



12 October 2022

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Sir/Madam

#### ANTI-DISCRIMINATION AND HUMAN RIGHTS LEGISLATION AMENDMENT (RESPECT AT WORK) BILL 2022

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission in respect of Your Future, Your Super measures.

#### About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include 26 Australian and international asset owners and institutional investors with over \$1trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership to strengthen investment outcomes. Active ownership allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage. ACSI members can achieve financial outcomes for their beneficiaries through genuine and permanent improvements to the environment, social and governance (ESG) practices of the companies in which they invest.

#### ACSI position

ACSI welcomes the introduction of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* (the Bill). ACSI commissioned research in 2021 to better understand how companies are addressing sexual harassment. The research also identifies steps that companies and their leaders can implement to improve their approach to the prevention of sexual harassment. The report found that sexual harassment is a financially material risk for companies due to its potential for negative impacts on staff recruitment and retention, productivity, profitability, culture and reputation.<sup>1</sup> Sexual harassment scandals can have a more negative impact on public perceptions of a company than financial misconduct or fraud.<sup>2</sup> Deloitte modelling estimates that the total cost of workplace sexual harassment to the Australian economy is \$3.8 billion, the largest component of which is a cost to employers of lost productivity (\$2.6 billion).<sup>3</sup> Consequently, sexual harassment has become an increasingly critical consideration for investors.

ACSI supports the inclusion of a positive duty on employers and businesses to prevent a hostile work environment based on sex. Joint research from ACSI and the Australian Human Rights Commission (AHRC) found that in many organisations it is often unclear where the responsibility lies for preventing and responding to sexual harassment.<sup>4</sup> The introduction of a positive duty, and the Commission's assigned role of providing guidelines and education on this duty, will assist in clarifying best practice and responsibilities for companies in preventing sexual harassment.

We also note that broader recommendations in the *Respect@Work: National Inquiry into Sexual*

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<sup>1</sup> ACSI and Australian Human Rights Commission, [Equality across the board: Investing in workplaces that work for everyone](#), 2021, p.13

<sup>2</sup> Ibid., p.19

<sup>3</sup> Australian Human Rights Commission, [Respect@Work: Sexual Harassment National Inquiry Report](#), 2020

<sup>4</sup> ACSI and Australian Human Rights Commission, [Equality across the board: Investing in workplaces that work for everyone](#), 2021, p. 21

*Harassment in the Workplace (2020)* Report included the introduction of sexual harassment indicators, such as the preventative measures in place, on which ASX-listed companies could report (Recommendation 44). We would welcome further action to implement these recommendations.

### **Introduction of a positive duty**

The Bill places a positive duty on an employer or person conducting a business to 'take reasonable and proportionate measures' to eliminate sexual harassment.<sup>5</sup> ACSI supports the Bill's inclusion of a positive duty on business and employers to prevent a hostile work environment on the basis of sex. Joint ACSI/AHRC research found that the majority of boards discuss sexual harassment on a reactive basis. Fewer than half of the respondents stated that prevention or management of sexual harassment was a regular agenda item for the board. Rather, events prompt board discussions.<sup>6</sup> As sexual harassment represents a financially material risk, reactive responses are inadequate and instead a proactive, preventative response is required.

This reactive approach to sexual harassment is in part a reflection of the lack of clarity on who within businesses are responsible for preventing and responding to sexual harassment. In most of the companies surveyed in research by ACSI and AHRC, it was unclear who was responsible for preventing and responding to sexual harassment as the responsibility was shared between boards and the senior executive.<sup>7</sup> By placing a positive duty on an employer or person conducting a business to eliminate unlawful sex discrimination, the Bill provides a much-needed clarification of the responsibilities for industry in preventing sexual harassment. This is consistent with findings by ACSI/AHRC research which found that better practice includes the board making it clear that they have primary responsibility for the prevention of sexual harassment.<sup>8</sup>

### **Guidance on best practice**

We note that the Bill gives the Commission the function to prepare guidelines and educate businesses and employers on the positive duty to prevent a hostile work environment on the basis of sex.<sup>9</sup> At present, there are inconsistencies in the reporting of sexual harassment and how relevant information is reported and used within companies.<sup>10</sup> Guidelines will assist companies to form best practice processes for the prevention of workplace sexual harassment. This may include appropriate sharing of information internally, such as high-level complaint data.<sup>11</sup> In our engagement with companies, ACSI encourages transparency on the number of sexual harassment complaints, how many were substantiated, and the resulting consequences, such as dismissal. In addition, ACSI/AHRC research found that directors and the Executive Management Team would benefit from additional expertise in the prevention and management of sexual harassment. For example, less than 1 in 5 companies reported that board directors 'underwent training on good governance and sexual harassment'.<sup>12</sup> The Commission's educational duties will assist companies to build this expertise.

Yours faithfully

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Louise Davidson AM  
Chief Executive Officer  
Australian Council of Superannuation Investors

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<sup>5</sup> *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022*

<sup>6</sup> ACSI and Australian Human Rights Commission, [Equality across the board: Investing in workplaces that work for everyone](#), 2021, p. 23

<sup>7</sup> *Ibid.*, p.10

<sup>8</sup> *Ibid.*, p.35

<sup>9</sup> *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022*

<sup>10</sup> ACSI and Australian Human Rights Commission, [Equality across the board: Investing in workplaces that work for everyone](#), 2021, p.21

<sup>11</sup> *Ibid.*, p. 40.

<sup>12</sup> *Ibid.* p.10