

SUBMISSION

Inquiry into the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

Concerns

Despite claims to the contrary in the parliamentary information, I have serious concerns about this bill – ironically because it **NEGATIVELY** impacts human rights.

The bill is highly biased in favour of financially protecting complainants at the expense of defendants.

There is no such thing as risk-free legal action; if there was, there would be no need to have a court decide a case. The current provision that if they lose their case, complainants may have to pay the costs of the defendant, is “a double-edged sword”. While it can discourage complainants from bringing genuine grievances to the courts, it also generally encourages only complainants with strong cases to bring their cases to the courts, and discourages trivial or vexatious complaints. Sometimes complainants with genuine cases can reduce the financial risks associated with taking legal action, by having “no-win no-fee” lawyers represent them in court.

By attempting to make legal action risk-free for the complainant, this bill could give a free pass to ideologically motivated activists to make vexatious legal complaints about individuals and organisations that they ideologically disagree with – and expect the defendants to pay all the legal bills regardless of who wins the law case, even if most complaints are dismissed.

This is potentially an open invitation for malicious actors to try to bankrupt people or organisations that they do not like, through legal costs, and offers little protection for falsely accused parties.

As well as being grossly unjust, this would likely tie up the courts with increasing numbers of trivial or vexatious legal cases. While the legislation does give the court the option of ordering costs to be paid by the complainant in completely vexatious cases, this is a subjective assessment, that deals with the complainant’s motives, and may be difficult to establish, and there is no guarantee that this will be decided.

If you are going to have cost protection, then the most important protection is to protect the **INNOCENT** party (or the **GENUINELY** grieved party if there is one), and not legally assume that all or almost all complaints are legitimate.

Or if that is too difficult, then you can protect both parties’ costs, through giving them both legal aid, regardless of the parties’ status or resources.

This bill seems to assume that the defendant is at least partly guilty for a case to have been brought against them. The bill openly states that the defendant should pay the legal costs of the complainant simply because the defendant has the capacity to pay them. This is not justice.

While I am not a professional lawyer, I know enough about criminal and civil law (and natural justice) to know that a party should be assumed innocent until proven guilty beyond reasonable doubt – and should not have to pay a fine, in the form of legal costs – if they are innocent.

There is enough injustice already in the state discrimination tribunals where we have people who have had all discrimination complaints against them dismissed by a court, but still have had to pay hundreds of thousands of dollars in legal costs to defend themselves, while the (false) complainant's legal costs have been covered by legal aid. This is not justice – it is ideological persecution.

This bill may be an attempt to make federal laws to be like equivalent state laws in this way – and that is a very BAD thing.

A related problem with this bill is that it grossly changes the power balance between men and women, by making men vulnerable to false claims of sexual harassment, or sex discrimination in promotion appointments, etc, by largely financially protecting the false accuser. This could mean that women may be promoted over more-capable men in the fear of sex discrimination complaints from women. A similar phenomenon is already happening in some organisations, where less-capable women are sometimes appointed instead of more-capable men, due to the requirement to have certain “quotas” of women in an organisation or in certain positions. Thus ironically, many people would say that the power balance has already swung too far towards women, in that employment appointments and promotions are no longer just on merit, even in theory, but also on gender – and this discriminates against capable men.

Concerning this, I understand that the idea for this bill came from a review of workplace sexual harassment. So, as well as all the other problems that this bill creates that are not related to sexual harassment, this bill will create the incentive for FALSE claims of sexual harassment, by financially protecting the complainant.

Particularly in the current “Woke” social climate, we need MORE financial protection for people who are falsely accused of harassment or discrimination, not less.

Conclusion

This bill is dangerous and should be abandoned. In effect it assumes that all discrimination complaints are at least partly legitimate and true, and therefore that even if the discrimination complaint is dismissed by the court for some reason (such as because of alleged legal technicalities), then that is the injustice, and so the defendant should still have to pay all the legal costs. This makes a mockery of the legal system, and turns discrimination courts into “kangaroo courts”.

There is also a more general aspect to all of this. By deliberately perverting justice, bills such as this weaken the court systems' administration of true justice. And by doing this, when the public sees that the court system is no longer about justice but about ideology, this undermines public confidence in and destroys public respect for the court systems, and corrodes law and order.

Thank you.