

Submission
No 425

INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN NEW SOUTH WALES

Organisation: Unions NSW
Date Received: 5 September 2018



Submission

**NSW Parliamentary inquiry
into the music and arts economy**

3 September 2018

Submission by:

Unions NSW
Trades Hall Building
Level 3, 4 Goulburn Street
Sydney NSW 2000

Introduction

1. Unions NSW is the peak body for trade unions and union members in NSW. It has over 65 affiliated unions and trades and labour councils representing approximately 600 000 workers across NSW.
2. Our union affiliates cover the spectrum of the workforce, stretching from workers in finance to footwear and construction to communications.
3. We welcome the opportunity to make a submission to this inquiry. Our submission will focus on third party sexual harassment, which we are concerned is prevalent at music venues.

Third party harassment

4. Hospitality, retail, teaching, health, community and public services are some of the industries most affected by third party sexual harassment – that is sexual harassment perpetrated by third parties such as customers, patrons, clients, students, parents, visitors, service users and patients.
5. One of the industries most affected by sexual harassment is hospitality. This is undoubtedly due in part to two key factors – the role of alcohol in fuelling unlawful behaviour and the unequal power relationship between customers and the employees serving them.
6. The imbalance in power makes it very difficult for employees to complain, including because they fear retribution from their managers.¹
7. Customer perpetrated harassment also affects approximately 11% of women working in retail according to the Shop Distributive and Allied Trades Union (**SDA**). There are obvious difficulties in addressing the issue as it is hard to identify perpetrators and take action as they may not be seen again. The SDA's current approach is to recommend reporting the incident, follow up the company to ensure support is provided, and request that a banning notice be issued where possible or appropriate.
8. A number of pubs and clubs have taken steps to try and prevent sexual harassment of patrons, like providing reporting mechanisms for staff and encouraging staff to observe any instances of harassment.² However, this often

¹ Good and Cooper (2016).

² Fileborn, B, (2017) 'Staff can't be the ones that play judge and jury': Young adults' suggestions for preventing unwanted sexual attention in pubs and clubs, Australian & New Zealand Journal of Criminology, 50(2) 213–233.

overlooks the problem of staff experiencing harassment from customers and patrons.

9. In a 2016 Australian study,³ hospitality employees considered the enforcement of RSA laws, where drunken behaviour from patrons is treated with zero tolerance. Due to the existence of heavy fines that can be issued during on-the-spot inspections, licensees take their responsibility very seriously. Some interviewees in the study working in bars cited harassment as a sign of intoxication and as such could form a basis for the removal of patrons under RSA laws.
10. One way to tackle the prevalence of sexual harassment in the hospitality industry might be to include sexual harassment within the RSA training, and an explicit recommendation in that training for zero tolerance of this behaviour, and a removal of patrons who engage in that behaviour towards staff or other patrons.
11. The Equality Act 2010 in the UK originally contained provisions which made employers liable for failing to protect workers from third party harassment if they were aware that harassment had previously occurred on two occasions and had failed to take reasonable steps to prevent it from happening again. In 2012, those provisions were repealed. The recent report of the House of Commons Women and Equalities Committee on Sexual Harassment in the Workplace (**the UK Report**)⁴ noted that there was widespread support in the inquiry for introduction of measures that were similar to those that were repealed, with many arguing that the 'three strikes' element of the original provision should be discarded, and that a single instance of harassment should be sufficient for action. Many also recommended that the government should prepare guidance to help employers and employees understand this duty.
12. The Sex Discrimination Act (section 28G) and the Anti-Discrimination Act (section 22F) both cover third party harassment and make it unlawful for a person receiving goods or services to sexually harass another person in the course of receiving those goods or services. However, these protections are in a separate section of the Acts to the protections that apply to employment, and perhaps are therefore not well known. The provisions appear to have been barely used. These provisions could be strengthened (along the lines recommended by the

³ Good and Cooper (2016).

⁴ House of Commons, Women and Equalities Committee, Sexual Harassment in the Workplace, Fifth Report of Session 2017-19, 25 July 2018.

UK Report) to make it clear that employers are also liable for third party harassment of their employees, and provide guidance and resources about how to prevent and respond to third party harassment.

13. There is clearly a problem with sexual harassment of workers in the hospitality industry, including the music industry. Unions NSW supports legislative reform to prevent sexual harassment of workers within this industry and all industries.