Australian Human Rights Commission

National Inquiry into Sexual Harassment in Australian Workplaces

Submission
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Acknowledgements

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We also pay tribute to the clients that we work with, whose experiences of sexual harassment and sexual assault in work settings, told through case studies, have informed this submission.

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Particular thanks go to Women’s Health Victoria for convening a cross-sector working group on sexual harassment that has contributed to our thinking and provided opportunities for a rich exchange of ideas and solutions to this urgent problem.

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ABOUT THE CASA FORUM

CASA Forum was established in 1992 and is the peak body for fifteen Centres Against Sexual Assault (CASAs) in Victoria, including the Victorian after-hours Sexual Assault Crisis Line (SACL).

The Forum is represented on a wide range of government policy and practice bodies within Victoria, providing advice and advocacy re the development of statewide policies, programs and services. We are also a member of the National Association of Services Against Sexual Assault (NASASV).

CASAs are funded by the Victorian Government to provide a range of sexual assault counselling and support services to victims/ survivors of sexual assault, and their non-offending family members/carers and friends. We understand sexual assault to occur along a continuum that includes any uninvited sexual behaviour that makes the recipient feel uncomfortable, harassed or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; rape with physical violence and threat to life; and sexual assault of children and the grooming of children that accompanies this crime.

CASAs work with all victims of sexual assault and sexual violence, including women, children, young people and men. The majority of our clients are women, who have experienced sexual assault in an intimate partner relationship; were sexually abused as children; have experienced date rape; or sexual assault by a stranger or recent acquaintance; or have experienced sexual assault within an institutional setting.

Children also make up a large proportion of CASA clients. They have most often been sexually abused by a family member.

Our services provide a crisis care response to recent assaults, and to recent disclosures of sexual assault. The majority of crisis care responses are provided to women and children. While the number of male victims accessing our services has increased, in most cases they are men seeking support to deal with the impact of historical childhood sexual assault perpetrated by male family members, by friends, or within institutions.

Many CASAs also now provide treatment services and programs for young people who demonstrate sexually abusive behaviours, with a view to intervening early to stop the problematic behaviour and support them to develop healthy attitudes and approaches to relationships.

In addition, CASA Forum provides Standards of Practice to guide the work of our services; a statewide workforce development training program for the sexual assault field; education and training for other sectors; respectful relationship programs in secondary schools; and advanced personal safety programs in primary schools.

This submission sets out CASA Forum’s concerns and recommendations in relation to reducing the prevalence of and harms caused by widespread sexual harassment and sexual assault currently occurring in Australian workplaces.
INTRODUCTION
CASA Forum welcomes the AHRC inquiry into sexual harassment in Australian workplaces.

Responding to clients who are victim/survivors of sexual harassment and sexual assault is core business for CASAs.

In order to contribute to the AHRC review, we asked CASA Counsellor/Advocates to provide case studies of clients who presented to their services for support related to sexual harassment (and often subsequent sexual assault) that had occurred within their workplace.

We received seventeen de-identified case studies, and all involved female victims. The case studies included detail about the industry or workplace setting and context in which the harassment and/or assault occurred; the client’s experience of what happened and how the sexual harassment started, how they responded, any attempts to seek help or report the behaviour; and how the behaviour escalated/developed.

Case studies also detailed what the client reported about the type of workplace culture or leadership that allowed the behaviour to happen and/or continue; and the relative position of the victim within the organisational structure. They also detailed whether there were any witnesses or bystanders, and if there were, how those witnesses behaved, and whether they attempted to intervene and/or offer support.

Details were also provided about what the outcomes were for the client, the perpetrator, and the workplace, including whether there were any penalties for the perpetrator.

The case studies invariably pointed to serious failings in current system responses.

Our submission draws on these case studies to draw themes, raise issues and make recommendations around prevention; the need for effective regulatory regimes; access to effective complaints processes and reporting tools; and support and advocacy services for victims.
THEMES ARISING FROM CASA CASE STUDIES

Power imbalances enable the abuse to start and then to continue
Regardless of the industry, or the size of the workplace, there were common threads evident through all the case studies submitted.

Most case studies highlighted that victims were young; that perpetrators held positions of power in the workplace; and that the imbalance of power was key to enabling the harassment and /or abuse to begin, and then to continue.

Victims usually felt like they had no place to go with their complaint and so were unable to report the sexual harassment. Commonly, they felt they would be disbelieved and feared the consequences of trying to report the abuse.

In many cases, victims felt the only recourse was to put up with the harassment, or for them to leave the workplace.

CASE STUDY 1: SMALL OWNER-RUN RETAIL BUSINESS
Male business owner started the sexual harassment almost immediately from when female employee commenced the job. It started with comments about her physical appearance (e.g. that she was attractive) and he discussed that he was lonely. He would take her out for lunch, he proposed that they share a bottle of wine together after her first shift and then tried to kiss her. [She] was linked with a job seeker agency, and she raised the behaviour with the agency, however she was encouraged to continue working.

CASE STUDY 2: GRADUATE PLACEMENT AT LARGE LEGAL FIRM
[The client] was sexually harassed by the perpetrator since starting the graduate program. This included initially ‘over-familiar’ comments, paying the client ‘compliments’ in front of others and making sexualised remarks in the guise of jokes. It then proceeded with brushing past her causing unnecessary touching, and then emailing her insinuating that they shared a ‘secret relationship.’
The client was [then] raped by the perpetrator. She was asked to stay back and help him on a deadline, and he coerced her into having sex with him when no one was left in the office, despite multiple efforts from her to refuse this...
The perpetrator was a leader at the firm, which created difficulties in her reporting the abuse. My client felt little power in the organisation and felt certain that if she reported the abuse to anyone that she would be disbelieved; and may lose her place in the company.
Sexual harassment seriously impacts clients’ lives, and can have long-term consequences

Many of the case studies described clients experiencing sexual harassment that progressed to sexual assault. Clients reported that a lack of support in the workplace enabled the behaviour to escalate, with serious impacts on mental health and well-being, including depression, hyper-vigilance, and for some, post-traumatic stress disorder.

Impacts on victims included costs to their professional lives. Many felt they had no option but to leave their job, and for a number of clients, they were unable to return to work for some time. For some, there were serious social and economic consequences, leading to homelessness and poverty. When not addressed, or addressed adequately in the workplace, the consequences of sexual harassment can have lifelong impacts.

CASE STUDY 3: NATIONAL TRAFFIC MANAGEMENT COMPANY

[The client] ...was working on a casual basis as a traffic controller and averaged approximately 70 hours per week... At one site for 2 weeks she was the target of bullying and sexual harassment... sexual innuendo, sexist jokes, name calling and personal insults... [She] tolerated much of the behaviour because she loved her job and also had rent to pay on the flat she had been living in for 10 years. [She] saw herself as a ‘happy-go-lucky’ type of woman who was able to let most things go and get on with her job. [She] reported that sexual harassment and bullying were... generally normalised by the male workers involved, the bystanders who either sniggered along, joined in or stayed silent. Only one male colleague offered a veneer of support when he witnessed the bullying stating, ‘don’t worry ‘nickname’, you’ve done nothing wrong’...

A week into the job [the] client’s supervisor [suggested] that they get together ‘discreetly’ since they had both been working away a long time... [She] thanked him but offered a ‘no thanks, sorry I have a boyfriend’. Later the supervisor told the crew that they were to go the pub to celebrate the end of the job rotation and [the] client was told that she had to go as well, which she did... [She] left the pub taking the work bus back to her accommodation [and] was about to go to bed when she heard the sliding door of her accommodation open, it was her supervisor... He forced her onto the bed and raped her twice. After he was done he took a cigarette off the table, calling her by her nickname and stated, ‘that was consensual sex, right?’... [The] client has reported the incident to police and currently has lawyers assisting her with a workplace claim [as yet there is no outcome]. Since sexual assault has occurred [she] has not been able to maintain employment. Her post trauma symptoms have impacted immensely on her life. [She] has had to go on Centrelink and has lost her housing as a result. [She] is now homeless and couch surfs or stays in a friend’s caravan that has no running water, power or sewerage, she showers at a local swimming pool bathroom. [The client] feels isolated and helpless... [She] has difficulty sleeping and is constantly on guard, she is terrified that she will accidentally see the offender in the street. [She] feels sick all the time and has unexplained pain throughout her body. [She] has not confided in many people and most of her friends are wondering why she has checked out of life, she simply cannot tell them, the shame she feels is too great.
Several case studies described sexual harassment as occurring within workplaces where there was a culture of tolerance, and often a ‘blokey’ or a ‘very masculine culture’.

Some clients reported that their workplace took token steps so they could be seen to be addressing the behaviour, but in fact that the culture of tolerance for sexual harassment continued unabated.

CASE STUDY 4: STATUTORY AGENCY

[The client] was sexually harassed and later sexually assaulted by a colleague after work hours... [she] felt unable to disclose this to anyone... she found she needed to spend a large amount of mental and emotional energy preparing for each shift and described it like putting armour on. She was also exhausted at the end of each shift from the hypervigilance she needed to maintain throughout the shift, and the exhaustion accumulated over time leading to her experiencing significant distress. [After the sexual assault] she held many common misconceptions about her responsibility for the assault and was concerned about the impact on her job [and] decided that for her emotional safety and wellbeing she would go to another workplace...

She remained vigilant in her new position as she was concerned about similar attitudes being present on some level throughout the sector. This impacted how she approached her new role and colleagues and meant that she still experiences a significant amount of anxiety in her workplace.

A culture of tolerance and victim blaming

Several case studies described sexual harassment as occurring within workplaces where there was a culture of tolerance, and often a ‘blokey’ or a ‘very masculine culture’.

Some clients reported that their workplace took token steps so they could be seen to be addressing the behaviour, but in fact that the culture of tolerance for sexual harassment continued unabated.

CASE STUDY 5: HOSPITALITY, POPULAR CAFÉ

... the head chef at this café behaved sexually inappropriately towards her and other waitresses. On [her] second day of employment he told her not to wear the shorts again that she was wearing because “her arse looked too great in them”. [The client] explained how she told her manager about the comments and her response was "oh that’s just ___ name of chef" indicating that [she] just needed to learn to tolerate his behaviour...

[She] described feeling isolated in her attempts to stand up for herself. She described a culture of tolerance of the chef’s harassment... [and] a workplace of tolerance for this behaviour as well as placing the onus of responsibility on victims to manage their response to the sexual harassment and figure out a way to “put up with it”. The culture of the café was one of complacency.

CASE STUDY 6: MALE DOMINATED TRADE

[The client] Asked for porn movies that hurt and degraded women not to be played in tea room. Response from employer – told not to be so sensitive and porn and associated commentary continued. Client felt distressed and anxious when going to work because of this so eventually felt she had no option but to quit.
CASE STUDY 7: REGIONAL TOURIST BUSINESS

...the [working environment] added to the lack of privacy/rights the [client] felt... other victimisation could have been prevented if earlier complaints had been acted on appropriately. The perpetrator was sent to a course – that was seen as an appropriate response, but it was really just a token and he still held the same power in the team and continued on as if nothing happened. They advertise themselves as being a white ribbon accredited organisation, but again, these things can be like a pat on the back – ie we are doing the right thing- there needs to be accountability around white ribbon branding and labelling for organisations.

Bystanders are also often affected by power imbalances
In several cases, clients reported that there were witnesses to the sexual harassment. In many cases, these witnesses also occupied relatively powerless positions within the workplace, which contributed to a lack of capacity and / or effort to intervene, report or to take action.

CASE STUDY 5: (continued) HOSPITALITY, POPULAR CAFÉ

[The client] said there were other witnesses and she also witnessed other waitresses “putting up with” the chef’s sexually inappropriate behaviour.

CASE STUDY 7: (continued): REGIONAL TOURIST BUSINESS

[The client worked in a] large well-known tourist business... [with] many part time/casual employees [many of whom were] untrained. The sexual harassment had been going on for approx 3 years. Reports to management were made, but the response was inadequate. The [client] continued to be rostered on shifts with the alleged offender [and] the complaint was poorly handled, she was made to meet where the alleged offender met, so he saw her as he was leaving the meeting. He was sent to a course on behaviour and continued to be employed. After that he became more emboldened, and she observed him harassing other young female staff members. The workplace culture also supported some of the other males to make jokes around the females. [Others witnessed the behaviour but were] too scared to say anything. No one intervened, [though] once she complained other young female employees came forward as well.
Small firms had no HR systems in place to deal with complaints
The nature of many of the organisations cited in the case studies tendered to CASA Forum meant that there often no internal systems in place in these organisations for victim/ clients to be able to raise their concerns or to report the sexual harassment or abuse. In these workplaces, there is no room (even if there was willingness) for the victim or the perpetrator to be ‘conveniently moved’ to another area.

**CASE STUDY 1: (continued) SMALL OWNER-RUN RETAIL BUSINESS**
[The client] was directly reporting to the owner of the company (the harasser), so there was no HR support. She was very aware of the power imbalance and reported that this impacted on the way that she responded - she felt that she had to be “nice” because she needed the money and didn’t want to lose her job. She also felt that she couldn’t leave the job when the job seeker agency said she had to stay because her Centrelink benefits would be cut

**CASE STUDY 8: SMALL CONSULTING FIRM/ MARKET RESEARCH BUSINESS**
The harassment occurred over time, and started with more subtle sexualised comments and then progressed to more explicit comments... It was a small business, and the harasser was the boss, the client didn’t know who to turn to for support and she thought that it might be minimised anyway, she wondered if she was making “big deal” out of it.

Other systems can conspire against reporting of sexual harassment
Several case studies documented issues with job seeker agencies when trying to report sexual harassment in the workplace. Commonly, young women found work through a job service/employment agency as part of requirements as a Centrelink recipient.

Several case studies reported a culture of tolerance in job placement agencies and at Centrelink whenever concerns about sexual harassment were raised. Agency staff dismissed these concerns and urged clients to ‘put up with it’ so they could keep their job and avoid penalties.

**CASE STUDY 9: SMALL BUSINESS / FOOD SERVICES INDUSTRY**
The job was found through a Centrelink authorised employment agency. These agencies receive bonuses for job seekers finding work and for staying in the jobs found for them (they gained financial benefit for me staying in the job). I reported the sexual harassment to them, however my reports were minimised and dismissed (“he’s just from another country and he likes you”). This made me question my response and it was more difficult to speak up again when it continued. Nowadays, welfare payments can be easily cut by employment agencies, which makes it even harder to speak out if there are issues (re: sexual harassment) within a work placement. It is a significant power imbalance that can leave job seekers vulnerable
Need for safe accessible reporting channels
Several case studies reported that clients had difficulty knowing how or where to report the sexual harassment they were experiencing. For many, there were no internal workplace systems that they could turn to for help.

There were particular challenges for women where the perpetrator was also the boss, whether in large or small organisations. In these settings, victims of sexual harassment need access to information about where they can get help, and safe accessible reporting platforms and avenues.

Anonymous reporting platforms have worked in other settings and jurisdictions and should be considered as part of the solution. These reporting platforms not only provide access for survivors to information and support but can contribute to identifying repeat perpetrators and ‘problem’ workplaces and employers.

CASE STUDY 2: (continued) GRADUATE PLACEMENT AT LARGE LEGAL FIRM
[The] client articulated a culture whereby new graduates were to expect mistreatment – including excessive work demand, poor conditions and comments by senior lawyers.

Need for stronger prevention messaging in workplaces
Clients who worked in larger organisations identified that there was a need for stronger messaging in the workplace about the right of all employees to be free of harassment and abuse.

CASE STUDY 11: FAMILY OWNED PUBLIC TRANSPORT COMPANY
My client feels there should be a lot more training in workplaces. She says that if there had been lots of posters up about her right to be free of harassment, she could have referred the offender to these. She also thinks that male-dominated workplaces generally have more issues; although she was able to manage in the [transport] company as an older woman, she knows that some of the younger women suffered sexual harassment from some of the guys.

Public airing of high-profile cases can assist victims in recovery
Case studies highlighted few positive experiences, however many had recommendations about what might have made a difference for the clients whose stories were shared.

One highlighted there was a positive impact for her of the public reporting of sexual harassment allegations against a high-profile figure.

CASE STUDY 8: (continued) SMALL CONSULTING FIRM/ MARKET RESEARCH BUSINESS
[The client] spoke of feeling really empowered and less alone when the Robert Doyle sexual harassment claim came out in the media. She spoke of the general feeling that sexual harassment is “less serious” than sexual assault and that it is often minimised. Visibility in the media is helpful’
Those who know how to navigate the system can experience it as validating
A few case studies showed that regulatory systems can work to some extent for those who know how to navigate them, although even in these cases, the women still ended up leaving or losing their jobs.

The processes for seeking justice, protection and restitution were often painful, stressful and often drawn out.

CASE STUDY 1: (continued) SMALL OWNER-RUN RETAIL BUSINESS
[There were] No witnesses, however an ex-employee (female) approached the [client] about sexual harassment that she had experienced within that workplace also and they supported each other and discussed how they would respond. The ex-employee was in the process of speaking with police, Worksafe and the Australian Human Rights Commission. The outcome of these discussions is unknown. My client chose to leave the job after several weeks. She had previously had a difficult experience reporting a sexual assault to the police and she did not want to be involved in further investigations.

CASE STUDY 5: (continued) HOSPITALITY, POPULAR CAFÉ
When [the client’s] manager would not support her after the verbal abuse and sexual harassment, she quit and went straight to Fairwork Australia. [She] was referred to Victorian legal aid and her lawyer advised her to sue the manager for psychological damage and loss of potential income. [She] was successful in this endeavour and the matter settled at mediation. [She] was awarded $4000, which she said was validating. [She] explained that she was not looking for money but rather she wanted to make a stance against being complicit with harassment and hold the workplace accountable for allowing a workplace to be unsafe for so many women.

CASE STUDY 12: HOSPITALITY / CAFÉ
[The client] suffered a loss of earnings from June 2018 till Jan 2019 and financial hardship and stress [however she] is involved with hospitalities newly formed union and an online campaign to address industry issues. This exposure is felt as promising to [her], [as she] is passionate about her work and wanted to stay in the industry, [but] also triggering, as she has ongoing police investigations, and ongoing PTS symptoms.
RECOMMENDATIONS

Prevention
CASA Forum recognises the underlying gendered drivers of sexual harassment and supports greater efforts to address these through whole-of-government and community strategies to prevent violence against women and promote gender equality. Sexual harassment in workplaces exists and is enabled by a wider cultural acceptance of violence against women in Australia and across the world.

We recommend:

1. That the AHRC should look to the framework developed by Our Watch: Change the story: A shared framework for the primary prevention of violence against women and their children in Australia¹, as a strong foundation for coordinated action to reduce the prevalence of and harms caused by sexual harassment in Australian workplaces.

2. Whole-of-organisation approaches are essential to preventing sexual harassment and all forms of gendered violence. In addition to the actions detailed in Change the story, a national strategy needs to include information, training and resources to support managers and staff to respond, intervene and prevent violence and harassment in the workplace.

3. Primary prevention efforts should expand to include training and education in responding to disclosures of sexual harassment and assault. When discussions about sexual harassment in the workplace and other forms of violence against women occur, disclosures invariably follow. Ineffective, unskilled and inappropriate responses contribute to minimising the behaviour, victim-blaming and collusion with perpetrators, and enable the abuse to continue and to escalate.

Stronger, more effective regulatory regimes
Sexual harassment complainants require access to effective complaints processes, systems and regulatory environments. They also need assurances that the relevant regulatory agency has the necessary powers to investigate and enforce legal remedies.

Importantly, we support reforms that will help to shift the burden and responsibility for action to prevent or stop sexual harassment from (aggrieved) individuals to employers. Introducing a positive legal duty to do so, with stronger powers of enforcement is fundamental.

While regulatory regimes already exist that can deal with complaints of sexual harassment in workplaces, there is a need for these to be strengthened and expanded to incorporate sexual harassment as a form of discrimination that is able to be addressed via human rights commissions (AHRC, VHREOC); and as a form of harm within occupational health and safety statutes.

We recommend:

4. The government expand and strengthen the legal obligations of employers to prevent sexual harassment in their workplaces, through legislative reform and enhanced investigative and enforcement powers of regulatory agencies.
   
a. The government undertake legislative reform to include enforcement of existing and a strengthened positive duty on employers to prevent and address sexual harassment.
   
b. Work health and safety laws be amended to include a clearer focus on sexual harassment, and include the psychological harms caused by sexual harassment.
   
c. The government expand the powers of human rights commissions to investigate complaints; enforce undertakings and compliance notices; and escalate consequences for non-action or non-compliance and enforcement via legal action.
   
d. Law reform and strengthened powers must be accompanied by resources to enable human rights commissions and regulatory agencies to act on complaints.

Fair, effective and efficient complaints processes
Complaints processes need to be fair, effective, efficient and most importantly accessible.

A range of platforms and access points need to be available that take account of the inherent barriers to reporting that exist for many victims of sexual harassment.

Processes must be designed to encourage reporting by employees in the types of workplaces that traditionally don’t have Human Resources systems that they can turn to for support. In such small businesses, there is no room (even if there was willingness) for the victim or the perpetrator to be ‘conveniently moved’ to another area.

We recommend:

5. Complaints processes be designed to enable complaints to be followed up in a timely manner, without jeopardising access to justice for those who may require more support and therefore take longer to lodge their complaint.

6. Complaints processes and systems are tailored to meet the needs of groups at higher risk of sexual harassment in their workplaces, and those who face additional barriers to reporting (including young women, CALD and refugee women, women with disabilities, and women and workers in particular industries where higher rates of sexual harassment are known to occur)

Advocacy and support for workers who experience sexual harassment
The Victorian CASA Forum has an agreed Standards of Practice manual that provides this lens on sexual assault:

Sexual assault occurs along a continuum of behaviour which includes any uninvited sexual behaviour which makes the recipient feel uncomfortable, harassed or afraid, unwanted touching or remarks, sexual harassment, coerced sexual activity, rape with
physical violence and threat to life and sexual assault of children and the grooming of children that accompanies this crime.2

Sexual harassment in workplaces, or indeed sexual harassment that occurs anywhere in a victim’s life, may also trigger memories and the trauma of a past experience of sexual assault. It causes immense harm.

CASAs see many people, mostly women, who experience sexual harassment in the workplace. Often what starts as sexual harassment can become sexual assault. Survivors need specialist, expert support to help them deal with the impact of the behaviour, to navigate relevant service systems and to access legal redress. CASAs can and do provide these services now with finite resources.

CASA Forum services and member agencies have unique expertise in the delivery of services across the continuum of sexual harassment and assault and provide a model that clients report assists them to recover from the trauma of different forms of sexual violence.

**We recommend:**

7. The expansion and development of advocacy and support services for survivors of sexual harassment to:
   a. provide access to information about response and support options for victim-survivors,
   b. help survivors navigate relevant service systems and access legal redress
   c. ensure survivors are able to access counselling and support in a timely manner

8. Victorian CASAs represent a unique statewide specialist sexual assault service model, and should be consulted and represented via the CASA Forum at state and national levels in relation to the design and development of an advocacy and support model for survivors of sexual harassment.

9. A national network of advocacy and support services is established and/or identified to provide a visible point of contact for survivors, and that these provide specialist, appropriate, skilled support by professionals who understand the gendered nature of sexual harassment and sexual assault.

10. Resources, training, accreditation and compliance systems be developed to ensure that advocacy and support services meet required standards for effectively responding to sexual harassment and sexual assault.

**Accessible reporting avenues and tools**

The gender and power imbalances that allow sexual harassment to flourish in workplaces often make it risky and incredibly difficult for survivors to report what’s happening to them. The system needs to be designed so that victims of sexual harassment have access to safe reporting tools and avenues.

Anonymous reporting platforms and tools have worked for some survivors of sexual assault, helping to link them to services and make choices about further action they might want to take. The South Eastern Centre Against Sexual Assault (SECASA) in Victoria developed the SARA3 (Sexual Assault

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3 [https://www.sara.org.au/](https://www.sara.org.au/)
Report Anonymously) tool that provides a useful model for comparison and that could inform a national platform.

**We recommend:**

11. That a national online anonymous reporting platform be developed and trialled to enable victims of sexual harassment to safely report the abuse and provide them with access to information and support.

12. That CASA Forum be funded to provide expert advice, guidance and support in relation to the development and implementation of a national online anonymous sexual harassment reporting tool, with reference to the existing SECASA SARA tool.

**Endorsements**

CASA Forum would also like to advise that we endorse Recommendation 8 in Women’s Health Victoria’s submission to the AHRC, in relation to research and data collection efforts required to build an evidence base on sexual harassment.

CASA Forum is also a signatory to the **Joint Statement on Sexual Harassment** that has been endorsed by over 100 organisations and individuals across Australia, representing legal, peak bodies, community, health, sexual assault services, academic and union sectors across Australia.