



Gendered Violence & Work: The Case for Action

Never Stand Still

Gendered Violence Research Network

Prepared by:
Luke McCaskie, Gendered Violence Research Network, University of New South Wales
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For more information,
contact:

Shabnam Hameed,
Gendered Violence & Work

T: +61 2 9385 4886

E: shabnam.hameed@unsw.edu.au

W: arts.unsw.edu.au/gvandwork

**Gendered Violence Research
Network**

T: +61 2 9385 2991

E: gvrn@unsw.edu.au

W: arts.unsw.edu.au/gvrn



UNSW
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The Gendered Violence Research Network (GVRN) at the University of New South Wales (UNSW Australia) has succeeded the Centre of Gender Related Violence Studies (CGRVS) which previously housed the Australian Domestic and Family Violence Clearinghouse (ADFVC). Researchers from GVRN have continued to develop certain work undertaken by CGRVS/ADFVC alongside many new initiatives such as the Gendered Violence & Work program.

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What is gendered violence?

Gendered violence is an expression of power and control over individuals or groups because of their gender. It is a broad term that encompasses domestic, family and sexual violence, and includes sexual harassment, sexual assault, stalking, intimate partner violence, and violence among household members, extended families and kinships.

Domestic, family and sexual violence disproportionately affects women and children; however, men, women, elders and youth can be victims and perpetrators. In addition, gendered violence can be experienced by lesbian, gay, bisexual, transgender and intersex (LGBTI) people.^{1,2}

What is domestic and family violence?

“Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal. Domestic violence includes physical, sexual, emotional and psychological abuse”.³

“‘Family violence’ is a more inclusive term referring to violence which may occur between a range of family members, as well as violence

occurring between intimate partners. It involves the same sorts of behaviours as described for domestic violence”.⁴

Domestic and family violence incidents are not isolated occurrences. For example, in Australia, New South Wales (NSW) Police attend over 126,000 incidents of domestic violence each year.⁵ While Victorian Police attended 60,829 incidents of family violence in 2012/13, with children present at more than one-third of these incidents.⁶

Between July 2008 and June 2010, one woman was killed nearly every week due to domestic and family violence in Australia (n=89).⁷

Between 2012 and 2013, the NSW Domestic Violence Review Team found that 23 people, all men, were

killed in ‘other’ domestic violence incidents, where there was no direct domestic relationship but the homicide was connected to domestic violence. Of these deaths, 70% (n=16) were perpetrated by a former intimate partner against a new partner.⁸

While incidents of domestic and family violence may constitute sexual violence, domestic and family violence is defined by the existence of a domestic or family relationship between the victim and perpetrator. Domestic and family relationships are not just those in which there is co-habitation, but under state-based legislation in Australia can also extend to kinship networks and other family-like relationships, such as carers.⁹

1 Australian Institute of Health and Welfare (AIHW) (2015) *Australia's Welfare 2015*. Canberra: AIHW, pp.340-342.

2 Another Closet (n.d) *Transgender People and Domestic Violence*, available at: <http://www.anothercloset.com.au/transgender-people-and-domesti/> (accessed 1 September 2015).

3 Council of Australian Governments (2013). *National Plan to reduce violence against women and their children: Including the first three-year Action Plan*. Canberra: COAG, available at: https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf (accessed 7 September 2015), p.2.

4 Ibid, p.2.

5 Thompson, C. (2013) *Domestic Violence Justice Strategy: Improving the NSW Criminal Justice System's Response to Domestic Violence*, available at: <http://www.victimsa.org/files/carolyn-thompson.pdf> (accessed 7 September 2015).

6 Victoria Police (2015) *Submission No.92 to the Senate Finance and Public Administration References Committee Enquiry into Domestic Violence in Australia*, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissions (accessed 1 September 2015).

7 Chan, A., and Payne, J. (2013) *Homicide in Australia: 2008-09 to 2009-10: National Homicide Monitoring Program annual report*, Canberra: Australian Institute of Criminology, p.18.

8 NSW Domestic Violence Death Review Team (2015) *NSW Domestic Violence Death Review Team Annual Report 2012-2013*, Sydney: NSW Coroner, p.9.

9 See: *Family Violence Prevention Act 2008* (Vic) s8; and, *Domestic Violence and Family Protection Act 2012* (Qld) s19.

What is sexual violence?

Sexual violence incorporates all forms of sexual harassment and sexual assault, and is defined by the World Health Organization as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”.¹⁰

The Personal Safety Survey conducted by the Australian Bureau of Statistics in 2012 found that 1,696,100 women (19%) had experienced sexual violence since the age of 15.¹¹

The same survey found that 87% of women who were sexually assaulted since the age of 15 reported that the perpetrator was known to them.¹²

With regard to sexual harassment, the Australian Human Rights Commission notes that this “can take many different forms – it can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males and females against people of the same or opposite sex”.¹³

¹⁰ World Health Organization (2014) *Violence Against Women – Intimate Partner and Sexual Violence Against Women*, available at: <http://www.who.int/mediacentre/factsheets/fs239/en/> (accessed 28 August 2015).

¹¹ Australian Bureau of Statistics (2012) *Personal Safety Survey, Australia*, Catalogue No. 4906.0.

¹² Ibid.

¹³ Australian Human Rights Commission (n.d) *What is Sexual Harassment?* Available at: <https://www.humanrights.gov.au/our-work/sex-discrimination/guides/sexual-harassment> (accessed 28 August 2015).

How does domestic and family violence affect the workplace?

Individuals

Two-thirds of Australian women who report violence by a current partner are in paid employment.¹⁴

Employees experiencing domestic and family violence are particularly vulnerable when working due to the predictability of their location and hours, while the strain of dealing with the abuse may impact their productivity, performance and wellbeing.¹⁵

Research conducted in 2011 showed that 19% of Australian workers who had experienced domestic and family violence reported the harassment continued at their workplace.¹⁶

The same study found that the primary form of abuse at work involved receiving threatening phone calls, text messages and emails, while 11% of respondents who had experienced domestic and family violence reported that the perpetrator had physically attended their place of work.¹⁷

A consequence of domestic and family violence on individual employees is that victims “have a more disrupted work history

and are consequently on lower personal incomes, have had to change jobs more often and are employed at higher levels in casual and part time work”.¹⁸

Co-workers

A 2011 Australian study found that 17% of respondents who were aware of a colleague experiencing domestic and family violence reported that the violence had created tension and conflict with co-workers.¹⁹

In some cases, the harassment and threats from a perpetrator may extend to other employees and managers, potentially placing these workers at risk.²⁰ This is especially the case for employees who are the first point of contact in a business, or for those directly working with colleagues who are experiencing abuse.

Employees who provide support to affected co-workers may also experience reduced productivity due to the stress and anxiety of the situation,²¹ along with increased workloads due to some victims being unable to fully perform their duties.

Organisations

A Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) report prepared by KPMG calculated that all forms of violence against women and children cost the Australian economy \$13.6 billion in 2008-09, while predicting this figure will rise to \$15.6 billion by 2021-22, of which \$609 million will be workplace productivity losses alone.²²

A US study of domestic and family violence perpetrators found that 48% of respondents said their partners had taken time off work to deal with the effects of domestic violence, of which 32% was paid time off.²³

The same US study also found that the productivity of perpetrators was severely affected by domestic and family violence, with 75% of respondents indicating they had trouble concentrating at work, while 53% said their work performance was negatively affected.²⁴

¹⁴ Australian Bureau of Statistics (2005) *Personal Safety Survey, Australia*, (Reissue), Catalogue No. 4906.0.

¹⁵ Special Taskforce on Domestic and Family Violence (2015) *Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland*, available at: <https://www.qld.gov.au/community/documents/getting-support-health-social-issue/dfv-report-vol-one.pdf> (accessed 1 September 2015), p.182.

¹⁶ McFerran, L. (2011) *Key Findings – Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*, Sydney: University of New South Wales, p.1.

¹⁷ Ibid, p.1.

¹⁸ Franzway, S., Zufferey, C., and Chung, D. (2007) *Domestic Violence and Women's Employment*, presented to 'Our Work, Our Lives 2007: National Conference on Women and Industrial Relations', 20-21 September 2007, p.5.

¹⁹ McFerran, L. (2011) *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*, Sydney: University of New South Wales, p.11.

²⁰ McFerran, L., Cortis, N., and Trijbetz, T. (2013) *Domestic and Family Violence Clauses in Your Workplace: Implementation and Good Practice*. Sydney: Social Policy Research Centre & Centre for Gender Related Violence Studies, University of New South Wales, p.10.

²¹ Johnson, P. R., and Indvik, J. (1999) The organizational

benefits of assisting domestically abused employees. *Public Personnel Management*, 28(3), p.368.

²² Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2009) *The Cost of Violence against Women and their Children*, Canberra: Commonwealth of Australia, p.45.

²³ Schmidt, M. C., and Barnett, A. (2011) *How Does Domestic Violence Affect the Vermont Workplace? A Survey of Male Offenders Enrolled in Batterer Intervention Programs in Vermont*. Montpelier, Vermont: Vermont Council on Domestic Violence, p.15.

²⁴ Ibid, p.21.

How does sexual violence affect the workplace?

Individuals

Sexual violence can severely impact on all areas of a victim's life, including their ability to work.²⁵

Sexual violence can be perpetrated both within and outside the workplace; however both can reduce productivity and workplace performance.

The provision of workplace supports is important for victims of sexual violence regardless of where the assault or harassment took place, as the physical workplace may present triggers or reminders of their trauma.²⁶

Individuals may also experience significant financial costs as a result of sexual violence, including "loss of earnings, loss of earning capacity, medical expenses, counselling expenses and a myriad of intangible costs not measurable in monetary terms".²⁷

The Australian Human Rights Commission's 2012 Sexual Harassment Survey found that

21% of people aged over 15 in Australia had experienced sexual harassment in the workplace during the preceding five years, with 33% of female respondents and 9% of male respondents indicating they had experienced sexual harassment.²⁸

Co-workers

Sexual harassment doesn't just impact the victim, but can negatively affect the morale of colleagues and managers. All employees, both men and women, "can find their work [is] disrupted by sexual harassment, even if they are not directly involved".²⁹

The demoralising effects of sexual harassment may impact on the productivity of the victim's co-workers and has the potential to create a hostile work environment for those who witness the harassment.³⁰

Co-workers may also be affected if a victim of sexual violence is no longer comfortable working with team members or clients who are the same gender as the perpetrator.³¹

Organisations

"Organisations [that are] able to support employees as they deal with and recover from experiences of sexual violence stand to benefit considerably from strengthening staff loyalty, productivity and job retention".³²

Sexual harassment can result in huge costs to employers in relation to lost productivity, misuse of resources and staff turnover.³³

A 2001 report by the US Department of Justice estimated that 36% of sexual assault victims had lost over ten days work, while around 8% of these assaults occurred while the victim was at work.³⁴

²⁵ Walden, I., and McFerran, L. (2014) *Report on a Scoping Study into the Effects of Sexual Violence on Employees and the Workplace*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales, p.12.

²⁶ *Ibid*, p.9.

²⁷ Morrison, Z., Quadara, A., and Boyd, C. (2007) *"Ripple Effects" of Sexual Assault: Issues Paper 7*, Melbourne: Australian Institute of Family Studies, Australian Centre for the Study of Sexual Assault, p.2.

²⁸ Australian Human Rights Commission (AHRC) (2012) *Working without Fear: Results of the Sexual Harassment National Telephone Survey*, AHRC, Sydney, p.4.

²⁹ University of Minnesota (n.d.) *Sexual Harassment*, available at: <http://www1.umn.edu/humanrts/svaw/harassment/explore/4effects.htm> (accessed 31 August 2015).

³⁰ Australian Human Rights Commission (n.d) *Sexual Harassment – Information for Employers*, available at: <https://www.humanrights.gov.au/sexual-harassment-information-employers> (accessed 28 August 2015).

³¹ Walden, I., and McFerran, L. (2014) *Report on a Scoping Study into the Effects of Sexual Violence on Employees and the Workplace*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales, p.8.

³² *Ibid*, p.10.

³³ Willness, C. R., Steel, P., and Lee, K. (2007) A meta-analysis of the antecedents and consequences of workplace sexual harassment. *Personnel Psychology*, 60(1), p.127.

³⁴ Walden, I., and McFerran, L. (2014) *Report on a Scoping Study into the Effects of Sexual Violence on Employees and the Workplace*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales, p.3.

What are the benefits to employers of addressing the effects of domestic, family and sexual violence?

Reducing costs

Access Economics estimated that in 2002-03, domestic violence cost Australian businesses A\$175.2 million.³⁵

A US study estimated the costs to employers of domestic and family violence was US\$5 billion/ per annum in lost productivity, absenteeism and health care costs.³⁶

Employers can reduce the costs of domestic, family and sexual violence on their organisations by providing supports to employees who are victims so that they can maintain their employment, thereby safeguarding organisational knowledge and long-term productivity, and reducing termination, recruitment and retraining expenses.^{37,38}

Fulfilling duty of care (OHS)

An organisation's duty of care to its employees is particularly relevant to domestic and family violence responses because under occupational health and safety (OHS) laws in Australia, an organisation must minimise or eliminate

the risk of any workplace practice or incident which may cause harm to an employee.³⁹

Considering that nearly one in five Australian women who experience domestic violence say the harassment continued at the workplace,⁴⁰ there is an OHS obligation on employers to ensure strategies are put in place to protect their employees from an incident of domestic and family violence at work.⁴¹

Failing to meet requests for flexible working arrangements for employees experiencing domestic and family violence under the Fair Work Act 2009 (Cth) may also breach occupational health and safety laws in Australia if the employee is placed at risk of harm through inaction.⁴²

Programs that address the impact of domestic and family violence in the workplace will also help address the major health implications caused by gendered violence. A large study in Victoria, Australia found that intimate partner violence was the leading contributor to death, disability and illness in women aged 15-44 years.⁴³

It is difficult for an organisation to mitigate risks where victims do not feel empowered to disclose their experience of domestic, family and sexual violence. It is therefore critical that any workplace response provides an environment in which employees feel comfortable disclosing their experience, as well as the provision of safety planning once an employee has done so.⁴⁴

Sexual harassment can also constitute a breach of an employer's duty to provide a safe workplace under Australian state-based occupational health and safety legislation, as well as their common law obligation to take reasonable care for their employee's wellbeing at work.⁴⁵

Protecting against vicarious liability claims

Australian organisations may be held vicariously liable for incidents of sexual violence that occur between employees. The Sex Discrimination Act 1984 (Cth)⁴⁶ provides a much wider definition concerning what is 'in connection with' one's employment than that provided under common law.^{47,48}

35 Access Economics (2004) *Cost Of Domestic Violence to the Australian Economy: Part 1*. Canberra: Access Economics, p.43.

36 Johnson, P. R., and Indvik, J. (1999) The organizational benefits of assisting domestically abused employees. *Public Personnel Management*, 28(3), p.372.

37 Willness, C. R., Steel, P., and Lee, K. (2007) A meta-analysis of the antecedents and consequences of workplace sexual harassment. *Personnel Psychology*, 60(1), p.133.

38 Campbell, R. (2011) *The Financial Cost of Family and Domestic Violence*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales.

39 Nunweek, J. (2015) *Is this the new hot-button health and safety topic?* Health and Safety Bulletin, available at: <http://www.healthandsafetyhandbook.com.au/is-this-the-new-hot-button-health-and-safety-topic/> (accessed 1 September 2015).

40 McFerran, L. (2011) *Key Findings – Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales, p.1.

41 Nunweek, J. (2015) *Is this the new hot-button health and safety topic?* Health and Safety Bulletin, available at: <http://www.healthandsafetyhandbook.com.au/is-this-the-new-hot-button-health-and-safety-topic/> (accessed 1 September 2015).

42 Ibid.

43 Victorian Health Promotion Foundation (2004) *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence: A Summary*

of Findings, Melbourne: VicHealth, p.8.

44 Ibid, p.1.

45 Australian Human Rights Commission (2004) *Sexual Harassment (A Code in Practice): Other Duties of Employers*, available at: <https://www.humanrights.gov.au/publications/sexual-harassment-code-practice-other-duties-employers> (accessed 31 August 2015).

46 *Sex Discrimination Act 1984* (Cth) s106(1).

47 *Lee v Smith & Ors* [2007] FMCA 59.

48 *South Pacific Hotels Pty Ltd v Trainor* [2005] FCAFC 130.

49 *Lee v Smith & Ors* (2007) FMCA 59.

Under s106(2) of the Australian Sex Discrimination Act, an employer may rely on the defence that they took ‘all reasonable steps’ to prevent the offending conduct. In *Lee v Smith & Ors*,⁴⁹ the court found that while the Australian Defence Force had equity and diversity guidelines in place, these were not adhered to in practice and therefore the employer could not rely on this defence.⁵⁰

In *Richardson v Oracle Corporation Australia Pty Limited*, the court found that the provision of routine online training and a workplace code of conduct, which lacked crucial elements, was insufficient in showing the employer had taken ‘all reasonable steps’ to prevent the sexual harassment that occurred.⁵¹ It is therefore imperative that employer responses to all forms of sexual violence include rigorous training, followed by ongoing monitoring and evaluation.

The liability of an employer can also extend to perpetrators who are using “computers, phones or tablets... to harass a person; for example by sending text messages, posting on social media sites or sending emails that have a connection to the

workplace”.⁵² Therefore, employers who proactively manage employees who are perpetrators of domestic, family or sexual violence will reduce the risk of vicarious liability and reputational damage.

Currently, vicarious liability claims centre around different forms of sexual violence; however, it is likely that future claims will be brought in relation to organisational responses to domestic and family violence.⁵³

Fair Work Act 2009

Under s65 of the Australian Fair Work Act 2009 (Cth),⁵⁴ an employee may request a change to their hours of work, their days of work or their work location due to their experience of domestic and family violence, or if they are supporting someone experiencing domestic violence.

Where a victim and perpetrator are both employed in the same organisation, it is critical that responses do not constitute an unfair dismissal or adverse action against an employee (see *Moghimi v Eliana Construction and Developing Group Pty Ltd*).⁵⁵

Employer of Choice

The Australian Workplace Gender Equality Agency requires businesses with over 100 employees to report on sex-based harassment and discrimination in the workplace every year. Organisations need to report on their grievance procedures in relation to sexual harassment, and what training is undertaken by managers on the prevention of sex-based harassment and discrimination.⁵⁶

From 2016, to be considered for an Employer of Choice citation the Australian Workplace Gender Equality Agency will require employers to report if they have formal policies or strategies in place to support workers who are experiencing domestic and family violence.⁵⁷

Proactively taking a stand against domestic, family and sexual violence will also demonstrate an organisation's commitment to their values and social responsibility charters, while also displaying “good corporate citizenship”.⁵⁸

50 Newton, A. (2007) *Is this a new frontier in vicarious liability?* Available at: <https://www.humanrights.gov.au/publications/site-navigation-3> (accessed 31 August 2015).

51 *Richardson v Oracle Corporation Australia Pty Limited* [2013] FCA 102.

52 Australian Human Rights Commission (2014) *Vicarious Liability*, available at: <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/vicarious-liability> (accessed 1 September 2015), p.1.

53 *Ibid*, p.3.

54 *Fair Work Act 2010* (Cth).

55 *Moghimi v Eliana Construction and Developing Group Pty Ltd* [2015] FWC 4864.

56 Department of Employment (2015) *Changes to Workplace Gender Equality Reporting*, available at: https://www.wgea.gov.au/sites/default/files/Changes_Workplace_Gender_Equality_Reporting_factsheet.pdf (accessed 28 August 2015).

57 Workplace Gender Equality Agency (2014) *WGEA Employer of Choice for Gender Equality: Criteria and Guide to Citation 2015*, available at: https://www.wgea.gov.au/sites/default/files/2014-11-12_EOCGE_Guide_to_citation.pdf

(accessed 28 August 2015), p.20.

58 Walden, I., and McFerran, L. (2014) *Report on a Scoping Study into the Effects of Sexual Violence on Employees and the Workplace*, Sydney: Australian Domestic and Family Violence Clearinghouse, University of New South Wales, p.10.