

12 October 2022

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

via email: legcon.sen@aph.gov.au

ARA SUBMISSION REGARDING ANTI-DISCRIMINATION AND HUMAN RIGHTS LEGISLATION AMENDMENT (RESPECT AT WORK) BILL 2022

INTRODUCTION

The Australian Retailers Association (**ARA**) welcomes the opportunity to comment on the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (the Bill)*.

The ARA is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 million Australians and is the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across all categories - from food to fashion, hairdressing to hardware, and everything in between.

OVERVIEW

The ARA supports the Government's plan to implement the recommendations of the Respect@Work Report (**the Report**). We note that the proposed amendments outlined in the Bill seek to implement recommendations 16, 17, 18, 19, 23, 25 and 43 of the Report as well as making some ancillary amendments across the legislative framework to ensure consistency and achieve the outcomes of the Report.

This Bill is an opportunity to create a safer, more inclusive workplace that we believe will help progress gender equality in all industries, including the retail sector.

Gender equality, sexual discrimination and harassment are important issues for the retail sector. Women make up 56% of the retail workforce¹ but only 17% of CEOs in the sector are female, and the ARA is committed to progress on gender equality and diversification across the sector, as evidenced by our [Gender Equality Position Statement](#). This publicly available document outlines our commitment to developing and deploying awareness campaigns, education events and forums to address sector-specific sexual discrimination and harassment in line with recommendation 47 of the Report.

While the retail sector is broad and includes some of Australia's largest employers, the sector is overwhelmingly dominated by small businesses, including micro-businesses and sole traders with only a handful of employees. The ARA suggests that these businesses will require support to implement some of the requirements contained in the Bill. To that extent, the ARA has been engaged in the Attorney-General's Department consultation on a Good Practice Indicators Framework for Preventing and Responding to Sexual Harassment.

¹ [WGEA Data Explorer](#)

This Framework will progress implementation of Recommendation 46 of the Report. In our feedback to the Attorney-General's Department we have suggested that the Framework should include specific parameters for smaller businesses. While small businesses face the same challenges as larger enterprises in preventing and responding to sexual harassment, they are more challenged when it comes to allocating resources to respond appropriately. We believe that industry associations, such as the ARA, have a critical role to play in educating and supporting members to encourage implementation of best practice models across the sector.

Further, we note that in the retail sector, sexual harassment can originate from customers as well as colleagues in the workplace, adding to the challenge of making retail workplaces safe for employees.

COMMENTS ON THE PROPOSED AMENDMENTS

1. Hostile workplace environment on the ground of sex

The ARA supports this provision and alignment with the provisions of the *Sex Discrimination Act (1984)* (the **SD Act**) by using existing terms and concepts. It is important that employers have clear definitions and tests so that the obligation is clear and can be implemented in a cost-effective manner by employers.

2. Positive duty to eliminate unlawful sex discrimination and enforcement of this duty

As this is a new obligation, the ARA notes that employers will need adequate time to understand and prepare to be able to meet this positive duty. We therefore support the proposal to delay commencement of the Commission's enforcement functions to ensure all employers have time to understand their obligations under the positive duty and implement necessary changes.

We also strongly encourage the Commission to promptly prepare and publish clear guidance materials and conduct an extensive stakeholder education campaign during the 12 months allowed. Further, we suggest, that 12 months is a tight timeframe and that consideration should be given to extending it to 18-24 months. The ARA is well placed to support the Commission in designing and deploying these resources for the retail sector.

As noted in our overview comments, the ARA recommends that small businesses will need extra support and guidance to ensure compliance with this obligation.

The ARA has been engaged with the Attorney-General's department in relation the development of a Good Practice Indicators Framework and our comments to the department also reflect the need for guidance that is tailored to small businesses.

3. Systemic inquiries into unlawful discrimination

The ARA recommends that systemic discrimination is clearly defined, in supporting guidelines,, as this is a broad ranging power that is being conveyed on the Commission. We note that the Commission will be empowered to inquire into any matter that may relate to systemic or suspected systemic unlawful discrimination, so it would be useful to understand what the necessary checks and balances will be to this power.

4. Representative applications

The ARA supports removal of legal and procedural barriers to enable representative bodies to make applications on behalf of individuals in the federal courts. We note that clarification on the definition of 'representative' would be helpful. However, we do have some concerns about the impact that these changes could have on small business and so another mechanism might be appropriate to minimise costs and reduce complexity, in the interests of both parties.

5. Cost protection provisions

The ARA supports the proposed approach to protect against high and uncapped costs becoming a barrier to legitimate claims. These provisions would provide certainty to both applicants and defendants and allows the court more flexibility to award costs to successful parties.

6. Victimisation

The ARA supports this proposed amendment, which aims to achieve a consistent approach across Commonwealth anti-discrimination legislation.

7. Timeframes for complaints

The ARA supports this proposed amendment, which aims to provide consistency and clarification to complainants of the timeframe for making a complaint.

8. Objects of the Act

The ARA supports the proposed amendments to the Objects of the Act, noting that the amendment will ensure Recommendation 16(a) of the Report is implemented, to achieve substantive equality between men and women; and clarify that one of the objects of the legislation is to eliminate, as far as possible, discrimination involving workplaces environments that are hostile on the ground of sex, to align with Recommendation 16(c).

9. Sex-based harassment – amend 28AA of the SD Act

The ARA supports the proposed amendment to lower the threshold for applicants, by removing reference to conduct of a 'seriously' demeaning nature and so implement the intention of Recommendation 16 (b) of the Report.

CONCLUSION

Thank you again for the opportunity to provide a submission to the Committee. We look forward to further engagement and any queries in relation to this submission can be directed to our policy team at

Yours sincerely,

Paul Zahra
Chief Executive Officer