

13 April 2021

Ms. Zali Steggall (OAM) MP
Independent Member for Warringah
House of Representatives
PO Box 450
Manly, NSW, 2095

By email only to: zali.steggall.mp@aph.gov.au

Dear Ms. Steggall,

RE: Sex Discrimination Amendment (Prohibiting All Sexual Harassment) Bill 2021

The Law Institute of Victoria ('LIV'), a constituent body of the Law Council of Australia ('LCA') writes to express its concern in relation to the Sex Discrimination Amendment (Prohibiting All Sexual Harassment) Bill 2021 ('the Bill'). Whilst the LIV strongly supports the recently proposed legislative reforms announced on 8 April 2021¹ which include amendments to the *Sex Discrimination Act 1984* (Cth) ('SD Act'), the LIV notes that the Bill's ambit goes beyond the workplace-focused recommendations of the Respect@Work report. As a result, the LIV submits that the Bill should not proceed for the reasons outlined below.

Limiting the ambit to workplaces

Whilst the LIV strongly agrees that sexual harassment is unacceptable and should not be tolerated, some members of the LIV have expressed concerns that the Bill's proposal to repeal sections 28B-28L of the SD Act goes too far and would be exceptionally difficult to practically enforce. Sections 28B-28L of the SD Act are limited to workplace settings, and reflects the additional liabilities attached to public life conduct as opposed to private life conduct. For example, at common law an employer can be found vicariously liable for an employee's sexual harassment of a colleague². The LIV notes that the Bill's proposal to 'prohibit sexual harassment *in all circumstances*³' (emphasis added) goes beyond the ambit of the Respect@Work report which was limited to Australian workplaces⁴. It appears to cover all incidents of sexual harassment in private settings, such as a someone who catcalls another person on a street, or a person who makes an unwelcome sexual comment at a private, non-work-related function.

¹ Prime Minister of Australia the Hon. Scott Morrison MP, 'Transcript - Press Conference – E&OE' (8 April 2021) <<https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-08april21>>

² Von Schoeler v Boral Timber [2020] FCAFC 13.

³ Sex Discrimination Amendment (Prohibiting All Sexual Harassment) Bill 2021, Explanatory Memorandum, pg. 8.

⁴ Law Council of Australia, 'National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession' (Report, 2020) 25.

The LCA's constituent bodies were asked to consider this particular proposal, and it was noted that "consultations revealed a lack of consensus on this issue⁵".

Recently proposed legislative reform

It is understood that the Government has recently committed to introduce several legislative changes into Parliament later this year. This includes proposals to:

- (1) amend the SD Act to extend its coverage to include members of parliament, judges and public servants;
- (2) amend the *Fair Work Act 2009* (Cth) to include sexual harassment as grounds or a valid reason for dismissal, and to include sexual harassment within the definition of "serious misconduct";
- (3) introduce a 'stop bullying order' to be available in the context of sexual harassment; and
- (4) ensure that accepted complaints to the Human Rights Commission that occurred less than 24 months ago cannot be terminated on the grounds of time⁶.

The LIV fully supports these initiatives, and it is clear that there is an overdue and immediate need for law reform of the SD Act. However, it is recommended that the Bill should not proceed in its current state without further consultation and in consideration that its scope is overly broad.

If you wish to discuss this letter, please contact Michelle Luarte, Senior Policy Lawyer (03 9607 9413 or mluarte@liv.asn.au).

Yours sincerely,

Tania Wolff
President
Law Institute of Victoria

⁵ Ibid, 21.

⁶ ABC News, 'Politicians and judges to be included in Sex Discrimination Act, federal government announces' (News article, 8 April 2021) < <https://www.abc.net.au/news/2021-04-08/government-responds-sexual-harassment-respect-at-work-report/100055070>>.