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Attorney-General's Department
Robert Garran Offices
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Via: Citizen Space online survey

Dear Attorney-General's Office,

Respect@Work – Options to progress further legislative recommendations

Thank you for the opportunity to provide feedback on options to progress further legislative recommendations of the Australian Human Right's Commission (**AHRC**) Respect@Work Report.

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership reflects the diversity of Australia's director community, with 47,000 members drawn from directors and leaders of not-for-profits, large and small businesses and the government sector.

1. Executive summary

The AICD acknowledges the extensive consultation undertaken by the AHRC as part of its landmark National Inquiry into Sexual Harassment in Australian Workplaces in 2018 (**National Inquiry**).

The AICD participated in the Government's earlier consultation in 2021 on the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (**Amendment Act**), supporting important legislative changes to both the *Sex Discrimination Act 1984* (**Sex Discrimination Act**) and the *Fair Work Act 2009* (**Fair Work Act**). As part of the AICD's response on the Amendment Act, we encouraged the Government to give further consideration to Recommendation 17 to introduce a positive duty on employers to prevent sexual harassment occurring in the workplace.

Accordingly, we welcome the Government's announcement to open consultation on the remaining Respect@Work Report recommendations and strongly support the implementation of these legislative reforms.

In summary, the AICD supports amendments to the Sex Discrimination Act to:

- **Recommendation 16(c)** – provide that creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited. An express prohibition in the Sex Discrimination would assist in setting clear boundaries in the workplace for what conduct is and is not acceptable;

- **Recommendations 17** – introduce a positive duty on employers to prevent sexual harassment from occurring. A positive duty under the Sex Discrimination Act would crystalise existing work, health and safety (**WHS**) obligations, but under Australia's anti-discrimination framework – having both an important cultural and normative impact on organisations and their employers. It would shift the burden from individuals making complaints under the current complaints-based model,

to one where employers must continuously assess whether they are meeting the requirements of the duty to take proactive and preventative action;

- **Recommendation 18:** provide the AHRC with the function of assessing compliance with the positive duty, and for enforcement. For the positive duty to be effective under the Sex Discrimination Act, the AHRC should have a range of responsive regulatory tools from 'soft corrective' to facilitate compliance with the duty by working cooperatively with organisations using existing research and education functions, to more 'punitive sanctions' that could be reserved for when cooperation is not achieving the desired change;

- **Recommendation 19** – provide the AHRC with a broad inquiry function to inquire into systemic unlawful discrimination, including sexual harassment. This would enable the AHRC to conduct sector-wide investigations and make findings about whether systemic conduct amounts to discrimination. This would provide an opportunity for organisations to have real-world insights into practices across their sector and to consider how they might apply key learnings to their organisations. It would also enhance the AHRC's ability to promote compliance steps required to appropriately discharge any new positive duty; and

- **Recommendation 25** – insert a cost provision into AHRC Act to provide that a party to proceedings may only be ordered to pay the other party's costs in limited circumstances. It is critical that disincentives from initiating civil proceedings, such as unsuccessful parties being ordered to pay the other parties' costs, are removed. In the AICD's view, a successful complainant should always recoup their costs from a respondent. However, if a complainant is unsuccessful, there should be cost protections such that a respondent will only bear their own costs and not the respondents, except in the case of frivolous, vexatious or unmeritorious claims.

The AICD's full responses to the Government's consultation paper questions is included in section two.

2. Consultation paper proposals and questions

Recommendation 16(c) - Hostile work environment

1. What are your views on amending the Sex Discrimination Act to prohibit the creation or facilitation of a hostile work environment on the basis of sex?

Support amending the Sex Discrimination Act to prohibit the creation or facilitation of a hostile work environment on the basis of sex.

AICD comment: The AICD supports the implementation of Recommendation 16(c) to provide an express prohibition on the creation or facilitation of an intimidating, hostile, humiliating or offensive environment on the basis of sex in the Sex Discrimination Act.

2. If you SUPPORT this proposal, what are your key reasons? (please select all that apply)

People who are exposed to sexual conduct, but who are not the direct target, are currently not clearly covered by the sexual harassment provisions in the Sex Discrimination Act and should be.

A legislative change would send a strong message to people in the workplace about their obligations and role in preventing sexual harassment.

The Australian Human Rights Commission should have a clear responsibility in relation to this type of conduct, in addition to complaint mechanisms and remedies available under other existing frameworks.

AICD comment: The AICD agrees with the intent of Recommendation 16(c). That is, to prohibit conduct that creates a hostile work environment in a general sense, rather than requiring conduct to be directed towards a particular person.

The Sex Discrimination Act does not, at present, expressly prohibit conduct that creates an intimidating, hostile, humiliating or offensive environment. Accordingly, similar to Recommendation 16(b) and the prohibition on sex-based harassment introduced into the Sex Discrimination Act in 2021, a prohibition on creating a hostile work environment would bring clarity and certainty to the law.

The model WHS laws require employers and other PCBUs to provide a safe working environment for workers, so far as is reasonably practicable. This includes the obligation to take positive steps to prevent and, if necessary, address conduct that creates or facilitates an intimidating, hostile, humiliating or offensive work environment.

However, as noted in the Discussion Paper, the WHS and Sex Discrimination Act frameworks have different compliance and enforcement models. The model WHS laws are enforced by WHS regulators, but do not provide a complaints-based mechanism for dealing with hostile work environments.

As identified by the AHRC's National Inquiry in 2018 and the Respect@Work Report, a range of conduct in the workplace can contribute to a hostile environment. In our view, an express prohibition in the Sex Discrimination would assist in setting clear boundaries in the workplace for what conduct is and is not acceptable.

By expressing that prohibition in the Sex Discrimination Act, this would create a complaints-based mechanism in to the AHRC and ultimately, help surface broader behavioural or cultural issues within existing work environments that contribute to, and facilitate, sex discrimination and sexual harassment.

3. Which of the following workplace roles or positions, if any, should a prohibition on creating or facilitating a hostile work environment apply to?

All individual/s who contribute towards creating or facilitating an intimidating, offensive, humiliating and hostile work environment.

AICD comment: In the AICD's view, a prohibition on creating or facilitating a hostile work environment should apply broadly to all individuals in the workplace who contribute towards the creation or facilitation of that environment.

However, we would expect that responsibility for ensuring compliance with this prohibition would ultimately sit with employers or other PCBUS (i.e. boards and executive leaders). This would be consistent with obligations under existing model WHS laws where workplaces already have a duty to ensure workplaces are not hostile, humiliating or offensive. In this respect, it is likely in practice to operate as an obligation on employers to take proactive, preventative action to eliminate these types of work environments.

Recommendation 17 – Positive duty

4. What are your views on introducing a positive duty into the Sex Discrimination Act to prevent sexual harassment from occurring in Australian workplaces?

Support introducing a positive duty into the Sex Discrimination Act.

AICD comment: The AICD supports the implementation of Recommendation 17 to introduce a positive duty on employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible.

5. If you DO support the introduction of a positive duty into the Sex Discrimination Act, what are your key reasons? (Please select all that apply)

Promote a culture of prevention in workplaces – the proposal would contribute to cultural change around addressing sexual harassment, promoting a preventative approach rather than a reactive, remedial one.

More effective than the existing work health and safety duty – the proposal would be a more targeted measure than the existing work health and safety duty, which requires persons conducting businesses or undertakings (PCBUs) to ensure, so far as reasonably practicable, the health and safety of workers.

Capacity to address systemic issues – a positive duty would better enable systemic sexual harassment issues to be addressed, compared to the current individual complaints-based framework.

Involvement of a specialist regulator – the proposal would mean a regulator with a focus on sexual harassment would enforce compliance with the positive duty.

Shift the burden of enforcement from individuals – a positive duty would transfer the burden of upholding the legal framework from individuals who experience sexual harassment to employers, businesses and institutions.

Alignment with the existing Work Health and Safety framework's focus on prevention – the proposal would align employers' obligations under the Sex Discrimination Act with their obligations under the Work Health and Safety framework, by focusing on preventative efforts.

AICD comment: As noted in our response to Recommendation 16(c), the existing compliance and enforcement frameworks for the prevention of workplace sexual harassment under the model WHS laws and Sex Discrimination Act have limitations.

Under the Sex Discrimination Act, the question of whether an employer is vicariously liable for the actions of its employees only arises after sexual harassment has already taken place and an individual complaint has been made. Although the model WHS laws provide a positive duty on employers to take reasonably practicable steps to eliminate or minimise risks to worker health and safety, including the risk of sexual harassment, this duty is not enforceable by individuals - only regulators by way of civil penalty or criminal proceedings.

In the AICD's view, the introduction of a positive duty under the Sex Discrimination Act would crystalise existing WHS obligations, but under Australia's anti-discrimination framework – having both an important cultural and normative impact on organisations and their employers. It would shift the burden from individuals making complaints under the current complaints-based model, to one where employers must continuously assess whether they are meeting the requirements of the duty to take proactive and preventative action.

By being proactive, organisations can also take steps to address broader issues such as gender inequality and workplace environments or cultures that are compatible with sexual harassment and discrimination.

The Respect@Work Report notes that human rights frameworks (such as under the Sex Discrimination Act) and model WHS laws have different foundations and advantages. In essence, the WHS positive duty, as it relates to sexual harassment, is focused on psychological health broadly, and frames sexual harassment as a safety risk and hazard. A positive duty under the Sex Discrimination Act would have a more specific and targeted focus on sexual harassment, sex discrimination and victimisation, and would operate in a human rights framework that takes into account systemic and structural drivers and impacts of sexual harassment.

For these reasons, the AICD considers it is appropriate that assessment of compliance with a positive duty under the Sex Discrimination Act come within the AHRC's remit (discussed further in the context of Recommendation 18). We note that WHS regulators have themselves commented on the inadequacy of their resourcing and expertise to address sexual harassment matters under the existing WHS framework (see responses to both the AHRC's National Inquiry in 2018 and Parliamentary Committee on the Respect at Work Amendment Bill 2021).

6. What, if any, complexities would introducing a positive duty into the Sex Discrimination Act create for employers and/or people who experience sexual harassment?

AICD comment: For the reasons discussed above, the AICD does not consider the introduction of a positive duty into the Sex Discrimination Act will create unnecessary complexities for employers and/or people who experience sexual harassment. In our view, a positive duty will add to, and enhance, the existing legal framework to address workplace sexual harassment in light of its current limitations in practice.

7. What are your views on the interaction between a new positive duty in the Sex Discrimination Act and the existing work health and safety duty? Can you identify any particular areas of interaction or concern that would require further thought or consideration, such as between different regulators when investigating issues of sexual harassment?

AICD comment: As noted in the Discussion Paper, inconsistent terminology and concepts of the required standard of care of employers is used across both existing duties and the AHRC's Respect@Work Report recommendation for the positive duty.

For example, the existing vicarious liability provision in the Sex Discrimination Act requires employers to 'take all reasonable steps' to prevent their employee from doing the unlawful act. The model WHS laws provide that 'reasonably practicable' means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up relevant matters. While the Respect@Work Report Recommendation 17 proposes that employers take 'reasonable and proportionate measures' based on the wording in the Equal Opportunity Act 2010 (Vic).

As further noted in the Discussion Paper, there is also already a body of case law discussing and interpreting the term 'all reasonable steps', including consideration of preventative action required by employers based on the size and particular circumstances of their business.

For consistency with existing drafting under the Commonwealth Act we suggest that it may be preferable if "all reasonable steps" is used. We believe, however, that the duty will be identical irrespective of the drafting.

The AICD's understanding is that there is no material difference in the interpretation at law between "all reasonable steps" in the context of vicarious liability under the Sex Discrimination Act when compared with "all reasonable and proportionate measures" in the context of a positive duty under the Equal Opportunity Act 2010 (Vic), having regard to the case law that has considered "all reasonable steps" under the Sex Discrimination Act.

Should any proposed positive duty in the Sex Discrimination Act be limited to "reasonable steps" we are not aware of any authority that prevents the body authorised to enforce the positive duty in considering proportionality factors in consideration of all reasonable steps. We understand that proportionality factors have been considered by Courts in a range of cases in the context of the vicarious liability provisions under the Sex Discrimination Act.

We strongly urge the AHRC to publish guidance materials that elaborate on measures that will assist an employer in discharging the positive duty and any proportionality factors that will be relevant. The AICD would be pleased to support Board-specific materials and promote any such guidance.

8. What other options to prevent sexual harassment in the workplace could the Government consider, alongside or instead of, introducing a positive duty into the Sex Discrimination Act? (Please select all that apply)

Providing further education on employer obligations and building capacity across all industries on creating safe workplace cultures.

AICD comment: The AICD considers that for any positive duty to be effective in lifting standards of preventative action and care by employers, it must be supported with better practice guidance material, government resources as well as education and training opportunities.

It is critical, in particular, that the NFP and SME sectors who often have limited time, resources and expertise, are provided targeted training and support.

We would further support industry-led initiatives or standards, developed in partnership between Government and Industry, to address systemic issues that result from unique work environments in certain sectors.

9. What are your views on how broadly or narrowly a positive duty should apply in terms of who it covers?

Apply to all employers as broadly as possible within the working world, regardless of size, structure and revenue, with no exclusions.

AICD comment: The AICD considers that a new positive duty should apply broadly to all employers, with no exclusions. As noted in the Discussion Paper, all employers – regardless of the size of their business – are already subject to existing vicarious liability provisions in the Sex Discrimination Act.

However, we would encourage Government to consider clarifying in any Explanatory Materials or guidance associated with the legislation that it is the intent of the legislative reforms that any new positive duty applies to micro-businesses, community or volunteer organisations on a graduated basis taking into account considerations such as the organisation's nature, size and resources. In other words, that not all organisations will be held to the same standard as to what constitutes 'reasonable and proportionate measures' (or 'all reasonable steps') in discharging the positive duty.

10. What considerations should be relevant when determining whether a duty holder has adequately discharged a positive duty?

The nature and size of the business or operations.

Business resources.

Business operational priorities.

The practicability and costs of the measure.

Any systemic issues within that industry or workplace.

Any other relevant facts or circumstances.

AICD comment: The AICD supports the consideration of non-exhaustive factors and/or circumstances when assessing whether an employer has taken 'reasonable and proportionate measures' (or 'all reasonable steps') in discharging the positive duty.

As noted in our previous response, this would help ensure the positive duty applies to organisations of different sizes and resourcing capabilities on a graduated basis. It is critical that NFPs, SMEs and micro-businesses are not held to the same standard as larger organisations.

11. What assistance or guidance would help support employers to meet any new positive duty obligations?

AICD comment: We note that the UK Equality and Human Rights Commission (EHRC) are similarly proposing the introduction of a new positive duty to prevent workplace sexual harassment. As part of these proposals, the UK EHRC have committed to developing a statutory code of practice to clarify what will constitute 'all reasonable steps' to prevent workplace sexual harassment.

The AICD notes that the AHRC have published guidance material on steps employers can take to prevent workplace sexual harassment. We encourage the Government to work with the AHRC to develop this guidance further to promote awareness of any legislative changes made, particularly regarding what steps employers must take to discharge the 'reasonable steps' requirement under both a new positive duty and the existing vicarious liability provision of the Sex Discrimination Act. It would be helpful if this guidance also discussed what constitutes 'reasonable steps' for organisations of different sizes to ensure understanding of a graduated application of the positive duty (as noted above) including any proportionality factors that will be relevant.

Recommendation 18 – Enforcement powers for the AHRC

12. If you SUPPORT the introduction of a positive duty, how should it be enforced? (Please select one)

Option 3 - New enforcement powers, as recommended in the Respect@Work Report

AICD comment: The AICD supports 'option 3' of Recommendation 18 to enforce a positive duty.

13. If you SUPPORT the introduction of enforcement powers (option 3 above) for the Australian Human Rights Commission, what powers should be made available?

AICD comment: The AICD supports the AHRC having enforcement powers attaching to the positive duty. We support these mechanisms being in the form of a range of responsive regulatory tools from 'soft corrective' to facilitate compliance with the duty by working cooperatively with organisations using existing research and education functions, to more 'punitive sanctions' that could be reserved for when cooperation is not achieving the desired change.

It is reasonable to imagine that while enforcement tools would on occasion be necessary to enforce the duty, their mere existence, rather than use, may facilitate cooperation from organisations.

As noted in the Discussion Paper for option 3, this would include:

- Compliance and co-regulatory powers: enabling the AHRC to work with an employer to facilitate compliance with the positive duty – for example, developing an action plan for complying with the positive duty;
- Investigation powers: enabling the AHRC to request and compel information and documents, the ability to hold a hearing, examine witnesses and compel them to appear/give evidence; and
- Enforcement powers: enabling the AHRC to issue compliance notices when required, accept enforceable undertakings from an employer and/or initiate proceedings to enforce enforceable undertakings or enforce non-compliance with a compliance notice in the court.

Under the existing model WHS laws, WHS regulators have the ability to monitor compliance with the WHS positive duty, provide advice to duty holders, investigate duty holders by obtaining information, documents and evidence, as well as conducting legal proceedings. However, as identified by stakeholders as part of the AHRC's National Inquiry, WHS state and territory regulatory agencies that currently have investigative powers into workplace sexual harassment are adopting different approaches to sexual harassment. For example, the Respect@Work Report notes that some regulators ordinarily refer sexual harassment matters to human rights and anti-discrimination agencies, unless the presence or indication of a systemic issue means they may review the matter, while others may review the matter themselves, while also suggesting concurrent recourse through an antidiscrimination body.

Moreover, the AHRC heard concerns in the course of its National Inquiry consultation that WHS regulators do not have the necessary skills and expertise in sexual harassment, and gendered violence or gender inequality more broadly, or in some cases, the resources to appropriately handle sexual harassment matters.

In the AICD's view, providing an ability for the AHRC to assess compliance with the positive duty, work with organisations to improve compliance where needed and investigate non-compliance, could provide a more sensitive and trauma-informed approach to a sexual harassment investigation than one led by a WHS regulator. In our view, the AHRC is at present better equipped to also take into account the systemic and structural drivers and impacts of sexual harassment within a human rights framework as part of its investigation.

14. Should the Australian Human Rights Commission be able to exercise enforcement powers in relation to an alleged breach of the positive duty by any employer, regardless of size or number of employees?

Yes

AICD comment: As noted in our previous response, the AICD supports the positive duty applying to organisations of different sizes on a graduated basis taking into account its nature, size and resourcing. We support the AHRC being able to exercise enforcement powers in relation to an alleged breach of the positive duty by any employer, provided that enforcement is also exercised proportionately, including taking into account employer size.

Recommendation 19 – Inquiry powers for the AHRC

15. What are your views on providing the Australian Human Rights Commission with new or additional inquiry powers to inquire into systemic unlawful discrimination, including sexual harassment? (please select one)

Support providing the Australian Human Rights Commission with new or additional inquiry powers to inquire into systemic unlawful discrimination, including sexual harassment.

AICD comment: The AICD supports Recommendation 19 for the AHRC to be provided with a broad inquiry function to inquire into systemic unlawful discrimination, including sexual harassment.

16. If you SUPPORT providing the Australian Human Rights Commission with new or additional inquiry functions, what are your key reasons?

AICD comment: The AICD understands that the AHRC currently has the power to inquire into 'any act or practice that may be inconsistent with or contrary to any human right' under the AHRC Act (provided those acts or practices were engaged in by or on behalf of the Government). This includes powers to

obtain information and documents, and examine witnesses, with penalties applying for non-compliance with any of these inquiry powers, when undertaking an inquiry under this section.

The AHRC also has the power to inquire into any act or practice within a state or under state laws that may constitute 'discrimination' under the AHRC Act. However, while this allows the AHRC to inquire into alleged acts of discrimination by employers, the AHRC does not have investigatory powers to obtain information and documents, or examine witnesses, unless the complaint is against the Government.

We are also aware that the AHRC has a number of broad education and public awareness functions, but does not have any investigatory powers in relation to these functions.

The AICD considers the thematic or sectoral work conducted under the AHRC's existing broad education and public awareness function is a critical activity providing valuable insights into standards for better practice. Providing the AHRC with accompanying investigatory powers would enable it to make findings about whether systemic conduct amounts to discrimination.

Similar to ASIC's surveillance function and thematic assessments undertaken into key governance areas within organisations since the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, we consider it is appropriate for the AHRC to have powers to conduct sector-wide investigations. This would provide an opportunity for organisations to have real-world insights into practices across their sector and to consider how they might apply key learnings to their organisations.

In our view, this investigation mechanism would only enhance the AHRC's ability to promote compliance steps required to appropriately discharge any new positive duty.

17. What are your views on limiting the Australian Human Rights Commission's proposed inquiry powers?

AICD comment: The AICD supports the AHRC's proposed inquiry powers as outlined in the Discussion Paper, without limitations.

18. What are your views on accompanying any new or additional inquiry powers for the Australian Human Rights Commission with additional investigatory powers (such as the power to require the giving of information, the production of documents and the examination of witnesses)? (please select one)

Support accompanying any new or additional inquiry powers for the Australian Human Rights Commission with additional investigatory powers.

AICD comment: As noted in our previous response, the AICD supports the AHRC's proposed inquiry powers as outlined in the Discussion Paper, without limitations.

That said, we anticipate that there may be a general reticence by employers to disclose requested information, documentation or enable the examination of witnesses due to concerns this may prejudice their position in the event of any future enforcement action by the AHRC.

We consider the outcomes of these investigations should remain focused on highlighting better practice and areas for improvement. However, we recognise that the AHRC may, as a result of the investigation in some cases, find that systemic conduct amounts to discrimination. In these instances, it is critical that any enforcement mechanisms are applied in the same way as discussed previously in the context of Recommendation 18. That is, the AHRC has the discretion to apply a range of regulatory responses from

'soft corrective' by working cooperatively with organisations to improve compliance, through to more 'punitive sanctions' that could be reserved for when cooperation is not achieving the desired change.

19. Are any investigatory powers appropriate to accompany a broad inquiry power for the Australian Human Rights Commission?

Require the giving of information, Require the production of documents, Enable the examination of witnesses, Issue penalties for non-compliance

AICD comment: As noted in our previous responses, the AICD support additional investigatory powers to company a new broad inquiry power for the AHRC.

However, we reiterate our earlier comments regarding a graduated application to organisations of different sizes and resourcing. While for larger organisations, the provision of information, documentation and witnesses may be achievable within a limited timeframe, the same may not be said for NFPs, SMEs or mirco-businesses. It is critical that there be an appreciation for the different capabilities to comply with, and respond to, any investigatory directives by the AHRC.

Recommendation 25 – Costs protections

20. What are your views on changing the current costs model?

Support changes to the current costs model

AICD comment: The AICD supports changes to the current costs model. Of the options outlined in the Discussion Paper, the AICD is most supportive of the 'cost neutrality' option.

However, as discussed further below, we consider that a better, alternative formulation may be to provide that a successful complainant will always recoup their costs from a respondent. However, if a complainant is unsuccessful, they will only bear their own costs and not the respondents, except in the case of frivolous, vexatious or unmeritorious claims.

21. If you SUPPORT a change to the costs model, what are your key reasons?

The current costs model deters applicants from initiating civil proceedings, even if they have a strong claim

AICD comment: The AICD considers that costs can operate as a significant barrier to pursuing sexual harassment matters in court under the Sex Discrimination Act.

The current laws relating to cost orders, which provide that an unsuccessful party may be ordered to pay the other parties' costs, not only deters a person from initiating civil proceedings but also ultimately further entrenches the power disparity between employers and complainants. In our view, it is critical that these disincentives are removed.

22. Which of the following options, if any, is the most appropriate costs model to apply in anti-discrimination matters?

Other

AICD comment: Of the options outlined in the Discussion Paper, the AICD is most supportive of the 'cost neutrality' option. That is, where each party bears their own costs in the first instance, but the courts may make exemptions in the interests of justice – taking into account factors such as the financial

circumstances of the party, where a party has been wholly unsuccessful in the proceedings, and/or whether a party made an offer in writing earlier to settle the matter.

Although we prefer this 'cost neutrality' option over replicating section 570 of the Fair Work Act, we consider that a better formulation may be to provide that a successful complainant will always recoup their costs from a respondent. However, if a complainant is unsuccessful, they will only bear their own costs and not the respondents, except in the case of frivolous, vexatious or unmeritorious claims.

In our view, with the knowledge that if successful, they will not bear their legal costs, complainants would have an even greater incentive to seek justice by proceeding through the court system. Equally, removing plaintiff's fear of an adverse costs order in the event that they are not able to establish their claim at law, except in frivolous, vexatious or unmeritorious cases, would encourage a speak-up culture and more misconduct to be surfaced.

3. Next steps

We hope our response will be of assistance to the Attorney-General's Department. If you would like to discuss any aspects further, please contact Christian Gergis, Head of Policy, at cgergis@aicd.com.au, or Laura Bacon, Senior Policy Adviser, at lbacon@aicd.com.au.

Yours sincerely,

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