



KLC is a community legal centre providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since 1981. We have over 40 years' experience and broad expertise across discrimination law, employment law and working for people who have experienced harassment. As part of this work, we run a specialist NSW state-wide Sexual

orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding.’

3. Positive duty on employers to prevent unlawful sex discrimination

A. Duty to prevent unlawful sex discrimination etc.

The legislative implementation of a positive duty remains the key legislative reform in our view that will directly address and prevent sexual harassment. It is, therefore, vitally important that we get both the scope of the duty and enforcement right.

We are concerned that the positive duty proposed under section 47C of the SDA is narrower than the positive duty recommended in recommendation 17 in the Respect@Work Report and under the (Vic) in certain ways. In particular:

- We are concerned that the positive duty under the Bill only applies to measures taken to prevent unlawful discrimination, and not to other forms of unlawful discrimination, (for example, section 15 of the (Vic)). This fails to recognise the complex and intersectional nature of discrimination in Australia and also the strong evidence in the Respect@Work Report that sexual harassment is characteristically intersectional in nature.³ This is also a missed opportunity to better protect and recognise intersectional discrimination which has long been identified as a significant legal gap in Australia.⁴ We believe that the Bill would benefit from more time to consider how the positive duty could better reflect intersectional discrimination. At a minimum, we recommend that section 47C(2) is revised to ensure that the positive duty exists in relation to all forms of unlawful discrimination at work under Commonwealth laws.
- We also note that the Government has already recognised the need for a consistent approach to anti-discrimination laws in the Bill by extending the time limit for all unlawful discrimination complaints to 24 months.

- We support the positive duty capturing sex discrimination by a broader range of persons than are protected from sex discrimination under the SDA. We consider this appropriate given that the duty is to prevent unlawful sex discrimination. We recommend that the positive duty is revised to ensure that duty holders are required to take reasonable steps to prevent discrimination by a range of third parties, including clients, customers, and workers in labour hire arrangements. In our experience, this is necessary to ensure that the duty is effective in preventing discrimination by a range of third parties, including clients, customers, and workers in labour hire arrangements. In our experience, this is necessary to ensure that the duty is effective in preventing discrimination by a range of third parties, including clients, customers, and workers in labour hire arrangements.

a right of recourse for individuals or representatives to bring action in the courts for the AHRC to commence inquiries or further their inquiry compliance process.

4. Inquiries into systemic unlawful discrimination

Restrictive definition of “systemic unlawful discrimination”

The Bill empowers the Commission to inquire into any matter relating to systemic unlawful discrimination, or suspected systemic unlawful discrimination, and to do anything incidental or conducive to the performance of these functions (s35L(1)). However, we are concerned that the definition of “systemic unlawful discrimination” is too narrow under section 35L(2)).

We support a broader definition of ‘systemic unlawful discrimination’ under the Bill, which takes into account other factors such as:

- the nature of the conduct;
- the nature of the parties involved (including whether any perpetrators are in positions of power); and
- the length of time of the systemic unlawful discrimination.

humiliate her. We recommend that the Bill is revised to make it clear that a hostile work environment can be one where a person of a particular sex is made to feel “unwelcome” or excluded” or otherwise prevents them from enjoying their rights at work. We also recommend that this form of discrimination is extended to other attributes protected under anti-discrimination laws (e.g., subjecting a person to a hostile workplace environment on the ground of disability).

6. Meaning of harassment on the ground of sex

We support the Bill's omission of the word 'seriously' under section 28AA(1)(a) of the SDA. However, we do not think this goes far enough in recognising that sex-based harassment is demeaning by its very nature. We also think requiring sex-based harassment to be 'demeaning in nature' sets an unnecessarily high standard for applicants, which is out of line with the other sex discrimination t

