



8 July 2021

Senate Education and Employment
Legislation Committee

[ANMF letter in response to the Senate Education and Employment
Legislation Committee inquiry into the *Sex Discrimination and Fair Work
\(Respect at Work\) Amendment Bill 2021*.](#)

Dear Senators

The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to provide a response to the above Senate Inquiry.

[About the ANMF](#)

The ANMF is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial, and political interests of more than 300,000 nurses, midwives, and personal care workers (PCWs) across the country. Approximately 89% of the ANMF's membership are women.

Our members work in the public and private health, aged care, and disability sectors across a wide variety of urban, rural, and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, to fulfil their professional goals, and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a trade union and professional organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF believes all nurses, midwives and carers have the right to work in a safe and healthy workplace environment and to perform their work without risks to their physical and psychological health and safety.

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ANMF Journals

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The ANMF considers it is vital that every possible measure be taken to eliminate the risks of sexual harassment, gendered violence and discrimination in the workplace. To achieve elimination of sexual harassment, gendered violence and discrimination there must be systemic change to workplace structures that perpetuate gender inequality and cultural attitudes that condone unacceptable behaviour. These changes must be encouraged and supported by legislative, regulatory and policy reform.

The ANMF supports the submission of the ACTU in relation to this Bill and wishes to express its strong support for the analysis and recommendations made in the submission.

The Bill

The ANMF welcomes the reforms proposed in the Respect at Work Bill, but is concerned that the reforms fall well short of what is required to prevent sexual harassment and gendered violence at work. The proposed reforms do not meet the recommendations made by the Sex Discrimination Commissioner in the Report- Respect@Work. It is an indictment on the current government that it has taken so long to respond to the report provided in March 2019 and that a number of key recommendations with respect to amending the Fair Work Act have been ignored. This is difficult to comprehend in light of the ever increasing understanding of how deeply the effects of sexual harassment and gendered violence have impacted the lives of so many working people.

The ANMF supports reforms in the Bill to:

- Amend the FW Act to include miscarriage as a permissible occasion for which compassionate leave can be taken.
- Extend the existing stop bullying regime to sexual harassment
- Amend the Sex Discrimination Act to:
 - Adopt definitions of worker and person conducting a business or undertaking to ensure all workers and workplaces are protected from sexual harassment.
 - Clarify that the SDA extends to judges and members of Parliament.
 - Remove the exemption of state public servants.
 - Ensure ancillary liability also extends to the prohibitions against sexual harassment and sex-based harassment.
 - Make it explicit that any conduct that is an offence under section 94 (which prohibits victimisation) can form the basis of a civil action for unlawful discrimination in addition to a criminal complaint.



- Amend the *Australian Human Rights Commission Act 1986* (AHRC Act) to:
 - Extend the President's discretion to terminate a complaint under the Sex Discrimination Act to 24 months since the alleged unlawful discrimination occurred; rather than 6 months.

What must be included in the Bill

The ANMF agrees with the ACTU's recommendation submission that the reforms need to be extended to ensure all recommendations of the Respect@Work report are adopted in full. The Bill should be amended to include:

- A new section containing a clear prohibition on sexual and sex-based harassment.
- An effective and accessible dispute settlement process into the FW Act.
- Prohibit a person from sexually harassing a worker or subjecting a worker to sex-based harassment in any circumstances connected with work, or prospective work in a business or undertaking. This should be a civil remedy provision enforceable by the courts.
- Sexual harassment should be defined as per s28A of the *Sex Discrimination Act* and should include clarification that sex-based harassment includes 'creating intimidating, hostile, degrading, humiliating or offensive work environment'.
- Include a secondary contravention where an employer or person conducting a business or undertaking (PCBU) 'fails to prevent' a worker being sexually harassed or subjected to sex-based harassment
- Rights for a worker who claims they have been or are being sexually harassed or subjected to sex-base harassment should have the right to lodge a sexual harassment and or sex-based harassment notification with the Fair Work Commission.
- 10 days paid family and domestic violence leave in the National Employment Standards.
- Amend the *Sex Discrimination Act* to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible.
- Empower the Human Rights Commission to conduct own motion inquiries in relation to unlawful sex discrimination, sex-based harassment, sexual harassment and victimisation, with enforcement measures attached.
- Amend the *Australian Human Rights Commission Act* (AHRC Act) to ensure costs may only be ordered against a party if satisfied that the party instituted the proceedings vexatiously or without reasonable cause, or if the court is satisfied that a party's unreasonable act or omission caused the other party to incur costs.



- Amend the AHRC Act to allow public interest actions to be brought to court by representative bodies such as unions.
- Strengthen the 'stop sexual harassment' process to allow the FWC to award compensation or penalties and extend its application to workers who have already been forced out of a workplace and remove and expand the workplaces that will be subject to the process.

Conclusion

The ANMF agrees wholeheartedly with the ACTU conclusion that the Bill is a missed opportunity to bring about the comprehensive and integrated reforms recommended in the Respect@Work Report. Without fully adopting the recommendations, the burden of complaint and challenging entrenched sex-based violence, discrimination and harassment in the workplace will continue to fall on individuals, predominantly women. This is unacceptable to the ANMF and its members. We urge the Senate Committee to adopt the Respect@Work recommendations in full and seek to ensure the Bill is amended to include all of the measures necessary to give effect to the recommendations.

Yours Sincerely

Annie Butler
Federal Secretary