

11 September 2023

Safe Work Australia
By email: INConsult@swa.gov.au

Dear Safe Work Australia,

Consultation on improvements to WHS incident notifications

The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to Safe Work Australia on potential options to improve the coverage and operation of the incident notification provisions in the model *Work Health and Safety Act 2011* (Cth) (incident notification provisions). The Commission strongly supports Safe Work Australia's commitment to addressing gaps in the current notification requirements, and amend notification requirements to more adequately capture incidents of workplace sexual harassment.

Workplace Sexual Harassment

The Commission's *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022 National Survey), found that 1 in 3 workers have reported they had experienced workplace sexual harassment in the last 5 years.¹ The impacts of workplace sexual harassment on the person harassed can be profound and devastating, including on their health, their career and their financial position. For instance, of those who were sexually harassed in the last five years:

- over two thirds (67%) experienced negative mental health impacts
- one half (50%) experienced negative impacts to their employment, career or work
- 1 in 5 experienced negative financial consequences.

Women and other marginalised workers (including LGBTIQ+ workers, First Nations workers, workers with disability, culturally and linguistically diverse workers, and younger workers) are more often targeted by harassers and bear the overwhelming majority of these negative consequences. A recent ANROWS report found that 46% of migrant and refugee women in Australia have

experienced workplace sexual harassment and that the harassment took place alongside racial harassment.² Intersecting forms of discrimination drive workplace sexual harassment. With greater diversity, the harassment is preventable, and considered action must be taken by workers, employers, regulators, and community members to change the status quo. Key to prevention is the implementation of trauma-informed response and reporting measures. The current incident notification requirements mean that a significant proportion of the workforce do not have access to appropriate response measures, and safety data cannot be properly utilised for evidence-informed prevention.

Current Arrangement

Incident notification is primarily designed to alert the Work Health and Safety (WHS) regulators to the most serious workplace incidents and potential breaches of WHS duties. It is a critical source of information and supports WHS regulators to exercise their powers and functions under WHS laws. The current arrangements encourage persons conducting a business or undertaking (PCBUs) to focus on hazards that pose an immediate threat to physical health and safety, and do not adequately identify, assess, and control psychosocial hazards – such as workplace sexual harassment.

The current arrangement has the following adverse implications for workplace sexual harassment:

- Psychosocial hazards are not captured. This includes those that pose immediate risk of harm (workplace violence) and those that pose risk of harm over time (bullying, sexual harassment, harassment, exposure to trauma).
- Without adequate identification of incidents of Workplace Sexual Harassment, WHS regulators cannot take appropriate action, and education and compliance campaigns cannot be targeted appropriately.
- The burden continues to fall on the victim-survivor to make a complaint to the PCBU. This is despite findings from the Commission's 2022 National Survey, which found that only 18% of workers made a formal report or complaint.

A system that only responds to workplace sexual harassment *after* it has occurred puts the burden on individuals to make complaints, and neglects the

important role that workplaces play in preventing sexual harassment from occurring in the first place. For this reason, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) was passed on the 12 December 2022, to ensure PCBUs take proactive action to prevent sexual harassment and sex discrimination from occurring. The proposed changes to the notification system will complement this amendment and fill important gaps in data collection identified by Recommendation 3 of the Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report, assisting in the evaluation of prevention initiatives.

Next steps

Better identification of workplace sexual harassment would lead to an improvement in trauma-informed response and prevention initiatives. Amending the notification arrangements would allow WHS regulators to identify both PCBUs where prevalence of these incidents is higher and PCBUs who may fail to report and investigate the systems in place to protect workers (rather than the circumstances of an individual incident).

In this context, the Commission supports Safe Work Australia's efforts to ensure:

- The immediate notification of workplace violence (discussed in Chapter 7) to better capture the most severe forms of bullying and harassment that involve a serious physical assault, sexual assault or threat of serious violence.
- The reporting of defined and specific types of behaviours – such as bullying, sexual harassment and harassment based on race, sex, gender, sexual orientation, age or disability (Option 2 in the attached discussion paper). The collection of unit-level demographic information is critical to understanding intersecting forms of harassment – such as the high prevalence of racial harassment that also needs to be identified.
- A reporting requirement that captures multiple forms of harassment – rather than just focusing on one form, e.g. sexual harassment. This requirement is likely to provide more insightful data for WHS regulators and support more informed responses. It would prevent misleading evidence or indicators about the prevalence of certain harmful behaviours, and avoid the impression that some forms of harassment are more or less important.

WHS regulators would need to ensure the data collected through periodic reports is considered in the context of other information sources. For example, general enquiry and advice lines, de-identified data from complaints made to anti-discrimination agencies, stop bullying and stop sexual harassment orders, worker surveys, research projects, and the industry/sector reviews and inquiries.

We encourage Safe Work Australia's ongoing engagement and consultation with the Respect@Work Council members to ensure the data on psychosocial hazards can inform response and prevention initiatives.

Noting the above, the Commission welcomes amendments as contributing to the significant progress underway to address gender inequality in Australian workplaces.

Yours sincerely,



Dr Anna Cody
Sex Discrimination Commissioner

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¹ Australian Human Rights Commission, Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces (September 2022) <<https://humanrights.gov.au/time-for-respect-2022>

² Segrave, M., Wickes, R., Keel, C., & Tan, S. J. (2023). Migrant and refugee women in Australia: A study of sexual harassment in the workplace (Research report, 06/2023). ANROWS.