

VAGO

Victorian Auditor-General's Office



Sexual Harassment in the Victorian Public Service

November 2019



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Independent assurance report to Parliament

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Victorian Auditor-General's Office

The Hon Shaun Leane MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Colin Brooks MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of the *Audit Act 1994*, I transmit my report *Sexual Harassment in the Victorian Public Service*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Greaves', is written over a faint, light blue circular watermark or seal.

Andrew Greaves
Auditor-General

28 November 2019

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Acronyms

AHRC	Australian Human Rights Commission
APS	Australian Public Service
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
DET	Department of Education and Training
DHHS	Department of Health and Human Services
DJCS	Department of Justice and Community Safety
DJPR	Department of Jobs, Precincts and Regions
DoT	Department of Transport
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
EAP	Employee Assistance Program
HR	human resources
IPP	Information Privacy Principle
LGBTIQ	lesbian, gay, bisexual, trans and gender diverse, intersex, queer and questioning
PMS	People Matter Survey
VAGO	Victorian Auditor-General's Office
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VPSC	Victorian Public Sector Commission
VSB	Victorian Secretaries Board

Abbreviations

the enterprise agreement	<i>Victorian Public Service Enterprise Agreement 2016</i>
the guide	<i>VPSC Guide for the Prevention of Sexual Harassment in the Workplace</i>
the model policy	<i>VPSC Model Policy for the Prevention of Sexual Harassment in the Workplace</i>

Support options

Sexual harassment can take many forms and result in physical and emotional harm. Our report discusses these issues. If you or someone you know has experienced sexual harassment or assault, or feels distressed, several support options are available.

1800RESPECT—national sexual assault, domestic and family violence counselling service

1800RESPECT provides information, referral and counselling services to people experiencing or at risk of experiencing sexual assault, domestic or family violence. It is also available to friends, family and professionals. 1800RESPECT provides a confidential service 24 hours a day, seven days a week.

Phone: 1800RESPECT (1800 737 732)

www.1800respect.org.au

Employee Assistance Program

The Employee Assistance Program (EAP) provides free and confidential short-term counselling to Victorian Public Service employees for workplace and personal issues. Staff can obtain details of the relevant EAP from their departments' human resources (HR) teams.

Centres Against Sexual Assault

Centres Against Sexual Assault are non-profit, government-funded organisations that provide support, counselling and crisis care to child and adult victims of sexual assault and their family. You can find your local centre by visiting www.casa.org.au.

Lifeline

Lifeline is a national charity providing all Australians experiencing a personal crisis with access to 24-hour crisis support and suicide prevention services.

Phone: 13 11 14

www.lifeline.org.au

Making a sexual harassment complaint

This audit examines whether the Victorian Public Service is free from sexual harassment. We do not take or investigate individual complaints. You can make a complaint or seek further information from:

Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) is an independent statutory body that has responsibilities under several pieces of legislation, including the *Equal Opportunity Act 2010*. You can contact VEOHRC to seek information or have your complaint heard.

VEOHRC may review complaints or refer them to the Victorian Civil and Administrative Tribunal.

Phone: 1300 292 153

www.humanrightscommission.vic.gov.au

Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is an independent statutory organisation established by the Parliament of Australia. It promotes human rights in Australia and internationally and investigates complaints about discrimination and human rights breaches.

Phone: 1300 656 419

www.humanrights.gov.au

Victoria Police

The role of Victoria Police is to serve the Victorian community and uphold the law. If you have experienced or witnessed a criminal offence, you should report it to Victoria Police via a local police station. In an emergency, dial 000.

www.police.vic.gov.au

Victorian Civil and Administrative Tribunal

The Victorian Civil and Administrative Tribunal hears and decides civil and administrative legal cases in Victoria. Complainants can apply directly to the tribunal to have a complaint about sexual harassment heard.

Phone: 1300 018 228

www.vcat.vic.gov.au/get-started/equal-opportunity

Audit overview

Sexual harassment is harmful, unlawful and, in some instances, a criminal offence. Its impact on individuals and employers can be significant.

The *Equal Opportunity Act 2010* defines what behaviours constitute sexual harassment in public life, including in the workplace. Sexual harassment is unwelcome behaviour of a sexual nature that a reasonable person would expect would make another person feel offended, humiliated or intimidated. Anyone can perpetrate or experience sexual harassment. It may be physical, spoken or written and can occur even when the perpetrator does not intend it.

Under the *Equal Opportunity Act 2010*, organisations including Victorian government departments must take reasonable and proportionate measures to eliminate sexual harassment in their workplaces.

This audit examines whether Victorian government departments provide workplaces that are free from sexual harassment. The departments are:

- Department of Environment, Land, Water and Planning (DELWP)
- Department of Education and Training (DET)
- Department of Health and Human Services (DHHS)
- Department of Justice and Community Safety (DJCS)
- Department of Jobs, Precincts and Regions (DJPR)
- Department of Transport (DoT)
- Department of Premier and Cabinet (DPC)
- Department of Treasury and Finance (DTF).

We looked at whether departments:

- have effective measures to prevent and report on sexual harassment
- respond to complaints of sexual harassment in a fair and effective manner.

Conclusion

The PMS is an annual survey run by the Victorian Public Sector Commission. It invites all employees in participating Victorian public sector organisations to have their say on how well their organisation, leaders and colleagues demonstrate public sector values and employment principles.

No department is free from sexual harassment and while they are working to improve this, departments can still do more. While departments express a clear message that sexual harassment is unacceptable, the 2019 People Matter Survey (PMS) found that one in 14 respondents experienced sexual harassment in the previous 12 months.

Departments make complaint channels available, but staff rarely use them. Our survey of public service staff found that this is because staff lack faith in the complaints system, fear the consequences, or perceive that the behaviour they experienced is not serious enough. Departmental training currently does little to address this.

Managers are often the ones to handle informal complaints of sexual harassment within their team, yet few receive training to help them do this. Further, departments do not generally have oversight as to how informal complaints are managed.

We reviewed formal complaints and found that for most, the departments' complaint handling process was fair and effective. However:

- The process for dealing with formal complaints can be lengthy and is not transparent.
- Departments have differing views and practices as to what information they can share with the complainant about investigations, which can lead them to share very little.
- We also saw differences between departments' threshold for investigating and making findings of misconduct, as well as examples of poor record keeping.

Poor handling of both formal and informal complaints leads to staff dissatisfaction, negative impacts on complainants and others and may also lead to organisational liability.

Findings Prevalence of sexual harassment

Through the PMS run by the Victorian Public Sector Commission (VPSC), departments have data on the prevalence of sexual harassment in their workforce. The survey is anonymous, which encourages staff to be open about their experiences. Response rates at departments are high (between 43 and 82 per cent), which means the data is reliable.

In the 2019 PMS, 7 per cent of departmental respondents said they had experienced sexual harassment in the past 12 months. This is more than 1 400 employees.

This has reduced from 11 per cent of respondents in the 2016 survey, which is positive. However, it is too soon to determine if this decrease is a trend, as only four years of data is available.

Employees at high risk

Anyone can experience sexual harassment, but the PMS results show that the following types of respondents are at much greater risk:

- those with a self-described gender identity (26 per cent experienced sexual harassment)
- women aged 15 to 24 (14 per cent experienced sexual harassment)
- lesbian, gay, bisexual, trans and gender diverse, intersex, queer and questioning (LGBTIQ) persons (13 per cent experienced sexual harassment)
- Aboriginal and Torres Strait Islanders (12 per cent experienced sexual harassment)
- those who earned less than \$75 000 (11 per cent experienced sexual harassment).

Types of sexual harassment experienced

Sexual harassment can take many forms. However, the 2019 PMS reports that the most common experiences were:

- intrusive questions about a person's private life or comments about their physical appearance
- sexually suggestive comments or jokes that offend a person (either in a group or one-on-one situation).

Departments must address all forms of sexual harassment, as research has shown that these behaviours can have significant negative impacts on individuals.

Negative impacts

Sexual harassment can significantly affect employees' mental and physical health. We conducted our own survey of departmental employees and received 4 811 responses. Twelve per cent of respondents who experienced sexual harassment said it negatively affected their:

- mental health and caused them stress
- self-esteem and confidence
- employment, career or work
- relationship with their partner, children, friends or family.

For organisations, sexual harassment may reduce workforce morale, and increase absenteeism and turnover. It can also expose departments to legal liability and be costly to investigate.

Responding to complaints

Encouraging complaints

Departments have adequate processes to accept complaints, but they need to do more to address underreporting of sexual harassment.

Of the PMS respondents who said they experienced sexual harassment, only 3 per cent said that they made a formal complaint.

Our survey suggests that the top reasons why staff do not make complaints about sexual harassment are that they:

- did not think it was serious enough
- believed there would be negative consequences for their reputation and/or career
- did not think it would make a difference
- did not believe the complaint would result in any action.

While some departments have implemented strategies to encourage staff to report complaints, it is too soon to assess whether this has improved reporting.

Informal and formal responses

Departments have both formal and informal processes to respond to sexual harassment complaints, which is good practice. In some cases, inappropriate behaviour (including sexual harassment) can be addressed at the team or workgroup levels, and not proceed to a formal investigation.

However, when departments address sexual harassment informally, there is little central oversight or knowledge of these instances and their handling. This also meant we could not assess how well departments respond to informal complaints.

Managers are often the ones to respond to informal sexual harassment complaints. There is limited training for managers on responding to sexual harassment complaints, which is a missed opportunity particularly given the sensitivity of these issues.

Departments receive a small number of formal complaints. We found variable practice in how departments handle these complaints. Poor practices include incomplete record keeping and limited communication with complainants, inconsistencies in the handling of potential criminal matters, lack of procedural fairness, and inconsistencies in investigations.

Documentation and record keeping

Departments do not always keep accurate and complete records on how they have handled formal sexual harassment complaints. This ranged from minor to some more serious instances, such as where investigation reports were missing.

Proper record keeping within the case files ensures departments comply with the *Public Records Act 1973*, and the absence of records puts the department at risk if its decisions are challenged.

Most departments do not have a sophisticated complaints management system. They rely on often outdated, mostly manual systems, which do not allow for easy registration, categorisation and reporting of complaints. Two departments were unable to quantify how many sexual harassment complaints they have received due to a failure to categorise sexual harassment complaints consistently, and having multiple, varied databases for central and regional staff.

Responding to criminal matters

Departments do not have a common understanding about how to handle alleged sexual harassment that may constitute a criminal offence, particularly in relation to engaging with Victoria Police before starting an investigation.

VPSC's guidance states that if an allegation appears to be relevant to the police, the department is obliged to report it to the police regardless of whether the complainant has done so. We found two cases where departments did not do this.

Poor communication with complainants

Making a complaint of sexual harassment can be a stressful experience that can negatively affect an employee's mental health and wellbeing.

Departments providing regular communication and information to the complainant helps complainants to feel part of the process.

We found variable practices in this regard. Some departments provided complainants with a senior officer within the department to offer support. Other departments had limited documentation as to whether they offered support or provided updates on the investigation.

All departments have communicated to their staff about the EAP on their intranet and in policies. In almost half of the investigation files we reviewed, departments did not document offers of support, such as the EAP, to the complainant in their investigation files. As such, we could not confirm that these offers occurred.

Departments give complainants varying levels of detail on the outcome of investigations, due to concerns for the subject's privacy. There is also limited guidance and uncertainty around how much information can be provided. Our survey highlighted that failure to inform the complainant can result in dissatisfaction in the complaint process.

Preventing sexual harassment

Policies

In November 2018, VPSC introduced the *Model Policy for the Prevention of Sexual Harassment in the Workplace* (the model policy). In general, departments have clear and accessible policies on sexual harassment that align with VPSC's model policy.

Some policies miss elements that the model policy includes, such as referring to the importance of bystander intervention and outlining external complaint avenues. As the VPSC introduced the model policy in November 2018, departments are still updating their sexual harassment policies to align with it.

DJCS and DTF do not have standalone sexual harassment policies, but instead include it in other documentation, such as appropriate workplace behaviour policies. This may reduce the visibility of sexual harassment guidance.

Training

Departments include sexual harassment training in their staff induction modules, but not all staff have completed this training. Our survey found only 23 per cent of respondents said they completed training on sexual harassment at induction, and 42 per cent said that they had never received sexual harassment training.

This is a missed opportunity to educate staff and may also expose departments to legal liability if sexual harassment occurs.

The content of training is also important. Bystanders play an important role in addressing and preventing sexual harassment, but most departments do not provide detailed training to help bystanders understand their role.

Training is important for managers as well as staff. Respondents to our survey highlighted issues with the way that their managers handled their complaint. Most departments do not offer specialised training for managers on how to deal with sexual harassment complaints.

Communication

At seven of the eight departments, senior leaders have sent at least one communication since 1 January 2018 outlining that sexual harassment in the workplace is unacceptable and signalling their commitment to its prevention.

In our survey, 71 per cent of respondents agreed that their department communicates zero tolerance for sexual harassment.

This is positive. Departments should continue to communicate at least annually with staff and express a commitment to eliminate this behaviour in the workplace. They may also consider further, targeted communication based on risk factors.

Addressing risk factors

The PMS gives departments information on high-risk teams, cultures and leadership within their workplace. Most departments prepare action plans to address key PMS findings, but these plans do not focus on groups at higher risk of sexual harassment, such as those with a self-described gender identity, LGBTIQ employees, women and Aboriginal and Torres Strait Islander employees.

Recommendations

Grey area behaviours are behaviours that some employees may find offensive and others may not. These might include more subtle and nuanced forms of sexual harassment.

We recommend that all departments:

1. introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:
 - practical guidance to help bystanders intervene
 - examples of less overt forms of sexual harassment and 'grey area' behaviours
 - reference to the relevant legislation, definition and that sexual harassment is unlawful
 - complaint channels (including external avenues)
 - consequences for the alleged harasser and the department, including legal liability
 - impact of sexual harassment on employees
 - positive duty to eliminate sexual harassment and victimisation in the workplace (see Section 4.3)
2. provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:
 - include training on the department's positive duty to eliminate sexual harassment and victimisation
 - be delivered to all new managers and repeated at least once every two years
 - be delivered face-to-face if possible (see Section 4.4)
3. develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups (see Section 3.2)
4. improve record keeping practices, including:
 - providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the *Public Records Act 1973*
 - performing spot checks at least annually to ensure records for formal complaints are appropriately maintained (see Section 3.3)
5. securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure:
 - complaint files can be located using a unique identifier found in the register
 - the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint (see Section 3.2)

6. implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police (see Section 3.3)
7. ensure that their senior leadership communicate at least annually a commitment to eliminate sexual harassment (see Section 4.5).

We recommend that the Department of Justice and Community Safety and the Department of Treasury and Finance:

8. introduce a standalone sexual harassment policy that incorporates better practice elements in the Victorian Public Sector Commission's model policy (see Section 4.2).

We recommend that the Victorian Public Sector Commission:

9. develop guidance for departments on investigating matters with no independent witnesses (see Section 3.3)
10. review and expand guidance for departments on reporting matters to Victoria Police (see Section 3.3)
11. develop guidance to ensure that departments understand the level of information they can share with complainants and others when the investigation concludes (see Section 3.4).

We recommend that the Victorian Equal Opportunity and Human Rights Commission:

12. develop guidelines on:
 - how to address and respond to anonymous complaints
 - what to do if a victim does not want to proceed
 - what to do if a subject resigns before the conclusion of an investigation
 - how to refer complainants to external bodies (see Part 3).

Responses to recommendations

We have consulted with DELWP, DET, DHHS, DJCS, DJPR, DoT, DPC, DTF, VEOHRC, VPSC and WorkSafe Victoria, and we considered their views when reaching our audit conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report to those agencies and asked for their submissions or comments.

The following is a summary of those responses. We include the full responses in Appendix A.

- All departments accept the recommendations directed to them and have produced action plans detailing how they will address them.
- VPSC and VEOHRC accepted the recommendations directed to them.
- WorkSafe Victoria did not comment on the draft report as there were no recommendations or findings directed to it.

1

Audit context

Sexual harassment in the workplace is unlawful and can have significant negative effects on individuals and their employers. In some cases, sexual harassment is also a criminal offence.

A national survey by the AHRC in 2018 showed that sexual harassment is common. One in three people reported being sexually harassed at work in the past five years.

In the Victorian public service, this rate appears to be lower. In 2019, 7 per cent of departmental respondents to the VPSC's PMS said that they had experienced sexual harassment at work in the previous 12 months.

Under the *Equal Opportunity Act 2010*, organisations including Victorian government departments must take reasonable and proportionate measures to eliminate sexual harassment in their workplaces. This audit examines the effectiveness of those steps.

1.1 Why this audit is important

There is growing awareness of the impact that sexual harassment in the workplace can have on individuals, employers and the wider organisation.

Impact on individuals

Academic research suggests that sexual harassment at work can cause significant physical, mental and financial harm to individuals. The AHRC's 2018 *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces* reports that most sexual harassment victims experience some short or long-term consequences. It has been linked to depression, anxiety and other health issues, absenteeism and reduced job satisfaction.

Impact on employers

Research also shows that sexual harassment is costly to employers. It can cause workplace disruption, impact employee productivity, damage culture and increase employee absenteeism and turnover.

Unless the relevant organisation has taken reasonable precautions to prevent sexual harassment, a tribunal may find it vicariously liable for the sexual harassment perpetrated by its employees. Even without the risk of litigation, it is costly to an organisation to investigate and act on complaints.

Why this audit is important now

Since 2016, PMS data has shown that sexual harassment is an issue for Victorian government service employees. At the same time, the AHRC's *National Inquiry into Sexual Harassment*, which began in 2018, and international movements such as the #MeToo campaign have renewed attention on the issue of sexual harassment.

In 2018, the Victorian government signalled its commitment to preventing and responding to sexual harassment. The Victorian Secretaries Board (VSB) issued a statement that 'any form of sexual harassment in any public sector workplace is unacceptable' and formed a working group, chaired by the VPSC. In November 2018, the VPSC introduced the model policy and *Guide for the Prevention of Sexual Harassment in the Workplace* (the guide).

It is timely for us to assess whether the departments are providing workplaces that are free from sexual harassment.

1.2 What is sexual harassment?

The *Equal Opportunity Act 2010* defines sexual harassment in the workplace as any unwelcome behaviour of a sexual nature that makes a person feel offended, humiliated, and/or intimidated in circumstances where a reasonable person would expect that reaction.

Anyone can perpetrate or experience sexual harassment. The model policy and guide outline various forms of sexual harassment, including:

- comments or questions of a sexual nature about a person's private life or their appearance
- sexually suggestive comments or jokes
- displaying offensive screensavers, photos, calendars, or objects of a sexual nature
- sexually explicit emails, text messages or posts on social networking sites
- repeated requests to go out on dates
- requests for sex or sexual favours
- sexually suggestive behaviour, such as leering, staring or offensive gestures
- unwelcome physical contact of a sexual nature including brushing up against someone, touching, fondling, or hugging
- actions or comments of a sexual nature in a person's presence (even if not directed at that person)
- sexual assault, indecent exposure, physical assault, and stalking (which are also criminal offences).

Sexual harassment can occur even when the perpetrator does not intend it. It does not need to be a repeated behaviour.

Risk factors

Sexual harassment can occur in any workplace and to any person. Research shows that certain factors can increase the risk of sexual harassment, including:

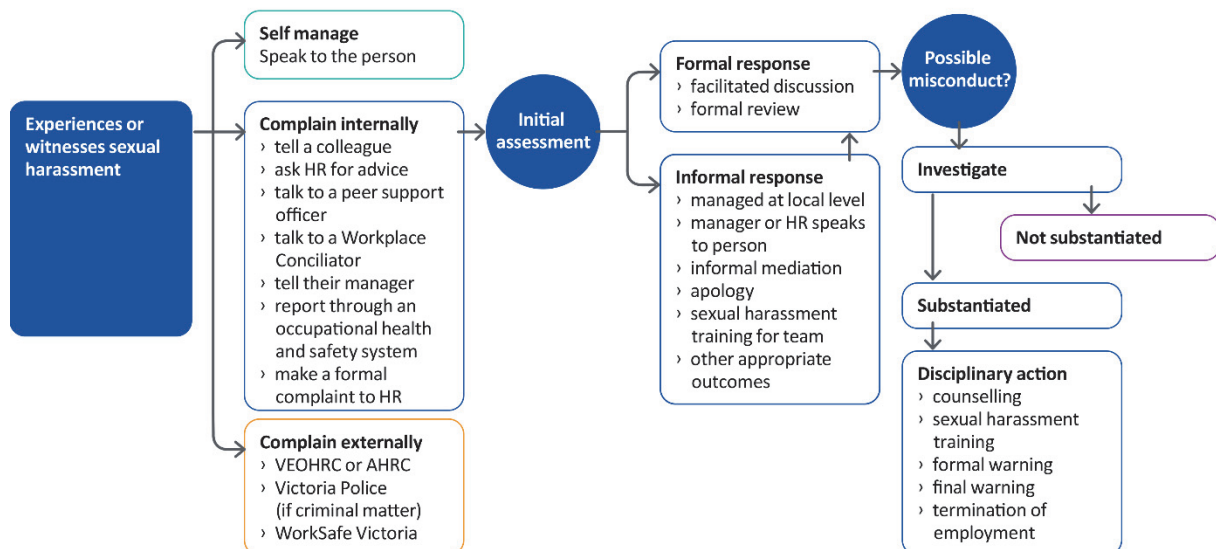
- poor organisational culture
- unequal power between men and women
- rigid gender stereotypes
- predominately male workforces
- hierarchical power structures.

1.3 Prevalence and complaints

Departments can use PMS data to look at culture and the prevalence of sexual harassment within the organisation. However, as an anonymous survey, the PMS does not give detail on individual complaints. Departments need to encourage complaints so that they can act on inappropriate behaviour.

VPSC's model policy and the AHRC's *Code of Practice for Employers 2008* recommend that employers have formal and informal channels for sexual harassment complaints. Figure 1A shows possible complaint channels, responses and outcomes.

Figure 1A
Possible complaints channels, responses and outcomes



Source: VAGO.

The department will determine how to handle the complaint, and should take into account the:

- nature of the complaint
- wishes of the complainant
- outcome the complainant is seeking
- initial channel for submitting the complaint
- need to protect employees.

1.4 Responding

When a department becomes aware of sexual harassment, it should act quickly and effectively and ensure it protects staff from victimisation. If a complaint is made, where appropriate, departments should encourage the relevant parties to resolve the complaint through informal procedures rather than through a formal investigation.

There may be instances where a formal complaint or response is necessary. If a disciplinary outcome is required, the department may initiate a formal misconduct process under Clause 21 of the *Victorian Public Service Enterprise Agreement 2016* (the enterprise agreement).

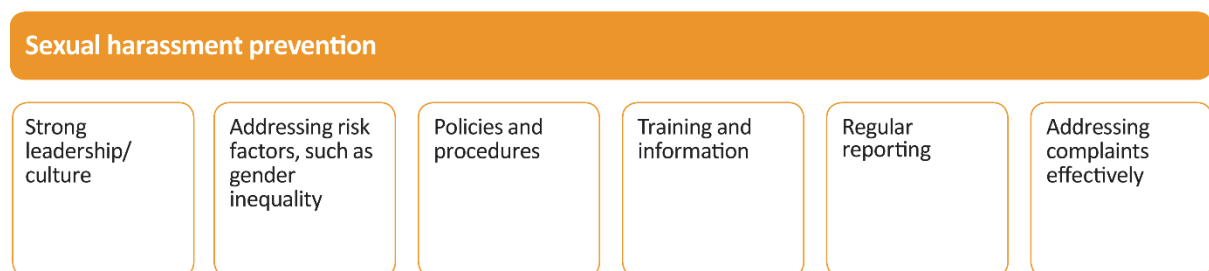
These processes should be well documented, timely, and uphold procedural fairness. They should also include supports for all parties, as the response to a sexual harassment complaint can be distressing for all involved.

1.5 Prevention

Departments must take reasonable steps to eliminate sexual harassment in their workplaces.

Figure 1B shows the key steps for preventing sexual harassment.

Figure 1B
Sexual harassment prevention



Source: VAGO.

1.6 Legislation, policy and guidance

Sexual harassment in the workplace is unlawful and prohibited under Victoria's *Equal Opportunity Act 2010* and the Australian *Sex Discrimination Act 1984*.

Departments have a positive obligation to eliminate sexual harassment in their workplace as far as possible. Departments, as employers, must also provide a safe workplace under Victoria's *Occupational Health and Safety Act 2004*.

The legislative framework does not prescribe the structures organisations need to have to prevent and respond to sexual harassment. This means organisations have the flexibility to design a system that suits their size, risk profile and resources.

Appendix B provides an overview of key legislative and guidance material relevant to public sector bodies when developing their sexual harassment policies and procedures.

1.7 Who we audited and why

We included 11 agencies in this audit:

- All eight Victorian government departments—DELWP, DET, DHHS, DJCS, DJPR, DoT, DPC and DTF
- VEOHRC
- VPSC
- WorkSafe Victoria.

Victorian government departments

The eight Victorian government departments employ more than 36 000 staff. Departments are often seen as the leaders in the public service and how they act and respond to sexual harassment sets an important example for the rest of the public sector.

On 1 January 2019, the Victorian government split the former Department of Economic Development, Jobs, Transport and Resources (DEDJTR) into two new departments, DoT and DJPR. We assessed both the former DEDJTR, as well as DoT and DJPR. DoT supplied data that predates the transition of the former VicRoads and the former Public Transport Victoria into DoT, which occurred on 1 July 2019.

VEOHRC

VEOHRC has responsibilities under the *Equal Opportunity Act 2010*, the *Charter of Human Rights and Responsibilities Act 2006* and the *Racial and Religious Tolerance Act 2001*. VEOHRC:

- provides education resources, training packages, practice guidance and consultancy services regarding sexual harassment
- can conduct investigations into potential systemic and serious matters of sexual harassment, discrimination or victimisation
- can review an organisation's compliance with human rights on request and enter into action plans with organisations to improve compliance with sexual harassment protections
- delivers a dispute resolution service for complaints about discrimination, sexual harassment, victimisation and racial or religious vilification.

VEOHRC can accept complaints from any person in Victoria, including government employees concerned about discrimination or harassment in their workplace.

VPSC

The role of the VPSC is to strengthen the effectiveness, efficiency and capability of the public sector. It issues codes of conduct and standards, monitors and reports on public sector compliance with these standards, and runs the annual PMS.

The VPSC:

- Deputy Commissioner chairs a VSB working group established to lead work on preventing and responding to sexual harassment in the workplace since March 2018
- released the model policy and guide in November 2018
- introduced the *Respectful Workplaces Framework* and the *Prevention of Sexual Harassment – Model Action Plan* in July 2019.

Together, these actions seek to support the public sector in preventing sexual harassment through improved policies and processes and by changing cultural norms.

WorkSafe Victoria

WorkSafe Victoria enforces occupational health and safety and accident compensation laws in Victoria. It aims to prevent workplace injury, disease and death. Staff who are injured at work, including those who experience mental health issues because of harassment, can make a workers' compensation claim. WorkSafe Victoria (or its agents) receives, assesses and determines claims for compensation. It also educates employers to achieve healthy and safe working environments.

1.8 What this audit examined and how

This audit examined whether the Victorian public service provides workplaces that are free from sexual harassment.

We assessed whether departments:

- have effective measures to prevent and report on sexual harassment
- respond to complaints of sexual harassment in a fair and effective manner.

Methods used

As part of the audit we:

- analysed raw data from the PMS undertaken from 2016 to 2019 for the audited departments and the former DEDJTR
- ran an online public submissions process. We received 27 submissions—two from organisations and 25 from departmental staff—on their experiences and views of sexual harassment in the Victorian public service
- examined departmental documentation, including policies, training, action plans and prevention strategies
- reviewed a selection of sexual harassment complaint files in each department.

We also conducted our own survey for departmental staff on sexual harassment. Our survey did not include staff working in prisons or statutory authorities.

Our survey asked about:

- individual experiences of sexual harassment and impact
- why respondents did or did not complain
- the adequacy of policies
- the effectiveness of training
- views on departmental communication and prevention.

The PMS asks staff about their experiences of sexual harassment and why they did not complain or whether they were satisfied with how the department handled their complaint. Our survey asked additional questions to gain further insight on sexual harassment.

Our survey was open for two weeks and received 4 811 responses. We received too few responses from DJPR and DOT to use in our analysis. We removed these responses from our analysis, which brought our response total to 4 729. The response rates for each remaining department ranged between 10 and 26 per cent.

We refer to both the PMS and our own survey throughout the report. While survey data is the best data source we have for understanding prevalence of sexual harassment, it is limited by response rates. It may not capture all staff who experience sexual harassment.

We conducted this audit in accordance with the *Audit Act 1994* and ASAE 3500 Performance Engagements. We complied with the independence and other relevant ethical requirements related to assurance engagements. The cost of this audit was \$520 000.

Any persons named in this report are not the subject of adverse comment or opinion.

1.9 Report structure

The remainder of this report is structured as follows:

- Part 2 examines the prevalence of sexual harassment and whether department workplaces are free from harm.
- Part 3 examines how departments address complaints of sexual harassment.
- Part 4 examines what departments have done to prevent sexual harassment in their workplaces.

2

Prevalence of sexual harassment

To address sexual harassment in their workplaces, departments must first understand its prevalence. They can then:

- identify trends and key demographics
- identify high-risk groups in their workforce
- determine whether prevention initiatives are working.

Departments rely on those who experience or witness sexual harassment to report these matters. This enables departments to measure the prevalence of sexual harassment in their organisation. Staff can report sexual harassment by making a complaint to their department or by taking part in surveys.

We assessed complaints and survey data to measure the prevalence of sexual harassment in the departments. We also assessed whether departments understand the prevalence of sexual harassment in their organisations and can identify and act on high-risk areas in their workforce.

2.1 Conclusion

Sexual harassment occurs in every department. Approximately one in 14 respondents reported experiencing sexual harassment in the 12 months prior to the 2019 PMS. The 2019 PMS also shows that certain groups of people are at increased risk of sexual harassment, such as those with a self-described gender identity or LGBTIQ individuals and young women.

Since 2016, the PMS has reported a reduction in the percentage of departmental respondents experiencing sexual harassment. While positive, more data is needed to feel confident that this is a sustained trend.

While the PMS provides data on high-risk demographics and poorly performing business units, it shows that formal complaints are significantly underreported. The underreporting, coupled with inadequate systems to capture informal complaints, means the ability of departments to understand sexual harassment prevalence and proactively identify and act on sexual harassment is limited.

2.2 How common is sexual harassment?

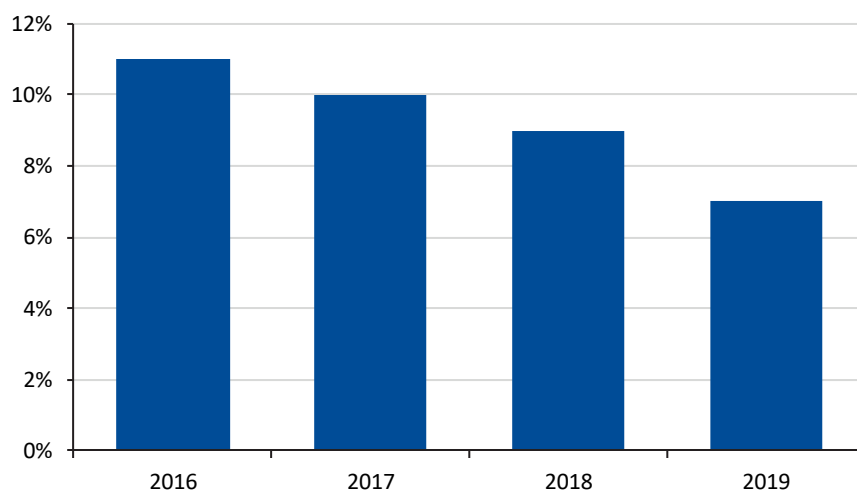
The VPSC runs the PMS across Victorian public sector agencies. Within the seven departments, 19 821 employees responded to the 2019 survey. This reflects a response rate of 56 per cent.

One way that departments can measure the prevalence of sexual harassment is through survey data. The most comprehensive survey in Victoria is the annual PMS, due to its high response rates. The PMS has included questions on sexual harassment since 2016.

Prevalence in the public service

In Victoria, 7 per cent of departmental respondents to the 2019 PMS—or one in 14 respondents—reported experiencing sexual harassment in the past 12 months. This is down from 11 per cent of respondents in 2016, which is a statistically significant decrease. However, it is too soon to determine if sexual harassment is decreasing in Victorian departments in a sustained manner, as only four years of data is available. This is illustrated in Figure 2A.

Figure 2A
Departmental respondents who have experienced sexual harassment



Source: VAGO analysis of PMS data 2016–19.

Factors that could influence this decrease include communication and initiatives to address sexual harassment that departments have implemented over the past four years. We discuss these measures further in Part 4.

Prevalence in other states

The VPSC was one of the first government agencies in Australia to include questions on sexual harassment in its survey of government staff. Four states—including Victoria—report publicly on rates of sexual harassment in their public service. The Australian Public Service (APS) also reports its results. The results are shown in Figure 2B.

Figure 2B
Sexual harassment prevalence across public services

State	Respondents who experienced sexual harassment in the 12 months prior to the relevant survey
Queensland	1% of respondents — Working for Queensland survey 2018
South Australia	3% of respondents — I work for SA – Your Voice Survey 2018
Tasmania	2% of respondents — State Service Employee Survey 2018
APS	3.3% of respondents — APS Employee census 2018.
Victoria	9.4% of respondents — PMS 2018

Note: Response rates—Queensland (44%), South Australia (22%), Tasmania (30%), APS (74%), Victoria (56%).

Source: VAGO.

Differing survey design across the states may explain Victoria's higher results. In Victoria, the survey asks whether respondents have experienced certain types of behaviours—such as inappropriate touching, sexually suggestive comments, or sexually explicit messages. In contrast, other states' surveys do not ask about certain behaviours, but instead ask whether a respondent has experienced sexual harassment. As highlighted by the AHRC in its national survey, respondents may be more likely to say that they have experienced different types of behaviours than say they have experienced sexual harassment.

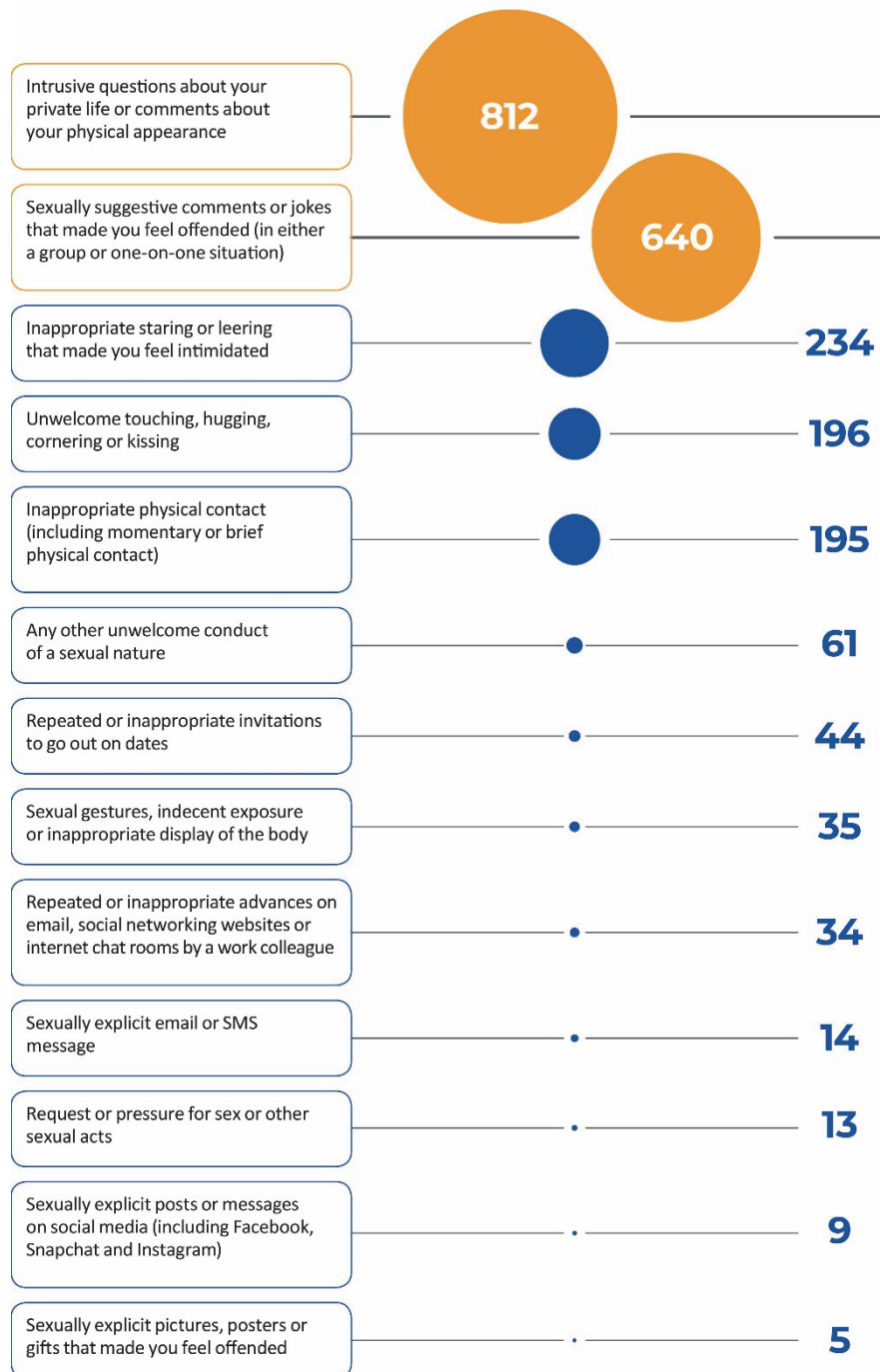
Sexual harassment experiences

Responses to our survey and public submission process show that individual experiences of sexual harassment can vary greatly:

- *I have witnessed a manager saying that the only good place for a female is in a porn movie.*
- *... one of them manipulated caseloads to allow himself to be near a young married woman who he fancied.*
- *... when talking about work to be done [she] would suggestively comment about how I was on her 'to do list'.*
- *When greeting me, he would often touch my waist and one time he tickled me while I was seated.*
- *He pressed his penis against me when I was bending over to pick something up, and he asked me 'is that your preferred position'.*
- *I was repeatedly asked out on a date by a colleague who also contacted me at home and spoke to my children.*
- *He then began to send me SMSs after hours, including the middle of the night, of a sexual nature.*

The 2019 PMS found that the types of sexual harassment most commonly experienced by respondents were intrusive comments and questions of a sexual nature, as shown in Figure 2C.

Figure 2C
Types of sexual harassment experienced by departmental respondents



Note: n=1 465. Respondents could select more than one type.

Source: VAGO analysis of PMS data 2019.

In our survey, we found that there are some forms of sexual harassment that respondents perceived as 'less serious' than other types. However, these behaviours must be addressed, as the negative impact on those who experience them can be high. A meta-analysis conducted by Sojo, Wood and Genat from the University of Melbourne (2015) found that frequent experiences of sexual harassment that some people may term as 'less serious' had similar negative impacts on a person's wellbeing to a 'more serious' experience. All forms of sexual harassment are serious, and departments should address them.

Prevalence within departments

The VPSC provides departments with detailed reports on their PMS results. The reports show the rates of sexual harassment by group, division, branch, team, or unit, where the number of respondents is greater than 10.

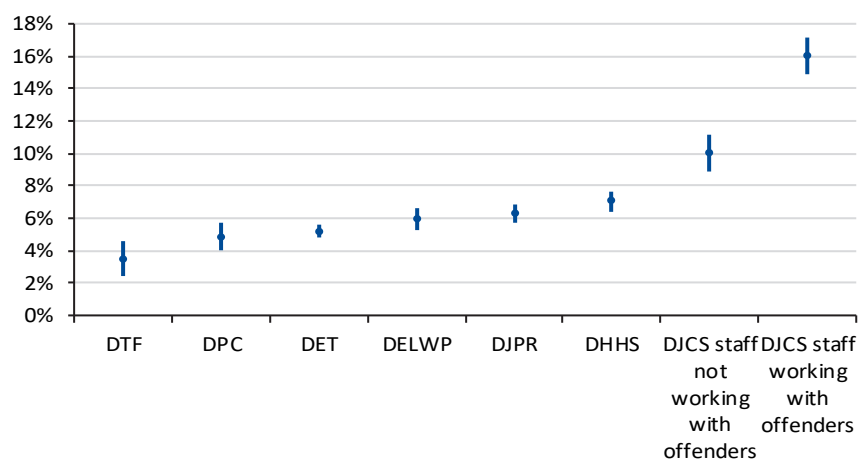
Participation in the PMS is voluntary. DoT did not participate in the 2019 PMS, due to the timing of machinery of government changes resulting in large-scale organisational change. As such, we have no data to confirm the prevalence of sexual harassment in this department.

Figure 2D shows the percentage of respondents in each department who reported that they had experienced sexual harassment in the 12 months prior to the 2019 PMS. As departments had different survey response rates, we have presented results within a margin of error. The results reveal that:

- the difference in rates of sexual harassment reported by respondents at DPC, DET and DELWP are not statistically significant
- DJCS respondents experienced the highest rates of sexual harassment compared to other departments. This is statistically significant. DJCS staff who work in prisons or with past offenders experience higher rates of sexual harassment, so we have separated these respondents.

Figure 2D

Respondents in each department who experienced sexual harassment



Note: Results presented within a margin of error due to varied response rates. The line represents the upper and lower bound of results with a 95% confidence interval.

Source: VAGO analysis of PMS data 2019.

2.3 Employees at high risk

Any employee can experience sexual harassment. However, the 2019 PMS shows that certain groups of respondents are at higher risk, as shown in Figure 2E.

Figure 2E
Groups at higher risk

Attribute	Experienced sexual harassment (%)	Compared to
Self-described gender identity ^(a)	26	6 per cent of respondents who identified as men and 8 per cent of respondents who identified as women
LGBTIQ sexual orientation	13	7 per cent of opposite-sex attracted respondents
24 years of age or under (all genders)	12	5 per cent of respondents aged 45 years or above.
Aboriginal and Torres Strait Islander	12	7 per cent of non-Aboriginal and Torres Strait Islander respondents
Earning less than \$75 000	11	3 per cent of respondents earning above \$155 000

(a) A low number of respondents had a self-described gender identity (n=80). Because of this low number, there may be uncertainty around the 26%. The 95% confidence interval for the rate is 17 to 37%

Source: VAGO analysis of PMS 2019 data.

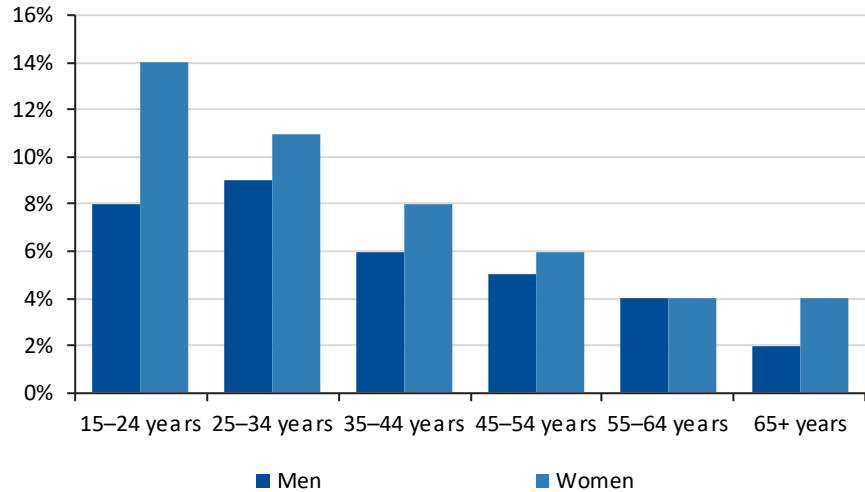
Departments can use this information to better target strategies and communication so that they can give the right level of support to everyone. We discuss this further in Part 4.

Gender, age and income

Individuals with a self-described gender identity and young women are at higher risk of experiencing sexual harassment. The PMS data shows that in all age categories, those with a self-described gender identity experienced the highest rates of sexual harassment, followed by women aged 15 to 24.

Figure 2F shows the rates of sexual harassment experienced by men and women in different age brackets.

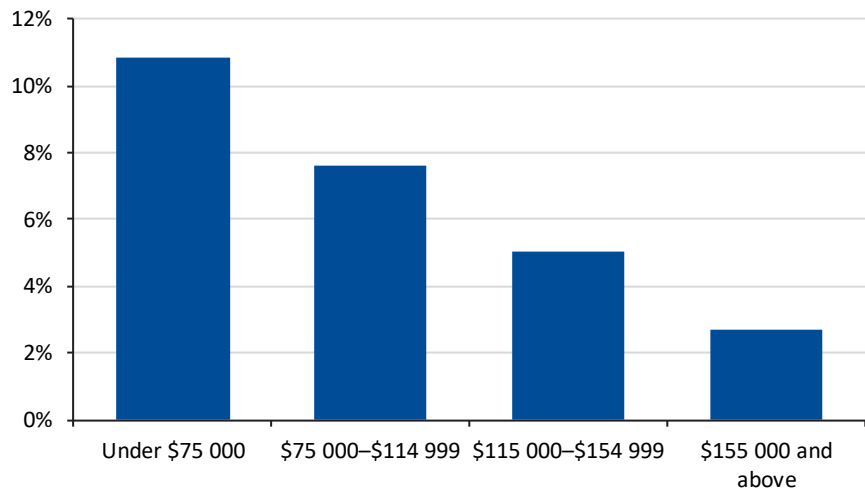
Figure 2F
Respondents who experienced sexual harassment



Source: VAGO analysis of PMS data 2019.

We also found that respondents who earned less experienced sexual harassment at a higher rate, as shown in Figure 2G.

Figure 2G
Respondents in each salary bracket who experienced sexual harassment



Source: VAGO analysis of PMS data 2019.

2.4 Impact and response

People who experience sexual harassment respond in different ways. Many find that their mental and physical health suffers, as do their personal relationships and careers.

Sexual harassment also affects organisations.

Impact on individuals

Sexual harassment can have a significant impact on an employee's mental and physical health. Through our survey and submission process, respondents shared their experiences and described how sexual harassment impacted their lives.

'I have been incredibly anxious, crying every day, spending weekends in bed unable to be very responsive to my children, my husband tells me it is impacting our marriage.'

'I attempted suicide due to these incidents of workplace sexual harassment. I have post-traumatic stress disorder as a result.'

'I lost my friendships with colleagues and social networks. I was isolated and had panic attacks coming to the office.'

'With the thought of having to return to that workplace again, I was in an extremely distressed state. I had lost a huge amount of weight and was unable to sleep.'

In our survey, 12 per cent of respondents who experienced sexual harassment said they were negatively impacted. These respondents reported the ways that sexual harassment negatively impacted their overall wellbeing.

Reported negative impact	Result (%)
Mental health and caused me stress	68
Self-esteem and confidence	53
Relationship with partner, children, friends, or family	14
Employment, career, or work	46
Financial situation	4

Note: n=167. Respondents could select more than one answer. Results are shown as a percentage of respondents who said they experienced sexual harassment and were negatively impacted.

Source: VAGO survey 2019.

Impact on organisation

At an organisational level, the consequences of sexual harassment can include reduced workforce morale, increased absenteeism, turnover and potential litigation, or reputational costs. From respondents of the 2019 PMS who experienced sexual harassment:

Response to harassment	Result (%)
Took time off work	7
Sought a transfer to another role/location/roster	3

Note: n=1 465. Respondents could select more than one option. Results are shown as a per cent of respondents who said they experienced sexual harassment and were negatively impacted.

Source: VAGO analysis of PMS data 2019.

'There are areas in my department that I would never apply for a job because the men have reputations for this. They barely have to hide it.'

Response

Where someone said that they had experienced sexual harassment, the 2019 PMS asked how they responded. The top five responses were:

	Response	Result (%)
1	Pretended it didn't bother you	50
2	Tried to laugh it off or forget about it	38
3	Avoided the person(s) by staying away from them	37
4	Told a colleague	26
5	Told the person the behaviour was not ok	25

Note: n=1 465. Respondents could select more than one option. Results are shown as a percentage of respondents who said they experienced sexual harassment.

Source: VAGO analysis of PMS data 2019.

In the 2019 PMS, of those who said they experienced sexual harassment, 3 per cent also said that they submitted a formal complaint, 2 per cent said they told HR, and 17 per cent told their manager.

Complaints

The number of sexual harassment complaints reported to HR is comparatively low. Figure 2H compares the number of complaints recorded by the departments between July 2016 and March 2019 and the number of respondents who said in the 2019 PMS that they experienced sexual harassment. DJCS and DHHS could not quantify the number of sexual harassment complaints they received, which we discuss further in Section 3.2.

Figure 2H

Formal complaints recorded by departments compared to PMS results

Department	Employees (2019)	Experienced sexual harassment over 12-month period (2019 PMS) ^(a)	Formal sexual harassment complaints recorded over the past three years (July 2016 to March 2019)
DET	5 151	212	4
DELWP	3 950	154	3
DJPR	2 787	143	Former DEDJTR 2 DJPR 1
DoT	650	Not undertaken ^(b)	DoT 0
DHHS	11 545	357	Cannot quantify
DJCS	10 177	539	Cannot quantify
DPC	1 099	42	4
DTF	729	18	4

(a) These numbers reflect responses to the 2019 PMS. There could be more staff who experienced sexual harassment that did not take part in the PMS.

(b) DoT did not participate in the PMS survey due to the timing of the machinery of government changes resulting in a large organisational change.

Source: VAGO analysis of departmental records and PMS data 2019.

We discuss complaint management and potential reasons for underreporting in more detail in Part 3.

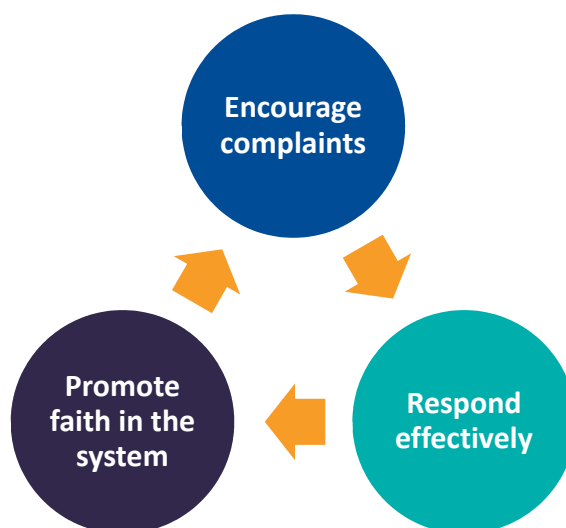
3

Sexual harassment complaints

When staff make a sexual harassment complaint, departments should respond quickly and effectively. To do this, all departments need a response framework that:

- has multiple avenues for employees to lodge a complaint
- enables them to respond to complaints quickly, sensitively and proportionately
- ensures that they take action when they substantiate sexual harassment
- supports all employees involved in the process.

If a department can do these things, it increases the faith of their staff in the system. This may lead to greater reporting of sexual harassment by employees.



We assessed whether departments have systems that encourage complaints and respond in a fair and effective manner. We also considered whether staff have faith in the complaints process.

3.1 Conclusion

Departments have adequate processes to receive and respond to complaints in a fair and effective manner. This includes different types of complaint channels, however staff often do not use them.

How departments handle complaints is crucial to increasing staff confidence. We found delays, poor investigative practices, a lack of transparency and inaccurate and incomplete records of how departments manage complaints. This puts departments at risk if their decisions are challenged and weakens staff trust in the system.

Our survey found that underreporting is due to many factors, including employee perceptions that their complaint is not serious enough, fear that there will be negative consequences, or lack of faith in the system. To address underreporting of sexual harassment, departments need to do more to increase staff confidence in the complaints system.

3.2 Encouraging complaints

Departments need to encourage employees to make complaints when sexual harassment occurs. We assessed the complaint management frameworks at departments, including:

- complaint channels available to employees
- how departments record and store complaints
- complaint rates
- reasons why employees do not complain.

Complaint channels

Complaint channels vary across departments. All department policies outline at least two ways for employees to complain (either to their manager or HR). Some departments provide further channels for employees to seek advice, as outlined below.

Complaints channel	Availability
Formal complaint to HR	All departments
Speak with manager	All departments
Peer support officers (staff in the department who can give confidential advice on options and supports available. They do not take complaints.)	DET, DELWP, DHHS and DTF
Online system for reporting occupational health and safety matters, including sexual harassment	DELWP, DHHS and DJCS
Workplace conciliators (provide confidential, impartial and informal support on workplace issues and complaint avenues. They can also facilitate difficult conversations or coach staff.)	DELWP, DHHS, DJPR and DoT

Complaint channels only work if employees know about them. Our survey found that only 49 per cent of respondents knew how to make a formal complaint about sexual harassment to their department.

Employees can also make a complaint to an agency outside of their department, such as:

- VEOHRC and AHRC
- WorkSafe Victoria
- Victoria Police (if a criminal matter)
- Fair Work Commission
- Victorian Civil and Administrative Tribunal.

When we commenced this audit all departments (except DTF and DPC) listed AHRC/VEOHRC, WorkSafe Victoria and Victoria Police as external avenues in their policies. DPC has since updated its policy to detail all external avenues for reporting complaints about sexual harassment.

Staff do not have a strong understanding of these reporting avenues. Our survey found that 50 per cent of respondents know how to report their complaint to external bodies.

Anonymous complaint channels

Various Ombudsman complaint handling guides state that it is good practice to accept anonymous complaints. Research into sexual harassment and assault in Australian universities supports this view. The 2017 *On Safe Ground* report from the University of New South Wales highlights that centralised and anonymous complaint channels enable systematic recording of incidents and can encourage staff to report sexual harassment.

Departmental staff have limited avenues to lodge concerns anonymously or online to their department. No department has a dedicated anonymous hotline or online channel for sexual harassment matters.

Further, the VPSC's model policy and departmental policies do not encourage anonymous complaint channels. Some departments stated that anonymous complaints make it difficult for them to ensure that:

- the complainant has access to support services
- the alleged harasser receives procedural fairness
- they investigate matters, as there may be insufficient information on specific allegations.

However, departments can use anonymous complaints to obtain useful insight into their organisations and address cultural and behavioural issues in the relevant group. This can include:

- prompting an appropriate workplace behaviour campaign or targeted training (focusing on the area the complaint is from)
- capturing complaints against the same subject, which may lead the department to instigate its own investigation
- prompting pulse surveys or staff feedback within the relevant area to test issues raised.

Capturing complaints

All departments record formal complaints about sexual harassment, but the level of information captured varies across departments. Complaint registers range from online case management systems to Excel spreadsheets.

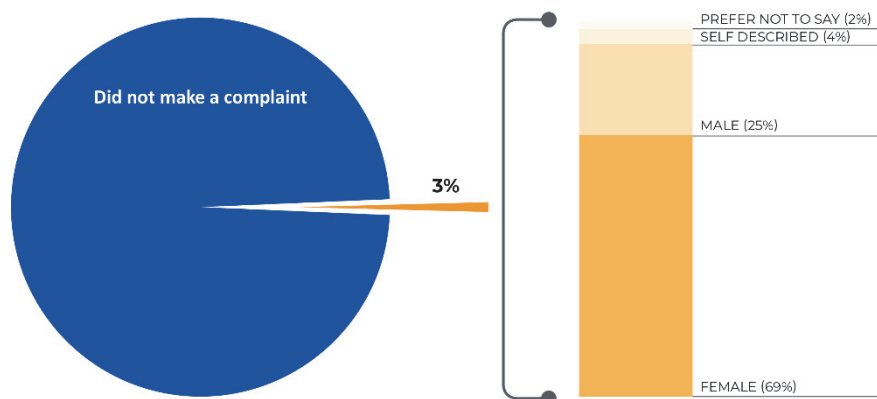
Shortcomings of departmental registers include:

- having multiple registers run by different people who capture different levels of information across regions or groups
- their inability to run a report on different variables, such as open investigations
- incorrectly categorising a sexual harassment complaint as a bullying or discrimination complaint
- inability to report on the number of sexual harassment complaints across the department.

How many employees make a complaint?

Significant underreporting of sexual harassment occurs across all departments. While the rate of sexual harassment reported in the PMS has decreased from 11 per cent in 2016 to 7 per cent in 2019, of those that experience sexual harassment, few complain. The 2019 PMS shows that only 3 per cent of those who experienced sexual harassment made a formal complaint, down from 5 per cent in 2018.

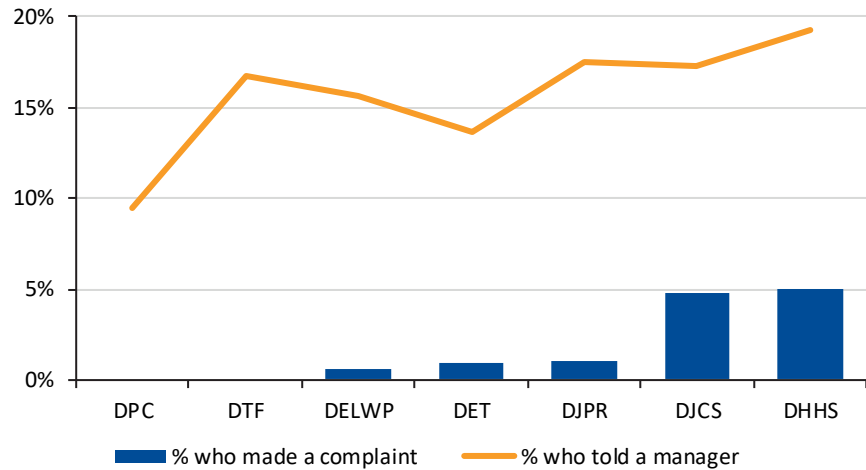
Figure 3A
Respondents who experienced sexual harassment and made a complaint



Source: VAGO analysis of PMS data 2019.

Complaint rates across departments vary. Departments want their complaint rates to be high relative to those who experience sexual harassment. Figure 3B shows that DHHS and DJCS have the highest complaint rates from the 2019 PMS. However, the rates across all departments are low.

Figure 3B
Respondents who experienced sexual harassment and made a formal complaint or told a manager



Source: VAGO analysis of PMS 2019 data.

At DTF and DPC, no respondents said that they made a formal complaint about the sexual harassment they experienced. The orange line shows that a higher percentage of respondents chose to tell a manager about the sexual harassment they experienced, although these figures are still low.

Reasons for not making a complaint

There may be many reasons why employees do not speak up about the harassment they experience. Reporting an incident of sexual harassment can be confronting and difficult. We found instances of respondents who feared that it would affect their safety and reputation or would not result in any action.

Our survey asked respondents who experienced sexual harassment why they did not make a complaint. The top five reasons were:

	Reason	Result (%)
1	I didn't think it was serious enough	50
2	I believed that there would be negative consequences for my reputation and/or career	35
3	I didn't think it would make a difference	32
4	I didn't believe that the complaint would result in any action	29
5	I thought that the complaint process would be embarrassing or difficult	20

Note: n=649. Respondents could select more than one answer. Results shown as a percentage of respondents who experienced sexual harassment and did not make a formal complaint.

Source: VAGO survey 2019.

Only 7 per cent said they did not make a complaint because they did not know how. We explore the top three reasons for why respondents did not make a complaint below.

Perception of seriousness of complaint

Based on our survey, the most common reason for not reporting sexual harassment was the respondent's belief that it was not serious enough. We heard from survey respondents who felt that their department's processes were not well equipped to deal with sexual harassment that was 'low level' or a 'minor' incident.

'Without a mechanism to advise about low level concerns, I did not feel that I had an avenue to make my discomfort known. A formal complaint would have been excessive, but an opportunity to report would have been helpful.'

'Most people do not report because the only response is a formal process. What we need to do is to understand the substantial nuances in this area, most of which cannot be resolved by our formal processes.'

'There are a lot of different forms of sexual harassment, including minor incidents (which is what I experienced) that the system is less well equipped to deal with. For what I encountered, the response would have been "overblown"...'

'It doesn't allow for the handling of what I call "grey area" sexual harassment and abuse of power in a sexual context. This is the inappropriate behaviour that we see day in day out and that is not "robust" enough to warrant a report.'

These responses highlight the need for departments to:

- have response frameworks that include options for informal responses to sexual harassment (discussed in Section 3.3)
- train staff on what sexual harassment is, including that 'grey area' behaviours can still be sexual harassment and are inappropriate (discussed in Section 4.3)
- encourage and train bystanders to speak up when they witness sexual harassment, even if they feel it is a 'minor' or 'low level' incident (discussed in Section 4.3).
- train managers on their obligation to address sexual harassment and deal with this at a local level (if appropriate) or escalate to a formal process (discussed in Section 4.4).

Fear of negative consequences

In our survey, 35 per cent of those who experienced sexual harassment and did not make a formal complaint said it was because they believed there would be negative consequences if they did.

'... no one felt comfortable or wanted to report it. One person specifically said "he is directly responsible for my career progression" and therefore didn't ...'

'... where the person being harassed is a subordinate, I believe there is still a perception that their career will suffer if they report.'

'The complaint would not be worth my career. I was also physically and emotionally intimidated by him.'

'To make a complaint is called a CLM, "career limiting move".'

Lack of faith

Perceptions and other people's experiences can affect staff confidence in the complaints process. Of those who said in the 2019 PMS that they had experienced sexual harassment, only 26 per cent agreed with the statement, 'I am confident that if I raised a grievance in my organisation, it would be investigated in a thorough and objective manner'. In our survey, we heard from respondents who did not have faith in the system.

'If the department deals with sexual harassment the same way it does when you report bullying or other inappropriate conduct from another employee at the department, then I have no faith that the department would actually do anything to support victims of such behaviours.'

'I am in a branch where staff, through the People Matter Survey, have indicated very low trust in the reporting system, but the branch exec refuse to address it. If I was sexually harassed, I would be more likely to report it to a Dep Sec or the Secretary (or the police) rather than go through branch exec or HR.'

The way that a department responds to all complaints will impact faith in the system. We discuss this further in Section 3.4.

3.3 Responding to complaints

When an employee lodges a sexual harassment complaint, a department should act quickly and effectively. Sexual harassment complaints can be sensitive and complex and can involve significant distress for the parties involved.

Both the VPSC's model policy and the AHRC's Code of Practice encourage employers to have both formal and informal responses to sexual harassment complaints. All departments include both options in their policies.

Informal responses

Department policies encourage an informal response where possible. According to VEOHRC, informal responses are ‘forward looking’, meaning they focus on resolving the matter and support a working relationship, rather than proving harassment occurred and taking disciplinary action.

Pros	Cons
Generally resolved quickly within the team or workgroup	The department often holds limited documentation and does not record the matter centrally
Less intimidating for all parties, as the process is less rigid	Formal disciplinary action is not taken, so repeat offenders may not be tracked or identified
Encourages open communication	

Data from the 2019 PMS shows that many respondents preferred an informal response. This included speaking to their manager or a colleague, rather than speaking to HR and submitting a formal complaint.

Response to harassment		% of those who experienced sexual harassment
Informal	Told a colleague	26
	Told a manager	17
Formal	Submitted a formal complaint	3
	Told HR	2

Note: n=1 465. Respondents could select more than one answer. Results shown as a percentage of respondents who experienced sexual harassment.

Source: VAGO analysis of PMS data 2019.

VEOHRC warns that informal processes often become ‘hidden’ in an organisation. The direct line manager usually handles informal complaints, and HR does not know their volume and nature. As a result, we could not determine the number of informal complaints and how departments dealt with them.

Formal responses

An informal response is not always appropriate. Where a sexual harassment complaint may require formal disciplinary action, the department needs to take a formal response. This often involves investigating the allegations.

Pros	Cons
Necessary for where the department decides the actions may contravene its code of conduct or a provision of the <i>Public Administration Act 2004</i>	Requires more from the complainant, such as submitting written complaints or attending interviews
Has a more robust process involving an assessment of the evidence and, if necessary, investigation of the complaint	Can be lengthy
Department keeps records that it may refer to in the future	Can be difficult for all parties

Deciding how to respond

When a department receives a formal complaint of sexual harassment, it needs to decide how to respond. Under the enterprise agreement, when an employee alleges misconduct, a department may:

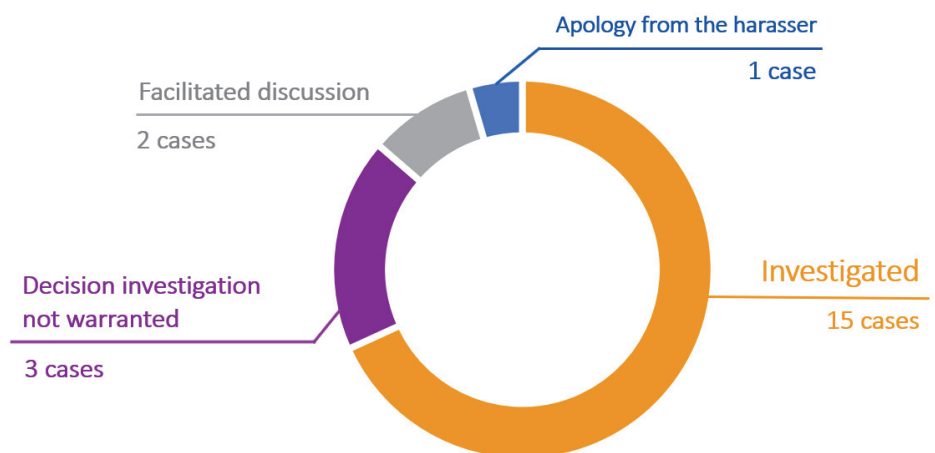
- conduct an initial assessment to determine if an investigation is required
- determine that it is appropriate to begin an investigation immediately.

According to VPSC guidance, the initial assessment should be simple and involve basic fact-finding to determine whether a formal investigation is appropriate.

VPSC recommends that the department clearly document the outcome of the initial assessment. This is especially important in cases where the department determines that an investigation is not warranted.

We assessed a selection of 21 formal sexual harassment complaints across the departments and how they responded. As illustrated by Figure 3C, departments can take different approaches to resolving formal complaints. We found two cases where departments had not adequately documented the reasons why a complaint was not investigated.

Figure 3C
Responses to the formal complaints we reviewed



Source: VAGO analysis.

Investigations

Of the 21 complaint files we reviewed, 15 proceeded to an investigation. Of these:

- seven cases were substantiated
- five cases were not substantiated
- three cases were stood down due to the subject resigning.

In examining these cases, we saw instances of poor handling, such as:

Issues	Findings
Procedural fairness	<ul style="list-style-type: none"> In one file, the department gave the subject two working days to respond to the investigation findings. This was less than the length of time specified in the department's policy.
Timeliness	<ul style="list-style-type: none"> The 15 investigations took an average length of 4.8 months. Some investigations were particularly complex, with the longest taking over a year to finalise. In one case, it took approximately seven weeks to hold a facilitated discussion after a complaint was raised. In one case, it took four months to initiate a misconduct process after a complaint was raised, and in another case, it took two months.
Inconsistency	<ul style="list-style-type: none"> One file gave inconsistent information between the investigation report and outcome letter. One file had inconsistencies between the allegations put to the subject and alleged instances of sexual harassment, with no documented rationale for the difference.

We also found issues with:

- incomplete documentation and poor record keeping
- poor application of the Briginshaw principle (discussed below)
- inconsistent responses to criminal matters
- investigations not occurring when there were no independent witnesses
- failure to finalise investigations when the subject resigns before the department concludes its investigation.

Incomplete documentation and poor record keeping

To comply with the *Public Records Act 1973*, departments must keep full and accurate records. These records must allow others to easily understand what decisions the department made and why.

Ten of the 21 complaints we reviewed had missing or incomplete documentation. This ranged from minor instances, such as missing file notes of telephone conversations, to more serious lapses such as:

- failure to record the rationale for key decisions
- final investigation reports not on file.

These instances may breach the *Public Records Act 1973* and expose the department to risk. A department may also not be able to defend its decisions if an outcome is appealed or a complainant initiates legal action.

Poor application of the Briginshaw principle

When investigating sexual harassment in the workplace, the investigator must form a view of the allegations on the balance of probabilities. This means that the investigator, in considering all available evidence, must determine whether it is more probable than not that sexual harassment occurred.

However, the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, known as the Briginshaw principle, means that while findings are made on the balance of probabilities, more serious allegations must be supported by stronger evidence.

We saw one case where a department misinterpreted the Briginshaw principle when substantiating an allegation. The investigation report weighed up the evidence and determined that the alleged conduct 'likely occurred', which is the required standard of proof. This should have meant that the allegation was substantiated. However, the report went on to say that the allegation could not be substantiated, due to heightened evidentiary standards required for more serious allegations.

The Briginshaw principle does not change the standard of proof based on the seriousness of the allegation.

While it is appropriate for departments to require stronger evidence when considering serious allegations, they must still determine whether it is more likely than not that the alleged conduct occurred. Such misinterpretations may lead to allegations not being substantiated, even though investigators are satisfied that the allegation was more likely than not to have occurred.

Responding to criminal matters

Some forms of sexual harassment are also criminal offences, such as stalking, sexual assault and indecent exposure.

Three of the 21 complaints we reviewed included alleged criminal conduct. All cases were dealt with differently:

- One department consulted with Victoria Police before starting the investigation, which we consider to be good practice and consistent with the model policy.
- One department did not refer the matter to Victoria Police because they believed that they should only refer substantiated matters.
- One department did not refer the matter to Victoria Police as the complainant expressed their wish not to do so on multiple occasions.

This is a difficult decision for departments, as they should balance the wishes of the complainant and the need to respond quickly with a requirement to report to Victoria Police. The following guidance is available for departments:

Source	Guidance
<i>Independent Anti-corruption Broad-based Commission guide on conducting internal investigations</i> (2016)	'Never make a finding in a report that a person has committed or is guilty of any criminal offence. It may be appropriate, however, to make a finding that there is sufficient evidence to warrant referring the matter to Victoria Police, IBAC or another appropriate agency.'
<i>VPSC model policy</i> (2018)	'If an allegation appears to be a matter relevant to the police, the [department] is obliged to report this to the police regardless of whether the complainant has made a report to the police or not.'
<i>VPSC Management of Misconduct Policy</i> (2019)	'Matters of potential employee criminal conduct must be promptly reported to appropriate external agencies/authorities.' This policy only applies to Victorian Public Service employees covered by the enterprise agreement.
<i>AHRC Code of Practice</i> (2008)	'If an employer suspects that a criminal incident has occurred, the individual should be advised to report the matter to the police as soon as possible and be provided with any necessary support and assistance.'

Departments must ensure that their actions will not prejudice any current or future criminal investigations, but also protect staff from further harm.

Departments should also document the rationale for not referring sexual harassment allegations to Victoria Police.

No independent witnesses

'My claim was investigated and he was found to be cleared of any wrongdoing. This was the outcome as it was my word against his with no other witnesses.'

We found cases where the department did not investigate allegations or did not substantiate a complaint because there were no independent witnesses.

By its nature, sexual harassment may often occur where there are no independent witnesses. A department's decision to not conduct or substantiate an investigation should not solely be on the basis that there was no independent witness. This wrongly suggests that people should only report sexual harassment if others witnessed it.

The AHRC *Effectively preventing and responding to sexual harassment: Code of Practice for Employers* (2008) states that when there is no independent witness, departments should consider:

- evidence that the complainant discussed their concerns with a third party
- supervisors' reports and personnel records (for example, unexplained requests for transfer or shift changes, sudden increase in sick leave)
- complaints or information provided by other employees about the behaviour of the alleged harasser
- records kept by the complainant

- whether the parties presented their evidence in a credible and consistent manner
- the absence of evidence where it should logically exist.

We found two cases where the investigator did not consider such evidence or assess the credibility of witnesses.

Subject resigning before the end of an investigation

In some of the cases we reviewed, the alleged harasser resigned before the conclusion of the investigation.

In some cases, the department chose to continue the investigation. In others, the department discontinued the investigation and did not make a finding as to whether the sexual harassment occurred.

Departments have no requirements or guidance on how to make this decision. There may be practical reasons why a department chooses to discontinue an investigation at this stage. This includes resources, evidentiary issues, and their inability to compel a subject to participate in the process after they resign. However, there are also risks, including that:

- other employees may feel that the subject was not held accountable for their actions
- the subject may find work in another department as the complaint against them was not substantiated, and a disciplinary outcome was not imposed.

Through our survey and submission process, we heard from multiple employees who were concerned about subjects who resigned before their conduct could be investigated, and that alleged offenders have moved on to work at other departments.

'I have since had to interact with him at another government department where he was hired due to his lack of formal reprimand.'

'It also allows the offender to be re-hired elsewhere in the VPS and to reappear to their victims in unexpected places, leaving them never feeling totally safe.'

'... there was gross misconduct but the perpetrator was offered the choice to resign or be subject to an investigation. This was mishandled by senior executives as it excused this behaviour and left the perpetrator with an untarnished record.'

'He was confronted and allowed to resign, rather than being sacked. Whilst it was a quick solution, it left everyone with the feeling that he got away with it as he is working elsewhere in the VPS and doesn't have it on his record.'

On 1 October 2019, the VPSC extended the *Victorian Public Service Pre-employment Screening Policy*, which previously only covered executives, to cover all staff in Victorian public service bodies. The policy requires candidates to self-report any misconduct investigation, even if it was not completed. This aims to screen out candidates with a relevant history of misconduct, which may help address the concerns raised. The associated guide also reinforces the need for departments to keep good records to enable validation of the declaration.

3.4 Complainant satisfaction and faith in the system

Poor handling of complaints can result in staff losing faith in the system, which may result in fewer staff making complaints.

Our survey showed that 32 per cent of respondents who made a complaint were not at all satisfied with how the department handled their complaint, and a further 21 per cent were somewhat unsatisfied. The top four reasons for staff dissatisfaction were:

	Reason	Result (%)
1	My complaint was not taken seriously	30
2	I was not informed of the outcome	27
3	Communication was poor	22
4	I was victimised as a result of complaining	22

Note: n=63. Respondents could select more than one answer. Results shown as a percentage of respondents who experienced sexual harassment and made a formal complaint.

Source: VAGO survey 2019.

Complaints not taken seriously

The 21 formal complaints that we reviewed were all taken seriously by the relevant department. However, some respondents to our survey felt that this is not always the case.

'I reported my incident and my manager laughed and it was like "boys will be boys". Nothing was done about it.'

'I don't think others see the behaviour as a big deal and roll their eyes and say "Oh that's just him".'

To meet their positive duty under the *Equal Opportunity Act 2010* to eliminate sexual harassment, departments must ensure that all complaints of sexual harassment are taken seriously and addressed.

Managers play a key role in this. We discuss the importance of training for managers further in Part 4.

Not informing complainants of the outcome

Departments give complainants varying levels of information about the outcome of investigations often due to concerns about privacy. We found some cases where departments did not inform the complainant whether the investigation had substantiated their complaint or not. This can have adverse impacts on the complaint, as outlined in responses to our survey.

'When [complainants] are not informed you make them feel like they are powerless and you are re-victimising them.'

'Managing sexual harassment claims is hampered by an over legalistic approach to investigation and sharing of information. This leads to frustration on behalf of the claimant who cannot be advised of the details of what action is being taken ...'

In our survey, 27 per cent of respondents who made a formal complaint said they were not satisfied because they were not informed of the outcome.

The guidance for departments on how much information they can provide requires the department to weigh the rights and interests of the complainant against that of the respondent. The *Privacy and Data Protection Act 2014* outlines departments' legislative obligations in relation to privacy, and further guidance is available:

Guidance	
VPSC Managing Poor Behaviour in the Workplace Guide	<p>'In most cases, the complainant will want to know the outcome at the end of an investigation.</p> <p>'In such cases, the interests and rights of the complainant to know that their complaint has been dealt with appropriately should be balanced with the interests and rights of the respondent.' This includes to have the outcome of the investigation kept confidential. 'Providing the complainant with details of the exact sanction imposed may be a breach of privacy.'</p> <p>'To balance these interests, the organisation should inform the complainant that an investigation was conducted and that it resulted in an appropriate outcome (without details of the nature of any sanction).</p> <p>'Providing some comment about the outcome of an investigation is also important in order to avoid a potential complaint that nothing has been done about an allegation.'</p>
Clause 21(13) of the enterprise agreement	The complainant must be advised that the allegation has been dealt with and may provide the Employee with other information as is reasonably practicable.
<i>Privacy and Data Protection Act 2014</i>	The <i>Privacy and Data Protection Act</i> requires departments to comply with Information Privacy Principles (IPPs) outlined in the Act. These manage how personal information can be managed, used and disclosed. IPP 2 states that an organisation must not use or disclose personal information for a purpose other than which it was collected (the primary purpose) unless an exception applies.

Discussion within cases such as the Federal Circuit Court of Australia case of *Banerji v Bowles* (2013) highlight that a greater degree of disclosure may be acceptable. In that case, the judge questioned how a complainant might obtain information or raise any questions about a serious misconduct matter if they were only told that 'appropriate action' was taken and that the relevant Privacy Act prevented disclosure of information. The judge noted that 'such an information vacuum might understandably give rise to a certain angst or tension in the workplace, which is not necessarily of the complainant's making'.

Poor communication and support

Making a sexual harassment complaint can be a distressing experience. Departments should provide support to complainants and ensure that they communicate clearly with the complainant throughout the process.

All departmental staff have access to an EAP, a free and confidential counselling service to address issues affecting their working or personal life. Our survey suggests that this information is well known to employees, with 84 per cent of respondents saying they were familiar with the program.

In 10 of the case files, there was no evidence that the department offered the complainant support, such as providing them with the details for the EAP, during the process. However, conversations with complainants before and during the process may take place outside of the investigations team, and it is general practice that departments offer access to an EAP in all instances. We also saw other instances where a senior officer was allocated as a support person to the complainant during the process.

None of the files we reviewed documented that the complainant had been advised of appeal options or external avenues to lodge a complaint. While this information is available in internal policies, departments should include it in key correspondence to the complainant.

We also saw cases where departments did not inform the complainant that an investigation had begun or did not update them through the process.

Victimisation

According to our survey, 22 per cent of respondents who made a complaint said that they were victimised as a result.

'I reported sexual harassment on three separate occasions – it has led to victimisation and I regret speaking up.'

'When I was sexually harassed, my manager told me that if I was to report it then it would be bad for me. My manager has a close relationship with the person who sexually harassed me so I felt victimised and ... as though I was the one who was wrong ...'

Under the *Equal Opportunity Act 2010*, departments have a duty to eliminate victimisation. These results highlight the importance of strong policies and swift action should reprisals occur. They also highlight the need to train managers on their responsibilities to protect complainants from victimisation.

4

Prevention

Departments have a duty under the *Equal Opportunity Act 2010* to take steps to eliminate sexual harassment in the workplace. This is a positive duty, which means they are legally obligated to take reasonable and proportional steps to provide a working environment that is free from sexual harassment. To do this, departments need to have effective prevention strategies, as shown in Figure 4A.

Figure 4A
Prevention strategies



Source: VAGO.

We assessed whether departments take all reasonable steps to fulfil their duty to eliminate sexual harassment in the workplace. In doing so, we focused on departments' key prevention strategies.

4.1 Conclusion

Departments are committed to preventing sexual harassment and communicate a strong message that sexual harassment is unacceptable. They have relevant policies, most of which are consistent with better practice. However, training on sexual harassment is largely inadequate and mostly limited to induction and online modules. There is also little work to target support for those at higher risk of sexual harassment, such as LGBTIQ people and younger women.

4.2 Policies

A clear and accessible sexual harassment policy signals to staff that a department will not tolerate harassment in their workplace.

Policies help employees understand what sexual harassment is, and where to get help if they witness or experience it.

A comprehensive policy also minimises a department's risks and legal liability. In the case of *Richardson v Oracle Corporation Australia Pty Limited* (2013), the Federal Court of Australia found that the respondent organisation was liable partly due to gaps in its sexual harassment policy.

Adequacy of sexual harassment policies

To help departments implement comprehensive sexual harassment policies, the VPSC introduced its model policy on sexual harassment in November 2018.

We found that all departments have a policy that mostly aligns with the model policy. Instances where policies were not aligned include:

Departments' sexual harassment policies

No standalone sexual harassment policy	<p>DJCS and DTF do not have a standalone sexual harassment policy. They include guidance on sexual harassment in other policies, such as an appropriate workplace behaviour policy.</p> <p>DPC did not have a standalone policy when we began our audit but has since introduced one that is consistent with the model policy.</p> <p>DTF is in the process of implementing a standalone policy.</p> <p>Failure to have a standalone sexual harassment policy can reduce its visibility. We found that such policies lack the level of detail outlined in the model policy. This includes liability of staff and the organisation, relevant legislation and highlighting the departments commitment to eliminate sexual harassment as opposed to addressing broader inappropriate behaviour.</p>
Does not state legislation and legal implications	<p>DJCS and DTF either do not state the relevant legislation, or that there could be legal implications for sexual harassment should it occur.</p> <p>When we began this audit, DPC did not reference the legislation, but has amended its policy to address this.</p>
Does not outline the importance of bystander intervention	<p>DJCS do not provide enough detail on the importance of bystander intervention.</p> <p>When we began this audit, DET, DJPR and DoT did not include enough detail on bystander intervention, but have since amended their policies to address this.</p>
Does not outline external complaint avenues	<p>When we began this audit, DPC and DTF did not list in their policies the external agencies that take complaints on sexual harassment. This impacts complainants' faith in the system and their awareness of alternative avenues for raising their complaint. DPC has recently updated its policy.</p>

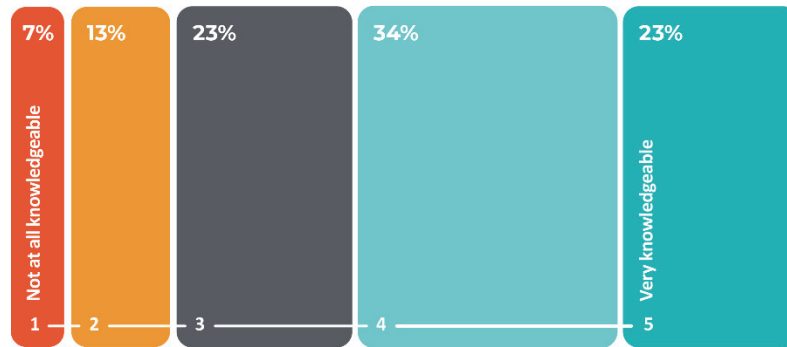
Staff awareness of policies

Policies are only effective if staff are aware of them and know how to access them. We found that all departments had an accessible policy on their intranet.

As shown in Figure 4B, our survey found that 57 per cent of respondents knew where to find their department's policy on sexual harassment. While this is positive, 20 per cent of respondents did not know where to find the policy.

Figure 4B

How knowledgeable are you in relation to where to find your department's policy on sexual harassment?



Note: n=4 729.

Source: VAGO survey 2019.

Departments should communicate their sexual harassment policies and ensure staff know how to find them. We discuss this further in Section 4.5.

4.3 Training for staff

Departments can use training to prevent sexual harassment in their workforces. Training helps staff better understand what unacceptable behaviour is and how to respond in different situations. It may also encourage staff to report complaints. We found one instance where a staff member made a formal complaint because of training they attended.

If training ...	Then ...
fails to reach all staff	an opportunity to address existing issues may be missed.
content is inadequate	<p>staff may not understand what sexual harassment is and what behaviours are inappropriate.</p> <p>staff may not know what to do if they see or witness sexual harassment.</p> <p>staff may not know how, or have the faith, to complain.</p> <p>the department may be exposed to legal liability.</p>

Factors that influence the adequacy of training include its:

- frequency
- mode of delivery (face-to-face or online)
- content, including tailoring for specific groups.

Tailored training may help reach and educate specific groups, such as managers or workgroups with poor culture or high rates of sexual harassment.

Frequency of training

According to VEOHRC, sexual harassment training should be a mandatory part of induction for new employees, and departments should provide refresher training regularly.

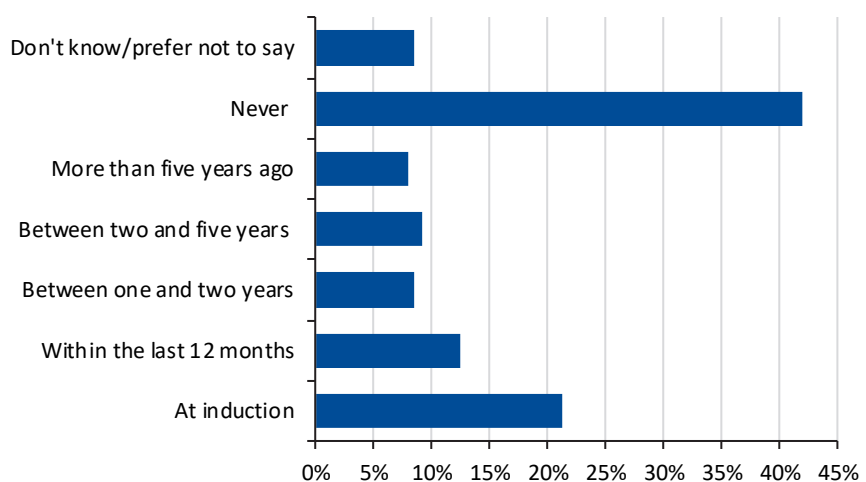
All departments include sexual harassment in their induction modules, which are mandatory for all new staff. Outside of induction, staff training on sexual harassment is limited and not mandatory. We outline the training provided by each department in Appendix C.

Our survey found that more than 40 per cent of the respondents had never completed sexual harassment training and only 21 per cent had received sexual harassment training at induction, as shown in Figure 4C.

'What was noticeable was the people who did not do the training, particularly senior executives who were absent because they were too busy.'

Figure 4C

Have you undertaken training on sexual harassment?



Note: n= 4 729. Respondents could select more than one answer.

Source: VAGO survey 2019.

Delivery mode

Most training consists of an online module during the induction process. This can be completed at any time, often enables electronic capture of staff who completed the training and when, and ensures that departments meet their core training obligations.

According to VEOHRC, face-to-face training is more effective than online training and should be delivered to employees every two years. Although face-to-face training is more costly, it:

- provides a forum for leaders to reiterate expected values and to demonstrate their commitment to prevent sexual harassment
- encourages greater discussion among staff about sexual harassment
- enables staff to better understand which behaviours are not acceptable.

However, as Appendix C highlights, limited face-to-face training occurs.

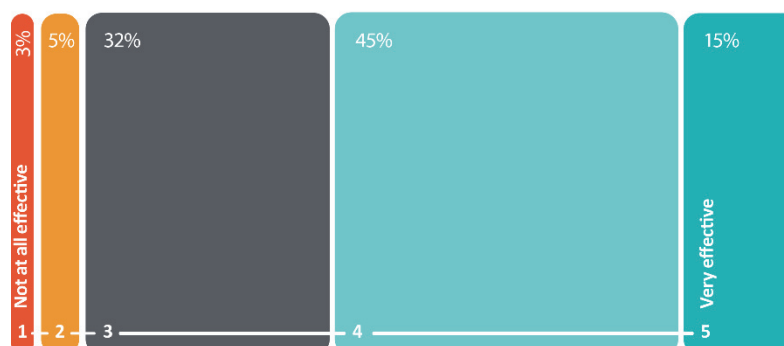
'What made it stand out is that she arranged for a People and Culture representative to attend to talk us through the policy, but also allow for flexibility by encouraging people to share their thoughts, experiences and respond to how they'd manage in different scenarios. What resulted was a very organic, honest and transparent discussion where everyone felt engaged and positive. It didn't feel like a box-ticking exercise. My branch continued these discussions months after the workshop, which to me is a success.'

Training content

Training must be sufficiently detailed to ensure that staff understand what sexual harassment is and how to respond. Effective training gives employees the skills, knowledge and confidence to apply what they have learnt in the workplace.

Our survey found that of those that attended sexual harassment training, 60 per cent thought it was effective or very effective, as shown in Figure 4D.

Figure 4D
Effectiveness of training



Note: n= 2460. Results shown as a percentage of respondents who said they attended training.
Source: VAGO survey 2019.

We assessed training provided by each department. As outlined in Appendix C, we found that some training packages did not include key elements such as:

- the relevant legislation
- descriptions of what sexual harassment is and that it is unlawful
- the impacts of sexual harassment
- practical examples of sexual harassment.

We also found that many of the training packages did not discuss 'grey area' behaviours and bystander responsibilities, which we explore further below.

'Grey area' behaviours

Many of the training packages we reviewed focused on overt examples of sexual harassment. Staff would benefit from training that also discusses more nuanced behaviours that many survey respondents referred to as 'grey area' behaviours.

The most prevalent forms of sexual harassment in departments are intrusive questions or sexually suggestive comments or jokes. These can be 'grey area' behaviours, where some employees may feel offended and others may not.

Our survey found that people's understanding of sexual harassment can vary. We asked whether staff experienced a range of unwelcome behaviours of a sexual nature. Of those who had experienced those behaviours, people differed in their view as to whether this was sexual harassment:

Perception of behaviour	Result (%)
Considered the behaviour they experienced to be sexual harassment	19
Did not think what they experienced was sexual harassment	11
Thought some, but not all, was sexual harassment	13
Did not know	8
Prefer not to answer	49

Note: n=1 386. Results shown as a percentage of respondents who experienced sexual harassment.
Source: VAGO survey 2019.

Through our survey, we heard from many employees who were unsure about whether something they experienced was sexual harassment.

'Consent is complex and there are many things that qualify as harassment that people do not perceive as harassment.'

'... when it is behaviour that one person would be OK with but another might not, it is harder to know what to do.'

'I feel confused about how to respond to these situations ... I don't know how to effectively deal with this grey area.'

'I think it helps to have open discussions about sexual harassment in the workplace as the "grey areas" are different for everyone, we need open discussion to gain a better understanding.'

Training that discusses these behaviours is effective, because it:

- works towards a group understanding of which behaviours are not acceptable
- informs those who may behave this way that their behaviour could be perceived as sexual harassment
- encourages those who experience these actions to speak up.

Bystander training

Bystanders play an important role. They can report sexual harassment when they witness it and support colleagues who experience it. VEOHRC recommends that bystander interventions make up a key part of departments' strategies for preventing sexual harassment. This includes referencing bystander interventions in policies and training packages.

Support from a bystander can be pivotal in an employee's decision to report the harassment they experience. It can also help a person experiencing sexual harassment feel that they have support from those around them. For this reason, training packages should:

- provide clear guidance on what staff should do if they witness sexual harassment, including practical examples of ways to intervene
- discuss the negative impacts of sexual harassment and how staff can support their colleagues who have experienced it.

Many of the training packages we reviewed reference the importance of bystanders calling out unacceptable behaviour. However, the packages do not guide potential bystanders on how they could do this.

4.4 Training for managers

Managers play a key role in complaint handling and resolution. A person who has experienced sexual harassment often first contacts their manager rather than make a formal complaint.

We found that survey participants felt that managers do not always respond appropriately to complaints and that this can have significant consequences:

- *The actions of my supervisor & ops manager at that time were almost as distressing as the sexual harassment. I was made to feel as though I was over reacting.*
- *Education on this matter for anyone in a management role would be particularly important, so no one else has to go through what I did.*

According to the 2019 PMS, those who experienced sexual harassment were less confident in approaching their manager to discuss concerns or grievances (55 per cent) than those who have not experienced it (76 per cent).

We found that no departments have specific standalone sexual harassment training for managers. Four of the eight departments (DET, DELWP, DJPR and DoT) have manager training that includes addressing complaints or wellbeing, as illustrated in Figure C3 in Appendix C.

Training managers to identify and respond to inappropriate behaviours may ensure better resolution of complaints and increase general confidence in the complaints process.

Effective training gives managers ...	This benefits staff and the department by ...
a clear understanding of their responsibilities to prevent sexual harassment and respond to complaints	increasing the likelihood of individuals reporting sexual harassment, as managers encourage complainants through their communication and actions
a clear understanding of the different types of sexual harassment, the impact they can have on their employees, and support options available	reducing the harm caused when a manager does not (or appears not to) support or believe a complainant
strategies on how to respond to sexual harassment complaints and ensures that they are aware of the available complaint channels	ensuring staff know how to access relevant channels ensuring the complaints process runs as smoothly as possible, minimising unnecessary stress to the complainant and wider workplace disruption making staff feel more supported improving the workplace culture
a clear understanding of their responsibility to protect complainants from victimisation	ensuring staff are safe and not victimised for making a complaint

4.5 Communication

Regular communication from senior leadership reiterating a commitment to preventing sexual harassment in the workplace sends a powerful message. This can help build a culture that does not tolerate harassment and works as a preventative measure.

As well as communicating a commitment to the elimination of sexual harassment, departments should remind staff about their sexual harassment policy and complaint channels. VEOHRC recommends that this happen at least once a year.

Frequency

Seven of the eight departments have sent out communications from the Secretary at least once since 1 January 2018. DoT has not yet sent out any correspondence as it has undergone significant change since it was formed in January 2019.

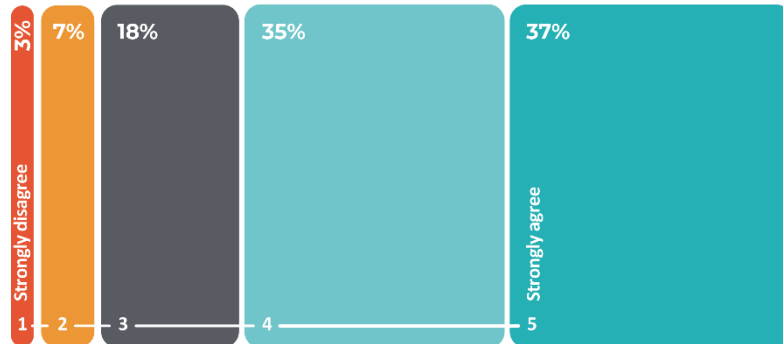
Some departments communicated to their staff more regularly. We found that departments used the release of PMS results to discuss sexual harassment and to reiterate their messages that sexual harassment is unacceptable.

Staff awareness

Our survey shows that most respondents have received communications from their department about its commitment to preventing sexual harassment, as illustrated in Figure 4E.

Figure 4E

My department communicates a zero-tolerance attitude to sexual harassment



Note: n= 4 729.

Source: VAGO survey 2019.

VEOHRC also suggests that departments consider reminders at key times, such as before work functions. We found examples of departments reminding employees of the sexual harassment policy before events such as the work Christmas party. We consider this to be better practice.

4.6 Risk factors

Taking proactive steps to address risk factors before sexual harassment occurs is one of the best ways for departments to minimise sexual harassment in the workplace.

Risk factors are any elements that make an employee, or a team, more likely to experience sexual harassment. Risk factors highlighted by researchers include:

- poor workplace culture
- gender inequality.

Poor workplace culture

Sexual harassment often exists in organisations with cultural problems. This means that those who experience sexual harassment may also be more likely to experience other bad behaviours and negative experiences.

From the 2019 PMS, we found:

Of those who experienced sexual harassment:	Compared to:
38% were also bullied	13% of those who did not experience sexual harassment
25% also experienced discrimination	6% of those who did not experience sexual harassment
39% were also experiencing high to severe work-related stress	24% of those who did not experience sexual harassment

As discussed in Part 3, workplace culture also impacts whether an employee reports sexual harassment.

VPSC research has identified correlations between low respect and accountability and increased rates of sexual harassment. We compared PMS respondents' answers to questions on culture and leadership and found that those who had experienced sexual harassment scored lower than those who had not experienced it.

Question	Respondents who did not experience sexual harassment and agree (%)	Respondents who experienced sexual harassment and agree (%)	Difference (% points)
My organisation does not tolerate improper conduct	60	35	↓ 25
People in my workgroup are honest, open and transparent in their dealings	76	52	↓ 24
People in my workgroup treat each other with respect	84	61	↓ 23
I would be confident in approaching my manager to discuss concerns and grievances	77	55	↓ 22
Senior leaders consider the psychological health of employees to be as important as productivity	41	23	↓ 18
Senior leaders model my organisation's values	65	48	↓ 17
My manager listens to what I have to say	85	69	↓ 16
My manager treats employees with dignity and respect	84	68	↓ 16

Source: VAGO analysis of 2019 PMS data.

Addressing culture requires a whole-of-organisation approach and commitment. The PMS is only one source of information departments can use. DELWP, DJCS and DHHS have all undertaken their own surveys, giving them further data to address cultural issues.

DELWP and DPC include sexual harassment in their broader corporate strategies. The other departments (DET, DHHS, DJCS, DTF, DJPR and DoT) more generally mention ensuring positive culture and wellbeing or addressing inappropriate behaviours in their strategies. This misses an opportunity to more explicitly call out and focus on this issue.

Gender inequality

Research has shown that rigid gender stereotypes and gender inequality can increase the risk of sexual harassment.

'I believe what I tend to see more of in my workplace is subtle gender-based behaviour that doesn't promote respect for women. Simple things like perpetuating traditional gender-based roles like women being asked to organise workplace catering or being left to clear up after events ... these little things are barriers to a respectful and equality-based culture. That's where we need to start.'

The Victorian government and the not-for-profit sector have initiatives to create a safer and more respectful workplace for all genders. While it is difficult to determine whether these initiatives have a direct impact on sexual harassment, it does reflect strong leadership around establishing gender equality.

These initiatives include:

- Safe and Strong
- White Ribbon
- Male Champions of Change.

Safe and Strong

The Victorian government's *Safe and Strong: A Victorian Gender Equality Strategy* (2016) promotes and ensures gender equality. The strategy aims to introduce gender auditing across the Victorian public service. The Office for Women (at the time with DHHS, but now with DPC) commissioned a gender audit pilot in 2017, which all departments took part in. The results showed inequality in pay and leadership.

Four departments have included targets in their strategies for executive officer or senior leadership positions to address gender inequality.

White Ribbon

White Ribbon was a registered charity that promoted the prevention of violence against women. During its operation, it offered an accreditation program. To gain accreditation, organisations had to meet 15 criteria including leadership and commitment, prevention of violence against women, and responses to violence against women. DHHS, DJCS and the former DEDJTR gained this accreditation. While not directly related to sexual harassment, this was a positive signal committing to prevention of violence against women. White Ribbon ceased operations in October 2019.

Male Champions of Change

The Male Champions of Change Institute works with male leaders across private and public sector organisations in Australia to support them in driving gender equality in their workplaces. DELWP and DPC have senior leaders who are also Male Champions of Change committed to gender equality and women in leadership.

4.7 Addressing PMS results

'I am in a branch where staff—through the People Matter Survey—have indicated very low trust in the reporting system, but the branch exec refuse to address it.'

The PMS is the best source of information for departments to understand risk factors for sexual harassment. It is important that departments use the results to listen to what their employees are telling them and take decisive action.

DoT did not undertake the PMS in 2019 and so is unable to utilise this data to understand its organisational culture.

PMS action plans

After receiving the PMS results, departments prepare action plans setting out how they will address key risk areas. Departments can decide which areas they address.

From the 2018 PMS, four departments (DELWP, DJCS, DTF and DPC) had action plans to specifically address sexual harassment results.

DET and DHHS had action plans to address inappropriate behaviour more broadly, such as bullying, harassment and discrimination. While these do not specifically address sexual harassment, often the initiatives to address such behaviours overlap.

All of these plans aim to address PMS findings at a high level and include department-wide training and communication initiatives. However, these plans do not focus on individuals at higher risk of sexual harassment, such as those with a self-described gender identity, LGBTIQ employees, women and Aboriginal and Torres Strait Islander employees, as outlined in Part 2.

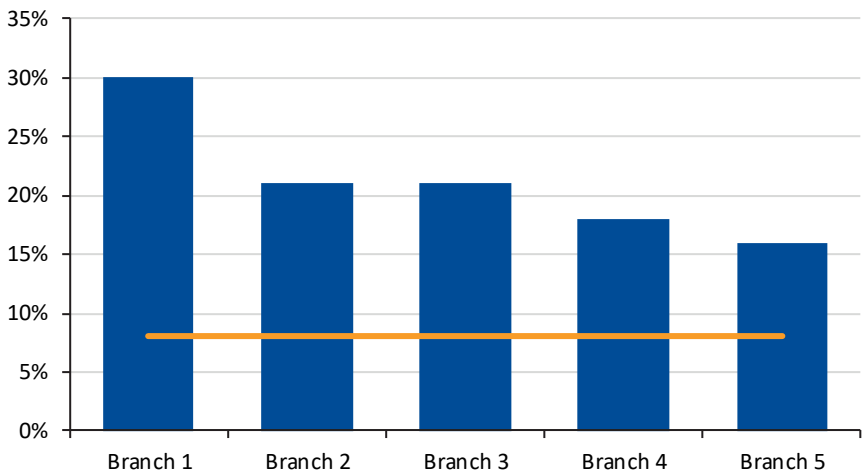
The Victorian LGBTIQ Taskforce was established in 2015 and can advise government departments on ways to support their LGBTIQ employees. Both DHHS and DJCS have working groups that provide subject matter advice and support to this taskforce.

High-risk teams

Divisions, branches and teams within a department may experience sexual harassment at a higher rate compared to other areas. Since 2016, the VPSC has provided departments with detailed insight into certain work areas that experience higher rates of sexual harassment.

From 2019, the VPSC has provided departments with a summary of the top five branches, divisions or units that experienced the worst rates of sexual harassment. For example, in one department, less than 8 per cent of its respondents said that they had experienced sexual harassment. However, as shown in Figure 4F, some branches within this department experienced sexual harassment at a much higher rate.

Figure 4F
Sexual harassment risk areas in one department



Source: VPSC report to one department 2019.

Departments can harness this data and look at prevention of sexual harassment holistically. This may ensure not only that they comply with their legal obligations, but that staff are safe from harm.

Appendix A

Submissions and comments

We have consulted with DELWP, DET, DHHS, DJCS, DJPR, DoT, DPC, DTF, VEOHRC, VPSC and WorkSafe Victoria, and we considered their views when reaching our audit conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report, or relevant extracts, to those agencies and asked for their submissions and comments.

Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

DELWP	66
DET	69
DHHS.....	72
DJCS	76
DJPR.....	81
DoT	85
DPC	89
DTF.....	93
VEOHRC	95
VPSC.....	97

RESPONSE provided by the Secretary, DELWP



Department of Environment,
Land, Water and Planning

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Mr Andrew Greaves
Auditor-General
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MELBOURNE VIC 3000

Ref: SEC014434



Dear Mr Greaves

Andrew,

PERFORMANCE AUDIT REPORT: SEXUAL HARASSMENT IN THE VICTORIAN PUBLIC SERVICE

Thank you for your letter of 29 October 2019 providing the Department of Environment, Land, Water and Planning (DELWP) with an opportunity to comment on the proposed performance audit report - *Sexual Harassment in the Victorian Public Service*.

The department appreciates the work of your office in the conduct of this audit. The findings and recommendations in this report will assist the department in improving measures to prevent and report on sexual harassment and respond to complaints in a fair and effective manner.

Sexual harassment will not be tolerated at DELWP. In July 2019 we launched our Safe and Respectful Workplaces program to improve our actions to prevent sexual harassment in the workplace and other forms of harassment and disrespect.

The department supports all seven recommendations. Details of our response to the report's recommendations are provided in the attached plan.

Should you require further information in relation to the matters raised, please contact Kelly Crosthwaite, Executive Director, People and Culture on (03) 9637 8201.

Yours sincerely

John Bradley
Secretary

13 /11/2019

Encl.

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



RESPONSE provided by the Secretary, DELWP—continued

Department of Environment, Land, Water and Planning action plan to address recommendations from VAGO's 'Sexual harassment in the Victorian Public Service' performance audit

No	VAGO recommendation	Action	Completion date
1	Introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum: <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace 	Redesign online Appropriate Workplace Behaviours training to include at a minimum VAGO's recommended content regarding sexual harassment. Launch updated Appropriate Workplace Behaviour training as mandatory for all staff at induction and as a minimum every two years.	January 2020 January 2020
2	Provide specific training to managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should: <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible 	Implement specific training to managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This training will be developed and provided to managers and mandatory for all new managers and repeated at least once every two years.	June 2020
3	Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously and targeted campaigns for high-risk groups.	Develop and commence delivery of an annual communications plan that includes a campaign to increase confidence in the complaints system and encourage complaints of inappropriate behaviour including sexual harassment. This plan will include messages to target high-risk groups.	November 2019
		Develop and implement an avenue for reporting complaints anonymously.	February 2020
4.	Improve record keeping practices, including: <ul style="list-style-type: none"> • providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the <i>Public Records Act 1973</i> • performing spot checks at least annually to ensure records for formal complaints are appropriately maintained. 	Review and revise existing record keeping practices of managing complaint files to identify gaps or processes that are inconsistent with departmental policy and the <i>Public Records Act 1973</i> . Determine a process to perform spot checks at least annually to ensure records for formal complaints are appropriately maintained. Develop a manual to provide guidance to relevant staff on the revised record keeping system of complaint files and spot check process. This will ensure a consistent approach is taken by staff in records management.	January 2020 January 2020 April 2020
		Deliver training to relevant staff on the revised record keeping system and spot	June 2020

RESPONSE provided by the Secretary, DELWP—continued

		check processes to ensure compliance with departmental policy and the <i>Public Records Act 1973</i> .	
		Implement the revised record keeping system of complaint files and spot check process to improve records management processes.	June 2020
5.	Securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure: <ul style="list-style-type: none"> complaint files can be located using a unique identifier found in the register the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint 	Implement a system to securely store complaint documentation in a confidential and searchable format.	December 2019
		Implement a register to record and categorise the number of sexual harassment complaints. The register will record a unique identifier for complaint files, the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint.	May 2020
6.	Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police	Review the complaints process and implement a checkpoint for when the department needs to report a sexual harassment complaint to Victoria Police.	December 2019
7.	Ensure that the department's senior leadership communicate at least annually a commitment to eliminate sexual harassment	Communicate a commitment to eliminate sexual harassment to coincide with 16 days of Activism and the release of the VAGO Report.	November 2019
		Develop and commence delivery of an annual communications plan that includes Secretary messages and Executive Leadership Group messages to staff that communicate a zero-tolerance attitude to sexual harassment.	November 2019

RESPONSE provided by the Secretary, DET



Department of
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BRI1937549

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Dear Mr Greaves

Proposed report: Sexual Harassment in the Victorian Public Service

Thank you for your letter of 29 October 2019, and the opportunity to comment on the proposed report for the *Sexual Harassment in the Victorian Public Service* performance audit.

The Department is committed to providing workplaces that are free from sexual harassment and building a safe and inclusive culture based on our values.

The Department has reviewed the report and has no further feedback.

The Department's action plan that addresses the recommendations is also attached. It reflects the work currently under way in this area, notably, improvements to the Department's sexual harassment policy, the release of a sexual harassment eLearning module and the implementation of a new complaints management system.

Should you wish to discuss the Department's response, please contact Jonathan Kaplan, Executive Director, Integrity, Assurance and Executive Services Division on 7022 0119 or by email: kaplan.jonathan.e@edumail.vic.gov.au.

Yours sincerely

Jenny Atta
Secretary
11/11/2019



RESPONSE provided by the Secretary, DET—continued

DET action plan for Sexual Harassment in the Victorian Public Service				
#	Recommendations for all departments	Response	#	The Department will/has:
1	<p>Introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace. 	Accept	1.1	Added the sexual harassment eLearning module to the suite of mandatory learning modules for completion at induction.
			1.2	<p>Review the sexual harassment eLearning module to ensure it includes:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace.
			1.3	Add the sexual harassment eLearning module to the suite of mandatory learning modules for completion by all staff every two years.
2	<p>Provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible. 	Accept	2.1	<p>Review the complaints handling component of the Respectful Workplaces training for managers to ensure it includes the following and is delivered to all managers at least every two years:</p> <ul style="list-style-type: none"> • information on responding to complaints of inappropriate behaviour, including sexual harassment complaints • the Department's positive duty to eliminate sexual harassment and victimisation.

RESPONSE provided by the Secretary, DET—continued

3	Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups.	Accept	3.1	Develop and deliver communications to raise awareness of inappropriate behaviour and sexual harassment, including targeted messaging regarding high-risk groups and information about all complaints channels (including anonymous reporting).	Dec 2020
4	Improve record keeping practices, including: <ul style="list-style-type: none"> providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the <i>Public Records Act 1973</i> performing spot checks at least annually to ensure records for formal complaints are appropriately maintained. 	Accept	4.1	Implemented the new case management system for complaints to ensure proper maintenance of records of complaints against employees.	Complete
			4.2	Implement a process to perform spot checks at least annually to ensure records for formal complaints are appropriately maintained.	Jun 2020
			4.3	Develop and provide guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the Department's policy and the <i>Public Records Act 1973</i> .	Jan 2020
5	Securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure: <ul style="list-style-type: none"> complaint files can be located using a unique identifier found in the register the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint. 	Accept	5.1	Continue to record and categorise all complaints of sexual harassment in the new, secure case management system to enable tracking and reporting on sexual harassment.	Complete
6	Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police.	Accept	6.1	Continue to assess all sexual harassment complaints to see if a report to police is required.	Complete
7	Ensure that the senior leadership communicate at least annually a commitment to eliminate sexual harassment.	Accept	7.1	Develop and deliver communications at least annually to raise awareness of the Department's commitment to eliminating sexual harassment, including key messages from senior leadership.	Dec 2020

RESPONSE provided by the Secretary, DHHS



Secretary

Department of Health and Human Services

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VAGO reference: 34143

BAC 4833

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 24, 35 Collins Street
MELBOURNE VIC 3000


Dear Mr Greaves

Sexual harassment in the Victorian public sector performance audit

Thank you for your letter dated 29 October 2019 and the opportunity to comment on the proposed report for the *Sexual harassment in the Victorian Public Sector performance audit*.

The Department of Health and Human Services (the department) accepts all of the recommendations in the report.

Enclosed with this letter is the department's action plan to address the recommendations from the report.

I would like to take this opportunity to thank your staff for their work and the professional manner in which they have engaged with the department's staff.

Yours sincerely


Kym Peake
Secretary

12 / 11 / 2019



RESPONSE provided by the Secretary, DHHS—continued

Sexual harassment in the Victorian public sector
Department of Health and Human Services response to VAGO recommendations

Recommendation	Proposed action	Proposed end date
<p>1. introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace (see Section 4.4) 	<p>The department accepts this recommendation.</p> <p>The department will:</p> <ul style="list-style-type: none"> • review its existing on-line sexual harassment module for new-starter employees to include specific reference to all elements listed. • implement a process for essential refresher training for existing employees. 	<p>May 2020 to review and update on-line training material. Essential refresher training will be ongoing.</p>
<p>2. provide specific training to managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible (see Section 4.4) 	<p>The department accepts this recommendation.</p> <p>The department will:</p> <ul style="list-style-type: none"> • review its existing on-line sexual harassment module to include a new section specific to managers and how to respond to complaints of inappropriate behaviour, including sexual harassment. This will capture new managers as they complete their refresher training and respond to the additional questions for those employees who manage staff. 	<p>May 2020 to review and update on-line training material. Essential refresher training will be ongoing.</p>

Sexual harassment in the Victorian public sector
Department of Health and Human Services response to VAGO recommendations

Recommendation	Proposed action	Proposed end date
<p>3. develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups (see Section 3.2)</p>	<p>The department accepts this recommendation in principle.</p> <p>The department will:</p> <ul style="list-style-type: none"> use data from the department's People Matter Survey results that identify high-risk groups to guide and inform the key messages and communication strategies in developing a targeted campaign for all staff and people leaders to encourage the reporting of inappropriate behaviour. include that employees may report concerns anonymously by providing written correspondence to the relevant executive, noting that the ability to respond or take direct action may be limited where evidence cannot be attained or clarified due to anonymity of the complaint. continue its current campaign and promotion of the <i>Home safely every day: Your health, your wellbeing, your workplace</i> awareness sessions about appropriate workplace behaviour and creating and maintaining a positive working environment to increase staff confidence in raising matters. 	June 2020
<p>4. improve record keeping practices, including:</p> <ul style="list-style-type: none"> providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the <i>Public Records Act 1973</i>. performing spot checks at least annually to ensure records for formal complaints are appropriately maintained (see Section 3.3) 	<p>The department accepts this recommendation.</p> <p>The department will:</p> <ul style="list-style-type: none"> include specific reference to record-keeping in existing training modules, including the Leading With Respect program and other training modules on managing and responding to inappropriate behaviour. review relevant policies to ensure that guidance is provided. introduce spot checks for formal discipline matters, supported by the use of a documentation file checklist to ensure all relevant material is on file. 	May 2020

Sexual harassment in the Victorian public sector
Department of Health and Human Services response to VAGO recommendations

Recommendation	Proposed action	Proposed end date
<p>5. securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure:</p> <ul style="list-style-type: none"> complaint files can be located using a unique identifier found in the register the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint (see section 3.3) 	<p>The department accepts this recommendation in principle.</p> <p>The department will:</p> <ul style="list-style-type: none"> continue to securely store all documentation in compliance with record-keeping requirements aligned to the <i>Public Records Act 1973</i>. include a specific category for sexual harassment, where available, in its existing systems and databases, including its human resource management system (SAP) and for formal discipline investigations that include allegations of sexual harassment. review the relevant policies and training to ensure record-keeping requirements are listed. 	May 2020
<p>6. implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police (see section 3.3)</p>	<p>The department accepts this recommendation.</p> <p>The department will:</p> <ul style="list-style-type: none"> review the <i>Sexual Harassment Policy</i> to include a checkpoint when determining the appropriate action to take following receipt of a complaint of sexual harassment, noting that the department has in place a <i>Reporting Employee Criminal Conduct Policy</i>, which requires the reporting of criminal matters to police. 	May 2020
<p>7. ensure that their senior leadership communicate at least annually a commitment to eliminate sexual harassment (see Section 4.6)</p>	<p>The department accepts this recommendation.</p> <p>The department will:</p> <ul style="list-style-type: none"> continue to communicate to all staff on a regular basis, and at least annually, a commitment to eliminate sexual harassment within DHHS. schedule this into the DHHS internal communication calendar. 	January 2020 and ongoing.

RESPONSE provided by the Secretary, DJCS



Department of Justice and Community Safety

Secretary

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DX: 210077

Our ref: CD/19/862637

Mr Andrew Greaves
Victorian Auditor-General
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Dear Mr Greaves

Thank you for your letter of 29 October 2019 providing me with the opportunity to respond to the Victorian Auditor-General's Office (VAGO) *Sexual Harassment in the Victorian Public Sector* proposed report.

The Department of Justice and Community Safety (the department) accepts the eight recommendations directed at the department.

The department has a zero-tolerance approach to sexual harassment. I welcome this opportunity to review and strengthen respect and safety in the department.

I have attached an action plan detailing how the department intends to implement the recommendations and the expected timeline.

If your office requires further information, please contact Kris Waring, Director, Integrity and Investigations, on 8684 8280 or via email at Kris.Waring@justice.vic.gov.au.

Yours sincerely

Rebecca Falkingham
Secretary

14/11/19.



Department of Justice and Community Safety response to the VAGO Sexual Harassment in the VPS proposed audit report

Recommendation	Proposed Action	Completion Date
<p>1. Introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace. <p>2. Provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible. 	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will introduce mandatory training on sexual harassment.</p> <p>All new staff will be required to complete the training during induction.</p> <p>Existing staff will have to complete the training every two years.</p>	<p>1 July 2020 — Development of training</p> <p>1 July 2021 — Delivery of training to all staff</p>
	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will introduce mandatory training on sexual harassment for managers.</p> <p>All new staff will be required to complete the training during induction.</p> <p>Existing staff will have to complete the training every two years.</p>	<p>1 July 2020 — Development of training</p> <p>1 July 2021 — Delivery of training to all staff</p>

Recommendation	Proposed Action	Completion Date
3. Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups.	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will run a campaign in relation to sexual harassment incorporating:</p> <ul style="list-style-type: none"> • A Message from the Secretary or Senior Leaders outlining the department's zero tolerance approach • Promoting the department's new sexual harassment policy • Encouraging staff to speak up to report sexual harassment or improper conduct <p>The department will also form a working group to target communication messages at high-risk groups, including staff working in the correctional environment or where data suggests an increased engagement campaign is required.</p>	<p>1 March 2020 — Message from the Secretary and promoting policy</p> <p>1 July 2020 — Targeted campaign for high-risk groups</p>
4. Improve record keeping practices, including: <ul style="list-style-type: none"> • providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the <i>Public Records Act 1973</i> • performing spot checks at least annually to ensure records for formal complaints are appropriately maintained. 	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department is committed to good record keeping practices in line with the <i>Public Records Act 1973</i> and departmental policy. All staff are required to routinely create and keep full accurate records of their work-related activities, transactions and decisions using authorised systems. The department will incorporate guidance on good record keeping in relation to sexual harassment complaints into its new policy and communication material.</p> <p>The department will introduce a system of annual spot checking in relation to formal complaint records to ensure records are appropriately maintained and managed.</p>	1 March 2020

RESPONSE provided by the Secretary, DJCS—continued

Recommendation	Proposed Action	Completion Date
<p>5. Securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure:</p> <ul style="list-style-type: none"> • complaint files can be located using a unique identifier found in the register • the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint. 	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will add a new category to its <i>Casetrack</i> system, where sexual harassment complaints are case managed by the central Workplace Relations team. <i>Casetrack</i> currently records the unique identifier, name, work area, date of complaint received and closed and outcome of the complaint. An additional category will be added to specifically record complaints as sexual harassment related.</p> <p>The department will also review the need to provide guidance to business units about recording sexual harassment complaints that are managed at a local level and options in relation to a new case management system.</p>	<p>1 March 2020 — Adding new category to <i>Casetrack</i></p> <p>1 July 2020 — Review of guidance to business units and options for case management system.</p>
<p>6. Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police.</p>	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will introduce a checkpoint to determine whether a sexual harassment complaint needs to be reported to Victoria Police.</p> <p>The department will work with the Victorian Public Sector Commission (VPSC) in relation to their guidance and model policy on this issue as per recommendation 10 that VAGO has directed to VPSC.</p>	<p>1 July 2020 — subject to the implementation of recommendation 10 by VPSC</p>

RESPONSE provided by the Secretary, DJCS—continued

Recommendation	Proposed Action	Completion Date
7. Ensure that their senior leadership communicate at least annually a commitment to eliminate sexual harassment.	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will send an annual Message from the Secretary or Senior Leaders to all staff outlining its zero-tolerance approach to sexual harassment and the importance of respect, health and safety in the workplace.</p>	1 March 2020
8. Introduce a standalone sexual harassment policy that incorporates better practice elements in the Victorian Public Sector Commission's model policy.	<p>The Department of Justice and Community Safety accepts the recommendation.</p> <p>The department will review its <i>Respect in the Workplace</i> policy, which includes sexual harassment, with a view to adopting a standalone policy in line with the VPSC Model Policy.</p>	1 March 2020

RESPONSE provided by the Secretary, DJPR



Department of Jobs, Precincts and Regions

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Ref: CSEC-2-19-706
File: 34153

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31
35 Collins Street
MELBOURNE VICTORIA 3000

Dear Mr Greaves

VAGO PROPOSED REPORT - SEXUAL HARASSMENT IN THE VICTORIAN PUBLIC SERVICE PERFORMANCE AUDIT

Thank you for your letter of 29 October 2019 providing the department with a copy of your proposed report on *Sexual harassment in the Victorian Public Service*. I welcome the opportunity to comment on the proposed report.

The department has zero tolerance of sexual harassment in the workplace. The department's responses to the audit recommendations are enclosed. If you require any further information, please contact Susana de Pedro, Director, Workplace Relations and Safety on 0428 642 473 or by email to Susana.dePedro@ecodev.vic.gov.au.

Yours sincerely

Simon Phemister
Secretary

18 / 11 / 2019



Department of Jobs, Precincts and Regions action plan to address recommendations from the VAGO performance audit: Sexual harassment in the Victorian public service

No.	VAGO recommendation	Action	Completion date
1.	<p>Introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and 'grey area' behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace (see Section 4.3) 	Existing training will be updated to incorporate the recommended minimum content.	31/3/2020
2.	<p>Provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible (see Section 4.4) 	Existing training will be updated to incorporate the recommended minimum content.	31/3/2020

RESPONSE provided by the Secretary, DJPR—continued

No.	VAGO recommendation	Action	Completion date
3.	Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups (see Section 3.2)	Action incorporated into the Safety and Wellbeing Strategy and Action Plan 2019-22.	30/06/2020
4.	Improve record keeping practices, including: <ul style="list-style-type: none"> providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the Public Records Act 1973 performing spot checks at least annually to ensure records for formal complaints are appropriately maintained (see Section 3.3) 	Refresher training to be provided to relevant staff.	31/03/2020
5.	Securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure: <ul style="list-style-type: none"> complaint files can be located using a unique identifier found in the register the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint (see section 3.3) 	The department's complaints and misconduct registers will be reviewed against the recommendations.	31/3/2020

RESPONSE provided by the Secretary, DJPR—continued

No.	VAGO recommendation	Action	Completion date
6.	Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police (see section 3.3)	Recommendation has been incorporated into the department's complaints process.	Completed
7.	Ensure that their senior leadership communicate at least annually a commitment to eliminate sexual harassment (see Section 4.5).	Zero tolerance of sexual harassment will be communicated by senior management at least annually.	30/06/2020

RESPONSE provided by the Secretary, DoT



Department of Transport

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Mr Andrew Greaves
Auditor-General of Victoria
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Level 31, 35 Collins Street
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Dear Mr Greaves

Proposed Performance Audit Report – Sexual Harassment in the Victorian Public Service

Thank you for your letter of 29 October 2019 enclosing your proposed report relating to Sexual Harassment in the Victorian Public Service audit, and for the opportunity to provide comment on the proposed report.

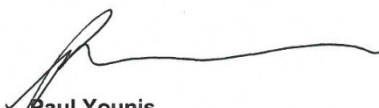
I note your conclusion that sexual harassment occurs in every government department and agree that improvements are required in how formal and informal complaints are handled and managed.

The Department accepts the recommendations outlined in the proposed report, and has provided comments on the recommendations for your office's consideration for inclusion in the final report.

The Department is committed to preventing, responding and reporting complaints of sexual harassment in a fair and effective manner.

If you have any queries, please do not hesitate to contact Joe Grgic, Director Workplace Relations on 0456 745 771 or David Hrzic, Director Independent Audit on 0417 523 442.

Yours sincerely



Paul Younis
Secretary

12 / 11 / 19



Sexual Harassment Action Plan

Action plan to address recommendations from the performance audit of Sexual Harassment in the Victorian Public Sector

No.	VAGO recommendation	Action	Completion date
1	<p>Introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> practical guidance to help bystanders intervene examples of less overt forms of sexual harassment and 'grey area' behaviours reference to the relevant legislation, definition and that sexual harassment is unlawful complaint channels (including external avenues) consequences for the alleged harasser and the departments, including legal liability impact of sexual harassment on employees; and the positive duty to eliminate sexual harassment and victimisation in the workplace. 	<p>Agreed.</p> <p>DoT will review current training and e-Learning modules across all former agencies and consolidate approach and practice. This includes:</p> <ul style="list-style-type: none"> Determining key compliance and governance training requirements and engaging with business subject matter experts to validate and refine requirements; Finalising foundational governance and compliance training requirements; Working with subject matters experts to consolidate, refresh and finalise e-learning content; Designing, developing and implementing an e-Learning module; Researching, recommending and implementing an online solution to place the e-Learning module on a platform that can provide reporting and reminders for mandatory refresher training every two years to meet compliance requirements; and Include training and e-learning modules as part of employee induction. 	July 2020
2	<p>Provide specific training to managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> include training on the department's positive duty to eliminate sexual harassment and victimisation; Be delivered to all new managers and repeated at least once every two years; and Be delivered face-to-face if possible. 	<p>Agreed.</p> <p>As part of the e-Learning module developed for all staff, DoT will design and incorporate a section specifically for managers that addresses their roles and responsibilities and how to respond to complaints.</p> <p>The e-Learning module will be included as part of manager induction at the Department.</p>	July 2020

VAGO Report - Sexual Harassment in the Victorian Public Sector - Action Plan

RESPONSE provided by the Secretary, DoT—continued

No.	VAGO recommendations	Action	Completion date
3	Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff's confidence in the complaints system. This should include allowing staff to report complaints anonymously and targeted campaigns for high-risk groups.	Agreed. DoT will develop a targeted campaign to encourage complaints of inappropriate behaviour. This includes: <ul style="list-style-type: none"> Ensuring that an annual email from the Secretary is communicated to all departmental staff supported by Team Talk and Fact Sheet with links to policy and intranet information; Rolling out HR Business Partner training to ensure specialist knowledge of process and to support managers; Updating the Departmental Policy on the intranet (completed); and Building intranet content repository for policy, toolkits, frequently asked questions, complaints process and key contacts. 	February 2020
4	Improve record keeping practices, including: <ul style="list-style-type: none"> Providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the Public Records Act 1973 performing spot checks at least annually to ensure records for formal complaints are appropriately maintained. 	Agreed. DoT will improve record keeping practices through: <ul style="list-style-type: none"> Filling the Grievance Registrar vacancy and providing guidance to staff who respond to complaints of sexual harassment; Reviewing the reporting and tracking process to capture robust data; Conducting spot checks on an annual basis each year to ensure records for formal complaints are appropriately maintained; and Exploring technical options to improve the incident management tool to record complaints. 	November 2019
5	Secure store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure: <ul style="list-style-type: none"> Complaint files can be located using a unique identifier found in the register; and The register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint. 	Agreed. DoT will build a database to store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format. Complaint filing and naming conventions will be refreshed as part of this process and processes for the management of complaint files will be established following the appointment of the new registrar.	November 2019
6	Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police.	Agreed. DoT will develop a mechanism to spot check the status of the complaint's process to determine whether a sexual harassment complaint needs to be reported to the Victoria Police.	December 2019

RESPONSE provided by the Secretary, DoT—continued

No.	VAGO recommendation	Action	Completion date
7	Ensure that their senior leadership communicates at least annually a commitment to eliminate sexual harassment.	<p>Agreed.</p> <p>DoT is committed to eliminating sexual harassment and will undertake the following activities (at least annually):</p> <ul style="list-style-type: none"> • Ensure the release of the Secretary's email expressing commitment to eliminate sexual harassment; • Encourage the conduct of manager team talk sessions; • Develop manager and staff fact sheets; • Develop intranet dotted line posting; • Develop and populate the People and Culture Sexual Harassment information site; • Highlight People Matters Survey results; and • Ensure that the Safety and Wellbeing Strategy includes zero tolerance on sexual harassment and outline leadership responsibilities for promoting a safe workplace. 	December 2019

RESPONSE provided by the Secretary, DPC



Department of
Premier and Cabinet

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D19/304719

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Dear Auditor-General

Thank you for your letter dated 29 October 2019 including the proposed report on sexual harassment in the Victorian Public Service, and your invitation to provide submissions and comments in relation to the recommendations contained in that report.

DPC notes the proposed report and agrees with all of the recommendations in the report.

Enclosed with this letter are DPC's responses to each of the recommendations directed to us, outlining the actions that we will take and projected implementation timelines. Over the relevant period, DPC will work with your staff to provide periodic updates as requested.

As Secretary of DPC and head of the VPS I am committed to ensuring my department and the VPS implement these recommendations to provide workplaces free from sexual harassment. I also take seriously our responsibility to ensure our staff are well supported to make complaints, are trained in how to recognise and address sexual harassment and receive appropriate support in instances where sexual harassment occurs.

Thank you for the opportunity to consider the proposed draft response and for the opportunity to respond. Should staff in your office have any questions, please contact Claire Stevens, A/Chief Human Resource Officer on 7017 3210.

Yours sincerely


Chris Eccles AO
Secretary

Encl.

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



RESPONSE provided by the Secretary, DPC—continued

DPC Audit Recommendation Action Plan – Sexual Harassment in the Victorian Public Service

Recommendation	DPC response	Timing
<p>1. introduce mandatory training for all staff on sexual harassment at induction and at least every two years. This should include at a minimum:</p> <ul style="list-style-type: none"> • practical guidance to help bystanders intervene • examples of less overt forms of sexual harassment and ‘grey area’ behaviours • reference to the relevant legislation, definition and that sexual harassment is unlawful • complaint channels (including external avenues) • consequences for the alleged harasser and the department, including legal liability • impact of sexual harassment on employees • the positive duty to eliminate sexual harassment and victimisation in the workplace 	<p>DPC representation and active participation in the VPS Sexual Harassment working group (chaired by the VPSC). The group aims to ensure a consistent approach to sexual harassment across the VPS, including leveraging resources, training, and lessons learnt.</p>	Ongoing
	<p>Development of new induction eLearning module ‘Our Respectful Workplace’ which includes:</p> <ul style="list-style-type: none"> - link to Policy for the Prevention of Sexual Harassment in the Workplace including complaint channels - Definitions of sexual harassment - examples/interactive scenarios of sexual harassment in the workplace 	FY20 Q3
	<p>Develop and implement a stand-alone eLearning module about sexual harassment in the workplace</p>	FY20 Q4
	<p>Implementation of the VEOHRC ‘<i>Raise It: Conversations about sexual harassment and workplace equality</i>’ initiative</p>	FY20 Q3
<p>2. provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints. This should:</p> <ul style="list-style-type: none"> • include training on the department's positive duty to eliminate sexual harassment and victimisation • be delivered to all new managers and repeated at least once every two years • be delivered face-to-face if possible 	<p>Implementation of the VEOHRC ‘<i>Raise It: Conversations about sexual harassment and workplace equality</i>’ training to equip managers with the skills necessary in identifying topics for conversation in respect to sexual harassment and workplace equality.</p>	FY20 Q3
	<p>Inclusion of topic of inappropriate behaviours (including sexual harassment) in Manager’s HR toolkit program</p>	FY20 Q3
<p>3. develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment, and increase staff confidence in the complaints system. This should include allowing staff to report complaints anonymously, and targeted campaigns for high-risk groups</p>	<p>Communications campaign in line with implementation of the VEOHRC ‘<i>Raise It</i>’ initiative. This will include promotion of policy, process and avenues to report complaints.</p>	FY20 Q3
	<p>Identify regular opportunities across the year for leaders to consistently communicate and present on sexual harassment and gender equality.</p>	Ongoing

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RESPONSE provided by the Secretary, DPC—continued

	<p>Review and update Webpages / intranet pages containing links to policy and guidance materials, and information about complaints processes.</p> <p>Follow up with staff who have made complaints to ensure they are supported and that their matter has been dealt with effectively.</p> <p>Analysis of People Matter Results to identify any potential hot spots, business areas with higher rates of reported sexual harassment, or lack of confidence in complaints handling procedures, and target with tailored Respectful Workplace Behaviour information sessions, facilitated by People and Culture Branch.</p>	<p>FY20 Q2</p> <p>Ongoing</p> <p>Ongoing</p>
<p>4. improve record keeping practices, including:</p> <ul style="list-style-type: none"> • providing guidance to staff who respond to complaints of sexual harassment on their record keeping obligations under the department's policy and the Public Records Act 1973 • performing spot checks at least annually to ensure records for formal complaints are appropriately maintained 	<p>Identify training opportunities for staff who respond to complaints of sexual harassment on their record keeping obligations.</p> <p>Develop a checklist to ensure that staff who respond to complaints of sexual harassment create and maintain records appropriately.</p> <p>DPC Chief Human Resources Officer or Assistant Director will spot check records annually to ensure records for formal complaints are appropriately maintained.</p>	Ongoing
<p>5. securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format to ensure:</p> <ul style="list-style-type: none"> • complaint files can be located using a unique identifier found in the register • the register records the name of the subject and work area, the date the complaint was received and closed, and the outcome of the complaint 	<p>DPC maintains a complaints register which ensures complaints can be identified by subject matter and CM file number while maintaining confidentiality.</p> <p>DPC files grievances and misconduct matters in CM with restricted access caveats.</p>	Ongoing
<p>6. implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police</p>	<p>The Chief Human Resources Officer will consider any initial assessment relating to sexual harassment to determine whether the department</p>	Ongoing

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RESPONSE provided by the Secretary, DPC—continued

	needs to report a complaint to Victoria Police and will be kept informed of the progress of any sexual harassment complaint by the investigator through regular updates. Where an external investigator is engaged, DPC will require the investigator to inform DPC of any information provided which relates to a sexual assault or otherwise and should be provided to the Victoria Police.	
7. ensure that senior leadership communicate at least annually a commitment to eliminate sexual harassment	<p>Coordinate release of Victorian Secretaries' Board statement on sexual harassment following release of VAGO report, and the report on the National Inquiry into Sexual Harassment (due to be released in early 2020).</p> <p>Coordinate DPC Secretary and/or Board of Management Message to all staff, aligning to key campaigns and/or days of significance where relevant.</p>	<p>Q3</p> <p>Annually (minimum)</p>

Other actions:

- DPC represented on Gender Equity Working Group of VSB supporting implementation of the multi-year Workplace Equality and Respect in the Public Sector program (WER).
- Undertake comprehensive gender audit to identify unexplained discrepancies in gender participation across DPC's activities
- Flexible work opportunities, including in leadership roles, are provided for all staff.
- Continued engagement with Male Champions of Change Initiatives.

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RESPONSE provided by the Secretary, DTF



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D19/253333

Mr Andrew Greaves
Auditor General
Level 31/35 Collins Street
MELBOURNE VIC 3000

Dear Mr Greaves

Proposed report – Sexual harassment in the Victorian Public Service performance audit

Thank you for your letter received on 29 October 2019 inviting a response to the proposed performance audit report: *Sexual harassment in the Victorian Public Service*.

I note the recommendations relevant to the Department of Treasury and Finance. A proposed action plan to address the recommendations is attached to this letter.

I further note that DTF has had a declining number of people reporting experiences of sexual harassment in the People Matter Survey (PMS) year on year. In 2019, 3% of respondents reported experiencing sexual harassment, down three percentage points from the 2018 results. In turn, these results were down two percentage points from the 8% recorded in 2017. In fact, the DTF 2019 PMS results recorded the lowest rates of staff reporting that they experienced sexual harassment in the previous 12 months out of all departments.

Without a stand-alone policy in place, we are still managing a culture of respect and safety that supports reporting and speaking up and a culture that fosters appropriate workplace behaviour. The Department carefully considered introducing a stand-alone sexual harassment policy at the time the model policy for the VPS was developed. Given the relatively low incidence of sexual harassment in the department, combined with the relatively high reporting rates, a decision was taken to retain existing policy arrangements. However, we accept VAGO's recommendation to implement a stand-alone policy to ensure alignment with the whole of government.

The Department is committed to the elimination of sexual harassment in the workplace. We will always look to improve and align to best practice and support the continuation of VPS wide, standard approaches to training, guidance and reporting so that all departments can align to best practice in the prevention and management of sexual harassment.

Thank you for the opportunity to respond to the report and the Department of Treasury and Finance welcomes continued feedback as we implement the recommendations.

Yours sincerely

David Martine
Secretary



RESPONSE provided by the Secretary, DTF—continued

DTF action plan to address recommendations from VAGO Audit - Sexual Harassment in the Victorian Public Service

No.	VAGO recommendation	Action	Completion date
1	Introduce mandatory training for all staff on sexual harassment at induction and at least every two years	DTF is reviewing current online and face to face training offerings, with a revised approach at induction and a two-year compliance date for sexual harassment training for all staff	March 2020
2	Provide specific training to all managers on responding to complaints of inappropriate behaviour, including sexual harassment complaints	DTF, as part of the Sexual Harassment working group chaired by the Victorian Public Sector Commission (VPSC), are working on a proposal for VPS wide approach to Sexual Harassment training for managers, delivered by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	March 2020
3	Develop a targeted campaign to encourage complaints of inappropriate behaviour, including sexual harassment	DTF is developing a comprehensive communication and engagement plan commencing December 2019	March 2020
4	Improve record keeping practices	DTF is reviewing and implementing process improvements to internal record keeping processes and systems, followed by training for all staff involved in case management, reporting and record keeping	March 2020
5	Securely store complaint documentation and record and categorise the number of sexual harassment complaints in a confidential and searchable format	DTF, as part of the Sexual Harassment working group chaired by the VPSC, will implement process improvements to common reporting standards and the categorisation of reports and complaints	March 2020
6	Implement a checkpoint during the complaints process to determine whether the department needs to report a sexual harassment complaint to Victoria Police	DTF are in the process of implementing a standalone sexual harassment policy, including an updated process flow with checkpoints in the complaints process	December 2019
7	Ensure senior leadership communicate at least annually a commitment to eliminate sexual harassment.	DTF is developing a comprehensive communication and engagement plan commencing December 2019	December 2019
8	Introduce a standalone sexual harassment policy	DTF are in the process of implementing a standalone sexual harassment policy that incorporates the VPSC model policy	Dec 2019

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RESPONSE provided by the Executive Director, VEOHRC



14 November 2019

Andrew Greaves
Auditor-General
Victorian Auditor-General's Office

Dear Mr Greaves

Response to proposed report - sexual harassment in the Victorian Public Service performance audit

Thank you for your letter of 29 October 2019 providing a draft copy of your office's draft report into sexual harassment in the Victorian Public Sector to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

VEOHRC welcomes the opportunity to comment on this draft. Thank you too for the opportunity to provide data and reflections to your office during the course of the audit to support the investigation of whether Victorian government departments provide workplaces that are free from sexual harassment.

VEOHRC's role

VEOHRC has responsibilities under the Victorian Equal Opportunity Act 2010, Charter of Human Rights and Responsibilities Act 2006 and Racial and Religious Tolerance Act 2001.

In relation to sexual harassment, this includes:

- issuing practice guidelines on employers' duties in relation to sexual harassment, which can be considered by courts or Tribunals as evidence of compliance
- providing education resources, training packages and consultancy services to organisations regarding sexual harassment
- delivering a dispute resolution service for complaints about discrimination, sexual harassment and victimisation
- conducting investigations into potential systemic and serious matters of sexual harassment, discrimination and victimisation
- entering into actions plans with organisations to improve compliance with sexual harassment, discrimination and victimisation protections
- reviewing organisations' compliance with equal opportunity obligations upon request and issuing recommendations
- intervening in court and tribunal proceedings that involve issues of sexual harassment, discrimination and victimisation

humanrightscommission.vic.gov.au
Enquiry Line 1300 292 153 or (03) 9032 3583

Level 3, 204 Lygon Street, Carlton, Vic 3053
Telephone 1300 891 848 Fax 1300 891 858 TTY 1300 289 621 Interpreters 1300 152 494
Email information@veohrc.vic.gov.au

RESPONSE provided by the Executive Director, VEOHRC—continued



- providing education, publications and an enquiries service to the public about the law

Recommendations in draft report

VEOHRC was very pleased to see the report acknowledge the importance of training, especially to senior leadership, in eliminating sexual harassment.

In VEOHRC's assessment training is most effective when it is both face-to-face and embedded in a holistic and programmatic approach to addressing sexual harassment and its drivers. This would include systems and governance mechanisms designed to embed a culture which actively works to eliminate sexual harassment. VEOHRC is pleased to work with any departments that wish to institute such programs.

In VEOHRC's comments on an earlier draft of the report we discussed the importance of clarity for departments on anonymous complaints, what to do if a victim does not want to proceed, a subject of an investigation resigns before its conclusion and the importance of complainants knowing when and how to contact external bodies. Thank you for considering and reflecting this feedback.

VEOHRC agrees with and accepts the recommendations on this issue made to it, which I note here for completion:

We recommend that the Victorian Equal Opportunity and Human Rights Commission:

12. develop guidelines on:

- *how to address and respond to anonymous complaints*
- *what to do if a victim does not want to proceed*
- *what to do if a subject resigns before the conclusion of an investigation*
- *how to refer complainants to external bodies.*

VEOHRC is in the process of updating practice guidelines on workplace sexual harassment for employers issued under the Equal Opportunity Act 2010 and will ensure these points are incorporated into this work. VEOHRC expects to publish the updated practice guidelines in the first half of 2020.

The current practice guidelines remain in place and can be accessed at <https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/ea-practice-guidelines/item/562-guideline-sexual-harassment-complying-with-the-equal-opportunity-act-2010>.

Please contact our office if you would like to discuss our feedback further.

Yours sincerely

Catherine Dixon
Executive Director

RESPONSE provided by the Commissioner, VPSC



Victorian Public Sector Commission

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www.vpsc.vic.gov.au

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31/35 Collins Street,
Melbourne VIC 3000

Dear Mr Greaves

Proposed Performance Audit Report: Sexual Harassment in the Victorian Public Service

Thank you for your letter dated 29 October 2019, providing the Victorian Public Sector Commission with an opportunity to review and comment on VAGO's proposed performance audit report on sexual harassment in the Victorian Public Service.

The Commission has reviewed the proposed report and supports the recommendations.

Enclosed with this letter are the Commission's responses and intended actions in relation to each of the recommendations for the Commission.

Should you require any further information, please do not hesitate to contact Ms Verity Harris, Executive Director, Integrity and Advisory, on (03) 70047169 or verity.harris@vpsc.vic.gov.au.

Yours sincerely

Paul Grimes
Commissioner

13 / 11 / 2019

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RESPONSE provided by the Commissioner, VPSC—continued

VAGO Recommendations	Commission Audit Action Plan	Completion date
Recommendation 9 Develop guidance for departments on investigating matters with no independent witnesses.	The Commission accepts this recommendation. The Commission intends to develop guidance for departments on investigating matters with no independent witnesses.	December 2020
Recommendation 10 Review and expand guidance for departments on reporting matters to Victoria Police.	The Commission accepts this recommendation. The Commission intends to develop guidance for departments on reporting matters to Victoria Police.	December 2020
Recommendation 11 Develop guidance to ensure that departments understand the level of information they can share with complainants and others when the investigation concludes.	The Commission accepts this recommendation. The Commission intends to develop guidance for departments on the level of information they can share with complainants and others when the investigation concludes.	December 2020

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Appendix B

Key legislative requirements and guidance material

Figure B1
Key legislative requirements and guidance material

Instrument	Requirements / Guidance
<i>Equal Opportunity Act 2010 (Vic)</i>	<p>Mandatory compliance</p> <p>Defines sexual harassment as an unwelcome sexual advance, an unwelcome request for sexual favours, or any other unwelcome conduct of a sexual nature in which a reasonable person would anticipate that this behaviour would offend, humiliate or intimidate. This legislation places a positive obligation on organisations to eliminate discrimination, sexual harassment, or victimisation as far as possible.</p> <p>It also provides that employers can be vicariously liable for breaches of the Act, including sexual harassment, by persons that they employ. An exception to this is when an employer can demonstrate that they have taken reasonable precautions to prevent the behaviour.</p>
<i>Sex Discrimination Act 1984 (Cth)</i>	<p>Mandatory compliance</p> <p>Provides that a person sexually harasses another person if they engage in unwelcome conduct of a sexual nature in circumstances where a reasonable person would be offended, humiliated or intimidated.</p>
<i>Crimes Act 1958 (Victoria)</i>	<p>Mandatory compliance</p> <p>Outlines offences—including indecent exposure, stalking, sexual assault, assault, obscene or threatening communications—that may also be sexual harassment.</p>
<i>Occupational Health and Safety Act 2004 (Victoria)</i>	<p>Mandatory compliance</p> <p>Requires employers to provide and maintain a safe working environment as far as reasonably practical.</p>
<i>Public Administration Act 2004 (Victoria)</i>	<p>Mandatory compliance</p> <p>Requires employees to conduct themselves in a manner which is consistent with the public sector values and employment principles set out in this legislation.</p>
<i>Code of Conduct for Victorian Public Sector Employees</i>	<p>Mandatory compliance</p> <p>Outlines public sector values that Victorian public service employees are required to demonstrate. Breaches of the code of conduct may be misconduct and can result in disciplinary action.</p>
<i>Sexual Harassment Model Policy (VPSC)</i>	<p>Better practice</p> <p>Promotes consistent practice in prevention and response to sexual harassment.</p>
<i>Guide for the Prevention of Sexual Harassment in the Workplace (VPSC)</i>	<p>Better practice</p> <p>Assists organisations to promote appropriate workplace behaviour and prevent sexual harassment in the workplace.</p>

Source: VAGO

Appendix C

Sexual harassment training

Mode of Training

Figure C1
Training provided to staff—by department

Department	Induction	Separate sexual harassment training (online)	Face-to-face training
DET	✓	✓ DET introduced a dedicated sexual harassment training module in July 2019. Previously sexual harassment was included within respectful workplaces e-learning modules (not mandatory)	In May 2018, DET provided training to workplace contact officers regarding updates to the sexual harassment policy.
DELWP	✓	X However, sexual harassment included in appropriate workplace behaviours training will be mandatory from 2020.	DELWP has recently revised its training and now offers: <ul style="list-style-type: none"> • Appropriate Workplace Behaviours—a three-hour face-to-face workshop and includes sexual harassment training. • Safe and Respectful Workplace Workshop—a workshop for teams to learn about sexism, discrimination and other inappropriate behaviour in the workplace. It has been delivered to more than 100 Forest, Fire and Regions staff. • Annual forums for Safe and Respectful leaders—staff who have volunteered to promote respectful workplace behaviours and culture across the department.
DHHS	✓	✓ Only mandatory on induction	DHHS provides some face-to-face training: <ul style="list-style-type: none"> • Peer support network training, which includes sexual harassment and workplace conflict. • Home Safely Every Day—program requires all managers to run a 30-minute conversation about appropriate behaviour and positive work environments with their teams based on a standardised course outline. It does not specifically address sexual harassment, but does discuss inappropriate behaviour and steps that can be taken to address this.

Figure C1

Training provided to staff – by department—*continued*

Department	Induction	Separate sexual harassment training (online)	Face-to-face training
DJCS	✓	X Sexual harassment included in online Respect in the Workplace training	DJCS has delivered: <ul style="list-style-type: none"> • Respect in the Workplace sessions to almost 350 staff in the past 12 months, which includes inappropriate behaviours and sexual harassment • Family Violence Awareness Training to almost 2 800 staff, which includes content on family violence and disrespectful behaviour towards women in the workplace. This training does not specifically detail sexual harassment in the workplace.
DJPR	✓	X Sexual harassment included in appropriate workplace behaviours training—not mandatory	DJPR provides some face-to-face training on appropriate workplace behaviours for managers
DoT	✓	X Sexual harassment included in appropriate workplace behaviours training—not mandatory	X
DTF	✓	X	DTF runs training on building positive workplace relationships. This is a one-hour face-to-face session. It does not specifically address sexual harassment.
DPC	✓	X Sexual harassment training included in appropriate workplace behaviours training annually	Respectful workplace behaviours presentations to all staff branch meetings in 2018, which includes a section on sexual harassment.

Note: None of the face-to-face training listed is mandatory for all staff.

Source: VAGO analysis of departmental training packages.

Training content

Figure C2
Sexual harassment training content

Does the training ...?	Yes	No, the training could be improved
Outline the department's commitment and responsibility to eliminate sexual harassment	<ul style="list-style-type: none"> • DELWP and DHHS outline a strong message and refer to the VSB statement in training • DET, DJPR and DoT clearly outline their commitment and responsibility to prevent sexual harassment 	<ul style="list-style-type: none"> • DTF, DPC and DJCS refer to a commitment to workplace values and a workplace free from harm. The training does not specifically outline the departments' commitment and responsibility to eliminate sexual harassment
Outline what sexual harassment is and that it is unlawful	<ul style="list-style-type: none"> • DET, DELWP, DHHS, DJPR and DPC provide the legal definition of sexual harassment, refer to the <i>Equal Opportunity Act 2010</i>, and state that it is unlawful 	<ul style="list-style-type: none"> • DJCS, DoT and DTF outline what sexual harassment is, but do not refer to the legislation
Outline the impacts of sexual harassment	<ul style="list-style-type: none"> • DET clearly outlines the impacts of sexual harassment 	<ul style="list-style-type: none"> • DHHS, DJCS, and DTF provide some information on the impact of sexual harassment • DELWP, DoT, DJPR and DPC do not detail the impact of sexual harassment
Contain practical examples	<ul style="list-style-type: none"> • DET, DELWP, DJCS, DJPR, DHHS, DPC and DTF include practical or interactive examples or scenarios on sexual harassment 	<ul style="list-style-type: none"> • DoT does not contain practical examples of sexual harassment in their training
Detail complaint avenues	<ul style="list-style-type: none"> • All departments provide details of complaint avenues in training 	
Detail grey area behaviours	<ul style="list-style-type: none"> • DoT and DJPR highlight that sexual harassment can be 'grey' • DJCS refers to jokes and comments which can be perceived differently by others 	<ul style="list-style-type: none"> • DET, DELWP, DHHS DPC and DTF do not address grey area behaviours in detail
Detail bystander responsibilities	<ul style="list-style-type: none"> • DHHS has a specific interactive example of a person who is an 'active bystander' • DELWP has a section in its training referring to active bystanders 	<ul style="list-style-type: none"> • DET, DJCS, DJPR, DoT and DPC refer to staff responsibility to call out or speak up about inappropriate behaviour, but do not address bystanders in detail • DTF has no reference to bystanders in its training

Source: VAGO analysis of departmental training packages.

Manager training

Figure C3
Training for managers on sexual harassment

Department	References sexual harassment?	Training
DET	Some	<p>Recently introduced respectful workplace training for managers. This references the manager's key role in managing complaints.</p> <p>The online respectful workplaces module also contains a slide on managers' responsibilities and what to do if sexual harassment is reported to them.</p>
DELWP	Some	<p>DELWP does not have training for managers on sexual harassment or addressing inappropriate behaviours in the workplaces.</p> <p>It has recently introduced safe and respectful workplace workshops for staff who have signed up to promote a respectful workplace.</p>
DHHS	No	DHHS's Leading with Respect training does not specifically include sexual harassment, but does outline how to deal with inappropriate behaviours.
DJCS	No	DJCS does not have specific training for managers on sexual harassment. It runs respectful relationships manager meetings in one division, and family violence awareness training for managers.
DJPR/DoT	Some	<p>As DJPR and DoT were formed on 1 January 2019, much of their training programs occurred under the former DEDJTR. Training to managers includes:</p> <ul style="list-style-type: none"> • creating a mentally healthy workplace • appropriate workplace behaviours training for managers (this contains a small section on sexual harassment).
DPC	No	Recently introduced management fundamentals training, which contains a component on complaints and grievances. It has no mention of sexual harassment or conflict management.
DTF	No	Does not have separate training for managers on sexual harassment. DTF introduced Respectful Workplace Culture training in 2019 for people leaders which includes some information on sexual harassment and addressing inappropriate behaviours in the workplace.

Source: VAGO analysis of departmental training packages.

Auditor-General's reports tabled during 2019–20

Report title	Date tabled
Managing Registered Sex Offenders (2019–20:1)	August 2019
Enrolment Processes at Technical and Further Education Institutes (2019–20:2)	September 2019
Cenitex: Meeting Customer Needs for ICT Shared Services (2019–20:3)	October 2019
Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2018–19 (2019–20:4)	November 2019
Council Libraries (2019–20:5)	November 2019
Market-led Proposals (2019–20:6)	November 2019
Results of 2018–19 Audits: Local Government (2019–20:7)	November 2019
Sexual Harassment in the Victorian Public Service (2019–20:8)	November 2019
Follow up of Access to Public Dental Services in Victoria (2019–20:9)	November 2019
Follow up of Regulating Gambling and Liquor (2019–20:10)	November 2019

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