WEstjustice

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Australian Law Reform Commission
By email: jrsv@alrc.gov.au

Submission to the Australian Law Reform Commission: Justice Responses to Sexual Violence

Thank you for the opportunity to make a submission to the Australian Law Reform Commission (**ALRC**) on the Justice Responses to Sexual Violence Issues Paper. This submission focuses on questions 48-51, relating to civil litigation and workplace laws.

This submission is made by Employment and Equality Law Program (**EELP**) of the Western Community Legal Centre Ltd known as WEstjustice. We are a community legal centre providing free legal help, financial counselling and support to people in the Western suburbs of Melbourne. We are a member of Community Legal Centres Australia, the Federation of Community Legal Centres (Victoria) (**FCLC**) and we co-chair the FCLC Victorian Employment Law Working Group with South-East Monash Legal Service and JobWatch Inc.

WEstjustice believes in a just and fair society where the law and its processes don't discriminate against vulnerable people, and where those in need have ready and easy access to quality legal education, information, advice and casework services. Our Western suburbs community, comprising almost a million people, is one of the fastest growing areas in Australia and is highly diverse, comprising many newly arrived refugee and migrant communities, significant representation from Asia, Africa and the Pacific Islands, and a growing Aboriginal and Torres Strait Islander community.

The WEstjustice EELP was established in 2014 and offers legal advice, representation and work rights education to international students, young people, newly arrived migrants and refugees, people experiencing family violence, and other people experiencing economic disadvantage or hardship. The EELP regularly assists clients experiencing sexual harassment, which is a form of sexual and gender-based violence, including clients who have been sexually assaulted, whilst performing their work duties, or at after-hours functions with work colleagues. Based our experience with these clients, and the challenges they have faced using the civil justice system in Victoria to access an appropriate remedy, we are able to provide insight into changes that could be made to improve access to justice.

Please note that the WEstjustice Family Violence and Family Law Program have participated in consultations with the FCLC and we are supportive of the submission they will be making on other areas of criminal and civil law.

This submission is endorsed by JobWatch and South-East Monash Legal Service.

Workplace sexual violence and harassment

Information about the prevalence and drivers of workplace sexual harassment and sexual violence are well known, due to recent studies and reports including the Australian Human

Rights Commission's (**AHRC**) report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020), and the ANROWS 2021-2024 Sexual Harassment Research Program reports *Migrant and refugee women in Australia: A study of sexual harassment in the workplace* (Segrave, Wickes, Keel and Tan, August 2023), and *Workplace technology-facilitated sexual harassment: Perpetration, responses and prevention* (Flynn, Powell and Wheildon, April 2024). For this reason, we take this information as known to the ALRC and do not repeat it here.

We acknowledge that the primary focus of the ALRC is on sexual violence and the criminal justice system, but are pleased that the civil justice system is also being considered. While there has been significant legal reform in recent years in relation to workplace law and sexual harassment and sexual violence (as referred to in the Issues Paper), the civil justice system remains extremely complex to navigate and identify an appropriate avenue for resolution, especially for unrepresented victim-survivors.

There are significant barriers to accessing justice through existing and newly introduced civil litigation options for workplace sexual violence and sexual harassment, including:

- lack of ongoing and sustainable funding for community legal centres providing legal advice, information and representation for workers experiencing workplace sexual harassment and sexual violence;
- lack of funding to cover the cost of medical reports to support civil claims, meaning clients must pay hundreds or thousands of dollars out of their own pocket for a psychologist or specialist report to prove the mental and physical injuries caused by sexual harassment and sexual violence;
- significant delay in civil proceedings that can be caused by a concurrent criminal complaint, whereby the victim-survivor is unable to proceed with their sexual harassment claim in order to ensure the criminal justice process is not impeded or prejudiced in any way;
- the length of time for a complaint to be allocated to a conciliator at the AHRC or for a conciliation to be scheduled at both AHRC and, in our jurisdiction, the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**);
- the risk of an adverse costs order being made against a victim-survivor in the Federal Circuit and Family Court or Federal Court if they are unsuccessful in their claim, whereby they have to pay the legal costs of the perpetrator or their employer. This is a major barrier for accessing justice especially for low paid and insecure workers, as the threat of costs prevents victim-survivors from pursuing their claims;
- the unregulated use of non-disclosure agreements and confidentiality clauses in settlement agreements/deeds which restrict a victim-survivor from sharing their story;
- the risk of non-payment of compensation agreed in a deed of settlement or as ordered by a court or tribunal, particularly by individual respondents (i.e. natural persons) and businesses who may become insolvent or voluntarily wind up, or who simply ignore the orders;
- lack of trauma informed practice training for court and tribunal staff (or lack of implementation or application of that training);
- lack of systemic outcomes ordered by Courts and Tribunals, and limited consideration of the same by parties in negotiating settlement of claims; and
- a failure to recognise and address intersectional experiences of workplace sexual violence and sexual violence, for example for Aboriginal and Torres Strait Islander peoples, people with a disability, culturally and racially marginalised peoples, and LGBTQIA+ peoples.

Our submission below identifies ways that some of these barriers can be addressed in civil justice responses to sexual violence under workplace and anti-discrimination law. We use the term "sexual harassment" in this submission to cover workplace sexual assault or sexual violence that constitutes sexual harassment.

For completeness we also refer the ALRC to our previous submissions on sexual harassment law reform, including our Joint Submission with SMLS to the Victorian Ministerial Taskforce on Workplace Sexual Harassment (August 2021) and our Submission to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces (February 2019). Many of our recommendations in these submissions remain relevant despite the significant changes recommended by *Respect@Work* and implemented by the Federal Government.

ALRC Question 48 Measures that are likely to most improve civil justice responses to sexual violence and Question 49 Other reforms and developments which the ALRC should consider

We agree that the measures listed in paragraphs 123 and 124 of the Issues Paper will assist with improving civil justice responses. We wish to comment on four measures which we consider would improve civil justice responses to workplace sexual harassment:

1. Government funding for some applicants in civil proceedings;
2. Government enforcement of orders to pay damages.
3. Trauma-informed legal processes
4. Extending the available remedies

Government funding for applicants in civil proceedings

We agree that government funding for applicants in civil proceedings is required – in relation to civil claims of sexual assault but also for workplace sexual harassment. The legal framework for sexual harassment complaints is complex, with multiple overlapping jurisdictions and external complaint options. Victim-survivors frequently need assistance to identify that they have multiple civil litigation options available irrespective of whether they have had any interaction with the criminal systems and often find it difficult (if not overwhelming) to navigate this framework without legal assistance.

In addition, victim-survivors frequently need to decide whether they wish to remain employed at the place they have been subjected to the sexual harassment both due to fear of victimisation if they complain, or continuation of the harassment if they do not. Victim-survivors choosing to leave their job as a result of the sexual harassment require a particular level of financial stability or the ability to quickly obtain alternative employment. Victim-survivors are often balancing their financial stability against the potential instability and a likely breakdown in professional relationships if they bring a civil claim. In this context, free legal information, advice and representation is essential to ensure access to justice for those victim-survivors.

The Victorian Law Reform Commission (**VLRC**), in their report *Improving the Justice System Response to Sexual Offences* (12 November 2021) made the following observation:

> *11.27 Another person, who was sexually assaulted at work, was able to get legal representation because she could sue the company that employed her. She told us how important this was for her.*

> *"It was empowering to know that I'm fighting for justice for all people that were involved. It's not about winning or losing the civil claim. Regardless of the outcome I feel like I would have done everything I could have in my power to say that what happened was wrong and that no one can go around doing what had happened to me without consequences.—Lucille"*

The VLRC report goes on to recommend that legal representation could be provided through a legal aid scheme or other "suitable body" but does not otherwise refer to legal representation for workplace claims. We note that in the workplace context, legal aid commissions and a number of community legal centres (**CLCs**) including WEstjustice are currently funded to provide free information, education, advice and representation to complainants and applicants in civil proceedings including in relation to sexual harassment.

The National Legal Assistance Partnership (**NLAP**) funds these frontline sexual harassment services but this funding ends in June 2025 with the end of that NLAP Agreement. While funding for Working Women's Centres was announced late 2023, there have been no public commitments by the Federal Government yet to continue the targeted CLC funding for workplace sexual harassment. Both these funding streams were recommendations of the AHRC *Respect@Work Report*, and it would be a significant impediment to access to justice if victim-survivors did not have access to free legal advice and representation.

Government funding for applicants should also extend to covering disbursements relating to their claim. Presently, any client of WEstjustice who is seeking to bring a sexual harassment claim must usually pay out of their own pocket for process servers as well as all specialist medical reports, such as from their treating psychiatrist or psychologist, and to pay for the specialist to be available for witness testimony, which can cost thousands of dollars depending on the practitioner. These reports are crucial for demonstrating the injury and its impact on the client's wellbeing and quality of life, and to assist in quantifying their loss.

In addition, specialist medical reports are often required at the very early stages of assessing a claim, and for use in dispute resolution or in negotiations to resolve the complaint. Where a victim-survivor does not have access to this evidence because they cannot afford to pay for the report, they will be unable to receive complete legal advice about the merits and quantum of their claim, and make a fully informed decision about whether to bring a claim and in what jurisdiction. If they do decide to proceed with a claim without this medical evidence, their lawyer has a reduced bargaining position to negotiate a favourable outcome and, if the matter proceeds to hearing, prove the claim.

CLCs do not have direct funding to assist clients with these costs up front and may have access to disbursement grants but these are managed by legal aid commissions with complicated pre-approval requirements. Clients who have a workers compensation claim and are being assisted by a private no-win no-fee law firms might use litigation funding or loans to obtain these reports, but these have limited use in sexual harassment matters and the same types of loans are not available to CLC clients. We would prefer not to put our clients in debt in order to obtain evidence for their claim and make the process of obtaining specialist medical advice easy and quick so as to avoid any delays in providing advice and bringing a claim.

> ***Recommendation 1: In line with the Independent Review of the National Legal Assistance Partnership (March 2024), we recommend the Federal Government provide significant and ongoing funding to CLCs for civil matters such as***

sexual harassment, and that this funding be geographically targeted to areas of high disadvantage and unmet legal need.

Recommendation 2: Government funding must be established to clearly, easily and quickly cover the disbursement costs for CLC clients in sexual harassment matters, such as medical reports and process servers.

Government enforcement of orders to pay damages

A real issue for victim-survivors of sexual harassment when utilising civil justice responses, is the concern that they will not be paid their compensation even when this has been negotiated and agreed in a deed of settlement or awarded by a court or tribunal. There are no easy and quick mechanisms to enforce a deed or judgement, and victim-survivors must take legal enforcement action in the courts for the compensation as a debt owed to them. For example, through the Magistrates Court enforcement of civil debt proceedings.

This further delays the resolution of a person's claim (which may have already taken years to reach that point), can impact their mental and physical health, and re-traumatise them in the process. CLC resources are generally limited and do not often extend to enforcement proceedings. If a CLC is unable to continue to assist or support the client and they cannot obtain pro-bono support, there are limited options available to pursue their remedy and obtain payment. This is a wholly dissatisfactory outcome for the client – a win on paper but no real remedy or change to their financial circumstances.

We support the concept of government enforcement of orders to pay damages by way of an authorised agency bringing enforcement proceedings on behalf of a victim-survivor where they have requested it (see VLRC Recommendation 42). However, more consideration is needed as to who the appropriate enforcement agency might be in the workplace context, given sexual harassment action can be brought in state, territory and federal jurisdictions. For example, the AHRC, Fair Work Commission (**FWC**), or the state/territory anti-discrimination agencies.

In any event, courts such as the Magistrates Court need more resources to ensure that enforcement proceedings are heard and determined quickly and ideally there would be some form of fast-track process available (including having enforcement claims heard on the papers to avoid the need for costly hearings).

Another alternative could be that the Federal Government implement a compensation recovery scheme, whereby a victim-survivor of workplace sexual harassment need not apply to court for enforcement but rather apply to the scheme for payment of the compensation when their employer is in default of a court order or has become insolvent and cannot pay or ignores the court orders and refuses to pay. WEstjustice has previously recommended this type of scheme in relation to recovery of underpayments of wages and entitlements. The scheme could be similar to the Fair Entitlements Guarantee (**FEG**), where workers have access to a central fund administered by the Federal Government, where the worker can apply to have their court order for repayment of wages and entitlements honoured.

The process should be available:

- to a victim-survivor of workplace sexual harassment who has a court order for the payment of compensation, and
- where the employer or personal respondent is insolvent or bankrupt, or fails to engage with the court process, and

- as a result, the victim-survivor is unable to enforce their judgement and receive payment of monies owed.

The recovery scheme could be funded through premiums payable by employers (or directors) or through recovery of money by the Commonwealth from entities such as the liquidator, bankruptcy trustee or other intermediary, in the same way as Part 5 of the FEG Act allows.

> ***Recommendation 3: Further consideration is given to what government assistance for enforcement of deeds and orders might practically ensure easy, timely and free enforcement is possible for victim-survivors of workplace sexual harassment.***
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> ***Recommendation 4: The Federal Government implement a compensation recovery scheme, whereby a victim-survivor of workplace sexual harassment can apply to the Government for payment of their court order where the respondent has failed to do so and the victim-survivor is unable to enforce their judgment.***

Trauma informed training

The civil justice framework for workplace sexual harassment includes claims that can be made at the FWC under the *Fair Work Act 2009* (Cth) (**FWA**), to the AHRC under the *Sex Discrimination Act 1984* (Cth) (**SDA**), and to state and territory anti-discrimination bodies under their own legislation. All staff at these agencies who are public-facing and are assisting victim-survivors of sexual harassment must ensure their complaints handling and dispute resolution processes are trauma informed and victim-centred. It is essential that these staff undertake mandatory trauma informed practice training to better understand how trauma affects a person who has experienced workplace sexual harassment, and to develop best practice in sensitively responding and dealing with complaints.

We know that AHRC and VEOHRC staff have significant experience in working with trauma affected complainants. However, the FWC jurisdiction is still new and it is unclear what training has specifically been provided to FWC staff since its new functions were implemented. The FWC's *Implementation Report: Sexual harassment in connection with work* (February 2023) stated that Commission Members and staff were trained on the nature, drivers and impacts of sexual harassment in 2021, and that a number of other professional development sessions have been provided to Members, conciliators and case managers. The *Implementation Report* stated further training "may" be provided, and the FWC's 2022/23 annual report noted that specialist staff have been trained in a trauma informed approach to case management.

Trauma informed practice training should be mandatory for all staff who will be involved in handling sexual harassment claims including conciliators and FWC Members, there should be refresher training provided to staff who have not had this training since 2021. There should also be transparency around how this is implemented through an updated implementation statement from the FWC President or a note in the Sexual Harassment Benchbook which commits to trauma informed ways of handling complaints and sensitively assisting complainants.

A lack of sensitivity during conciliation or hearing has a real risk of re-traumatising complainants. Conversely, where staff and decision makers respond appropriately to complaints of sexual harassment this can assist victim-survivors in their healing journey.

> ***Recommendation 5: The FWC must ensure all staff, conciliators and Members who are involved in sexual harassment applications undertake mandatory trauma informed practice training or refresher training, and must provide the public with more transparency around how it is implementing this training, including through an updated Implementation Statement and/or the Sexual Harassment Benchbook.***

Remedies for workplace sexual harassment

The current civil justice system for sexual harassment is focused on an individual bringing a claim against their employer or the perpetrator, and remedies are focussed on addressing that individual's loss as a result of the unlawful conduct. This is an important element of redress, but more can be done to improve civil justice responses to sexual harassment to achieve systemic outcomes as well.

Under the FWA, a person could bring a claim to the FWC for a Stop Sexual Harassment order (if they are still employed), or otherwise for the FWC to deal with a sexual harassment dispute. These claims first go through a dispute resolution process, which can result in a negotiated outcome. If the matter does not settle, the FWC will issue a certificate and the victim-survivor then has to elect whether to take the matter to court or not. If the parties agree, it will proceed to FWC arbitration. In these circumstances the FWC has the power to make any orders appropriate to deal with the dispute, and has flexibility in the potential outcomes available while focusing on redress loss or damage as a result of the sexual harassment.

For example, section 527S(3) of the FWA provides that in arbitration for a sexual harassment dispute, the FWC may make one or more of the following orders:

- an order for the payment of compensation including for financial loss, or
- an order requiring a person to perform any reasonable act, or carry out any reasonable course of conduct, to redress loss or damage suffered.

The latter could conceivably include orders for an apology, for someone to comply with or review a policy about sexual harassment, or orders that workers be given more information, support and/or training. However, this is a new jurisdiction and we have not seen any published decisions of the FWC yet making stop orders (only declining to make them) or making any other orders in relation to sexual harassment disputes, so we do not know whether the FWC is likely to order non-compensatory and systemic outcomes as a matter of course. This could be a matter that the President deals covers in any updated Implementation Statement and/or the Sexual Harassment Benchbook.

Under anti-discrimination law, if a complaint of sexual harassment is successful, the court or tribunal (respectively) is generally also limited to making orders for the purposes of providing redress to the applicant. For example, section 46PO(4) of the *Australian Human Rights Commission Act 1986* (Cth) provides that for sexual harassment cases that do not settle at the ARHC and are successful in the Federal Circuit and Family Court or Federal Court, the court may make orders as it thinks fit, including:

(a) an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination;

(b) an order requiring a respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an applicant;

(c) an order requiring a respondent to employ or re-employ an applicant;

(d) an order requiring a respondent to pay to an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent;

(e) an order requiring a respondent to vary the termination of a contract or agreement to redress any loss or damage suffered by an applicant;

(f) an order declaring that it would be inappropriate for any further action to be taken in the matter.

None of the above orders directly address the drivers of sexual harassment or gender-based violence. While it is still open to the court to make orders for workplace training or changes to policies, in reality these orders are uncommon given how few cases that make it through to hearing and have a successful outcome. If we are serious about systemic change in relation to workplace sexual harassment, courts and tribunals must be required to consider what orders they could make that would not only remedy the individual's loss or damage, but also contribute to improving the safety and culture of the workplace to prevent future sexual harassment.

Standard form settlement agreements utilised by the FWC, AHRC and state and territory anti-discrimination bodies should also include terms that require employers to address the drivers and promote systemic change as part of conciliated outcomes. For example, through training (including on the drivers and gendered nature of sexual harassment, or sexual violence behavioural change training targeted at management level staff), compliance audits, introducing de-identified reporting requirements, and/or the introduction of relevant policies.

These recommended changes would not detract from the individual's own remedy, and in fact can enhance their feelings of justification and satisfaction in the outcome and may, for some complainants, provide the impetus to bring a complaint where they might otherwise have been reluctant on the basis that they think it will not make a difference or change anything. We find that when we have negotiated outcomes for our clients with a more broad-reaching impact for the workplace, such as agreements to run sexual harassment and anti-discrimination training in the workplace, these outcomes allow victim-survivors to feel like they have contributed to substantial and tangible changes in their workplace. In several of these cases, clients have reported a feeling of a 'weight being lifted' as a result.

Recommendation 6: The FWC must publish guidance on when it might make orders in sexual harassment disputes that promote systemic workplace changes.

Recommendation 7: Commonwealth, state and territory anti-discrimination legislation should be amended to require courts and tribunals to consider remedies that promote systemic change.

Recommendation 8: The FWC, AHRC, and state and territory anti-discrimination agencies should update their standard terms of settlement to include systemic outcomes.

ALRC Question 51: Provisions or processes that best facilitate the use of civil proceedings in the context of workplace laws

We agree that all the recommendations and actions listed at para 125 would facilitate the use of civil proceedings to provide better access to justice for sexual harassment victim-survivors. In relation to that list, we make the following comments:

- The positive duty has been implemented into the SDA and we are now waiting to see how the AHRC uses its new enforcement powers. These have the potential, if used well, to shift the focus away from a system that requires individuals to prosecute and prove their own complaint to one that promotes regulator action to support victim-survivors and remedy the power imbalance that exists between victim-survivor and perpetrator or their employer.
- An equal access costs model has been proposed by the Federal Government which would remove the risk of costs being awarded against a victim-survivor. We welcome this change and are now waiting for the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 to be passed into law following the Report of the Senate Standing Committee on Legal and Constitutional Affairs in February 2024 which recommended that the Senate pass the bill.
- We support harmonisation of anti-discrimination laws, noting that in relation to sexual harassment the tests are generally accepted as being the same but there are key differences in accessorial liability provisions (e.g. for respondents who have authorised, assisted or permitted sexual harassment to occur) which could be reviewed and resolved through harmonisation.
- We also call for stronger and more pro-active confidentiality protections for victim-survivors who bring claims in any jurisdiction. See our discussion below.

We highlight some additional reform below that would improve civil proceedings for victim-survivors of sexual harassment.

Proper Resourcing for AHRC

The AHRC along with other state and territory anti-discrimination bodies must be properly resourced, particularly their complaints or dispute resolution teams, so that complaints of workplace sexual harassment can be dealt with quickly and efficiently. Current wait times of between six to 12 months to have a matter referred to a conciliator are unacceptable and highly detrimental to complainants who experience significant distress and trauma from the length of time it takes to find a resolution to their complaint.

By way of comparison, for FWC sexual harassment complaints, the FWC aims to discuss the case with everyone involved within 2 weeks of receiving the application and resolving the case within 16 weeks (see "*How we deal with sexual harassment cases*"). For general protection dismissal claims the timeframes are similarly low: conciliation usually occurs 5-10 weeks after the FWC receives the application and the FWC aims to finalise the application within 16 weeks (see *"The process for general protections dismissal").* For many legal practitioners working with victim-survivors, these time limits are crucial considerations in advising on choice of jurisdiction when all other factors are equal.

We also understand that the AHRC does not have current funding available to maintain its Respect@Work website https://www.respectatwork.gov.au/ which is a key source of information, tools and resources to support individuals and organisations understand, prevent and respond to workplace sexual harassment. The AHRC must be given dedicated funding to ensure online resources remain available and up to date.

> ***Recommendation 9: The AHRC must be appropriately funded and resourced to ensure workplace sexual harassment complaints can be dealt with in a timely manner, and its Respect@Work resources are maintained and updated as needed.***

Non-disclosure agreements and confidentiality

Despite non-disclosure agreements and confidentiality clauses in sexual harassment settlements being identified as a major issue in *Respect@Work,* with *Guidelines on the Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints* being issued in 2022 as best practice principles, (**NDA Guidelines**) their use persists. Research by the University of Sydney *Let's Talk about Confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report* (Featherstone and Bargon, 6 March 2024) (**Confidentiality Research Report**) found that strict blanket confidentiality and non-disparagement terms remain the default confidentiality term used by lawyers in workplace sexual harassment settlements in Australia, and there is no consensus around what a "standard" confidentiality clause might be or uniformity in practice across the legal profession in negotiating these clauses.

Conciliators at the FWC, AHRC, VEOHRC and other state and territory anti-discrimination agencies should adopt the model confidentiality clauses attached to the Confidentiality Research Report in their internal templates, to bring consistency to negotiations and a common starting point that does not assume strict confidentiality as the basis for settlement. Conciliators must also ensure they are discussing risks and issues identified in the NDA Guidelines with parties at conciliation to ensure that the negotiated agreement is not on the basis of an agreed remedy plus "standard terms". Any confidentiality term must be discussed and agreed before the settlement deed or agreement is drafted to ensure parties are on the same page and the victim-survivor has the opportunity to negotiate the confidentiality terms and, if appropriate, negotiate additional compensation to account for their inclusion.

> ***Recommendation 10: Conciliators at the FWC, AHRC, and state and territory anti-discrimination agencies should adopt the Confidentiality Research Report's model confidentiality clauses in their internal templates.***

Confidentiality of personal information

In the FWC, recent decisions in a number of unfair dismissal applications have included the publication of significant personal and medical information about victim-survivors of family violence. Although mechanisms exist for the FWC to make confidentiality orders through sections 593(3) and 594 of the FWA, (and with a short general information page on their website about this) these require an application which may not be known to victim-survivors of family violence or sexual harassment, and the FWC has historically been reticent to make such orders.

The FWC should develop and implement a mechanism to provide better privacy protection and confidentiality for victim-survivor applicants and their witnesses, tailored to their

circumstances, in recognition of the significant risk to their safety that may come with publication of their information. This mechanism could include pro-actively advising victim-survivors at the outset of proceedings, before any decision is issued of the availability of de-identification and other confidentiality orders, and support to apply for the same.

The FWC should also issue a practice note or other guidance for decision makers on the use of confidentiality powers that specifically takes into account the unique safety risks for applicants who have experienced family violence or sexual harassment.

> ***Recommendation 11: The FWC must develop publicly available practice guidance on privacy and confidentiality for victim survivors of both sexual harassment and family violence.***

Please contact me by email (jennifer@westjustice.org.au) if you have any questions about this submission.

Yours sincerely

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This submission is endorsed by JobWatch and South-East Monash Legal Service:

JobWatch
Employment Rights Legal Centre

SOUTH-EAST MONASH LEGAL SERVICE INC.