



Preventing sexual harassment & promoting gender equality in Tasmanian workplaces

Unions Tasmania

April, 2021



Preventing sexual harassment & promoting
gender equality in Tasmanian workplaces

Introduction

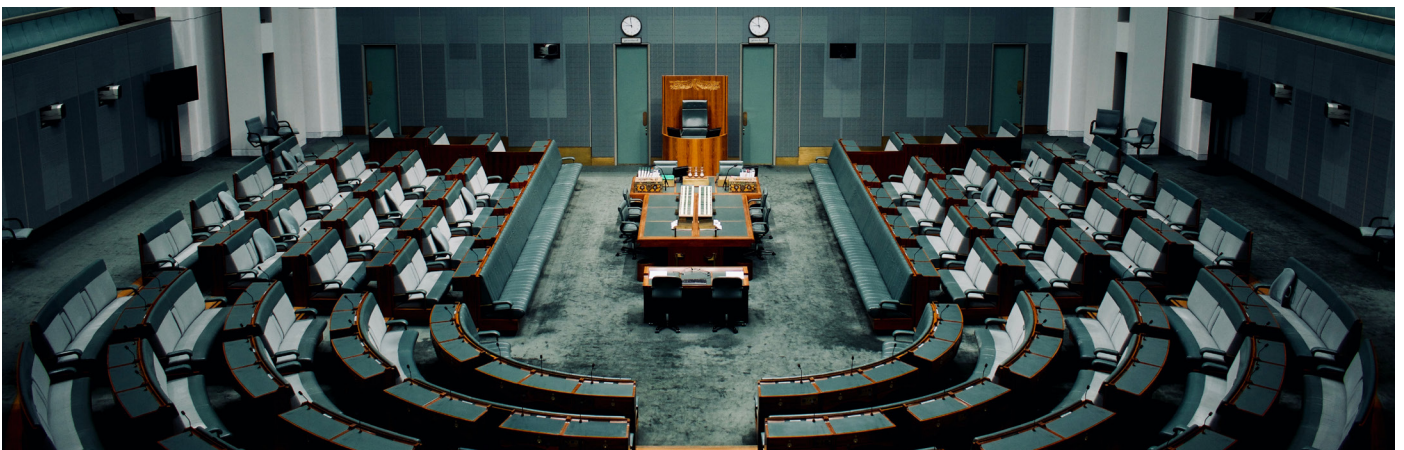
Introduction

Sexual harassment and gendered violence are workplace health and safety issues. Furthermore, it is an entirely preventable hazard. Governments play the central role in directing how work health and safety risks are to be managed in workplaces, including the risk of sexual harassment and gendered violence.

Unions in Tasmania and in partnership with our national peak body have long advocated for action on gendered violence and harassment at work. The Australian Council of Trade Unions (ACTU) 2018 *Sexual Harassment in Australian Workplaces Survey*¹ found that over the course of a person's working lifetime, 64% of women and 34% of men respondents had personally experienced one or more forms of sexual harassment.

The ACTU survey found strong support from workers who have experienced harassment for mandatory training to prevent harassment from occurring, a more effective complaints mechanism and clear workplace policies, with sexual harassment treated plainly as a workplace health and safety issue.

In 2021, the issue of sexual harassment and gendered violence in the workplace and in our society more broadly is firmly in the national spotlight with stories of sexual assault and violence occurring in workplaces right up to the Federal Parliament.



¹https://www.actu.org.au/media/1385284/a4_sexual-harassment-survey-results_print.pdf

Preventing sexual harassment & promoting
gender equality in Tasmanian workplaces

Respect@Work Report

Australian Human Rights Commission (AHRC) Respect@ Work Report

In 2020, after more than a year of consultations and research conducted by the Australian Human Rights Commission with women and men across the country, the Sex Discrimination Commissioner delivered a final report to the Federal Government - the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report².

It found that sexual harassment in Australian workplaces was 'widespread and pervasive.' The report's finding that in the last five years, 39% of women and 26% of men have experienced sexual harassment at work, but only a minority report it because they aren't confident in fair outcomes in the current system, comes as no surprise to unions. We regularly hear from our members about sexual harassment in Tasmanian workplaces and continue to advocate for targeted, evidence-based policy to address this safety issue and the underlying inequality that contributes to it.


The report made 55 recommendations to Government for reform.



“

39% of women and 26% of men have experienced sexual harassment at work, but only a minority report it because they aren't confident in fair outcomes in the current system

²<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>



Preventing sexual harassment & promoting
gender equality in Tasmanian workplaces

Government Response

Government response to Respect@Work

On the 8th of April 2021, the Morrison Government responded to the Respect@Work report with its own 'Roadmap to Respect'.

After a 12 month wait, and a month after Australia saw the largest women's rallies in decades as part of the 'March 4 Justice' movement, the Australian Government finally gave their response to each recommendation.

Unions Tasmania supports all the recommendations of the Respect@Work report and welcomes commitments by the Government to implement most of the recommendations but their response, sadly, falls short.

The Federal Government response fails to provide proper protections for women at work, with no new rights for people experiencing sexual violence and harassment and no further responsibility on employers to ensure a safe workplace and prevent sexual violence and harassment.

It is the Tasmanian union movement's view that Morrison failed to act on arguably some of the report's most important recommendations, by:

1

Failing to commit to necessary changes to work health and safety (WHS) laws and regulations;

2

Failing to create a positive duty to prevent sexual harassment in the *Sex Discrimination Act 1984*;

3

Failing to introduce a new 'stop sexual harassment order' into the *Fair Work Act 2009*.

What the Tasmanian Government can do

What the Tasmanian Government can do

It is now the responsibility of the Tasmanian Government to step in where the Federal Government has failed.

Unions Tasmania is calling on all political parties and candidates to publicly commit to implementing the legislative change in Government where they have jurisdiction and pressing the Federal Government to act where they do not.

Furthermore, we are seeking the establishment of a Gender Equality Act and Gender Equality Commissioner to advance gender equality in the workplace and the broader community.

In his State of the State address on the 16th of March, Premier Gutwein said the following:



Further, in terms of the rallies held yesterday around the country, and the hundreds of women who marched and rallied for a more inclusive, safe and fair society here in Tasmania - I see you, I hear you. This Government, this Parliament sees you and it hears you, and while action has been taken already, we know there is more to be done, and we will not shirk our responsibilities to ensure that everyone is safe, everyone is respected and everyone is supported.

We welcome this commitment to gender equality. We urge all politicians who have expressed support for equality to turn words into action.

***Tasmanian unions seek the commitment of political leaders
that these actions will be taken as a matter of urgent priority
following election***

What the Tasmanian Government can do

Recommendation One

Commit to legislating recommendations made by both the AHRC Respect@Work report and the Boland Review that support the development of a psychological health Regulation under the Work Health and Safety Act 2012 (Tas). Develop guidelines on sexual harassment with a view to informing the development of a Code of Practice on sexual harassment.

Tasmania's WHS laws are based on a set of model laws at a national level. These model laws form the basis of most WHS laws across the country including here. All Ministers responsible for workplace health and safety are due to meet in likely May 2021 to decide whether to adopt the recommended changes following an independent review by Marie Boland (the Boland Review³) in 2018. We seek the commitment of the Tasmanian Government to bring the voice of workers to the table at this meeting and vote in favour of all the Boland Review recommendations, including the development of a psychological health Regulation.

Regardless of whether national agreement is reached on changing the model laws, we call on the Tasmanian Government to commit to develop a psychological health regulation under the *Work Health and Safety Act 2012 (Tas)*.

Tasmanian work health and safety regulations are already clear about how the risks of such things as manual handling, working at heights, or asbestos are to be managed. This same clarity must be provided for managing the risk of gendered violence and harassment.

There is an important difference between Regulations and Codes of Practice or other guidance material. Whereas Codes tell employers what they should do, Regulations tells employers what they must do. Regulations are also enforceable if they are not complied with.

Tasmania's safety regulator, WorkSafe Tasmania, also has a critical role to play in keeping women safe at work. The Tasmanian Government should provide additional resources for WorkSafe Tasmania directors and inspectors to undertake accredited training and education on the nature, drivers and impacts of sexual harassment to inform their work.

³<https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>

What the Tasmanian Government can do

Recommendation Two

Legislate for a Gender Equality Act and a Gender Equality Commissioner.

We call on the Tasmanian Government to introduce Tasmanian legislation similar to the Victorian Government's *Gender Equality Act 2020* and to establish a Tasmanian Public Sector Commissioner for Gender Equality to drive positive change in our State. Specifically, a Tasmanian Gender Equality Act would:

- Require all entities run by or on behalf of the Tasmanian Government, including the University and local councils to take positive action towards achieving workplace gender equality.
- Require these organisations to consider and promote gender equality in their policies, programs and services.
- Establish a properly resourced and empowered Public Sector Gender Equality Commissioner to provide education, support implementation and enforce compliance.

These organisations would be required to undertake specific actions to achieve gender equality, such as undertaking a gender equality audit of their workforce, developing action plans and tracking progress against defined gender equality indicators, and conducting gender impact assessments on their policies, programs and services to ensure that they are designed to benefit all Tasmanians.

Recommendation Three

Fund a Working Women's Centre within Unions Tasmania.

Establish within Unions Tasmania a Working Women's Centre with recurrent funding to provide information, advice and assistance to vulnerable workers who experience sexual harassment, taking into account particular needs of workers facing intersectional discrimination.



Preventing sexual harassment & promoting
gender equality in Tasmanian workplaces

What the Tasmanian Government can do

Recommendation Four

Urge the Morrison Government to take strong action at a Federal level by legislating for a positive duty in the Sex Discrimination Act 1984 and sexual harassment provisions in the Fair Work Act 2009, and to ratify the ILO Convention on Violence and Harassment in the World of Work (No. 190).

Stop sexual harassment provisions in the *Fair Work Act 2009*


The Morrison Government hasn't agreed to introduce the recommended 'stop sexual harassment order' into the FWA. Instead, Morrison wants to see whether the existing 'stop bullying order' provisions can double as 'stop sexual harassment order' provisions, despite significant limitations like the fact that if a worker has left an unsafe workplace, they cannot complain, or the requirement for behaviour to be repeated before it can be addressed. One incidence of sexual harassment or violence is one too many.

Our view is that sexual harassment is a distinct issue and warrants its own 'stop sexual harassment order' provisions under the *Fair Work Act 2009* that ensure a fair and accessible process for dealing with workplace sexual harassment.

Positive duty in the *Sex Discrimination Act 1984*

The Respect@Work report recommends the introduction of a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible, within the *Sex Discrimination Act 1984*.

The Morrison Government's response is only that it notes the recommendation. Without action, they're leaving the onus on the shoulders of women to make complaints instead of on employers to prevent sex discrimination and harassment.



Preventing sexual harassment & promoting
gender equality in Tasmanian workplaces

What the Tasmanian Government can do

ILO Convention on Violence and Harassment in the World of Work (No. 190)

Internationally, the right of all workers to be free of gendered violence and harassment, the disproportionate impact this has on women and girls, and the role of governments in preventing and addressing this safety hazard is also reflected in the United Nations' International Labour Organization's Violence and Harassment Convention, 2019 (No. 190)⁴.

The convention makes specific reference to both work health and safety management, and underlying causes of gendered violence including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations. Australia is a signatory to this convention but the Federal Government is yet to ratify it.

Community-wide response and support for people impacted by gendered violence

We support the recommendation to provide increased and recurrent funding to community legal centres, Aboriginal and Torres Strait Islander Legal Services, and legal aid commissions to provide legal advice and assistance to vulnerable workers who experience sexual harassment, taking into account the particular needs of workers facing intersectional discrimination. This is another action that the Tasmanian Government can take now, and we call on them to make this a clear commitment.

⁴https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190