

Media Release

Justice just got more accessible - Legal costs risks to be reduced for those experiencing workplace discrimination and sexual harassment

Despite nearly 3 million Australians facing sexual harassment each year, only 11 cases are brought to court each year on average. That is because the barriers facing those subject to sexual harassment are enormous.

Today, the parliamentary inquiry into the Albanese government's Costs Protection Bill will take place, following the Attorney General, The Hon Mark Dreyfus KC, introducing legislation in November that aims to remove financial barriers that prevent victims of workplace discrimination and sexual harassment from seeking justice. The Bill is a breakthrough development for victim-survivor rights to legal justice and delivers on one of the key recommendations of the Respect@Work report.

Currently, people who are unsuccessful in claiming against an employer for workplace discrimination or sexual harassment may be required to cover the defendant's legal costs. As legal fees can easily amount to hundreds of thousands of dollars, the financial risk can silence victims.

The introduced *Australian Human Rights Commission Amendment (Costs Protection) Bill 2023* proposes a modified equal access costs model in federal anti-discrimination law. The model essentially means people who successfully claim workplace discrimination and sexual harassment can recoup their legal costs, while those who are unsuccessful are protected from having to pay the defendant's legal costs (except in certain, limited circumstances).

While some organisations claim that the reforms will clog up the courts with unmeritorious claims, these concerns are unfounded. The Australian Human Rights Commission acknowledges that there are already sufficient protections in place that deter unmeritorious complaints, including the power of the Commission to terminate unmeritorious complaints and the fact that complaints terminated on these grounds are only able to proceed to court with the leave of the court. There are also protections built into the equal access model itself. Finally, there is precedent for the equal access model being applied to whistleblowers, and there is no evidence that this has led to a significant increase in unmeritorious claims.

National Legal Aid, Kingsford Legal Centre and the ACTU strongly advocated for the equal access model alongside a coalition of over 85 organisations including community organisations, unions, academics, peak bodies, health professionals, lawyers and victim-survivors, all with expertise in preventing and addressing workplace discrimination and sexual harassment.

"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." said Louise Glanville, Chair National Legal Aid.

"It is heartening to see the Government listening to both victim-survivors and those organisations that work with the most disadvantaged to design a system that removes barriers to seeking redress from workplace discrimination and sexual harassment." said Emma Golledge, Kingsford Legal Centre Director.

“Many of our clients choose not to proceed with seeking legal justice because of their legitimate worries about financial risk to their future well-being, and that of their families” said Emma Golledge, Kingsford Legal Centre Director.

“This change is critically important for low-income and vulnerable workers experiencing discrimination and harassment and will give confidence to workers who have been silenced because of fear of the cost of speaking up,” said Michele O’Neil, President of the ACTU.

“We know that discrimination and sexual harassment are widespread and damaging, that many barriers exist to people bringing forward complaints, and that there is often a large power imbalance. Despite nearly 3 million Australians facing sexual harassment each year, only 11 cases are brought to court each year on average. This reform removes a significant barrier to access to justice and helps to address deep structural inequalities in our society.” said Michele O’Neil, President of the ACTU.

The Respect@Work report, which contemplated this reform, was released in 2020 by Former Sexual Discrimination Minister, Kate Jenkins. The report found the prevalence of sexual harassment in Australia to be “endemic”, conservatively estimating the cost to the economy at \$3.5 billion per year.

Spokespeople are available for interview.

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