

Submission

on the

Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

to the

Senate Legal and Constitutional Affairs Committee

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by

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Subject: Submission Opposing the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

FamilyVoice Australia wishes to express our strong opposition to the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023, currently under consideration. While we acknowledge the importance of protecting human rights and ensuring fair legal processes, we believe that the proposed amendments pose a significant risk to employees in general, and faith-based institutions in particular. We are concerned about the likelihood that the bill, if passed, would impose unnecessary burdens on employers, and especially on faith-based organisations.

The amendments outlined in the bill, particularly in Schedule 1—Amendments, Part 1—Main amendments to the Australian Human Rights Commission Act 1986, raise concerns about the potential impact on religious freedom and the ability of faith-based institutions to engage in activities without undue legal burdens.

Specifically, the amendments to section 46PSA, regarding costs protection, introduce provisions that may infringe on the rights of faith-based institutions. That is because faith-based institutions are more likely to face unwarranted action that would proceed without the historic protections afforded under law. Given the polarised nature of debate on sexuality and gender identity, it would be conservative and biblically-based schools that would be wide open to abuse, should the bill pass.

All organisations should enjoy the protections of law afforded by the customs and legal systems we enjoy in Australia. Those protections include the presumption of innocence, and that the burden of proof is born by the litigant. Those who do not prove their accusations are liable for their costs and those accrued by the defendant. This process helps to protect innocent parties from unwarranted or unprovable accusations.

Undermining the time-honoured process, the bill would empower persons to engage in unwarranted and unprovable legal action, free of paying any costs to the defendant, should the action fail. That is likely to induce organisations to settle the matter without proceeding to court. If the bill were to become law, there would be an increase in the risk that any vaguely-expressed claim would be settled privately and expensively.

The public nature of the settlement of legal proceedings would therefore be eroded, as would the protection historically afforded to the accused by the presumption of innocence.

Innocent organisations may well find themselves settling to spare themselves the legal liability for costs that traditionally would become the liability of unsuccessful litigants.

Faith-based organisations that uphold conservative views on sexuality and gender identity would be much more likely to face vaguely-expressed litigation and effectively would be forced to settle the matter confidentially and expensively.

Small faith-based schools especially would find themselves having to settle privately and expensively. This would necessitate significant increases in school fees paid by parents.

This cannot serve the advancement of justice.

While the bill grants the court the authority to order respondents to pay an applicant's costs if successful in proceedings, it fails to provide sufficient safeguards to protect individuals and organisations from being penalised for exercising their rights in good faith.

Additionally, the criteria outlined in subsection (6) for ordering the applicant to pay costs are vague and subject to interpretation. This lack of clarity creates an environment where faith-based institutions may be unfairly targeted, especially considering the subjective nature of terms such as "vexatiously" and "without reasonable cause."

Furthermore, the amendments fail to recognize the unique position of faith-based institutions, potentially exposing them to legal proceedings that could hinder their ability to carry out their core religious and charitable activities.

FamilyVoice urges the Senate Committee to reconsider the implications of this bill on faith-based institutions and to recommend the Bill be withdrawn or to introduce amendments that provide adequate safeguards for religious freedom. It is crucial to strike a balance between protecting human rights and ensuring that faith-based organizations can continue their valuable contributions to society without unnecessary legal hindrances.

FamilyVoice urges the Senate Committee to recognise the likely impact of the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 on faith-based institutions and recommend the bill not proceed.