Australian Nursing And Midwifery Federation

# SUBMISSION TO THE NATIONAL INQUIRY INTO SEXUAL HARASSMENT IN AUSTRALIAN WORKPLACES

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Australian Nursing & Midwifery Federation

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## About the ANMF

The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 275,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a trade union and professional organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

The ANMF believes all nurses, midwives and carers have the right to work in a safe and healthy workplace environment and to perform their work without risks to their physical and psychological health and safety.

The ANMF considers in all aspects of working life a zero tolerance approach to any form of sexual harassment in the workplace must be adopted. To achieve the elimination of sexual harassment in the workplace there must be systemic change to workplace structures that perpetuate gender inequality and cultural attitudes that condone unacceptable behaviour. These changes must be encouraged and supported by legislative, regulatory and policy reform.

## National Inquiry into Sexual Harassment at Work

The ANMF welcomes the opportunity to make a submission to the Australian Human Rights Commission on this important inquiry and commends the AHRC for taking leadership in identifying and addressing the effects of sexual harassment in the workplace.

The ANMF has read the submission of the ACTU and wishes to express its strong support for all of the recommendations made by the ACTU to address both the causes and effects of sexual harassment in the workplace. This submission provides some industry specific information on the prevalence, nature and reporting of sexual harassment and the impact this has on workers and their participation in the workforce.

The ANMF has also considered the Boland report, which recommends the development of a new Regulation on psychosocial hazards be developed as a matter of priority. This recommendation is strongly supported and will be discussed further in this submission.

## Prevalence, nature and reporting of sexual harrassment

### Prevalence and nature

The AHRC 2018 survey: '*Everyone's business*: *Fourth national survey on sexual harassment in Australian workplaces*' shows the prevalence of workplace sexual harassment in the past five years by industry group. Health Care and Social Assistance sat at the national average across industries at 33%.

In 2018 The NSW Nurses & Midwives Association collaborated with Dr Jacqui Pich of University of Technology Sydney to conduct an extensive survey of nurses and midwives in NSW looking at their exposure to patient related violence and aggression. The survey asked about all forms of violence, including sexual harassment as experienced by nurses and midwives from patients, relatives and visitors to health services. It did not look at violence between colleagues at work.

Dr Pich presented her preliminary findings on the work, '*Violence against nurses and midwives from patients and or relatives and friends*', at the 6th International Conference on Violence in the Health Sector in Toronto in October 2018. The report *'Violence in Nursing and Midwifery in NSW:Study Report*' (the Pich report) has recently been published and is annexed to this submission.

The survey attracted responses from 3,416 participants, working in nursing and midwifery including areas of medical, surgical, mental health and aged care across the public sector (78%), private sector (16%) and not for profits (7%). Reflective of gender representation in the industry, 87% of respondents were women.

Of the total number of participants surveyed, 47% reported experiencing an episode of violence in the previous week and 80% in the 6 months prior to completing the survey.

The report looked at the type of violence experienced in the previous 6 months. Verbal or non-physical violence was the most common type of violence reported, with 76% of participants experiencing an episode. Of those participants who had experienced verbal or non-physical violence, 25% had experienced sexually inappropriate behaviour.

Nearly 25% of participants reported physical abuse/violence in the previous 6 months. Of those participants 13% experienced inappropriate sexual conduct and 2% - or 35 individuals - had experienced sexual assault.

When invited to describe the nature of the inappropriate sexual conduct experienced, participants added the following:

- *A 23 year old ice user threatened to knife rape me*
- *I have had semen thrown on me*
- *Grabbed by the waist and pinned to the bed rail*
- *My right breast was grabbed by a dementia patient and squeezed so hard it hurt for 24 hours afterwards.*

## Impact of violence

The Pich report examines the consequences of episodes of violence. While the report does not attribute consequences to the effects of sexual violence specifically, the findings on the consequences more broadly are relevant.

28% of participants reported they had suffered a physical or psychological injury as a result of an episode of violence. Nearly a third of those sought medical attention and over a third took time off work ranging from the remainder of a shift to over a year.

Some participants elaborated by saying they ended up resigning, were forced into retirement or took random days off when too distressed to work. The impact of violence can be highly detrimental to the working lives of nurses and midwives in terms of time away from work. Absence from work also impacts on colleagues, management of services and care of patients and health care recipients.

The Pich report also identifies the emotional consequences of experiencing violence at work. These can range from long term psychological harm to feelings of unhappiness, powerlessness, fear, anxiety, shame and guilt.

This extract from the Pich report shows the range of detrimental effects that can be experienced:

> **4.4.1 Emotional response**
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> *Participants reported a range of ongoing emotional responses following an episode of violence, some of which indicated negative coping strategies, for example "increase in use of alcohol or other substances/medications". A number of the responses were long-term in nature, including those linked to Post Traumatic Stress Disorder (PTSD), for example "weight loss/gain", "nightmares and flashbacks" and "altered sleep patterns". PTSD itself was selected as a response by 8% of participants. In addition some responses impacted the nursing practice of participants, for example "withdrawal from people/situations" and "fear/anxiety re future episodes"* (Table 18).[1]
>
> The report identifies that in addition to the impact on the individual there is a clinically adverse outcome for health care recipients as well. Participants reported a withdrawal not only from an offending individual but were more likely to experience a lack of empathy for patients generally. A loss of ability to empathise and interact with patients is detrimental to the overall ability to provide care.
>
> With reference to other studies, Dr Pich concludes that nurse 'burn out' leads to a lack of joy in providing care and spending less time with patients whom they perceive as abusive. *'Thus the negative effects of patient related violence extend to the workplace and can lead to difficulties with the recruitment and retention of nurses, decreased productivity and efficiency, increased absenteeism and fewer resources for nurses'*.[2] There is a cost flow on to the recruitment and retention of nurses and workers compensation claims.
>
> Again, while the impacts above are speaking about the response to experiencing violence in the workplace more generally, the study included those who experienced sexually inappropriate conduct. It is not difficult to infer that a nurse, midwife (or carer) who has been subjected to sexually inappropriate behaviour would experience the impacts described above.

[1] Jacqui Pich, Christopher Oldmeadow and Matthew Clapham 'Violence in Nursing and Midwifery in NSW: Study Report' p. 49-50

[2] Ibid 71

## Reporting

The ACTU *'Sexual Harassment in Australian Workplaces: Survey results (Report 2018)'* indicates that 58.8% of people who experienced sexual harassment told someone about it. Of those only 26.7% made a formal complaint. The Pich report also looked at the level and nature of reporting.[3] It found 33% reported all episodes of violence, 45% reported selectively and 22% did not report at all.

The Pich report showed reasons for not reporting included the belief that nothing would change in the long-term, that it was an accepted/expected part of the job and there was a lack of follow up.

The survey conducted for the Pich report identified a problem specific to those working in health - some 390 participants did not report because they perceived the perpetrator as not responsible for their actions due to their clinical or personal circumstances. This perception poses a significant barrier to both reporting and managing risk. The ACTU survey also recorded that 56.1% of people who made a formal complaint were not at all satisfied with the outcome of the complaint process. The Pich study found almost half of participants were not satisfied with their employer's immediate response.

Participants in the Pich study felt they did not receive adequate information, support or outcomes as a result of making a complaint. Some considered they were blamed for the incident.

The ANMF is concerned that there is significant under reporting of instances of sexual harassment in the workplace, both using internal mechanisms or seeking the assistance of the union. In order to tackle sexual harassment in the workplace, there needs to be significant cultural change. It must become acceptable to make a complaint and the complaint process should be effective and prompt and not expose the complainant to the risk of negative repercussions.

Where violence and harassment cannot be prevented, it must be dealt with promptly and positively by management. Staff should be supported and encouraged to report incidents and seek help. Management must be responsive and proactive in addressing concerns and taking steps to minimise future risk. In all respects, this is a cultural issue that requires consistent behavioural modelling- management must lead by example and enable all staff to call out unacceptable behaviour without fear of repercussion.

## Work Health and Safety

It is the ANMF's view that sexual harassment in the workplace needs to be treated as an OHS issue.

As discussed above, a significant cultural challenge in health is to change the perception that experiencing violence at work 'is part of the job'. This perception highlights the importance of addressing the problem from an OHS perspective. Risk management to minimise exposure to inappropriate behaviour and placing the onus of designing safe work practices on employers will be more effective than remedy after the fact.

It is acknowledged, however, that prevention will not always be possible, particularly in environments such as emergency departments, mental health and drug and alcohol treatment facilities. In these settings it is particularly important to focus on the environment and supporting clinical best practice rather than vilifying individual perpetrators of violence.

Employers have an obligation to provide a safe workplace under the Model Laws or state equivalents in Victoria and Western Australia. The employer's obligation as it currently stands can be met by showing it has policies and procedures in place and has provided training to staff.

The ANMF supports the contention that the obligation to provide a safe workplace should be required to include taking pro- active steps beyond simply having policies and procedures in place.

In line with this, the ANMF supports recommendation 2 of the Model WHS Laws 2018 Review Report calling for a new Regulation on psychosocial hazards. The regulation and any supporting Code should provide clear what steps should be taken to eliminate or minimise risk. These should extend beyond a 'tick a box' compliance regime of having a policy and providing cursory online training.

The ANMF (Victoria Branch) developed the *'10 Point Plan to End Violence and Aggression: A Guide for Health Services'* that sets out a method for assessing and eliminating or minimising risk. The 10 Point Plan identifies areas of work for example from security, admission practices, reporting, investigating and responding to events. It then describes progressively what high risk, reduced risk and low risk practice looks like in these areas. It is a practical tool to aid continuous improvement and as a positive example of work that can be done to minimise all forms of violence in the workplace. A copy of the 10 Point Plan is attached.

## The drivers of workplace sexual harassment

The ANMF refers to the ACTU submission at pages 10-14 identifying gender inequality as a major cause of sexual harassment. It is also a major barrier to being empowered to report and act on sexual harassment.

The Workplace Gender Equality Agency report of August 2018 'Australia's Gender Pay Gap Statistics' shows that Australia's full-time gender pay gap is 14.6%. That means women earn on average $244.80 per week less than men. The national gender pay gap narrowed from 15.3% in May 2017 to 14.6 in May 2018. Disturbingly, when broken down by industry, the gap in Health Care and Social Assistance increased from 21.9% to 25% over the same period.

In September 2008 the (then) ANF submitted to the House of Representatives '*Inquiry into pay equity and associated issues related to increasing female participation in the workforce'*. The submission set out in general terms, some of the issues that contribute to the gender pay gap:

*'Many factors contribute to the gender pay gap including the historical and continuing undervaluing of women's work, levels of workplace participation, workplace conditions and the way work is organised, tribunal processes and methods of setting wages and conditions, education and training and other workplace factors such as access to overtime and higher levels of casualization and part-time work for females.'*[4]

These factors are as relevant in 2019 as they were in 2008. The lack of progress in reduction of the gender pay gap supports the argument that change needs to be more sustained and substantial.

For young people, LGBTIQ people, people with a disability, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds, the effects of structural inequality and insecure work are compounded.

## Proposed reform

The ACTU submission to this Inquiry puts forward a range of detailed recommendations for legislative and regulatory reform. These include:

- Amendment to the Fair Work Act to empower the Fair Work Commission to resolve, by conciliation or arbitration if necessary, sexual harassment and discrimination disputes;

[4] Australian Nursing Federation submission to the 'Inquiry into pay equity and associated issues related to the increasing female participation in the workforce' September 2008, p.6

- Unions and other interested parties to have the capacity to bring representative complaints on behalf of workers;
- Strengthening the powers of FWC to address gender equality, including the establishment of a Gender Equality Panel;
- A new Workplace Health and Safety (WHS) Regulation and Code of Practice should be developed in consultation with social partners and experts on all psychosocial hazards, including sexual harassment;
- Unions should have the right to prosecute breaches of WHS regulations;
- The *Sex Discrimination Act 1984* should be strengthened, including by empowering and resourcing the Sex Discrimination Commissioner to conduct own motion inquiries, authorising courts to award exemplary and punitive damages for breaches of the Act and extending time limits for sexual harassment complaints. A new 'positive duty' on employers should be considered;
- The Australian Government should actively support the development of, ratify and fully implent a new ILO Convention supplemented by a Recommendation preventing violence and harassment in the world of work;

The ACTU recommendations are fully supported by the ANMF.

## Conclusion

Elimination of sexual harassment in the workplace will not be achieved, without practical reform and sustained cultural change to the way in which we view, report and respond to sexual harassment.

The ANMF is committed  to continuing to raise awareness of the problem, campaigning for appropriate legislative reform and supporting the many structural changes proposed by the ACTU. The work is essential to ensuring the health and wellbeing of our members, supporting their optimal participation in the workforce and in turn the best outcomes for health care recipients.