

***Senator DAVEY: It's my understanding that unions have the right to enter workplaces to investigate work health and safety issues. Have any of your unions actively used these rights in regard to sexual harassment or sexual discrimination?***

Right of entry under WHS laws

Unions and HSRs represent and assist workers who have experienced sexual harassment under WHS laws on a daily basis (a recent case study is detailed below). Sexual harassment is covered at a general level by the Model Work Health and Safety (**WHS**) Act, and there are rights for permit holders to enter workplaces to investigate suspected contraventions. However, because there is currently no specific Model WHS Regulation or Code of Practice addressing the issue of sexual harassment (see Recommendation 35 of Respect@Work), it is much more difficult for unions and HSRs to take action under WHS laws to address this issue in workplaces. This is why unions have campaigned so hard for specific WHS Regulation on psychosocial hazards at work, including sexual harassment.

Unions around the country are working extremely hard to ensure that sexual harassment and other forms of gendered violence are taken seriously as WHS concerns by both employers and regulators. To highlight just two examples, the Victorian Trades Hall Council (**VTHC**) has undertaken extensive work with WorkSafe Victoria to jointly develop [a guide for employers](#) on preventing and responding to work-related gendered violence and work-related sexual harassment. VTHC has also developed an accredited WorkSafe HSR refresher training program on gendered violence and work-related sexual harassment; and is working with WorkSafe to ensure that training for their inspectors aligns so that both HSRs and the regulator have the same understanding of the drivers of, and best practice responses to, sexual harassment at work. Similarly, UnionsNSW has worked closely with the regulator in that state to introduce a new code of practice for managing psychosocial hazards at work, which includes sexual harassment, and continues to advocate for more detailed advice on sexual harassment and occupational violence.

Despite the limitations of the current regulatory framework, unions and HSRs represent and assist workers who have experienced sexual harassment under WHS laws on a daily basis. There are countless examples of this. Just one recent case study involves a patient at a hospital in NSW who allegedly sexually and physically assaulted a number of young female nursing staff members. The New South Wales Nurses and Midwives' Association (NSWNMA) exercised right of entry under WHS laws on several occasions to access documents, inspect the workplace, speak with nurses, and meet with management. Further alleged sexual assaults were reported on young women several months later in the same ward, but from a different patient. We understand that the matter is now before the District Court.

This discussion highlights the urgent need for a clear and detailed new Model WHS Regulation and Code of Practice addressing the issue of sexual harassment at work. The government's commitment on 20 May to support amending the Model WHS Regulation to deal with psychological health, as recommended by the Boland Review<sup>1</sup> and Respect@Work is welcomed by unions. The development of a new WHS Regulation on psychosocial hazards at work will be a significant step forward in the prevention of sexual harassment and gendered violence at work. It is crucial that the new regulation applies the hierarchy of control and is sufficiently clear and detailed to enable employers to understand their obligations, and that a supporting Code of Practice on sexual harassment is also

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<sup>1</sup> [https://www.safeworkaustralia.gov.au/system/files/documents/1902/review\\_of\\_the\\_model\\_whs\\_laws\\_final\\_report\\_0.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf)

developed. The ACTU will continue to play an active role in this work through Safe Work Australia (SWA).

#### Right of entry under the Fair Work Act

Unions also have the right to enter workplaces under s 481 the Fair Work Act (**FW Act**) for the purpose of investigating a suspected contravention of the FW Act. However, as detailed in our written and oral submissions, sexual harassment is not currently prohibited by the FW Act. Despite a clear Respect@Work Report recommendation to address this (Recommendation 28) the Government's Bill fails to address this. This gap means a permit holder would not have clear rights to enter a workplace under that Act involving a sexual harassment issue. This is another reason why Recommendation 28 must be implemented without further delay.

We would be happy to provide any further information required by the Committee.