

3 October 2018

Gender Equality Unit
Office for Women
Department of Health and Human Services
By email: gender.equality@dhhs.vic.gov.au

Dear Gender Equality Unit

Submission in response to the Gender Equality Bill Exposure Draft

About JobWatch

JobWatch Inc (**JobWatch**) is an employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It is an independent, not-for-profit organisation which is a member of the Federation of Community Legal Centres (Victoria).

JobWatch was established in 1980 and is the only service of its type in Victoria. The centre is funded by State and Federal funding bodies to do the following:

- a) provide information and referrals to Victorian, Tasmanian and Queensland workers via a free and confidential telephone information service (**TIS**);
- b) engage in community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- c) represent and advise vulnerable and disadvantaged workers; and
- d) conduct law reform work with a view to promoting workplace justice and equity for all workers.

Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone information service. To date we have collected more than 200,000 caller records with each record usually canvassing multiple workplace problems, including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time.

In the 2017-18 financial year, JobWatch's TIS responded to over 16,000 calls and assisted over 12,000 callers.

JobWatch's feedback on the Gender Equality Bill

1. JobWatch congratulates the Andrews Labor Government on taking concrete, practical steps designed to achieve gender equality in Victoria.
2. We note that the Gender Equality Bill (**the Bill**) is very important first step. However, "for change to be realized, it will take successive generations and governments to maintain focus, funding and effort on gender equality."¹
3. We support the need for legislation that imposes positive obligations on public sector bodies, being all the entities listed in s6 of the Bill. We would hope that, in the near future, the positive obligations relating to the gender equality action plans and gender equality targets might be extended to large companies in the private sector, but we agree that, as a starting point, they should be binding on public sector organisations.
4. We also support the proposal that procurement guidelines may be issued for the purpose of promoting and advancing gender equality in not-for-profit and private organisations. We would welcome the opportunity to be involved in a consultation process to further consider what those procurement guidelines might look like.
5. It is unfortunate that the Bill defines gender equality very narrowly, in line with gender binarism, as "equality of rights, opportunities, responsibilities and outcomes between people of different sexes" (s4). This potentially excludes trans, intersex and gender diverse people from the Bill. The definition of gender equality set out in the *Safe and Strong: A Victorian Gender Equality Strategy* document (pg 36) explicitly referred to trans and gender diverse people and we strongly submit that trans and gender diverse people should be specifically protected in any Gender Equality legislation. At the very least, we would like to see the Victorian Government act quickly to amend the *Equal Opportunity Act 2010* (Vic) so as to list intersex status as a separate attribute that is protected from discrimination.
6. We agree with the proposal that the names of non-complying defined entities should be published in State Gender Equality Plan annual reports (s18 of the Bill). However, we submit

¹ The Hon Natalie Hutchins MP, Gender Equality Bill exposure draft: discussion paper, pg 3.

that there should be a review process of the Gender Equality legislation after a certain number of years (eg three to four years) and consideration should at that stage be given to whether naming and shaming is an effective deterrent or whether organisations should be fined for non-compliance. Consideration will also need to be given to what checks and balances are in place to ensure that employers do not include false information on their Action Plans. On this point, we draw your attention to what happened to one of our callers:

Mina² was a manager who was paid lower bonuses than her two male colleagues, who held comparable positions in the company. She had an MBA whilst the other two did not. She also discovered that her previous manager had submitted false information for the requirements of the *Work Gender Equality Act 2012 (Cth)*, reporting that she was being paid an amount higher than her actual pay by \$11,000.

7. Aside from these initial comments, our feedback is focused on what more should be done, in addition to this Bill, to achieve gender equality in Victorian workplaces.
8. Whilst many women in the community are under-employed and/or lack security of employment, many professional women feel over-worked and torn between work and family commitments. Women in both these categories suffer the effects of gender inequality and are in need of special measures to alleviate their situations. Below are some practical suggestions designed to address some of the problems experienced by working women. We make these recommendations on the basis that they would initially be binding on employers in the public sector, but gradually the obligations would extend to large private sector companies and eventually to all employers.
 - a. Employers should not be allowed to advertise jobs without a salary range. This would put all job applicants, regardless of gender, on a much more equal footing, so that salary negotiations could be more genuinely focused on qualifications, experience and expertise.
 - b. Secrecy clauses in employment contracts should be abolished. Many of the current problems to do with the gender pay gap are connected with confidentiality clauses which prevent employees from discussing and comparing their terms and conditions with each other.
 - c. Given that many jobs these days are no longer clock-on and clock-off roles, but rather require employees to be “on duty” or “switched on” outside of work hours, checking emails and actively engaging with social media accounts etc, many employees feel that

² All names have been changed to protect our callers’ anonymity.

they never truly leave work behind and the notion of a “work life balance” is a myth. Employees feel increasingly pressured to be more productive and “do more with less.” Accordingly, regular job audits should be mandated in order to assess whether the role can reasonably be performed in the allocated hours.

- d. Flexible work arrangements need to be more meaningful. Currently many employers pay lip service to flexibility but are failing to adequately accommodate their employees’ needs by offering part-time and job-share arrangements. Part-time jobs are rarely advertised and many women feel their only real chance of working part-time is to either apply for a position which is advertised as a full-time role and then try to negotiate part-time hours, or to work for a certain amount of time on a full-time basis until they have proved themselves, before they can request part-time hours/flexible arrangements.
- e. Male employees need to be offered incentives to take parental leave, work part-time or flexible arrangements so as to ensure a greater take-up rate of these benefits. If we do not offer incentives, many employers and employees will continue to treat care responsibilities as women’s work and men will continue to feel that they will suffer professionally if they avail themselves of these benefits.
- f. Leave-buying arrangements need to be more readily available and promoted, not just exist as a theoretical possibility. Parents of school aged children should be actively encouraged to buy more annual leave so they can spend time with their children during the school holidays. This must be done in recognition of the fact that four weeks of annual leave leaves parents (more often women) feeling stressed, overwhelmed and anxious about how to look after their children the remaining eight weeks per year when their children are on school holidays. If both male and female employees were encouraged to buy more annual leave to care for their children, this would go a long way towards achieving greater gender equality.
- g. The *Equal Opportunity Act 2010* (Vic) needs to be amended so as to include a “but-for test” for claims relating to discrimination based on the attributes of breastfeeding, parental/carer status, pregnancy or sex, as well as for victimisation claims. This would mean that instead of needing to prove that the unfavourable treatment was because of a particular attribute, applicants would need to satisfy VCAT that but-for the attribute (eg the applicant being a woman / pregnant/ a parent etc), the applicant would not have been treated in the unfavourable way that she was treated. For the purpose of a victimisation claim, applicants would need to prove that had they not complained about discrimination or sexual harassment, or had they not refused to do go along with something that would have amounted to unlawful discrimination or sexual harassment, they would not have been subjected to the detriment they suffered. A but-for test would allow more women to succeed with their discrimination and victimisation claims and this would in turn result in meaningful behavioral change across the board and therefore greater gender equality.

- h. Large organisations should either be obliged to (or at least incentivized to) offer their employees subsidized, quality childcare, preferably onsite.
- i. Finally, we recommend that gender equality issues in a multicultural society such as ours be considered through an intersectional lens. The benchmark cannot solely be white, anglo, educated women. Gender equality policies and measures must take into consideration the compounded disadvantages experienced by women that have other vulnerability characteristics, including low socio-economic background, race, migrant status, age, disability, homelessness etc. Employers, beginning with public sector bodies, should mandate training in relation to unconscious biases for all senior managers. Employment policies and procedures to do with recruitment and retention should be scrutinized with the aim of achieving greater diversity in workplaces. Consideration should be given to improving systems for easier recognition of overseas qualifications and for assisting the transition of migrant women into our Victorian labour market.

Queries/comments

JobWatch thanks the Gender Equality Unit for considering our submission. We would be pleased to meet with you or to organise for you to meet with some of our callers/clients. Please contact Gabrielle Marchetti on (03) 9662 9458 if you have any queries or for further comment.

Yours sincerely,



Gabrielle Marchetti
Principal Lawyer
JobWatch Inc