

Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

Submission to the Senate Legal and
Constitutional Affairs Committee

22 December 2023

Contents

Who we are	4
Introduction	5
Equal access cost model	5
Application to all federal anti-discrimination laws	6
Amendments to the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 and broader reforms	7
Conclusion	7

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Senate Legal and Constitutional Affairs Committee ('Committee') on the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 ('Bill').
2. The ALA also welcomes the Federal Governments' commitment to implementing all the recommendations made in the Australian Human Rights Commission's 2020 report, entitled *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* ('*Respect@Work* report'). The ALA supports that the reforms outlined in this Bill will address Recommendation 25 from the *Respect@Work* report.
3. The ALA supports the intentions behind this Bill "to alleviate the barrier to justice that the risk of an adverse costs order currently poses for applicants in federal unlawful discrimination court proceedings".²
4. Our submission will address the importance of an equal access cost model; why this model should apply to all federal discrimination matters; and what amendments to this Bill and broader reforms should be considered by the Committee.

Equal access cost model

5. The ALA considers that the Bill's proposed modified equal access cost model is a significant step forward for victim survivors of discrimination, including sexual harassment, at work.
6. Should this Bill pass Parliament, individuals who are successful in bringing claims of discrimination and sexual harassment can recoup their legal costs,³ while also being protected from having to pay legal costs if they are unsuccessful (except in limited circumstances).⁴

² Explanatory Memorandum, Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (Cth) 3.

³ Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (Cth) cl 46PSA.

⁴ Ibid cl 46PSA(6).

7. The ALA submits that the Bill's proposed model recognises and addresses the practical issues currently faced by people bringing anti-discrimination claims and supports vindication of legal rights – in particular, rights to equality and access to justice.
8. In proposing a modified equal access, this Bill addresses the power imbalances and resource disparities present in most discrimination proceedings.
9. **For the above reasons, the ALA strongly supports the cost model proposed by this Bill.**

Application to all federal anti-discrimination laws

10. The ALA strongly supports the application of this modified equal access cost model across all federal anti-discrimination laws.
11. Power imbalances are fundamental to all forms of discrimination, and it is well-documented that victim survivors of sexual harassment experience that sexual harassment along with other forms of discrimination, including in the workplace.⁵
 - a. **The ALA submits, therefore, that it is essential for all victims of discrimination that there is a cost model which is usable and fair, as well as which promotes access to justice. An equal access model fulfils these criteria.**
12. The ALA is not concerned if adopting this costs model across all federal anti-discrimination legislative frameworks results in increased litigation. We note that currently instances of sexual harassment and discrimination are not progressing to litigation because of the barriers regarding resources, power imbalances, and concerns about costs.
 - a. **The ALA contends that it is in the public interest for instances of sexual harassment and discrimination to progress to litigation; for victim survivors to access justice and compensation; for there to be increased awareness of workplace discrimination; and for societal norms and practices to shift as a result.**

⁵ See: Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020).

Amendments to the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 and broader reforms

13. The ALA has reviewed the submission on this Bill written by the Australian Discrimination Law Experts Group (ADLEG).
14. In their submission, ADLEG has proposed five recommendations – including clarifying when the Federal Government will review this legislation, and also ensuring that applicants have access to legal representation.
15. **We refer ADLEG’s recommendations, including those pertaining to amending this Bill, for the Committee’s consideration.**

Conclusion

16. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input on the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023.
17. The ALA is available to provide further assistance to the Senate Legal and Constitutional Affairs Committee on the issues raised in this submission.

Shaun Marcus
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Australian Lawyers Alliance