

29 April 2026

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

Sent by: submitted online

Dear Secretary

Submission to the Senate Legal and Constitutional Affairs Committee

The Australian Human Rights Commission (Commission) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (Committee) on the Secrecy Provisions Amendment (Repealing Offences) Bill 2026 (the Bill). The Bill forms part of the Attorney-General's Department's review of Commonwealth secrecy provisions and will remove criminal liability from several secrecy provisions across the Commonwealth statute book. Relevantly for the Commission, the Bill proposes to repeal s 92 from the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act).

The Commission supports the repeal of s 92 of the Sex Discrimination Act as there is not sufficient justification to retain this section.

Section 92 of the Sex Discrimination Act and its background

Section 92 of the Sex Discrimination Act provides that if a complaint alleging sexual harassment is lodged with the Commission, it is an offence for any person, including the complainant, the respondent and officers of the Commission, to disclose any particulars of that complaint until an inquiry has commenced, or the complaint is withdrawn or terminated (whichever occurs first).

There are some exceptions, including:

- in relation to staff of the Commission, in the course of their duties

- discussions with the complainant, the respondent, their legal representatives and employers
- the complainant discussing the complaint with another complaint handling body, a relative, or a counsellor.

In 1984, it appears that the rationale for including s 92 in the Sex Discrimination Act was to prevent public discussion of sexual harassment complaints before a decision could be made about whether they were frivolous or vexatious, in order to protect the reputation of respondents from potentially 'malicious complaints'.

According to a 1984 background paper on the Sex Discrimination Act when it was enacted, while sexual harassment will be unlawful in employment and education:

To protect people against damage from unjustified or malicious complaints, it will be illegal to publicise or divulge particulars of a complaint until the Commissioner or Commission has commenced to hold an inquiry into the complaint.¹

This rationale also appears in a contemporaneous press release issued by a Senator for the Australian Democrats who seems to have proposed the provision. The press release notes that the amendment would 'prevent men or women being "set up" frivolously or maliciously on the grounds of sexual harassment' and was necessary to remove the potential for 'smearing people'.²

There is not sufficient justification to retain s 92

Section 92 of the Sex Discrimination Act is out of step with current thinking about the nature of sexual harassment and draws on the myth that complainants make up complaints.

This provision is also anomalous in that it applies only in relation to sexual harassment complaints, and not any other kind of complaint under the Sex Discrimination Act. There are no equivalent provisions in the other federal discrimination laws.

While it is essential that all parties to a complaint have confidence that officers of the Commission will treat complaints with confidentiality, s 92 is not necessary for upholding that confidence given the existence of s 112 in the Sex Discrimination Act. Section 112 is also a secrecy provision that attracts criminal liability, but it only applies to Commission staff and statutory officeholders who acquire complaint information by reason of their employment or office at the Commission.

Furthermore, there are other ways to preserve the confidentiality of material provided to the Commission where this is justified, for example through directions

given under s 14 of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) prohibiting disclosure of a person's identity or publication of certain material.

For the reasons set out above, the Commission agrees that s 92 of the Sex Discrimination Act should be repealed.

The Commission also notes that the AHRC Act and the 4 commonwealth anti-discrimination acts contain secrecy provisions similar to s 112 of the Sex Discrimination Act referred to above (being secrecy provisions that attract criminal liability only for Commission staff and statutory officeholders) and that all 5 provisions serve similar purposes. It is the Commission's view that these provisions can be streamlined such that the secrecy provision contained in the AHRC Act can apply across all 5 relevant pieces of legislation.

The Commission welcomes further engagement with the Committee on this issue.

Yours sincerely



Hugh de Kretser
President



Anna Cody
Sex Discrimination Commissioner

¹ C Larmour, *Background Paper: The Sex Discrimination Bill (No.2)*, Education and Welfare Group, the Parliament of the Commonwealth of Australia, 5 March 1984.

² Senator Colin Mason, *Sexual Harassment Amendment* [medial release], The Senate, 20 October 1983, accessed 14 April 2026.