

Australian Manufacturing Workers Union NSW and ACT – Submission to the National Inquiry into Sexual Harassment in Australian Workplaces

The Australian Manufacturing Workers Union (“AMWU”) is a trade union that covers workers across all areas of manufacturing in Australia. The union as currently configured was formed in 1995, however we draw on a history of unions and unionism in Australia dating back to the 1850s.

The AMWU is affiliated to both the Australian Council of Trade Unions and Unions NSW, and we endorse and adopt the content of those submissions.

The AMWU NSW & ACT, however, wishes to provide additional comments in relation to the following Terms of Reference:

- a) The current legal framework with respect to sexual harassment
- b) Recommendations to address sexual harassment in Australian workplaces

Who do we represent?

In New South Wales and the ACT the AMWU represents 16,246 members, of which 10% are female. The highest proportion of female membership is in the Food Manufacturing division, with women accounting for 36% of members. Only three of our large workshops have a majority of women members employed there.¹

Within many of those industries covered by the AMWU there is a significant level of gender segregation. This may result in workplaces that accommodate women with difficulty – both from a cultural sense as well as physical limitations such as separate toilets or wash areas.

Drawing from the results of the surveys conducted by the Human Rights Commission² and the ACTU³, many of our members are likely to have experienced sexual harassment in the workplace, either as a victim or as a witness. Our members have also been the subjects of complaints of sexual harassment.

Our interest in this inquiry and the recommendations it will make broadly falls into these categories:

- a) Providing a safe workplace for all workers, free from all forms of bullying and harassment;
- b) Protecting the dignity and respect of workers; and
- c) Ensuring any complaints and investigations framework are built around procedural fairness for all participants.

¹ AMWU Membership data at December 2018

² *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* found that 18% of workers in the manufacturing industry had been sexually harassed at work in the past five years; however AMWU workers are also employed in mining, construction, electrical, gas, water and waste, as well as professional, scientific and technical services.

³ *Sexual Harassment in Australian Workplaces: Survey Results* does not break down the findings by industry but found that nearly 2/3rds of workers had witnessed sexual harassment in the workplace.

The current legal framework with respect to sexual harassment

The current legal framework surrounding sexual harassment is probably best described as individualized and complaint based. Remedies are therefore shaped in response to those complaints and may have limited, if any, focus on tackling any issues in the workplace that allowed for such conduct, particularly if the complainant has left or chooses to leave the workplace following the resolution of the complaint.

Sexual harassment, together with other forms of bullying and harassment in the workplace, is a threat to health and safety in the workplace. In theory, incidents of sexual harassment can be dealt with through the mechanisms contained in Work Health and Safety Acts, however both regulators and employers are loath to do so.

The AMWU sees significant value in ensuring that sexual harassment is able to be dealt with through the Work, Health and Safety law for the following reasons:

- 1) The existence of a primary duty of care to ensure the health and safety of workers; where that obligation is held by a broadly defined person conducting a business or undertaking and covering a broadly defined group of workers;
- 2) There are immediate steps that can be taken to protect the health and safety of workers, and these steps can be taken by the Regulator or a health and safety representative (such as the issuing of Provisional Improvement Notices)
- 3) Suspected contraventions of the Act can be investigated by the Regulator or union officials holding WHS permits. Such contraventions are not limited to acts of harassment, but also the failure to provide adequate information, training and/or supervision that would minimise the risk of sexual harassment⁴
- 4) The behaviour that is captured under Work, Health and Safety law is more broadly defined than in the *Sex Discrimination Act*⁵
- 5) The primary duty under the Act works towards the prevention of harm occurring to workers through the minimization of risk. This requires the employer to take action to prevent sexual harassment occurring, rather than merely respond to incidents or to take action following the report of an incident.

The AMWU supports the recommendations contained in the Unions NSW and ACTU submissions in relation to the broadening of the work health and safety legal and regulatory framework.

⁴ Section 19(f) of the *Work, Health and Safety Act* (NSW) 2011 requires that a person conducting a business or undertaking provide "...any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking"

⁵The *Work, Health and Safety Act* focuses on the prevention and minimisation of risks to health and safety "as far as reasonably practical". While the behaviour that is caught by the definition of sexual harassment in the *Sex Discrimination Act* is reasonably broad, there must be conduct of a sexual nature which might be only one aspect of the harassment that is experienced by the worker.

The AMWU is also supportive of amending the *Fair Work Act* 2009 to include provisions prohibiting sexual harassment. In particular, the AMWU believes there may be value in allowing any such amendment to provide for the ability to conciliate and/or arbitrate disputes over the implementation of policies and access to training, or systemic failures of employers to address instances of sexual harassment. While there are limitations with the Fair Work Commission's ("FWC") "anti-bullying" jurisdiction, consideration should also be given to ensuring that the FWC has the power to make orders to the effect of stopping and preventing sexual harassment in the workplace.

Recommendations to address sexual harassment in the workplace

As stated above, a significant failure of the current legal and regulatory framework is that it is designed to address individual complaints, rather than directly bring about change in the workplace.

The problem of sexual harassment in a workplace may not end when a complaint is resolved. While some 44% of complainants stated the harassment stopped after making a complaint⁶, some 45% of complainants also reported there was no change in the workplace after the complaint had been made.⁷

While the AMWU fully supports changes to the legal framework, the problem of sexual harassment within workplaces will not disappear unless there is a commitment from employers to take active steps to work with their workforce to build a culture of dignity and respect. At the very least, there needs to be defined processes within workplaces for the making and handling of complaints to ensure that the issue of sexual harassment (as with all forms of harassment) is appropriately dealt with. These processes need to be supported by training of relevant staff to ensure that complaints are dealt with sensitively, without unreasonable delay and the outcomes communicated to complainants. Further, any party involved in the investigation – whether they have made the complaint, are a witness or are the subject of the complaint – must be confident that they will be listened to and what they have to say is considered without bias.

The AMWU notes that training programs tackling gendered violence are being run by organisations such as Victorian Trades Hall Council and Unifor in Canada. The issues raised in these programs also deal with issues that are similar to issues that are present in workplaces where sexual harassment is occurring. The AMWU NSW & ACT has offered such training to our staff and officials, and endorses the use of such training by other organisations to help build understanding and awareness of these issues within both their workplace and the broader community.

Conclusion

The ability to prevent sexual harassment in the workplace is one that cannot be dealt with solely by amendments to the *Sex Discrimination Act* and other anti-discrimination law. The AMWU believes that other legislative frameworks that deal

⁶ *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* p 73

⁷ *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* p 77

with the world of work, such as work health and safety law and the *Fair Work Act*, should also be used to a much greater extent to ensure that employers take genuine preventative action to build that culture in their workplace.