

# 72% of Australians have been sexually harassed, and the system to solve the problem is broken

June 26 2020, by Karen O'connell

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Credit: Keira Burton from Pexels

With the investigation into former High Court judge Dyson Heydon, we are once again talking about the [devastating impact](#) of sexual

harassment.

This time, the background setting is the law, but at other times the allegations of harassment have been in [medicine](#), [politics](#), [hospitality](#) and [the arts](#).

While we discuss this latest shocking case as if it is a surprise, [the statistics do not change](#). Sexual harassment is an everyday experience in Australia.

According to a 2018 [Australian Human Rights Commission \(AHRC\) survey](#), 72% of Australians over 15 have experienced sexual harassment in their lifetimes. In the previous 12 months, 23% of women and 16% of men said they had been harassed at work.

We know that sexual harassment is unlawful. So why do we still keep hearing these appalling stories?

Despite all the measures we have put in place, we are not fixing the problem.

We are refusing to acknowledge the truth: Australia has a sexual harassment system that is set up to fail at the very thing it is intended to do—eradicate sexual harassment.

## **What happens if someone is sexually harassed?**

On paper, Australia has strong sexual harassment laws, [federally as well as in every state and territory](#).

These laws follow similar patterns: they make sexual harassment unlawful in certain areas of public life, including employment. The laws also require employers to put in place policies, training and grievance

procedures to respond to sexual harassment in the workplace if they want to avoid liability for harassment.

So, let's now consider what happens when someone experiences unwelcome sexual behavior at work.

The person can make a [complaint](#) to their employer, to try to resolve things through internal grievance procedures. If these do not exist or are inadequate, a complaint can be made to the AHRC or equivalent state or territory body.

Compulsory conciliation then takes place, with each side meeting to reach an agreement on an acceptable outcome. If conciliation fails, the complaint is terminated and the complainant has the option of going to court.

## **It's rare for victims to come forward for help**

Despite this extensive framework, very few people formally come forward.

According to the AHRC's 2018 survey, [only 17% of people](#) who experienced sexual harassment at work in the previous five years made a formal report or complaint about the harassment.

Of that fraction, even fewer are brought as [formal complaints to the AHRC](#) or equivalent. And, as a researcher on sexual harassment law, I see only a tiny number of cases go to court or tribunal each year.

This could be because the system is successfully managing sexual harassment. But [academic research](#) strongly counters this view, showing that complainants who settle before going to court are motivated more by concerns about the time and cost of litigation, problems with proving

discrimination and low compensation.

In practice, the sexual harassment framework can be seen as a system for filtering out and silencing complaints until nothing much is left.

## **Our sexual harassment system is designed to look as if we are addressing the problem**

This is not surprising if we think about what the system actually does.

It requires the harassment to have already happened and it requires the person who has been hurt to take responsibility for making a complaint (a person cannot make a complaint on behalf of someone else).

But making a complaint often means more distress, more unwanted focus on the person's sexuality and further risk to their career. It is a passive, backward-looking system that potentially amplifies the very harm the person has already experienced.

Where it does work, it mostly provides for individual compensation.

The system does not require organizations to take positive steps to deal with broader workplace cultures and structures that permit harassment.

If, for example, the workplace structure involves [young women](#) entirely under the direction of a powerful man with no oversight, the system waits for something to go wrong and puts the onus on the young woman to set it right.

## **How can we fix it?**

It is clear we need a system that deals with the bigger picture of

harassment. The AHRC recently conducted an extensive inquiry into sexual harassment in Australian workplaces and has good recommendations to do just that.

The report, [Respect@Work](#), was released in [March this year](#) and needs to be implemented.

Two of the report's 55 recommendations stand out. The first is that sexual harassment laws should be amended to explicitly make the creation or facilitation of a "hostile environment" at work unlawful. This can include belittling and sexual comments, not necessarily directed at one individual.

Workplaces that are toxic for women are places where harassment thrives. Rather than identifying single acts of harassment, pervasively toxic cultures must be addressed.

## **A positive duty to protect employees is needed**

Another important recommendation is the creation of a positive duty on employers to take "reasonable and proportionate measures" to eliminate sexual harassment from their workplaces.

A positive duty means there is a clear responsibility for creating the kind of workplace systems and structures to prevent sexual harassment occurring.

We need these active and forward-looking measures to prevent harassment.

Because if we keep the system as it is, we will have only the pretense that [sexual harassment](#) is being adequately addressed. We will keep debating the same cases of entrenched and ongoing [harassment](#) and we

will keep our terrible statistics.

We will keep failing.

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