



By email: SH.Inquiry@humanrights.gov.au

Dear Sex Discrimination Commissioner, Ms Jenkins, and Inquiry Team

Submission to Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces

About JobWatch

1. JobWatch Inc (**JobWatch**) is an independent, not-for-profit, employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It provides assistance to Victorian, Queensland and Tasmanian workers regarding their rights at work. JobWatch is a member of the Federation of Community Legal Centres (Victoria) and is funded by Victoria Legal Aid, the Office of the Fair Work Ombudsman and the Victorian and Federal Governments.
2. JobWatch was established in 1980 and is the only service of its type in Victoria. It is funded to deliver four key services, which are as follows:
 - a) A free and confidential telephone information service (**telephone service**) which provides information and referrals to Victorian, Tasmanian and Queensland workers;
 - b) Community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers and community groups;
 - c) A casework legal practice which provides advice and representation to vulnerable and disadvantaged workers; and
 - d) Law reform work, with a view to promoting workplace justice and equity for all workers.
3. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone service. To date we have collected more than 200,000 caller records with each record usually canvassing multiple workplace problems, including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time.
4. In the 2017-18 financial year, JobWatch's telephone service responded to over 16,000 calls and assisted over 12,000 callers. The majority of our callers have

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nowhere else to turn to for assistance as they are not union members and they cannot afford private lawyers.

5. Between 2014 and 2018, JobWatch's telephone service saw a more than 100% increase in the number of calls relating to sexual harassment (54 to 114).
6. JobWatch is proud to have signed the Joint Statement entitled "*Power to Prevent: Urgent Actions Needed to Stop Sexual Harassment at Work*" which was submitted to the Commission on 28 February 2019.
7. In addition to that Joint Statement, JobWatch wishes to make these further recommendations about necessary changes to address sexual harassment in the workplace.
8. All the case studies provided in this submission are taken from JobWatch's legal practice client files and/or our telephone service database. They have been de-identified. The case studies are provided to highlight the need for urgent law reform.

The Current Legal Framework With Respect To Sexual Harassment and Recommendations for Improvements

9. The current legal framework for sexual harassment should, in JobWatch's view, be improved in a number of respects. Our recommendations for law reform are below.

Recommendation 1: The *Sex Discrimination Act 1984* (Cth) (SDA) should be amended so as to extend the sexual harassment prohibition:

- **across *all* areas of life as far as constitutionally possible, or alternatively**
- **across *all* areas of *public* life, or alternatively**
- **with respect to volunteer workers, in addition to the current protections.**

a. Currently, sexual harassment is only prohibited in certain areas of public life under the SDA. Relevantly for this Inquiry, s28B of the SDA prohibits sexual harassment in employment and related areas. It prohibits a person harassing their employee or prospective employee, current or prospective fellow employee, current or prospective commission agent or contract worker, fellow current or prospective commission agent or contract worker, partner or prospective partner.

b. Outside of these clear relationships, s28B(6) of the SDA also prohibits a workplace participant from harassing another workplace participant "at a place that is a workplace of either or both of those persons."¹ Section 28B(7) defines "place" to include a ship, aircraft or vehicle.² "Workplace participant" is defined to include "an employer or employee, a commission agent or contract worker, a partner in a partnership."³ "Workplace" is defined to include a place "at which a workplace

¹ *Sex Discrimination Act 1984* (Cth) s 28B(6).

² *Ibid* s 28B(7).

³ *Ibid* s 28B.

participant works or otherwise carries out functions in connection with being a workplace participant.”⁴

c. Accordingly, where one workplace participant sexually harasses another workplace participant, the conduct is only prohibited if it occurs at a place where they both carry out functions in connection with their workplace. “Workplace” has been interpreted broadly, so as to include a bar across the road from a workplace, where the workplace participants have gone to resolve an earlier incident of workplace harassment.⁵

d. That sexual harassment is only prohibited in certain areas is a major limitation of the SDA. While the definition of sexual harassment is adequately broad, the limited prohibition to particular areas of public life is unduly restrictive. It means that:

- i. Not all sexual harassment is currently unlawful under the SDA; and
- ii. The SDA creates an additional and unnecessary burden on complainants to prove that the sexual harassment occurred in one of the six proscribed categories.⁶

e. The SDA should, as far as constitutionally possible, prohibit sexual harassment across *all* areas of life. This would be in line with the *Anti-Discrimination Act 1991 (Qld)*, which renders sexual harassment unlawful anywhere and anytime it happens, regardless of whether it is in a particular area of life (eg employment).

f. Alternatively, the SDA should prohibit sexual harassment across *all* areas of *public* life. This would be in line with the *Racial Discrimination Act 1975 (Cth)* (**RDA**), which prohibits racial vilification in any area ‘otherwise than in private’.⁷ The RDA provides that an act is not done in private if it:

- i. *causes words, sounds, images or writing to be communicated to the public; or*
- ii. *is done in a public place; or*
- iii. *is done in the sight or hearing of people who are in a public place.*⁸

g. The RDA defines “public place” broadly so as to include “*any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place*”.⁹

h. At the very least, s28B of the SDA needs to be amended so as to extend the reach of the sexual harassment laws to volunteer workers.

⁴ Ibid.

⁵ *Vergara v Ewin* (2014) 223 FCR 151.

⁶ For example, in *Vergara v Ewin* (2014) 223 FCR 151, the Full Court of the Federal Court of Australia was asked, in part, to reconsider whether particular events which had taken place at a hotel fell within the definition of a “workplace” for the purposes of the SDA. The Applicant had already proved to the trial judge’s satisfaction that the hotel had the requisite connection to her work and should therefore be considered as part of her “workplace” for the purpose of the sexual harassment complaint, but the Respondent appealed this and other aspects of the decision at first instance.

⁷ *Racial Discrimination Act 1975 (Cth)* s 18C(1).

⁸ Ibid s 18C(2).

⁹ Ibid s 18C(3).

i. The following case study highlights the limitations of the current regime. Had she made a complaint to the Australian Human Rights Commission (**AHRC**), the complainant in this case study would have found it difficult to establish that the sexual harassment she had experienced was unlawful pursuant to s28B of the SDA.

Carla was a young woman who was employed by a labour hire company to work as an Assistant Property Manager for a host company. About two months into her employment, Carla attended a work function after work on a Friday night. Later that evening, Carla and a small group of her co-workers were invited back to the home of one of the host company's directors. Carla was asked by the director to accompany him out into the stairwell of the apartment block. She followed him and left all her belongings inside, including her handbag, phone and keys. Out in the stairwell he raped her. Carla eventually got out of the apartment block and asked a group of passers-by to call '000'. The police arrested the director and took Carla to the hospital. On her way to the hospital, whilst crying and in a traumatized state, Carla notified her immediate supervisor that she had been assaulted by one of the directors. The labour hire agency subsequently advised Carla that the host company no longer required her services and she was asked to return the company's belongings to the agency. Neither the labour hire agency nor the host employer took any steps to investigate the sexual harassment allegation.

Recommendation 2: The SDA should be amended so as to include a positive duty to eliminate sexual harassment.

- a. The SDA does not currently include a positive duty on organisations to prevent sexual harassment.
- b. The Federal Court of Australia (FCA) has rejected an argument that the definition of sexual harassment, outlined in s28A of the SDA, includes the "*failure by the employer to act to prevent its occurrence, the suffering of a sexually hostile working environment, and the failure to quash it once it commenced.*"¹⁰ Indeed, Justice Mansfield of the FCA has held that "a failure to have a formal policy against sexual harassment and to publicise it" does not of itself fall within the concept of sexual harassment.¹¹
- c. Accordingly, whilst an organisation may choose to implement policies/procedures for dealing with sexual harassment complaints for the purpose of denying vicarious liability under s 106(2) of the SDA, there is currently no requirement in the SDA to do so.
- d. A positive duty in the SDA could be loosely modeled on the positive duty contained in the *Equal Opportunity Act 2010 (Vic)* (**EO Act**), which provides that 'a

¹⁰ *Poniatowska v Hickinbotham* [2009] FCA 680 [301]-[302].

¹¹ *Ibid* [302].

*person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation as far as possible.*¹²

e. The factors relevant to whether a measure is reasonable and proportionate are listed in the EO Act as follows:

- i. the size and nature of the person's operations;
- ii. the person's resources and operational priorities;
- iii. the practicability and the cost of the measures.¹³

f. Any positive duty to eliminate sexual harassment should include reporting obligations, such as those in the *Workplace Gender Equality Act 2012* (Cth), which require certain employers to prepare a written public report with information relating to the gender equality indicators within that workplace.¹⁴

g. There should also be clear enforcement provisions and consequences for any failure to comply with the positive duty to eliminate.

Recommendation 3: The SDA should be amended so as to require organisations to adequately respond to disclosures of sexual harassment, including, where necessary, by way of a personal safety plan

a. Upon receiving a disclosure of sexual harassment, an organisation should be obliged by the SDA to take further steps to protect people (including their employees, contractors, volunteers, customers, patients, service providers, students, tenants, members etc) from any further sexual harassment.

b. In the employment context, employers should be required to respond to employee/worker disclosures of sexual harassment by initiating, with the consent of the employee, the process of creating a personal safety plan. A personal safety plan should consider:

- i. Workplace safety and security measures;
- ii. Measures to protect the affected person from any immediate threat or danger;
- iii. Measures to protect the person from unwanted or abusive contact;
- iv. Training for staff members to prevent sexual harassment and victimisation;
- v. Disciplinary action to address sexual harassment;
- vi. Flexible working arrangements including but not limited to working at a different location or different hours; and
- vii. Leave entitlements to support the affected person to attend to issues related to their safety and wellbeing.

h. The following case study demonstrates the need for positive steps to be taken after a disclosure is made to an employer and it highlights how poor

¹² *Equal Opportunity Act 2010* (Vic) s 15(2).

¹³ *Ibid* s 15(6).

¹⁴ *Workplace Gender Equality Act 2012* (Cth) s 13(1).

complaint-handling mechanisms add to the trauma for women who experience sexual harassment.

Tina was a Thai woman in her 40s with limited English. She worked in the kitchen of a hospital. She was rostered to work one Christmas Day and, during a quiet period in her shift when she thought no one else was in the storage room, she stood against the storage shelf, facing the wall, so that she could sign the Christmas cards she had prepared for her co-workers. She suddenly felt someone pushing up against her from behind. It was one of her male co-workers, who had an erection. Tina was shocked. She pushed him away and told him that what he'd done to her was horrible. She reported the matter to the police before reporting it to her manager. The next day, two police officers attended her workplace without her knowledge. During her shift, Tina was called in to the HR office. The police officers and her manager were present. The police read out Tina's statement and asked Tina whether she preferred for them to arrest the perpetrator or to allow the employer to handle the problem. She opted for the latter and returned to work, feeling overwhelmed and highly distressed. Some hours later, Tina was again called to the HR office. She was told that the perpetrator had been directed by HR not to talk to Tina. She was also told not to talk to anyone else about the incident. Tina did not feel at all supported by her employer. To the contrary, she felt disbelieved and she resented being prevented from talking about the incident. Tina took sick leave while the employer conducted an internal investigation. She was eventually informed by the police that her employer planned to issue the perpetrator with a formal warning but still allow him to work (he had not been stood down since the incident). Tina was unhappy with this proposed outcome. She had asked her employer to transfer the perpetrator to a different branch of the hospital, but she had been told that there were no vacancies anywhere else. Tina's distress about the incident of sexual harassment was compounded by her employer's poor handling of the matter.

Recommendation 4: The victimisation prohibition in the SDA should be improved and strengthened so as to:

- a) Recognise detrimental action taken because of a person's rejection of sexual harassment as victimisation; and**
 - b) Explicitly protect whistleblowers or witnesses who intervene, call out or try to stop any sexual harassment.**
- a. Currently the SDA provides that a person victimizes another if they threaten or subject another person to any detriment because the other person has done or proposes to do any of a number of things which are listed in s94(2) of the SDA.
 - b. The current victimisation provision has significant limitations. Most notably, the provision does not expressly cover detrimental conduct caused by the refusal, rejection, or non-acceptance of sexual harassment. That is, whilst the sexual harassment itself might be actionable under the SDA, any adverse action that is

linked to the rejection of a sexual advance is not currently explicitly recognized as being separately actionable as victimisation.

Case study:

Rachel ran her own cleaning business. She entered into a cleaning contract with a construction company. The building manager with whom she had all her business dealings for this contract was a man who often commented on Rachel's relationship status and asked her personal questions of a sexual nature, which made her feel very uncomfortable. While Rachel was cleaning one day, the building manager instructed her to clean the tile grout. She said that was not part of her cleaning agreement. He raised his voice and said: "*Shut your mouth, get on your knees and scrub the fucking tiles.*" Soon after this incident, Rachel took a phone call from him one day in which he asked her: "*Did you forget to tell me something?*" She did not know what he was referring to and he added "*You did some naked photos [in the past].*" Rachel felt that he had stalked her on the internet and had found some old photos of her which were not readily available to the public. The building manager later asked Rachel to send him "*A complete range of [her] services.*" When Rachel refused to take the bait, he continued by asking whether she would provide her services if she were "*locked in a bathroom?*" Rachel interpreted this as a rape threat. Having rebuffed his sexual advances, Rachel then began to be micro-managed by the building manager and eventually she was informed by him that he would lower her pay rate. Rachel finally terminated the cleaning contract because of his sexual harassment and the fact that he had subjected her to a detriment following her rejection of his sexual harassment.

- c. A further problem with the victimisation prohibition in the SDA, is that it does not afford protection to people associated with the person who was sexually harassed. This means that bystanders who might intervene in a sexual harassment incident or support a person who is being/has been sexually harassed are not afforded protection with regard to victimisation.
- d. A major issue facing people who are sexually harassed is a lack of support, intervention and isolation in the workplace from colleagues and witnesses. The victimisation prohibition needs to be strengthened so as to encourage people to intervene, call out any sexual harassment and report it if necessary, without fear of reprisal. Bystander intervention is a key to reducing incidents of sexual harassment and to dismantling workplace cultures which produce sexual harassment.¹⁵

¹⁵ Ann L Coker et al, 'Multi-College Bystander Intervention Evaluation for Violence Prevention' (2016) 50(3) 295 <<https://www.ncbi.nlm.nih.gov/pubmed/26541099>>.

Recommendation 5: There should either be no set timeframe for making sexual harassment complaints to the AHRC or the timeframe should be extended to 6 years.

- a. On 13 April 2017, a number of amendments to the *Australian Human Rights Commission Act 1986 (Cth)* (**AHRC Act**) came into effect. Those changes included requiring the President of the AHRC to undertake an initial assessment to consider whether a complaint should be terminated pursuant to one of the termination grounds. This assessment now occurs before the President commences an inquiry or attempts to conciliate a complaint. The termination grounds are grouped into mandatory and discretionary grounds.
- b. One of the listed discretionary grounds is that the President can now terminate a complaint if the complaint was lodged more than 6 months after the alleged act, omission or practice took place. This change only applies to acts, omissions or practices that take place after 13 April 2017 (the date of the amendment).¹⁶ Prior to this amendment, the President had the power to terminate a complaint lodged more than 12 months after the alleged events.
- c. Survivors of sexual harassment may not come forward to report sexual harassment within 6 months due to the trauma, embarrassment, shame and fear inflicted on them.
- d. As a society, we should make it as easy as possible for people to complain about sexual harassment, to expose perpetrators and shed a light on their unacceptable behaviours, rather than forcing complainants to navigate tight time limits and confusing termination procedures.
- e. JobWatch's position is that sexual harassment complaints should be able to be lodged within an unlimited period of time after the alleged act or practice takes place, and the President should not have the power to terminate a complaint merely on the ground that it was lodged late.
- f. Alternatively, if there must be a discretionary power to terminate sexual harassment (and discrimination) complaints because they are lodged late, JobWatch recommends that the timeframe be extended to 6 years after the alleged act or practice took place. A 6 year-time limit would be in line with the time limits for filing general protections non-termination claims and recovery of entitlements claims under the *Fair Work Act 2009 (Cth)* (**FWA**).

Recommendation 6: There should be a costs protection for applicants wishing to file proceedings under the SDA, in the same way as there is for proceedings under the *Fair Work Act 2009 (Cth)* (FWA).

- a. In *Chen v Monash University*,¹⁷ a female professor who filed claims of sex discrimination and sexual harassment against a colleague at Monash University, was ordered to pay her employer's legal costs of \$900,000 after she lost her case.

¹⁶ *Australian Human Rights Commission Act 1986 (Cth)* s46PH.

¹⁷ [2015] FCA 130.

Results like this act to disincentive complainants from pursuing sexual harassment claims.

- b. The costs risks for complainants under the SDA is one of the reasons many women prefer to issue sexual harassment proceedings under one of the State anti-discrimination Acts, like the EO Act, where costs do not automatically follow the event. JobWatch recommends that the default position for claims under the SDA should be that each party bears its own costs but that a party may be ordered by a court to pay another party's costs only if the court is satisfied that:
 - i. the party instituted the proceedings vexatiously or without reasonable cause; or
 - ii. the party's unreasonable act or omission caused the other party to incur the costs; or
 - iii. the party unreasonably refused to participate in a matter before the AHRC and the AHRC matter arose from the same facts as the proceedings.¹⁸

Recommendation 7: The sexual harassment prohibition in the SDA should be a civil remedy provision which attracts pecuniary penalties and the AHRC should be given additional powers.

- a. Under the FWA, a court of competent jurisdiction can order an employer that has breached a civil penalty provision (which includes relevantly the discrimination and workplace rights protections) to pay a penalty.
- b. Penalties are currently up to \$63,000 per breach if the employer is a body corporate and up to \$12,600 per breach if the employer is an individual. If the court is satisfied that there were *serious contraventions* of the FWA, meaning that the employer knowingly contravened the legislation and there was a pattern of conduct relating to one or more persons, the maximum penalties are \$630,000 per breach for bodies corporate and \$126,000 per breach for individuals.
 - a. Persons involved in the contravention can also be ordered to pay a pecuniary penalty.
 - b. The Fair Work Ombudsman (**FWO**), trade unions and individuals affected by contraventions of civil remedy provisions all have the power to seek pecuniary penalties against offending employers and any accessories.¹⁹
 - c. Penalties are usually payable into consolidated revenue but a court can order penalties to be payable to the individual, their union or any other organisation.
 - d. The FWO is very well resourced and has obtained millions of dollars in penalties against offending employers.²⁰ When the FWO obtains an order against an offending employer, it usually issues a media release, with the aim of deterring

¹⁸ This is based on s570 of the *Fair Work Act 2009 (Cth)*.

¹⁹ *Fair Work Act 2009 (Cth)* Chapter 4, Part 4-1.

²⁰ For example, in one financial year alone, 2014–2015, the FWO recovered \$22.3 million in back-pay for more than 11,000 workers.

non-compliance and/or encouraging cooperation with any FWO investigation and early resolution of matters.

- e. JobWatch recommends that to a similar approach be adopted in the context of the SDA's sexual harassment prohibition. That is, courts should be empowered to order pecuniary penalties against offending corporations and individuals (and any accessories).
- f. Moreover, the AHRC Commission should be given similar powers as those of the FWO,²¹ to monitor compliance with the SDA, inquire into and investigate any contraventions of the SDA, prosecute offending corporations and individuals and accept enforceable undertakings.

Anna was a young woman who worked in sales. She was offered one-on-one coaching by one of the male company directors who had recruited her. The coaching began with him asking her to complete a personality questionnaire. This gave him access to a lot of personal information about Anna. The coaching, which lasted for several months, was primarily focused on Anna's personal life. Her boss gradually gained more and more control over Anna's social life, isolating her from her friends and family and making her increasingly emotionally dependent on him. The director told Anna that she must always answer his phone calls and that if she ever needed to talk to someone she should only call him. He taunted her by saying things like *'people just don't like you'* but he simultaneously made her believe that he was the only person who could help her achieve success. Anna saw him as her mentor and a *'father figure.'* Eventually her boss asked Anna to accompany him on a work trip out of town. He told her they would stay in a 2 bedroom apartment. He said this was *'accepted practice.'* In the car, he asked Anna *"When was the last time you had sex?"* He then said that a lack of sex led to her being in *"a bitchy mood."* He talked to her about the benefits of sex not only for her happiness but also for her sales figures. His grooming of Anna culminated in a sexual relationship. When Anna ended this, the director said he would no longer continue with the one-on-one mentoring as she did not have the ingredients for success and he was *'letting her go from [his] sights'*. Anna suffered a mental breakdown and required ongoing psychological counselling.

Recommendation 8: Apart from being unlawful under the SDA, sexual harassment should also be made unlawful in the *Fair Work Act 2009 (Cth)* (FWA) and the Fair Work Information Statement, which must be provided to new employees as soon as they start a new job, should contain information about sexual harassment.

- a. The creation of a separate sexual harassment prohibition in the FWA would serve to give those who experience sexual harassment another option for redress.

²¹ *Fair Work Act 2009 (Cth)* s 682(1)(d).

- b. We submit that sexual harassment complaints should be able to be made either to the AHRC under the SDA or to the Fair Work Commission under the FWA, or to any of the State/Territory anti-discrimination bodies.
- c. Information about sexual harassment, including what it is and how to complain about it, should be outlined in the Fair Work Information Statement which must already be provided to all new employees upon starting a new job.
- d. Any sexual harassment prohibition in the FWA should protect *workers* (not just employees) as per the bullying provisions of the FWA.
- e. The FWO's powers should be extended to deal with sexual harassment complaints, including by way of investigation and prosecution.
- a. Workers who feel they have been sexually harassed at work, in circumstances where there is a risk that they will continue to be sexually harassed at work, should be able to apply to the Fair Work Commission for an order(s) to stop the sexual harassment.

Maria was employed on a six-month contract as a store manager. Towards the end of that contract, Maria's work performance was acknowledged as being excellent and all the evidence indicated that her contract would be renewed or extended. She attended a work function where she alleged she was sexually harassed by the company's managing director, who made comments of a sexual nature to her while rubbing his leg against hers under the table. Maria rebuffed his advances by looking him in the eyes and saying softly but firmly that she was not prepared to meet him alone and would only meet him in the presence of HR. Maria went home feeling shocked and upset by what had happened. The next day, she called him at the end of her shift, as she was required to do, to report on the day's sales figures. He called her a "slut" over the phone. She hung up and started crying. She then emailed HR advising that she would not attend that evening's scheduled work function. She did not go into detail about what had happened but she said that the managing director's behaviour had been "*...not warranted or appropriate.*" Maria's email to HR was never followed up and her contract was left to expire shortly afterward. Maria did not want to issue two sets of proceedings in different jurisdictions. She elected to pursue a general protections claim in respect of the non-renewal of the contract, so her sexual harassment claim was never tested.

Catalina was a young international student with limited English who found a job as a cleaner to help her pay for her education and living expenses in Australia. Her boss was an older man who operated as a sole trader franchisee, cleaning various hotels. Catalina was never paid for her first two shifts as her boss told her these were 'training' days. He underpaid Catalina, did not provide her with pay slips, did not make any superannuation contributions for her and he always paid her late. When she explained that she desperately needed to be paid on time, he stood up close to her face and asked: "*Are you willing to do anything for money?*" Over the following weeks, Catalina was repeatedly told by her boss that she needed to be

“friendly” and hug him more. She felt forced to hug him on several occasions. She told him she didn’t like it but he persisted. He also reached out to touch her buttocks when he would see her, making her move out of his reach so as to avoid his physical contact. Eventually, after Catalina’s boss told her that if she wanted to keep her job she would have to “*make [him] happy*” she decided to quit even though she badly needed an income. Catalina decided to put her energy into recovering her unpaid wages rather than pursuing a sexual harassment complaint.

Recommendation 9: Work health and safety regulators across State and Federal jurisdictions should be properly resourced so as to investigate and prosecute sexual harassment matters in a timely and appropriate manner.

- a. Sexual harassment must be recognized by employers and principals as an occupational health and safety issue and all the work health safety regulators across Australia must be given the tools to properly manage sexual harassment claims. This should not be done at the expense of the AHRC but, rather, it must be done in addition to the proper allocation of resources to the AHRC.
- b. In order to properly deal with sexual harassment complaints, work health safety regulators should have specially trained units, similar to the Sexual Offences and Child Abuse Investigation Teams (SOCITs) set up within Victoria Police.

Yolanda was a young international student with limited English. She found a job as a cleaner. She was told to get an Australian Business Number and was sent to clean private residential properties on her own, without any training about occupational health and safety matters. Shortly after she arrived at one residential property, the owner of the house sexually harassed her by exposing himself to her. She fled the house in fear and disgust and was unable to return to work for three months due to feeling traumatized by that event.

Recommendation 10: Existing organisations, including statutory agencies and not-for-profit organisations such as community legal centres and organisations aimed at protecting and supporting women should be better resourced to provide the specialist legal, advocacy and other support services to people who experience sexual harassment.

- a. There are some inherent problems with an individual complaints driven process and these issues could, to a large extent, be overcome if community legal centres and other organisations had sufficient funds to make representative complaints on behalf of at least one person who is not a complainant.
- b. Section 46PB-46PC of the AHRC Act already allows for representative complaints to be lodged to the AHRC, and Part IVA of the *Federal Court of Australia Act 1976* allows representative proceedings to be commenced in the Federal Court of Australia (FCA) in certain circumstances. It appears that representative complaints cannot currently be brought in the Federal Circuit Court of Australia (FCCA).

- c. The circumstances in which representative complaints (to the AHRC) and representative proceedings (to the FCA) can be made, should be streamlined, simplified and kept consistent across the AHRC, FCA and FCCA.
- d. Moreover, in order for community legal centres and other organisations to make representative complaints/bring representative proceedings, they must be better resourced, and possibly funds could be allocated for these kinds of matters.

Queries/comments

If you have any questions regarding any aspect of this submission, please do not hesitate to contact Gabrielle Marchetti [REDACTED]
[REDACTED]

Yours faithfully,

[REDACTED]

Gabrielle Marchetti
Principal Lawyer
JobWatch Inc

With the invaluable contribution of interns from the University of Melbourne and the Australian Catholic University