

Too much left out of Jenkins response: ACTU

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The ACTU has labelled the Morrison Government's legislation arising from the [Respect@Work report](#) a "missed opportunity" to deal with sexual harassment and violence at work.

The peak union body says the [Sex Discrimination and Fair Work \(Respect at Work\) Amendment Bill](#), introduced today, constitutes a limited set of reforms that fail to act on key recommendations of Sex Discrimination Commissioner Kate Jenkins in *Respect@Work*.

The legislation amends the Fair Work Commission's bullying jurisdiction to include sexual harassment at work, allowing it to make a "stop sexual harassment order".

The ACTU said the proposed "stop sexual harassment" orders are a positive step but do not allow the FWC to award compensation or penalties, and workers who had already been forced out of a workplace due to sexual harassment could not access the process.

The government argues the legislation protects more workers, particularly vulnerable workers, by broadening the scope of people covered by the Sex Discrimination Act to include volunteers, interns and the self-employed.

But the provisions on where the worker is being "bullied or sexually harassed at work" only apply to those working in a constitutionally covered business as defined in the existing s 789FD(3) of the FW Act [s 789FD\(3\)](#).

The Bill's Explanatory Memorandum says the FWC can consider sexual harassment that occurred prior to commencement of the amendments but it could only make an order if there was a "risk of future harm."

ACTU president Michele O'Neil said that many workplaces are excluded from the legislation, but unions welcomed the inclusion of miscarriage as a reason for which compassionate leave can be taken.

She said central theme of the Respect@Work Report's recommendations was to better integrate and align the anti-discrimination, workplace and WHS systems and put in place a proactive, preventative approach to sexual harassment.

The Bill was a "missed opportunity that will continue to place the burden on the shoulders of individual women to enter complex and lengthy complaints processes at their own cost and risk."

O'Neil said the government had failed to adopt the following seven key recommendations in the report:

ILO Convention concerning the elimination of violence and harassment in the world of work (ILO 190)

Recommendation 15: The Australian Government ratify ILO Convention 190.

Positive duties

Recommendation 17: 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. In determining whether a measure is reasonable and proportionate, the Act should prescribe the factors that must be considered including, but not limited to:

- a. the size of the person's business or operations
- b. the nature and circumstances of the person's business or operations
- c. the person's resources
- d. the person's business and operational priorities
- e. the practicability and the cost of the measures
- f. all other relevant facts and circumstances.

Recommendation 18: The Commission be given the function of assessing compliance with the positive duty, and for enforcement. This may include providing the Commission with the power to:

- a. undertake assessments of the extent to which an organisation has complied with the duty, and issue compliance notices if it considers that an organisation has failed to comply
- b. enter into agreements/enforceable undertakings with the organisation
- c. apply to the Court for an order requiring compliance with the duty.

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Australian Human Rights Commission powers

Recommendation 19: Amend the Australian Human Rights Commission Act to provide the Commission with a broad inquiry function to inquire into systemic unlawful discrimination, including systemic sexual harassment. Unlawful discrimination includes any conduct that is unlawful under the federal discrimination laws. The Commission should be given powers to require:

- a. the giving of information
- b. the production of documents
- c. the examination of witnesses
- d. with penalties applying for non-compliance, when conducting such an inquiry.

Representative and/or collective claims

Recommendation 23: Amend the Australian Human Rights Commission Act to allow unions and other representative groups to bring representative claims to court, consistent with the existing provisions in the Australian Human Rights Commission Act that allow unions and other representative groups to bring a representative complaint to the Commission.

Recommendation 25: Amend the Australian Human Rights Commission Act to insert a cost protection provision consistent with section 570 of the *Fair Work Act 2009* (Cth).

Fair Work Act/Fair Work Commission

Prohibition against sexual harassment

Recommendation 28: The Fair Work system be reviewed to ensure and clarify that sexual harassment, using the definition in the Sex Discrimination Act, is expressly prohibited.

O'Neil said *Respect@Work* report laid out a comprehensive set of reforms that would ensure a safer workplace for women in Australia – but many of them have been completely ignored.

"This government was dragged to action on this issue by Brittany Higgins making public her alleged rape.

"Delayed action led to many women leaving work," she said.

"This report's recommendations represent the bare minimum that the Federal Government should be doing to support women in the workplace," she said.

"We know that only 17% of those sexually harassed at work report it, for reasons including fear of losing your job and backlash from the perpetrator."

"There must be more preventative measures and the Federal Government must give the Sex Discrimination Commissioner greater

powers to commence investigations into problematic workplaces – all of which was recommended by the report and ignored by the government."

The Bill has been referred to the [Senate Employment and Education Committee](#) to report by August 6.