



**Victorian Equal Opportunity
& Human Rights Commission**

Affected communities: Workplace gender equality

**SELECTIONS FROM THE 2020 REPORT ON
THE OPERATION OF THE CHARTER OF
HUMAN RIGHTS AND RESPONSIBILITIES**

While the COVID-19 virus does not discriminate, its impacts have been felt more harshly by people and communities who already experience discrimination and disadvantage.

The pandemic has shone a light on systemic and structural disadvantages that serve to further entrench inequality:

- **Multicultural and multifaith communities:** Multicultural and multifaith communities experienced increased vilification and discrimination. The pandemic also highlighted the broader systemic failure to provide multicultural and multifaith communities with access to the resources and supports to understand and comply with public health directives and remain safe. See discussion in Chapter 8.¹⁴⁷
- **People with disabilities:** People with disabilities and their carers were often more disadvantaged by service closures and lockdowns. People with disabilities also encountered discrimination in shops, clinics and at work from the inflexible application of the requirement to wear masks.¹⁴⁸ See case studies on pages 52-53.
- **People in closed environments:** People in prisons and mental health facilities had little or no face-to-face access to family as a result of measures necessary to protect health and safety. Changes in the management of custodial settings implemented to prevent the spread of the virus also meant that people had less access to fresh air, education and welfare programs. At times, people entering prison were subject to up to 14 days 'protective quarantine'.¹⁴⁹ See discussion in Chapter 7.
- **Young people:** Young people in youth justice facilities and out-of-home care had face-to-face access to family paused for significant periods during the pandemic; however, phone and online contact with family was possible. Educational and vocational activities in youth justice facilities were also disrupted or transferred online. More generally, across Victoria (and particularly in Greater Melbourne and Mitchell Shire) school learning was conducted online for most students for long periods of time during 2020, causing disruption to education. Young people have had their education significantly disrupted, experienced social isolation, experienced changes to their family lives and weekly schedules, and been placed at greater risk of mental ill-health.¹⁵⁰ On 23 July 2021, the Commission for Children and Young People released findings on the impact of COVID-19 following consultations with more than 600 children and young people and more than 170 workers supporting them.¹⁵¹ The findings detail huge impacts on the lives of children and young people in Victoria across safety, mental health and education, revealing a picture of growing uncertainty and isolation, combined with diminished visibility. The findings can be accessed at <https://ccyp.vic.gov.au/upholding-childrens-rights/covid-engagement/>.

- **Older people:** Older Victorians were increasingly isolated, often cut off from family and supports, and at greater risk of hospitalisation and death, causing considerable distress. Between January and December 2020, 655 Victorians in residential aged care died from COVID-19.¹⁵² This accounted for over 95 per cent of Australia's total aged care deaths in 2020.¹⁵³
- **Women:** Women shouldered a disproportionate burden of increased unpaid caring responsibilities during the lockdown.¹⁵⁴ The pandemic, and measures taken in response, also exposed and exacerbated existing workplace gender inequalities, in particular in relation to employment entitlements, pay systems and the value the community places on feminised work and unpaid labour. These effects are discussed in Chapter 9.
- **People with insecure housing or work:** People with insecure housing or work suffered disproportionate economic impacts during 2020.

This is by no means a comprehensive list. Other groups that were disproportionately affected included: people living alone who were more isolated during lockdown; Aboriginal people; people experiencing homelessness or sleeping rough, who had more difficulty complying with Chief Health Officer Orders; small business owners who were forced to close their businesses and their casual employees who lost shifts as a result; people forced to defer surgery as hospitals pivoted to treating COVID-19 patients; pregnant women with limited supports when giving birth; healthcare and frontline workers who were exposed to infection at higher rates; and, of course, the people who contracted the virus and their loved ones.

It is not possible to cover all these issues in the scope of this report. Instead, we focus on three areas that are within the strategic priorities of the Commission and in which the Commission has been more deeply engaged. This section of the report:

- considers the human rights impacts on people in closed environments (Chapter 7)
- draws on research and community engagement by the Commission to understand the impact of COVID-19 on multicultural and multifaith communities (Chapter 8)
- provides the Commission's research findings on flexible work (Chapter 9).

9. Workplace gender equality

At a glance

- Measures taken in response to the COVID-19 pandemic, while necessary to stop community transmission of the virus, had a disproportionate impact on women.
- Commission research found that:
 - The pandemic has exacerbated the already entrenched inequality experienced by women.
 - Women continue to shoulder a disproportionate burden of unpaid caring responsibilities.
 - Many employers continue to view family and caring responsibilities as belonging to women.
 - The gender imbalance in caring responsibilities contributes to increased stress and mental health issues for women.
 - Women and employees with family responsibilities generally report the highest rates of workplace discrimination.
- The COVID-19 crisis has provided an opportunity for positive change and to reset the way we work. As we recover, the Victorian community needs to continue to reflect on the different priorities and opportunities that the pandemic has revealed in relation to gender equality, including the importance of applying a gendered lens in government decision-making.

Gender equality is a fundamental human right. It is protected by the right to equality in the Charter, which provides that everyone is entitled to equal and effective protection against discrimination and to enjoy their human rights without discrimination.³²⁵ Victorian Government public authorities are required to consider and act in accordance with Charter rights including gender equality in their decision-making and policy responses. As the Charter continued to operate during the pandemic in 2020, so did this requirement to consider gender equality issues.

Prior to the COVID-19 pandemic, the Victorian Government had undertaken initiatives to promote gender equality in the workplace and improve the status of women, with Parliament enacting the *Gender Equality Act 2020* and the subsequent appointment of the new Public Sector Gender Equality Commissioner.³²⁶

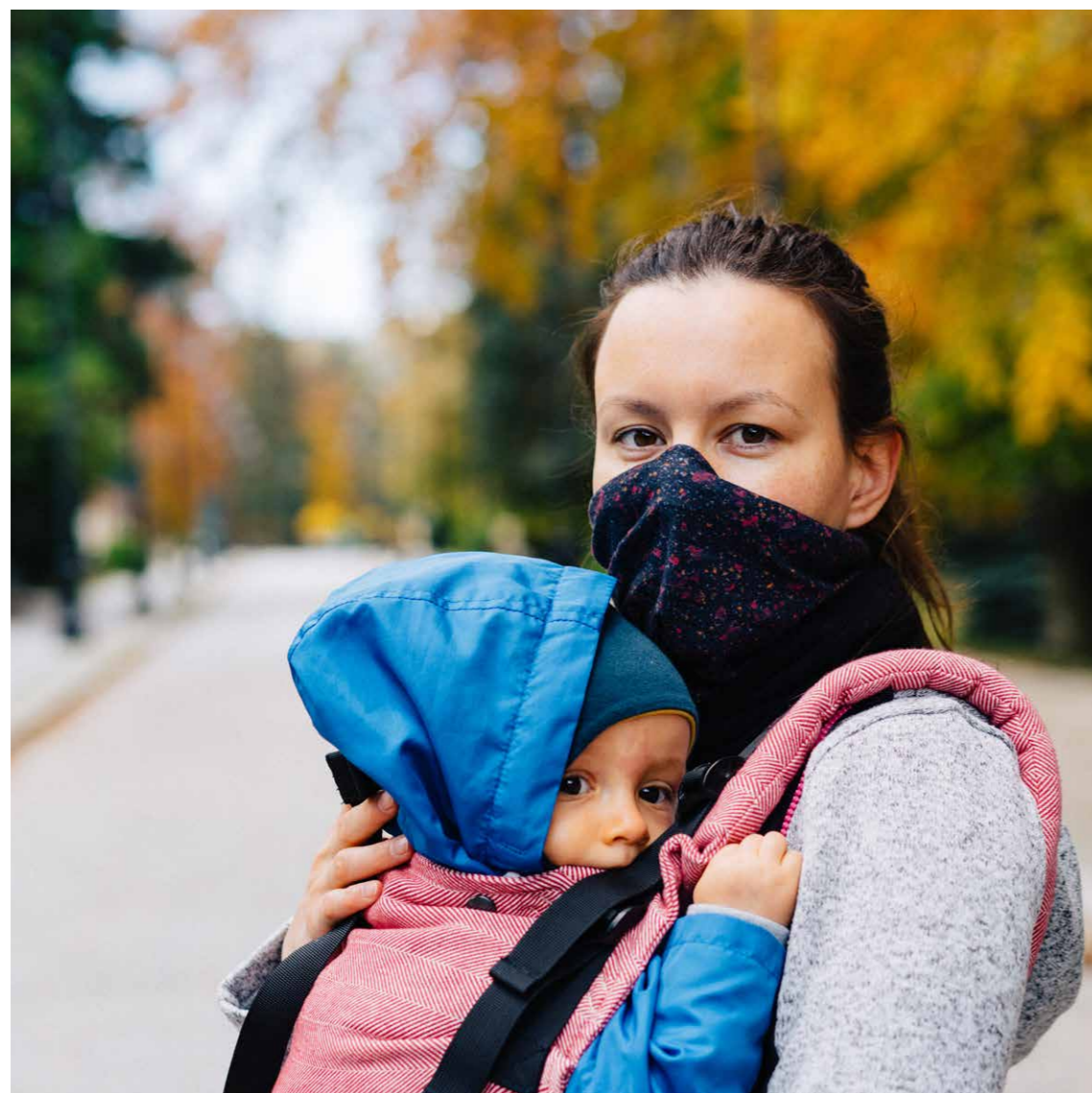
In 2020, the government took a range of measures in response to the COVID-19 pandemic that, although necessary to stop community transmission of the virus, had a disproportionate impact on women. In particular, closing schools, childcare

centres and many workplaces exposed and exacerbated existing workplace gender inequalities in relation to employment entitlements, pay systems and the value the community places on feminised work and unpaid labour.

The Commission monitored the gendered impact of many of the COVID-19 response measures in three ways. We:

- closely examined the enquiries and complaints we received during 2020
- conducted focused research into the barriers to gender pay equality in small-to-medium enterprises on how COVID-19 has drawn out and intensified structural inequalities that undermine equal pay, especially for women³²⁷
- conducted an online survey and in-depth interviews to understand the gendered and other impacts of the widescale and urgent transition to remote work and flexible working arrangements.

Some of the key findings from this work are highlighted in this chapter.³²⁸



Commission research: Experiences of flexible work arrangements during COVID-19

The move to remote working and the unprecedented need for flexible work arrangements during COVID-19 have fundamentally changed the way Victorian workplaces operate. This presents both risks and opportunities for women.

In June 2020, the Commission surveyed 1500 people in order to better understand how COVID-19 transformed, and continues to transform, approaches to flexible work and the impacts of this transformation. We surveyed Victorian workers aged 18-plus years who are parents, carers and/or have a disability. We asked:

- How has COVID-19 transformed approaches to flexible work?
- What has worked well and should be continued?
- What have been the areas of concerns and what do we need to guard against in the future?
- What do best practice approaches to flexible work look like post-recovery?

Key findings

1. The pandemic exacerbated the already entrenched inequality experienced by women

During 2020, more women than men lost their jobs or had their working hours drastically reduced, with significant consequences for their pay and economic security.³²⁹ While more men than women reported a pay reduction during the pandemic (29 per cent of men compared with 22 per cent of women), the women who did lose pay lost much more, having their pay cut by 46 per cent on average compared to 30 per cent for men. The cuts rose to an average of 39 per cent among part-timers and 65 per cent for casual employees.

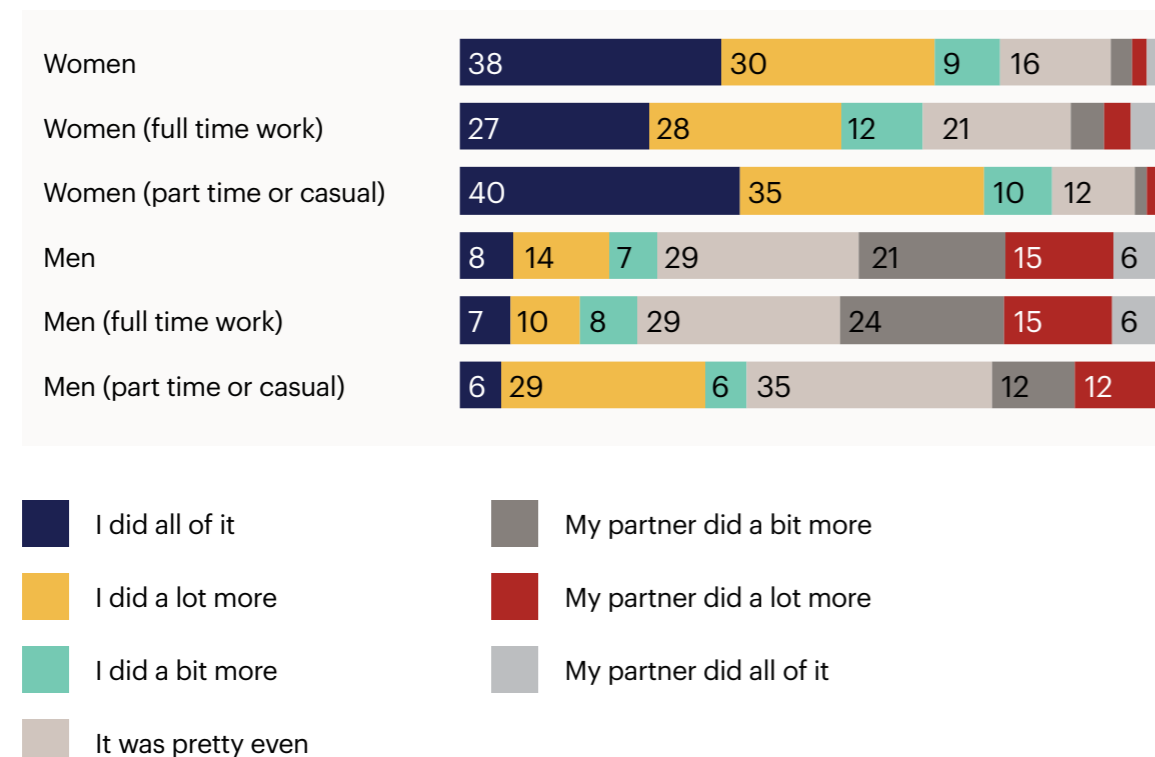
2. Women continue to shoulder a disproportionate burden of unpaid caring responsibilities

78% of women reported they did more homeschooling than their partner. 28% of men reported they did more homeschooling than their partner.

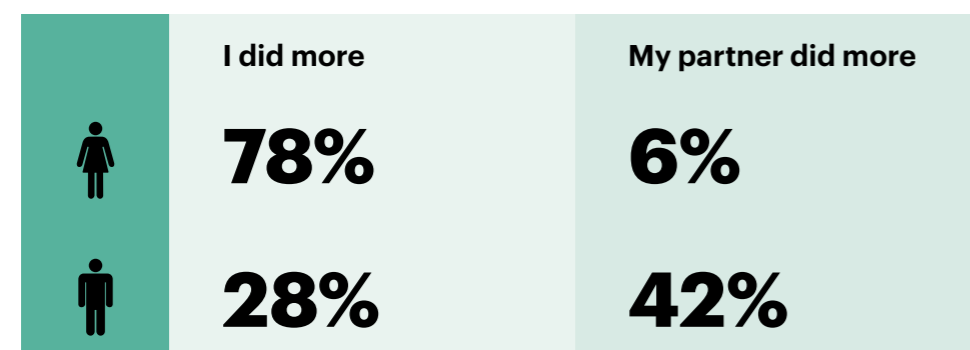
The Commission's survey showed that women in the workforce continued to take on more caring responsibilities, regardless of whether they were employed full time or part time, or had a partner who was working from home during the pandemic. For example, 78 per cent of women reported that they did more homeschooling than their partner, while 28 per cent of men reported that they did more homeschooling. Further, 72 per cent of men reported that their (usually female) partner spent more time with the children than before. Women were

also more likely than men to say that free childcare (introduced by the Australian Government for a limited period) had a “very positive” impact on their work performance during COVID-19 (58 per cent compared to 48 per cent of men). A majority of women (61 per cent) also said that free childcare would have a “very positive” impact on their career progression and ability to enter the workforce if it continued (compared to 48 per cent of men).

Dividing responsibility for helping children with schoolwork – self vs. partner (%)



Who helped with homeschooling?



"We had lots of tears in the first few days; there was lots of adjusting to do. I took the road that the kids are under enough pressure – I want to be easygoing in terms of pressure and schooling and parenting. I've been through pressure before, but they haven't. I'm quite a strict parent with certain expectations of schooling and what the kids present, but my expectation in this environment was too high. Right now, I need to focus on the things that make them feel good. Work went on the back burner; I did it after hours or in between and when they were having snacks or lunch ... Helping with schoolwork took four to five hours each day. I didn't do any of my work from 9 to 3; I'd cook dinner and work at night-time. I would answer a couple of calls during the day but maybe do three to four hours after dinner."

Single mother of two children, aged 10 and 13

3. Many employers continue to view family and caring responsibilities as women's responsibility

The Commission's survey also showed that, in terms of seeking flexible work arrangements to accommodate additional childcare responsibilities, men were slightly more likely to have a flexible work request refused (18 per cent compared to 14 per cent of women),³³⁰ which reflects the dominant and detrimental view that family and caring responsibilities are for women to manage – and ultimately reinforces the gendered vision of labour and caring responsibilities in the community. Further, 37 per cent of women who did not ask for one or more flexible work options during COVID-19 did so because they thought it would have a negative impact on their job security (compared to 24 per cent of men).

Men	Women
<p>More likely than women to:</p> <ul style="list-style-type: none"> have a request for time off in lieu refused (7% vs. 3%) have options to work from home or part time but not use them (13% vs. 6% and 34% vs. 23%) say that part time was not available for their role (29% vs. 18%) 	<p>More likely than men to say they did not know if it was possible for them to:</p> <ul style="list-style-type: none"> attend personal appointments and make up the hours (10% vs. 5%) receive time off in lieu (16% vs. 9%) compress their working week (18% vs. 11%)

4. The gender imbalance in caring responsibilities contributes to increased stress and mental health issues for women

The Commission survey found that the gender imbalance in caring responsibilities contributes to increased stress and mental health issues for women.

CASE STUDY

Working and parenting during the pandemic

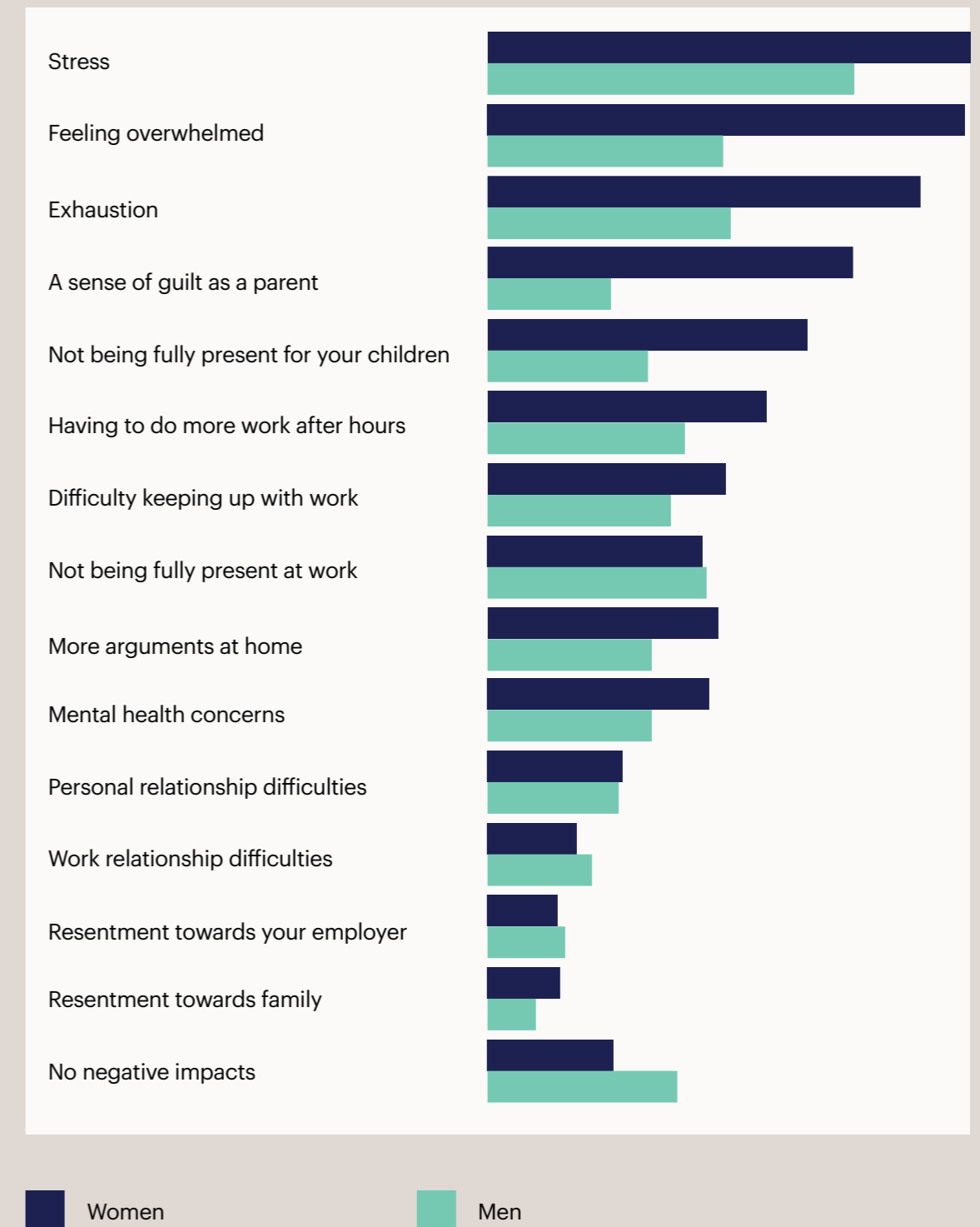
Marielle³³¹ moved to Australia from South America around 10 years ago and lives in regional Victoria with her husband and three young children. She works four days a week in healthcare administration and is also studying.

During the pandemic, she was able to work from home but her husband was not. She did all of the homeschooling work as well as all of the other domestic work around the home. Not having family here was especially hard:

"I didn't know if I was getting depressed. The first few weeks I really struggled. We still had to do work from home, as well as look after the kids and keep them busy. Couldn't take the kids anywhere and even if I had to go to the supermarket, I had to wait for my husband to come home; it was very stressful. I ... so when the kids went back to school it felt like it went back to normal – that I could concentrate on one thing at a time. My kids are so little that they don't understand when I need to do work and they do need to be supervised. So I was doing the work late in the evening, sometimes at 10–11 at night."³³²



Negative impacts from trying to balance responsibilities (%)



5. Women and employees with family responsibilities generally report the highest rates of workplace discrimination

Commission research found that women and employees with family responsibilities continued to experience higher incidences of workplace discrimination during COVID-19.³³³ Women are already overrepresented in insecure work and the need to balance work and unpaid carer responsibilities meant that women were having to negotiate greater flexibility from their employers. Stakeholders reported varying employer responses to these requests.³³⁴ If requests were refused, women may have been forced to reduce hours or even resign.

For example, in a complaint to our service a woman told us she had been 15 weeks pregnant and the primary carer of her children when the COVID-19 restrictions came into force. She had asked her employer for flexible work arrangements. Her employer had said she could work three days a week or go on early maternity leave or unpaid leave. The complainant's employer had sent her an email stating she should consider taking a career break.

The precariousness of employment during COVID-19 has likely also limited women's willingness to report workplace discrimination and sexual harassment.

The pandemic has illustrated that flexible working helps reduce workplace inequalities, including the gender pay gap, because women continue to perform the bulk of unpaid work and care duties and so lose out on higher paying and secure roles that fail to offer flexibility:

"They understand my role as a mum as best they can but unless you've walked in the shoes of a single parent it's hard to understand. But they are flexible. Two of the others have kids but those are quite traditional males where the wife stays home with the children."³³⁵

The Commission encourages public authorities to consider these findings when implementing their obligations under section 8 of the Charter. It is also important for employers more broadly, who have a positive duty under the Equal Opportunity Act to eliminate discrimination, sexual harassment and victimisation.³³⁶

Gender-equal recovery

In 2020, the pandemic provided an opportunity for positive change and to reset the way we work in order to progress gender equality during the pandemic recovery.³³⁷

Going forward, duty-holders under the Charter will need to be mindful of how the right to equality is engaged in the context of workplace gender equality, particularly in relation to accommodating requests for flexible work. Employees often seek small adjustments that can make a big difference to their ability to exercise and enjoy the right to equality.

The 2020–21 State Budget includes some important initiatives to counter some of the impact of COVID-19 on women, including gendered job creation, the Secure Work Pilot Scheme, the Women in Construction Program and the Women's Founders Angel Fund, as well as fully funding kindergarten and increasing the availability of before- and after-school care.³³⁸

The Commission is also pleased that the Victorian Public Sector Commission, as the body providing oversight of all public authorities, is prioritising and promoting the benefits of flexible work.³³⁹ Combined with the Gender Equality Act measures and oversight by the Public Sector Gender Equality Commissioner, this work will help to uphold the right to equality in section 8 of the Charter.

It will also be necessary for the Victorian community to continue reflecting on the different priorities and opportunities that the pandemic has revealed in relation to gender equality, including the importance of applying a gendered lens in government decision-making on issues including cost of childcare:

"I was lucky I didn't lose my job and had a chance to work from home. Having that extra income was good. We live in a small town, so many people lost their jobs and had to take their kids out of day care. So having the option for free childcare was really helpful. Going back to work, most of my income is going to childcare, so having that help from the government was great. Otherwise, I couldn't really afford to go back to work if the children were still homeschooling.

Free childcare would make a huge difference, even though I am happy to pay for childcare as they do an amazing job looking after the kids, and is the reason we can go to work. But it is very expensive. So, if we could have access to a bigger subsidy, it would put a lot more women into the workforce. I don't have other family members here in Australia, so I don't have anyone to look after kids. I have to send my other two now to vacation camp during the school holidays so I can work."

Responses to the Commission's Experiences of Flexible Work Arrangements During COVID-19 survey, June 2020

While the benefits of free, accessible and properly funded childcare are clear, COVID-19 has also shown us that there is a need for greater investment in female-dominated sectors, to more proactively address the gender pay gap, and that employers can do more than previously imagined to support flexible working arrangements. Above all, women's voices – including women's networks and rights organisations – need to be better represented in COVID-19 policy spaces and decision-making.

Endnotes

- 147 Victorian Ombudsman, *Investigation into the Detention and Treatment of Public Housing Residents Arising from a COVID-19 'Hard Lockdown' in July 2020* (Report, December 2020) 22, 177 <<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-covid-19-hard-lockdown-in-july-2020>>.
- 148 The Commission received 182 complaints related to COVID-19 in 2020; 64% of these related to the requirement to wear masks. The Commission also received complaints and enquires relating to other areas of disability discrimination arising from the pandemic.
- 149 Corrections Victoria, 'Our Response to COVID-19', *Corrections, Prisons and Parole* (Web page, 29 June 2021) <<https://www.corrections.vic.gov.au/covid19#prisons>>.
- 150 Centre for Multicultural Youth, *Inquiry into the Victorian Government's Response to the COVID-19 Pandemic (July 2020)* 7 <https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/52a_Centre_for_Multicultural_Youth.pdf>.
- 151 Commission for Children and Young People, 'COVID-19 Engagement' <<https://ccyp.vic.gov.au/upholding-childrens-rights/covid-engagement/>>.
- 152 Department of Health, Australian Government, 'COVID-19 Cases in Aged Care Services: Residential Care' (Webpage, 23 March 2021) <<https://www.health.gov.au/resources/covid-19-cases-in-aged-care-services-residential-care>>.
- 153 Ibid.
- 154 See detail in Chapter 9.
- 325 Charter of Human Rights and Responsibilities Act 2006, s 8. Discrimination under the Charter is linked to the list of attributes found in s 6 of the Equal Opportunity Act e.g. sex, parental status and carer status. The Gender Equality Act also aims to support the identification and elimination of systemic causes of gender inequality and to promote the right to equality.
- 326 Premier of Victoria, 'Breaking New Ground For Gender Equality In Victoria' (Media release, 10 September 2020) <<https://www.premier.vic.gov.au/breaking-new-ground-gender-equality-victoria>>.
- 327 Victorian Equal Opportunity and Human Rights Commission, 'Equal Pay Matters: Achieving Gender Pay Equality in Small-to-Medium Enterprises' (Webpage, undated) <<https://www.humanrights.vic.gov.au/resources/equal-pay-matters/>>.
- 328 The Commission also consulted Victoria Legal Aid, VMC, Trades Hall Council and Gender Equity Victoria about their research and experiences of gender equality issues during COVID-19.
- 329 The State Budget confirmed that women were the hardest hit by the pandemic, with employment falling by 6.7 per cent for women (109,000 jobs) compared to 3.9 per cent for men (70,000 jobs). According to Treasury, this is because the vast majority of employment losses were in part time and casual work.
- Gender Equity Victoria, 'Victorian Budget is a Good Start Towards a Gender Equal Recovery' (Media release, 24 November 2020) <<https://www.genvic.org.au/media-releases/victorian-budget-is-a-good-start-towards-a-gender-equal-recovery/>>.
- 330 Eighteen per cent of the 511 men surveyed had flexible work requests refused compared to 14% of the 993 women surveyed.
- 331 Complaint made to the Commission.
- 332 Excerpt taken from complaint made to the Commission, August 2020.
- 333 Commission enquiries: 67 enquiries regarding parental status and 47 regarding sex for period 1 March 2020 to 30 November 2020 (down from 92 and 91, respectively, in 2019); Commission complaints: 84 complaints lodged based on sex, 46 based on carer status and 36 based on parental status for period 1 March 2020 to 30 November 2020 (compared to 103, 38 and 38, respectively, in 2019); Victoria Legal Aid, Equality Law Program, Civil Justice: Victorian Legal Aid's Equality Law Program provides a range of advice and representation services to clients who experience discrimination in all areas of public life. During the COVID-19 pandemic, its Legal Help phone and webchat assistance services have seen a significant increase in enquiries for employment law information and referral, and the Equality Law Program has received enquiries from clients who have experienced discrimination in their employment due to their disability, family responsibilities or sex.
- 334 Victoria Legal Aid, Equality Law Program, Civil Justice.
- 335 Excerpt taken from complaint to the Commission, July 2020.
- 336 Equal Opportunity Act 2010, s 15.
- 337 United Nations, 'UN Secretary-General's Policy Brief: The Impact of COVID 19 on Women' (Brief, 9 April 2020) 2, 4 <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>>.
- 338 Premier of Victoria, 'Giving Women Access to the Opportunities They Deserve' (Media release, 24 November 2020) <<https://www.premier.vic.gov.au/giving-women-access-opportunities-they-deserve>>.
- 339 The Victorian Public Sector Commissioner has announced a study into productivity and other savings that arose from flexible working during the COVID-19 pandemic: Tom Burton, 'Victoria Seeks to Lock in Benefits of Work From Home', Financial Review (online, 17 December 2020) <<https://www.afr.com/policy/economy/victoria-seeks-to-lock-in-benefits-of-work-from-home-20201216-p56o5z>>.

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