

Time for equal access in discrimination claims

We all deserve to be safe at work and free from discrimination and sexual harassment. While sexual harassment is pervasive across all industries and all employment levels in Australia, it is not inevitable. **The Australian Government has the power to prevent discrimination and sexual harassment** by adopting an equal access costs model to ensure that people who are harmed can access justice and achieve fair outcomes.

A major barrier to justice for people who have experienced discrimination and sexual harassment is the risk of having to pay the legal costs of the perpetrator or the perpetrator's employer should they lose. Equally, they must be able **to recover their own legal costs if they win** to ensure that they are not left out of pocket, and that legal representation is financially viable and accessible.

These risks stop people from pursuing their rights. This is especially true for diverse and disproportionately affected communities, for people who are low paid and in insecure work, and when people are up against an organisation with large resources such as many employers.

The rules for awarding costs in discrimination matters have a significant impact on access to justice as legal costs can be hundreds of thousands of dollars and many people do not bring claims for fear that they could have to pay the other side's costs if they lose. This means people do not enforce their rights and claims are rarely aired in court. This allows discrimination and sexual harassment to flourish.

The **Power to Prevent** Coalition is a group of more than 60 diverse community organisations, unions, academics, peak bodies, health professionals, lawyers and victim-survivors. We see the effects of discrimination and sexual harassment on people every day. Our recommendations to improve the law are based on this direct experience.

This is why we are calling on the Australian Government to adopt an Equal Access costs model for all discrimination matters. This would allow people who experience discrimination and sexual harassment to recover their legal costs if successful. If unsuccessful, they would not be required to pay the other side's costs, with some limited exceptions such as for vexatious litigation. This model is similar to costs protections already available in whistleblowing law. Adopting this model would mean that people do not face a lifetime of debt simply for enforcing their rights.

Equal Access means:

- **People who experience the highest rates of discrimination and sexual harassment are supported to come forward without the risk of becoming bankrupt or having a huge debt simply for enforcing their rights.**
- **People who have experienced discrimination and sexual harassment can access legal representation.**
- **There will likely be more case law that sends the message that this behaviour is unacceptable, and will allow damages awards to better reflect community standards.**
- **We can ensure the new protections in the Sex Discrimination Act are upheld to better eliminate and prevent gender based discrimination.**

We can prevent and eliminate sexual harassment and discrimination but to do this we must remove barriers to accessing justice and support people who experience discrimination and sexual harassment to take action.

It's time for Australia to adopt Equal Access for discrimination claims.

List of Signatories (as at April 2023)

1. Accountability Matters Project
2. Associate Professor Alysia Blackham, University of Melbourne
3. Australian Centre for Disability Law
4. Australian Council of Trade Unions
5. Australian Education Union
6. Australian Lawyers Alliance
7. Australian Lawyers for Human Rights
8. Australian Manufacturing Workers Union (AMWU)
9. Australian Nursing & Midwifery Federation
10. Australian Women Lawyers Ltd
11. Australian Workers Union
12. Carol Andrades, Senior Fellow, University of Melbourne
13. Caxton Legal Centre
14. Circle Green Community Legal
15. Community and Public Sector Union (PSU Group)
16. Community Legal Centres Australia
17. Community Legal Centres NSW
18. Domestic Violence NSW
19. Dr Belinda Smith, Associate Professor, Sydney Law School, University of Sydney
20. Dr Laura Hilly, Barrister, Victorian Bar
21. Dr Robin Banks, University of Tasmania and Director, Equality Building
22. Drummond Street Services
23. Electrical Trades Union of Australia
24. Emerita Professor, Margaret Thornton, Australian National University
25. Employment Rights Legal Service
26. Equality Rights Alliance
27. Fair Agenda
28. Finance Sector Union
29. Full Stop Australia
30. Gender Equity Victoria
31. Grata Fund
32. Hall Payne Lawyers
33. Health Services Union
34. Independent Education Union of Australia
35. Inner City Legal Centre
36. Jen Hargrave, University of Melbourne
37. Justice Connect
38. Katherine Women's Information & Legal Service
39. Kieran Pender, Honorary Lecturer, ANU College of Law)
40. Kingsford Legal Centre
41. Leah Marrone, Barrister, Flinders Chambers
42. Legal Aid NSW
43. Liam Elphick, Monash University
44. Mackay Regional Community Legal Centre
45. Maurice Blackburn Lawyers
46. Migrant Justice Institute
47. National Legal Aid
48. Northern Territory Legal Aid Commission
49. Professor Beth Gaze, Melbourne Law School, University of Melbourne
50. Professor Michelle Ryan, Australian National University and Director, Global Institute for Women's Leadership
51. Professor Nareen Young, Jumbunna Institute of Indigenous Education and Research
52. Professor Emerita, Sara Charlesworth, RMIT University

Joint statement



53. Public Interest Advocacy Centre
54. Redfern Legal Centre
55. Resolution 123
56. Sexual Assault Services Victoria
57. Sexual Assault Support Service
58. Shop Distributive and Allied Employees' Association (SDA)
59. South-East Monash Legal Service Inc.
60. Top End Women's Legal Service
61. Unions NSW
62. Unions NT
63. Unions Tasmania
64. United Workers Union
65. University of Melbourne Student Union
66. Victoria Legal Aid
67. Victoria Trades Hall Council
68. Villamanta Disability Right Legal Service
69. Western NSW Community Legal Centre
70. WestJustice
71. Wurringa Baiya Aboriginal Women's Legal Centre
72. Women Lawyers Association of NSW
73. Women with Disabilities Victoria
74. Women's Health Goulburn North East
75. Women's Health in the South East
76. Women's Health Victoria
77. Women's Information and Referral Exchange Inc
78. Women's Legal Centre ACT & Region
79. Women's Legal Services Australia
80. Women's Legal Service NSW
81. Women's Legal Service Victoria
82. Working Women Queensland – Basic Rights Queensland
83. Working Women's Centre South Australia Inc
84. Young Workers Centre
85. Youth Law Australia

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