



Diversity Council Australia Ltd

Customs House, Level 3
31 Alfred Street, Sydney
NSW 2000 Email:
admin@dca.org.au

SYDNEY OFFICE Phone: (02) 8014 4300

MELBOURNE OFFICE Phone: (03) 9067
8000

ACN 006 898 406 • ABN 64 421 748 342

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By email: legcon.sen@aph.gov.au.

DCA submission in response to Inquiry into the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

Dear Committee Secretary,

Thank you for the opportunity to provide a submission in response to the *Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (Amendment Bill)*.

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We have over 1,300 member organisations, reaching approximately 20% of the Australian labour market.

Workplace sexual harassment is an issue of significant interest to DCA and our member organisations. We have previously contributed to a number of consultation processes supporting the full implementation of *Respect@Work*. We have also provided a submission to the *Review into an appropriate cost model for Commonwealth anti-discrimination laws* which can be found [here](#).

In this earlier submission DCA recommended that a *cost neutrality with discretion model* or '*soft cost neutrality*' is most appropriate because it allows for flexibility in determining costs associated with the dispute resolution process.

DCA welcomes the opportunity to make a submission on this *Amendment Bill* which inserts a modified 'equal access' cost protection provision to apply consistently across federal anti-discrimination laws. As we have stated in previous submissions and consultations, measures to address barriers to accessing justice in relation to sexual harassment are of critical importance. We know that rates of reporting sexual harassment are low, in part due to the risk of a costs order. DCA strongly supports an amendment that will encourage applicants to make a complaint without fear of incurring costs awarded against them.

We noted in our previous submission that there is a need to balance this with the potential cost burden placed on organisations, particularly smaller businesses and non-profit organisations. In the current framework of the new *Positive Duty* obligations it is important to encourage organisations to adhere to these obligations, take action to prevent sexual harassment and accept the risk of costs awarded against them if they have not done enough to prevent sexual harassment in the workplace. But this burden should be fair.

The *Amendment Bill* provides a model which adds a level of flexibility to counter situations where it would be unfair to place a costs burden on businesses genuinely trying to comply with their *Positive Duty* obligations. DCA acknowledges that the current context of *Positive Duty* intends to encourage businesses and organisations to shift their focus to actively preventing workplace sexual harassment and discrimination. It would be counterproductive to introduce a

costs model that placed an unfair burden on those doing the right thing.

DCA supports a review period to ensure that the costs model is working fairly for all parties.

Yours sincerely

Lisa Annese
Chief Executive Officer

