SYDNEY SENTINEL

Workplace sexual harassment laws must protect people of all sex, genders and sexualities

15 March 2022 Contributor Opinion

Respect in the workplace must extend to all citizens in all circumstances, writes Dr Tracie O'Keefe. Stock image.

The law must protect sex, gender or sexuality diverse people from harassment and abuse in the workplace – irrespective of perpetrators' religious beliefs – otherwise they are a farce, writes Dr Tracie O'Keefe.

The federal government is undertaking a review of workplace laws particularly in light of the Me Too movement. I was invited as a representative of Sex and Gender Education (SAGE) Australia, a campaigning group for the rights of sex and/or gender diverse groups of people, to

be on a Respect@Work consultation roundtable for human rights and advocacy groups on Wednesday, 9 March – or so I thought.

The government representatives stated it was a process to seek feedback from stakeholders on a range of policy questions relating to proposals from the *Respect@Work: Sexual Harassment National Inquiry Report*.

Respect in the workplace must extend to all citizens in all circumstances and is inalienably connected to their sex and gender presentation or sexuality, not just presumed heteronormative privilege. One cannot separate sexual harassment from harassment on the grounds of sex variation or gender presentation or sexuality.

The report used the phrase "driving cultural change and building safer and more respectful workplaces". It turned out during the consultation, however, that only applies to some people.

There was no representation from men's groups, gay men's groups, lesbians, bisexuals, the Asian community (of which there are over two-and-a-half million people in Australia) or people of disability. I guess the government thinks these people do not surfer sexual assault.

The legislative reform on sex-based harassment is highly confused and heteronormative excluding the variables of sex variation and gender presentation or sexuality. The proposed sexual harassment cessation orders will be useless if the perpetrator then turns around and says, "The *Sex Discrimination Act* (SDA) allows me to discriminate on the grounds of sex variation and gender presentation or sexuality because I'm religious," which it presently does, even if their religion involves believing in pixies from Mars.

A proposal states: "The *Respect@Work Report* recommended that the *Sex Discrimination Act* be amended to expressly prohibit creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex (recommendation 16(c))." However, until the clause in the *Sex Discrimination Act* that allows religious people and groups to discriminate against sex, gender or sexuality diverse groups, is removed, such conditions can never be possible.

I raised this point twice at the consultation meeting but was shut down and told it was not in the remit, which is code for the meeting being a government rubber stamp for government policies and not a real public consultation with stakeholders. Being a researcher, I immediately recognised facilitator and information sorting bias.

Dr Tracie O'Keefe, pictured, writes that the *Sex Discrimination Act* must not allow religious people and groups to discriminate against sex, gender or sexuality diverse groups. Photo: Tracie O'Keefe/Facebook.

To align the federal SDA with the *Work Health and Safety Act*, it must promote good mental health in the workplace that reaches into all workplaces, as the Tasmanian anti-discrimination laws presently do.

The SDA must prevent discrimination on the grounds of sex variation, gender presentation and sexuality even in religious circumstances. To do otherwise is a farce and actually promoting harassment.

It is untrue to say in the report, "The *Sex Discrimination Act* provides that it is unlawful to discriminate against a person in specified areas of public life because of their sex (and other protected attributes) … It also makes it unlawful to engage in sexual or sex-based harassment in specified areas of public life."

When a church or religious groups preclude people from employment because of their sex, sex variation, gender presentation or sexuality, that is discrimination in public life. It causes severe mental distress, traumas, PTSD and even suicidal thoughts, so it is victimisation of those groups.

Many people from sex, gender and sexuality diverse groups are sexually harassed, abused, raped and assaulted at work and do not report it because of already existing discrimination around their differences. They were already traumatised in the workplace by discrimination, so believe making a complaint of sexual assault would put them under too much pressure and scrutiny.

How do I know this? Because in my work as a mental health professional and sexologist I have counselled hundreds of people about the trauma they experienced from sexual assault.

Biological sex, sex variance, gender identity, gender variance and sexuality create a complex indivisible equation for the abused individual in the workplace. The elements of coercive control and physical violence cannot be reduced back to solely sexual abuse otherwise the law caters for an idealistic heteronormative reductionism. It creates an apartheid between heteronormative people and those who are sex, gender and sexuality diverse, and excludes the latter from legal protection.

Unless the *Fair Work Act* and all Australian laws, federal and state, align in talking about abuse on the grounds of physical sex differences, gender variance and sexuality, they are a nonsense. For Australia to comply with its international commitments to human rights, the perpetrators of sexual assaults and harassment should not be excused because of their religious views.

So, the respect in the workplace review should include the recommendation to remove the clause from the SDA that allows religious people and bodies to discriminate against people who are sex, gender and sexuality diverse in all area of life – because it is violence.

To have your say on the amendments in the Respect@Work consultation, which closes on 18 March, 2022, visit https://consultations.ag.gov.au/rights-and-protections/respect-at-work/.

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