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Senate Legal and Constitutional Affairs Legislation Committee

**Inquiry into the Australian Human Rights Commission Amendment
(Costs Protection) Bill 2023 [Provisions]**

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Authorisation

This submission has been authorised by the NFAW Board

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This submission is being made by the National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial, and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

We welcome the Committee's invitation to comment on the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 [Provisions]. NFAW previously made a submission to the Inquiry into the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 which adopted previous recommendations made by NFAW and other women's organisations to better implement the recommendations of the *Respect@Work* report. We noted the issue of costs in bringing an action for discrimination is complex, the anticipation of costs can act as a deterrent to initiating proceedings, and lawyers are often reluctant to represent clients who are unable to pay their own legal costs.

We welcome the introduction of this new legislation that addresses both of the issues noted in NFAW's previous submission and aims to remove the financial barriers that prevent victim-survivors of discrimination and sexual harassment from initiating proceedings. NFAW supports the numerous submissions to the Attorney-General's Department's review into an appropriate cost model for Commonwealth anti-discrimination laws which demonstrated a consistent view across the sector that a modified 'equal access' costs protection model will best achieve the policy objective of recommendation 25 of the *Respect@Work* report.

The modified 'equal access' costs protection provision will help overcome the deterrent effect that an adverse costs order poses to applicants, and addresses concerns about applicants not being able to cover their own costs (and having to entirely rely on *pro bono* assistance). We share concerns that a mirroring of the *Fair Work Act 2009* (Cth) provisions could reduce the number of lawyers that are willing to represent clients in these matters. This model reflects the public interest in holding people to account for discrimination and sexual harassment. This approach also addresses the power imbalances and resource disparities present in most unlawful discrimination proceedings.

We note the Bill goes beyond the scope of sex discrimination claims and applies to all discrimination matters under federal law. It is important to note that all forms of discrimination involve fundamental power imbalances and all applicants are likely to experience similar financial barriers to initiating proceedings. The intersectional nature of sex discrimination and sexual harassment means that victim-survivors will have often experienced multiple forms of discrimination. There is value in having a consistent approach to costs across all discrimination matters, including reduced complexity.

We also endorse the submission to this Inquiry of the Power to Prevent Coalition, a group of diverse community organisations, unions, academics, peak bodies, health professionals, lawyers, and victim-survivors. The Power to Prevent Coalition strongly advocated for this reform with 85 organisations endorsing a call for equal access costs protections in discrimination and sexual harassment matters. NFAW works in partnership with many of these organisations.

Recommendations

1: The Bill should be passed by Parliament.
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