



Changes to state employment laws in WA

New stop bullying and sexual harassment provisions

June 2022

New stop bullying and sexual harassment provisions have been introduced into the state industrial relations system which allow individual public and private sector workers who reasonably believe they have been bullied or sexually harassed at work (or both) to make an application to the Western Australian Industrial Relations Commission (WAIRC) for a stop bullying or sexual harassment order.

These changes were introduced by the *Industrial Relations Legislation Amendment Act 2021* and the new provisions in the *Industrial Relations Act 1979* (IR Act) commenced on 20 June 2022.

The stop bullying and sexual harassment provisions provide the WAIRC with the power to address a worker's bullying and/or sexual harassment allegations directly and promptly.

This fact sheet provides general information on:

- definitions of 'bullied at work' and 'sexually harassed at work';
- who can make an application for an order to stop bullying or sexual harassment;
- making an application for an order to stop bullying or sexual harassment;
- WAIRC response to applications for an order to stop bullying or sexual harassment;
- interaction with other laws and grievance resolution processes;
- enforcement of orders to stop bullying or sexual harassment; and
- appeal of an order to stop bullying or sexual harassment.

State employment laws have changed

This fact sheet is part of a suite of information on the changes to state employment laws that commenced on 20 June 2022. For details on the changes visit www.dmirs.wa.gov.au/new-employment-laws.

Definitions of 'bullied at work' and 'sexually harassed at work'

A worker is **bullied at work** if, while the worker is at work, an individual or group of individuals repeatedly behaves unreasonably towards the worker and that behaviour creates a risk to the safety and health of the worker.

A worker is not bullied at work if the behaviour is reasonable management action that is carried out in a reasonable manner.

A worker is **sexually harassed at work** if, while the worker is at work, an individual or group of individuals makes an unwelcome sexual advance or an unwelcome request for sexual favours to the worker, or engages in other unwelcome conduct of a sexual nature in relation to the worker, in circumstances a reasonable person would have anticipated the possibility that the worker would be offended, humiliated or intimidated.

Conduct of a sexual nature in relation to a worker includes:

- making to, or in the presence of, the worker or another person, a statement of a sexual nature concerning the worker, whether by visual, oral, written or electronic communication; or
- publishing a statement of a sexual nature concerning the worker on the internet or any other form of communication.

The term **while the worker is at work** means carrying out work in any capacity for a **person conducting a business or undertaking**. This may be at a place other than the employer's premises, and is not limited to a physical workplace or the times at which a worker is performing work. A worker may be 'at work' whilst engaging in an activity which is authorised or permitted by their employer, e.g. attending a work Christmas party.

The use of the term **individual or group of individuals** is broad and includes clients or customers of the business or undertaking in which the worker works. It can include an individual who is a national system employer or employee.

Who can make an application for an order to stop bullying or sexual harassment

An application to the WAIRC for a stop bullying or sexual harassment order can be made by a 'worker', which is a wider term than 'employee'. A person is a **worker** if the person carries out work in any capacity for a **person conducting a business or undertaking**, including work as any of the following:

- an employee;
- a contractor or subcontractor;
- an employee of a contractor or subcontractor;
- an employee of a labour hire agency who is working in the person's business or undertaking;
- an outworker;
- an apprentice or trainee;
- a student gaining work experience; or
- a volunteer.

Person conducting a business or undertaking

A worker must be carrying out work for a 'person conducting a business or undertaking' (PCBU) to be covered by the stop bullying and sexual harassment provisions. The term 'person' includes sole traders, partnerships, public sector bodies and incorporated and unincorporated associations. A PCBU does not have to conduct its business for profit or gain but the term does exclude volunteer associations if they do not employ anyone. There are also others exclusions to the term PCBU.

Making an application for a stop bullying or sexual harassment order

A worker who reasonably believes that they have been bullied and/or sexually harassed at work may make an application to the WAIRC for an order to stop bullying or sexual harassment. This application must be made on the appropriate form and be accompanied by any fee prescribed by the *Industrial Relations (General) Regulations 1997*.

A worker may make an application for both a stop bullying and a stop sexual harassment order.

A union may make an application for an order to stop bullying or sexual harassment in relation to a member.

WAIRC response to applications for an order to stop bullying or sexual harassment

The WAIRC must start to deal with an application for an order to stop bullying or sexual harassment within 14 days after the application is made.

It may deal with the application via conciliation, arbitration, or take other action as appropriate. The WAIRC may also dismiss an application.

The WAIRC may make an order to stop bullying and/or sexual harassment if it is satisfied that:

- the worker has been bullied and/or sexually harassed at work; and
- there is a risk that the worker will continue to be bullied and/or sexually harassed at work.

The WAIRC may make any order it considers appropriate, other than an order requiring payment of compensation to a worker. An order may be made against the person who engaged in the bullying and/or sexual harassment, e.g. a manager, a co-worker, a contractor, a client or a customer. An order may also be made that applies to a person other than the individual who has engaged in the bullying and/or sexual harassment. For example, an order could be made for the worker's employer to provide workplace bullying training to its employees, or for the applicant themselves to comply with reasonable directions of their employer.

Where an employee's employment has terminated after making an application for an order to stop bullying or sexual harassment but before the matter is dealt with by the WAIRC, the WAIRC will be unable to make an order to stop bullying or sexual harassment if there is no demonstrated risk of continued bullying and/or sexual harassment.

Interaction with other laws and grievance resolution processes

These provisions complement work health and safety, and discrimination laws. The WAIRC will therefore be able to deal with an application for an order to stop bullying or sexual harassment notwithstanding that the worker has made a complaint to another body, such as WorkSafe, the Equal Opportunity Commission or WorkCover. It may also deal with an application regardless of whether or not the worker has accessed their employer's grievance resolution processes.

Enforcement of orders to stop bullying or sexual harassment

A person to whom an order to stop bullying or sexual harassment applies must comply with the terms of the order. The Industrial Magistrates Court can impose a penalty of up to \$13,000 in the case of an individual or \$65,000 in the case of a body corporate if a person does not comply with the provisions of an order to stop bullying or sexual harassment.

Appeals

A person against whom an order has been issued may appeal that decision to the Full Bench of the WAIRC.

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