Shop Distributive and Allied Employees' Association

THE UNION FOR WORKERS IN
RETAIL. FAST FOOD. WAREHOUSING.

Recommendations of the 2018 Review of the Model Work Health and Safety Laws

SDA Submission to Safe Work Australia - Consultation RIS - 2018 Review Recommendations

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Submitted by: Julia Fox
National Assistant Secretary

SDA National Office
Level 6
53 Queen Street
MELBOURNE VIC 3000

Telephone: (03) 8611 7000

Email: julia@sda.org.au

What is your name?

1. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 213,000 members. The majority of SDA members are women and young people. Almost 60% of members are female, equating to approximately 131,000 women. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy and modelling.

2. Since the release of the Boland report, over 2000 SDA members participated in an ACTU's WHS survey of 25,000 people: 74.69% were women and 23.48% were men, with 2.37% identifying as Aboriginal and/or Torres Strait Islander.[1] Respondents were predominantly from retail (88.16%), in addition to workers in warehousing, storage and wholesale trade (3.61%%) and accommodation, cafes and restaurants (2.22%). The survey ran over July 2019.

    - Over half of SDA members who completed the survey (54.7%) were aware of existing conditions in their workplace that could cause serious injury of illness to a worker if left unaddressed or not properly managed.
    - More than half of SDA members had experienced or witnessed a near miss at work that could have injured them or a workmate.
    - Over half of SDA members said that had either been exposed to traumatic events or been abused, threatened or assaulted at work in the past 12 months.[2]

3. The SDA supports the submissions of the ACTU and agrees that there is a need for urgent reform of our Model WHS Laws. The SDA makes additional comments in relation to:
    - Psychosocial hazards (No. 2 and 20)
    - Choice of HSR training course (Recommendation 10)

[1]Appendix 1 – ACTU WHS Survey 2019_SDA results.
[2] Ibid.

Psychosocial risks (Recommendation 2)

How are you, your organisation or your stakeholders affected by the problems identified in the 2018 Review findings, and to what extent?

4. The SDA supports the ACTU's submissions that the current regulatory framework in relation to managing psychosocial hazards is not working and supports calls for urgent reform. The SDA agrees with the ACTU that the development of a new regulation on psychosocial hazards must be supported by additional reforms:

    - The development of new, detailed Code/s of Practice addressing different psychosocial hazards in different sectors (including a review of the adequacy and accuracy of existing Codes of Practice and SWA guidance material);
    - Extension to the Risk Management process in Reg 36 to all risks (No. 27)
    - Review of the notification provisions in the Model Act (No. 20)
    - A review of the accuracy of existing Codes and guidance material dealing with psychosocial hazards;
    - Additional research by Safe Work Australia into psychosocial hazards in Australia, in particular the impact of systems of work on psychosocial risks, and the effectiveness of workers compensation processes in responding to psychological injuries.

5. The current framework fails to adequately protect workers from psychological injuries and illnesses and is failing in its objective to protect the health and safety of workers. Psychosocial hazards including excessive workload, bullying and customer abuse and violence including customer perpetrated sexual harassment are systemic issues in parts of retail and fast food and warehousing which are having a detrimental impact of the health of workers in these industries.

6. The SDA anticipates enormous benefits to the health and safety of workers in retail, fast food and warehousing would flow from the development of new regulation and reforms on psychosocial hazards.

Evidence of impacts: Workload

7. Around 70% of SDA members responding to the ACTU WHS survey in July 2019 reported experience workload related issues including high workloads (too much to do, fast work pace or significant time pressure), long work hours (29.12%), highly

controlled work where you don't have a say in the way you do your work or when you take breaks or change tasks (21.2%), unclear or uncertain job tasks and standards (27.59%) over the past 12 months.[3]

8. The recent ACTU survey results supports the findings of SDA's 2015 Workload survey ('SDA Workload survey') of 5,432, predominately female, retail, fast food and warehouse workers that workload is as systemic issue and adversely affecting the health and safety of workers in our industries.[4] Results from this survey found:

    - Over 70% of respondents reported experiencing an impact on their health and safety that they believed was a consequence of their workload in the last 12 months.
    - Workers identified health and safety consequences they were aware of that are associated with excessive workload, with neck and/or back pain, high stress levels, anxiety and loss of motivation reported by over 50% of all respondents as impacting on them directly.
    - Over 47.7% of respondents advised the issue occurred on a weekly basis, with 22% reporting it as a daily occurrence.

9. Workers responding to the SDA Workload survey thought that genuine consultation with employees (46.26% respondents), better understanding of the allocation of hours based upon a realistic expectation of the time it takes to complete tasks (68.27% respondents) and more staff (74.52% respondents) would assist with the resolution of issues in their workplace.[5]

10. Under s 19 (3) (c) of the model Act PCBU must the provide and maintain 'a safe system of work'. The failure of PCBU to conduct risk assessments to identify 'unsafe systems of work frequently leads to operational decisions that disregard the deleterious impact excessive workload is having on their workers' health and safety.

[3] Ibid.
[4] Shop Distributive and Allied Employees' Association, *2015 SDA Workload Survey,* 31 August 2015, SurveyMonkey, https://www.surveymonkey.com/results/SM-P2K2C598L/.
[5] Ibid.

11. The nature of psychological injuries means they are not immediately apparent to the PCBU, particularly where no risk assessment has been undertaken to review controls to eliminate or minimise risk of exposure to psychosocial hazards related to workload.

Evidence of impacts: Bullying

12. Poor workplace relationships (e.g. bullying, aggression, harassment, conflict, lack of fairness and equality between workers) were experienced by 45% of SDA members in the last 12 months.[6]

13. Research commissioned by Safe Work Australia has confirmed an increase in bullying in Australian workplaces, with the research indicating nearly one in 10 people report that they have been bullied at work.[7] The devastating effects of bullying and harassment as reported, are consistent with the observations of union officials and experiences of SDA members who deal with this issue frequently.

> *In relation to health outcomes, bullying was related to emotional exhaustion, psychological distress and depression. In relation to work outcomes, it was significantly negatively associated with job satisfaction and work engagement, and positively with intention to leave the workplace.*[8]

14. While the SDA supports the regulatory framework under Part 6-4 of the *Fair Work Act 2009* (Cth) which was designed to provide a low cost, quick and effective process and appropriate outcome for some workers affected by bullying behaviour, it is not accessible for all workers or for groups of workers affected by bullying and does not consider that bullying is first and foremost an issue that impacts worker health and safety.

15. Most employers do not treat bullying as an WHS issue or adopt a risk management model to bullying, even though bullying is included in the WHS jurisdiction. The Model Laws are grossly inadequate and unable to deal with workplace bullying in an effective way. Further the SDA notes the low-level prosecutions of bullying

[6] Appendix 1 – ACTU WHS Survey 2019_SDA results.
[7] Rachel E. Potter, Maureen F. Dollard, Rachel R. Tuckey, 'Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014/15' (Report, Safe Work Australia, 23 November 2016).
[8] Ibid 7.

complaints through Fair Work Commission jurisdiction, and the SDA's direct experience of the poor handling of complaints by PCBU in many instances.

16. The Model Act is clear in stating that the PCBU has an obligation to consult in relation to the identification and management of risks under Part 5, Division 2, s 49, however neither the Act nor Regulations impose a duty on the PCBU to conduct a risk assessment.

Evidence of impacts: Customer abuse and violence

17. Since 2014, data collected by the SDA via extensive surveying of over 30,000 workers has provided the union with a direct insight into the key Workplace Health and Safety (WHS) issues workers themselves have identified as impacting on them at work. The quantitative data collected over this period has helped inform the SDA's approach to health and safety issues in retail and fast food. [9]

18. The significant number of respondents who reported they had experienced 'customer abuse and violence' (CAV) since 2015 led the SDA to conduct an online survey 'Customer violence and abuse in Retail and Fast Food' ('SDA CAV survey') of 6,358 retail and fast food workers in 2017. [10]

19. Customer abuse and violence (CAV) is having an enormous impact on both the physical and perhaps more significantly the psychological health of workers. The SDA has done extensive work on this issue over the past 3 years including the launch of the union's public 'No One Deserves A Serve' campaign. The SDA recently hosted a second industry roundtable on 30 July 2019 to facilitate an industry wide response, from employer associations, employers, regulators and other key stakeholders, to tackle this issue. There is now broad consensus across industry that CAV is a systemic and underreported WHS issue.

[9] Shop Distributive and Allied Employees' Association, Submission to Safe Work Australia 2018 Review of Model Laws, 13 April 2018.
[10] Shop Distributive and Allied Employees' Association, *Customer violence and abuse in Retail and Fast Food*, 31 January 2017, SurveyMonkey, https://www.surveymonkey.net/results/SM-CVNKLL9G/.

20. The state of knowledge of psychosocial hazards in relation to customer abuse and violence in retail and fast food is widely known and accepted but measures to enable accessible reporting, and to establish risks and control measures are yet to be properly and widely established.

Evidence of impacts: Customer perpetrated Sexual harassment

21. The SDA recently partnered with the Australian Human Rights Commission (AHRC) to conduct a comprehensive, statistically significant survey of SDA members regarding their experience of sexual harassment at work. The survey (SDA/AHRC Survey) was completed by over 3,400 members and provides robust data on sexual harassment in retail, fast food, warehousing and other industries our members are working.

22. The SDA/AHRC survey was based on the national prevalence survey conducted by the AHRC but contained further questions to obtain data on customer perpetrated sexual harassment; current workplace practices; and health impacts from sexual harassment in our industries.

23. Overall the data and experiences shared by workers in the SDA CAV survey confirmed the existence of a serious, widespread and systemic workplace health and safety issue for the retail and fast food industry. Survey results found 88% of respondents overall experienced CAV in the preceding 12 months, including 11% of workers who said they experienced CAV that was sexual in nature.[11] A subsequent survey of fast food workers in 2018 found that CAV that was sexual in nature was even more prevalent, with 32.5% confirming this experience.[12]

24. Recent data from the SDA/AHRC survey confirms irrefutably the enormity of the problem for fast food and retail workers with workplace sexual harassment, slightly higher than the general workforce (39%). The gender bias evident in this data, confirming that it is women and girls, aged 15 years and over, working in retail and

[11] Ibid.

fast food who are more likely to be sexually harassed than men (46% compared with 29%).

25. The adverse health impacts for workers exposed to sexual harassment are not in dispute. Scientific studies have confirmed that adverse psychological outcomes, including depression, anxiety, and post-traumatic stress disorder (PTSD) stem from exposure to sexual harassment.[13]

26. Retail and fast food workers clearly and consistently identify the personal health impacts they have experienced following what is in the majority of cases for SDA members over the last 5 years, ongoing and extended exposure to sexual harassment.

27. The SDA/AHRC survey found that the harassment had occurred on more than one occasion for more than half (57%) of the SDA Members who had been harassed – this was similar for both women (58%) and men (52%) and for most victims this harassment was ongoing over an extended period of time; in just over half (53%) of cases the harassment lasted for more than six months with this more likely to be the case for men (56%) than women (51%).[14]

28. Despite cogent evidence of the deleterious health consequences of exposure to sexual harassment and evidence of it as widespread, systemic workplace health and safety issue, government, regulators, insurers and employers have failed to act in response.

29. The following are extracts from over 400 of the 1000 responses to the 2018 SDA Survey of Fast Food workers who said they had experienced abuse and violence from customers that was sexual in nature. All respondents to the survey who had experienced abuse and violence from customers that was sexual in nature said it impacted on their physical or mental health.

13 Willness, Chelsea R., Steel, Piers and Lee, Kibeom, *A Meta-analysis of the antecedents and consequences of workplace sexual harassment,* Personnel Psychology, volume 60, issue1 spring 2007 pages 127-162 first published: 22 February 2007.
14 SDA/AHRC survey data.

'It's horrible, it's disgusting how human beings can treat others like the way I have been treated I'm only 17 and I have already witnessed how horrible society can be and how I can feel unsafe in my work place'

'People speaking to me in a disrespectful manner, men making uncomfortable sexual comments, having beverages thrown at me and accused of doing things I did not do by customers'

'A customer made me feel very uncomfortable when he repeatedly came into our store and insulted my manager and saying rude accusations towards her. I didn't really know what to do because if I told her then it would upset her hearing the insults. He also complained about as many things as possible just out of spite.'

'I am constantly yelled at, sworn at and treated inhumane by customers at my workplace. I've been called names ranging from "incompetent piece of shit" to "dumb cunt" and "fat slut". I try my hardest to give everyone a positive experience and be as welcoming and nice to people as possible, but being disrespected by others just because I am a teenager that works in fast food really pulls me down some days. I've seen other employees be threatened, had things thrown at them or near miss punches. I can understand if a customers frustration is valid but it is almost always not.[15]

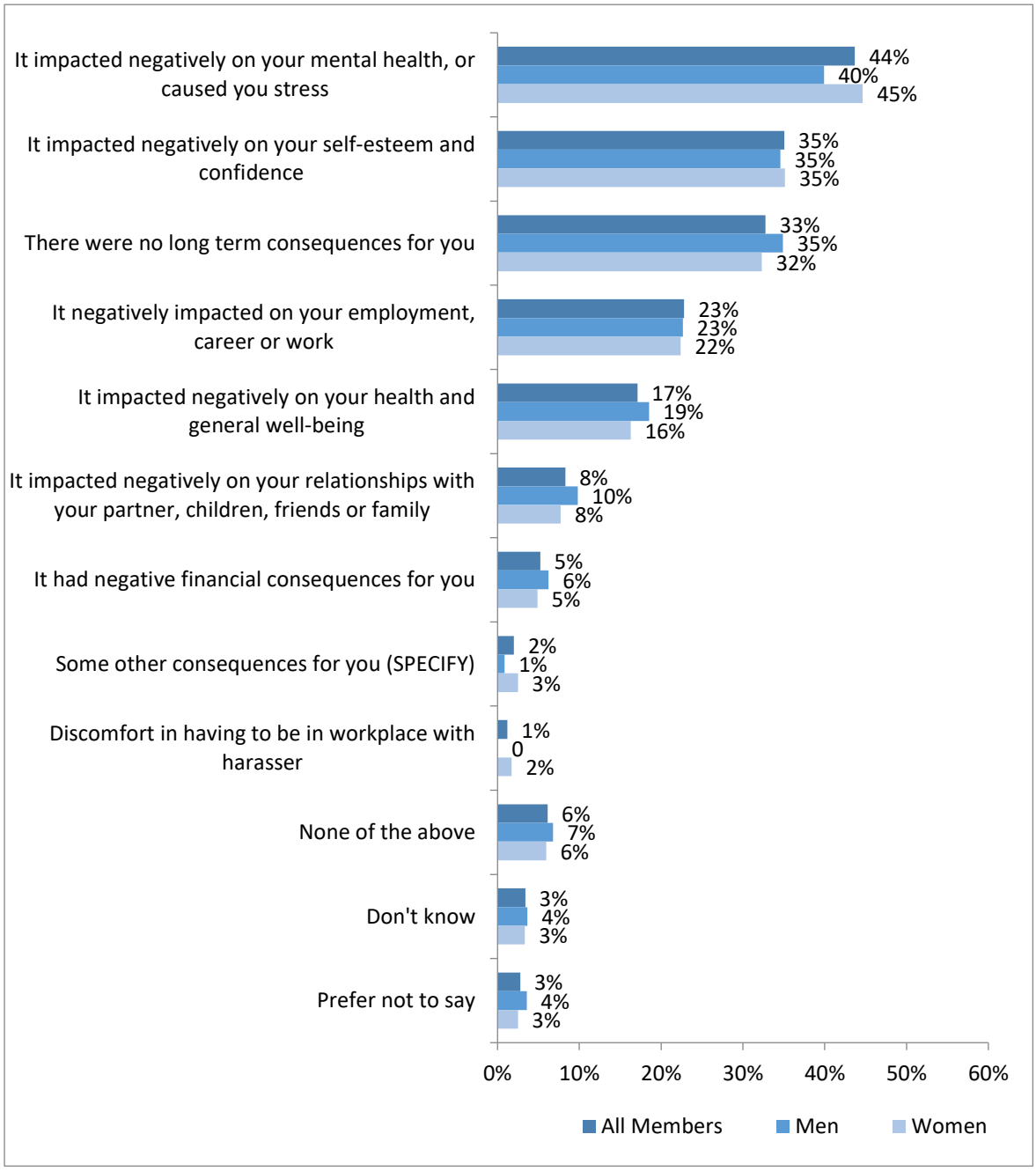
30. The AHRC/SDA survey establishes that the majority of sexual harassment experienced by SDA members is perpetrated by men. Women are most commonly harassed by customers or clients, followed by co-workers and men are more likely to be harassed by a co-worker.

31. A substantial proportion of SDA members who are sexually harassed at work experience negative consequences as a result, with women (45%) more likely than men (40%) to say that the most recent incident had caused them mental health issues or stress. 16

32. Women report higher levels of offence and intimidation about their most recent incident of workplace sexual harassment than men (24% of women felt 'extremely offended', compared to 14% of men; 24% of women felt 'extremely intimidated', compared to 12% of men).

33. The following table contains the consequences of sexual harassment for victims responding to the SDA/AHRC Survey:

[15] SDA Fast Food CAV survey 2018.
[16] SDA/AHRC survey.



34. Members were asked to indicate if they had experienced any specific health and well-being consequences following the most recent incident of workplace sexual harassment. While 37% of SDA Members said that they had not experienced any of the listed consequences, the majority of victims of workplace sexual harassment did report experiencing some health and/or wellbeing consequences.

35. The specific health and/or well-being consequences most commonly identified by people who had experienced workplace sexual harassment were:

- Anxiety (40%)

- Loss of self-esteem (23%)
- Depression (18%)
- Sense of helplessness (16%), and/or
- Sleeplessness (16%).

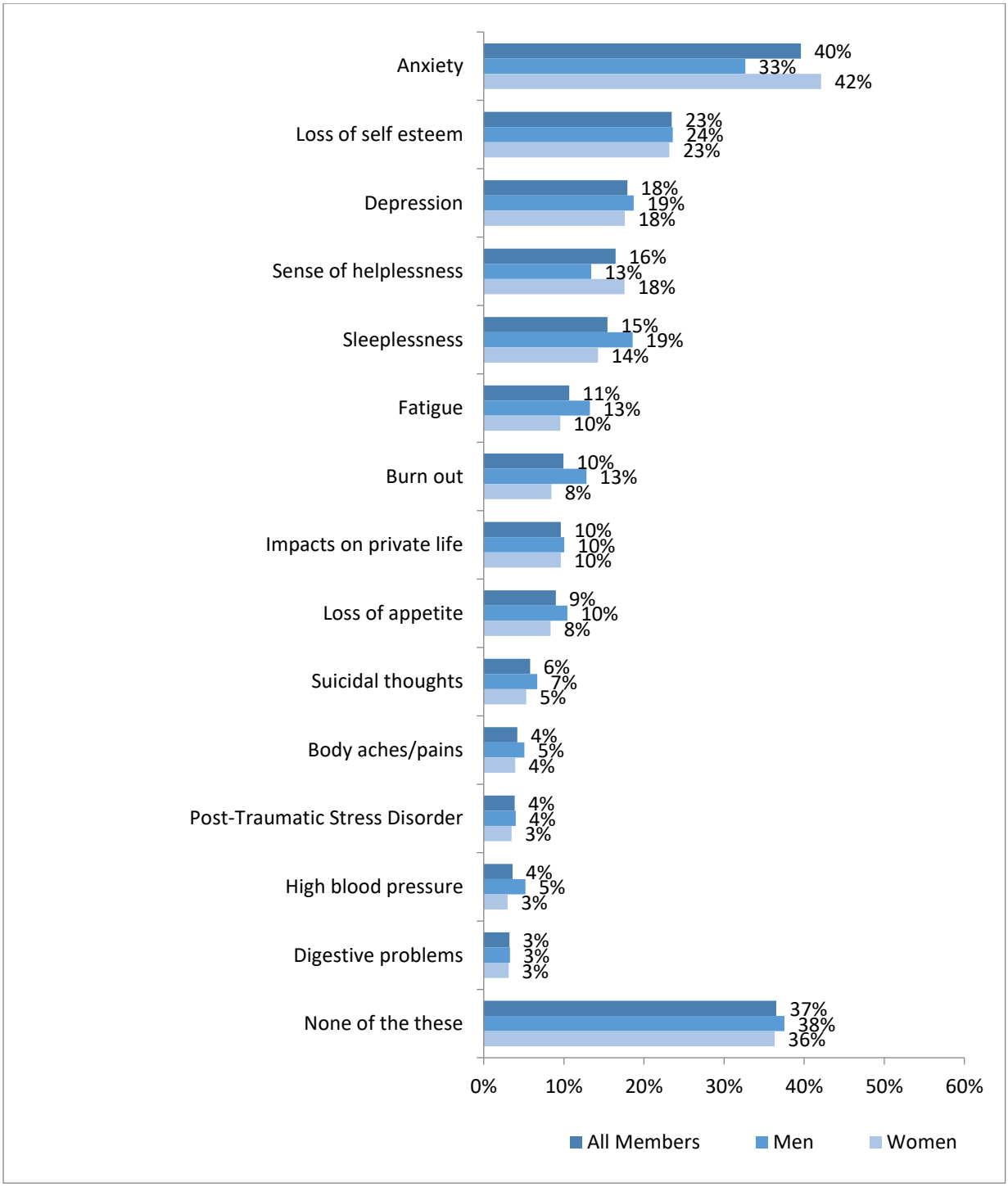
36. The proportions of men and women reporting experiencing a particular consequence were similar for nearly all listed items. The only statistically significant differences were that women (42%) were more likely than men (33%) to have experienced anxiety as a result of the most recent incident of workplace sexual harassment, and men more likely than women to have experienced burn out (13% and 8% respectively).

37. Incidents of sexual harassment can result in severe health and well-being consequences for our members. The SDA/AHRC found that 4% suffered post-traumatic stress disorder and 6% had suicidal thoughts following their most recent experience of sexual harassment.

    One member said that:

    > *'A few years ago I was treated like crap by management and coworkers for filing a harassment complaint. It became so bad I considered ending my life. I have since never spoken up again if someone touched me or said something to make me feel uncomfortable.'*

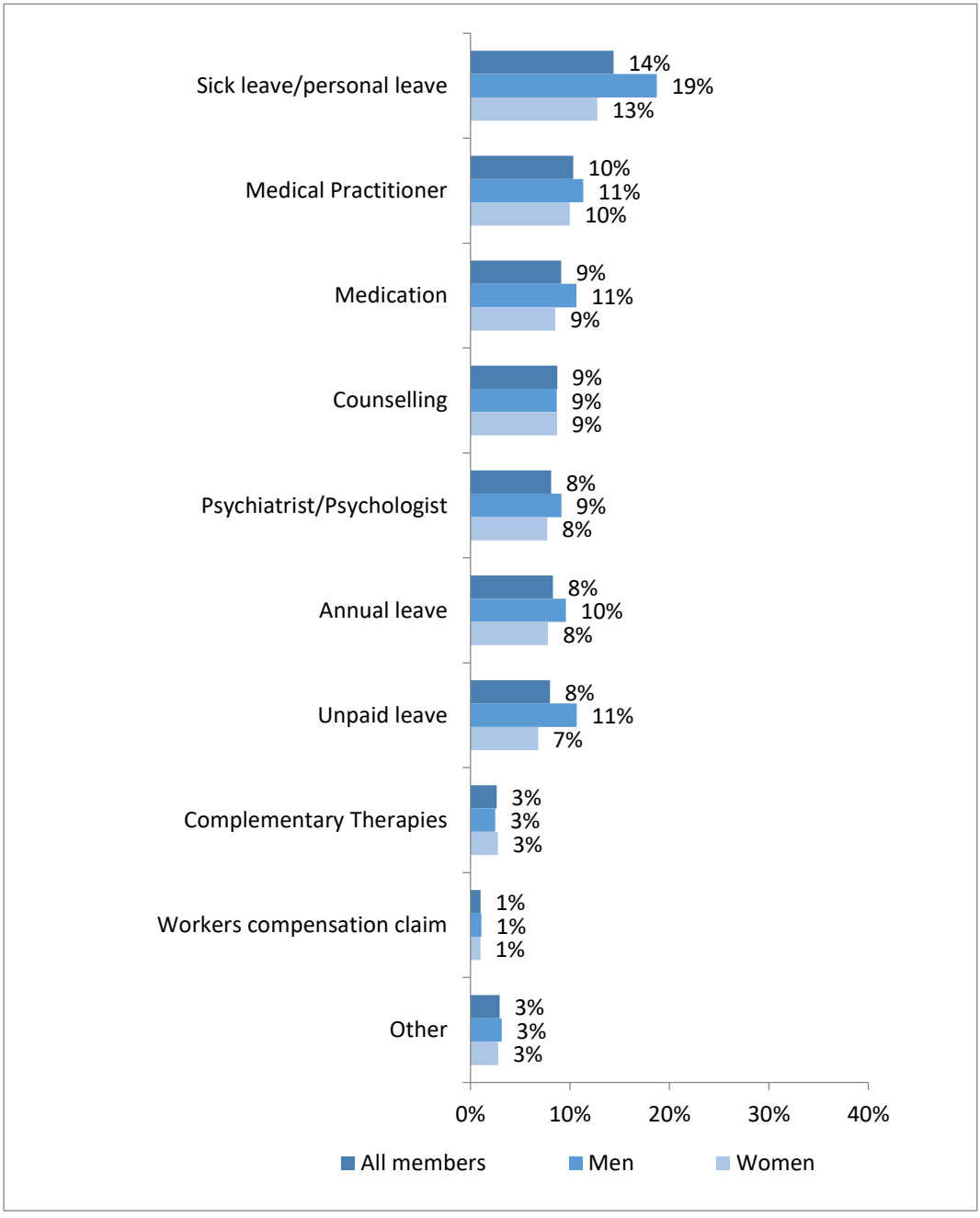
The following table shows the responses from those members who suffered negative health and well-being consequences following sexual harassment:



38. Those who had been sexually harassed in the workplace in the last five years were also asked to indicate whether they had sought assistance (from a closed set of potential sources of support) as a result of health problems directly associated with the most recent incident of workplace sexual harassment.

39. The source of support most often utilised was sick/personal leave (14%), followed by counselling (9%), medication (9%), a psychiatrist/psychologist (8%), annual leave (8%) and/or unpaid leave (8%). Men were more likely than women to have taken sick/personal leave (19% and 13% respectively) and/or unpaid leave (11% and 7% respectively). There were no sources of assistance more likely to have been utilised by women than men.

40. The following table represents the forms of assistance utilised by victims of sexual harassment:



41. This table provides evidence that there is not only a personal cost on individual workers, from a health and financial perspective, but also a cost on workplaces, companies and the economy more broadly. The cost on business results from the need for employees to use paid and unpaid leave and workers compensation. This says little about the impact this has on the individual worker, their colleagues and broader workplace.

42. This provides clear evidence that sexual harassment is a WHS issue.

43. Women and young workers are highly represented cohorts in retail and fast food and are groups most at risk of exposure to sexual harassment.

44. WHS laws have thus far, not dealt with sexual harassment as a workplace health and safety issue, which it plainly is.

45. The objects of our WHS laws are largely consistent across jurisdictions, with the exception of Western Australia and Victoria who do not yet have harmonised legislation. Australia's WHS model laws include Legislation, (WHS act), Regulations (WHS Regulations) and non-binding Codes of Practice. Enforcement

46. Section 3 (a) of the Model Work Health and Safety Bill 2016 (the WHS act) outlines the objects of the our harmonised WHS laws:

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant]; and
(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and
(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
(d) promoting the provision of advice, information, education and training in relation to work health and safety; and
(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
(g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

47. The evidence of exposure of retail and fast food workers to sexual harassment, shows WHS laws have abjectly failed to meet their objectives to protect workers, women in particular, against harm to their health and safety, and wellbeing.

48. The Model WHS laws also make clear that the responsibility to prevent harm to workers, lies primarily with the employer or Person Conducting a Business or Undertaking (PCBU).

Division 2 Primary duty of care

19 Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

(a) workers engaged, or caused to be engaged by the person; and

(b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

49. Employers must also understand workers health includes both physical and psychological health. 'Health' is defined in at s 4) of WHS Act as both physical and psychological health.

50. Sexual harassment is a psychosocial hazard, that is an incident or situation which has the potential to cause harm including psychological injury. This is supported by the evidence of harm to workers caused by exposure to sexual harassment from the AHRC/SDA survey and the SDA work and advocacy for members over decades.

The WHS Act is instructive in relation to what employers and PCBU are obliged to do in order to fulfil legal obligations to workers, that is their legal duty of care. Employers must ensure, so far as is reasonably practicable, that they:

- Provide a work environment that is maintained without risks to health and safety,
- provide and maintain a safe system of work,
- provide adequate facilities that are accessible,

- provide information, training, instruction or supervision that is necessary to protect all persons from risks and
- monitor the health of workers and the conditions at the workplace for the purpose of preventing illness or injury[17]

51. In particular, s 19 (3) (c) states an employer must provide and maintain 'a safe system of work'. The failure of employers to conduct risk assessments to identify 'unsafe systems of work' frequently leads to operational decisions that disregard the deleterious impact sexual harassment is having on their workers' health and safety.

52. The SDA has numerous examples of the adverse impacts of broader business decisions made by retail and fast food employers that have created an unsafe system of work. These decisions have increased the risk or lead to an environment that enabled sexual harassment of workers. Recent examples include requirements for workers in customer facing roles to wear uniforms or other apparel with inappropriate and sexually suggestive slogans and national marketing campaigns that denigrate workers as individuals, who exist only to please and service the customer.

53. There is no compelling evidence in the AHRC/SDA survey, or in the SDA's experiences with large and medium employer across the board in retail and fast food, that employers are meeting their legal obligation to workers to ensure they are not exposed to sexual harassment.

54. The failure of WHS Regulations to address sexual harassment can be further understood in the context of the failure of the laws to adequately deal with the management of psychosocial hazards more broadly. While psychosocial hazards are dealt with in a new Codes of Practice, sexual harassment is glaringly omitted from the list of hazards that may cause illness or injury.[18]

55. Customer perpetrated abuse and violence (CAV), including behaviour that is sexual in nature is impacting significantly on the psychological health of workers in retail

17 Model WHS Act (s19 (3).
18 Safe Work Australia, *'How to manage work health and safety risks'* (Code of Practice) 25 May 2018.

and fast food. The SDA has done extensive work on this issue over the past 3 years including the launch of the union's public 'No One Deserves A Serve' campaign.[19]

56. In March 2018, and recently in July 2019, the SDA hosted industry roundtables to initiate an industry wide response, from retail and fast food employer associations, employers, regulators, NGO's and other key stakeholders, to tackle this issue.[20]

57. There is broad consensus across industry that CAV, in general, is underreported as a WHS issue. The SDA anticipates that there will be an upward trend in relation to reporting of incidents in retail and fast food as awareness of the impacts of CAV increases.

58. Some employers have already taken measures to improve and encourage reporting of incidents. An Australian-first trial involving a major fast food and retail employer has recently launched by insurance provider iCare in partnership with the SDA to reduce abuse from customers towards workers. A key strategy of the trial is to reject the ideology that the "customer is always right". This trial is a direct result of the SDA's ongoing campaign to stop abusive and violent behaviour in retail and fast food in general.

59. Many workplace incidents that cause or create a risk of illness or injury are not reported, including sexual harassment. A problem for SDA members in retail and fast food is that the WHS laws do not specify that workers should have direct access to reporting systems. In the SDA's experience, many companies have online reporting processes which often can only be accessed by management and are not easily, if at all, accessible by workers. This can lead to errors in reporting and failures to properly investigate incidents by managers, especially if an incident does not result in a serious injury.

60. The SDA/AHRC survey confirms extensive under-reporting of sexual harassment in retail and fast food. Only 13% of victims make a formal report or complaint in relation to workplace sexual compared to 17% of the national workforce.

[19] Shop Distributive and Allied Employees' Association, *'No One Deserves a Serve' – SDA launches major national campaign to stop abuse of retail and fast food workers this Christmas'* (Media Release, 1712, 14 December 2017).
[20] Shop Distributive and Allied Employees' Association, *'Retail and fast food workers union hosts roundtable to tackle customer abuse epidemic* (Media Release, 1803, 14 March 2018).

61. In a recent positive development following consultation with the SDA, a major national employer has confirmed it has successfully incorporated psychological health into its injury reporting system. This employer's critical incident reporting system now also captures sexual harassment as a type of incident, integrating it into notifiable WHS incidents. However, this is not yet an industry wide or standard approach.

62. The SDA would like to see all employers required to integrate incident reporting on sexual harassment into their WHS systems. The SDA supports the ACTU recommendation that notifiable incidents need to be reconsidered and redrafted in relation to reporting psychosocial hazards including sexual harassment.

63. The SDA's observation of the performance of WHS regulators in relation to sexual harassment is that they are largely absent from this space. The SDA supports the ACTU submissions in this regard. At this point in time, WHS regulators are ill equipped to address sexual harassment as a serious WHS issue from a compliance and enforcement perspective.

64. In general, employer WHS systems in retail and fast food do not properly identify sexual harassment as a health and safety hazard. These systems are flawed in their design as they:

- do not build in risk assessments in relation to psychological health
- do not train, instruct and appropriately supervise their staff
- do not monitor the health of their staff in relation to psychological health; and
- do not have provisions to capture incidents of sexual harassment in their reporting systems.

65. WHS systems set up by employers fail workers as they do not work to prevent incidents and keep workers safe from workplace sexual harassment.

66. Incidents of sexual harassment are driven by gender inequality. Any approach to address this issue in the context of WHS laws must consider the gendered aspect to

sexual harassment, particularly given that affected workers in retail are fast food are predominately women.

67. The costs of inaction on addressing sexual harassment as a WHS issue far outweigh the potential costs of putting in place controls to eliminate or prevent the risk of exposure in Australian workplaces. The cost to business includes WorkCover premiums, legal fees, absenteeism, lost productivity and staff turnover.

68. To counter any argument advanced now or in the future about the cost to business of reforms to WHS laws to address sexual harassment, the model WHS Act is clear that cost should only be taken into account if it is grossly disproportionate to the risk. 21.

Suggestions for other options to address the problems identified in the 2018 Review findings in relation to psychosocial hazards and psychological health

Recommendations

I. A new WHS Regulation and Code of Practice should be developed, in consultation with social partners and experts, on all psychosocial hazards, including sexual harassment.
II. WHS regulators must be sufficiently resourced and trained to deal with psychosocial hazards, including sexual harassment and sexual assault.
III. The definitions of 'notifiable incident', 'serious injury or illness' and 'dangerous incident' should be reconsidered and redrafted to require reporting in relation to psychosocial hazards, including sexual harassment.
IV. Sexual assault must be a 'notifiable incident' and must require mandatory reporting to the regulator. The confidentiality of the victim must be strictly maintained.
V. Australia's national approach to WHS compliance and enforcement in relation to psychosocial hazards, including sexual harassment, needs an urgent review, including accessibility of workers compensation in cases of sexual harassment.

[21] *Blackadder v Ramsey Butchering* (2002) 118 FCR 395 at [67].

VI. To control risks in a workplace, particularly in relation excessive workload, bullying, customer abuse and violence, the obligation of a PCBU to conduct a risk assessment should be stated expressly in the model Act, with requirements on how to meet this obligation set out in a Regulation.

VII. The bullying guidance should be upgraded and included as part of a new Code addressing psychosocial risks and hazards, with clear links to a new provision in the model Act stipulating the PCBU's obligation to conduct risk assessments.

Choice of HSR training course (Recommendation 10)

69. The SDA strongly supports Option 2.

70. Of the SDA members who identified as being current and former HSR's;
    - 14.55% had a disagreement about the choice of training provider for their HSR training
    - 15.69% had a disagreement about Time off to take their HSR training
    - 12.00% The cost of the Health and Safety Representative training course.

71. The HSR model is generally poorly supported or in too many cases actively resisted by the PCBU. Some PCBU policies state that HSRs are not needed if a HSC committee is established. Examples include a PCBU (large employer) deliberately acting to reduce the number of HSR nominations by each nominee having to meet with a State WHS Manager and Store Manager to talk about the HSR role. In this instance the number of nominations for HSR positions reduced from 40 to 11. Other strategies are to delay HSR elections or access to training and protracting negotiations for 'Designated Work Groups'. One current DWG negotiation with workers, the PCBU and the SDA has been ongoing for 6 months.

72. The SDA strongly supports the submissions of the ACTU in relation to the reforms required to improve access to training and additional protections for HSRs.