

Senator Nita Green
Chair
Senate Legal and Constitutional Affairs Committee – Legislation Committee
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Parliament House
Canberra ACT 2600
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22 January 2024

Dear Senator Green,

**AUSTRALIAN HUMAN RIGHTS COMMISSION AMENDMENT (COSTS PROTECTION)
BILL 2023**

Thank you for the opportunity to comment on the *Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (the Bill)*.

The Power to Prevent Coalition is a group of diverse community organisations, unions, academics, peak bodies, health professionals, lawyers and victim-survivors. We see the effects of discrimination and sexual harassment on people every day and the barriers they face in seeking justice.

We wholeheartedly support the adoption of key principles of the Equal Access model in the Bill and believe this will greatly enhance access to justice, allowing people who have experienced discrimination and harassment to seek redress and particularly people experiencing disadvantage.

The cost provisions in this Bill represent a significant positive progression on the previous costs provisions that were proposed in the *Anti-Discrimination and Human Rights Legislation Amendment (Respect@Work) Bill 2022*.

We thank the government for conducting the Review into an appropriate cost model for Commonwealth anti-discrimination laws (**the Review**) and note that the Power to Prevent Coalition submitted a joint statement to the Review in support of an Equal Access Costs Model signed by 85 signatories, representing broad support across the sector for this model.

The costs provisions contained in the Bill will remove a significant barrier to accessing justice and ensure applicants can access legal representation and are supported to come forward without the risk of becoming bankrupt or facing significant debt simply for enforcing their rights. This will in turn lead to greater judicial consideration of anti-discrimination laws, send a clear message that this behaviour is unacceptable, and allow damages awards to better reflect community standards. This reform is a huge step forward in addressing and preventing discrimination and harassment into the future.

The Power to Prevent coalition released a public statement in support of the Bill in December 2023. This statement outlines the reasons for our support and is attached.

Signatories:

Aboriginal Legal Service (NSW/ACT)	Federation of Community Legal Centres (Vic)
Australian Council of Trade Unions (ACTU)	Finance Sector Union
Australian Education Union (AEU)	Full Stop Australia
Australian Lawyers Alliance	Grata Fund
Australian Nursing and Midwifery Federation	Hall Payne Lawyers
Australian Salaried Medical Officers Federation	Health Services Union (HSU)
Carol Andrades, Senior Fellow, University of Melbourne	Independent Education Union of Australia (IEU)
Caxton Legal Centre	Inner City Legal Centre
Circle Green Community Legal	JobWatch
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia's (CEPU)	Jumbunna Institute
Community Legal Centres Australia	Justice Connect
Community and Public Sector Union – PSU Group	Kingsford Legal Centre
Community and Public Sector Union – SPSF Group (CPSU-SPSF)	Legal Aid NSW
Domestic Violence NSW	Legal Aid NT
Drummond Street Services	Mackay Regional Community Legal Centre
Equality Rights Alliance	Maritime Union of Australia (MUA)
Emerita Professor Margaret Thornton, Australian National University	Maurice Blackburn Lawyers
Emerita Professor Sara Charlesworth, RMIT University	Migrant Justice Institute
Employment Rights Legal Service	National Legal Aid
Ethnic Communities' Council of Victoria	New South Wales Nurses and Midwives' Association (NSWNMA)
	Professionals Australia
	Public Interest Advocacy Centre
	Queerspace
	Redfern Legal Centre
	Ruby Gaea Darwin Centre

Sexual Assault Services Victoria

Shop, Distributive and Allied Employees' Association (SDA)

South-East Monash Legal Service

Southside Justice

Top End Women's Legal Service

UTS Business School

Unions NSW

Unions NT

Unions Tasmania

United Workers Union (UWU)

Victoria Legal Aid

Victorian Trades Hall Council

Villamanta

WEstJustice

Women's Health in the South East (WHISE)

Women's Health NSW

Women's Health Victoria

Women's Information and Referral Exchange (WIRE)

Women's Legal Centre ACT

Women's Legal Services Australia

Women's Legal Service NSW

Women's Legal Service Tasmania

Women's Legal Service Victoria

Working Women Queensland

Working Women's Centre SA

Young Workers Centre

Joint statement

December 2023

A huge step forward in access to justice in discrimination claims

The **Power to Prevent Coalition** welcomes the costs reforms introduced in parliament on 15 November 2023 by the Attorney General, The Hon Mark Dreyfus KC. The Bill will implement recommendation 25 of the *Respect@Work* Report. The *Australian Human Rights Commission Amendment (Costs Protection) Bill 2023* adopts a modified **equal access costs** model in federal anti-discrimination law in Australia, addressing a key barrier to people pursuing redress for discrimination and sexual harassment.

The **Power to Prevent Coalition** is a group of diverse community organisations, unions, academics, peak bodies, health professionals, lawyers and victim-survivors. We see the effects of discrimination and sexual harassment on people every day and the barriers they face in seeking justice. Because of this expertise and experience, the **Power to Prevent Coalition** strongly advocated for this reform with 85 organisations endorsing a call for **equal access** in discrimination and sexual harassment matters.

An **equal access** costs model, as proposed under the Bill, means that individuals who bring claims of discrimination and sexual harassment can recoup their legal costs if they are successful while being protected from having to pay legal costs if they are unsuccessful (except in limited circumstances). Legal costs in these types of cases can easily be in the hundreds of thousands of dollars and can bankrupt people. This has been a major barrier to people speaking up when harmed by discrimination or sexual harassment at work.

This reform is a first for Australia in discrimination law. People will now be able to bring claims without the huge risk of having to pay the legal costs of the perpetrator, or the perpetrator's employer, should they lose. It also means that people who bring successful sexual harassment or discrimination claims will have their legal costs covered.

People not being able to enforce their rights has led many people to be silenced and perpetrators not being held to account. Long overdue, this change to how costs are considered in discrimination and sexual harassment claims will be another tool to address the endemic nature of sexual harassment documented in the *Respect@Work* Report.

This change together with the implementation of the *Respect@Work* reforms sends the clear message that sexual harassment and discrimination are unacceptable. We also welcome that from 12 December 2023, for the first time in Australia, the Australian Human Rights Commission will have the ability to investigate and enforce compliance with the new positive duty that organisations and businesses have to eliminate sexual and sex-based harassment and discrimination in connection with work, as well as any related acts of victimisation. This means employers need to actively seek to create a safer work environment free from this type of conduct.

We congratulate the Commonwealth Government on the Bill and the implementation of the *Respect@Work* recommendations. We thank and acknowledge everyone who has advocated in this area, particularly people who have directly experienced sexual harassment and discrimination and have bravely spoken out to improve the law.