



Thursday 2 March 2023

Adam Hatcher  
President  
Fair Work Commission  
Level 4/11 Exhibition Street  
Melbourne VIC 3000

Via: [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au)

Dear President Hatcher,

**RE: Sexual Harassment Jurisdiction Implementation Report**

I write to you on behalf of the Victorian Trades Hall Council (VTHC) and thank you for the opportunity to provide feedback to Fair Work Commission on its implementation report of the new sexual harassment jurisdiction.

VTHC was founded in 1856 and is the peak body for unions in Victoria. VTHC represents over 41 unions and more than 500,000 workers in the state. These workers are members of unions that reach into every industry across Victoria.

Unions have a long and proud history of advocating for workers. Victorian unions have been at the forefront of fighting for equality for women workers and have emphatically campaigned for changes to the law on sexual harassment at work. All women workers deserve to be safe and respected at work.

VTHC and affiliate unions warmly welcome the amendments to the *Fair Work Act (Cth)* 2009 that created the Fair Work Commission (FWC)'s new sexual harassment jurisdiction. The previous legal framework for sexual harassment at work was arduous, inaccessible, individualistic, and often resulted in poor outcomes that retraumatised the worker. The new provisions in the Act go a long way to address these issues. VTHC applauds the steps outlined in the FWC's implementation report, as it makes clear that the wellbeing of workers who are victim/survivors of sexual harassment as well as their access to timely justice is a genuine priority.

Sexual harassment is a part of a broad societal problem that positions women as lesser. Victim/survivors, predominantly women, are harassed by perpetrators that do not respect them because of their gender. This disrespect is part of a structural issue. The FWC's implementation of the new jurisdiction must ensure that workers subjected to sexual harassment are able to access justice. It should aid overall progress towards ending sexual harassment and gender-based violence once and for all.

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It is imperative that perpetrators are not protected by the private settlement of a claim and that workers subjected to sexual harassment are not silenced. Paragraph 48 FWC outlines that parties may contemplate the inclusion of confidentiality clauses in terms of settlement, and further at paragraph 52 that confidentiality clauses 'may no longer be a standard term' in FWC's draft terms of settlement.

VTHC recommends in the strongest terms possible that the FWC remove confidentiality from its standard terms of settlement in the new sexual harassment jurisdiction.

Confidentiality clauses stop a victim/survivor from requesting workplace changes after they've been sexual harassed. They bar women workers from speaking publicly about their experiences and advocating for improvements to laws and policy. They stop victim/survivors talking to their co-workers about their experiences which in turn may stop others from coming forward who have been subjected to the same sexual harassment. Confidentiality clauses mean that perpetrators are protected, and they mean that women workers subjected to sexual harassment are unable to access the real justice that they deserve.

The FWC must not include confidentiality clauses or non-disclosure agreements that restrict a worker subjected to sexual harassment from speaking about their experiences in their standard terms of settlement in this new jurisdiction.

There may be instances where it is appropriate that confidentiality clauses are included but such terms should only be entered into at the sole discretion of an applicant victim/survivor. Where confidentiality clauses are requested by the worker and entered into by the parties, the workers' consent to confidentiality must be able to be withdrawn at any time. Alternative arrangements in terms of settlement, for example a time limited confidentiality clause or an irrevocable agreement, should only be entered into subject to the victim/survivor having received industrial and/or legal advice, and most importantly, there being a clear, demonstrable benefit to the victim/survivor entering into an agreement with confidentiality terms.

Given the complex structural nature of the drivers of sexual harassment, Victorian unions are pleased to see that FWC Members have undergone training. VTHC recommends that there should be transparency around who has undertaken this training, whether it was mandatory, and also recommends that FWC Members and staff undertake training on gendered violence as a workplace issue.

Victorian unions also welcome the workplace advice service, and seek transparency about which partner organisations will form part of the service.

Unions should form part of the list that includes partners, as well as community legal centres such as the Young Workers Centre.

Lastly, Victorian unions note the sexual harassment working group advising the FWC on the implementation of the new jurisdiction does not include any community legal centres, nor does it include representatives from expert services such as the Centre Against Sexual Assault or Victorian Legal Aid. Without this expertise of subject matter experts, FWC is missing valuable insights that make the jurisdiction most accessible to those most need it. VTHC recommends as community legal centre representatives are included on working group.

VTHC once again thanks the Commission for the opportunity to be part of this important piece of work.

Should you wish to discuss this submission further, please contact Tiarne Crowther, Politics and Research Lead Organiser on [tcrowther@vthc.org.au](mailto:tcrowther@vthc.org.au).

Yours sincerely,



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