



WOMEN OF COLOUR AUSTRALIA

Championing Australia's Women of Colour

Submission: Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022

Introduction

Women of Colour Australia (WoCA) is a not-for-profit organisation whose purpose is to champion Australia's Women of Colour in all places and spaces.

WoCA is committed to the delivery of four key objectives:

- Building and maintaining a credible evidence base for policies, initiatives, and programs targeted towards WoC;
- Engaging with Women of Colour and allies to understand the opportunities and constraints for Women of Colour in the workplace and in the business space, and leverage data and insights to promote change within workplaces and business spaces;
- Providing access to industry-leading resources that will equip Women of Colour to succeed in the Australian workplace and business spaces; and
- Creating an active Women of Colour Australia community that champions and holds space for one another.

WoCA welcomes the opportunity to make a submission in response to the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 on behalf of WoC across the country.

Response

WoCA's inaugural '[Women of Colour in the Australian Workplace](#)' survey (2021), gives a unique insight into the systemic barriers and structural inequities Women of Colour face, in what are essentially ethnocentric workplaces in Australia. A total of 543 women of colour completed the survey, with 7% identifying as being Aboriginal or Torres Strait Islander. Our survey uncovered that majority of Women of Colour face ongoing discrimination in their workplace (60%). Respondents also identified that the most pressing issues facing Women of Colour in Australian workplaces are the combination of racism, sexism and organisations engaging in tokenism, rather than real and meaningful action.

Our survey highlights that the experiences of discrimination, harassment, bullying and assault are much more prevalent when we take an intersectional view. The intersectionality of Women of Colour translates to compounded levels of oppression, due to being minorities in terms of race/ ethnicity as well as gender. This was further explored in our recent

academic article unpacking the performative expectations of Women of Colour in Australian workplaces under the ‘colonial gaze. This research “describes the harmful ramifications of gendered othering of Women of Colour for Australian organisations and society” (Archer, Sison, Gaddi & O’Mahony, 2022, 1). Each research piece highlights that despite recent steps forward in government and organisational spheres, this is still the lived experience of Women of Colour in Australian workplaces.

“Racism, sexism and the particular forms of oppression and discrimination faced by refugees and migrants, particularly people of colour, intersect to drive increased levels of violence against women from these groups – violence that is both gendered and racialised.” (Change the Story, 2021, 47)

Thus, for any national workplace reform that aims to tackle sex discrimination and sexual harassment to be successful, it must be underpinned by an intersectional approach that addresses multiple intersecting systems of oppression and discrimination.

Whilst we fully support this bill, we want to highlight that these legislative changes need to work in concert with other measures, particularly aimed at dismantling racial discrimination, to better protect Women of Colour in the workplace. We encourage relevant agencies to collect intersectional data so that we have a better understanding of how the experiences of women vary across different groups. For example, the National Survey on Sexual Harassment in Australian workplaces run by the Australian Human Rights Commission every four years should collect demographic information of women from culturally and linguistically diverse backgrounds, just as it collects information of Aboriginal and Torres Strait Islander women, so we can compare findings for Women of Colour and the other intersectional groups.

Overall, WoCA welcomes the Respect at Work Bill 2022 that proposes to introduce Recommendations 16, 17, 18, 19, 23, 25 and 43 of the Respect@Work: National Inquiry into Sexual Harassment in the Workplace (2020) led by Sex Discrimination Commissioner Kate Jenkins. WoCA specifically supports the following proposals under the Bill as set out in the Explanatory Memorandum:

Recommendation 16(c): Subjecting a person to a hostile workplace environment on the grounds of sex

“5. The Bill would insert a new provision in the SD Act to prohibit conduct that subjects another person to a workplace environment that is hostile on the ground of sex. This amendment would implement recommendation 16(c) of the Respect@Work Report.”

Recommendation 17: Positive duty to eliminate unlawful sex discrimination

“11. The Bill would insert a new provision in the SD Act to introduce a positive duty on all employers and PCBU’s to take ‘reasonable and proportionate measures’ to eliminate unlawful sex discrimination, including sexual harassment, as far as possible. These amendments would implement recommendation 17 of the Respect@Work Report.”

In relation to the above recommendations 16(c) and 17, WoCA's survey found that while 58.69% of respondents said their organisation had a diversity and inclusion policy, 21.91% said their organisation did not, and 19.4% were unsure. 28.67% said the policy was not suitable, and 41.67% were unsure. A survey participant raised the issue of a one-size-fits-all approach in a comment:

"The policy specifically only protects Aboriginal or LGBTI communities. We need to perform factual analysis of the challenges at play for other minority groups and support them."

We are hopeful that a positive, enforceable duty on workplaces to prevent sex discrimination and sexual harassment will encourage workplaces to introduce intersectional and culturally safe initiatives, trainings and seminars that are more inclusive of people from diverse backgrounds.

Recommendation 18: Enforcement of positive duty

"17. The Respect@Work Report recommended that the positive duty (recommendation 17) be accompanied by an appropriate enforcement mechanism to help ensure it is effective and employers engage with their legal obligations (recommendation 18). An appropriate enforcement mechanism would also ease the burden on individuals by enabling the Commission to initiate action to address unlawful discrimination, rather than relying on individuals making complaints."

Recommendation 19: Systemic inquiries into unlawful discrimination

"24. The Bill would insert a new provision in the AHRC Act to provide the Commission with a broad inquiry function to inquire into systemic unlawful discrimination or suspected systemic unlawful discrimination. This amendment would implement recommendation 19 of the Respect@Work Report."

Recommendation 23: Representative applications

"29. The Bill would amend the AHRC Act to enable representative bodies to make representative applications on behalf of people who have experienced unlawful discrimination in the federal courts. This amendment would implement recommendation 23 of the Respect@Work Report."

Recommendation 25: Cost protection provisions

"33. The Bill would insert a cost protection provision in the AHRC Act to provide greater certainty to parties during court proceedings in relation to costs. This amendment would achieve the policy objective of recommendation 25 of the Respect@Work Report."

Recommendation 43(a): Public sector reporting to WGEA

38. The Bill would amend the WGE Act to bring the Commonwealth public sector into line with the private sector by requiring Commonwealth public sector reporting to WGEA. This

amendment would implement recommendation 43(a) of the Respect@Work Report for the Commonwealth public sector. Like private sector organisations, the public sector reporting program will require agencies to report annually on six gender equality indicators.

WoCA welcomes the opportunity to make this submission on behalf of our members. WoCA commends the efforts of the Government to take necessary action and help build a more equitable, safe society.

References

Archer, C., Sison, M., Gaddi, B., & O'Mahony, L. (2022): Bodies of/at Work: How Women of Colour Experienced Their Workplaces and Have Been Expected to 'Perform' During the COVID-19 Pandemic, Journal of Intercultural Studies, DOI: 10.1080/07256868.2022.2128091

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<https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2021/11/18101814/Change-the-story-Our-Watch-AA.pdf>

Women of Colour Australia (2021): Women of Colour in the Australian Workplace Inaugural Survey. <https://womenofcolour.org.au/workplace-survey-report-2021/>