

Everyone's Business – whether they're paid or unpaid

Protections for Volunteers and Unpaid Workers from Workplace Sexual Harassment

**National Inquiry into Sexual Harassment
in Australian Workplaces**

Joint Submission to the Australian Human Rights Commission

Volunteering Australia and Justice Connect

28 February 2019



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1. Executive Summary

Justice Connect and Volunteering Australia welcome the opportunity to make a submission to this important inquiry into sexual harassment in Australian workplaces.

Our submission highlights the inadequacy of the current legal framework in Australia to prevent and address sexual harassment against volunteers¹ and other unpaid workers² and recommends a way forward.

Equal opportunity matters are legislated at the State and Territory and Commonwealth level and provide protection for employees from sexual harassment in every jurisdiction. However, the situation is not the same for volunteers and other unpaid workers. **In some jurisdictions there is no legislation to prevent and remedy the sexual harassment of volunteers and other unpaid workers.**

These gaps in the law produce unequal treatment between paid and unpaid workers (including volunteers) when it comes to sexual harassment, as well as unequal treatment of volunteers depending on where in Australia they volunteer. This has ramifications for the safety and wellbeing of volunteers and other unpaid workers, and sends a message they are valued less than paid workers.

“As a woman without paid employment, I cannot access the same protections or avenues of conciliation as my employed counterparts. It also creates a strange duality for the working woman: protected in the context of employment but outside of that realm, she’s fit for harassment.”³

We are recommending a series of basic legal and policy reforms to ensure everyone in Australian workplaces has an enforceable legal right to be protected from sexual harassment – whether they are paid or unpaid; whether they are employees, volunteers or other unpaid workers. We would welcome an opportunity to contribute our expertise as to how these laws should be developed, taking into account the impact on both volunteers and Volunteer Involving Organisations.⁴

We recommend:

1. All workers, including volunteers and other unpaid workers, should be given full protection from sexual harassment in Commonwealth, State and Territory laws. This legal protection should include a positive duty on organisations to take reasonable steps to prevent, identify and respond to sexual harassment in all its forms.
2. The establishment of an appropriate national service to provide information, emotional support, advice and confidential referrals for volunteers who believe they have experienced sexual harassment and other breaches of their rights while volunteering – to do this the federal government should fund a scoping study.
3. The changes in law (Recommendation 1) should be accompanied by education initiatives to inform Volunteer Involving Organisations of their responsibilities and support them to take measures to fulfil their obligations to protect volunteers, unpaid workers and employees equally from sexual harassment.
4. Mandatory policies and procedures for preventing, identifying and responding to sexual harassment should be put in place for all Volunteer Involving Organisations. These should reflect a current understanding of sexual harassment, including online behaviour, and should be consistent across jurisdictions and in line with the *National Standards for Volunteer Involvement*.⁵ Policies and procedures should be supported by information, training and resources on how to interpret, implement and review them.

¹ Volunteering Australia defines volunteering as ‘time willingly given for the common good and without financial gain’. Volunteering Australia’s definition was reviewed in 2015 to consider the evolution of volunteering. It is now in line with the United Nation’s definition of volunteering. Available at: <https://www.volunteeringaustralia.org/definition-of-volunteering/>.

² See discussion at 3.2 below.

³ Respondent, Volunteering Australia and Justice Connect ‘Volunteering and sexual harassment in the workplace’ survey, December 2018.

⁴ A generally accepted term widely used in the volunteering sector to describe organisations that involve or engage volunteers.

⁵ Volunteering Australia (2015), National Standards for Volunteer Involvement, <https://www.volunteeringaustralia.org/policy/national-standards-and-supporting-material/>.

2. Our expertise

2.1 Volunteering Australia

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the Australian community. Volunteering Australia's vision is to promote strong, connected communities through volunteering. Our mission is to lead, strengthen, promote and celebrate volunteering in Australia.

We work collectively with the seven State and Territory volunteering peak bodies to deliver national, State, Territory and local volunteering programs and initiatives to grow a culture of giving. As the primary link between the volunteering sector and federal government, Volunteering Australia provides feedback into key decision making. All feedback is informed by research, evidence and consultation with the volunteering sector.

2.2 Justice Connect

Justice Connect is a legal charity that pursues a fairer, stronger Australia, with 25 years of experience using the law to help our community grow and thrive. As part of this work, Justice Connect advocates for an improved legal and regulatory framework for the not-for-profit sector, and for law reform that considers the impacts and costs of regulation for not-for-profit organisations.

Not-for-profit Law, a specialist service of Justice Connect, provides free and low-cost legal advice and information and fee-for-service training to not-for-profit organisations across Australia. We are regularly engaged to provide advice, training and conference presentations on the topic of volunteers and the law. In 2018 we received federal government funding to develop new legal resources on volunteering – including a comprehensive National Volunteer Guide, with a section on sexual harassment and volunteers (downloaded over 5,000 times since launch in October).

Justice Connect's Public Interest Law service also provides legal assistance to people experiencing sexual harassment in their workplace. Justice Connect is a signatory to the joint statement 'Time's Up: Urgent Actions Needed to End Sexual Harassment at Work'.

3. Volunteers and other unpaid workers in Australia

3.1 Volunteers

Volunteers are the lifeblood of our communities, with over 5.8 million Australians or 31 per cent of the population engaging in formal volunteering activities and programs.⁶ There is strong evidence that reinforces the economic impact of the contribution of volunteering. Volunteering delivers a \$4.50 return for every dollar invested.⁷ Nationally this is an estimated annual economic and social contribution of \$290 billion.⁸

Volunteering Australia defines volunteering as 'time willingly given for the common good and without financial gain.' Volunteering is critical to the delivery of the Australian Government's priorities of building strong and resilient communities, by encouraging economic participation, mitigating isolation and loneliness, and increasing social inclusion, community resilience, and social cohesion.

Volunteering is an incredibly diverse activity, extending to every corner of society. From the arts, education, emergency services, sports, environment, health, the private sector, aged care, disability, and community welfare; volunteering is woven into the fabric of everyday life, and Australian society is increasingly dependent on volunteering activities and programs.

3.2 Other unpaid workers

Other forms of unpaid work fall outside Volunteering Australia's definition of volunteering because they do not constitute 'time willingly given for the common good and without financial gain'. These include fine repayment schemes and 'mutual obligation' activities created by various government initiatives where the worker (indirectly)

⁶ Australian Bureau of Statistics (2015), General Social Survey, Summary Results, Australia, 2014, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0>.

⁷ Volunteering Western Australia (2015), The Economic, Social, and Cultural Value of Volunteering to Western Australia, https://volunteeringwa.org.au/assets/downloads/vwa_report%20book_web.pdf.

⁸ Flinders University (2014), Volunteering worth \$290 billion a year, <http://blogs.flinders.edu.au/flinders-news/2014/10/31/volunteering-worth-290-billion-a-year>.

receives something in return for their work, such as the Work for the Dole, National Work Experience and Voluntary Work Activity schemes. Others, such as court ordered community work, cannot be said to be ‘time willingly given’. Still other forms of unpaid work exist primarily to provide a benefit to the individual rather than ‘the common good’. These include unpaid internships, vocational placements, privately arranged work experience and unpaid work trials.

Because all these forms of unpaid work fall outside the definition of employment or volunteering, there is confusion about their legal status. We frequently hear from volunteer managers that workers often shift between these forms of unpaid work and true volunteering — which can even more confusion as to how the law applies. In the interests of consistency and fairness to all workers, our submission therefore addresses the need to ensure there are enforceable legal rights that protect all volunteers and other unpaid workers from sexual harassment.

4. Defining the problem

4.1 The current situation

All State/Territory and Commonwealth anti-discrimination and equal opportunity laws expressly make sexual harassment of employees unlawful and provide protections and avenues for complaint. Most State and Territory laws provide this same protection for volunteers and other unpaid workers, but this protection is not provided under Commonwealth, Western Australian or Northern Territory laws, and is limited in New South Wales (see full outline below, Existing laws).

“It’s concerning as a volunteer that if I were to be in a situation where sexual harassment occurs that I would have no legal recourse. I only volunteer in places that cover volunteers with insurance. But as there is no legal structure for volunteer[s] experiencing sexual harassment I cannot be sure I will be protected if it were to occur. This makes me second guess volunteering as a safe place to be.” (Respondent, Volunteering and Sexual Harassment in the Workplace Survey, December 2018)

The problem is heightened when we consider the growing prevalence of ‘virtual volunteering’, where volunteers are working remotely online and may never meet their colleagues in person. Such online work environments can place workers in a vulnerable situation due to isolation. The impact of workplace sexual harassment on workers (paid and unpaid) in the digital sphere must also be considered. While digital technology can be used to amplify the voices of organisations and workers, it can be difficult to police the rights of those volunteering in this space.

4.2 The solution

The absence of clear and consistent protection from sexual harassment for volunteers and unpaid workers across Australia needs to be addressed urgently. There can be no sound policy rationale for why payment of a worker should determine whether the person is protected from sexual harassment. Volunteers and other unpaid workers deserve the same legal protection as employees from sexual harassment in the workplace. This is essential to guarantee equality of rights and safety, and it will help ensure parity of esteem between the paid and voluntary workforce.

“All people working within an organisation have the right to feel safe and be respected, regardless of whether they are paid for their service or not. Organisations have a duty of care to both their staff and volunteers and must also comply with all relevant regulations. The rights of volunteers should be similar to those of employees, even if they are implemented under a different regulatory framework. Being a volunteer should not leave a person who experiences sexual harassment with no legal recourse.”⁹

Both Justice Connect and Volunteering Australia have previously advocated for volunteers to be given explicit rights and protections under equal opportunity laws.

⁹ Respondent, Volunteering Australia and Justice Connect ‘Volunteering and sexual harassment in the workplace’ survey, December 2018.

For example, Volunteering Australia's 2006 submission on Strengthening and Sustaining Volunteering in Australia recommended that an intergovernmental working group be set up to identify relevant legislation across jurisdictions and a process be developed to achieve legislative change and amendments in relation to equal opportunity laws and other legislation.¹⁰ Justice Connect's 2012 submission relating to the Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012* argued for the inclusion of 'volunteering' as a separate area of public life protected by the anti-discrimination law (which was to include sexual harassment).¹¹ The Exposure Draft had included unpaid work in the definition of employment (a recognised area of public life). Although the approach of defining unpaid work as 'employment' is in itself problematic, this reform would have at least provided volunteers with protection from sexual harassment at the Commonwealth level. However, the Bill was never enacted, and there has been no equivalent reform to provide explicit protection to volunteers or unpaid workers in existing Commonwealth anti-discrimination laws.

This inquiry is another opportunity to put the weight of the Australian Human Rights Commission's recommendations on this issue behind the movement for reform.

5. Existing laws

There is currently a patchwork of laws providing inconsistent protection against, and remedies for, sexual harassment in the workplace, especially for volunteers and other unpaid workers.

Below we highlight the various areas of law at play, highlighting the gaps that exist for volunteers and unpaid workers.

5.1 Equal opportunity legislation

The legal definition of sexual harassment varies in equal opportunity legislation across jurisdictions, but generally sexual harassment occurs when the following two criteria are met in an area of public life:

- a person makes unwelcome sexual advances, requests sexual favours, makes unsolicited acts of physical intimacy, or physical contact of a sexual nature or remarks with sexual connotations about another person; and
- the behaviour is intended to, or could reasonably be expected to, offend, humiliate or intimidate the other person.

While employment is an 'area of public life' in the equal opportunity legislation in all jurisdictions, only some jurisdictions include volunteering and/or unpaid work in this definition. These are the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria (more information in appendix). In these jurisdictions, the right to protection from sexual harassment is accompanied by a right not to be victimised.¹² This is an important protection that, generally speaking, prevents a volunteer or other unpaid worker who makes a complaint, asserts rights or assists with an investigation about sexual harassment from being subjected to or threatened with a detriment as a result of doing so.

Remarkably the Commonwealth, Northern Territory and Western Australia do not explicitly cover voluntary and unpaid workers in their anti-discrimination and equal opportunity laws. This means that volunteers and other unpaid workers do not generally have legal protection from sexual harassment under these laws and do not have the associated rights to make a complaint to the relevant agencies, or to protection from victimisation.

Below we summarise the position in each jurisdiction in a little more detail. The treatment of sexual harassment of volunteers and other unpaid workers under state and territory equal opportunity laws are further summarised in Appendix A.

¹⁰ Volunteering Australia (2006), Strengthening and sustaining Volunteering in Australia, Submission, November 2006

¹¹ Justice Connect (2012), 'PILCH Submission to the Senate Legal and Constitutional Affairs Committee on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012', 21 December 2012.

¹² For a summary of the legal protections from victimisation available to volunteers and unpaid workers, see Justice Connect's *National Volunteer Guide*, Part 4, chapter 5 (Victimisation), available at <https://www.nfplaw.org.au/volunteers>.

5.1.1 Commonwealth

Critically the *Sex Discrimination Act 1984* (Cth) does not provide explicit protection for volunteers from sexual harassment. Volunteers may be protected in some circumstances where their activities fall under another ‘area of public life’,¹³ but these circumstances are limited and ad hoc.

A person who has experienced unlawful sexual harassment can make a complaint to the Australian Human Rights Commission, and if the complaint is not resolved, seek redress through the Federal Court or Federal Circuit Court of Australia. This avenue is not available to volunteers and other unpaid workers, who are not able to show the sexual harassment against them was unlawful under Commonwealth laws.

We note that the Australian Human Rights Commission has previously recognised this gap in its submission to the 2008 inquiry into the *Sex Discrimination Act 1984* (Cth)¹⁴ recommended that coverage of the Act be extended to provide protection from sexual harassment for voluntary workers. Similarly, in its 2011 submission to the Federal Attorney-General on the ‘Consolidation of Commonwealth Discrimination laws’, the Commission also provided in-principle support for coverage of voluntary workers by Commonwealth discrimination laws. It noted that:

“Volunteering provides important opportunities for social participation [...] Measures to advance equality in this area are thus an important component of advancing equality more generally.”¹⁵

5.1.2 Western Australia

In Western Australia, sexual harassment is unlawful in employment. However, employment is not defined to include unpaid work or volunteering. A complaint about sexual harassment can be made to the Western Australian Equal Opportunity Commission only if the matter is covered by the *Equal Opportunity Act 1984* (WA). Since volunteers and other unpaid workers are not generally protected by the legislation, there is no formal avenue for them to make a complaint.

5.1.3 Northern Territory

Under the *Anti-Discrimination Act 2015* (NT), sexual harassment is unlawful when it happens in ‘work’ (among other activities). ‘Work’ is not defined to include unpaid work or volunteering. Currently in the Northern Territory, as in Western Australia, a person can only make a complaint about sexual harassment to the Anti-Discrimination Commission if the matter is covered by the *Anti-Discrimination Act 2015* (NT). This leaves volunteers in the Northern Territory without a general right to protection from sexual harassment and without a formal avenue for complaint about sexual harassment.

In a discussion paper about modernising the *Anti-Discrimination Act 2015*, the Northern Territory government has argued it is possible the definition of ‘work’ could nonetheless be interpreted to include volunteering. To avoid doubt the Northern Territory government has recommended amending the definition to explicitly include volunteering.¹⁶ We strongly support this recommendation. To date the Northern Territory parliament has no action on this.

5.1.4 New South Wales

In New South Wales it is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those people¹⁷. ‘Workplace participant’ includes a volunteer or unpaid trainee but is not defined to include other unpaid workers. The effect of this is that only some types of unpaid workers have enforceable protection from sexual harassment by other workplace participants.

¹³ For example, provision of goods, services and facilities, carrying out a function under a federal law or for the purposes of a federal government program or by a member of a management committee of some clubs.

¹⁴ Australian Human Rights Commission (2008), Submission of the Human Rights and Equal Opportunity Commission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality, 1 September 2008, paras 318–323.

¹⁵ Australian Human Rights Commission (2011), Submission to the Attorney General’s Department on the Consolidation of Commonwealth Discrimination Laws, 6 December 2011, at [116].

¹⁶ Department of the Attorney-General (2017), Discussion Paper: Modernisation of the Anti-Discrimination Act, September 2017, p 24.

¹⁷ *Anti-Discrimination Act 1977* (NSW), s 22B(9)(e).

5.1.5 Other jurisdictions

In the Australian Capital Territory, Queensland, South Australia, Tasmania and Victoria, volunteers and other unpaid workers have the same protection from sexual harassment as employees.

In Victoria, organisations have a positive legal duty to 'take reasonable and proportionate measures to eliminate [...] sexual harassment or victimisation as far as possible'.¹⁸ An example of reasonable and proportionate measures for a small, not-for-profit community organisation is that the organisation 'takes steps to ensure that its staff are aware of the organisation's commitment to treating staff with dignity, fairness and respect and makes a clear statement about how complaints from staff will be managed'.¹⁹

In addition to equal opportunity legislation, there are some other forms of legal protection that may be available to volunteers and other workers, both paid and unpaid. These are discussed below.

5.2 Common law

At common law all organisations have a legal duty to provide a safe workplace and to take reasonable steps to protect all workers – both paid and unpaid – from reasonably foreseeable harm. This includes foreseeable harms arising from sexual harassment, both physical and psychological. An organisation that fails to meet this standard, and whose failure has led to a legally recognised form of harm, may be liable to pay damages to the complainant.

However, there are significant barriers to volunteers accessing a remedy for sexual harassment via the common law, including the financial and social cost, along with the time investment of taking a matter to court, and the burden of proving a legally recognised form of harm.

5.3 Work, health and safety laws and the Fair Work Act

Under work health and safety laws, some Volunteer Involving Organisations have obligations to take steps to protect volunteers from sexual harassment – a behaviour that can pose a risk to the health and safety of volunteers.

However, the uniform work health and safety laws, and their equivalents in Victoria and Western Australia, do not cover all Volunteer Involving Organisations – for example, those without any employees and those that do not manage and control a workplace.

Volunteers are excluded from most provisions of the *Fair Work Act 2009 (Cth)*.²⁰

5.4 Criminal law

In some circumstances sexual harassment can also be a criminal offence – such as when the harassment is physical or involves stalking.

However, relying on criminal prosecution to address workplace sexual harassment is unsatisfactory for several reasons, including evidentiary requirements, the higher burden of proof, and the stress involved in providing testimony.

Below is a fictional but, from our combined experience, realistic example to illustrate the impact of the legal gaps that exist.

¹⁸ *Equal Opportunity Act 2010 (Vic)*, s 15.

¹⁹ *Equal Opportunity Act 2010 (Vic)*, s 15, example 1.

²⁰ Protection against sexual harassment is a notable omission from the Fair Work Act even for paid workers. Unlike other workplace rights, there is no right to be protected from sexual harassment in the workplace.

Fictional case study – Natasha and West Animal Rescue

Natasha has been volunteering for six months with West Animal Rescue in Perth, WA. She loves the work but has been dreading shifts where she has to travel to pick up stranded and injured animals with her supervisor Andre. Whenever he gets the chance, Andre makes suggestive comments about Natasha's appearance in the West Animal Rescue shorts, touches her leg while driving, and asks about her romantic life. He has asked her out several times even though she has repeatedly said no. Natasha feels powerless and threatened. She asks her friend Joelene, another volunteer at West Animal Rescue, what she should do.

Joelene does some research for Natasha and finds that in fact there is no legal recourse for her friend, either under WA equal opportunity laws or at the Commonwealth level. This means she also doesn't have any avenue for complaint at the Australian Human Rights Commission or the WA Equal Opportunity Commission. Because there is no sexual harassment policy at West Animal Rescue, and because it is her supervisor that is sexually harassing her, Natasha feels there is nothing she can do about it and thinks that even if she makes a complaint higher up, she won't be listened to: Andre has been at West Animal Rescue for years and is very popular.

Eventually Natasha decides just to leave West Animal Rescue. After quitting she feels disturbed about what happened. Andre is still in his role and has not been confronted about the behaviour. No-one except Joelene knows about what happened.

Joelene decides to speak up about Andre's behaviour and addresses it with management at West Animal Rescue. The complaint is brushed off, Joelene is told she is causing trouble, and she then stops getting shifts at West Animal Rescue. Joelene feels she is being victimised but has no protection under Western Australian or Commonwealth laws. She also decides to end her involvement with West Animal Rescue.

Recommendation 1

All workers, including volunteers and other unpaid workers, should be given full protection from sexual harassment in Commonwealth, State and Territory laws. This legal protection should include a positive duty on organisations to take reasonable steps to prevent, identify and respond to sexual harassment in all its forms.

6. Volunteering and sexual harassment in the workplace survey (2018)

In late 2018 we disseminated a survey²¹ to understand the nature of sexual harassment experienced by volunteers in the workplace. Despite a short timeframe,²² the survey received 323 responses, predominantly from volunteers and managers of volunteers. Throughout the survey responses was a resounding call for equality in sexual harassment rights, protections and complaint mechanisms for volunteers and unpaid workers.

A majority of respondents worked in the charitable or not-for-profit sector, followed by the public sector. Eighty per cent of respondents were female, and almost 30 per cent of respondents were in the 55-64 year age bracket – followed by 45-54 years, and then 65-74 years.

Respondents were asked about their experiences of sexual harassment in the workplace, whether they had faced issues with reporting harassment, and what they thought could be done to improve the current situation with regards

²¹ See Appendix B.

²² Joint Volunteering Australia and Justice Connect Survey on Volunteering and Sexual Harassment in the Workplace ran for three weeks from 21 November – 12 December 2018.

to sexual harassment experienced and/or perpetrated by volunteers. The qualitative data obtained through the survey tells a compelling story of the systemic issues relating to safety and working conditions caused by the lack of clear and nationally consistent legal rights for volunteers. According to one respondent:

"I have not really had a volunteering experience where I felt the level of support was adequate, or what I was owed. I think this type of environment is ripe for sexual harassment."

Some of the issues identified by those who had experienced sexual harassment in the workplace included:

- Experience with older men who did not seem to understand the changes in workplace culture and broader society that now condemn outdated and misogynistic views of women
- The view that some people see volunteering as an opportunistic way to meet women and display untoward predatory behaviour towards other volunteers and employees
- The incidence of physical sexual harassment, with respondents reporting having experienced inappropriate touching, including being groped, in the workplace, and
- More insidious forms of harassment such as suggestions to wear a more feminised uniform, people standing uncomfortably close, sexist comments, and sexual inferences in general conversation.

When asked if there had been issues when reporting workplace sexual harassment, respondents noted the following:

- Management ignored the claims or acknowledged them but did nothing
- The perpetrator of the harassment was in a position of power and the organisation was too fearful to do anything
- Victim blaming was a common experience
- There was a general lack of respect for the issue
- Victims experienced a backlash in the workplace
- Victims were removed from their role
- Victims were not believed
- Management did not believe they were responsible for the issue
- Management put the onus on the victim to confront their perpetrator to resolve the issue, and
- Attitudes of management deterred victims from reporting in the first place.

"In my organisation inappropriate behaviour has sometimes been explained away as 'that is just their generation.' There is also the challenge that my organisation struggles to see volunteers as a part of the workforce and does not actively engage in supporting or actively addressing inappropriate behaviour."

A recurrent theme from the survey was respondents not being believed, being disregarded or being told to resolve the issue themselves:

- *"Police did not believe me or the video footage and dismissed the matter."*
- *"[I was asked:] 'Did you do anything that could have been misinterpreted? You need to be more assertive!'"*
- *"[I was told to] stop making a fuss."*

Many respondents were unaware that volunteers across Australia are not consistently afforded the same protection from workplace sexual harassment as paid employees. Those who noted this were "shocked" and thought it was "totally unfair" that volunteers did not have the same rights as paid employees in some instances.

"I think sexual harassment claims whether from volunteers or paid employees should be treated the same."

One respondent stated, “*every person has the right to feel safe*”, while another respondent said:

“I was shocked when I saw this email saying volunteers do not have the same rights as paid workers. WHY? Why are we being discriminated against? I do not understand why we are even having this conversation.”

Respondents were asked for suggestions on how to improve the way sexual harassment of volunteers is currently addressed. The following suggestions were made:

- Volunteers should have the same rights as paid employees with regards to sexual harassment
- Laws protecting volunteers from sexual harassment should be legislated at a Commonwealth level
- Volunteer Involving Organisations should be required to have stringent policies and procedures that protect all staff, paid and unpaid, from sexual harassment in the workplace
- There should be clear processes for reporting that protects the interests of the person reporting the behaviour
- There should be more education available for volunteers on their rights and for Volunteer Involving Organisations on their responsibilities to their volunteers
- There should be communication to all people – regardless of age – that sexual harassment, including sexually explicit or suggestive comments, will not be tolerated in the workplace, and
- An advice helpline should exist where volunteers can call to access information on their rights and talk to an impartial person about options for reporting a breach of these rights.

“I think that whilst men's attitudes are changing in general, there is still a lot of improvement required, especially in male-dominated voluntary organisations.”

“Efforts at securing respect for women must be felt throughout the whole of Australian communities and not limited to the confines of boardrooms and office space.”

7. Complaints handling and resolution

The lack of clear and consistent protection for volunteers from sexual harassment can have significant flow-on effects for volunteers and other unpaid workers.

Without a clear legal duty for Volunteer Involving Organisations to prevent sexual harassment of volunteers, organisations have less impetus to have policies and procedures in place for addressing sexual harassment of volunteers, and volunteers have no formal avenue to make a legal complaint.

Many in the volunteering sector have identified that the general lack of rights for volunteers leaves them feeling undervalued for the work they do. To quote one survey respondent:

“We are not made to feel as if we can complain because we aren't getting paid – we're expected to be fine with any conditions we experience.”

Currently, the primary option available to volunteers who have experienced sexual harassment is to make a complaint in-house with their immediate supervisor or through the organisation, to try to come to a reasonable solution. This could be through conciliation or mediation. The next step in the process could be to file a complaint with the Australian Human Rights Commission or relevant State-based agency – but this can only happen once sexual harassment against volunteers is made unlawful in all jurisdictions.

The vast majority of Volunteer Involving Organisations are generally wanting to do the right thing when it comes to protecting their workers from behaviours like sexual harassment, but (especially the smaller ones) often lack the resources and expertise to do so.

Volunteering Australia (and its network of peaks) and Justice Connect use our best efforts to support Volunteer Involving Organisations with education, information and – in the case of Justice Connect – legal advice. Neither organisation receives recurrent federal government funding for this work. Despite deficiencies in the current legal

and policy framework, we also promote best practice in addressing sexual harassment through our resources, training and advice. Volunteer Involving Organisations should be provided with adequate resources and training to implement sexual harassment policies and proactively address sexual harassment in their organisations. It is also vital that these organisations are adequately funded to be able to provide training to all workers.

In addition, there should be processes in place for escalating a complaint where it has not been effectively dealt with by a manager of volunteers or the Volunteer Involving Organisation. Responses to our Volunteering and Sexual Harassment in the Workplace survey indicated inaction and resistance from management and organisations was a common response to sexual harassment complaints from volunteers.

Consistent with the survey results, Volunteering Australia has been made aware through direct enquiries and communications that when a volunteer is sexually harassed and is unable to find an appropriate response to their complaint, the person will often stop volunteering altogether. This is simply not good enough, both morally and because it reduces the number of Australians willing to give their time to make a contribution to the community. Given our reliance as a nation on the voluntary and unpaid workforce it is imperative that we remove barriers to participation and actively protect the rights of volunteers and other unpaid workers, so that Volunteer Involving Organisations are not discouraging people from volunteering.

"We had a volunteer (male) who sexually harassed a fellow volunteer (female). The perpetrator was not reprimanded, and his behaviour was explained as being part of his military culture – to be expected. The victim was forced to change roles to get away from the perpetrator, rather than the perpetrator being reprimanded or removed."

"I imagine that like myself there are many incidents that aren't reported through embarrassment and not wanting to go through a "process". There needs to be an easy process for reporting and an awareness to make it easy for people to do so and to recognise what is sexual harassment."

Despite Volunteering Australia and the State and Territory volunteering peak bodies receiving frequent enquiries relating to the rights of volunteers, there is currently no body that is funded to provide information, emotional support, confidential referrals and legal advice to individual volunteers.

"I believe there is a lack of information available for volunteers on the matter of harassment and their options."

"As a volunteer I was not given any information on how to respond to sexual harassment at all and had no knowledge of whether it was covered or not. In paid roles I've always been given HR information and specific information on sexual harassment. Particularly as my volunteering was outreach and service-based, I interacted with people outside the organisation, so this made the rules/responses further unclear."

Recommendation 2

The establishment of an appropriate national service to provide information, emotional support, advice and confidential referrals for volunteers who believe they have experienced sexual harassment and other breaches of their rights while volunteering – to do this the federal government should fund a scoping study.

The breadth of issues and lack of clarity on volunteer rights give rise to the need to investigate how the needs of volunteers can best be met. Volunteering Australia is aware anecdotally that there is a need to fill the gap in services to address volunteer rights and needs. However, it is currently not funded to undertake formal research to ascertain the ideal model, or to provide volunteers with information on their rights and assist with complaints.

A scoping study is required to examine the establishment of an independent, professionally staffed national service to provide volunteers with information on their rights, to receive volunteer complaints (including on sexual

harassment) and to collect data to inform responsive legislative change and policy solutions. This service could, for example, take the form of a national help desk that operates like the Carer Line in NSW,²³ which provides callers with emotional support, referrals, resources and information.

8. Education and support for best practice

It is critically important that there are well-trained managers of volunteers who have access to further information, training and support to enable them to manage complex situations. As stated above, commonly small-to-medium Volunteer Involving Organisations — many of which are entirely volunteer-run — are inadequately resourced to effectively manage behaviours like sexual harassment. Volunteering Australia and Justice Connect emphasise that it is important that managers of volunteers are adequately supported in their roles so they are confident in responding to sexual harassment.

“...Education and support for volunteer managers would be helpful [so that they are] equipped to have these conversations with their teams.”

“Sexual harassment was not covered in my training. If I experienced a problem, I would not be certain what to do. It would be better to have a clear process for reporting an issue.”

“There is a need for resources in this area to support those organisations that cannot develop these themselves.”

Recommendation 3

The changes in law (Recommendation 1) should be accompanied by education initiatives to inform Volunteer Involving Organisations of their responsibilities and support them to take measures to fulfil their obligations to protect volunteers, unpaid workers and employees equally from sexual harassment.

Feedback from survey respondents emphasised that it is important that there are clear and mandatory policies and procedures in relation to volunteering and workplace sexual harassment, that are consistent across the country. In our view, it is essential for all organisations to have effective volunteer management processes in line with the *National Standards for Volunteer Involvement*,²⁴ to make sure that all employees and volunteers are aware of their rights, responsibilities and obligations.

Recommendation 4

Mandatory policies and procedures for preventing, identifying and responding to sexual harassment should be put in place for all Volunteer Involving Organisations. These should reflect a current understanding of sexual harassment, including online behaviour, and should be consistent across jurisdictions and in line with the *National Standards for Volunteer Involvement*. Policies and procedures should be supported by information, training and resources on how to interpret, implement and review them.

The *National Standards for Volunteer Involvement*, developed by Volunteering Australia, is the best-practice framework for volunteer management. The Standards cover eight fundamental areas of volunteer involvement and encourage organisations to consider the role of volunteers within their organisations, and the impact that effective volunteer involvement can have on achieving both strategic and operational goals. Training and webinars on the Standards are available and are delivered by the seven State and Territory volunteering peak bodies.

²³ See <https://www.carersnsw.org.au/how-we-help/support/carer-line/>.

²⁴ See Volunteering Australia's *National Standards for Volunteer Involvement*, <https://www.volunteeringaustralia.org/policy/national-standards-and-supporting-material/>.

The guidelines provided by the Standards provide that volunteers should be given information about how to make a complaint or raise a concern within an organisation and to relevant external bodies. They advise that grievances from volunteers should be managed consistently, transparently, equitably, and in line with the principles of natural justice.

An organisation with limited resources may not have prioritised implementing a sexual harassment policy that is reflective of societal expectations and the current understanding of sexual harassment, and modern practices and procedures for responding to it. Sexual harassment policies should clearly explain the different forms of sexual harassment, such as online sexual harassment, and include examples. It is also important that the policies and procedures encourage respectful relationships and include processes on how to deal with complaints. As one survey respondent stated, there should be:

[m]andatory clear policies and procedures including definitions, reporting and management processes, and further options specifically for the volunteering sector. This is because volunteer coordinators need support in dealing with [complaints] as well.”

Having consistent and up-to-date policies and procedures relating to volunteer engagement in the workplace will not only ensure that the rights and obligations of volunteers are recognised, but also that there is a universal system of dealing with complaints whether the volunteer is a victim or perpetrator.

“My organisation has no clear, easily accessible policy for reporting or actioning reports of sexual harassment by volunteers, either towards staff, towards other volunteers, or towards the people they are interacting with as the face of our organisation. I know it is happening, I have heard the stories, but I have no confidence it is currently being addressed. We have no procedure at all for removing a volunteer who is acting inappropriately.”

9. Conclusion

Justice Connect and Volunteering Australia thank the Australian Human Rights Commission for the opportunity to provide comment on the Inquiry into Workplace Sexual Harassment. We reiterate that all measures need to consider the rights and obligations of volunteers and Volunteer Involving Organisations and ensure equal legal protection and parity of esteem between volunteers and other unpaid workers, and employees.

We look forward to working with the Commission on furthering legislative amendments and policy reforms. Volunteering Australia and Justice Connect would welcome further opportunity to consult or expand on any of our recommendations raised in this response.

10. Acknowledgments

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Appendix A – State and Territory equal opportunity laws and sexual harassment of volunteers and other unpaid workers

Australian Capital Territory

Volunteers are covered by the *Discrimination Act 1991* (ACT) (the ‘**ACT Discrimination Act**’) under the definition of employment, which includes an unpaid worker being a person who performs work for an employer for no remuneration (s 4 and Schedule 1). Under the ACT Discrimination Act it is unlawful for:

- an employer to subject an employee (or volunteer), or a person seeking employment, to sexual harassment, or
- an employee (or volunteer) to subject a fellow employee (or volunteer), or a person seeking employment with the same employer, to sexual harassment.

A person subjects someone else to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated (ACT Discrimination Act, s 58(1)). The term “conduct of a sexual nature” includes the making of a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing (ACT Discrimination Act, s 58(2)).

New South Wales

In relation to sexual harassment, s 22B(9)(e) of the Anti-Discrimination Act 1977 (NSW) (the ‘**NSW Anti-Discrimination Act**’) provides that the term “workplace participant” includes a volunteer or unpaid trainee. It is unlawful under the NSW Discrimination Act for a volunteer to be sexually harassed by another person at the place that is a workplace of both those persons (NSW Anti-Discrimination Act, s 22B(6)).

A person sexually harasses another person if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Northern Territory

Under the Anti-Discrimination Act (NT) (the '**NT Anti-Discrimination Act**') the term "work" (s 4) does not include work undertaken by volunteers. Work includes work in a relationship of employment, under a contract of services, remunerated in full or part, under a statutory appointment, by a person with an impairment in a sheltered workshop and under a guidance program, vocational training program or other occupational training or retraining program. This means that volunteers are unlikely to be covered by most provisions of the NT Anti-Discrimination Act, including the sexual harassment provisions. However, the law is unclear. In a recent Northern Territory Government Discussion Paper, it was stated that:

"It is unclear whether the current definition of "work" includes volunteers: it is not exhaustive and may include volunteer work".

The Discussion Paper, published by the Northern Territory Department of the Attorney-General and Justice, concerns a current review of the NT Anti-Discrimination Act (see the Note Box below page 25).

Queensland

Volunteers are protected under the *Anti-Discrimination Act 1991* (Qld) (the '**Qld Anti-Discrimination Act**') from discrimination pursuant to the meaning of the term "work" (Schedule 1 Dictionary). "Work" includes work under a work experience arrangement, vocational placement, on a voluntary or unpaid basis, by a person with an impairment in a sheltered workshop and under a guidance program, vocational training program or other occupational training or retraining program. Sexual harassment is prohibited under the Qld Anti-Discrimination Act (ss 118-119) and occurs where a person:

- subjects another person to an unsolicited act of physical intimacy,
- makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person,
- makes a remark with sexual connotations relating to the other person, or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person,

with the intention of offending, humiliating or intimidating the other person or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

South Australia

Volunteers are protected by the *Equal Opportunity Act 1984* (SA) (the ‘**SA Equal Opportunity Act**’) pursuant to the definitions of employee and employment, which include unpaid worker and unpaid work respectively (s 5). The SA Equal Opportunity Act makes it unlawful for a person to subject a volunteer with whom they work to sexual harassment while in attendance at a place that is a workplace of both the persons or in circumstances where the person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker (SA Equal Opportunity Act, s 87(1)). A person sexually harasses another if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated (s 87(9)).

Tasmania

Volunteers are protected by the Anti-Discrimination Act (Tas) (the ‘**Tas Anti-Discrimination Act**’) pursuant to the definition of the term “employment”, which includes employment or occupation in any capacity, with or without remuneration. The Tas Anti-Discrimination Act provides that a person must not sexually harass another person. Sexual harassment will take place if a person, in circumstances where a reasonable person having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed (Tas Anti-Discrimination Act, s 17):

- subjects another person to an unsolicited act of physical contact of a sexual nature
- makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person
- makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person’s presence
- makes any unwelcome gesture, action or comment of a sexual nature, or
- engages in conduct of a sexual nature in relation to another person that is offensive to that person.

Victoria

The definition of “employee” under the *Equal Opportunity Act 2010* (VIC) (the ‘**Vic Equal Opportunity Act**’) includes, in relation to the prohibition of sexual harassment, unpaid workers and volunteers (Vic Equal Opportunity Act, s 4).

The Vic Equal Opportunity Act makes it unlawful for either an employer to sexually harass an employee (or a volunteer), or for an employee (or volunteer) to sexually harass a fellow employee (or volunteer).

The term “sexual harassment” means:

- making an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or
- engaging in any other unwelcome conduct of a sexual nature in relation to another person,

in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

The term “conduct of a sexual nature” can include:

- subjecting a person to any act of physical intimacy
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence, or
- making any gesture, action or comment of a sexual nature in a person’s presence.

Under s 15 of the Vic Equal Opportunity Act, employers (and others) “must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation as far as possible.”

Western Australia

The definition of “employment” in the *Equal Opportunity Act 1984* (WA) (the ‘**WA Equal Opportunity Act**’) includes part time and temporary employment, work under a contract of service and work as a State employee (WA Equal Opportunity Act, s 4). Provisions relating to sexual harassment (s 24) rely upon ‘employment’ (and only apply in relation to specified areas of public life being education, employment and accommodation). Accordingly, volunteers are unlikely to be covered by most provisions of the WA Equal Opportunity Act, including the sexual harassment provisions.

Appendix B – Survey on Volunteering and Sexual Harassment in the Workplace

Justice Connect and Volunteering Australia would like to gather feedback on the experiences of volunteers in the workplace.

Your feedback will be vital to inform our joint submission to the National Inquiry into Sexual Harassment in the Workplace. Information collected as part of this survey may be drawn upon, quoted or referred to as part of the submission process. Responses are completely anonymous, and any information used will be de-identified. If you have any questions or concerns, please do not hesitate to contact Volunteering Australia via admin@volunteeringaustralia.org.

If you find that completing this survey is causing you distress, you can access counselling and other support through: 1800RESPECT (Ph: 1800 737 732) – National Sexual Assault, Domestic Family Violence Counselling Service or visit www.1800respect.org.au.

"Volunteering is time willingly given for the common good and without financial gain."

For the purposes of the survey are you responding as a:

- Volunteer
- Manager/Coordinator of Volunteers
- Employer
- Not currently volunteering
- Working in the volunteering sector but not in the above roles
- Other (please specify) _____

Which sector did/do you volunteer in?

- Charitable or Not-for-profit
- Public sector
- Private sector
- Research or Academia
- Other (please specify) _____

What is your gender?

- Female
- Male
- Non-binary
- Other
- Did not answer

What is your age?

- <18
- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65-74
- 75-84
- 85 and over

Sexual harassment is unwelcome sexual behaviour in circumstances where a reasonable person would have anticipated that the person harassed would be offended, humiliated, or intimidated. Examples include unwelcome physical touching, staring or leering, suggestive comments or jokes, unwanted requests to go out on a date, requests for sex, emailing

pornography or rude jokes, sending sexuality explicit texts, intrusive questions about your private life or body, or displaying posters of a sexual nature.²⁵

Have you experienced workplace sexual harassment? (Either as a volunteer or perpetrated by a volunteer).

Yes

No

Unsure

Share your experiences

Have you ever reported workplace sexual harassment?

Yes

No

Have you experienced issues with reporting workplace sexual harassment as a volunteer or by a volunteer?

Yes

No

If yes, why?

Do you have any frustrations with how sexual harassment in volunteering is currently addressed? Do you have any suggestions on what we can do to improve the situation?

Are there any other comments you would like to make?

Thank you for completing the survey! If you found that completing this survey has caused you distress, you can access counselling and other support through: 1800RESPECT (Ph: 1800 737 732) – National Sexual Assault, Domestic Family Violence Counselling Service or visit www.1800respect.org.au, or contact Lifeline on 13 11 14.

²⁵ Australian Human Rights Commission (2018), Workplace Sexual Harassment Toolkit, https://www.humanrights.gov.au/sites/default/files/publication/WORKPLACE_SHA_TOOLKIT.pdf.