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**BY EMAIL (2 PAGES)**

Dear Commissioner

**SUBMISSION TO THE NATIONAL WORKPLACE SEXUAL HARASSMENT INQUIRY –  
SUBMISSION ON MEASURES TO ADDRESS SEXUAL HARASSMENT IN AUSTRALIA**

My name is Brian Williamson and I have been an Accredited Specialist in Industrial Relations and Employment Law since 1994.

I recently attended the January 2019 Law Asia Employment Forum in Fiji and presented a paper on Disciplinary Investigations. One of my co-presenters, Ms Wong Cheat King, from Malaysia presented a paper on Investigations of Sexual Harassment Allegations.

I was most interested to learn that under the Malaysian *Employment Act* (“**the Act**”) a statutory obligation is placed on employers to investigate all complaints of sexual harassment. Penalties apply for failure to do so. In particular:

Section 81A of the Act defines a “*complaint of sexual harassment*” as being “*any complaint relating to sexual harassment*” by:

- an employee against another employee;
- an employee against the employer; or
- the employer against an employee.

Section 81B of the Act mandates that upon receiving a complaint of sexual harassment, the employer “*shall inquire into the complaint in a manner prescribed by the Minister*”. Where the employer refuses to make the inquiry, it must within 30 days provide written reasons to the complainant. Grounds for refusing to inquire include the existence of a previous investigation or that the employer regards the complaint as “frivolous, vexatious or not made in good faith”.

Dissatisfied complainants can then refer the complaint to the Director General, who, after a review, can direct the employer to conduct an inquiry or advise the complainant that the Director General agrees with the employer’s grounds for refusal.



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Section 81C of the Act then deals with the results of an inquiry in which there have been adverse findings against any employee perpetrator. In particular the employer **MUST** take disciplinary action against the perpetrator, with mandated sanctions including summary dismissal, demotion, or the imposition of lesser punishments, including suspension without pay for up to two weeks.

There are further provisions that deal with any non-employee perpetrators.

Section 81D and 81E of the Act further flesh out the procedures for sexual harassment complaints made to the Director General. It would in my opinion, be possible to adapt those provisions to apply to the AHRC. It would give the AHRC more power than it currently has.

Section 81F of the Act set out the penalty provisions that apply to employers who fail / refuse to inquire into sexual harassment complaints, fail to inform the complainant of the reasons for refusal to investigate and fail to inquire following the Director General's directions.

### **Submission**

It appears to me that:

- 1 Even though the impact of the Harvey Weinstein Effect has had a profound impact on many enlightened Australian businesses and many have upgraded their responses and attitudes to sexual harassment in the workplace, there is still much that needs to be done.
- 2 Accordingly, I believe that a regime of mandatory investigation of complaints of sexual harassment, as exists in Malaysian law, is both appropriate and timely for Australia. There is already a precedent in the Anti-Bullying provisions in the *Fair Work Act* which enables the Fair Work Commission to examine allegations of bullying and impose Stop Bullying Orders on perpetrators. In my respectful submission the creation of mandatory obligations to investigate complaints of sexual harassment is not a big step, especially when one understands that a number of bullying allegations to the FWC are really based in sexual harassment.
- 3 As the impacts of faster travel, the gig economy and the growth of trans-border corporations continues, there is merit in taking useful provisions from another Asian jurisdiction and adapting their provisions to the Australian environment.

This submission is non-confidential.

Yours faithfully

*Brian Williamson*

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