



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

Education and Workforce Committee

Parliament Buildings, Wellington

By Email: ew@parliament.govt.nz

15 July 2022

**Employment Relations (Extended Time for Personal Grievance for Sexual Harassment)
Amendment Bill**

Background

- 1 Thank you for the opportunity to submit on the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill (the **Bill**).
- 2 This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Trust**). The Trust is responsible for administering the New Zealand Women's Law Journal (the **Journal**), which is the only academic publication that is solely dedicated to publishing legal scholarship about women's issues in the law and supporting the work of women lawyers in New Zealand. The primary aims of the Trust are to promote awareness about gender justice in the law and to support women in the New Zealand legal profession in their careers. This includes contributing to wider society discourse about legal issues facing women.
- 3 The Trust acknowledges that people of any gender can be victims of sexual harassment. However, the Trust would also like to note that this is a gendered issue that is more likely to be experienced by women, trans, and non-binary people.¹ Workplace sexual harassment is also an issue within the legal profession. Thirty-one percent of women and five percent of men in the 2018 Legal Workplace Environment Survey said they had been sexually harassed during their working life.²
- 4 The Bill proposes to extend the time available to raise a personal grievance that involves allegations of sexual harassment from 90 days to 12 months. The Trust is making this submission in support of the Bill.

¹ Ministry of Business, Innovation, and Employment "Bullying and harassment at work issues paper – in depth look" (2020) <<https://www.mbie.govt.nz/dmsdocument/11515-bullying-and-harassment-at-work-issues-paper-in-depth-look>> at [46] – [50].

² New Zealand Law Society "The 2018 Workplace Environment Survey" (29 June 2018) <<https://www.lawsociety.org.nz/news/lawtalk/issue-919/the-2018-legal-workplace-environment-survey/>>

Support for the Bill

- 5 The Trust agrees with the Bill's intention to extend the time for personal grievances involving allegations of sexual harassment to allow victims sufficient time before deciding to come forward.
- 6 Research shows that many employees experience sexual harassment in the workplace. However, from 2015 to 2019 the Employment Relations Authority only considered 14 cases where sexual harassment was the main basis of a personal grievance.³ During the same period, the Employment Court did not consider any cases where sexual harassment was the main basis for a personal grievance.⁴ The Trust is of the view that this shows that the current legislative settings are not adequate for allowing victims of workplace sexual harassment time to raise a personal grievance.
- 7 The Trust highlights that it can be difficult to report sexual harassment in a workplace, and victims often wait a long time before coming forward.⁵ There can be many reasons for this. Employment relationships and environments are often complex, and power imbalances and uncertainty can impact whether a victim raises allegations of sexual harassment. Employees may also not feel supported within their workplace to raise a formal complaint, let alone a personal grievance. Employment relationships can be multifaceted and the MBIE "Bullying and harassment at work issues paper"⁶ and the 2018 Legal Workplace Environment by the New Zealand Law Society⁷ discusses a number of specific issues to reporting arising from employment relationships. Increasing the time to 12 months can help to give the victim time to consider what has happened to them and raise a personal grievance.
- 8 The Trust considers that the current extension of time to 12 months appears appropriate. However, follow-up research should be carried out to evaluate whether 12 months allows time for victims of sexual harassment to raise a personal grievance. It may be the case that a longer time period is required, particularly where the victim is vulnerable.

³ Ministry of Business, Innovation, and Employment "Bullying and harassment at work issues paper – in depth look" (2020) <<https://www.mbie.govt.nz/dmsdocument/11515-bullying-and-harassment-at-work-issues-paper-in-depth-look>> at 66.

⁴ At 67.

⁵ Ministry of Business, Innovation, and Employment "Bullying and harassment at work issues paper – in depth look" (2020) <<https://www.mbie.govt.nz/dmsdocument/11515-bullying-and-harassment-at-work-issues-paper-in-depth-look>> at [135].

⁶ Ministry of Business, Innovation, and Employment "Bullying and harassment at work issues paper – in depth look" (2020) <<https://www.mbie.govt.nz/dmsdocument/11515-bullying-and-harassment-at-work-issues-paper-in-depth-look>>;

⁷ New Zealand Law Society "The 2018 Legal Workplace Environment Survey" (June 2018) <https://www.lawsociety.org.nz/news/lawtalk/issue-919/the-2018-legal-workplace-environment-survey/>

- 9 The Trust notes that the period of 12 months begins on the date on which the alleged action occurred or came to the notice of the employee, whichever is later. Given that sexual harassment can be an ongoing and recurring act, spanning months or years, which may escalate over time, the Trust is of the view that the 12-month period should begin on the last alleged act of sexual harassment.⁸ In our view, section 114 should be amended to provide that the 12 month period for personal grievances involving allegations of sexual harassment should run from the last occasion on which the conduct in question is said to have occurred. This amendment would support the stated intent of the Bill – to give employees sufficient time to raise a complaint in cases of sexual harassment – and ensure consistency in the treatment of personal grievances involving sexual harassment.

Conclusion

- 10 Thank you for the opportunity to submit on the Bill. Please feel free to contact us if you have any questions or wish to discuss anything further.

Ngā mihi

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⁸ This submission is consistent with the view taken by Anderson, Hughes and Duncan in *Employment Law in New Zealand* (2017, 2nd ed) at 9.169. The authors note that in cases of sexual harassment, "...the action or actions required to found a grievance may occur over a period of time before it becomes sufficiently serious or sustained to be the basis of a complaint. It would seem logical, and in conformity with the object of preventing such types of conduct, for the period to run from the last occasion on which the conduct that forms the basis of the complaint occurred."