

# **National Inquiry into Sexual Harassment in Australian Workplaces**

**ETU SUBMISSION**

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# 1 INTRODUCTION

The Electrical Trades Union of Australia (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 65,000 electrical industry workers around the country and the CEPU as a whole, represents over 100,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make this short submission to the National Inquiry into Sexual Harassment in Australian Workplaces.

The ETU has been involved in consultation around the development of the ACTU submission to this inquiry and supports the recommendations put forward in that submission.

Of the 61,000 ETU members women make up just under 2% of the Unions membership. The proportion of women in the ETU is consistent with the proportion of women in electrical trades, which nationally, has sat at around 2% over the ten-year period 2006 to 2015<sup>1</sup>.

There have been many research projects undertaken to identify barriers to female participation in male dominated occupations including electrical trades. The Australian Human Rights Commission summarised their findings in its 2013 publication *Women in male-dominated industries: A toolkit of strategies*<sup>2</sup> as follows:

- lack of exposure to women working in male-dominated industries early in life;
- stereotypes and bias against women working in such trades, starting early and reinforced at school;
- negative perceptions of the industry and a lack of awareness of opportunities and career paths such trades offer;
- stereotypes and myths about women in male dominated workplaces and women's supposed lack of the capabilities and qualities women needed to perform the work;
- workplace cultures which are non-inclusive, traditionally masculine or 'blokey' with a higher tolerance of inappropriate behaviours – such as bullying, aggression and objectification of women;
- biases against recruiting, developing and advancing the careers of women in male dominated trades;
- workplace practices and issues such as unavailability of flexible employment opportunities, appropriate workplace facilities and uniforms (Australian Human Rights Commission, 2013)

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<sup>1</sup> [Perfect for a Woman Report 2017](#)

<sup>2</sup> [A toolkit of Strategies 2013](#)

At the heart of these barriers is the issue of sexual harassment and discrimination.

The ETU actively participated and encouraged our membership to contribute to the recent survey conducted by the ACTU Sexual Harassment Survey. The findings associated with the ETU's participation, while not inconsistent with the broader survey outcomes, did result in some nuance to the experience of electrical industry respondents compared to the broader ACTU survey respondent group.

Some key points identified in the survey results include;

- Despite being male dominated workplaces, the rates electrical industry respondents experienced sexual harassment in the workplace was only 10% lower than the broader ACTU survey group experience;
- Electrical industry respondents experienced unwanted sexual attention at half the rate of the broader ACTU survey group, however crude and offensive behaviours and other harassment types were significantly higher;
- A clear understanding of what constituted sexual harassment appears to be lower for electrical industry respondents compared to the broader respondent group, with a significantly higher number of "unsure" responses to the question "Have you witnessed sexual harassment";
- Electrical industry respondents were more likely to report sexual harassment to colleagues and make formal complaints compared to the broader respondent group, however the response from employers was universally deemed deficient by respondents;
- In nearly two thirds of incidences the relationship of the perpetrator was a more senior position to the victim for electrical industry respondents;
- Electrical industry respondents who complain about sexual harassment experienced less favourable treatment in their workplace as a result of their complaint at 3 times the rate of the broader respondent group; and
- 100% of electrical industry respondents called for better protections for the victims of sexual harassment.

Through engagement and input from a National network of ETU women, this submission seeks to provide some additional context and consideration to the ACTU's recommendations. In particular, the ETU provides additional comment and context relating to three specific areas;

- Proposed reforms to the industrial relations system;
- Improvements to the workplace health and safety regulatory environment; and
- Changes to the *Sex Discrimination Act 1984*

A common theme across the jurisdictions is the lack of understanding of what an appropriate hierarchy of controls would constitute in relation to sexual harassment and discrimination and subsequent to that, what an appropriate graduated regulatory response should be for regulatory breaches. Serious consideration should be given to working to establish overarching principles for these through consultation with representatives of workers, regulators and employers through an appropriate tri-partite mechanism.

Reform must ensure people who have experienced sexual harassment and / or discrimination have effective access to redress. It must also focus on changing workplace culture to ensure employers do not permit toxic workplace cultures to persist and to ensure that everyone in a workplace understands their rights, their obligations and that sexual harassment and discrimination has no place in Australian workplaces.

## **2 THE EXPERIENCES OF ETU WOMEN AT WORK**

The following extracts are real life stories submitted by ETU women. Names have been removed, and in some cases, further identifying details have been removed to protect the anonymity of the contributors.

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While working at a remote site in WA, an ETU member was blatantly confronted by a male in his 30s who approached her and put his arm around her and crudely propositioned her. She was walking with her partner at the time who happened to be working the same project.

*“This dude actually put his arm around me and said, ‘Hey love, are you f\*cking anyone here or married or what?’ And I was walking, I was with my partner, and we were walking together. He [the other man] pushed in between us and said that.”*

The usual societal norms which dictate how someone might response to that just don’t apply.

*“If you get into a fight, you get sacked, and they get sacked. So, you can’t do anything. You’re very powerless because if you strike out, which is what you feel like doing when something like that is said to you, or friends that you’re with feel like striking out because of what’s being said to you then everyone loses their job.”*

*“He was obviously drunk, and you could tell that. But his mate turned around and just said ‘So sorry that happened. He’s drunk.’ The excuse is “He’s drunk” and that makes it OK? In the real world, in society, is that OK for someone to say that to a female walking down the street?”*

The next day she spoke with a union delegate.

*“You’ve got two options: you can go to HR and stir up a big investigation. You can be the chick who goes and does that, but that will go against you. You’ll be written all about in the toilets on site. Or you can use the unions. I chose that way.”*

*“I didn’t get an apology from that guy, but he did get a good what-for.”*

The delegate said the man “needed to get off the piss”. “Alcohol becomes the excuse”, she said in her experience.

*"Everyone tends to drink a lot because there is not that much to do," she said. "It does for a few become an excuse because a lot of them are running away from things."*

She reflected how it has changed over time and more recently is generally young workers who act like that rather than the older workers. In her experience, this has flipped in the past two decades, when it used to be the older workers who would make the comments.

*"It's changed a little bit. Before it was more sexist, and now it's more sexual. Before it was the older guys saying 'What are you doing here? You're a female?'"*

*"It was sexual discrimination and now it's sexual harassment."*

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In another situation a male worker came banging on woman's cabin at a work site *"because a chick lives in there"*, aggressively looking for sex.

*"It was Saturday night, so you'd have a barbeque with your mates rather than heading to the mess. You'd have a few drinks then head off your room."*

*"I'd only been back in my room for about half-an-hour maybe and I was ready to jump into bed and had had a shower and this guy decided to come and bash on my door."*

The ETU member spoke of the mentality that because you're female that it is assumed you want male company, *'So let's just bash on your door'*.

*"He thought it was ok to bash on my door and yell out all these things. I ended up phoning another friend to come and remove him."*

The ETU member spoke with her senior delegate and the man eventually came and apologised.

*"It's like a footy trip away where they just get on the piss."*

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In another situation at a site in WA workers witnessed a man masturbating outside his cabin while sitting on his deck. One of the group took the matter to management who explained it away as *"sleep wanking"*.

*"We had just been having a few quiet beers and were heading back to our cabins, just the three of us and we saw this guy open the door of his donger and sit down on one of those green plastic chairs."*

The trio did not think much of it, assuming the man had simply stepped out to have a smoke but suddenly realised what he was doing when he stood up. In complete shock one of the trio exclaimed *"He's f\*cking nude. He's got no clothes on."*

One of three workmates wanted to physically confront the man, but they all knew they would have been fired for that.

The HR manager was told of the incident but because the man was in a supervisor role it was known and subsequently proved that he escaped any repercussions for his behaviour.

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Two female electricians were working on a site where another woman had a 'reputation' for enjoying the company of men. The rumour mill grew to the point it was regularly spoken about that she would frequently perform oral sex in the bushes outside a local pub.

These stories were projected onto the two female electricians to the point of men on the site approaching them with an unusually high frequency asking if they wanted to go for a drink or catch up after a shift.

*"So, a woman on site decides to have sexual relationships with other men on site - that's her prerogative, that's fine. But it started affecting myself and my colleague because people thought we were her. People assumed it was one of us two, so we were putting up with sh\*t out on site from people."*

One of the women would eventually go onto be a union delegate, which she says helped because in her words it *"taught her not put up with sh\*t"*.

Being actively involved with the union offered some comfort and protection for the women because it felt like *"most of the guys, they're your brothers"*.

While there was always going to be co-workers chasing others for romance, for the two women being involved with their union meant the attitudes and behaviour of people around them were better.

*"You always felt like someone had your back, that they're there to help you out."*

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A more experienced female electrician reflected on her time as a young apprentice. *"I was working up ladder when a male worker walked below me and said: 'You have the best arse I've ever seen on a sparkie'. Why did he even say that? Is this guy going around checking out sparkies' arses?"*

She remembers that he was older, in his late 40s or early 50s, talking to her, a young apprentice – a woman, barely 20 years of age.

*"I think it must have been pretty normal for him or he would not have said it. But it was very, very uncommon to be female and be on site but it's getting better."*

She also reflected on female representation in the industry getting better, but things are different. *"Women workers are still often seen as one homogenous group and their reputations and standing is collectively judged. As they progress through the ranks and grow older in the trade, the reputation becomes even more crucial to success, but less susceptible to rumour and innuendo, but it takes years to get to this point."*

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While working with one of the largest construction companies in Australia, one young woman described a manager who had been the supervisor with the firm more than two decades as *"quite a creep"*.

*"Everyone in management was in on it, everyone was fine with, everyone turned a blind eye to it,"* she said.

As the more senior apprentice at the time, she was often working with younger school-aged female apprentices – aged around 16 and 17.

When the supervisor, who was in his 50s, started inappropriately approaching the young girls, she stood up to him and managements lack of action and spoke out about the behaviour.

She has since been blacklisted from this major construction company because of this.

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One young woman was in overalls working for a large contractor when she was approached by a supervisor several decades her senior. The man approached her and stuck his hand in her pocket.

*“He had been at company for years. And if he had been like this, he would have been like this for at least a decade before me,” she said.*

There were other instances where the man was aggressive in a sexual manner but putting his hand in her pocket was the most brazen.

*“The man had a reputation and other female workers knew of his behaviour, as did management. But he never lost his job or was counselled or anything.”*

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One ETU woman spoke about a situation at a remote camp where more than 300 workers were given the sack on a Saturday, but the company had not arranged flights home for the sacked workers until the next afternoon.

*“So there was 300 blokes getting blind rotten drunk,” the woman said. “And they ripped the cyclone-rated flyscreen off the door to a woman’s donga. There were five guys outside and they actually tried to rip a door off its hinges.”*

She pointed to the evidence that companies must know these dangers exist as there are dongas that are specifically set-up for women, with panic alarm buttons installed to protect the women from these kinds of instances.

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Another woman spoke of the lack of confidence in ever receiving proper institutional or company support. *“If was to ever make a complaint, the men would never want to work with another female again. The company would never want to hire another female apprentice.”*

The woman said she felt no matter how heinous the crime, in the eyes of some, her actions afterward and the repercussions of her complaint would overshadow what was done to her and the men would be made feel the victims.

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The lack of awareness and understanding of these issues was pointed out by a young female apprentice who was working with a much older male who would not say a word to her for the six months she worked with him.



When an apprentice-training officer spoke with her about her experience as an apprentice, she replied with *“I just want to do my time and be done with it.”*

The training officer responded, *“I used to work with convicts. That’s exactly how a convict speaks about doing jail time.”*

When the older male colleague heard about it, he chewed out the younger males on the job for treating their female colleague like they did and making her feel unwelcome and imprisoned.

*“He said ‘How can you treat her like that? She’s a human being!’”*

He didn’t even realise he was part of the problem of isolation and exclusion.

### **3 INDUSTRIAL RELATIONS**

Changes to Australia’s industrial relations legislation may be an appropriate avenue to address the issue of sexual discrimination and harassment in Australia’s workplaces. There is however, identified deficiencies particularly regarding the general protections and unfair dismissal provisions of the Fair Work Act that, if unchanged, could seriously limit the effectiveness of this jurisdiction.

Any reforms to the industrial relations regime should specifically consider the following matters;

- Capacity to bring matters to the FWC where sexual harassment is occurring, threatened or likely, and for the FWC to have expansive powers to make orders to change the workplace culture. Such proceedings should not preclude prosecutions of specific instances of sexual harassment (i.e. the FWC proceedings can be run concurrently with Court proceedings).
- Ensure that broad definitions are introduced due to the highly complex and diverse nature of harassing and discriminatory behaviour. Creating a regulatory environment with too high a bar which allows employers and their legal representatives to “strike out” applications based on definitional interpretations will undermine any real capacity for industrial reform to address this issue;
- Ensuring the industrial umpire can recommend and direct proactive orders based on a risk matrix approach (discussed earlier) which will enhance the effectiveness of decisions in the Commission. Focusing on a hierarchy of controls that seeks elimination of these behaviours rather than responding only after the event will drive cultural change within organisations;
- Orders must not be limited to the direct employer and / or employees;
- Victims and their representatives must have a say in the drafting of appropriate orders;

- General Protections and Unfair Dismissal provisions have proven deeply deficient and must be reformed to more adequately respond to the typical reaction of employers to complaints which has been to make things worse for the victim;
- Ensuring that a focus of any regulatory response is graduated and based on a collective or organisational response rather than the current behaviour of simply just focusing on the individual;
- An essential element of any reform is to provide for mechanisms where appropriate, which allow for the protection of a complainant's identity;
- Recognising and responding to the issue of how minors are dealt with in respect of the age of apprentices;
- Applying an appropriate graduated regulatory response with the effect of a higher duty holder onus where there is a power relationship involved in an incident. This must include a multiplier for penalties where this threshold is met; and
- Workers who resign their employment following sexual harassment and / or discrimination should be treated as a constructive dismissal and therefore have access to unfair dismissal remedies.

## **4 WORK HEALTH AND SAFETY**

Whilst the ETU was broadly supportive of the introduction of the model workplace health and safety laws there remains significant deficiencies in this regulatory environment, most notably in the way that legislation clearly contemplates the hazards, risks and control measures relevant to physical activities but is almost entirely absent in relation to psychosocial factors.

When you add these legislative deficiencies to the absence of clear and effective organisational capacity within safety regulators it isn't surprising that the response from the inspectorate is currently inadequate. The reality is that psychosocial risks such as sexual harassment are not treated as a safety issue but are instead directed into individual grievance processes which has negated the development of effective organisational responses through preventative and systematic risk management processes.

It is the ETU's view that any reform to the regulatory environment should consider;

- Reviewing Health and Safety Representatives (HSR) powers with a view to explore any potential expansion and/or clarification of powers to better facilitate HSR's capacity to advocate in relation to this hazard/risk in their workplaces;
- The introduction of a positive power to request training which the employer must act within a timeframe to deliver to the workplace. Ensuring that the power to request is broad and can be initiated by an individual, a worker representative or a union. The type of training,

including the preferred provider, and its delivery should be subject to consultation and agreement with the party requesting the training;

- The current definitions around powers to stop work are deficient due to being entirely focused on physical risks and not psychological risk. Even in the case of stopping work for physical risk, the threshold interpretation has proven to be unrealistically high with workers required to demonstrate they face likely imminent death in order for this provision to be enacted. This threshold promotes unnecessary risk taking. Changes to this threshold should also introduce a reverse onus of proof on the employer to demonstrate all reasonable steps have been taken to remove the risk;
- Reviewing an expansion of authorised officer and entry permit holder (EPH) powers to better facilitate an EPH's capacity to advocate and where appropriate intervene in relation to this hazard/risk in workplaces;
- Ensuring regulators issue guidance notes developed through tripartite industry mechanisms;
- The creation of specialist units in regulators with appropriate expertise, resourcing and training in psychosocial hazards including sexual harassment and discrimination; and
- Ensuring HSR refresher training with a focus on psychosocial hazards is available to participants.

## **5 SEX DISCRIMINATION ACT 1984**

The Sex Discrimination Act 1984 (*the Act*) is long overdue for significant reform. The public sentiment towards what is and isn't appropriate behaviour relating to sexual harassment and discrimination has shifted significantly since *the Act* was written in the early 1980's. It is reasonable to assert that the lens that legislators viewed this legislation through would now be considered outdated and unacceptable to modern Australia.

Reforming *the Act* to ensure it is more contemporaneously applied is a critical component to addressing Sexual Harassment and Discrimination in Australian workplaces. In any proposed reform to the *Act*, consideration must be given to;

- The removal on limitations which prevent access to remedy under the Act due to victims initiating actions in other legal jurisdictions;
- The introduction of a positive obligation on employers which recognizes the power relationships within workplaces and that the onus of responsibility should rest with the employer;
- Like the industrial law, ensure that broad definitions are introduced due to the highly complex and diverse nature of harassing and discriminatory behaviour. Creating a regulatory environment with too high a bar which allows employers and their legal representatives to

“strike out” applications based on definitional interpretations will undermine any real capacity for reform to address this issue;

- Creating the capacity to develop enforceable statutory codes which give direction to the jurisdiction rather than unenforceable guidelines;
- Adequately recognising the threshold issue through a higher onus on individuals where there is a recognised power relationship coupled with the introduction of a multiplier for penalty provisions; and
- In determining penalties, the jurisdiction must have the capacity to consider past conduct, including issues with repeat behaviours and other indicators of workplace culture and/or organizational and management failings.

## **6 RECOMMENDATIONS**

The ETU makes the following recommendation to this inquiry:

### **Recommendation 1:**

The inquiry adopts the recommendations set out in the ACTU submission in consideration of the context and suggestions outlined in this ETU submission.

### **Recommendation 2:**

Careful, considered and inclusive engagement of social partners, including Unions, must be at the forefront of any development and introduction of reform.

## **7 CONCLUSION**

Regrettably the overwhelming experience of people who have experienced sexual harassment and discrimination is there is rarely, if ever, adequate redress. Compounding the issue is victims facing the reality that the next workplace will inevitably be no different.

Sexual Discrimination and Harassment is deeply damaging to workers and every effort must be made to eradicate this hazard from Australian workplaces. Any reforms that are implemented must be supported by appropriate education and underpinned by a recognition of the onus on the employer’s duty of care.

Importantly, driving critical reforms to address the scourge of sexual harassment and discrimination will benefit all workers by ensuring Australian workplaces are safer, fairer and more inclusive for everyone.