What it takes to be successful

McDonald and Flood (2012) argue that effective interventions to reduce and prevent workplace sexual harassment will only make real progress if they adopt the principles and strategies shown to constitute best practice in violence prevention more generally. These include:

1. *Adopting multiple strategies to address the problem behaviour, in multiple settings and at multiple levels.*
2. *Demonstrating a sound understanding of both the problem—of the workings and causes of sexual harassment itself—and of how it can be changed.*
3. *Invoking educational, communication and other strategies known to create change—ensuring they focus on determinants of this behaviour, use effective teaching methods and be long and intense enough to produce change.*
4. *Developing interventions that have regard to the context (i.e., the social and structural constraints and the operating beliefs and norms).*
5. *Involving a comprehensive process of impact evaluation that is integrated into programme design and implementation. (McDonald and Flood 2012:13)*

Similarly, Daley et al (2018) remind organisations that effective anti-sexual harassment training does not just restate an organisation’s policies and reporting procedures. Rather, it should:

- be mandatory for all staff and updated to keep up with best practices and current issues
- include a focus on increasing empathy and perceptual accuracy, so participants can better understand the real-life consequences for people who are sexually harassed
- show employees how they can intervene as empowered bystanders.

4.2 Examples

The initiatives described below are examples of recent efforts to address sexual harassment at work.

1. *Multiple strategies*

Following their review of sexual harassment in the workplace for the US EEOC, Feldblum and Lipnic (2016b) produced a highlights report that includes suggestions and checklists for employers to follow to reduce harassment in the workplace. The document also includes a useful chart of risk factors which draws attention to the need to be aware of cultural and ethnic differences, and of events happening outside the workplace (see https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm#_Toc453686321).

Sweden has introduced a number of strategies to address sexual harassment and violence in the workplace. These include: preventive initiatives, stronger protection and support, more effective law enforcement, work environment investments and awareness-building measures. Initiatives particularly relevant to a sexual harassment approach include:

- The Minister for Employment and Minister for Gender Equality have met with the labour market and union partners, and several ministers have convened meetings with heads of government agencies and business leaders in order to focus on the responsibility of employers to counteract sexual violence and harassment.
- The Government also signed an agreement with Swedish Association of Local Authorities and Regions (SALAR) in 2017 to strengthen the focus of gender equality work on men, boys and questions of masculinity.
- The Government adopted a national work environment strategy in close consultation with the labour market and union partners, containing concrete measures in three priority areas, one of which is the psychosocial work environment. The Swedish Government's work environment policy aims to contribute to a work environment that prevents ill health, accidents and people being excluded from working life. Work environment management must take into account people's differing circumstances and contribute to the development of both individuals and operations.
- The Government has enhanced resources for its work environment policy by over SEK 100 million per year during this term of office. The funds have enabled the Work Environment Authority to strengthen its supervisory activities. Around a hundred new work environment inspectors have been hired.
- The Government has adopted some changes to the Swedish Work Environment Authority's instructions, which entered into force on 2 January 2018. The instructions now explicitly state that the Authority is to conduct its activities so as to promote diversity and gender equality and a work environment free from victimisation (section 4a).

- The Act on special protection for workers against reprisals for whistleblowing concerning serious irregularities, the Whistleblowing Act, which entered into force on 1 January 2017, can be applicable in situations where an employer takes reprisals against an employee for reporting sexual harassment to a government agency or the media (see <https://www.government.se/articles/2018/01/the-government-of-swedens-measures-against-sexual-violence-and-harassment/>).

2. *Demonstrate a sound understanding of the problem*

In June 2018, the Australian Human Rights Commission⁸ announced a year-long inquiry into sexual harassment at work, with the following terms of reference:

The National Inquiry will review and report on:

- a national survey of the prevalence, nature and reporting of sexual harassment in Australian workplaces, by sector
- online workplace-related sexual and sex-based harassment and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment
- the use of technology and social media to identify both alleged victims and perpetrators of workplace-related sexual harassment
- the drivers of workplace sexual harassment, including whether:
- individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability
- some workplace characteristics and practices are more likely to increase the risk of sexual harassment
- the current legal framework with respect to sexual harassment
- existing measures and good practice being undertaken by employers in preventing and responding to workplace sexual harassment, both domestically and internationally
- the impacts on individuals and business of sexual harassment, such as mental health, and the economic impacts such as workers compensation claims, employee turnover and absenteeism, and
- recommendations to address sexual harassment in Australian workplaces.

In conducting the National Inquiry the Commission will have regard to the economic impact of sexual harassment in the workplace, drawing on economic modelling.

Additionally, three years after the release of the National Inquiry report, the Australian Human Rights Commission will:

- conduct an assessment of any changes in the prevalence, nature and reporting of sexual harassment in Australian workplaces since the National Inquiry, and

⁸ <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces>

- make any further recommendations necessary to address sexual harassment in the workplace.

The National Inquiry is being conducted pursuant to the Commission's functions under the Australian Human Rights Commission Act 1986 (Cth). The focus of the inquiry is on the nature and prevalence of sexual harassment in Australian workplaces, the drivers of this harassment and measures to address sexual harassment in Australian workplaces. The Commission's focus will be on these systemic issues, and, for this reason, the Commission will not be investigating or making findings about individual allegations of sexual harassment as part of the inquiry.

3. *Partnership models*

One approach that has been successful to date involves government and regulatory bodies working in partnership with workplaces and key stakeholders. Another form of partnership is the collaboration between violence-against-women services and workplaces. Partnerships with local intimate partner violence or sexual assault support services can be particularly useful in smaller organisations, which may have insufficient human resources or employee assistance structures to take on prevention work. These services can provide expert advice and training to support prevention of violence against women in the workplace. Such models further promote a work practice of inclusion and community responsibility (Chung et al 2012: 39).

Examples of partnerships include the Autonomous Framework Agreement by the European Social Partners: Business Europe, UEAPME—European Association of Craft, Small and Medium-Sized Enterprises; CEEP—the European Centre of Employers and Enterprises providing Public Services and Services of General Interest; and ETUC—the European Trade Union Confederation on violence and harassment at work (see <https://www.etuc.org/framework-agreement-harassment-and-violence-work>).

This was followed in the UK by the publication of a joint set of guidelines prepared by ACAS—the Advisory, Conciliation and Arbitration Service, the Department for Business Innovation and Skills, the Health and Safety Executive and the Partnership of Public Employers and the Trade Union Council (see <http://www.hse.gov.uk/violence/preventing-workplace-harassment.pdf>).

4. *Developing interventions that have regard to the context*

In Denmark, growing concerns about work environment problems and sexual harassment led to a parliamentary discussion on the issue, and resulted in government funding to address sexual harassment. A working group was formed by the Ministry of Employment (Work Environment Authority) with social partners to draw up guidelines on tackling sexual harassment in the workplace. The guidelines, *A Good Psychological Working Environment: Prevention of Sexual Harassment*, were sent out to all employers in Denmark in 2016 and aim to prevent and give practical advice to employers on how to handle sexual harassment in the workplace. The guidelines cover the following topics:

- sexual harassment is unacceptable
- have clear guidelines
- use dialogue as a tool⁹

⁹ See <https://thesystemsthinker.com/the-process-of-dialogue-creating-effective-communication/> for a discussion of the use of dialogue to resolve differences.

- it should be okay to say no
- clarify roles and responsibilities
- stay focused on the prevention of sexual harassment
- sexual harassment can have major consequences.

5. [A gender equality agency](#)

A new gender equality agency began working in Sweden in January 2018. The agency will work with follow-up, analysis, co-ordination, knowledge and support for achieving the Swedish Government's gender equality policy goals. One of the sub-goals is that men's violence against women must stop, and that women and men, girls and boys must have the same rights and access to physical integrity.

In Minnesota, the Management and Budget Service recommended that the state government create an independent office to receive reports of sexual harassment, conduct investigations and enforce consistent application of the policy and procedures across the executive branch (Minnesota Management and Budget 2018; see <https://mn.gov/mmb/mmbhome/?id=1059-325053>).

6. [Accredited workplaces](#)

New Zealand's White Ribbon Trust has developed an accreditation system for businesses. It aims to engage more businesses in effective violence prevention of family violence and sexual violence, and increase the number that effectively integrate violence prevention into their business practice. As at the end of June 2018, four organisations had been formally accredited: the Warehouse, the New Zealand Defence Force, Countdown Supermarkets and the Billy Graham Youth Foundation (Boxing Academy) in Naenae. Others are in the process of becoming accredited.

The programme was developed in response to the growing recognition, internationally and locally, that businesses are good environments in which to prevent violence because:

- family and sexual violence has a direct cost for businesses, through staff absenteeism and turnover, and loss of productivity
- employers have responsibilities for the safety of staff, including the risk of violence in the workplace
- actively preventing violence can improve staff morale and drive greater productivity
- supporting anti-violence initiatives enhances the business's reputation as a good employer, an ethical organisation and an active supporter of the local community.

The criteria for becoming accredited are set out on the White Ribbon website:

<https://whiteribbon.org.nz/workplace-accreditation/>. They include requirements for businesses to implement internal plans to:

- develop staff skills to support colleagues
- promote the respectful behaviour required of all staff in all workplace relationships
- train key people in supporting staff affected by violence
- inform staff about violence and local services
- encourage flexible gender behaviour and gender equity

- ensure staff, customers and visitors are safe from violence while at the business
- ensure policies are supportive
- encourage leaders to model respectful relationships
- support the White Ribbon Campaign.

Businesses also need to implement external plans to:

- include violence prevention information in external communications
- work with others involved in violence prevention
- model respectful relationships in external relationships
- support initiatives promoting gender flexibility and equality.

7. Advocacy

In 2017, the UNI Global Union produced an advocacy toolkit for all UNI affiliated unions that are engaged in lobbying efforts with their governments and employers to achieve an ILO convention against violence against women and men in the workplace. The toolkit highlights differences in legislation, in definition of terms and in understanding what violence in the workplace entails, and attributes these to the lack of an international legal standard that addresses violence and harassment, including gender-based violence, in the world of work. The toolkit describes the standard-setting process, sets out timeframes and potential action by unions, provides background information and lists a wide range of available resources (see www.uniglobalunion.org/sites/default/files/files/news/bookletbtc_en.pdf).

The 107th session of the ILO Conference was held in June 2018. The proposed Conclusion and Draft Resolution can be viewed at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--relconf/documents/meetingdocument/wcms_631787.pdf. It was decided that an item entitled 'Violence and harassment in the world of work' would be included in the agenda of the next ordinary session for a second discussion with a view to the adoption of a Convention supplemented by a Recommendation.

8. Union leadership

In Belgium, where collective bargaining coverage is high at approximately 96 percent, unions have been involved in a range of campaigns and training programmes on violence against women. The following examples were cited in a report by Pillinger (2017a):

- A national union training programme on discrimination and harassment ran between September 2016 and June 2017.
- Unions are very active in the implementation of the legislation on wellbeing at work, and particularly the prevention of psychosocial risks and occupational health and safety.
- Trade unions have issued specialised publications on the implementation of the Wellbeing at Work legislation and have carried out extensive training for workplace representatives on negotiating workplace agreements, policies and procedures.
- Psychosocial risk is included in training for new worker representatives on health and safety committees.

A specialist in gender equality legislation at the DGB, a German trade union confederation that represents over six million workers, would like to have a collective right to file an action so that a trade union can take proceedings against employers in cases of sexual harassment:

So far, it is up to the individual to do so but we demand a collective right to take an action. (Sullivan 2017)

9. Media campaigns

- i *The Advocates for Human Rights: Stop Violence Against Women* based in Minnesota, believes that media and communication campaigns are powerful tools in combatting all forms of violence against women, including sexual harassment. They can change attitudes toward sexually harassing behaviour and employer practices vis-à-vis sexual harassment. The media can also be used to encourage women in the workforce to report the behaviour and prosecutors to enforce laws directed at the behaviour, whatever their form. They describe one campaign that took place in 1997.

The Women's Forum of the United Nations Development Program conducted the campaign in Slovenia and Croatia to explain the concept of sexual harassment, to change attitudes in the workplace and to educate women about their legal right to a workplace free from sexual harassment. The campaign involved Women's Forum advocates and trade union activists distributing thousands of leaflets and posters providing guidelines for employees facing sexual harassment in the workplace and instructing women "How to say no to your boss." The posters and leaflets appeared in banks, post offices, railway stations, healthcare centres, parliament and government agencies. In addition, a manual on developing employer policies for the prevention and eradication of sexual harassment and video tapes introducing the problem of sexual harassment in the workplace were distributed at 'the training of trainers' workshops. The campaign resulted in 95 articles, seven television broadcasts and extensive radio coverage in Slovenia and 50 articles and four television programmes in Croatia. Women's Forum attributes the following positive developments to the media campaign:

- Government agencies and trade unions established phone lines dedicated to providing counselling regarding sexual harassment.
 - A strike forced a major Slovenian company to address sexual harassment charges by its female employees.
 - A new labour law prohibiting sexual harassment was drafted in Slovenia.
 - The first criminal charges of sexual harassment were filed in Croatia.
 - Croatian trade unions adopted sexual harassment policies.
 - The campaign promoted increased awareness about sexual harassment in the workplace (see http://www.stopvaw.org/media_and_communication_strategies_for_ending_sexual_harassment).
- ii. In 2014, the State of Oregon Sexual Assault Task Force published *A Best Practice: Using Social Media for Sexual Violence Prevention* (see <http://oregonsatf.org/wp-content/uploads/2016/12/Using-Social-Media-for-Sexual-Violence-Prevention-FINAL-1.pdf>).

Evaluating the effectiveness of media campaigns is notoriously difficult, given that it is difficult to assess changes in knowledge, attitudes and behaviour over a reasonable length of time with a consistent sample, and even more challenging to pin changes directly to campaign messages. Campaigns tend to target the population as a whole, rather than those most at risk. They may also focus on what is not acceptable rather than on the kind of behaviour that promotes respectful relationships. At the same time, media campaigns can create a shift in the overall social climate and, in association with other activities, promote new behavioural norms.

10. An alternative to fines

An interesting initiative in the Netherlands is a joint programme by the Labour Inspectorate and policy department of the Ministry for Social Affairs and Employment for OSH. It aims to create an alternative approach to the way labour inspection normally ensures that organisations comply with the law (through warnings, fines, etc.). The alternative approach is called 'pilot behavior and culture'. It aims to develop a scientifically proven process in which organisations can engage and which will lead to improvements in the culture of an organisation. Interventions are inter alia inspired by inclusive approaches used in organisations to combat bullying. Organisations will have the possibility to opt for this approach rather than for paying a fine. The Ministry expects more clarity on the direction of this pilot in the course of 2019.

5. Conclusion

This review began as a search for international best practices in preventing and/or responding to sexual harassment in the workplace. The literature suggests well-intentioned good practice such as mandatory policies about and complaints procedures for dealing with, sexual harassment are ineffective if they are not well implemented, monitored and evaluated, and if the culture of workplaces is unsupportive.

Sexual harassment in the workplace does not occur in isolation. It is facilitated by societies and workplaces that tolerate such behaviour. There is a growing view that sexual harassment at work needs to be seen in the wider context of anti-violence activity, gender equality initiatives and acceptance of more flexible gender roles for everyone.

There is a growing use of partnership approaches to preventing sexual harassment at work; for example, employers, trade unions, NGOs and governments working together to produce guidelines for employers and staff, and collaborations between violence-against-women services and employers to address this issue.

It is perhaps not surprising that there is relatively little information on what constitutes an effective approach in individual workplaces, although there is a general consensus that workplace culture is one of the strongest predictors of workplace sexual harassment. Strong leadership, inclusive policy development and proactive role modelling from senior staff need to sit alongside the promotion of respectful relationships throughout the organisation.

The literature agrees that sexual harassment can have severe and lasting consequences for victims, harassers, bystanders and others in the workplace, physically, emotionally and mentally, as well as economically and in terms of career development. There was little positive evidence of ongoing support for those affected. Indeed, those who raised concerns were often ignored, or had their cases dismissed.

The intersectionality of violence is a growing concern. Violence occurs in a range of settings—home, work and public places—and to a range of people.

There is almost a complete absence of material on effective interventions for those who harass, beyond the training provided to all staff.

Governments and organisations internationally have taken steps to improve their response. These include: organisational surveys; a national inquiry; new training approaches focusing on respectful relationships; new partnerships between government, employers, trade unions and NGOs; new gender equity agencies; accredited businesses; an advocacy toolkit; and social media campaigns and union-led initiatives.

On the basis of this literature scan, a multi-pronged approach is the most effective in changing attitudes as well as behaviour. This means collecting information and building on the activities and strategies that the government, employer organisations, professional bodies, trade unions and national and local anti-violence organisations already have in place.

Annex 1 Legislative arrangements in 13 countries

Note: The information in this Annex comes from different sources and is not consistent for all countries.

Country	Legislation and responsible organisation	Expectation
Australia	The Sex and Age Discrimination Legislation Amendment Act 2011. Human Rights Commission	Employers are usually expected to: <ul style="list-style-type: none"> • have an appropriate sexual harassment policy • train employees on how to identify and deal with sexual harassment • put in place an internal procedure for dealing with complaints • take appropriate remedial action if and when sexual harassment occurs.
Belgium	The Act on Wellbeing at Work of 28 February 2014 specifically addresses violence, harassment and sexual harassment at work. Minister for Employment plus Labour Inspectorate	There is a specific focus given to the implementation of prevention programmes by the employer, line managers, the workplace prevention and protection committee, technical experts in psychosocial prevention and the 'person of confidence'. Since 2014, the Anti-Discrimination Law has covered discrimination against a person in an employment relationship due to their gender. Companies failing to comply with the legislation on psychosocial risks at work risk criminal penalties and can be ordered to pay damages to employees who have been victims. The harasser can also be liable under both the civil and criminal law. Trade unions are very active in training and implementation.
Canada	The Canada Labour Code and the Canadian Human Rights Act protect workers against	Although all provincial and territorial jurisdictions have passed legislation regarding sexual harassment and sex discrimination, they are typically

Country	Legislation and responsible organisation	Expectation
	sexual harassment at work. Workers are also protected through the Canada Criminal Code against physical and sexual assault.	covered under human rights legislation and not under the individual labour codes or Acts.
	Ministry of Employment, Workforce Development and Labour, and provincial agencies	Federal employers and most provinces/territories have guidelines that dictate how employers should deal with sexual harassment in the workplace.
Denmark	The 2010 Working Environment Act and related executive orders provide for the protection of employees and a safe and healthy working environment.	There are no mandatory requirements to implement particular measures to prevent sexual harassment.
	Working Environment Authority	Employers are required to take action when they become aware that an employee is alleging sexual harassment, but there are no specific legal obligations in relation to the investigative procedure to be followed.
France	Sexual harassment has been covered under the Penal Code since 1994; employment retaliation linked to sexual harassment has been addressed in the Labour Code since 1992. The Penal Code, as revised in 2002, qualifies sexual harassment as sexual violence.	The labour statute requires that employers include sexual harassment in the company's internal regulations and post the internal regulation in the firm and places of recruitment. It allows, but does not require, discipline for sexual harassment in the workplace. French labour law requires employers to provide justification for any dismissal, and employers who penalise employees for sexual harassment risk being sued for wrongful discharge. The employer is obliged to evaluate the risks and to undertake any measures necessary to guarantee the security and to protect the physical and psychological health of their employees.
	Directorate General for Employment	

Country	Legislation and responsible organisation	Expectation
Germany	<p>The General Equal Treatment Act, introduced in 2006, grants employees considerable rights and makes clear precisely what constitutes sexual harassment. The law is applicable in the private and public sectors. Section 3 of the law gives protection against sexual violence and harassment and obliges employers to prevent and protect victims against sexual violence/ harassment.</p> <p>Federal Anti-Discrimination Agency plus provincial systems</p>	<p>The 2006 Act: (1) The employer has the duty to take measures necessary including preventive measures to ensure protection against discrimination (including sex). (2) The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and shall use his or her influence to ensure that such discrimination does not occur. (3) Where employees violate the prohibition of discrimination under Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating or dismissing the employee in question. (4) Where employees are Discriminated against in the pursuance of their profession by third persons within the meaning of Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.</p>
Netherlands	<p>Under the Working Conditions Act 1999 (plus amendments), companies in the Netherlands are obliged to protect their employees from such psychological stresses.</p> <p>Ministry of Social Affairs and Employment</p>	<p>An employer is potentially liable for any acts of discrimination committed by an employee “in the course of employment”, regardless of whether the employer knew or approved of the acts. The employer can only avoid this liability if he can show that he had taken “all steps reasonably practicable” to prevent the discriminatory acts from taking place. There is no legal obligation to give diversity training.</p>
Iceland	<p>The Act on the Equal Status and Equal Rights of Women and Men was passed in May 2000 and has been amended many times since then.</p>	<p>The Act establishes and maintains equal status and equal opportunities for men and women and thus promote gender equality in all spheres of society. The Centre offers counselling and education in the field of gender equality for government and municipal authorities, institutions, companies, individuals and NGOs. Those who consider themselves to have been harassed can report incidents to the Centre’s Complaints Committee.</p>

Country	Legislation and responsible organisation	Expectation
	Centre for Gender Equality	Victims of sexual harassment have the right to be represented by lawyers, but most victims choose not to take legal action.
Norway	Norway adopted the Equality and Anti-Discrimination Act in June 2017, and set up a new Equality Tribunal on 1 January 2018 which can award compensation in discrimination cases at work.	With the establishment of the Equality Tribunal, the Equality and Anti-Discrimination Ombudsman will no longer handle complaints from individuals but it will remain an important actor in ensuring that the authorities comply with laws and policies in matters of gender equality.
	The Labour Inspection Authority	
Sweden	The Employment and Labour Law 2018 covers sexual harassment.	Sweden has adopted a rights-based/ discrimination focus, supported by the work environment legislation. The employer has the burden of proof in discrimination cases.
	A Work Environment Strategy for Modern Working Life 2016–2020 is being implemented.	The Swedish Government established a new Gender Equality Agency on 12 January 2018. One of the agency's main tasks is to increase the impact of the Government's gender equality policy. This covers all of the Government's gender equality policy objectives: power and influence, economy, education, health, unpaid housework and care work, and an end to men's violence against women.
	Work Environment Authority	
Switzerland	Article 4 of the Federal Act on Gender Equality forbids sexual harassment in the workplace.	A rights-based approach sees sexual harassment as discrimination but also recognises psychological harm. The employer has to take measures that have been proven in practice to be necessary and adequate to prevent sexual harassment and which it could reasonably have been expected to take.
	Federal Office for Gender Equality	

Country	Legislation and responsible organisation	Expectation
United Kingdom	<p>Under the Equality Act 2010, employers are liable for acts of sexual harassment by one employee towards another unless they have taken all reasonable steps to prevent it.</p> <p>The Sex Discrimination Act amended in 2008 gives an expanded definition for sexual harassment as “related to her sex or that of another person”.</p> <p>Health and Safety Executive and Equality and Human Rights Commission</p>	<p>There are currently no minimum requirements, but reasonable steps should include an anti-harassment policy and appropriate procedures for reporting harassment and taking action (Equality and Human Rights Commission 2018).</p> <p>Under the Sex Discrimination Act, claimants now only have to show the treatment was associated with the sex of the victim or any other person. It extends protection to include witnesses of harassment, or where conduct related to sex has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for one sex. This can include “environmental harassment”; for example, the hanging of posters that make an environment unwelcoming to one sex.</p>
United States	<p>Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments, employment agencies and labour organisations, as well as to the federal government. Some states have their own statutes barring sexual harassment at work.</p>	<p>Employers have a legal duty under the Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the health, safety and welfare of their workers when at work. In the case of breaches of this legislation, the Health and Safety Executive or local authorities are responsible for enforcement.</p>

Country	Legislation and responsible organisation	Expectation
	Commission on Equal Employment Opportunity plus state agencies	

Annex 2 Country examples

Note: The information in this Annex comes from different sources and is not consistent for all countries.

Australia

Australia has adopted a human rights approach with complaints being made to the Australian Human Rights Commission.

In Australia, under the Sex Discrimination Act 1984, employers must take all reasonable steps to minimise the risk of discrimination and harassment occurring. 'All reasonable steps' is not defined in the Sex Discrimination Act, but is determined on a case-by-case basis depending on the size and resources of the organisation. The Sex and Age Discrimination Legislation Amendment Act 2011 amended the Sex Discrimination Act 1984 in May 2011 to expand the protections against sexual harassment. Employers are usually expected to:

- have an appropriate sexual harassment policy
- train employees on how to identify and deal with sexual harassment
- put in place an internal procedure for dealing with complaints
- take appropriate remedial action if and when sexual harassment occurs.

Under the Sex Discrimination Act, 'sexual harassment' has three key elements:

- conduct that is unwelcome
- conduct of a sexual nature
- a reasonable person (aware of all the circumstances) would anticipate the possibility that the person subjected to the conduct would feel offended, humiliated or intimidated.

It is unlawful to sexually harass a current or prospective employee, commission agent or a contract worker, colleague, partner, fellow commission agent or fellow contract worker, or any other workplace participant. A 'workplace participant' includes employers (e.g., sole trader), employees, commission agents, contract workers and partners in a partnership. The term 'workplace' refers to 'a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant'.

In May 2011, the Sex and Age Discrimination Legislation Amendment Act 2011 expanded the protections against sexual harassment. The amendments:

- redefined sexual harassment to cover what a reasonable person would anticipate the possibility that the person harassed would be offended, humiliated or intimidated by the conduct
- strengthened protections against sexual harassment in workplaces and schools to protect students from sexual harassment regardless of their age and whether they are harassed by someone from their own educational institution or another educational institution
- prohibited sexual harassment conducted through new technologies (e.g., over the internet, or through social media or texting).

Complaints about sexual harassment at work are dealt with through the Human Rights Commission. In June 2018, the Human Rights Commission announced a year-long inquiry into sexual harassment in the workplace. It will cover its prevalence and nature, perpetrators and victims, and ideas for preventing and/or responding to incidents of harassment.

Belgium

Belgium has adopted a wellbeing approach, supported by antidiscrimination laws. Trade unions are very active in training and oversight.

In Belgium, sexual harassment and violence are principally dealt with as psychosocial risks in the workplace, provisions for which were substantially strengthened in legislation in 2014. The Act on Wellbeing at Work of 28 February 2014 (supplementing the Law of 4 August 1996) specifically addresses violence, harassment and sexual harassment at work.

A wider definition of psychosocial risk in the workplace is contained in the amended legislation. Psychosocial risk is defined as “exposure to an environment or behaviour that creates an objective danger over which the employer has some control” and includes sexual harassment, violence and psychological harassment. The legislation also requires employers to address and prevent psychosocial risks arising from work organisation, work content, working conditions and interpersonal relationships at work.

In Belgium, safety, health and wellbeing at work fall within the remit of the Minister for Employment and its Federal Public Service Employment, Work and Social Dialogue. The labour inspection ‘Supervision of Well-being at Work’ controls the compliance with occupational safety, health and wellbeing standards. The Directorate-General for Humanisation of Labour is responsible for regulatory affairs and takes care of the dialogue with social partners and the promotion of wellbeing at work.

There is a specific focus given to the implementation of prevention programmes by the employer, line managers, the workplace prevention and protection committee, technical experts in psychosocial prevention, and the ‘person of confidence’ . A ‘person of confidence’ is recommended in each company to provide confidential advice and information to workers who are victims of psychological or sexual harassment, and they have to complete a five-day training course and an annual evaluation. If there is a conflict of interest, a workers’ representative has the right to ask that the person be sidelined. They can also appoint a specialised prevention counsellor (usually someone who is external to the company and a certified psychologist). In addition, the new law introduced measures to encourage victims to report psychosocial injuries, which include protecting victims from reprisals.

Companies failing to comply with the legislation on psychosocial risks at work risk criminal penalties and can be ordered to pay damages to employees who have been victims. The harasser can also be liable under both the civil and criminal law. Sexual harassment at work is considered a crime under Belgium’s Social Criminal Code. Companies were required to implement the new obligations by 1 March 2015, by detailing details and duties of the psychosocial prevention advisor and the person of confidence, and ensuring that internal procedures are drawn up and made accessible to employees.

In case of proven sexual harassment by a work colleague where any further collaboration appears impossible, the employer may consider taking disciplinary sanctions against the harasser. Different courts have decided that acts of sexual harassment can justify proceeding to a dismissal for serious cause without notice or severance pay. Employers can take the lead in searching for a solution themselves, rather than asking the employee asserting sexual harassment to start an internal procedure based on the above laws. The

latter is generally time-consuming and laborious for all concerned and does not always lead to a satisfactory outcome.

Since 2014, the Anti-Discrimination Law has covered discrimination against a person in the employment relationship due to their gender. The law sanctioned sexism/sexual harassment in employment relationships as: “any gesture or behaviour which, under the circumstances detailed under Article 444 of the Criminal Code, has the purpose or effect of degrading someone, due to his/her gender or where someone treats a person less favourably because of their gender leading to a severe loss of dignity by the victim”. The Act also covers sexual harassment in public places and online sexual harassment; for example, “mocking a stay-at-home father or insulting a woman for wearing revealing clothes”.

Collective bargaining coverage is high at approximately 96%. Unions have been involved in a range of campaigns and training programmes on violence against women. The following examples were cited in a report by Pillinger (2017a):

- A national union training programme on discrimination and harassment ran between September 2016 and June 2017.
- Unions are very active in the implementation of the legislation on Wellbeing at Work, and particularly the prevention of psychosocial risks and occupational health and safety.
- Trade unions have issued specialised publications on the implementation of the Wellbeing at Work legislation and have carried out extensive training for workplace representatives on negotiating workplace agreements, policies and procedures.
- Psychosocial risk is included in training for new worker representatives on health and safety committees.

Canada

Canada has a mix of a rights and a wellbeing approach to addressing sexual harassment although the level of obligation varies by province.

Canadian laws such as the Canada Labour Code and the Canadian Human Rights Act protect workers against sexual harassment at work. Workers are further protected through the Canada Criminal Code against physical and sexual assault.

Regarding sexual harassment, federal law is found in the Canada Labour Code. If companies fall under federal jurisdiction, then sexual harassment is covered under Labour Standards of the Canada Labour Code (R.S.C. 1985:c. L-2¹⁰). Although all provincial and territorial jurisdictions have passed legislation regarding sexual harassment and sex discrimination, they are typically covered under human rights legislation and not under the individual Labour Codes or Acts. Employers doing business throughout Canada, or who have operations in different provinces, are subject to differences in the employment laws of the various provinces and territories.

Federal employers and most provinces/territories have guidelines that dictate how employers should deal with sexual harassment in the workplace.

For example, the Occupational Health and Safety Act requires that all employers in Ontario have a harassment policy and process to investigate complaints, which they must review

¹⁰ <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-l-2/latest/>

annually. Employers are also required to develop and maintain a programme to implement the policy. The programme must include:

- mechanisms for employees to report harassment
- a procedure for handling incidents and maintaining confidentiality
- provisions for investigating incidents
- information about how the results of the investigation will be provided to the alleged target and alleged harasser.

In 2016, the Ontario Government amended the Act and added 'sexual harassment' to the definition of workplace harassment and made it mandatory for all employers' harassment policies to include provisions on sexual harassment (Canadian Labour Relations 2018).

In provinces like Alberta, British Columbia and Saskatchewan, there is occupational health and safety legislation that requires employers to have a violence prevention programme in place; Quebec has legislation on workplace psychological harassment. Unfortunately, employers in other provinces are currently not legally obliged to address this issue through workplace policies. However, employers still have a duty to provide a 'poison-free environment'. Most provinces and territories impose duties on employers to take action if they find out an employee is being subjected to sexual harassment (Yosowich 2018).

Denmark

Denmark has a mix of a rights and wellbeing approach to sexual harassment, covered by the Working Environment Act and the Equal Treatment Act. There are no mandatory requirements to implement particular measures to prevent sexual harassment in the workplace. The Working Environment Authority appears to be similar to WorkSafe New Zealand.

The 2010 Working Environment Act and related executive orders provide for the protection of employees and a safe and healthy working environment. Section 9 of the Act states that the performance of work must ensure that the work does not result in a risk of physical or psychological health as a result of bullying, including sexual harassment.

The Danish Working Environment Authority is authorised to access registers showing businesses with a high degree of absenteeism and other factors that can be related to a bad working environment. The Danish parliament voted, in March 2015, for a new agreement on the working environment aimed at increasing the monitoring of businesses that have high health and safety risks. The Authority has powers to monitor and control these businesses through an increase in unannounced inspections and more detailed inspections based on access to the national register for occupational accidents.

Employers are required to take action when they become aware that an employee is alleging sexual harassment, but there are no specific legal obligations in relation to the investigative procedure to be followed. According to the Danish Working Environment Authority, it is advisable for the employer to talk with the alleged harasser, as well as the alleged victim, to determine the facts. As it may be difficult for the employer to be objective, it is also advisable for it to involve a third party adviser in these matters.

The Equal Treatment Act contains provision to ensure that men and women in the working population are not discriminated against. Harassment and sexual harassment are defined as 'discrimination based on sex' and are therefore prohibited, and it is unlawful for an employer

to reward a worker for submitting to sexual harassment. The Act covers every employer, authority and organisation in public administration and public enterprises; and authorities, organisations and all persons who supply goods and services to the public, in both the public and private sectors, including public bodies. The employer is responsible for harassment and sexual harassment by managers and fellow workers if the employer has not taken reasonable steps to avoid or stop the harassment. However, there is no legislation or case law in Denmark specifying that the employer is obliged to implement particular measures to prevent sexual harassment in the workplace (Lister 2017).

Following the #MeToo initiative, there have been growing concerns about work environment problems and sexual harassment. This led to a parliamentary discussion on the issue, and resulted in government funding to address sexual harassment. A working group was formed by the Ministry of Employment (Work Environment Authority) with social partners to draw up guidelines on tackling sexual harassment in the workplace. The guidelines, *A Good Psychological Working Environment: Prevention of Sexual Harassment*, were sent out to all employers in Denmark in 2016 and aim to prevent and give practical advice to employers on how to handle sexual harassment in the workplace.

France

France has legislation in place to provide a safe working environment but it is weakly enforced and the court systems are under-resourced. Focus is as much on protecting the employer as on supporting victims.

In France, sexual harassment has been covered under the Penal Code since 1994, and employment retaliation linked to sexual harassment has been addressed in the Labour Code since 1992. The Penal Code, as revised in 2002, qualifies sexual harassment as sexual violence, stating: “no employee can be penalised nor dismissed for having submitted or refusing to submit to acts of harassment of any person whose goal is to obtain favours of a sexual nature for his own benefit or for the benefit of a third party”.

Sexual harassment is a criminal offence in France. It is defined by the fact of repeatedly imposing behaviours or discussions with a sexual connotation on a person that either: offend his or her human dignity because of their degrading or humiliating characteristics; or create an intimidating, hostile or offensive situation for that person. Any form of serious pressure, even if not repeated, that is exercised with the real or apparent aim of obtaining a sexual favour for the perpetrator or for a third party also amounts to sexual harassment. In the work-related environment, employers have a duty to protect employees against such harassment, as part of their general obligation to provide a safe working environment. Jurisprudence has clarified in 2012 that physical violence committed on an employee in a private context by an external person at the workplace is also the responsibility of the employer. The Labour and Penal Laws are complementary and can be simultaneously claimed by the victim.

The French Labour Law does not foresee sanctions but these can be pronounced by the employer in internal rules. The prevention of harassment (sexual, sexist or moral) and the protection against internal violence are part of the general employers’ obligations guaranteeing safety and security at work. The employer is obliged to evaluate the risks and to undertake any measures necessary to guarantee the security and to protect the physical and psychological health of their employees. Further, they have an obligation to prevent the risks of sexual, sexist and moral harassment (Le Divellec 2017a).

Lister (2017) describes ‘best practice’ for employers in France. When faced with a sexual harassment claim, the employer should immediately conduct an investigation, in association with employee representatives, to determine whether the allegations are genuine. The

occupational doctor should also be advised of the situation and involved in the investigation. The investigation will entail discussions with the alleged victim and the alleged perpetrator and identify possible witnesses. It is advisable to ask involved parties to issue affidavits to build the case for a potential trial. These should be handwritten, including certain mandatory specifics, in order for them to be used in court.

If the result of the investigation is that sexual harassment has occurred, the harasser should be dismissed. Case law has determined that sexual harassment constitutes serious misconduct, which makes it impossible to continue executing the employment contract.

Any failure by an employer to react when there is a sexual harassment claim is likely to make matters significantly worse for it. The victim may choose to go to court and claim damages for the company's failure to provide a safe working environment, possibly contending that there is a case for constructive dismissal to terminate the employment contract. This would include a claim for all sums connected to the termination and damages for dismissal without legitimate grounds.

In addition, the Labour Inspector may be advised of the situation and decide to start an on-site investigation to determine whether there is sexual harassment. Such investigations are usually very time-consuming, as the Inspector will want to see the employees concerned, as well as potential witnesses, in addition to the company's general manager and HR director. French employers generally seek to deal with matters of this type in a confidential manner to avoid adverse publicity (Lister 2017).

Sexual harassment in the workplace was made subject to legal sanction in France in 1992, but the reach of those laws was not matched by vigorous enforcement. The effect has been to discourage women from pursuing cases, as reflected in a 2014 survey for France's Defender of Rights, a government office that helps people enforce their civil rights. The survey found that at least one in five working women said they had confronted sexual harassment but only 30 percentage of them had reported it to management, and only 5 percent ever brought it before a judge. Far more said they had worked in an environment where there were sexist or crude jokes.

There is no French equivalent of the Equal Employment Opportunity Commission in the US, which can bring cases but which also works directly with companies to resolve them through internal measures before they go to court (Rubin 2017).

Germany

Germany has a rights-focused approach to dealing with sexual harassment at work, with a company/organisation-based complaints system and the right to appeal to the courts.

German law is quite strong when it comes to workplace sexual harassment. The General Equal Treatment Act, introduced in 2006, grants employees considerable rights and makes clear precisely what constitutes sexual harassment. The law is applicable in the private and public sectors. The law gives protection against sexual violence and harassment and obliges employers to prevent and protect victims against sexual violence/harassment.

Since Germany is a federal state, each Land (state) has adopted a regional Gender Equality Act prohibiting sexual harassment, which gives protection to civil servants at a regional level. These laws, which apply only to the public sector, define sexual harassment as discrimination and oblige the employer to sanction the perpetrator and to prevent any discrimination against the victim as a consequence of their complaint. In accordance with EU law, the employer is responsible for creating an internal complaints procedure, implementing

mechanisms to deal with the case, sanctioning the perpetrator(s), not discriminating against the victim and preventing any form of sexual harassment. The victim has the right to appeal internally (Le Divellec 2017b).

Beyond the most obvious and serious cases involving physical assault, sexual harassment in the workplace, according to the law, means: unwanted physical contact, leering, lewd looks, sexual comments, sexist jokes or the displaying of pornographic material. The legal obligation on the part of employers to deal with allegations appropriately and to protect employees is also clear under the Antidiscrimination Law (see <http://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/germany-sexual-harassment>).

Employees have the right to lodge a complaint with the responsible department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint is to be examined and the complainant informed of the result of the examination. The rights of worker representatives remain unaffected.

It is designed as a possibility for the employee and the employer to find an internal solution instead of a long and costly external legal procedure. Either party has two months to appeal internally and three months to file a claim before the court. Compensation for discrimination can also be claimed from the employer for not fulfilling their obligations, independent from the employer's intention not to respond (Section 15). The victim is protected against any discrimination resulting from their appeal and can even refuse to execute the contract if protection against further harassment/discrimination is not guaranteed (Le Divellec 2017a).

The fact that bringing a claim of sexual harassment before the courts currently must happen within three months of it taking place has become a matter for debate. Commentators say this should be extended to six months as victims need time to consider taking legal action, particularly if they are traumatised or concerned about job security. Another gap is the fact that the law currently protects people working at universities but not students harassed by university employees (Sullivan 2017). A specialist in gender equality legislation at the DGB, a German trade union confederation which represents over six million workers, would like to have a collective right to file an action so that a trade union can take proceedings against employers in the cases of sexual harassment. So far, it is up to the individual to do so.

Iceland

Equal rights are the basis for Iceland's approach to addressing sexual harassment at work. Increasing compliance with the law has become an issue, with a call for more resources.

The Act on the Equal Status and Equal Rights of Women and Men was passed in May 2000 and has been amended many times since then. The purpose of the Act is to establish and maintain equal status and equal opportunities for men and women and thus promote gender equality in all spheres of society. The Minister of Social Affairs is in charge of the implementation of the Act, which also established the Equal Status Bureau, now called Centre for Gender Equality. The Centre offers counselling and education in the field of gender equality for government and municipal authorities, institutions, companies, individuals and NGOs.

Those who consider themselves to have been harassed can report incidents to the Centre's Complaints Committee. While Icelandic courts have the power to issue restraining orders,

critics have complained that such orders did not have the desired effect because they were granted too infrequently and took too long to be issued. Victims of sexual harassment have the right to be represented by lawyers, but most victims choose not to take legal action.

The law requires employers and organisation supervisors to make specific arrangements to prevent employees, students and clients from becoming victims of gender-based or sexual harassment. Only employers with 25 or more employees are required to provide their employees with information on the legal prohibitions against sexual harassment in workplaces (US Department of State Country Reports on Human Rights Practices for 2011).

Commentary in January 2018 (NIKK Nordic Information on Gender 2018) noted that a new ordinance that went into effect in 2015 increased the pressure on employers to actively prevent sexual harassment, but it needs to be better resourced:

We get calls about sexual harassment and know it's going on, but the problem is that the employers don't do anything. There is a need for more money to make employers better aware of how they should act. They need support in their prevention efforts...The ordinance needs to be followed up, both with resources and with regulations making the consequences tougher for non-compliers. Employers that violate the law should face direct financial consequences, or else there is no incentive to prioritise these issues.
(NIKK 2018)

Netherlands

The Netherlands has a rights-based approach to dealing with sexual harassment. Complaints can be filed with the Netherlands' Institute for Human Rights.

Under the Working Conditions Act 2007 (and subsequent amendments), companies in the Netherlands are obliged to protect their employees from psychological stresses. Employees must be able to work in a healthy and safe environment. In practice, sexual harassment is generally included as part of the wider problem of harassment, violence and bullying and, more generally, 'unwanted or undesirable conduct' that creates an undignified and unsafe environment. Sexual harassment in the workplace comes under the remit of the Ministry of Social Affairs and Employment.

Employers are obliged to draft annual risk assessment reports and develop measures to prevent risks. Sexual harassment is considered to be a health and safety risk and has to be addressed in these reports. The Labour Inspectorate is tasked with supervising this process.

An employer is potentially liable for any acts of discrimination committed by an employee 'in the course of employment', regardless of whether the employer knew or approved of the acts. The employer can only avoid this liability if they can show that they had taken 'all steps reasonably practicable' to prevent the discriminatory acts from taking place. There is no legal obligation to give diversity training.

The employer, workers and unions in a company are responsible for drawing up policies and implementing measures on working conditions and occupational safety and health. Agreements set out the framework in the form of a 'declaration of intent' for the sector as a whole. In practice, many employers have implemented company and workplace measures through codes of conduct, by appointing a 'person of confidence', who gives confidential advice and support, and through the establishment of complaints committees. However, there is no legal obligation on employers to establish a complaints committee. In practice, many large employers or organisations have their own complaints procedure for victims of harassment or other 'misconduct'. Smaller organisations are often linked to a 'national complaints committee' for a certain sector. For example, a national complaints committee

exists for the primary education sector, where individual primary schools can 'buy' the assistance of an independent committee if a complaint is made in a school setting. Some ministries have issued guidelines for codes of conduct and complaints procedures for employees; for example, as exists in the police force, the army and prison sector.

Complaints about discrimination can be filed with the Netherlands Institute for Human Rights, which is responsible for monitoring compliance with the Equal Treatment Regulations. An employer can apply to the Institute for a ruling as to whether a particular measure is discriminatory. Although not legally binding, the Institute's decisions are usually complied with.

Legal actions can also be brought in the civil court following proceedings with the Netherlands Institute for Human Rights, or in lieu of such proceedings. These proceedings are not common (see <http://www.elexica.com/en/legal-topics/employment-and-benefits/05-discrimination-and-harassment-in-the-netherlands>).

Notes from the Ministry of Social Affairs and Employment¹¹ confirm that, over the past few years, the government has raised considerable attention to the importance of preventing psychosocial stress at work, through campaigns that focused on sustainable employability and the importance of a healthy work culture respectively. These campaigns involved various other actors, such as the employers' organisations in different sectors, professionals who assist employers in developing policies and taking measures and representatives of workers (including work council members). The notes continue:

At present we are continuing efforts to raise awareness on the importance of a safe working environment and a safe work culture. To this end, we will organise a conference later this year that will focus on the role workers' representatives at company level can play in raising attention to measures to combat sexual intimidation/harassment. A so-called action team for psychosocial stress assists around 20 organisations in taking measures to promote a healthy work culture. Some organisations focus specifically on undesirable behaviour, such as bullying or sexual harassment. Lessons learned from this approach will be shared with a broad audience, including through a conference on 9 October 2018. Our Ministry also supports the 'week of work-related stress' during which all over the Netherlands events and conferences are organised. We have been in the lead on this 'week' for the past few years, but now we only subsidize the organisation of this event through a limited contribution. This dovetails with our general approach: we have raised considerable attention for the issue over the past few years, developed tools and instruments for employers and other relevant groups to contribute to a safe work environment and to combat undesirable behaviour at the workplace. Now it is up to organisations themselves to take this one step further.

The Ministry continues to help facilitate employers so that they can fully take their responsibility on emerging issues. Examples of efforts to continue support in this field is research we have undertaken on confidential advisers (confidants) in organisations and efforts to promote the skills of confidential advisers as well as the incidence of confidential advisers in organisations. We are currently in the process of commissioning research on codes of conduct in organisations, focused on preventing and addressing undesirable behaviour.

The legislative framework of the Working Conditions Act is outcome-oriented and focuses on a number of process steps that an employer needs to take (identifying and assessing risks, taking measures, evaluating measures, etc.) in an iterative process.

¹¹ Supplied by the Ministry in response to a question from the Ministry for Women, New Zealand, July 2018.

There are some calls from the business community to specify specific measures employers must take, such as having a complaint procedure or a confidant. Thus far, however, we have not diverged from the way our Working Conditions Act has been drawn up, which focuses on the goals and not on the precise means. We believe this allows for tailored solutions in each and every organisation. Our efforts have focused on awareness raising and on safe and healthy work cultures. It is very difficult to assess the impact of such interventions. Change in behaviour and culture within organisations takes time.

One possibly interesting initiative in the Netherlands is a joint programme by the Labour inspection and our policy department for OSH. It aims at creating an alternative approach to the way our Inspection normally ensures that organisations comply with the law (through warnings, fines, etc.). The alternative approach is called 'pilot behavior and culture'. It aims at developing a scientifically proven process in which organisations can engage and that will lead to improvements in the culture in an organisation. Interventions are inter alia inspired by inclusive approaches used in organisations to combat bullying. Organisations will have the possibility to opt for this approach rather than for paying a fine. We expect more clarity on the direction of this pilot in the course of 2019.

Norway

The Working Environment Act and the Equality and Anti-Discrimination Act prohibit discrimination in employment. The protection against direct and indirect discrimination and harassment is applicable to the following categories of discrimination: age, disability, gender, race, colour, religion or belief, political opinions, sexual orientation and national, social or ethnic origin.

The Labour Inspection Authority has the administrative and supervisory responsibility for a number of Acts, including the Working Environment Act and the Vacation Act. If orders from the Labour Inspection Authority are not complied with by an employer, fines may be imposed and, in serious cases, the business may be ordered to close. Further, the Labour Inspection Authority may report employers to the police for serious breaches of the Acts.

The Working Environment Act requires that all employers in Norway with more than 50 employees must have Working Environment Committees. Employers with 20 to 50 employees are also required to have Working Environment Committees if the employees, the employees' representative or the employer requires it. In addition, the Labour Inspection Authority can decide that employers with fewer than 50 employees must establish a Working Environment Committee. Working Environment Committees are primarily dedicated to health and safety issues in the workplace (Olsby and Lerheim 2018).

Norway adopted the Equality and Anti-Discrimination Act in June 2017, and set up a new Equality Tribunal on 1 January 2018, which can award compensation in discrimination cases at work. At present, the national Equality and Anti-Discrimination Ombudsman handles complaints of discrimination and harassment. People can report harassment related to the established grounds for discrimination, such as ethnicity and sexual orientation, to the Ombudsman, but not sexual harassment.

Eggebø (2018¹²) argues that this should be changed:

The legal protection for victims of sexual harassment is extremely weak in Norway. If the equality and anti-discrimination ombudsman also administered and investigated sexual

¹² <https://www.nikk.no/en/news/review-sexual-harassment-in-the-workplace-remains-widespread-in-the-nordic-countries/>

harassment, the system would become more legally secure. The most obvious change would be that sexual harassment would be equated with and administered as other forms of harassment.

It would also contribute to important case law on sexual harassment in the workplace, which is currently missing in Norway. “The requirement for employers to work against sexual harassment should be designed more like strict environmental requirements, where employers have to undergo certain procedures to be compliant.”¹³

With the establishment of the Equality Tribunal, the Equality and Anti-Discrimination Ombud will no longer handle complaints from individuals but it will remain an important actor in ensuring that the authorities comply with laws and policies in matters of gender equality.

The board of Universities Norway has recently established a working group known as UHRMOT to “document and prevent sexual harassment and ensure that effective systems are in place for reporting and following up bullying and harassment of employees and students” (Sosrum 2018). The working group is also expected to hold conferences and seminars, offer guidance and provide information.

Sweden

Under section 6 of Sweden’s Equal Opportunities Act 1991, employers have a duty to prevent sexual harassment from occurring in the workplace. In addition to imposing a duty to prevent sexual harassment from occurring, Swedish law also requires employers to investigate the incidence of sexual harassment in their workplaces.

In the last two years the Swedish Government has introduced a number of new initiatives. On 17 November 2016, it decided on the written communication “Power, goals and agency—a feminist policy for a gender-equal future” (Government Communication 2016/17¹⁴:10¹⁵). In the communication, the Government presented the focus of gender equality policy with a new goal structure, a Gender Equality Agency and a 10-year national strategy to prevent and combat men’s violence against women. The Equality Agency, established in January 2018, aims to achieve a strategic, cohesive and sustainable governance, and effective implementation of the gender equality policy. The Agency will be responsible for follow-up, analysis, co-ordination, knowledge and support based on the gender equality policy goals.

A Work Environment Strategy for Modern Working Life 2016–2020 aims to contribute to a work environment that prevents ill health, accidents and people being excluded from working life. Work environment management must take into account people’s differing circumstances and contribute to the development of both individuals and operations. The Government is raising the level of ambition in its work environment policy by basing this strategy on concrete measures within three prioritised areas: zero tolerance of fatal accidents and the prevention of accidents at work; a sustainable working life; and psychosocial work environment.

Improving the work environment requires action on the part of both central government and social partners. Consequently, the process of drawing up the Government’s work environment strategy for modern working life, which began in winter 2015, was begun in

¹³ *ibid*

¹⁴ <https://www.government.se/499cd0/contentassets/95678f8dfcea4ece916e5b7950f2260f/a-work-environment-strategy-for-modern-working-life-20162020>

¹⁵ <https://www.regeringen.se/49c517/globalassets/government/dokument/socialdepartementet/summary-of-the-government-communication-power-goals-and-agency--a-feminist-policy.pdf>

consultation with the social partners. In order to maintain and deepen this tripartite process, the Government intends to create a forum for dialogue in which to continually discuss ongoing, planned and future actions in this area with the social partners (Government Communication 2015/16:80).

Sweden has also introduced a number of strategies to address sexual harassment and violence in the workplace. These include: preventive initiatives; stronger protection and support; more effective law enforcement; work environment investments; and awareness-building measures. Initiatives particularly relevant to sexual harassment include:

- The establishment of a new Gender Equality Agency from 1 January 2018. The tasks of the Agency are to:
 - contribute to strategic, cohesive and sustainable governance and the effective implementation of gender equality policy
 - be responsible for follow-up, analysis, co-ordination and support based on the gender equality policy objectives
 - co-ordinate the national strategy to prevent and counter men's violence against women, including honour-related violence and oppression, as well as prostitution and human trafficking for sexual purposes
 - collect and disseminate knowledge in its area of responsibility
 - examine matters concerning government grants for gender equality projects and women's organisations
 - assist the Government in other respects on gender equality policy issues, such as international co-operation in the area.
- The Minister for Employment and Minister for Gender Equality have met with the labour market and union partners, and several ministers have convened meetings with heads of government agencies and business leaders in order to focus on the responsibility of employers to counteract sexual violence and harassment.
- The Government also signed an agreement with Swedish Association of Local Authorities and Regions (SALAR) in 2017 to strengthen the focus of gender equality work on men, boys and questions of masculinity.
- The Government adopted a national work environment strategy in close consultation with the labour market and union partners, containing concrete measures in three priority areas, one of which is the psychosocial work environment. The Swedish Government's work environment policy aims to contribute to a work environment that prevents ill health, accidents and people being excluded from working life. Work environment management must take into account people's differing circumstances and contribute to the development of both individuals and operations.
- The Government has enhanced resources for its work environment policy by over SEK 100 million per year during this term of office. The funds have enabled the Work Environment Authority to strengthen its supervisory activities. Around a hundred new work environment inspectors have been hired.
- The Government has adopted some changes to the Swedish Work Environment Authority's instructions, which entered into force on 2 January 2018. The instructions now explicitly state that the Authority is to conduct its activities so as to promote

diversity and gender equality and a work environment free from victimisation (Section 4a).

- The Act on special protection for workers against reprisals for whistleblowing concerning serious irregularities, the Whistleblowing Act, which entered into force on 1 January 2017, can be applicable in situations where an employer takes reprisals against an employee for reporting sexual harassment to a government agency or the media (see <https://www.government.se/articles/2018/01/the-government-of-swedens-measures-against-sexual-violence-and-harassment/>).

Switzerland

According to Article 5 paragraph 3 of the Federal Act on Gender Equality GEA, private as well as public employers are obliged to take preventive measures, which can vary according to the size, branch or type of firm or industry. Employers are strongly recommended to adopt an internal regulation and to regularly inform and train their employees about their rights and obligations.

Article 4 of the Federal Act on Gender Equality forbids sexual harassment in the workplace. (See Article 4: “Any harassing behaviour of a sexual nature or other behaviour related to the person’s sex that adversely affects the dignity of women or men in the workplace is discriminatory. Such behaviour includes in particular threats, the promise of advantages, the use of coercion and the exertion of pressure in order to obtain favours of a sexual nature.”.)

Anyone who is the victim of discrimination within the meaning of Articles 3 and 4 may apply to the court or to the administrative authority for an order: prohibiting or stopping threatened discrimination; requiring existing discrimination to cease; confirming that discrimination is taking place if it is continuing to have a disruptive effect; for the payment of any salary due. In the case of discrimination through sexual harassment, the court or the administrative authority may also award the person concerned compensation, unless the employer proves that it took measures that have been proven in practice to be necessary and adequate to prevent sexual harassment and which it could reasonably have been expected to take. Compensation penalties go up to six months’ of the average Swiss salary.

Last year, an analysis of about 200 cantonal court decisions between 2004 and 2015 showed that 80% of sexual harassment claims were dismissed. According to an earlier study released in 2008, in most cases victims seek informal remedies (e.g., talking directly to the harasser, to colleagues or to the employer), which may be considered a reasonable way to proceed compared with the slim chances of winning a case in court.

For broader programmes against sexual harassment, the responsibility mainly lies with the national and regional (cantons) governments. They may collaborate with non-state actors like associations and workers’ unions. For other prevention programmes in the workplace—for instance, healthcare and accident prevention—the responsibility lies with the companies and firms that have to report to the cantonal work inspectorate in co-operation with a public law insurance body (‘Suva’).

An initiative pending in the federal parliament wants to introduce a reversal of the burden of proof in cases of sexual harassment in the workplace with a view to enhancing access to justice for victims.

Raising awareness about sexual harassment at the workplace and about gender-based violence is one of the permanent tasks of the Federal Office of Gender Equality. A toolbox provides information and intervention materials for experts in these areas, and includes two

specific projects aim to inform and reach out to victims of sexual harassment, providing information and offering advice.

United Kingdom

Under the Equality Act 2010, employers are liable for acts of sexual harassment by one employee towards another unless they have taken all reasonable steps to prevent it. There are currently no minimum requirements, but reasonable steps should include an anti-harassment policy and appropriate procedures for reporting harassment and taking action (Equality and Human Rights Commission 2018).

A general definition of harassment in the Act covers any unwanted conduct that is based on sex, and that has either the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This definition is wide enough to cover a wide range of conduct, from one-off sexist comments or jokes right up to serious sexual assaults.

In addition, the definition of harassment specifically covers unwanted conduct 'of a sexual nature', which is prohibited if it has the purpose or effect referred to above. It is also harassment if the harasser treats the victim less favourably because of the victim's rejection of or submission to this conduct. This covers the situation where a person's career is damaged when they either give into or refuse sexual advances from a more senior employee (Lister 2017).

Employers have a legal duty under the Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the health, safety and welfare of their workers when at work. In the case of breaches of this legislation, the Health and Safety Executive or local authorities are responsible for enforcement.

The Sex Discrimination Act, amended in 2008, gives an expanded definition for sexual harassment as 'related to her sex or that of another person'. Claimants now only have to show the treatment was associated with the sex of the victim, or any other person. It extends protection to include witnesses of harassment, or where conduct related to sex has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for one sex. This can include 'environmental harassment' (for example, the hanging of posters that make an environment unwelcoming to one sex).

The Amendment also confirms employers' liability for third party sexual harassment in situations where they are aware of sexual harassment and fail to take reasonably practicable (proactive and reactive) steps to protect workers when it is known to have happened on at least two other occasions (European Social Partners: UK Partners n.d.).

It is not necessary for a victim to have made it clear in advance that harassing conduct was unwanted, and the harasser may still be liable for harassment even if they were not aware of the effect of the behaviour. The victim's reaction to the behaviour must be reasonable, so a purely subjective perception that seemingly innocent behaviour is harassment will not necessarily meet this test. Such behaviour may, however, become harassment if the conduct is repeated after the victim has asked for it to stop (Lister 2017).

Employers are expected to be proactive in preventing sexual harassment from happening at all, by implementing clear policies and providing training to their staff—particularly to managers who may be in a position of power over other employees.

United States

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labour organisations, as well as to the federal government. Some states have their own statutes barring sexual harassment at work.

Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under Title VII (US Equal Employment Opportunity Commission: 2017)

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