



**VICTORIAN
WOMEN
LAWYERS**

**SUBMISSION TO THE AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION REVIEW OF
THE MENTAL HEALTH & SUICIDE PREVENTION AGREEMENT**

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Submission

About Victorian Women Lawyers

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community of women lawyers.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and has promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating gender-based and sex-based discrimination, to achieve justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au.

Introduction

Victorian Women Lawyers appreciates the opportunity to make a submission to the Australian Government's Productivity Commission Review of the National Mental Health and Suicide Prevention Agreement (**National Agreement**).

As an organisation of women lawyers, VWL's submission focus is the promotion and support of women's legal and human rights, including the advancement, inclusion and equality of people who identify as women and gender diverse.

Executive summary

A key gap in the National Agreement is the absence of express commitments for nationally consistent **safety regulatory controls** for occupational violence, bullying, and sexual and gender-based harassment, which disproportionately impact women.

When the risk is serious harm or death, as it is with work-related gendered violence, regulatory intervention is imperative (Australian Women Lawyers, 2024). Despite this, our current safety laws and regulations remain silent on this issue.

Given that we expressly regulate minimum safety controls for work-related hazards which impact men (e.g., high risk electrical, mining, construction & warehousing work), we should also regulate minimum safety controls for the behavioural hazards which disproportionately impact women in the workplace.

This is particularly so given that women comprise 57.8% of all serious claims for mental health conditions and are disproportionality impacted by bullying, harassment and occupational violence (Safe Work Australia, 2024).

Currently, compliance is left to guidelines and codes of practice which do not impose minimum mandatory controls in all businesses. Instead, codes of practice are admissible "after-the-fact", in safety prosecutions, as evidence of what should have been known about hazards and risks, and the means of controlling them.

Regulations on the other hand, can provide minimum mandatory controls to prevent the risk of harm. Safety regulatory controls have been found to halve the rate of injury if they are complied with (Gun, R, T, 1993).

Governments should also focus on actions to address the unique risks of high-risk workplaces, like the legal sector, through mechanisms which support compliance.

Our submission is informed by observations and experiences at both a local and national level.

The essential role of national workplace safety laws in preventing harm

The National Agreement recognises that workplaces provide a critical opportunity for prevention and that Governments at all levels should support and promote a legislative framework for work-related psychological health, ensuring that psychological health and safety is as important as physical health and safety (see paragraph 3 on page A-3 of the Agreement).

Whilst important work has been done by Governments across Australia to introduce safety regulations which require employers to identify, assess, control and review psychological hazards so far as reasonably practicable, most safety regulations remain largely silent on the specific controls for harmful behaviour hazards. Instead, controls are contained in guidelines and codes of practice which do not set minimum enforceable regulatory standards for compliance.

For example, whilst Governments expressly regulate safe work methods statements for high-risk construction work, controls for electrical, warehousing and mining work, which present physical hazards predominantly impacting men, they do not expressly regulate mandatory controls for occupational violence, bullying, and sexual and gender-based harassment, which disproportionately impact women.

The risk of serious harm or death

The current gap in workplace safety regulations leaves women, especially those from high-risk groups, vulnerable to the risk of serious harm or death (Australian Women Lawyers, 2024).

Work-related gendered violence can range in severity from comments and gestures through to sexual harassment and rape. It can also include stalking, intimidation, threats, verbal abuse, ostracism, exclusion, sexually explicit gestures, offensive language and imagery, put downs, innuendo, insinuations, undermining a person in their role or position, sexual harassment, sexual assault, and rape. Work-related gendered violence sometimes overlaps with work-related bullying (WorkSafe Victoria, 2022).

Work-related gendered violence can contribute to serious physical and mental injury, leading to feelings of isolation, anxiety, depression, PTSD, heart disease, and, in the worst cases, even suicide (WorkSafe Victoria, 2022).

The gendered nature of harmful behaviour hazards

Safe Work Australia's February 2024 Report (Report) identified that in 2021 - 2022, women accounted for the majority (59%) of accepted workers' compensation claims for occupational violence.

The Report also found that women comprise the majority of serious claims for mental health conditions (57.8%) and are more likely to experience poor work-related psychological health outcomes because they are exposed to more psychosocial hazards, including work pressure, work-related bullying and harassment, occupational violence and workplace sexual harassment than men.

Previous studies have considered that injury rates would at least be halved if safety regulations were complied with, such that where there is no regulatory compliance, the rate of severe injuries may be more than doubled (Gun, R, T, 1993).

Substantial benefits are also likely to be obtained by increasing the ambit of safety regulations where risks and control measures can be appropriately identified (Gun, R, T, 1993).

We consider that harmful behaviour hazards could therefore be expressly regulated, with minimum mandatory safety controls.

The need for express regulatory controls for harmful behaviour hazards

Action 6 of the Federal Government's First Action Plan 2023 - 2027, Under the National Plan to End Violence Against Women and Children 2022-2032 acknowledges that targeted work is needed to address gendered violence in all settings, including in the workplace, and that an outcome relevant to this includes that women are safe and supported in all settings and that systems and institutions should support and protect persons impacted by gender-based violence .

The Australian Human Rights Commission's 2020 Report, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, identified that while Australia's model workplace health and safety framework has the potential to adequately address sexual harassment, this framework is currently underutilised due to the lack of express regulation .

We consider that whilst the Australian Government's Productivity Commission Inquiry Report, dated 30 June 2020, recommended the development of psychological safety codes of practice, and that a model code of practice has now been developed for sexual and gender-based harassment, this code does not mandate minimum safety controls for employers and instead is only admissible in a safety prosecution as evidence of what should be known about the hazard of sexual and gender-based harassment and the means of controlling the risks associated with this hazard.

Codes of practice, whilst useful, rely on an enforcement lever wherein the code of practice is admitted into evidence in a safety prosecution, once the harm has already occurred, instead of prescribing minimum legally enforceable standards, in the form of regulatory controls, to prevent the risk of harm in the first place.

What have other Government reviews said

On 23 August 2024, in the context of Australia's national crisis of gender-based violence, recommendation 7(f) in the Federal Government's Rapid Review of Prevention Approaches, *Unlocking the Prevention Potential*, recommended strengthening workplace health and safety laws to complement the positive duty on employers to prevent workplace sexual harassment, sex discrimination and harassment under the Sex Discrimination Act 1984 (Cth) .

It has been estimated that the current cost of inactivity on work-related gendered violence is \$30 billion per year (Ballard, A, & Bozin, D, 2023). The significant cost associated with the absence of express controls for work-related gendered violence, and the comparatively lower cost of regulation, suggests that there could be significant social and economic benefits for Australia if these behavioural hazards, which disproportionately impact women, are properly regulated, with minimum enforceable standards.

Recommendation: Governments at a Federal, State & Territory level should commit to developing nationally consistent model safety regulatory controls to prevent occupational violence, bullying, and sexual and gender-based harassment, which disproportionately impact women.

Safety regulatory controls, achieved via amendments to model safety laws, and implemented Federally, and in each State and Territory, would be distinct from and complement protections under the *Sex Discrimination Act* (Cth).

Further concerns specific to the legal sector

Mental health is a critical issue in the legal profession, with high levels of harmful behaviour, stress, anxiety, and burnout reported among practitioners. Further sector-specific mental health and suicide prevention programs under the National Agreement can have a direct impact on the productivity and wellbeing of women legal professionals. We have observed that mental health issues can lead to reduced workforce participation, increased absenteeism, and lower job satisfaction.

While the National Agreement has made strides in addressing mental health issues, there remains a gap in effectively reaching and supporting women in law. Programs under the National Agreement need to be tailored further to address the unique challenges faced by women in the workplace (including legal professionals), such as gender-based discrimination, work-life balance, and career progression barriers.

Our further recommendations are:

- a) **Increased funding for safety regulators:** Governments need to increase funding to safety regulators to:
 - i. Conduct regular audits and inspections focused on psychological safety hazards, like enforcement activities for physical safety hazards.
 - ii. Increase industry awareness of psychological hazards, recognising that awareness of regulatory obligations is essential for compliance.
 - iii. Provide Mental Health First Aid training for high-risk industries.
 - iv. Provide EAP programs via safety regulators. For example, this could include mental health services for legal professionals in rural areas through telehealth services, online therapy and counselling services.
 - v. Implement structured mental health programs, including:
 - Psychological safety risk identification, assessment and control strategies,
 - Workplace stress and burnout prevention strategies,
 - Mandatory training for employers, practice managers, or equivalent personnel to ensure they have the knowledge and skills to support employees experiencing mental health concerns seriously and confidentially.
- b) **Expand adverse action protections:** Introduce further workplace protections, in the *Fair Work Act*, to recognise that adverse action should not be taken against employees who raise psychological safety issues, noting that psychological safety issues often overlap with workplace behaviour concerns.
- c) **Expand leave entitlements:** Expand leave entitlements under the National Employment Standards to introduce Mental Health Leave as a workplace leave entitlement.
- d) **Access to mental health services:** Address challenges in accessing mental health services, especially in rural and remote areas.
- e) **Stigma:** Address the stigma associated with accessing mental health services, in particular for working professionals where this stigma may be heightened.
- f) **Inclusion and representation:** It is imperative that the voices of high-risk groups (e.g., women, persons under the age of 29, persons who are gender diverse, Aboriginal and Torres Strait Islander persons, persons with a disability, migrants, refugees, culturally and racially marginalised persons, persons who identify as LGBTIAQ+, and those with lived experience of mental ill-health and suicide) are heard and acted upon in workplace strategies. Within the legal profession, this includes ensuring that high-risk groups are considered in policy development and implementation.
- g) **Best practices:** the adoption of best practice approaches across Australia is essential for improving mental health outcomes. We recommend implementing evidence-based strategies such as peer support programs, mental health first aid training, and advocacy and / or education regarding flexible work arrangements within the legal sector. These practices have shown promise in enhancing wellbeing and productivity.
- h) **Integration of services:** Advocate for better integration of mental health services across different sectors.

- i) **Preparedness and responsiveness** The legal profession requires tailored strategic support to address the high-pressure environment that often leads to mental health crises. Current services need to be more responsive and prepared to handle the specific needs of women in law, including access to confidential counselling services and stress management resources.

Governance and oversight

Effective administration and governance of the National Agreement is crucial for its success. We recommend ensuring that mental health initiatives are uniformly available and adequately funded across all jurisdictions. Additionally, the roles and responsibilities established in the National Agreement need to be clear and applicable to all stakeholders involved, including workplaces in the legal sector. The strengthening of reporting and governance arrangements will safeguard transparency and accountability.

Conclusion

We consider that Governments at a Federal, State & Territory should commit to developing nationally consistent model safety regulatory controls to prevent occupational violence, bullying, and sexual and gender-based harassment, which disproportionately impact women.

Safety regulatory controls, achieved via amendments to model safety laws, and implemented Federally, and in each State and Territory, would be distinct from and complement protections under the *Sex Discrimination Act* (Cth).

Supporting regulatory intervention, Governments should also increase funding to safety regulators to raise awareness of psychological safety risks and control measures, whilst supporting further protections for workers who do raise psychological safety concerns in their workplaces.