



Australian Human Rights Commission Amendment (Costs Protection) Act 2024

No. 89, 2024

**An Act to amend the *Australian Human Rights
Commission Act 1986*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Australian Human Rights Commission Amendment (Costs Protection) Act 2024

No. 89, 2024

An Act to amend the *Australian Human Rights Commission Act 1986*, and for related purposes

[Assented to 1 October 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Human Rights Commission Amendment (Costs Protection) Act 2024*.

No. 89, 2024 *Australian Human Rights Commission Amendment (Costs Protection)* 1
Act 2024

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	2 October 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Australian Human Rights Commission Act 1986

1 Subsection 46PH(2A)

After “46PO”, insert “in certain circumstances”.

2 Subsection 46PO(4) (notes 1 and 2)

After “this section”, insert “in certain circumstances”.

3 Section 46PSA

Repeal the section, substitute:

46PSA Costs

Scope

- (1) This section applies to proceedings (including an appeal) in a court that relate to an application made by a person (the *applicant*) under section 46PO in respect of one or more respondents to a terminated complaint.

When respondent liable for costs

- (2) Subject to subsection (4), if the applicant is successful in proceedings on one or more grounds, the court must order each respondent against whom the applicant is successful to pay the applicant’s costs.
- (3) The court may order that the costs to be paid by the respondent be assessed on an indemnity basis or otherwise.
- (4) If the court is satisfied that the applicant’s unreasonable act or omission caused the applicant to incur costs, the court is not required to order the respondent to pay the costs incurred as a result of that act or omission.

When applicant liable for costs

- (5) Subject to subsection (6), the applicant must not be ordered by the court to pay costs incurred by another party to the proceedings.
- (6) The applicant may be ordered to pay the costs if:
 - (a) the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the applicant's unreasonable act or omission caused the other party to incur the costs; or
 - (c) all of the following apply:
 - (i) the other party is a respondent who was successful in the proceedings;
 - (ii) the respondent does not have a significant power advantage over the applicant;
 - (iii) the respondent does not have significant financial or other resources relative to the applicant.

Representative applications

- (7) In the case of a representative application, subsection (6) does not authorise the court concerned to award costs against a person on whose behalf the application is made other than the person who made the application.

Part 2—Consequential amendments

Federal Circuit and Family Court of Australia Act 2021

4 Before subparagraph 214(1)(b)(i)

Insert:

- (ia) Division 2 of Part IIB of the *Australian Human Rights Commission Act 1986* (redress for unlawful discrimination); or

5 Subsection 214(1) (after note 1)

Insert:

- Note 1A: Subparagraph (b)(ia)—see section 46PSA of the *Australian Human Rights Commission Act 1986*.

Federal Court of Australia Act 1976

6 After paragraph 43(1)(a)

Insert:

- (aa) section 46PSA of the *Australian Human Rights Commission Act 1986*; and

Part 3—Application of amendments

7 Application of amendments

- (1) The amendment of subsection 46PH(2A) of the *Australian Human Rights Commission Act 1986* made by this Schedule applies in relation to any notice under subsection 46PH(2) of that Act given after the commencement of this item.
- (2) Despite the repeal and substitution of section 46PSA of the *Australian Human Rights Commission Act 1986* made by this Schedule, that section continues to apply, in relation to any application made under subsection 46PO(1) of that Act before the commencement of this item, as if that repeal and substitution had not been made.
- (3) Despite the amendments of the *Federal Circuit and Family Court of Australia Act 2021* and the *Federal Court of Australia Act 1976* made by this Schedule, those Acts continue to apply to proceedings in respect of an application made under subsection 46PO(1) of the *Australian Human Rights Commission Act 1986* before the commencement of this item, as if those amendments had not been made.

[Minister's second reading speech made in—
House of Representatives on 15 November 2023
Senate on 14 August 2024]

(143/23)
