

28 February 2019

Kate Jenkins
Sex Discrimination Commissioner
Australian Human Rights Commission

Only by online submission

Dear Commissioner Jenkins,

National Inquiry into Sexual Harassment in Australian Workplaces

We thank you for the opportunity to make this submission to the inquiry into the Sexual Harassment into Australian Workplaces.

Caxton Legal Centre is Queensland's oldest community legal centre. Caxton Legal Centre's objects are to provide legal and social welfare services to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness, and to educate such people in legal, social welfare and related matters.

We are an independent, non-profit community legal centre providing free legal advice, representation, social work services, information and referrals.

In our Human Rights and Civil Law Practice we operate a specialist employment law program. Through that program we assist many clients who have been sexually harassed in the workplace. From time to time we also provide advice to individuals who have been accused of sexual harassment in the workplace. In the 2017/18 financial year we provided 180 advice and representation services to clients concerning discrimination and sexual harassment.

The following submissions are based on trends we have identified over time giving advice to and representing people who have been sexually harassed in the workplace and those who have been accused of sexual harassment.

We have only responded to those terms of reference where we have identified that we may provide an informed response.

Online workplace related sexual and sex-based harassment and the use of technology and social media and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment

Many clients have reported that they are encouraged to use their personal mobiles or Facebook accounts to communicate with co-workers.

We often see seemingly banal conversations turn into conduct that forms the basis of a sexual harassment complaint.

We have heard Respondents argue that they believed this behaviour does not constitute sexual harassment in the workplace because it occurred outside work, outside work hours and happened through their personal phones or computers.

The induction material that we see workplaces use seems to simply address behaviour that is occurring at work or during work hours. Emphasis needs to be placed on the fact that behaviour that occurs outside the physical parameters of work may also constitute sexual harassment in the workplace.

The use of technology and social media to identify both alleged victims and perpetrators of workplace-related sexual harassment

We are regularly seeing clients who have copies of emails, text messages or Facebook messages that are a clear record of sexual harassment. From an evidentiary perspective this makes it a lot easier to run sexual harassment matters.

However, this is a double-edged sword. When there is a written record of the behaviour a lot is read into the literal meaning of the messages, particularly the complainants' replies. In our experience many people do not respond to sexually implicit messages with explicit demands for the behaviour to stop. It is rare for a client to respond with "that is unwelcomed behaviour". Instead, it is more likely for a complainant to try to deflect the behaviour by either laughing it off or changing the subject.

In some cases, this has caused issues when determining if the behaviour was unwelcomed. It has also prevented clients from either bringing or continuing complaints because they fear that their responses will be criticised.

The drivers of workplace sexual harassment, including whether: some individuals are more likely to experience sexual harassment due to particular characteristics including gender, age, sexual orientation, culturally or linguistically diverse background, Aboriginal and/or Torres Strait Islander status or disability, and some workplace characteristics and practices are more likely to increase the risk of sexual harassment

The majority of the clients that we see who are complaining about sexual harassment in the workplace are women. We have also noticed that women from culturally and linguistically diverse backgrounds also seem to be disproportionately represented in our client numbers.

One trend that we have noticed is that that people who are experiencing sexual harassment in the workplace tend to be experiencing some form of isolation. They can experience isolation in their employment status, for example, they may be a new apprentice or trainee, or they may be a contractor or an employee that works for a different organisation than the majority of other employees in the workplace. We have also seen clients who have experienced isolation in the tasks they are instructed to do, for example, they may have to drive long distances between

their worksites either alone or with another employee. They may have to work in a remote area. They may have to spend long periods working solely with one other co-worker or a small group of co-workers.

Most commonly, the sexual harassment victims we see are women who are working in male dominated areas.

The current legal framework with respect to sexual harassment

The majority of the situations that we advise on occur in Queensland. Consequently, we regularly advise clients of the complaint processes of the Australian Human Rights Commission (AHRC) and the Anti-Discrimination Commission Queensland (ADCQ).

Generally, we advise clients to lodge complaints in the Anti-Discrimination Commission Queensland. There are several reasons for this. The time limit in the ADCQ is twelve months, rather than the AHRC's six-month time limit. In our experience, many sexual harassment matters involve conduct that has escalated over a long period of time, or clients have delayed in seeking legal advice because they did not want to discuss what happened to them. This longer time limit assists in these situations.

The *Anti-Discrimination Act 1991* (Qld) states that a person must not sexually harass another person. Sexual harassment is prohibited in all areas of life. The *Sex Discrimination Act 1984* (Cth) prescribes certain areas where sexual harassment is unlawful.

As previously discussed, with the use of social media and technology, sexual harassment at work often occurs outside the workplace. The restriction that the *Sex Discrimination Act* (Cth) provides is a further reason as to why clients generally prefer to lodge a complaint with the ADCQ.

This submission was prepared by Georgia May, employment lawyer, Human Rights and Civil Law Practice and Klaire Coles, Director, Human Rights and Civil Law Practice.

Please do not hesitate to contact Klaire Coles [REDACTED] if you have any questions regarding this submission.

Yours faithfully

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