



8 July 2021

Committee Secretary
Senate Education and Employment Legislation Committee
Department of the Senate
P.O. Box 6100
Parliament House
CANBERRA ACT 2600

Email: seniorclerk.committees.sen@aph.gov.au

Dear Secretary,

Re: Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

Unions NSW is the peak council of trade unions in NSW. Unions NSW represents over 600,000 members, and 60 affiliated unions and trade and labor councils. Unions NSW is part of the broader trade union movement.

Unions NSW thanks the Senate Education and Employment Legislation Committee for the opportunity to comment on the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021.

In the first instance, Unions NSW writes to support the submission by the ACTU dated 9 July 2021 and the recommendations of the Respect@Work report.

In particular, Unions NSW agrees that:

1. The current legal and regulatory system is 'simply no longer fit for purpose'. A new model is needed which will 'improve coordination, consistency and clarity' between the *Fair Work Act 2009 (FW Act)*, Work Health and Safety (**WHS**) laws and the *Sex Discrimination Act (SDA)*.¹
2. The legal and regulatory framework should 'encourage and support employers to take proactive and preventive measures to address sexual harassment, rather than relying on individual complaints'.²
3. The FW Act does not expressly prohibit sexual harassment and 'does not clearly or specifically provide an enforceable right for victims of sexual harassment in the workplace'.³

Unions NSW therefore strongly supports the ACTU recommendation that the following Respect@Work report recommendations be implemented immediately:

- Recommendation 28 – Amend the Fair Work Act to expressly prohibit sexual harassment.
- Recommendation 15 – Ratify the International Labour Organisation's Convention on the Elimination of Violence and Harassment at Work 2019 (C.190).

¹ Respect@Work Report pp 10 and 442

² Ibid

³ Respect@Work Report, p 517

- Recommendation 17 – Amend the Sex Discrimination Act to include a positive duty on employers to take reasonable measures to eliminate sex discrimination, sexual harassment and victimisation.
- Recommendation 23 – Amend the Australian Human Rights Commission Act to allow public interest actions to be brought to court by representative bodies such as unions.
- Recommendations 18 and 19 – Amend the Sex Discrimination Act to give the Sex Discrimination Commissioner the power to undertake systemic investigations (e.g. where there is a pattern of sexual harassment in a sector or workplace) and undertake compliance monitoring to ensure that industries, organisations or sectors are complying with a new positive duty.
- Recommendation 25 – Amend the Australian Human Rights Commission Act to ensure costs may only be ordered against a party if the proceedings are vexatious or unreasonable.

Unions NSW notes that the failure to implement Recommendation 28 denies workers the right to an effective and efficient complaints process in the FW Act. Unions NSW supports the ACTU recommendation that a new section be included in the Bill inserting a clear prohibition on sexual and sex-based harassment, and an effective and accessible dispute settlement process into the FW Act. This new process should:

- prohibit any person (including workers, clients, and customers) from sexually harassing another person in any circumstances connected with work;
- grant a worker who claims they have been sexually harassed at work the right to apply for a remedy;
- set out a secondary contravention which is directed to a business which fails to prevent sexual harassment of a worker in any circumstances connected with work;
- authorise the FWC to make any orders, including the payment of compensation to a worker, if the FWC is satisfied that it is appropriate in the circumstances of the case, taking into account the public interest in eliminating sexual harassment;
- apply broad definitions of ‘worker’ and ‘work’, which capture all types of work and workers;
- provide all workers, including prospective, current and former workers, with the right to make a complaint; and
- provide unions with the capacity to lodge complaints on behalf of an affected worker or workers whose industrial interests they are entitled to represent.

Unions NSW also draws the Committee’s attention to Recommendation 17, which the government has failed to include in the Bill. It is critical that the Bill be amended to insert a positive duty into the Sex Discrimination Act, requiring employers to take steps to prevent gendered violence before it occurs. Implementation of Recommendation 17 would require employers to improve gender equality and sexual harassment policies and processes in their workplaces. Such steps should include policies and practices founded on:

- The Our Watch Change the Story Gender Equality framework. This will instil an understanding of gender inequality as the underlying cause of gendered and gender based violence. It will engage employers in understanding the drivers of gender inequality being sex role stereotyping, dominance of men in positions of power, poor responses to gendered violence

and male peer relationships that encourage gender aggression. This knowledge will assist employers to direct workplace practices that will reduce gendered violence in their workplaces.

- Workplace Gender Equity Agency's gender equality diagnostic tools. These tools will assist employers to undertake an audit of their workplace to further assist them to identify and reduce gender inequality.
- Gendered and gender-based violence in the workplace induction and in-service training for all employees so that all employees understand workplace requirements in relation to gendered and gender based violence.
- Implementing a workplace Sexual Harassment Policy which is effective, efficient, trauma responsive, confidential, consultative, conforms to the principles of natural justice and is promoted in the workplace. The policy should include options for those who use gendered and gender based violence including behaviour change counselling.

Unions NSW is available and willing to further assist the Committee in its work. I can be contacted via my Executive Assistant Connie Vartuli either by phone: or via email:

Yours sincerely

Mark Morey
Secretary