

9 January 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100 Parliament House
CANBERRA ACT 2600

Sent electronically online

Dear Committee Secretary,

Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

The SDA welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee on the *Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (the Bill)*

The SDA has made previous submissions in relation to the costs model in federal anti-discrimination law in Australia and we recently participated in the consultation process which formed part of the Attorney-General's Department review into an appropriate cost model for Commonwealth anti-discrimination laws.

SDA members, the majority of which are women and young people, work predominately in retail and fast food. The *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* found that the experience of sexual harassment is notably higher for workers in the Retail Trade (40%) and Fast Food (34%). Retail has the 3rd highest prevalence of sexual harassment and fast food the 4th highest¹. Retail Trade and Accommodation and Food Services were the two top industries where sexual harassment is disproportionately high.²

The retail and fast food industries are comparatively low paid and often characterised by unpredictable and insecure work. This is reflected in low reporting rates by workers when they experience sexual harassment (14%)³. This is similarly the case with other forms of harassment and discrimination.

Workers who experience sexual harassment or discrimination should have access to a complaints process that supports them to make a complaint rather than providing a further deterrence to seek a remedy.

Any complaints process must be supported by a cost model that enables access to free or

¹ Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* • 2022, page 14

² *Ibid*, page 114

³ *Ibid* page 121

low-cost advocacy without the deterrent of potential costs being awarded against them. For many workers the cost of taking a complaint to court can have a severe financial impact and can act as a key deterrent in determining whether to proceed through a complaints process.

It is vitally important to recognise and acknowledge the power disparity that already exists between well-resourced employers/ corporations, and an individual, often unrepresented complainant. The system of complaints handling should not keep reinforcing this disparity.

An individual's ability to finance a complaint should not be the reason someone can pursue a complaint. In our experience in representing and advocating on behalf of workers who have been sexually harassed or discriminated against, uncertainty and fear of a costs order can discourage them from pursuing their complaint.

For these reasons, the SDA welcomes and supports the Bill, which implements a modified Equal Access costs model in federal anti-discrimination law in Australia. The SDA believes that this will address a key barrier to workers pursuing a complaint in relation to discrimination and sexual harassment.

The SDA supports the submissions of both the ACTU and the Power to Prevent Coalition to the Committee regarding this reform, which welcomes the Bill and the adoption of key principles of the Equal Access model. An Equal Access model will remove financial barriers and greatly enhance access to justice for people who have experienced discrimination and harassment.

Yours faithfully,



Julia Fox
National Assistant Secretary

About the SDA



The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with over 200,000 members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%, approximately 131,000), under 35 years (57%, approximately 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members with caring responsibilities, who are predominately our women members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA advocated for the introduction of the Government Paid Parental Leave scheme and were involved in the Government Implementation Group. The SDA has made submissions to previous inquiries in relation to past Bills to introduce amendments to the *Paid Parental Leave Act 2010* (Cth) (**Act**).

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix 2.

Rationale for SDA policy positions



SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its center. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But, there has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.