



SUBMISSION

Review into an appropriate
cost model for Commonwealth
anti-discrimination laws

April 2023

Monday, 3 April 2023

The Hon Mark Dreyfus KC MP

Attorney-General

Submitted online

Review into an appropriate cost model for Commonwealth anti-discrimination laws

Dear Attorney,

Thank you for the opportunity to make a submission to the *Review into an appropriate cost model for Commonwealth anti-discrimination laws*.

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace.

We have over 1,200 member organisations, reaching more than 20% of the Australian labour market.

Workplace sexual harassment is an issue of significant interest to DCA and our member organisations and we have contributed to a number of consultation processes supporting the full implementation of *Respect@Work*.

In considering an appropriate cost model, we note the findings in *Respect@Work* that the risk of a costs order acts as a disincentive to pursuing sexual harassment matters in the federal jurisdiction.

Given the already low rates of reporting of sexual harassment, we agree that it's important to ensure that barriers or disincentives to action are removed.

However, we also note the discussion in the consultation paper as it relates to the likelihood of vexatious or unmeritorious complaints proceeding to court. While these situations may be uncommon, vexatious applicants can create an unfair burden on the respondent. This can be particularly difficult for smaller businesses and non-profit organisations, which may not have the same resources as larger organisations to defend themselves against such claims.

DCA is therefore of the view that **cost neutrality with discretion model ('soft cost neutrality')** is the most appropriate because it allows for flexibility in determining costs associated with the dispute resolution process and believe that this model strikes the most suitable balance.

We support the notion that the court should be able to consider relevant matters in awarding costs, including, among other things:

- the conduct of the parties to the proceedings (including any conduct of the parties in dealings with the Commission)
- whether any party to the proceedings has been wholly unsuccessful in the proceedings
- whether the subject matter of the proceedings involves an issue of public importance;
- whether a party has been responsible for unreasonably prolonging or delaying the time taken to complete the proceedings;

- whether a party conducted proceedings in a way that unnecessarily disadvantaged another party to the proceedings; and
- whether the proceedings were frivolous or vexatious or otherwise misconceived or lacking in substance.

As noted in the consultation paper, this model provides some ambiguity to both applicants and respondents in relation to the costs they would be required to pay as part of court proceedings. However, we believe that this is balanced by not disadvantaging either successful applicants from recovering their costs or respondents who are not well-resourced from paying their own costs.

DCA therefore recommends that the soft cost neutrality model is adopted, in line with the recommendations of the Australian Human Rights Commission.

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on 0424 578 698 or advocacy@dca.org.au, you require any further information about this matter.

Yours sincerely



Lisa Annese

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ABOUT US

Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

DCA's Membership represents over 20% of the Australian workforce

DCA's prestigious group of over 1,200 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over 20% of the Australian labour market.

About our members

1,200 member organisations, including almost 40 ASX100 Listed companies.

Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.

Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

Our belief, vision and mission

- Our **belief** is that diversity and inclusion is good for people and business.
- Our **vision** is to create a more diverse and inclusive Australia.
- Our **mission** is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded – its income is generated from membership fees, sponsorships and services to business/employers.