

A Bill for an Act relating to the Proactive Measures to Prevent Sexual Harassment in the Workplace Bill 2021.

To be enacted by the YMCA Victoria Youth Parliament;

Proactive Measures to Prevent Sexual Harassment in the Workplace Bill 2021

A Bill for an Act to establish the Workplace Sexual Harassment Prevention Authority (WSHPA). This is a body with the purpose of preventing sexual harassment in workplaces. The WSHPA aims to provide proactive measures, including training and education services, on the recommendation of the Respect@Work Report (2020)¹.

The Australian Human Rights Commission into Sexual Harassment conducted a survey in 2012 which found that, in the previous five-year period, approximately one in five (21%) people over the age of fifteen has experienced sexual harassment in the workplace². Sexual harassment often goes ignored and unreported, due to fears of workplace retaliation, feelings of shame, alienation, and intimidation from colleagues. Rather than acting as a commission or a tribunal, the WHSPA aims to implement preventative measures in workplaces to protect employees.

The WHSPA will work to prevent and dismantle negative workplace cultures from festering and compromising the wellbeing of employees. This Bill will allow for proactive measures to be implemented in workplaces, to see a reduction in individuals impacted by sexual harassment. Reactive measures, such as education into lodging complaints safely, will be taught to employees to ensure all voices can be heard.

¹Australian Human Rights Commission. (2020). *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. Sydney: Australian Human Rights Commission.

²Australian Human Rights Commission. (2012). *Working without fear: Results of the Sexual Harassment National Telephone Survey (2012)*. Sydney: Australian Human Rights Commission.

PART I—Preliminary

Clause 1 Purpose

The main purposes of this Act are—

- (a) to implement a body within Victoria which actively works to prevent sexual harassment within workplaces;
- (b) to provide workplaces and employees with training on how to prevent sexual harassment from occurring, and how to safely report incidents;
- (c) to provide a framework through which to investigate workplaces for risks of sexual harassment or concerning behaviour;
- (d) to provide advice and recommendations on how to reduce risks of sexual harassment within workplaces.

Clause 2 Commencement

This Bill shall commence upon receiving assent from the Youth Governor of Victoria.

Clause 3 Definitions

In this Bill, we define the following to mean —

- (a) **representative of the organisation** means an individual, who has been appointed by the WSHPA, with the authority to exercise the organisation's powers;
- (b) **sexual harassment** means any unwelcome sexual advance or unwelcome conduct of a sexual nature;
- (c) **concerning behaviour** means any acts or omissions displayed by an individual or workplace which, to any reasonable person, could be seen as creating an environment in which sexual harassment is likely to occur.

Part II—Establishment

Clause 4 Establishment of the Workplace Sexual Harassment Prevention

Authority (WSHPA)

- 4.1 The WSHPA shall have the following aims—
- (a) to prevent the occurrence of workplace sexual harassment by ensuring companies have sufficient preventative measures;
 - (b) to ensure companies comply with this Act and the **Equal Opportunity Act 2010**;
 - (c) to act as a watchdog body to monitor compliance with the **Equal Opportunity Act 2010**;
 - (d) to bring action against non-compliant companies through the courts;
 - (e) to eliminate and reduce workplace health and safety risks;
 - (f) to ensure that all employees and employers feel safe in their workplace environment;
 - (g) to complement the **Occupational Health and Safety Act 2004**.
- 4.2 WSHPA shall have the following functions—
- (a) to monitor and enforce compliance with—
 - (i) this Act and its compulsory training as dictated in Clause 6;
 - (ii) section 92-102 of the **Equal Opportunity Act 2010**;
 - (b) to disseminate information regarding the duties of employers under this Act;
 - (c) to promote and develop education and training programs for employers.
- 4.3 WSHPA shall have the following powers—
- (a) to obtain information about workplaces and their compliance with this Act—
 - (i) a person shall be required to submit information relevant to an investigation, should they receive a written request from WSHPA;
 - (b) to give advice on compliance with this Act;
 - (c) to establish training and minimum training standards to which employers must train their employees;
 - (d) to issue penalties;
 - (e) to refer criminal matters to Victoria Police.

Clause 5 Investigation

- 5.1 A representative from WSHPA shall conduct annual workplace investigations.

- 5.2 Workplaces may also be investigated under the following circumstances—
- (i) random, undeclared audits;
 - (ii) upon receiving a tip or complaint from an individual;
 - (iii) upon receiving a request from a company seeking advice.
- 5.3 Representatives from WSHPA shall be able to exercise any powers listed in Clause 4—
- (a) WSHPA representatives shall require reasonable motive to exercise these powers.
- 5.4 Representatives from WSHPA shall not—
- (a) intentionally or unreasonably hinder or obstruct any employer or employee;
 - (b) intentionally intimidate or threaten any employer or employee;
 - (c) intentionally use or disclose information that was acquired from an employer or employee, for a purpose not reasonably connected with the exercise of a power;
 - (d) intentionally exercise or plan to exercise a power other than for the purpose of the investigation;
 - (e) be involved in investigations if they have any vested or personal connection with an involved party.
- 5.5 Representatives from WSHPA shall be able to issue directives to the investigated workplace for perceived breaches—
- (a) representatives shall complete a follow-up check on the quality of compliance with advice;
 - (b) directives shall be reasonable and appropriate to the conditions and income of the workplace;
 - (c) WSHPA shall aid in providing necessary equipment in order to fulfil directives made.

Clause 6 Compulsory Training for Organisations

- 6.1 Training shall be compulsory for the following—
- (a) human resources (HR)—
 - (i) for workplaces where there is no human resources team, this training shall be completed by managers or a person who is in charge of employee relations;
 - (b) employees.
- 6.2 Human resources training, conducted by WSHPA, shall be conducted over a period of two consecutive hours.
- 6.3 Employee training shall cover the following content—
- (a) identifying concerning behaviour;

- (b) reporting information or observed behaviour in a manner that is safe, anonymous, and professional.
- 6.4 Human resources training shall cover the following content—
- (a) training employees in relation to preventing sexual harassment;
 - (b) facilitating programs for employees on how to prevent sexual harassment;
 - (c) facilitating programs for employees on how to report concerning behaviour;
 - (d) facilitating programs for employees on how to prevent opportunities of sexual harassment occurring;
 - (e) supporting employees in disclosing information regarding concerning behaviour observed.
- 6.5 Employee training, conducted by human resources, shall—
- (a) occur annually;
 - (b) be conducted over a minimum period of two consecutive hours.
- 6.6 Training resources shall include—
- (a) discussions;
 - (b) modules;
 - (c) handouts and papers that employees may take away for future reference—
 - (i) handouts shall include contact information for WSHPA and methods of how to report concerning behaviour.

Clause 7 Penalties

- 7.1 Penalties shall apply for the following breaches—
- (a) Failure to comply with an investigation—
 - (i) 60 penalty units for a natural person;
 - (ii) 150 penalty units for an organisation with less than 20 employees;
 - (iii) 300 penalty units for an organisation with between 20 and 200 employees, inclusive;
 - (iv) 600 penalty units for an organisation with more than 200 employees.
 - (b) Failure to comply with compulsory advice given by WSHPA following an investigation—
 - (i) 60 penalty units for a natural person;
 - (ii) 150 penalty units for an organisation with less than 20 employees;
 - (iii) 300 penalty units for an organisation with between 20 and 200 employees, inclusive;

Sponsor: Ivanhoe Girls' Grammar School

Refuter: Newhaven College

- (iv) 600 penalty units for an organisation with more than 200 employees.
- (c) Failure to comply with minimum training requirements established by WSHPA—
 - (i) 100 penalty units for an organisation with less than 20 employees
 - (ii) 250 penalty units for an organisation with between 20 and 200 employees inclusive
 - (iii) 500 penalty units for an organisation with more than 200 employees.