

17 May 2023

Proper Officer

Australian Government Attorney-General's Department

email only: [WRConsultations@dewr.gov.au](mailto:WRConsultations@dewr.gov.au)

Dear Proper Officer,

Kingsford Legal Centre ( ) welcomes the opportunity to make this submission on the Consultation Paper: Updating the to provide stronger protections for workers against discrimination (April 2023)

We consent to this submission being published. For all case studies in this submission, names and identifying information have been changed to protect confidentiality.

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KLC is a community legal centre, providing free legal advice, casework, and community legal education to people in south-east Sydney. We have been providing specialist discrimination and employment law advice to people since 1981.

Today we continue to specialise in discrimination law and run a state-wide Discrimination Law Clinic. In 2022, we gave 189 discrimination advices. We provide advice and representation in all discrimination jurisdictions available to NSW workers, including the Fair Work Commission, Australian Human Rights Commission, Federal Court, Federal Circuit Court, Anti-Discrimination NSW, and the NSW Civil and Administrative Tribunal.

KLC has a specialised employment practice and runs a state-wide Employment Rights Legal Service ( )<sup>1</sup> and Sexual Harassment Legal Service Clinic ( ). These clinics provide free legal help and assistance to people experiencing social and economic disadvantage and barriers to justice. In 2022, we gave 602 employment law advices,<sup>2</sup> and represented clients in 36 discrimination matters. KLC is part of the UNSW Sydney Faculty of Law & Justice and provides clinical legal education.

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KLC broadly supports the legislative agenda outlined in the Paper. The move to harmonise ( ) with anti-discrimination schemes is long overdue. The proposed reforms will reduce the legal complexity faced by our clients and assist them to make decisions about how to best enforce their rights at work.

We also propose several additional measures to support the proposed legislative reforms. The Fair Work Commission ( ) will need to be adequately resourced to take on an increase in anti-discrimination matters. FWC members will require additional training in anti-

discrimination, it is even more challenging for our clients to bring claims within the FWC time limits and is out-of-step with any anti-discrimination jurisdictions.

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This submission responds to Questions 1 – 11 and Question 13. It does not address Question 12. For clarity, KLC's response to each question is summarised at Appendix A.

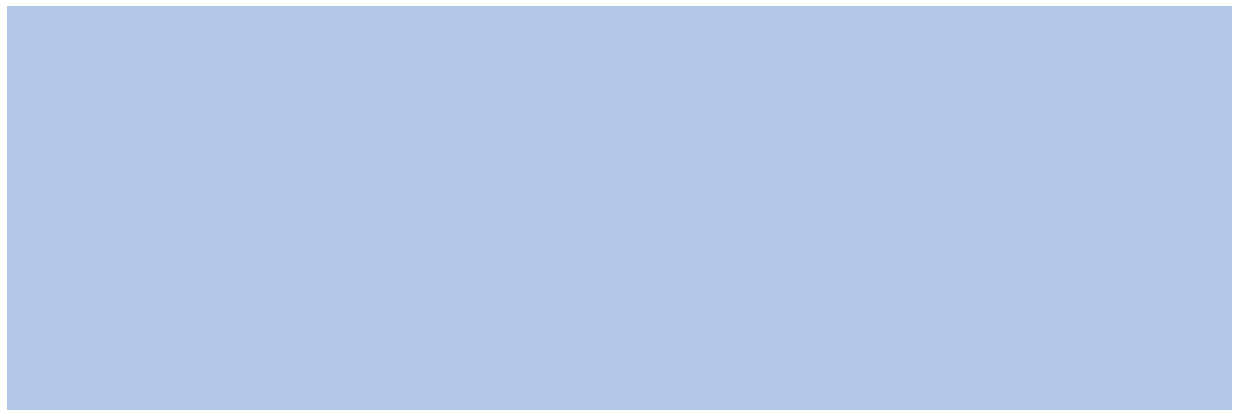
KLC supports the Paper's proposals to clarify the FWA and harmonise its provisions with other anti-discrimination schemes. The current complexity of anti-discrimination laws in Australia poses significant challenges for our clients, who are navigating these systems at stressful time. Many clients are also doing this using their second or third language. The current inconsistency between anti-discrimination schemes is a large reason for complexity for our clients. Without legal assistance, it is difficult for clients to identify the most favourable jurisdiction in which to bring their claim and filing in the wrong jurisdiction can have a serious impact on clients' claims. The issue is only exacerbated by the short time frames to file at the FWC and lack of access to free legal services. We favour a more a more harmonised and accessible system so that people can readily make informed decisions about how to enforce their rights.

KLC supports the express prohibition of indirect discrimination in the FWA. This is a long overdue reform and a significant current omission in the Act. A huge proportion of discrimination is indirect and does not have coverage or effective remedies under the Act.

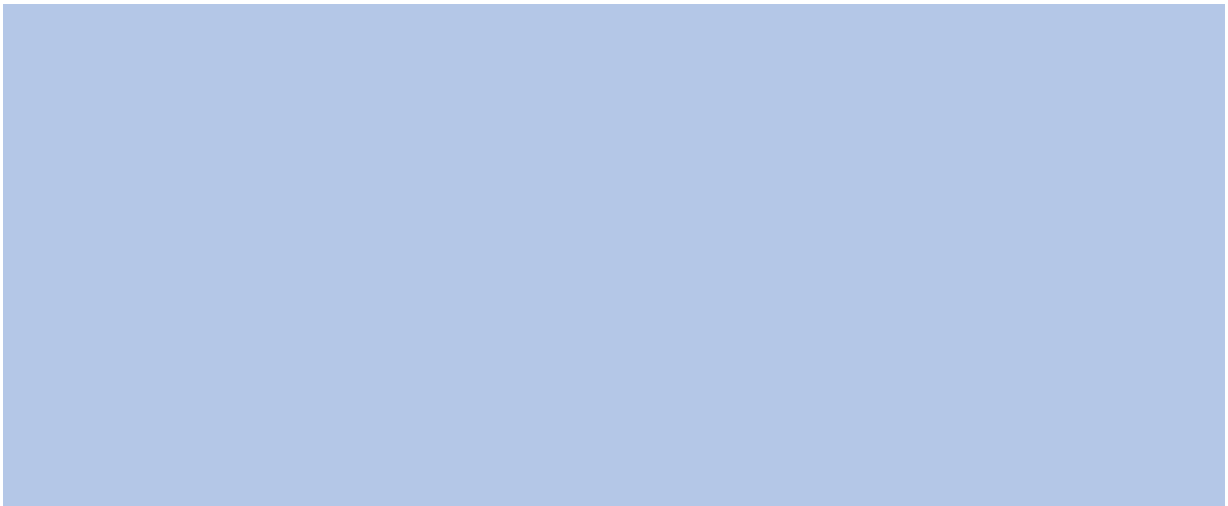
This reform will increase consistency across the FWA and discrimination laws and is line with the recommendations of the government's recent <sup>3</sup> The clarification will also assist our clients

'an unjustifiable hardship' test, which requires decisionmakers to also consider the benefit of a potential adjustment to the employee.<sup>5</sup>

KLC's clients would benefit from a clear prohibition against indirect discrimination in the FWA, backed up by a robust requirement for employers to consider reasonable adjustments.

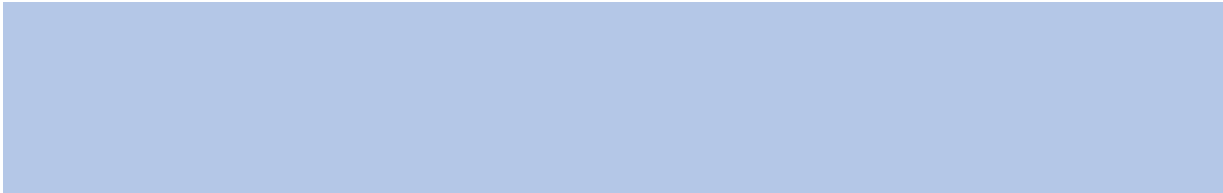


The FWA should also clarify that discrimination on the basis of extensions or manifestations of protected characteristics is prohibited. The availability of attribute extension (in the context of disability) has been an area of uncertainty at the FWC which, fortunately, appears to have resolved favourably since the 2011 decision in *...*<sup>9</sup> A clear legislative reference to the protection of



There should be no filing fees required for discrimination complaints to the FWC, consistent with complaints to the Australian Human Rights Commission ( ) or the New South Wales Anti-Discrimination Commission.

reforms. State and Commonwealth anti-discrimination acts should do the same, following the lead of the Northern Territory<sup>13</sup> and Australian Capital Territory parliaments.<sup>14</sup>



The FWA should prohibit discrimination on the basis of a combination of attributes. This reflects the lived realities of our clients, who often face discrimination on the basis of multiple, intersecting attributes.

KLC acknowledges that this would introduce inconsistency between the FWA and Commonwealth and state anti-discrimination provisions. However, we believe that other jurisdictions should follow the lead of the FWA on this point. There appears to be appetite for this kind of reform – Queensland, for example, is considering this proposal as part of their review of the (Qld).

1. Should the Fair Work Act expressly prohibit indirect discrimination?	Yes - support.
2. Should the Fair Work Act be aligned with the DDA and include a definition of 'disability'?	Yes - support.
3. Should the inherent requirements exemption in the Fair Work Act be amended to clarify the requirement to consider reasonable adjustments?	Yes - support.
4. Should attribute extension provisions be included in the Fair Work Act?	Yes - support. 2
5. As per the broader Commonwealth anti-discrimination framework, should a new complaints process be established to	

