



Northern Territory Women Lawyers Association Inc.

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25 February 2019

National Inquiry Project team
National Inquiry into Sexual Harrassment in Australian Workplaces
Australian Human Rights Commission

Dear Madam or Sir,

Submission to the National Inquiry into Sexual Harrassment in Australian Workplaces – Northern Territory Women Lawyers Association Inc.

The Northern Territory Women Lawyers Association (NTWLA) is pleased to provide this response to the National Inquiry into Sexual Harrassment in Australian Workplaces conducted pursuant to the *Australian Human Rights Commission Act 1986 (Cth)* (**the Inquiry**). The NTWLA welcomes the opportunity to make a submission to the Inquiry on behalf of women lawyers in the Northern Territory (NT).

About NTWLA

The NTWLA is a legal association open to all female legal practitioners in the NT. A constituent member body of the Australian Women Lawyers Association, the NTWLA provides an opportunity for NT women lawyers to:

- Network, share and learn;
- Support charity and community groups;
- Mentor or be mentored;
- Socialise and have fun;
- Be involved in law reform and advocate legislative change in relation to matters affecting women; and
- Have a voice at a Territory and national level on issues affecting women and the law.

Our submission

More than one in three Australian lawyers have experienced sexual harassment at work, according to a survey by the International Bar Association.¹ Harassment was not reported by 77% of those who experienced it – 80% of those said this was because perpetrators were never punished, and 31% said it was because they thought their employer's response would be insufficient. Further, 38% of victims reported that they intended to leave their workplace as a

¹ <https://lsj.com.au/articles/timesup>

result. Clearly, sexual harassment is a priority issue to be addressed in all workplaces, and legal settings are by no means immune.

The NTWLA believes that the core problem with our sexual harassment complaints-based system is that the full burden of addressing sexual harassment is left to the individual, the victim of the unwanted behaviour. There is no enforced requirement for systemic responsibility to be taken by employers or workplace regulators. **Workplace sexual harassment is a systemic problem that requires structural responses.** It is an expression of broader social gender inequality and is an outcome of workplaces reflecting the broader issues faced by women in society: discrimination, harassment, and domestic and family violence. Broadening the responsibility for responding to sexual harassment in workplaces would also address the current problem whereby the vast majority of unlawful behaviour goes unchecked, as most victims do not complain.

In essence, current legislative responses to sexual harassment are individualised, informal, confidential, temporary and do nothing to challenge the systemic problem or protect other employees from similar unlawful behaviour. Further, despite the fact the sexual harassment in the workplace is a clear occupational health and safety issue that falls under the work health and safety legislation, a culture of "not my job" seems to have arisen which has resulted in no external regulation of internal complaints procedures for sexual harassment in the workplace, as there is for other forms of occupational health and safety breaches. Employers who do not have policies, processes, training and skilled personnel in place to address such complaints face no formal sanctions or consequences. This means that improper and inadequate complaints processes in many organisations can go unchecked.

We make the following recommendations to the Inquiry:

Occupational Health and Safety regulators

1. Amend Federal, State and Territory work health and safety laws to explicitly state that sexual harassment and discrimination are safety issues that are covered by these laws, and that existing powers will be used to address sexual harassment.
2. Develop a national code of practice to educate and assist employers, so that regulators and employers can proactively enforce work, health and safety laws to **prevent** sexual harassment occurring.
3. Develop education materials, guidance materials and campaigns as preventative measures to address the issue of gendered violence risks in the workplace.
4. Develop (or contract in) the capacity to respond seriously and adequately to complaints of gendered violence.

Expanding the powers of Anti-Discrimination bodies

5. Amend Federal, State and Territory discrimination laws to include an enforceable positive-duty on duty holders to eliminate discrimination and harassment.
6. In line with above, provide the Australian Human Rights Commission and State and Territory Anti-Discrimination bodies with the powers to enforce the developed national code (see Recommendation 2 above), to initiate and conduct investigations of their own, to enter into enforceable undertakings, to issue compliance notices, and to issue proceedings to remedy a contravention of the law.

Strengthening the *Fair Work Act 2009* (Cth)

7. Amend the general protections provisions in the *Fair Work Act 2009* (Cth) to explicitly include sexual harassment as a form of sex discrimination.

8. Explore the inclusion of an additional section similar to the current anti-bullying provisions to address sexual harassment complaints.
9. Amend the *Fair Work Act 2009* (Cth) to require Modern Awards and Enterprise Agreements to contain terms mandating positive steps to prevent sexual harassment, in the same way that they currently do for dispute settlement procedures, consultation and individual flexibility agreements.

Make procedural changes to AHRC and Fair Work Commission complaints processes

10. Extend or remove time limits for sexual harassment complaints to both State and Territory Anti-Discrimination bodies and the federal Fair Work Commission.
11. Prohibit the inclusion of confidentiality clauses (commonly known as "gag clauses") in settlement agreements unless the complainant requests them. Alternatively, prohibit confidentiality clauses unless the organisation has agreed to take steps to prevent the harassment or discrimination occurring again (such as policy change or training).
12. Raise or remove current compensation caps for sexual harassment in both the *Fair Work Act 2009* (Cth) and the *Anti-Discrimination Act* (NT).
13. In line with the *Fair Work Act 2009* (Cth), provide that parties bear their own costs for proceedings under Anti-Discrimination laws, unless certain criteria are met.

Improve external oversight measures

14. Introduce compulsory reporting of sexual harassment claims and outcomes for all employers reporting to the Workplace Gender Equality Agency.

Improve access to specialist support services

15. Increase funding for specialist support services for employees experiencing sexual harassment, such as Women's Legal Services and Working Women's Centres. Many States and Territories have no Working Women's Centres, as well as underfunded Women's Legal Services; we submit that this should be rectified by an expansion of the programs to ensure national access to these essential, specialist services.

Improved data collection and research

16. Require work health and safety regulators to collect and publish sex disaggregated data on gendered occupational violence complaints.

All Areas of Life and Over the Life Cycle

17. Conduct an expanded inquiry into sexual harassment beyond workplaces; examine sexual harassment in all areas of life and over the life cycle, including sexual harassment occurring in schools, religious groups, sporting groups, clubs and associations and in the public arena.
18. Introduce a Commonwealth Government-wide gender equity policy.
19. Ensure that the Fourth Action Plan under the National Plan to Reduce Violence Against Women and their Children includes a focus on addressing sexual harassment and other forms of workplace gendered violence.

Defamation laws

20. Review Australian defamation laws in order to reduce the current legislative disincentive to make sexual harassment civil complaints.

Conclusion

We thank you for the opportunity to make this submission and your consideration of the above. Should you wish to discuss this submission further, please contact the NTWLA by email to ntwomenlawyersassoc@gmail.com.

Yours faithfully,



Bronwyn Haack
President
Northern Territory Women Lawyers Association

*on behalf
of*