



Community Legal Centres
Australia

JOINT MEDIA RELEASE

Community Legal Centres welcome long overdue sexual harassment reform, but work needed on access to justice.

Leading Community Legal Centres (CLCs) have welcomed the Senate Legal and Constitutional Affairs Legislation Committee Report on the Government's Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022.

This Bill gives legislative effect to key *Respect@Work* recommendations, which are long overdue. This includes an obligation on employers to take steps to eliminate sexual harassment.

Emma Golledge, Director of Kingsford Legal Centre reflected on the changes:

“The creation of a positive duty on employers to eliminate sexual harassment is long overdue and an important reform. For too long the law has only operated after people have experienced sexual harassment and harm. This has meant that sexual harassment has reached what the Sex Discrimination Commissioner has described as “endemic”. A positive duty is critical to tackling this serious issue.”

Missed opportunity on access to justice

While the Bill has many positive aspects, CLCs have expressed concern that the Bill has missed an opportunity to tackle some of the big access to justice challenges that prevent women from taking legal action.

The Bill proposes to amend the *Australian Human Rights Commission Act 1986* (Cth) to create a presumption that parties in federal discrimination matters will bear their own legal fees. However, the Bill also creates provisions which give the federal courts a broad discretion to award costs in a range of circumstances, such as considering the financial circumstances of parties and offers to settle matters.

Ms Pip Davis, Principal Solicitor of Women's Legal Service NSW commented:

“There is an important access to justice aspect as to whether women are able in reality to enforce their rights. We think the Bill misses an important opportunity to address the power imbalance experienced by working women bringing actions against their employers and the risk that if they lose, they have to pay hundreds of thousands of dollars in legal costs.”

The Senate Committee heard evidence from many experts that reflected concerns that the Bill had not gone far enough to address the access to justice barriers of bringing sexual harassment and discrimination matters. The Senate Report documents broad support for an equal access model to costs.

An “equal access” model for costs would protect people who bring actions from a costs order but would mean that they could have their legal costs paid by the other side if they win. As a result, the Committee recommended that the Australian Law Reform Commission hold an inquiry into the operation of the costs provision in the Bill.

Ms Golledge has welcomed this recommendation but says the government should not delay in considering an equal access model for this Bill.

“An equal access model recognises the huge disparity in resources between working women and their employers in these matters. It is critical that in order to effectively implement *Respect@Work*, we address the huge barriers to access to justice which has the effect of sexual harassment remaining hidden and not considered by the courts. We need to end this legal silence.”

Community Legal Centres have also raised concern about the failure of the Bill and this Senate Report to pave the way for an intersectional approach to addressing and preventing sexual harassment at work. Ms Kelley Temple, Advocacy Manager of Community Legal Centres Australia also noted:

“The Bill must reflect a core finding of the *Respect@Work* Report that sexual harassment and sex discrimination often occur with other types of discrimination. We believe that a positive duty should protect across all types of discrimination, and it should be unlawful for an employer to create a hostile work environment not just on the basis of sex, but of race, disability, and age.”

Need for greater funding for the AHRC to perform its compliance role under the Bill

CLCs also want to review how the new duties and obligations of the Australian Human Rights Commission will be met given that the organisation has faced years of devastating funding cuts.

Ms Madeleine Causbrook, Law Reform Solicitor at Kingsford Legal Centre observed:

“The effectiveness of these laws will depend on an adequately funded Australian Human Rights Commission. Our Centre and a coalition of other community legal centres are calling on the Government to urgently restore adequate baseline funding to the AHRC and increase funding to support the new legislative powers of the AHRC under the Bill.”

Media Contacts

Emma Golledge
Director, Kingsford Legal Centre
Email: legal@unsw.edu.au

Kelley Temple
Advocacy Manager, Community Legal
Centres Australia
Email: emily.hamilton@clcs.org.au

Pip Davis
Principal Solicitor, Women’s Legal Service NSW
Email: pip.davis@wlsnsw.org.au