



Australian Salaried Medical Officers' Federation

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Friday, 9 July 2021

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

**RE: ASMOF submission to the Senate Education and Employment Legislation
Committee inquiry into the *Sex Discrimination and Fair Work (Respect at Work)
Amendment Bill 2021***

The Australian Salaried Medical Officers' Federation (ASMOF) is the Doctors' Union, representing over 14,000 Registered Medical Practitioners including Staff Specialists, Post Graduate Fellows, Clinical Academics, Career Medical Officers and Doctors in Training including Interns, Resident Medical Officers and Registrars who are directly employed in the Public Hospital system, Affiliated Health Facilities, Private Hospitals and in Community Health.

ASMOF welcomes this inquiry as an opportunity to make a submission to the Education and Employment Legislation Committee inquiry into the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (the Bill). It is imperative that the legislative reforms reflect the findings of the comprehensive and well-researched Respect@Work Report, which came out of the Inquiry into Sexual Harassment in Australian Workplaces. ASMOF believes that amendments to the Bill are necessary to properly tackle the persistent problem of sexual harassment in the workplace.

The Respect@Work Report confirmed the right of workers to be free from sexual harassment is a workplace right and a health and safety right, as well as a human right. While the government's response to the Respect@Work Report includes some positive changes that are welcomed by ASMOF, we believe that strengthened legislation is needed to put in place the proactive and preventative approach to sexual harassment recommended by the Report. We are particularly concerned about the failure to accept pivotal recommendations that would place an obligation on employers to take reasonable steps to prevent sexual harassment in the workplace.

Doctors' health, wellbeing and safety at work is of paramount concern to us. The high prevalence of sexual harassment in the medical profession is posing a significant health risk to our medical workforce. ASMOF has for many years been calling for stronger and more effective measures to prevent, address and redress all forms of sexual harassment and sex-based harassment at work.

In 2019, ASMOF surveyed NSW members on sexual harassment and gender equity for the National Inquiry into Sexual Harassment in the Workplace. Our findings confirmed that sexual harassment is far too commonly experienced by doctors, with an alarming 55% of female doctors reporting that they had experienced sexual harassment in their workplace.¹ Furthermore, the internal and external processes around reporting sexual harassment and outcomes for doctors are of a significant concern to ASMOF. ASMOF's survey found that the vast majority of doctors who had experienced sexual harassment did not report it, citing the power dynamics in the health workplace, the fear surrounding reporting and the impact on career options. Respondents to ASMOF's survey who reported sexual harassment were not satisfied with the outcome, and comments indicated that the process was unfair and often resulted in further victimisation.

Hospitals and health service providers are not doing enough to protect doctors. The status quo places the burden on the shoulders of individual doctors to lodge a complaint at their own cost and risk. The Respect@Work Report found that the primary benefit of a positive duty on employers is that it "shifts the burden from individuals making complaints to employers taking proactive and preventative action."² There is a real need in the medical profession for employers to take proactive and preventative measures to address gendered violence and harassment at work. Indeed, when ASMOF asked doctors in NSW whether they were aware of initiatives or policies in their workplace which address sexual harassment, half of doctors were not aware of any policies or initiatives around sexual harassment. Sexual harassment is a workplace issue which must be expressly prohibited by and addressed through our workplace laws.

The obligations of hospital and health services to create safe working environments are guided by work health and safety legislation, which promotes a risk management approach. Sexual harassment represents a significant risk to health and safety, but it is currently inadequately considered and addressed under this Bill. Doctors who are sexually harassed need access to fair, effective and efficient complaint mechanisms in our workplace laws and employers must be required to take reasonable steps to prevent sexual harassment and gendered violence before it occurs.

A new positive duty on employers is urgently required, and adequate enforcement powers are essential for the positive duty to be effective in delivering necessary change in workplaces. Commentators have noted that medical environment carries risks due to a hierarchical structure, male dominance in senior positions, and a system of training which leaves junior

¹ ASMOF's Submission for National Inquiry into Sexual Harassment in the Workplace.

² Respect@Work at p479.

doctors dependent on powerful senior colleagues to progress their career.³ These sector-specific dynamics highlight the genuine need to provide the Sex Discrimination Commissioner with the power to undertake systemic investigations and monitor compliance in industries and workplaces which are rife with sexual harassment.

Amendments

The Australian Council of Trade Unions (ACTU) and other stakeholders have drawn attention to the failure of Australia's current regulatory framework to ensure that Australian workplaces are safe, equitable and harassment-free. ASMOF supports their calls to strengthen the regulatory framework by implementing the following recommendations of the Report into the Bill:

- Recommendation 28 – Amend the FW Act to expressly prohibit sexual harassment.
- 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.
- Recommendations 18 and 19 – Amend the Sex Discrimination Act to give the Sex Discrimination Commissioner the power to undertake systemic investigations (eg 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 23 – Amend the Australian Human Rights Commission Act to allow public interest actions to be brought to court by representative bodies such as unions.
- 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.

Thank you for considering our recommendations, and if you would like any further detail about our survey findings or any aspect of this submission do not hesitate to contact us.

Warm regards,



Prof Geoffrey Dobb
Federal President
ASMOF

³ Mathews and Bismark, 'Sexual harassment in the medical profession: legal and ethical responsibilities' *Med J Aust* 203, no. 4 (2015): 189-192.