



DIVERSITY  
COUNCIL  
AUSTRALIA

**Diversity Council Australia Ltd**

Customs House, Level 3  
31 Alfred Street, Sydney NSW 2000  
Email: [admin@dca.org.au](mailto:admin@dca.org.au)

SYDNEY OFFICE Phone: (02) 8014 4300

MELBOURNE OFFICE Phone: (03) 9067 8000

ACN 006 898 406 • ABN 64 421 748 342

16 July 2021

Senator the Hon James McGrath  
Chair  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

## Inquiry into the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

Dear Senator

Thank you for the opportunity to provide a submission in response to the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We have a wealth of experience providing advice to our members on the business benefits of diversity and inclusion.

Workplace sexual harassment is an issue of significant interest to DCA and our member organisations and DCA welcomes the Government's response to the *Respect@Work* report.

While DCA supports the amendments proposed under the Bill, we believe these changes alone are insufficient and our submission recommends that:

- the Bill is amended to include a positive duty on employers as outlined in recommendation 17 of the *Respect@Work* report;
- the proposed s 28AA of the Bill be amended to change the threshold for sex-based harassment from unwelcome conduct of a 'seriously demeaning' nature to unwelcome conduct of a 'demeaning' nature;
- the Bill be amended to clarify that sex-based harassment can be conduct amounting to a valid reason for dismissal;
- the definition of 'serious misconduct' in the Fair Work Regulations 2009 be amended to also include sex-based harassment;
- the Sex Discrimination Act 1984 be amended to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited; and
- that protections against sex discrimination be extended to all workers.

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on 0424 578 698 or [advocacy@dca.org.au](mailto:advocacy@dca.org.au), you require any further information about this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'L. Annese', with a long horizontal flourish extending to the right.

**Lisa Annese**  
**Chief Executive Officer**

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# I. ABOUT DIVERSITY COUNCIL AUSTRALIA

## Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

## DCA's Membership represents over 20% of the Australian workforce

DCA's prestigious group of over 900 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

## About our members

- 900 member organisations, including almost 40 ASX100 Listed companies.
- Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.
- Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

## Our belief, vision and mission

- Our **belief** is that diversity and inclusion is good for people and business.
- Our **vision** is to create a more diverse and inclusive Australia.
- Our **mission** is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

## What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.

## Our Research

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

- **DCA research is grounded in the contributions of people with lived experience.** DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.
- **DCA resources are ahead of the curve.** They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.
- **DCA resources drive business improvement.** They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.
- **DCA resources are practice focused.** They respond to the information needs of industry leaders and the people they employ.
- **DCA resources speak to the Australian context.** DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.
- **DCA resources considers all diversity dimensions.** The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.



## II. POSITIONING

### The importance of taking an intersectional approach

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation.

As the Australian Human Rights Commission's *Fourth national survey on sexual harassment in Australian workplaces* points out, women with intersectional identities experience an increased prevalence of sexual harassment.

For example, almost all (92%) women who identify as gay, lesbian, bisexual, pansexual, queer, asexual, aromantic, undecided, not sure, questioning or other have experienced sexual harassment in their lifetime; and nine in ten (89%) women with disability have experienced sexual harassment in their lifetime.<sup>1</sup>

DCA's research has also found that culturally diverse women experience specific types of harassment where gender and cultural biases have a compounding or 'amplifying' effect, as evidenced in this quote from a DCA research participant:

*"He said, 'Why are Asian women's feet so small? So they can stand closer to the sink!' Then he got angry when I didn't like it and said, 'Why are you so uptight? You're misconstruing what I'm saying.' But it's not that, it's just that I want to be treated with respect."<sup>2</sup>*

It is therefore critical that in understanding and responding to workplace sexual and sex-based harassment that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach implementing such policies.

### A note on binary language used in this submission

While neither sex nor gender exist in binary categories, these categories still have very real effects.

As noted by the Australian Human Rights Commission, the majority of workplace sexual harassment in the past five years was perpetrated by men against women.<sup>3</sup>

This submission therefore uses binary language to convey the gendered nature and dynamics of perpetration and victimisation.

At the same time, however, DCA recognises that there are people whose experiences and identities cannot be captured by the use of binary language, and these limitations should be acknowledged whenever binary language is used.

DCA also recognises that non-binary and gender diverse people experience high levels of sexual harassment, and for this reason it is critical that responses to sexual and sex-based harassment take an intersectional approach that recognises the experiences of people of all genders in our community.

### III. SUMMARY

DCA welcomes the opportunity to make this submission. Workplace sexual harassment is an issue of significant interest to DCA and our member organisations.

In April this year, DCA launched the *#StandForRespect* campaign in response to what we believe is a turning point in the national conversation about sexual harassment and gender inequality.

Since we launched this campaign, [over 200 CEOs](#)<sup>4</sup> of DCA member organisations have signed the pledge to:

- Stand against gendered harassment and violence in all its forms; and
- Commit to taking steps in their organisation to address sexual and sex-based harassment, to make the workplace safe for everyone.

**As the widespread engagement with this campaign shows, workplace sexual and sex-based harassment is an incredibly important issue for our member organisations.**

DCA was a strong supporter of the *National Inquiry into Sexual Harassment in Australian Workplaces*, and made a [comprehensive response to that inquiry in 2019](#)<sup>5</sup> in consultation with our member organisations.

DCA commends the outcome of this inquiry and supports the recommendations made in the *Respect@Work* report.

We welcome the changes proposed in the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*, and commend the Government's efforts in taking action in this area.

We believe there is a missed opportunity in this legislation to introduce a number of the reforms that were outlined in the *Respect@Work* report to make workplaces safer for everyone. Therefore, this submission makes the following recommendations:

1. DCA recommends that the Bill is amended to include a positive duty on employers as outlined in recommendation 17 of the *Respect@Work* report.
2. DCA recommends that proposed s 28AA of the Bill be amended to change the threshold for sex-based harassment from unwelcome conduct of a 'seriously demeaning' nature to unwelcome conduct of a 'demeaning' nature.
3. DCA recommends that the Bill be amended to clarify that sex-based harassment can be conduct amounting to a valid reason for dismissal.
4. DCA recommends that the definition of 'serious misconduct' in the *Fair Work Regulations 2009* be amended to also include sex-based harassment.
5. DCA recommends that the *Sex Discrimination Act 1984* be amended to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.
6. DCA recommends that protections against sex discrimination be extended to all workers.

## IV. BACKGROUND

DCA welcomes the opportunity to make this submission. Workplace sexual harassment is an issue of significant interest to DCA and our member organisations.

### DCA's #IStandForRespect Campaign



DCA launched the *#IStandForRespect* campaign in April 2021, in response to what we believe is a turning point in the national conversation about sexual harassment and gender inequality.

Since we launched this campaign [over 200 CEOs](#)<sup>6</sup> of DCA member organisations have signed the pledge to:

- Stand against gendered harassment and violence in all its forms; and
- Commit to taking steps in their organisation to address sexual and sex-based harassment, to make the workplace safe for everyone.

The campaign has been enormously popular with members and has seen extensive engagement across our social media platforms (LinkedIn, Twitter, Facebook and Instagram).

As the widespread engagement with this campaign shows, workplace sexual harassment is an incredibly important issue for our member organisations.

DCA continues to work with our members to improve their knowledge and capability in this area through offering tailored workshops and resources to address sexual and sex-based harassment and by developing research and resources to support Australian organisations in becoming more gender equal.

### DCA's response to the National Inquiry into Sexual Harassment in Australian Workplaces and recommendations of the Respect@Work Report

DCA was a strong supporter of the *National Inquiry into Sexual Harassment in Australian Workplaces*, and made a [comprehensive response to that inquiry in 2018](#)<sup>7</sup> in consultation with our member organisations.

This process gave us an insight into the understanding that Australian workplaces have about sex-based and sexual harassment, how these workplaces are currently responding,

and what are the gaps between what workplaces are doing and what evidence tells us about sexual harassment.

DCA welcomed the outcome of this inquiry and supports the recommendations made in the *Respect@Work* report. This report was comprehensive, well-researched and, if adopted, the recommendations contained therein have the power to provide great outcomes.

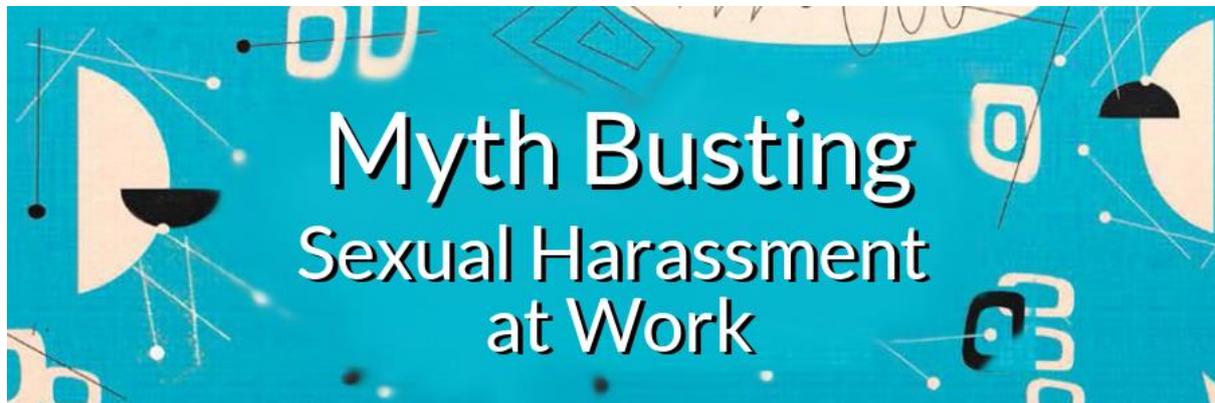
### **DCA's response to the Roadmap to Respect**

DCA notes the Government's response to the *Respect@Work* report, and the actions contained in the *Roadmap to Respect*.

We welcome the changes proposed in the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*, and commend the Government's efforts in taking action in this area. We believe the proposed changes to the *Sex Discrimination Act (SDA)* and *Fair Work Act (FWA)* will help strengthen the legislative framework that seeks to protect workers from sexual harassment.

We do, however, believe this is a missed opportunity to introduce a **positive duty** on employers to take reasonable measures to eliminate sex discrimination, sexual harassment and victimisation, as outlined in recommendation 17 of the *Respect@Work* report. We provide more detail on this issue below.

### **DCA's Myth Busting Sexual Harassment at Work**



DCA members are at the forefront of responding to and preventing sexual harassment in organisations across Australia. We know from their experience that critical stumbling blocks for organisations are the myths about what sexual harassment is, its impact on organisations and individuals, and what we can do stop it.

To assist, DCA has produced a myth-buster which challenges the common misconceptions which have allowed these sexual harassment statistics to rise despite the #MeToo movement. The guide provides detailed frameworks for action on eight common myths so that employees and workplaces can stand up for safety and respect at work.

*This document is attached for the Committee's information.*

## V. DCA'S RESPONSE TO THE PROPOSED LEGISLATION

DCA supports the following proposals under the Bill:

- **Miscarriage as a valid reason for compassionate leave:** DCA strongly supports the inclusion of miscarriage as a valid reason for taking compassionate leave. Miscarriage is a tragically common occurrence in Australia, with up to one in five pregnancies ending before the twentieth week. These changes provide an important support for grieving parents and acknowledge that miscarriage is a loss that takes time to mourn. DCA further welcomes that it is available when an employee has a miscarriage and when an employee's spouse or de facto partner has a miscarriage.
- **Amending the SDA to make it expressly clear that it is unlawful to harass a person on the ground of their sex:** Research shows that many people experience harassment at work that is on the basis of their sex but that would not be described as "conduct of a sexual nature"<sup>8</sup>. DCA supports this amendment as it provides further clarity to employers and employees that this type of harassment is expressly prohibited.
- **Amending the SDA to extend coverage to Members of Parliament, their staff, and judges at all levels of government, and remove the exemptions relating to state public servants:** DCA supports the extended protections to Members of Parliament, their staff, judges and public servants. Recent allegations surrounding Parliament and the court system highlight the need to extend SDA protections to these workers.
- **Extension of the timeframe for making complaints from 6 to 24 months:** DCA supports amendments that will mean that a complaint under the SDA could only be terminated if it is made more than 24 months after the alleged unlawful conduct took place.
- **Expanded coverage of workers protected by sexual harassment provisions:** DCA supports the introduction of protections for unpaid workplace participants like volunteers, interns and students, as well as people who are self-employed, from harassment. (However, as we note below, we would urge that these protections be extended to sex discrimination as well as sexual harassment).
- **Recognising sexual harassment a valid reason for unfair dismissal:** DCA supports proposed changes in the Bill that would clarify that sexual harassment by an employee in connection with their employment can amount to a valid reason for dismissal by their employer. This amendment would make it clear to businesses, employers and employees that sexual harassment is a serious issue and can amount to a valid reason for termination of employment, and will provide clarity to employers.
- **Creation of a new object clause to make it clear that the SDA aims to achieve, so far as practicable, equality of opportunity between men and women:**

Research shows that gender inequality is a key driver of sexual harassment. DCA's research on the continuum of sexual harm shows that while not all disrespect towards women results in violence, all violence against women starts with disrespectful behaviour ([Myth Busting Sexual Harassment at Work](#)). DCA supports the inclusion of gender equality in the objects of the SDA, as this inclusion acknowledges that addressing gender inequality is central to any sexual harassment prevention effort. We note the original recommendation in *Respect@Work* was to amend the SDA provide that an object of that Act was 'to achieve substantive equality between women and men'.



## What is missing from the Bill?

While DCA supports the amendments proposed under the Bill, we believe these changes alone are insufficient. Below we make a number of recommendations in line with our submission to the *National Inquiry* and the *Respect@Work* report.

### 1. Introduction of a positive duty

DCA urges the Government to implement recommendation 17 of the *Respect@Work* report 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.

**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.<sup>9</sup>

As the *Respect@Work* report identified, nearly 2 in 5 women and 1 in 4 men have experienced sexual harassment in the workplace in the past five years. Yet despite this, fewer than 1 in 5 people (17%) who experienced sexual harassment in the workplace made a formal report or complaint.<sup>10</sup>

Under the current complaints-based legislative framework, the onus is on people who experience sexual harassment to make a complaint. Therefore, while employers must take steps to prevent sexual harassment, an employer's practices would only come under scrutiny once a complaint has been made.

Given that significant numbers of sexual harassment incidents go unreported (and therefore are not investigated), we believe that requiring employers to proactively identify and take action to eliminate sexual harassment at work is a critical first step in making workplaces safer for everyone.

A positive duty would incentivise employers to address systemic drivers of sexual harassment and help prevent it occurring in the first place.

We note the Government's concerns that implementing a positive duty may create further complexity, uncertainty or duplication in the overarching legal framework.

However, we believe that amending the SDA 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, would provide clarity for businesses and employers.

We believe this is a crucial recommendation of the *Respect@Work* report, as it expands the focus from responding to incidents after the fact to taking steps to prevent sexual harassment occurring in the first place.

We note the Government's concern's that this may create complexity for employers, however, based on our work with DCA members over many years we believe a positive duty will give further clarity and create clear expectations for employers to adhere to.

We are calling on the Government to publicly commit to supporting this recommendation and to work with all State and Territory governments to achieve a strong national consensus.

DCA recommends that the Bill is amended to include a positive duty on employers as outlined in **recommendation 17** of the *Respect@Work* report.

### Case Study:

The following case study demonstrates how the existing system could be improved with the introduction of a positive duty that encourages employers to take proactive steps to create workplaces free from harassment.

*A 19-year-old female engineering intern is undertaking a vacation internship with a mining company. As part of her internship, she will be sent to a remote mine site in Western Australia where she will be the only woman in 400 employees. Once her internship is complete, this individual is hoping to gain regular employment with the mining company.*

The *Respect@Work* report outlined many drivers of sexual harassment and many risk factors where sexual harassment is more likely to occur. Some of those relevant to this case study are:

- Mining is a male-dominated industry, and this workplace has a gender imbalance of 99.75% men on this site (nationally, women account for 18% of the mining workforce).
- The mining industry has a higher prevalence of sexual harassment than the prevalence of sexual harassment across all industries (40% for mining compared to 31% for all industries.) 74% of women working in mining have experienced sexual harassment.
- Disparities in power play a central role in sexual harassment. Most workers will be senior to an intern.
- Workers in insecure work arrangements are at higher risk of workplace sexual harassment.
- Young workers (aged 18-29) have the highest prevalence of workplace sexual harassment of all age groups.

While this mining company may be fulfilling their responsibilities under WHS laws, they are nonetheless placing this intern in an environment where she could be at an increased risk of experiencing sexual harassment. Under the existing legislative environment, employers have a responsibility to take reasonable steps to prevent sexual harassment. However, in the current system whether this mining company is fulfilling its duties will only come under scrutiny if there is a complaint made.

**A positive duty would require a proactive approach to addressing these risks factors, in a proportionate and reasonable way, to minimise the risk of sexual harassment occurring.**

## **2. Amend s28AA of the Bill to prohibit sex-based harassment of a ‘demeaning’ nature**

Research shows that many people experience harassment at work that is on the basis of their sex but that would not be described as “conduct of a sexual nature”.<sup>11</sup>

According to the International Center for Research on Women<sup>12</sup>,

*Sex-based harassment encapsulates a wide range of behaviors that degrade or humiliate an individual based on their sex and/or gender. Three different categories of behavior define sex-based harassment: (1) “gender harassment,” referring to verbal and nonverbal behaviors that demean women and/or femininity or create a hostile work environment, but which do not have the goal of sexual cooperation; (2) “unwanted sexual attention,” referring to behaviors such as pressure for dates and unwanted touching which express a romantic or sexual interest but are unreciprocated and unwelcome; and (3) “sexual coercion,” pertaining to behaviors that threaten loss of job, unfavorable work assignments, or loss of pay or promised promotion, raises, or better assignments in return for sexual cooperation.*

As noted above, DCA supports the amendment to the SDA (proposed s 28AA) which would clarify the prohibition against sex-based harassment, in line with recommendation 16(b) of the *Respect@Work* report.

However, we note that the concerns expressed by the Australian Human Rights Commission<sup>13</sup>, and others, that the threshold for sex-based harassment of unwelcome conduct of a ‘seriously demeaning’ nature is too high.

DCA therefore supports the Commission’s recommendation to remove ‘seriously’ from this clause.

DCA recommends that proposed s 28AA of the Bill be amended to change the threshold for sex-based harassment from unwelcome conduct of a ‘seriously demeaning’ nature to unwelcome conduct of a ‘demeaning’ nature.

## **3. Recognise sex-based harassment as a valid reason for dismissal**

As noted above, DCA supports proposed changes in the Bill that would clarify that sexual harassment by an employee in connection with their employment can amount to a valid reason for dismissal by their employer.

Given the serious implications of sex-based harassment, and the importance of addressing this issue, DCA recommends that these amendments also include sex-based harassment.

DCA recommends that the Bill be amended to clarify that sex-based harassment can be conduct amounting to a valid reason for dismissal.

#### **4. Recognise sex-based harassment as a form of serious misconduct**

As noted above, DCA welcomes the Government's commitment that it will implement recommendation 31 from the *Respect@Work* report and amend the definition of 'serious misconduct' in the Fair Work Regulations to include sexual harassment.

Given the serious implications of sex-based harassment, and the importance of addressing this issue, DCA recommends that these amendments also include sex-based harassment.

DCA recommends that the definition of 'serious misconduct' in the *Fair Work Regulations 2009* be amended to also include sex-based harassment.

#### **5. Amend the SDA to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited**

DCA's submission to the *National Inquiry into Sexual Harassment in Australian Workplaces*<sup>14</sup> detailed many examples of workplace experiences characterised by inappropriate sexual comments, innuendo and offensive jokes.

This type of hostile environment was specifically recognised in the *Respect@Work* report and it was recommended that the SDA be amended to clarify the law to specifically address this issue:

*While it has been traditionally accepted that a sexually hostile work environment could constitute unlawful sex discrimination under the Sex Discrimination Act, the Commission considers that there is merit in clarifying the law.*

*The Commission recommends that the Sex Discrimination Act be amended to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited. The Commission is of the view that this amendment will provide clarity and certainty to the law and assist in setting clear boundaries in the workplace for what is and is not acceptable. One way this could be achieved is to incorporate a prohibition on creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex into either the sex discrimination or sexual harassment provisions within the Sex Discrimination Act.*

*The Commission also considers that this issue can be addressed through better education and guidance materials for workplaces, including good practice sexual harassment and discrimination workplace policies, procedures and practices for employers. Further discussion of best practice measures for employers is in Section 6, 'Preventing and responding to sexual harassment in the workplace'.*

*Respect@Work, p538*<sup>15</sup>.

DCA recommends that the *Sex Discrimination Act 1984* be amended to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.

## **6. Amend the Bill to ensure it protects unpaid workers against sex discrimination**

DCA supports the introduction of protections for unpaid workplace participants like volunteers, interns and students, as well as people who are self-employed, from harassment.

However, we note this expanded coverage only applies to protections against harassment, not the protections against sex discrimination.

As noted by the Australian Human Rights Commission:<sup>16</sup>

*While the Bill provides volunteers and interns with protection against sexual harassment and sex-based harassment, they will not be able to make a claim of sex discrimination. This is problematic because many claims of sexual harassment also include a claim of sex discrimination.*

The rationale for this is unclear, and we urge the Government to consider extending all protections in the SDA to all workers.

DCA recommends that protections against sex discrimination be extended to all workers.

## VI. CONCLUSION & RECOMMENDATIONS

DCA welcomes the Government's response to *Respect@Work* report, and supports the actions contained in the Government's *Roadmap to Respect*. We welcome the changes proposed in the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*, and commend the Government's efforts in taking action in this area.

DCA member organisations are committed to standing against gendered harassment and violence in all its forms and taking steps in their organisation to address sexual and sex-based harassment, to make the workplace safe for everyone.

We believe there is a missed opportunity in this legislation to introduce a number of the reforms that were outlined in the *Respect@Work* report to make workplaces safer for everyone. Therefore, we are making the following recommendations:

**DCA recommends that the Bill is amended to include a positive duty on employers as outlined in recommendation 17 of the *Respect@Work* report.**

**DCA recommends that proposed s 28AA of the Bill be amended to change the threshold for sex-based harassment from unwelcome conduct of a 'seriously demeaning' nature to unwelcome conduct of a 'demeaning' nature.**

**DCA recommends that the Bill be amended to clarify that sex-based harassment can be conduct amounting to a valid reason for dismissal.**

**DCA recommends that the definition of 'serious misconduct' in the *Fair Work Regulations 2009* be amended to also include sex-based harassment.**

**DCA recommends that the *Sex Discrimination Act 1984* be amended to ensure that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited.**

**DCA recommends that protections against sex discrimination be extended to all workers.**

## VII. ENDNOTES

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<sup>1</sup> Australian Human Rights Commission, *Everyone's business*, pp. 24-27.

<sup>2</sup> Diversity Council Australia (O'Leary, J., Groutsis, D. and D'Almada-Remedios, R.) *Cracking the Glass-Cultural Ceiling: Future Proofing Your Business in the 21st Century*, Sydney, Diversity Council Australia, 2017.

<sup>3</sup> Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*, 2018, accessed at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>.

<sup>4</sup> DCA, *#StandForRespect*, accessed at: <https://www.dca.org.au/campaigns/istandforrespect>.

<sup>5</sup> DCA, *Submission to the National Inquiry into Sexual Harassment in Australian Workplaces, 27 February 2019*, accessed at: [https://www.dca.org.au/sites/default/files/dca\\_response\\_to\\_the\\_national\\_inquiry\\_into\\_sexual\\_harassment\\_2019.pdf](https://www.dca.org.au/sites/default/files/dca_response_to_the_national_inquiry_into_sexual_harassment_2019.pdf).

<sup>6</sup> DCA, *#StandForRespect*, accessed at: <https://www.dca.org.au/campaigns/istandforrespect>.

<sup>7</sup> DCA, *Submission to the National Inquiry into Sexual Harassment in Australian Workplaces, 27 February 2019*, accessed at: [https://www.dca.org.au/sites/default/files/dca\\_response\\_to\\_the\\_national\\_inquiry\\_into\\_sexual\\_harassment\\_2019.pdf](https://www.dca.org.au/sites/default/files/dca_response_to_the_national_inquiry_into_sexual_harassment_2019.pdf).

<sup>8</sup> WGEA, *Sex-based discrimination and harassment*, online resource, accessed at: <https://www.wgea.gov.au/take-action/sex-based-discrimination-and-harassment>.

Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 2020, p.457, accessed at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

<sup>9</sup> Australian Human Rights Commission, *Respect@Work*.

<sup>10</sup> Australian Human Rights Commission, *Everyone's business*.

<sup>11</sup> WGEA, *Sex-based discrimination and harassment*.  
Australian Human Rights Commission, *Respect@Work*

<sup>12</sup> International Center for Research on Women (Theodore A Rizzo et al), *The Costs of Sex-Based Harassment to Businesses: An In-Depth Look at the Workplace*, August 2018, accessed at: [https://www.icrw.org/wp-content/uploads/2018/08/ICRW\\_SBHDonorBrief\\_v5\\_WebReady.pdf](https://www.icrw.org/wp-content/uploads/2018/08/ICRW_SBHDonorBrief_v5_WebReady.pdf).

<sup>13</sup> Australian Human Rights Commission, *Submission 19: Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021, Submission to the Senate Education and Employment Legislation Committee*, 9 July 2021.

<sup>14</sup> DCA, *Submission to the National Inquiry into Sexual Harassment in Australian Workplaces*.

<sup>15</sup> Australian Human Rights Commission, *Respect@Work*.

<sup>16</sup> Australian Human Rights Commission, *Submission 19: Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.