

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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**9 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:

Australian Council of Trade Unions (ACTU)	Legal Aid NT
Australian Education Union (AEU)	Mackay Regional Community Legal Centre
Australian Lawyers Alliance	Maurice Blackburn Lawyers
Carol Andrades, Senior Fellow, University of Melbourne	National Legal Aid
Caxton Legal Centre	New South Wales Nurses and Midwives' Association (NSWNMA)
Circle Green Community Legal Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia's (CEPU)	Public Interest Advocacy Centre
Community Legal Centres Australia	Queerspace
Community and Public Sector Union – SPSF Group (CPSU-SPSF)	Redfern Legal Centre
Domestic Violence NSW	Ruby Gaea Darwin Centre
Drummond Street Services	Sexual Assault Services Victoria
Equality Rights Alliance	Shop, Distributive and Allied Employees' Association (SDA)
Emerita Professor Margaret Thornton, Australian National University	South-East Monash Legal Service
Emerita Professor Sara Charlesworth, RMIT University	Top End Women's Legal Service
Employment Rights Legal Service	United Workers Union (UWU)
Ethnic Communities' Council of Victoria	Victoria Legal Aid
Finance Sector Union	WEstJustice
Full Stop Australia	Women's Health in the South East (WHISE)
Grata Fund	Women's Health Victoria
Hall Payne Lawyers	Women's Information and Referral Exchange (WIRE)
Inner City Legal Centre	Women's Legal Centre ACT
Justice Connect	Women's Legal Services Australia
Kingsford Legal Centre	Women's Legal Service NSW
Legal Aid NSW	Women's Legal Service Tasmania
	Women's Legal Service Victoria
	Working Women Queensland
	Working Women's Centre SA

# 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.