



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/EEas: 1639518

8 February 2019

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: sarah.sacher@lawcouncil.asn.au

Dear Mr Smithers,

Australia's national review of the Beijing Declaration and Platform for Action

Thank you for the opportunity to contribute to a Law Council submission to the Department of Prime Minister and Cabinet's Office for Women regarding its national review of Australia's implementation of the Beijing Declaration and Platform for Action ("BDPFA").

The views of the Law Society have been informed by our Human Rights Committee. Our input relates to the years 2014-19, and is linked to the three dimensions of the BDPFA's "critical areas of concern" highlighted in your memorandum as particularly relevant for the Law Council and its constituent bodies.

Poverty eradication, social protection and social services

Issue: The gender pay gap in Australia.

With reference to achieving equality for women in the economy, the BDPFA requires governments to:

Enact and enforce legislation to guarantee the rights of women and men to equal pay for equal work or work of equal value.¹

The *Sex Discrimination Act 1984* (Cth) makes it unlawful for an employer to provide less favourable terms and conditions of employment to an employee because of their sex.² Each state and territory has its own laws prohibiting sex discrimination in employment. Despite these protections, there is a persistent gender pay gap in Australia. Data from 2017-18 illustrates that men in Australia still out-earn women, on average, by 21.3%.³ This equates to an additional \$25,717 in take-home pay for men each year. While the gender pay gap in

¹ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, 165.

² *Sex Discrimination Act 1984* (Cth), s14(1)(c).

³ Australian Government Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard: Key findings from the Workplace Gender Equality Agency's 2017-18 reporting data* (November 2018), 1.

Australia has dropped from 24.7% in 2013-2014,⁴ progress remains slow: at the present rate of change, Australia will not reach gender pay equity until the year 2060.

The Law Society has put in place measures to contribute to closing the gender pay gap in the legal profession. On 10 October 2016, we launched our Charter for the Advancement of Women in the Legal Profession ("the Charter"). Signatories to the Charter commit to taking actions to promote and support the retention of women in the legal profession over the course of their careers, including by removing gender bias and discrimination in the workplace, and ensuring equal pay for legal graduates within the same organisation regardless of gender. Over 150 practices and organisations that employ legal professionals in NSW have signed the Charter to date. Another initiative of the Law Society, the Women's Mentoring Program, engages women in the profession with experienced practitioners to support and encourage their career progression. We have also developed resources to assist in implementing flexible working practices, and adopted the Law Council's Equitable Briefing Policy, which provides targets for the briefing of senior and junior women barristers. For further information on ongoing initiatives, see the **attached** Advancement of Women Initiative Summary 2019.

Issue: Unmet need for civil law services.

Strategic Objective 1.2 in the BDPFA – "ensure equality and non-discrimination under the law and in practice" – requires governments to "strengthen... legal aid programmes to assist disadvantaged women seeking redress for violations of their rights."⁵ Yet legal assistance funding from the Australian Government is at its lowest in over 20 years, dropping from \$11.57 per capita in 1996-1997 to \$8.40 per capita in 2017-2018.⁶ Almost half of the 14% of Australians living below the poverty line are not eligible for legal aid services for both civil and criminal law.⁷

This funding crisis has significant impact on the provision of civil law services to Indigenous women, who are among the most legally disadvantaged groups, suffering from systemic racial discrimination, financial difficulties, sex discrimination and disability.⁸ Aboriginal and Torres Strait Islander Legal Services are unable to meet the demands of civil law service needs despite the increases in matters such as homelessness, child protection and credit issues.⁹ Indigenous women suffer from accommodation crises 15 times more than non-Indigenous women.¹⁰ Failure to provide legal assistance in housing matters is a major contributing factor to Aboriginal and Torres Strait Islander women remaining in violent relationships and the removal of Indigenous children.¹¹

In 2014, the Productivity Commission recommended governments immediately invest at least \$200 million annually in legal assistance services to address unmet need for civil law services.¹² Such investment should not be made at the expense of legal assistance in the criminal justice sector. In our 2019 NSW State Election Policy Platform, the Law Society has

⁴ Australian Government Workplace Gender Equality Agency, *Five years of Workplace Gender Equality Agency data: the key trends* (November 2018).

⁵ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995, 232(n).

⁶ Parliament of Australia, Senate Notice Paper No. 96 - 10/05/2018, 14 at [822] Senator Griff.

⁷ *Ibid.*

⁸ Law Council of Australia, *The Justice Project Final Report – Part 1 (2018), Aboriginal and Torres Strait Islander People*, 10.

⁹ *Ibid.*, 7.

¹⁰ *Ibid.*, 24.

¹¹ *Ibid.*, 23.

¹² Australian Government Productivity Commission, *Access to Justice Arrangements – Inquiry report* (2014).

noted that a combination of a low hourly rate paid to private practitioners and insufficient time claimable under the fee scales has left the legal aid system in crisis. We have called on all parties in NSW all parties to commit to increasing the hourly Legal Aid rate to \$250, make future increases linked to the consumer price index, and increase the time claimable to undertake matters.¹³

Issue: Legal assistance for asylum seekers and refugees.

Only a small number of asylum seekers in Australia have access to government-funded legal assistance whilst most rely on pro-bono services.¹⁴ Legal assistance is crucial to refugees and asylum seekers. Immigration application forms can be extremely complex, especially for people who have limited understanding of English or legal terminology.¹⁵ Legal assistance is particularly important for female asylum seekers, as they often experience heightened vulnerability. In this regard, Dr Linda Bartolomei and Eileen Pittaway of the UNSW Centre for Refugee Research have noted that “[women] are not inherently vulnerable, but the refugee experience puts them at risk... Cultural differences often give women lower social status, dependent on men.”¹⁶

Freedom from violence, stigma and stereotypes

Issue: Support for women experiencing domestic violence.

The Law Council's *The Justice Project – Final Report* highlighted that women who experience family violence “have a more disrupted work history, are on lower personal incomes, have had to change jobs frequently and are [more] often employed in casual and part time work” compared to women with no experience of violence.¹⁷ Financial hardship can compound the issue, and lead to situations where women are unable to take time off from work in order to leave an abusive relationship.

A number of states in Australia have introduced domestic violence leave for public sector workers. As of 1 January 2019, more than 300,000 public sector workers in NSW have access to 10 days paid domestic violence leave each year, under a Premier's Memorandum.¹⁸ Similar schemes exist in South Australia, Victoria and Queensland. This has created a disparity between public sector workers in these states and other categories of workers. Under the National Employment Standards, as amended by the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*, there is an entitlement for five days unpaid family and domestic violence leave.

An additional concern is the lack of formal legal support services available to women on temporary visas in Australia who are experiencing domestic or family violence. The 2016 final report of the Victorian Royal Commission into Family Violence found that “uncertainty about visa status can increase the risk of [domestic] violence in a number of ways”. The report went on to note that:

¹³ The Law Society of NSW, *2019 State Election Policy Platform*, 5. Available at: https://www.lawsociety.com.au/sites/default/files/2018-12/LS3000_LS_ElectionPlatform_Final_Web.pdf

¹⁴ Kelly Newell, “The latest hurdles for people seeking asylum in Australia” (22 March 2017), *Kaldor Centre for International Refugee Law*.

¹⁵ *Ibid.*

¹⁶ Linda Bartolomei and Eileen Pittaway, “The international protection system is failing refugee women and girls” (17 November 2017), *Thomson Reuters Foundation*.

¹⁷ Law Council of Australia, *The Justice Project - Final Report (Part 1): People who Experience Family Violence* (August 2018), 22.

¹⁸ NSW Government Department of Premier and Cabinet, *Support for Employees Experiencing Domestic and Family Violence* (issued 21 December 2018), Premier's Memorandum M2018-03.

[B]ecause of the complexities of migration law, women might need intensive specialist support to prepare visa applications, and such support is limited and available only in urban areas, compounding the disadvantage CALD [culturally and linguistically diverse] women living in rural and regional areas can experience.¹⁹

I further note that the Law Society supports the objectives of White Ribbon Australia, and the vital work it conducts to prevent men's violence against women. The Law Society is presently looking into obtaining organisational accreditation through the White Ribbon Workplace Accreditation Program.

Issue: Forced sterilisation of women and girls with a disability.

The BDPFA affirms that forced sterilisation of women and girls is an act of violence which nullifies the enjoyment of human rights.²⁰ Nonetheless, forced sterilisation of people with a disability, particularly women and girls, is an ongoing practice in Australia: in the 24 months to 30 June 2018, there were 13 adult sterilisation approvals across the country.²¹ In July 2018, the UN Committee on the Elimination of All Forms of Discrimination against Women, in its observations on Australia's progress in eliminating discrimination against women, recommended that Australia "abolish... the sterilization of women with disabilities, and enforce strict guidelines on the sexual and reproductive health rights of women and girls with disabilities who are unable to consent".²²

The human rights of women

Issue: Improving federal anti-discrimination law in Australia.

In the BDPFA, governments committed to "adopt and implement laws against discrimination based on sex in the labour market"²³ and "enact and enforce laws... regarding discriminatory working conditions and sexual harassment."²⁴ Australia's anti-discrimination framework consists of five core instruments; a number of other federal instruments also include anti-discrimination provisions. Despite these legislative protections, significant gaps remain in anti-discrimination coverage at the federal level, along with a set of exclusions that hamper the laws' efficacy.

We **attach** our letter to the Law Council of 11 December 2018 on this issue.

Issue: Over-incarceration of Aboriginal and Torres Strait Islander women.

The BDPFA requires governments to "review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women."²⁵ In Australia, there is a dramatic disparity in the number of Aboriginal and Torres Strait Islander women who are incarcerated. As of 2016, Indigenous women made up 2.2% of Australia's adult female population, but

¹⁹ State of Victoria, Royal Commission into Family Violence, *Report and Recommendations* (March 2016), Vol V, Parl Paper No 132, 110.

²⁰ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 115.

²¹ Australian Guardianship and Administration Council, *Australian Sterilisation Data Report 2018*; and Australian Guardianship and Administration Council, *Australian Sterilisation Data Report 2017*.

²² UN Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of Australia* (20 July 2018), CEDAW/C/AUS/CO/8, 26(d).

²³ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 165(b).

²⁴ *Ibid.*, 178(c).


²⁵ *Ibid.*, 232(l).

accounted for 34% of the female prison population.²⁶ In NSW, the number of Aboriginal and Torres Strait Islander women in prison increased by 77% – from 195 to 340 – from 2011 to 2017, compared with a 40% growth in the number of non-Indigenous women in prison over the same time period.

The disparity in incarceration rates of Aboriginal and Torres Strait Islander women further affects their children. Studies suggest that 80% of female Aboriginal and Torres Strait Islander prisoners are mothers, with 20% of Aboriginal and Torres Strait Islander children nationally experiencing parental incarceration.²⁷ The Australian Law Reform Commission *Pathways to Justice* reports notes that the imprisonment of Aboriginal and Torres Strait Islander women has a “disproportionate but largely hidden adverse outcome for their children” and can contribute to “gaps in parenting, income, child care, role models and leadership in their communities, entrenching future disadvantage”.²⁸ Studies show that Aboriginal and Torres Strait Islander children who are removed from their mother are themselves more likely to enter the criminal justice system, highlighting the flow-on, intergenerational effects of Aboriginal and Torres Strait Islander incarceration.²⁹

Thank you for the opportunity to provide comments on this issue. Questions may be directed to Andrew Small, Policy Lawyer, at (02) 9926 0252 or andrew.small@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President

Enc.

²⁶ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples: Discussion Paper* (July 2017), Discussion Paper 84 (DP 84), 26.

²⁷ The Australian Law Reform Commission, *Pathways to Justice – An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report* (December 2017), 11.100.

²⁸ *Ibid.*, 11.102.

²⁹ *Ibid.*



ADVANCEMENT OF WOMEN INITIATIVE SUMMARY 2019

Law Society of New South Wales Advancement of Women Project

In its Thought Leadership series, the Law Society brings together leaders of the legal profession for robust panel discussions impacting on the rule of law, legal institutions and practice. In 2011, the Law Society commenced a major Thought Leadership project on the Advancement of Women in the Legal Profession. The program of work aims to progress initiatives to cultivate women's professional development and advancement under three core themes:

- the Law Society demonstrating leadership in the profession;
- addressing barriers experienced by women; and
- assisting women to build their leadership skills.

In 2016 the Law Society established a Diversity and Inclusion Committee. Its role is to promote diversity, equality and inclusion in the legal profession, in particular by progressing initiatives to ensure the equality of opportunity for all members of the profession, regardless of race, ethnicity, heritage, gender, age, religion, disability, sexual orientation, gender identity or intersex status. Supporting the implementation of Advancement of Women in the Legal Profession is a priority area for the Committee.

The Law Society's Advancement of Women initiatives include:

- adoption of the Law Council's Diversity and Equality Charter;
- adoption and promotion of the Law Council of Australia's Equitable Briefing Policy;

- establishing and expanding a Women's Mentoring Program;
- publishing online resources on flexible working for employers and employees;
- developing tailored CPD events (e.g. sexual harassment);
- including unconscious bias training in Rule 6.1 CPD seminars, so that it is one option for legal practitioners when completing their mandatory CPD training.
- publishing online resources for practitioners during an absence from work and when preparing to return to work;
- developing the first comprehensive business case for diversity and inclusion for law firms and organisations that employ legal practitioners in NSW.

Further information is available at lawsociety.com.au/about-us/advocacy/advancement-of-women

Equitable Briefing Networking Events

In 2017 and 2018, the Law Society, in partnership with the Bar Association of New South Wales, held Equitable Briefing Networking Events in support of the Law Council of Australia's Equitable Briefing Policy. The aim of these events was to connect women barristers and solicitors who work in specific practice areas. The areas of law that the events covered were civil litigation, criminal law, construction law, intellectual property, medial law, defamation and privacy law.



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Charter for the Advancement of Women in the Legal Profession

On 10 October 2016, the Law Society launched its Charter for the Advancement of Women in the Legal Profession (“Charter”).¹ The Charter is designed to promote and support strategies to retain women in the legal profession over the course of their careers and encourage and promote their career progression into senior executive and management positions.

In support of this initiative, Charter signatories commit to:

- demonstrating leadership by implementing diversity and inclusion principles in the legal profession and removing gender bias and discrimination in the legal workplace;
- driving change in the legal profession by developing a culture that supports the retention of women legal practitioners and recognises their value in senior roles;
- implementing recruitment and promotion strategies that include gender diversity as an important consideration, including ensuring equal pay for legal graduates within the same organisation regardless of gender;
- promoting and supporting mentoring and sponsorship of women in the legal profession;
- encouraging and supporting flexible work practices in the legal profession to assist men and women to better balance professional and other commitments.²

The Law Society has published Guidelines outlining examples of practices that law practices can adopt to fulfil their Charter commitments.

All law practices are encouraged to sign up to the Charter and implement its strategies within two years of signing the Charter, apart from equal pay for graduates, which is to be implemented within 12 months. We have over 150 signatories covering a broad range of practices and organisations that employ legal professionals.

Charter for the Advancement of Women in the Legal Profession Award

In recognition of those signatories that have made considerable efforts to implement the Charter, the Law Society initiated an annual Charter for the Advancement of Women in the Legal Profession Award (“Award”). The Award is designed to recognise the efforts of signatories who can demonstrate excellence in implementing strategies and best practice commitment to sustainable workplace changes relating to the objectives of the Charter. The Award is open to any signatory of the Charter.

2018 was the inaugural year for the Award. The Award was presented at the *First 100 Years of Women in the Law Gala Dinner* at the State Parliament of NSW on 26 November 2018. Clayton Utz received the Award. Coutts received recognition as Highly Commended.

The First 100 Years of Women in the Law

The First 100 Years is an inspirational history project, supported by the Law Society of NSW and Women Lawyers Association of NSW, charting the journey of women in law since enactment of enabling legislation throughout Australia in the early 1900s.³



In 2018 the project marked the centenary of the *Women’s Legal Status Act 1918* (NSW) which paved the way for women to become lawyers for the first time in NSW, as well as allowing women to stand for the NSW Parliament.

The Law Society and leaders in the legal profession commemorated this important milestone by sponsoring a scholarship for a woman lawyer, commissioning a portrait of Chief Justice Susan Kiefel, the first woman to serve as Chief Justice of the High Court and commissioning a photo mosaic digital artwork of Ada Evans, the first Australian woman to graduate with a law degree. The celebrations culminated in a gala event at State Parliament on 26 November 2018 to recognise the achievements of female lawyers who have pioneered changes to encourage women to practise law.⁴

Further information is available at first100years.com.au

Endnotes:

1. Law Society of New South Wales, *Charter for the Advancement of Women in the Legal Profession* <https://www.lawsociety.com.au/sites/default/files/2018-03/AOW%20charter_0.pdf>
2. Law Society of New South Wales, *Charter for the Advancement of Women in the Legal Profession Guidelines*, 2016 <https://www.lawsociety.com.au/sites/default/files/2018-03/AOW%20Guidelines_0.pdf>
3. Law Society of New South Wales and Women Lawyers Association of New South Wales, *First Hundred Years* <<https://first100years.com.au/>>
4. Law Society of New South Wales and Women Lawyers Association of New South Wales, <<https://first100years.com.au/news/first-100-years-gala-celebrated-on-26-november-at-nsw-parliament-house/>>



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Our ref: HRC/DHas: 1616724

11 December 2018

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: emma.hlubucek@lawcouncil.asn.au

Dear Mr Smithers,

National Inquiry into Sexual Harassment in Australian Workplaces – final submission

Thank you for the opportunity to contribute to the Law Council of Australia's submission to the Australian Human Rights Commission ("AHRC") inquiry into sexual harassment in Australian workplaces ("the Inquiry").

This letter represents the position of the Law Society with respect to the terms of reference for the Inquiry. In some instances, the provisional recommendations contained in our letter to the Law Council of 5 October 2018 have been refined. We therefore request you refer to the material in this letter rather than our preliminary response.

The material in this letter is informed by our Employment Law, Human Rights, and Diversity and Inclusion Committees.

Prevalence, nature and reporting of sexual harassment in the legal profession in Australia

In addition to state and federal legislation prohibiting sexual harassment, solicitors in Australia are bound by the Australian Solicitors' Conduct Rules, which at rule 42 requires that "a solicitor must not in the course of practice, engage in conduct which constitutes: discrimination; sexual harassment; or workplace bullying".

Notwithstanding this unambiguous rule, sexual harassment is a persistent issue within the legal profession in Australia. In 2018 the International Bar Association ("IBA") surveyed almost 7,000 legal professionals around the world on their experience of sexual harassment at work. In Australia, 934 legal professionals completed the survey, and the results revealed that around one third (37%) of lawyers in Australia disclosed they had been sexually harassed while at work or in work-related contexts. The results illustrated that women working in the law in Australia disclosed experiencing sexual harassment at a far greater rate than men: 47% of women disclosed being sexually harassed, compared with 13% of men. This compares with the global rate of 37% for women working in the law, and 7% for men.

The International Bar Association survey also found that sexual harassment goes unreported in 77% of cases. Of those who did report the harassment, 73% said their employer's

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response was either insufficient or negligible. Of respondents who had disclosed harassment, 38% expressed an intention to leave their workplace as a result. On a global basis, 44% of people who had been harassed in legal workplaces reported that the perpetrator was "more senior" than them; in 19% of cases the perpetrator was someone of equal seniority, and in only 4% of cases was the person responsible for the harassment someone junior.

From October to November 2018 NSW Young Lawyers conducted a separate survey on young lawyers' experiences of sexual harassment in the workplace. The survey was distributed to the NSW Young Lawyers mailing list, and received 125 responses. Over half of respondents (51%) disclosed having been sexually harassed in the workplace, and 25% had witnessed another person being sexually harassed. Of those who disclosed an experience of sexual harassment, less than 30% made a complaint. The reasons for not pursuing a complaint were elaborated on by some of the respondents. One wrote that:

"It was embarrassing, and I did not want the stigma of being a complainer or too sensitive. I thought that complaining would be considered a 'weak female' response."

Another respondent raised the power imbalance faced by young lawyers as a deterrent to formal reporting.

"It is impossible to make a complaint against a partner in a law firm for whom you work. HR has no power as the partners are the owners of the company. I feared retaliation".¹

When asked how sexual harassment in the workplace could be eliminated or reduced, respondents to the NSW Young Lawyers survey provided four key suggestions: education of employers and employees on what sexual harassment is, how to report it, and consequences; cultural or attitudinal change, including systemic change led by management; strong disciplinary measures; and reducing alcohol consumption at work-related events. The Law Society understands that NSW Young Lawyers will be providing a supplementary submission outlining the results of its survey, and recommendations, in further detail.

Legislative reform to improve the legal framework to better address sexual harassment in Australian workplaces

Please find **attached** at Annexure A the Law Society's recommendations with regard to key aspects of the framework addressing sexual harassment – at a state, federal and international level.

Recommendations organisations can adopt to prevent and respond to sexual harassment in the workplace

The Law Society suggests that organisations develop and commit to organisation-wide frameworks to reduce the risk of sexual harassment occurring in the workplace and encourage a safe and respectful workplace that is free from harassment. Such a framework might include the following:

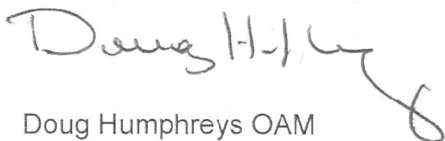
- 1) Recognition of the benefits of a safe and respectful workplace free from harassment and discrimination where the organisation does not tolerate sexual harassment.

¹ NSW Young Lawyers Human Rights Committee, 'Sexual Harassment in Australian Workplaces Survey Results' (November 2018).

- 2) Workplace policies addressing sexual harassment which include a set of values/principles for standards of conduct in the workplace, a clear definition of sexual harassment and details of whistleblowing or 'speak up' procedures.
- 3) Training programs for all staff which support workplace policies at least every two years, with tailored programs for management, given their heightened responsibilities.
- 4) Effective procedures which support organisational objectives and policies, including a robust and effective complaints mechanism and investigation procedures.
- 5) Reporting mechanisms to capture data in relation to complaints of sexual harassment in the workplace.
- 6) Procedures which finalise the complaint with the complainant once any investigation has concluded, and include the provision of appropriate support to the complainant through an employee assistance program or external providers. Any disciplinary outcomes should also be documented.
- 7) A feedback mechanism for staff to make comments and suggestions for improvements in relation to the organisation's approach to combatting sexual harassment.

Thank you for the opportunity to provide input on this issue. Should you have any questions or require further information please contact Andrew Small, Policy Lawyer on (02) 9926 0252 or email andrew.small@lawsociety.com.au.

Yours sincerely,



Doug Humphreys OAM
President

Enc.

Annexure A: Recommendations of the Law Society of NSW for improving the legal framework with respect to preventing and responding to sexual harassment

a) Federal framework

Issue Identified	Recommendation
<p><i>Australian Human Rights Commission Act 1986 (Cth) ("AHRC Act") s 46PH(b).</i></p> <p>The ability of the President of the Australian Human Rights Commission ("AHRC") to terminate a complaint if it is not brought within six-months of an alleged act or practice taking place acts as a barrier for individuals who wish to seek redress for sexual harassment at work.</p>	<p>Amend s 46PH(b) of the AHRC Act to reinstate the 12-month time limit that was in place prior to passage of the <i>Human Rights Legislation Amendment Act 2017 (Cth)</i>.</p>
<p><i>Promoting employer accountability and addressing systemic discrimination.</i></p> <p>Currently, employers can only be held accountable for failing to take all reasonable steps to prevent sexual harassment through the vicarious liability provisions of the <i>Sex Discrimination Act 1984 (Cth) ("SDA")</i>. Under the <i>Anti-Discrimination Act 1977 (NSW) ("ADA")</i>, the vicarious liability provisions are even narrower, with employers only vicariously liable if they expressly or impliedly authorise the act of sexual harassment.</p>	<p>To address systemic discrimination, the AHRC should be given the power to conduct own-motion investigations of what appears to be unlawful sexual harassment under the SDA, and the power to commence court proceedings without receiving an individual complaint.</p>
<p><i>Fair Work Act 2009 (Cth) ("FWA") s 351.</i></p> <p>Sexual harassment is not directly covered by the general protections provisions of the <i>Fair Work Act 2009 (Cth) ("FWA")</i>. The definition of "adverse action" does not explicitly include sexual harassment, and while the protections against discrimination in s 351 of the FWA prohibit adverse action due to sex, it is not clear whether sexual harassment is prohibited by this section.</p>	<p>Section 351 of the FWA should be amended to include sexual harassment in the definition of "adverse action".</p>
<p><i>Intersectional discrimination.</i></p> <p>The SDA and ADA do not recognise the ways in which individuals may experience compound or intersectional forms of discrimination. Where an individual seeks to claim more than one form of discrimination, they must take action where each ground and each form of discrimination is examined in isolation. This may act as a further barrier to minority groups who experience sexual harassment along with discrimination based</p>	<p>The Commonwealth Government should consider consolidating federal anti-discrimination law to address all the prohibited grounds of discrimination, including sexual harassment. The definition of discrimination under any consolidated act should include intersectional discrimination.</p>

Issue Identified	Recommendation
on other protected attributes from pursuing a claim.	
<p><i>Whistleblower protections.</i></p> <p>Whistleblower protections are lacking, particularly in the private sector.</p>	<p>The Parliament of Australia should pass the <i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017</i>, which is currently before the Senate. This would require public companies and large proprietary companies to have a whistleblower policy and to make this accessible to all employees, and imposes penalties for non-compliance.</p>
<p><i>Lack of public accountability.</i></p> <p>There is presently no formal requirement for companies to regularly report sexual harassment statistics and claims internally or externally.</p>	<p>The AHRC should consider introducing compulsory reporting requirements so a company's board and a relevant external body receive regular updates on sexual harassment incidents and claims.</p>
<p><i>Expand the application of the SDA.</i></p> <p>State-based public servants are not able to make a claim under the SDA for sexual harassment that occurs within their workplace.</p> <p>The discrimination and sexual harassment provisions of the SDA do not currently provide explicit coverage for volunteers and other types of unpaid workers.</p>	<p>Subject to any constitutional limitations, the Commonwealth Government should amend the SDA to:</p> <ul style="list-style-type: none"> • Provide coverage to an employee of a state or a state instrumentality, as recommended by the Senate Standing Committee on Legal and Constitutional Affairs in their 2008 Inquiry into the effectiveness of the SDA; and • Provide coverage for volunteers, interns, and other categories of unpaid workers.

b) International framework

Issue	Recommendation
<p><i>ILO Convention on the Elimination of Violence and Harassment in the World Of Work.</i></p>	<p>The Commonwealth Government should:</p> <ol style="list-style-type: none"> a) vote to adopt the new ILO Convention and Recommendation on the elimination of violence and harassment in the world of work at the 108th session of the International Labour Conference in June 2019; and b) if the Convention is adopted, take action to ratify it and incorporate it into domestic law.

c) General recommendations

Issue	Recommendation
<p><i>Resourcing of the AHRC.</i></p> <p>The AHRC remains significantly under-resourced, with complaints regularly taking five to six months to reach a conciliation hearing.</p>	<p>The Commonwealth Government should adequately resource the AHRC so it can effectively carry out its investigation, complaint and conciliation functions.</p>
<p><i>Promoting uniformity in state and territory anti-discrimination legislation.</i></p> <p>Each state and territory in Australia has enacted anti-discrimination legislation that outlaws sexual harassment. While the laws are largely similar, some significant differences exist. One notable area of divergence is the damages cap: in NSW, there is a cap on damages under the <i>Anti-Discrimination Act 1977 (NSW)</i>, while in other states there is no such cap.</p> <p>This creates difficulties for individuals as to where to commence their action. Similarly, respondent organisations face the complex task of ensuring their policies and operations comply with multiple pieces of legislation.</p>	<p>State and territory governments should amend their anti-discrimination legislation to ensure harmonisation between jurisdictions. This process should seek to harmonise best practice, rather than a lowest common denominator approach.</p>