

First for Australia in discrimination law – legal costs risks to be reduced for those experiencing workplace discrimination and sexual harassment

The Attorney General, The Hon Mark Dreyfus KC, has this month introduced a bill that aims to remove financial barriers that prevent victims of workplace discrimination and sexual harassment from seeking justice. This is a breakthrough development for victim-survivor rights to legal justice, and a significant change from the changes being considered by Government 12 months ago.

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).

National Legal Aid, Kingsford Legal Centre and the ACTU strongly advocated for this reform 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 Katherine McKernan, Executive Director 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.”

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. 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.

Power2Prevent statement available at the link [here](#)

Spokespeople are available for interview.

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