



5 October 2018

Office for Women
Department of Health and Human Services
50 Lonsdale Street
Melbourne Victoria 3000

Dear Secretary,

RE: GENDER EQUALITY BILL EXPOSURE DRAFT

Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission into the proposed Gender Equality Bill for Victoria.

VTHC was founded in 1856 and is the peak body for unions in Victoria. VTHC represents over 40 unions and more than 400,000 workers in Victoria. These workers are members of unions that reach into every industry in the state, both in the public and private sectors.

Since gaining the Eight Hour Day in April 1856, VTHC has had a long history of fighting for and defending the rights of workers in Victoria. The importance of winning the eight-hour day is significant not just in Australia but worldwide. Few advances in the quality of life for working people would have been achieved without the involvement of the Victorian union movement.

Over the last 160 years, VTHC and its affiliated unions have campaigned for and successfully won a range of important rights and entitlements for Victorian (and Australian) workers, including:

- Minimum wage
- Penalty rates
- Collective bargaining rights
- Occupational Health and Safety (OHS) protections
- Annual as well as sick (and carer's) Leave
- Maternity and parental leave
- Domestic violence leave
- Superannuation, and
- Protections from unfair dismissal and redundancy entitlements.

VTHC will continue to campaign tirelessly for the rights, entitlements and protections of workers in Victoria, no matter their employment status, gender, age or workplace.

Today more than ever, VTHC is focused on ensuring workers have access to safe workplaces, and secure jobs with good wages and conditions. Women workers in Victoria are often marginalised and their work exploited and undervalued, and VTHC applauds the commitment from the Victorian Government to address this important issue.

As the Exposure Draft Discussion Paper states, the "link between violence and attitudes towards women" is becoming more widely recognised, and it impacts on "social, civic and economic participation for women, men and gender diverse

LUKE HILAKARI
Secretary

CARINA GARLAND
Assistant Secretary

WILHELMINA STRACKE
Assistant Secretary

Trades Hall
54 Victoria Street Carlton 3054
Phone: 03 9659 3511
info@vthc.org.au
vthc.org.au
weareunion.org.au

people in Victoria,” and as such, it is vital that this legislation works to dismantle structural barriers and systems that create inequality.

This aim is imperative, and the commitment to action from Government is admirable. However, to make real and lasting change, the measures in the bill must be specific and enforceable. Without comprehensive compliance mechanisms, numerical gender quotas, and legal rights enshrined by law, this legislation risks becoming a platitude without effect.

This submission will cover seven topics; guiding principles, gender equality action plans, targets, frequency of reporting, procurement guidelines, monitoring and compliance, and the Ministerial Council. This submission will also briefly comment on the other issues raised by this bill.

This submission will be based on the position of VTHC that working environments in Victoria should be free from gender inequalities, that all workers should be able to achieve their full potential irrespective of gender and that gender pay gaps should be eliminated for all women workers.

It is further based on our understanding that women workers are subjected to gendered violence which is pervasive in our workplaces. Gendered violence is any behaviour, action, system or structure that causes physical, sexual, psychological or economic harm to a worker because of their sex, gender, sexual orientation or because they do not adhere to dominant gender stereotypes or socially prescribed gender roles. And that gendered violence at work exists and is perpetuated by unequal power relations and pervasive socially prescribed gender norms. Dismantling systems that create and re-enforce gendered violence are central to creating gender equality in the workplace. Further information about Victorian working women’s experiences of gendered violence at work can be found in the VTHC 2016 ‘Stop Gendered Violence Report.’¹

These recommendations are based in part on the Gender Pay Equity Principles for the Public Service, adopted by New Zealand,² and gender equality legislation adopted by Scandinavian countries.

a) Guiding Principles

The guiding principles of this legislation should clearly set out the values and actions that every Victorian must undertake in order to achieve true gender equality. VTHC agrees with the proposition that the purpose of this legislation should be to create gender equality, and that it must set out actions for achieving it. The principle that all Victorians have the right to safety and equality is imperative, and a core value of the Victorian union movement.

VTHC believes these principles form a good initial basis for the bill. However, they do not frame opportunities for real structural change. There is not enough detail to

¹ Stop Gendered Violence Report: Women’s Rights at Work Report (2016) Victorian Trades Hall Council

² ‘Gender Pay Principles’ (2018) < <http://women.govt.nz/work-skills/income/gender-pay-gap/gender-pay-principles> >

explain how these principles will be implemented, and certain principles are missing that are integral to creating equality in the workplace.

Recommendation 1: Expand section 8.

VTHC recommends in addition to the pre-existing principles in section 8, the following statements must be included:

- The Victorian Government is committed to equal pay for work of equal or comparable value, and to the elimination of the gender pay gap across all sectors.
- Gender bias and discrimination is a factor in gender inequality and occurs at multiple points throughout a worker's employment cycle including before a worker starts employment and periods in and out of the workforce.
- Gender segregation is a factor in gender inequality, with women tending to be overrepresented in low paid, insecure work and in the 'caring' sectors.
- The gender pay gap and gendered segregation of the workforce are the result of unequal attitudes that deem 'women's work' to have less value.
- Advancing equality of domestic work and caring responsibilities amongst genders is vital. Parental rights and obligations must be shared, and workplace rights and policies should promote and reflect this.
- Ending gendered violence for all workers, including sexual harassment, is an urgent priority for all levels of Government.
- Government as a model employer, has an increased responsibility for propelling ambitious reforms on gender equality. As a minimum, every single Government worker should be covered by tangible measures to achieve full gender equality.
- Victoria is a place where all genders can thrive, economically, socially and politically. Securing the equal influence of men and women in these spheres is vital to creating gender equality. Gender discrimination and bias is unacceptable in Victoria.
- Gender discrimination intersects with other forms of discrimination and vulnerabilities, including women workers from migrant backgrounds, young women workers, disabled women workers, LGBTQIA+ workers, workers affected by insecure work, workers subjected to family and domestic violence, and Aboriginal or Torres Strait Islander women workers. Measures to combat gender discrimination must also address the intersection of discrimination and insecurities faced by these groups.
- Better outcomes are achieved when workers are included in identifying, implementing and evaluating strategies to address gender inequality in the workplace.

Recommendation 2: Shift language in section 8 to give rise to enforceability.

The principles in section 8 must be accessible to working women who are affected by gender inequality and gendered violence. They must also be enforceable.

VTHC recommends a language shift to reflect this. As such the need to 'consider' these principles, must be replaced with 'defined entities must include these principles...'

Recommendation 3: Replace section 9 to create an independent Gender Equality Commission with powers of investigation and accountability.

Gender inequality and gendered violence is driven by pervasive attitudes that cause women workers real harm. The only way to combat these attitudes is to create legal rights and enforceability that in turn can generate cultural change.

It is the position of VTHC that section 9 should be completely removed if this legislation is to make any difference to combating gender inequality. It should be replaced by creating a third-party watchdog or overseeing body, such as an independent Gender Equality Commission, with similar scope and powers to the Victorian Labour Hire Licensing Commissioner.

This recommendation is based on the international success of Finland.³ The Finnish legislation for gender equality provides for an Ombudsman with investigative powers. Any individual may bring a complaint to them for violation of anti-discrimination laws. Further, Finland provides for wide reaching penalties for breaching sexual harassment laws, and gender discrimination laws. It is the role of the Ombudsman to investigate and enforce these laws.

Recommendation 4: Section 9 must also include enforceable rights for workers subjected to gendered violence.

Section 9 should be replaced to give rise to legal consequences for gendered violence at work. Individual workers must have the power to pursue claims, and section 9 should synthesise sexual harassment at work laws, including penalties.

It should make senior leadership, such as secretaries, directors and CEO's responsible for preventing gendered violence at work. This is consistent with the approach of Iceland, where there is a reverse onus of proof on the employer to show they created a safe workplace for women workers.⁴

This is also consistent with the requirements of the Victorian Occupational Health and Safety Act, which creates obligations on employers to create safe and healthy workplaces.

Recommendation 5: The Government must expand measures for gender equality to other state powers.

While recognising the constitutional limitation of state powers, VTHC believes the Victorian Government can be more ambitious in affecting change. For example, the Government retains its powers over liquor licenses, business licenses, consumer affairs and environmental permits. Commitments to achieving gender equality must form part of these licensing processes.

For example, United Voice's Respect is the Rule Campaign aims to end sexual harassment of staff and patrons at hospitality venues.⁵ Ensuring businesses have met specified and measurable standards for preventing and appropriately

³ Finland Act on Equality Between Men and Women

⁴ Iceland Gender Equality Act

⁵ United Voice < <https://www.respectistherule.org.au/> >

responding to incidents of sexual harassment and other forms of gendered violence before providing a licence is one way the Government could influence this workforce.

Iceland takes this approach. In Iceland, there is a reverse onus of proof, and penalties for sexual harassment of hospitality workers and patrons extend to service providers.⁶

As such, the Government could require licence holders complete a GEAP (see below) before they grant or renew a licence.

Recommendation 6: Expand the definition of gender equality to include gender diverse workers, and protect positive discrimination.

VTHC also believes the definition of gender equality in this bill is limiting. This legislation presents a great opportunity to address the way inequalities affect gender diverse workers and to enshrine principles relating to positive discrimination. The definition of gender equality in section 4 must be expanded to include this.

b) Gender Equality Action Plans

VTHC believes Gender Equality Action Plans (GEAPs) are a good way to create meaningful change, and commends the Government's commitment to producing tailored plans to achieve equality. These plans can be used to produce evidence of gender deficiencies and highlight opportunities to leverage change. However, as with guiding principles, VTHC has recommendations for increasing their effectiveness.

Recommendation 7: Amend section 10(2)(b) so that GEAPs operate for 2 years.

As with above, GEAPs are an excellent opportunity for public accountability and targeting of gender equality. However, four-year timeframes do not create a quick enough turnaround for change for working women. Two-year timeframes would ensure measures are more responsive. It would also ensure that Departments/Agencies remain focused on outcomes and do not allow them to 'drift' over time.

Recommendation 8: Amend section 6 so that all public sector agencies and organisations are compelled to report on GEAPs.

It is important that provisions for gender equality apply consistently across the whole of government. As a model employer, the Government must extend the requirements of this bill, and reportable provisions of GEAPs to all its workforce, not just larger departments with over 100 workers.

⁶ Iceland Gender Equality Act

Recommendation 9: Expand section 11.

The legislation must be explicit about what ‘gender equality’ means, in principle and in practice. VTHC recommends GEAPs operate in line with the principles set out in Recommendation 1.

It is our view that GEAP’s should also incorporate gender pay equity principles similar to those adopted by the New Zealand government for the public service.⁷

In addition to the requirements of the current section 11, it must require that GEAPs set out tangible actions focused on:

- A target of 50% women in leadership positions
- Quotas that extend beyond leadership, such as equal targets for men and women in casual, part-time and full-time employment, and targets for job-share management positions
- Processes for preventing and responding to gendered violence and sexual harassment
- Mechanisms for the organisation to resolve gendered segregation. One such example is for women dominated entities to partner with male dominated organisations to collaborate on strategies to improve opportunities, share workforces
- Timeframes for implementing change (2 years as above)
- Mandatory reporting and obligations for organisations
- A requirement to explain where targets and milestones have not been met and to outline measures to ensure targets and milestones will be met going forward
- Establish equal pay for work of equal or comparable value
- Ensure employment and pay practices are free from bias and discrimination
- Ensure transparency and accessibility of employment and pay practices, pay rates and information about them
- Acknowledge the relationship between paid and unpaid work
- Ensure change is sustainable through collective, agreed and enduring solutions
- Ensure the collaborative participation and engagement of workers, unions and Departments/agencies

The writing of and reporting on GEAPs will also determine what is prioritised and whose voices are heard. It will be easy for certain vulnerable groups to be excluded, without deliberately including them in this process.

As such, section 11 must include that GEAPs are written and reported on collaboratively through working groups comprising workers and their unions. In addition, they must be inclusive of marginalised groups such as Aboriginal and Torres Strait Islander women, migrant women, gender diverse workers, queer workers, parents, part-time and casual workers.

⁷ ‘Gender Pay Principles’ (2018) < <http://women.govt.nz/work-skills/income/gender-pay-gap/gender-pay-principles> >

c) Targets

As the discussion paper notes, targets are valuable for achieving gender equality, but also that “good intentions have never been enough... the most successful gender equality initiatives are those that apply challenging targets, backed by effected sanctions and incentives.”⁸

While Division 5 prescribes that targets may be set for gender equality, it fails to give substantive legislative change.

VTHC endorses gender quotas, and notes this measure is extremely important for creating long lasting change. As such, VTHC makes the following recommendations by amending Division 5 in order to strengthen gender equality target provisions.

Recommendation 10: Enshrine 50/50 gender quotas in law.

To achieve true equality, 50/50 quotas for men and women workers must be set. VTHC stands for the principle that men and women have equal value, and anything less would be, from our perspective, inadequate.

Fixed quotas should be enshrined in law to ensure that equality is not negotiable. Division 5 must state that all defined entities must work towards 50/50 representation.

Quotas must also operate beyond executive manager, to senior manager and other middle management, and extend to teams and other various classifications.

Recommendation 11: Set targets for the retention of women workers.

Targets must be set for the retention of women workers, as this will go some way to address issues around the 40% gender super pay gap,⁹ and unfair discriminatory policies relating to working parents and workers with other caring responsibilities. Division 5 must state that defined entities must work towards having the same retention rate amongst all genders and implementing specific, tangible measures to achieve this.

Recommendation 12: The progress towards achieving quotas and targets must be reported in GEAPs.

For these quotas and targets to take any affect, they must be part of publicly available GEAPs. In line with VTHC’s other recommendations, the responsibility for publication of GEAPs and targets will lie with an independent Gender Equality Commissioner.

If they are not being met within a reasonable timeframe, there must be an explanation, and measures to improve the situation. As such, Division 5 must state

⁸ <https://www.vic.gov.au/women/gender-equality/a-victorian-gender-equality-strategy/what-works/targets-work.html>

⁹ Hetherington, D. & Smith, W., (2017) “Not So Super, For Women: Superannuation and Women’s Retirement Outcomes,” *Per Capita and Australian Services Union*
< https://percapita.org.au/wp-content/uploads/2018/05/Not-So-Super_FINAL-v2-2.pdf >

that targets are to be publicly reported in GEAPs along with progress against targets.

Recommendation 13: Set targets to remove the gender pay gap.

Women in positions of leadership must not be the only ones to benefit from this legislation.

The gender pay gap is a marker of the wages and conditions of low paid women workers. Division 5 must state that defined entities must report on gender pay gaps within their workforce, and set targets and timeframes for removing them.

As previously outlined in this submission, it is our view that gender pay equity principles should be adopted along similar lines to those operating across the New Zealand public service.

d) Procurement Guidelines

Recognising the limitations placed on the Victorian Government within the framework of state powers, procurement guidelines are one of the most effective mechanisms for promoting gender equal employment in the private sector. VTHC welcomes the Government's approach for using this as an opportunity to make change beyond their immediate workforce. VTHC also notes that the Victoria's Social Procurement Framework provides a guide for creating gender equality.

The Government should be doing everything within its powers to make workplaces as equal as they can for all genders. Within this context, VTHC makes the following recommendations for improving procurement standards to create gender equality.

Recommendation 14: Amend section 13 to require all Government providers to have completed a GEAP.

The Government must not contract service providers who are not committed to achieving gender equality for their workplace. Companies and agencies tendering for government contracts should be required to complete a GEAP with all the same requirements of defined entities, including:

- 50/50 gender targets for all levels of employment
- Mechanisms to address gendered violence, and sexual harassment
- Targets for Aboriginal, migrant, gender diverse and LGBTQIA+ workers
- The elimination of any gender pay gap

The continuation of contracts must also depend on reporting of GEAPs being undertaken yearly, in the same way as defined entities. Private entities' GEAPs must also be held with the third-party compliance body.

Recommendation 15: Amend section 13 to provide a commitment to requiring procurement only from workplaces with enterprise bargaining agreements.

Workers who are members of their union are more likely to be safer, and have better wages and conditions.¹⁰ Bargaining power makes women workers safer. The Government must commit to protecting union fought workers' rights as it is the first measure in creating safe workplaces for women.

e) Monitoring and Compliance

The success of GEAPs depend on how effectively they are monitored. The establishment of an independent third party, such as a Gender Equality Commissioner, with investigative powers and the power to compel organisations to comply with directives will ensure appropriate oversight and compliance.

VTHC is concerned that placing the monitoring burden on the Department of Health and Human Services (DHHS) will not achieve the outcomes sought. It is our view that public and independent accountability and compliance is key.

While sections 17 and 18 currently provide a good framework for compelling organisations to comply with the proposed Gender Equality legislation, amending these sections so these powers are given to a third party will create further accountability, and an opportunity for individual workers to seek accessible recourse.

Recommendation 16: GEAPS must be publicly available and monitored by a third-party body, such as a Gender Equality Commission.

In line with the above recommendations, the effectiveness of the GEAP mechanism will depend on their enforcement and accountability. The current proposal for monitoring between Departments and public sectors organisations is insufficient. Change is driven by transparency and accountability. Giving a body such as an independent Commission the power to oversee and enforce would demonstrate real commitment to resolving the core drivers of gender inequality.

Recommendation 17: GEAPs and data collected from GEAPs must be publicly available and monitored through a Gender Equality Commission website.

This will create more public accountability and monitoring, and provide examples for other organisations to base their GEAPs on. This again is consistent with the approach of European legislation to create workplace gender equality. It will allow for evidence of where and how wage gaps and segregation manifests, public scrutiny, and opportunities to target responses.

The collection of data must include a 'unique identifier', allowing for defined entities, the Ministerial Council and independent Commissioner to usefully analyse the data beyond an annual snapshot, allowing analysis longitudinally overtime. This will assist with the above aims so that reliable trends of progression, career path,

¹⁰ "The Union Effect" (2016) *Trade Union Congress*
< <https://www.tuc.org.uk/research-analysis/reports/union-effect> >

impacts of breaks from the workforce, rates of return can be determined, and a powerful investigation of the specific factors of blockages found. Data with a unique identifier will also allow agencies and others to draw insights about the effectiveness of measures take in their GEAPs specific to their workforce.

Recommendation 18: Provide the Commission with the powers of the Secretary in sections 17 and 18.

This will create further accountability and mean that an independent body can compel a defined entity to make changes within a designated time period.

Recommendation 19: Provide the Commission with investigative powers and the power to issue fines and penalties.

There needs to be a mechanism for redress that is accessible to workers, who are not covered by GEAPs or where the process has broken down. A third party such as an independent Gender Equality Commission with investigative powers and the power to issue penalties, would be an option for workers with complaints who cannot access the standard procedure. Complaints must also be able to be brought by unions or representatives on behalf of workers or groups of workers. Investigative powers could also be accessed when a defined entity or other business fails to explain persistent pay gaps or discriminatory policies.

Establishing such a body would be in line with Gender Equality Legalisation in Finland and Norway.¹¹ In Finland, individual workers may bring complaints to an Ombudsman who can bring an action to a District Court.

f) The Ministerial Council

Establishing a Ministerial Council (MC) as an expert reference body for progressing gender equality is a good way to produce best practice policy. Generally, VTHC mostly agrees with Part 4 of the bill, but has a number of recommendations to refine its functions.

Recommendation 20: Amend section 19(2) to be consistent with the amended aims in section 7.

This would mean the MC would focus on ending the gender pay gap, ending gendered violence, mechanisms to increase parental rights and parent/carer friendly work, and additionally mechanisms to increase equality in household labour dynamics.

Recommendation 21: Amend section 20 so that the majority of the MC are women.

VTHC seeks to emphasise that in order to make change on the issue of gender equality, women and their experiences must be front and centre. As such, the MC must be at least 50% women. Further, there must be reserved positions for workers and their relevant unions, including the Community and Public Sector Union (CPSU). In addition, the MC must be inclusive of groups that are often marginalised

¹¹ Finland Act on Equality Between Men and Women, and Norway Act Relating to Gender Equality

such as Aboriginal and Torres Strait Islander women, migrant women, gender diverse workers, young women and women with disabilities.

Recommendation 22: Section 22 must be amended so that cessation of appointment can only be done through a decision of the entire Council.

This will provide more safeguards to the position of members of the MC, and enable them to provide frank and fearless advice, no matter who they are advising.

Conclusions

VTHC seeks to reiterate that the approach of introducing a Gender Equality Bill is admirable and shows a real commitment towards make the lives of working women in Victoria better.

However, it is vital that this legislation be amended so that it applies to as many women workers as possible. Setting 50/50 gender quotas, and quotas for workers of all genders in all employment positions is vital. Further enforceability and avenues to give rise to legal recourse for workers are pivotal.

The content of Gender Equality Action Plans needs to be proscriptive, with actions to end gendered violence and gendered violence at work central to the legislation.

Only strong gender equality legislation will make a real difference for women and gender diverse workers. Ending gendered violence at work must be a core focus for any work undertaken to end gender inequality. This fight will always be at the core of the work of Victorian union movement.

If you have any questions or would like further information, please do not hesitate to contact Danae Bosler on (03) 9569 3583.

Thank you for your consideration.

Yours sincerely,



Wil Stracke
Assistant Secretary

WS: TC Ref: 91.143