



Guide to external pathways in Western Australia to address workplace sexual harassment

October 2022

Disclaimer

The information in this guide is of a general nature only. Much of it has been summarised for simplicity and is not an exhaustive statement of the law or the jurisdictions and functions of the bodies mentioned. For more information about each of these bodies and their relevant jurisdictions, please visit their websites. This guide is not a substitute for independent professional advice. For tailored advice and support, please see the section on support services in this guide.



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Introduction

How to use this guide

This guide provides information about the external pathways in Western Australia (WA) for addressing workplace sexual harassment, including:

- a brief description of each agency's role
- the timeframes and costs involved for seeking help
- agency processes for handling workplace sexual harassment matters, including the average time taken (where available)
- potential rights of appeal if a person is unhappy with an outcome
- contact information and links to resources, including support services.

There is a quick reference guide at the end of this document with each agency's contact information.

Parties impacted by a workplace sexual harassment matter (such as the worker who has experienced the sexual harassment, the person alleged to have engaged in the sexual harassment, and their employer) can use this guide to understand what the external pathways are and what to expect from them, as well as the services that may be available to provide additional support. Agencies and advocates can use this guide to inform their referrals, where relevant. Legislation may have changed following the publication date of this guide.

What is sexual harassment?

In Australia, the legal definition of sexual harassment is different between federal, state and territory jurisdictions.

In simple terms, sexual harassment means any unwelcome sexual behaviour that a reasonable person could anticipate may make another person feel offended, humiliated, intimidated, insulted or ridiculed in that situation. A 'reasonable person' can be taken to mean a neutral and unbiased observer.

Sexual harassment can be a single, one-off incident or an ongoing pattern of behaviour.



Sexually harassing behaviours include:

- unwelcome touching
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures or posters
- unwanted invitations to go out on dates
- requests for sex
- intrusive questions about a person's private life or body
- unnecessary familiarity, such as deliberately brushing up against a person
- insults or taunts based on sex
- sexually explicit physical contact
- sexually explicit emails or SMS text messages.

Behaviours that amount to a criminal offence under criminal law can also constitute sexual harassment, such as actual or attempted sexual assault.

While sexual harassment may form part of other forms of harassing and inappropriate behaviour, such as bullying and discrimination, this guide is focused on workplace sexual harassment.

Workplace sexual harassment refers to sexual harassment which occurs at, or in connection to, work or in the course of employment. It is unlawful to engage in workplace sexual harassment.

For more information, please see the [Australian Human Rights Commission's 'Sexual Harassment' webpage](#).

Pathways for addressing workplace sexual harassment

Workers who have experienced workplace sexual harassment need clear, up-to-date, relevant and easily accessible information to help them come to terms with their experiences and to enforce their rights.

If a worker has experienced workplace sexual harassment, there are a range of options that may be available to them to address that behaviour. For example, they can report the behaviour directly to their supervisor or human resources area at work, with their employer or workplace determining how the matter will be handled.



Alternatively, the worker may choose to have the matter handled by someone outside of their workplace. For example, they may decide to use an external pathway, such as making a formal complaint about the workplace sexual harassment to an external agency.

This guide focuses on information about the external agencies that may be able to assist a person affected by workplace sexual harassment.

The external pathways available to a person affected by workplace sexual harassment can include:

- seeking support, advice and advocacy from a range of different services, such as legal assistance and mental health and well-being support services
- lodging a sexual harassment complaint with an anti-discrimination and human rights body
- lodging an application with an workplace relations body, such as in relation to unfair dismissal or for a stop sexual harassment order
- lodging a workers' compensation claim if the workplace sexual harassment has caused mental or physical injury or illness
- reporting the sexual harassment as a work health and safety (WHS) issue to a WHS regulator
- reporting the sexual harassment to police if it involves criminal conduct.

Determining which external pathway is the best option

The external pathways which may be available to a person affected by workplace sexual harassment will depend on their individual circumstances.

Each external pathway has its own specific eligibility criteria. The matters each agency can accept and assist with, will depend on several elements, such as:

- the employment arrangement the person affected by the sexual harassment was in at the time (for example, whether they were a paid employee, independent contractor, unpaid volunteer)
- when the sexual harassment or resulting workplace injury occurred
- where the sexual harassment occurred (for example, geographical location)
- whether the person affected by the sexual harassment reported it to their employer and/or an external avenue



- whether the person affected by the sexual harassment is still employed in the workplace where the sexual harassment occurred
- what outcome the person affected by the sexual harassment is seeking (for example, financial compensation, an apology, job reinstatement or a change to workplace culture through policies or training for staff)
- whether the person affected by the sexual harassment was penalised (such as having their employment terminated) for making a complaint about the sexual harassment.

If you have been affected by workplace sexual harassment, to assist you to better understand the impact of this eligibility criteria on your individual circumstances, please see the interactive tool available on the [Respect@Work website](#).

Concurrent matters

A person who has experienced sexual harassment in the workplace and who wishes to seek help from an external avenue, will need to elect which jurisdiction and body they are going to pursue their matter with. Generally, a person is not able to pursue the same matter in multiple jurisdictions at the same time.

If a person affected by workplace sexual harassment has already attempted to address the matter through an external avenue, this may impact whether other external avenues can also help. For example, if a person has made a complaint about the workplace sexual harassment to their state anti-discrimination body, they may be unable to make a complaint about the same conduct to the Australian Human Rights Commission.

This will ultimately be a matter to be determined by each external avenue when contacted by a person affected by workplace sexual harassment. The external avenue will determine an individual's eligibility to access their services based on the information provided, noting that this can be a complex process.

The exception to this is an application for a stop sexual harassment order, which can be made to the Fair Work Commission at the same time as addressing the matter through other avenues.

Support services

It can be difficult for a person affected by workplace sexual harassment to identify and navigate the support services that may be available to them. The support needs of victims and others affected by workplace sexual harassment may be varied and are often complex.



Victims and other people affected by workplace sexual harassment may need to access a range of services providing support, advice and advocacy in order to minimise harm and decrease the likelihood and severity of negative social, financial and psychological outcomes.

This guide includes a list of support services that can provide:

- sexual harassment and sexual assault support services
- mental health and wellbeing assistance
- legal advice
- other advocacy services, such as union assistance
- support services for vulnerable workers, including indigenous workers, LGBTIQ+ workers, workers with disability and young workers
- police assistance.

Anti-discrimination and human rights bodies

The Commonwealth and each state and territory have an anti-discrimination and/or human rights body responsible for investigating and resolving complaints of discrimination, including complaints about workplace sexual harassment.

Generally, these agencies attempt to resolve complaints through the process of conciliation, whereby the parties come together to negotiate an outcome to the dispute with the assistance of an impartial conciliator.

Where disputes are resolved, the parties typically enter a written settlement agreement which can provide for outcomes such as the payment of compensation, an apology by the employer and/or persons accused of the harassment, job reinstatement and/or changes to workplace practices, such as the implementation of policies and/or training.

If a complaint is unresolved and proceeds to a court or tribunal process, the parties will typically be responsible for paying their own legal costs. A party may be ordered to pay the other party's costs if their matter is unsuccessful.

Workplace relations bodies

In Australia, the national workplace relations system is established by the *Fair Work Act 2009* (Cth) (Fair Work Act) and covers the majority of private sector employees and employers. Other workers, such as state public sector employees, are covered by the state workplace



relations system. The Fair Work Commission, the Fair Work Ombudsman and relevant state-based workplace relations bodies are described below.

Fair Work Commission

The Fair Work Commission (FWC) is Australia's national workplace relations tribunal, established by the Fair Work Act. The FWC may be able to assist in workplace sexual harassment matters where it relates to an application lodged in respect of:

- an order to stop sexual harassment or an order to stop bullying and sexual harassment
- general protections
- unlawful termination
- unfair dismissal.

In some matters, the FWC can make binding orders which parties must comply with, such as requiring that ongoing sexually harassing behaviours discontinue. The types of orders the FWC can make will depend on the type of application lodged.

Fair Work Ombudsman

The Fair Work Ombudsman is Australia's national workplace relations regulator, established by the Fair Work Act. It provides employees and employers with information and advice about workplace entitlements and obligations.

The Fair Work Ombudsman can provide employees and employers with general information about protections from sexual harassment, prevention and managing sexual harassment in the workplace.

Western Australian Industrial Relations Commission

Employees not covered by Australia's national workplace relations system may be able to seek help from their relevant state workplace relations body. In WA, this is the Western Australian Industrial Relations Commission. Employees who work for the state public sector or for a non-constitutional corporation in local government or private industry in WA who have been dismissed in connection with workplace sexual harassment, may be able to lodge an unfair dismissal claim with the Western Australian Industrial Relations Commission.



Workers' compensation bodies

If the workplace sexual harassment a person experiences has caused them a physical or mental injury which has required medical or allied health treatment or time off work, then they may be able to claim workers' compensation.

The Commonwealth and each state and territory have workers' compensation bodies which may provide insurance to employers or regulate the operation of private insurers and self-insurers. Workers' compensation bodies may also be responsible for processing workers' compensation claims.

Workers' compensation is a no-fault system. This means a worker does not have to prove wrongdoing by their employer in order to make a claim. However, in order for the workers' compensation body to accept liability for the claim, typically the worker's injury should be directly connected with their work and cannot be the result of reasonable management action (such as performance management).

Workers' compensation outcomes can include payment of income compensation payments, medical expenses and/or a lump sum amount.

Work health and safety regulators

Commonwealth, state and territory work health and safety (WHS) laws impose a duty on employers to ensure the health and safety of their workers so far as is reasonably practicable, including with respect to the risk of sexual harassment. Under WHS laws, workers are also required to take reasonable care for their own health and safety and that of others while at work.

WHS regulators are responsible for monitoring and enforcing compliance with WHS laws. If a person is unsuccessful in their attempts to resolve a workplace sexual harassment matter within the workplace, they can request a WHS regulator to assist in resolving the issue. A WHS regulator may also intervene if a matter demonstrates that an employer may not be managing WHS risks to workers and others in the workplace.

Interventions by WHS regulators are focused on providing outcomes which promote a safe and healthy workplace and reduce the risks of further health or safety incidents. WHS investigations are not focused on providing remedies to individual workers (such as financial compensation or an apology). WHS regulators have a range of compliance tools, such as improvement notices, to direct a workplace to make safety or health



improvements, or less commonly a prosecution may be undertaken, generally for the most serious cases.



Support services

Sexual harassment and sexual assault support services

1800RESPECT

1800RESPECT is a telephone and online counselling and support service for people who have experienced, or are at risk of experiencing, sexual, domestic or family violence including workplace sexual harassment. You can contact 1800RESPECT on 1800 737 732 and find more information on the [1800RESPECT website](#).

State and territory assistance

There are support services available in each state and territory for people affected by sexual assault. In WA, the following services can provide assistance:

- Sexual Assault Resource Centre: www.kemh.health.wa.gov.au/other-services/sarc
- Waratah Support Centre: www.waratah.asn.au/view/contact-us

Mental health assistance

If you require mental health support, you may be able to access free mental health assistance from the below services.

Beyond Blue

Beyond Blue is a mental health and wellbeing support organisation, which provides information and support to persons affected by depression and anxiety. You can contact Beyond Blue for 24/7 advice and support on 1300 22 4636. You can find further contact information on the [Beyond Blue website](#).

Headspace

Headspace provides mental health and wellbeing support to young people aged 12 to 25 years. You can find contact information for Headspace on the [Headspace website](#).

Lifeline

Lifeline is Australia's leading suicide prevention service, which provides 24-hour crisis support to people experiencing personal crisis. You can contact Lifeline on 13 11 14. You can find further contact information on the [Lifeline website](#).



SANE

SANE offers connection and community to people with complex mental health issues including trauma. You can contact the SANE helpline on 1800 187 263 or at getsupport@sane.org. You can find more information on the [SANE website](#).

Suicide Call Back Service

The Suicide Call Back Service provides free professional 24/7 telephone and online counselling support to people at risk of suicide, concerned about someone at risk of suicide, bereaved by suicide and people experiencing emotional or mental health issues. You can contact the Suicide Call Back Service on 1300 659 467. You can find contact information on the [Suicide Call Back Service website](#).

State and territory assistance

There are mental health phone lines available in each state and territory which provide mental health support. The Mental Health Emergency Response Line is a 24-hour telephone service for people in the Perth metropolitan area experiencing a mental health crisis. You can call the service on 1300 555 788 and find more information on the [Government of Western Australia Mental Health Commission website](#).

Legal services

If you require legal advice, you may be eligible to access free legal assistance from the below services.

Community legal centres

Community legal centres (CLCs) are independent community organisations that offer free legal services to the public, depending on certain eligibility criteria. To find a CLC near you, please see the [Community Legal Centres Australia 'Find Legal Help' webpage](#).

Legal aid

Legal aid commissions offer a range of services, including information, legal advice and representation in courts and tribunals. You can find more information about legal aid in WA and check whether you are eligible to access their services at: www.legalaid.wa.gov.au/get-legal-help.

Workplace Advice Service

The Workplace Advice Service is run by the FWC to provide free legal help to employees and employers on employment issues that involve dismissal, general protections, bullying or



sexual harassment at work. You can find more information about the Workplace Advice Service on the [Fair Work Commission website](#).

Union assistance

The Australian Unions Support Centre can provide free and confidential assistance to workers for all workplace issues, including in respect of their rights. You can find contact information on the [Australian Unions Support Centre website](#).

If you are a member of a union, you can contact your workplace union representative directly for support.

Aboriginal and Torres Strait Islander workers

The following services may be able to provide free legal assistance to Aboriginal and Torres Strait Islander peoples in WA, including in respect of employment, discrimination and human rights matters:

- National Aboriginal and Torres Strait Islander Legal Services (national service): www.natsils.org.au/
- Aboriginal Legal Service of Western Australia Limited: www.als.org.au/.

LGBTIQ+ workers

Counselling

The following services may be able to provide free counselling and support to LGBTIQ+ people in WA:

- QLife (national service): <https://qlife.org.au/get-help>
- Western Australian AIDS Council - LGBTIQ+ Youth Counselling: www.waac.com.au/what-we-do/counselling/lgbtqia-plus/.

Workers with disability

Sussex Street Community Law Service may be able to provide free legal assistance to persons with disability in WA, including in respect of disability discrimination and human rights: www.sscls.asn.au/.



Young workers (people aged 25 and under)

Kids Helpline

Kids Helpline is a free, confidential 24/7 online and phone counselling service for young people aged 5 to 25. You can contact Kids Helpline on 1800 55 1800 or at admin@kidshelpline.com.au. You can find more information at: <https://kidshelpline.com.au/>.

Legal services

Youth Law Australia may be able to provide free legal assistance to young workers, including about workplace rights: <https://yla.org.au/contact-us/>.

Police assistance

If you believe the workplace sexual harassment you have experienced involves criminal conduct, including actual or attempted sexual assault, you can report the matter to police.

The Police Assistance Line operates 24 hours a day, 7 days a week and allows the reporting of crime over the phone with the information being made immediately available to your local police. You can call the service on 131 444 and find more information on the [Report Crime webpage](#). In cases of emergency, please call 000.



Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is Australia's National Human Rights Institution and is established by the *Australian Human Rights Commission Act 1986* (Cth). The AHRC investigates and conciliates discrimination and human rights complaints, including complaints of sexual harassment under the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act).

Jurisdiction

All of Australia (subject to eligibility criteria)

Timeframe for lodging a complaint

There is no specific time frame in which a complaint must be lodged with the AHRC. However, the AHRC can terminate a complaint alleging sexual harassment if the complaint was lodged more than 24 months after the alleged acts, omissions or practices took place.

Cost to lodge a complaint

Free

Time taken to process a complaint

Generally, the process takes on average at least five months.

Making a complaint

A complaint can be made by a person (or persons) who believe they have experienced unlawful discrimination (including sexual harassment or sex-based harassment), or by a person or trade union on their behalf. The law outlines certain requirements for making a valid complaint of unlawful discrimination. These include that the complaint must: be in writing; allege acts that could be unlawful discrimination; and set out details of the alleged acts.

Workers in various employment arrangements can make a complaint of workplace sexual harassment, including unpaid workplace participants such as volunteers, interns and students and self-employed workers.

Dispute resolution process

Once received, the complaint will be subject to an assessment by the AHRC. If the AHRC decides not to investigate the complaint, the person will be provided with reasons for this decision and may be referred elsewhere.



If the AHRC accepts the complaint for investigation and/or conciliation, they will let the person or organisation who the complaint is about (the respondent(s)) know. The AHRC may also ask them for their side of the story.

Following this, a complaint may proceed to a conciliation process or conference facilitated by an AHRC conciliator. The AHRC is an impartial third party during the conciliation process. The conciliator's role is to assist the parties to consider different options to resolve the complaint and provide information about possible terms of settlement.

Outcomes from a conciliation will vary depending on the nature of the complaint and can include:

- an apology
- job reinstatement
- compensation for lost wages
- the respondent implementing certain actions, such as staff training or changes to, or development of, a workplace policy.

For the complaint to be resolved, the parties must agree to the outcomes.

When a complaint might be terminated

A complaint may be terminated if the AHRC considers:

- the alleged conduct is not unlawful discrimination
- the complaint was made more than 24 months after the alleged conduct
- an inquiry, or the continuation of an inquiry, into the complaint is not warranted
- a more appropriate remedy is available or has been pursued
- the complaint has already been dealt with, or could be dealt with, by another agency
- the complaint is trivial, vexatious, misconceived or lacking in substance
- there is no reasonable prospect of the matter being settled by conciliation.

What if a complaint is unresolved or has been terminated?

If the AHRC is satisfied that a complaint cannot be resolved, or one of the above reasons apply, the complaint will be terminated. After a complaint is terminated, the person affected may apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia to have the allegations decided by the court. Any application must be made within 60 days of date of the termination decision. In some situations, the person making the complaint may need to get the court's permission to take the matter to court.



If the court agrees to hear the matter and finds that unlawful discrimination (such as the workplace sexual harassment) has occurred, the court may make binding orders, which can include requiring the respondent: to perform any reasonable act to redress any loss or damage suffered; to pay the applicant compensation for any loss or damage suffered; or employ or re-employ the person. The court can award costs against either party in the proceedings.

Contact information

- Website: <https://humanrights.gov.au/>
- National Information Service: 1300 656 419
- Email: infoservice@humanrights.gov.au

Resources

- [Complaint forms](#)
- [Making a complaint fact sheet](#)
- [Translated versions of the Making a complaint fact sheet](#)
- [Auslan: Information about making a complaint](#)
- [Unlawful discrimination - Information for people making complaints](#)
- [Complaints under the Sex Discrimination Act fact sheet](#)
- [Responding to a complaint fact sheet](#)
- [Understanding conciliation fact sheet](#)



Comcare

As the national work health and safety (WHS) and workers' compensation authority, Comcare's legislated functions include securing the health and safety of workers and workplaces. Comcare has a workers' compensation role in respect of workplace sexual harassment where that conduct has resulted in an injury or illness to the worker.

Comcare administers the *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth) and is the national regulator for WHS in the Commonwealth jurisdiction.

As the national regulator, Comcare has regulatory functions and powers, including to enforce compliance with WHS laws. This includes in respect of workplace sexual harassment where the alleged conduct constitutes a WHS risk to workers.

Contact information

- Website: www.comcare.gov.au/
- Email: general.enquiries@comcare.gov.au or whs.help@comcare.gov.au
- Mail: GPO Box 9905, Canberra ACT 2601
- Phone: 1300 366 979
- Translation and interpreter service: 13 14 50
- TTY users call 133 677 then ask for 1300 366 979
- Speak and Listen users call 1300 555 727 then ask for 1300 366 979
- Internet relay users connect to the National Relay Service (NRS) then ask for 1300 366 979
- Video relay users can choose the available NRS video relay contact on Skype and ask for 1300 366 979
- SMS relay users call 0423 677 767 and ask for 1300 366 979
- Translation and Interpreting Service (TIS National): 131 450
- Online enquiry form



Workers' compensation

Jurisdiction

Commonwealth employees, parliamentarians and employees of Comcare's self-insured licensees, can apply for workers' compensation. For a list of the corporations that are self-insured with Comcare, please see the [Comcare website](#).

Timeframe for lodging a claim

A claim should be lodged as soon as practicable after an employee becomes aware of their injury.

Cost to lodge a claim

Free

Time taken to process a claim

Generally, a majority of claims are determined within 60 days.

Making a claim

A compensation claim can be made where an employee has sustained a work-related injury (physical or mental) which results in death, incapacity for work, or impairment.

A 'work-related' injury can include while the employee was away from work but undertaking work-related business or travelling for work.

Claims management process

The workers' compensation claim should be submitted by the employee in written form and include a medical certificate from a legally qualified medical practitioner.

The claim is then provided to the employer to provide their details. Once the claim is completed, the claim is assessed to determine if liability is accepted. Liability is assessed on the basis of whether the claim satisfies the relevant criteria under the Safety, Rehabilitation and Compensation Act 1988 (Cth).

If the claim is accepted, support and financial assistance may be provided to the employee (such as medical treatment, rehabilitation, income support, care and household services, aids and travel costs). If liability is not accepted, the claim is declined.

When a claim might be declined

In certain circumstances, Comcare may not pay compensation for an injury. This includes an injury:



- that is a result of reasonable administrative action taken (or not taken) in a reasonable manner in respect of the employee's employment, such as performance managing the employee
- intentionally self-inflicted
- caused by the serious and wilful misconduct of the employee, unless the injury results in death, or serious and permanent impairment
- where a wilful and false representation is made.

A claim may also be denied because:

- the claimant is not considered an employee
- the injury is not deemed sufficiently work-related
- the medical diagnosis does not fully or accurately reflect the facts
- the employee has already recovered workers' compensation for the same injury at the state or territory level or under common law.

What if a party is unhappy with the outcome?

A party may request a reconsideration of a liability determination within 30 days from the date of the decision. The determination will be reconsidered by an independent review officer who will either affirm, vary or revoke the original determination.

If a party disagrees with the reviewable decision, within 60 days they can apply to the Administrative Appeals Tribunal (AAT) to determine the matter. AAT processes include conciliation, where the Tribunal has the discretion to make or decline to make a decision on the terms agreed to by the parties. If conciliation is unsuccessful, the Tribunal can formally determine the matter.

In matters before the AAT, costs usually follow the successful party. If a decision of the respondent (the party responding to the appeal) is varied or set aside, the costs of the applicant (the party who brought the appeal) are often covered by the respondent.

Resources

- [Workers' compensation claims webpage](#)
- [Workers' compensation online claim form](#)
- [Online claim lodgement user guide](#)



Work health and safety

Jurisdiction

Under the WHS Act, Comcare is the regulator for employers in the Commonwealth WHS scheme, who are primarily comprised of:

- Commonwealth departments and agencies
- national companies licensed under the SRC Act
- members of the Australian Defence Force when not at war, including reservists and cadets.

When to report a WHS issue

A person can report a WHS issue or concern to Comcare once parties have made reasonable attempts to resolve the matter internally within the workplace.

Cost to report

Free

Reporting a WHS issue

The WHS Act imposes a duty on employers to eliminate or manage hazards and risks to the health and safety of workers at work, including to prevent workplace sexual harassment. Any party to a WHS issue – including workers, officers, employers, witnesses and worker representatives – may commence a WHS dispute resolution procedure within their workplace, including in relation to workplace sexual harassment as a possible breach of a WHS duty.

Dispute resolution procedure

Where an issue or conflict arises which may cause physical or psychological harm to individuals in the workplace, a party may raise it as a WHS issue for resolution by informing the other parties:

- that there is an issue to be resolved
- the nature and scope of the issue.

Where an issue or conflict is raised, all parties must make reasonable efforts to achieve timely, final and effective resolution of the matter. If the issue is resolved in the workplace, details of the issue and its resolution should be set out in a written agreement if a party requests this.



If a WHS issue remains unresolved, a party may ask Comcare to appoint an inspector to attend the workplace to assist in resolving the issue. Comcare may respond by conducting a workplace inspection under the WHS Act. If the inspection identifies serious non-compliance with the WHS Act, the inspector can enforce compliance by issuing notices requiring corrective actions to the employer.

The WHS Act does not provide outcomes for individual complainants. In undertaking its functions under the WHS Act, Comcare's focus is to monitor and enforce compliance with the WHS Act and Regulations.

When a WHS issue might not be investigated

Comcare may decide not to become actively involved in a worker's individual complaint where it considers the complaint may be better addressed by other means. This includes consideration as to whether Comcare is the relevant agency to pursue the outcome a worker is seeking from their complaint.

Comcare is most likely to intervene where significant harm has occurred or where serious deficiencies exist in an organisation's WHS systems, which may expose workers to an increased risk of workplace sexual harassment.

An incident of workplace sexual harassment may not meet the threshold under the WHS Act for a notifiable incident (that is, require mandatory reporting). This obligation is triggered only in circumstances where workplace conduct creates a risk of death or serious injury or illness.

What if a party is unhappy with the outcome?

An employer, a worker or their WHS representative may apply to Comcare for review of a WHS decision (such as the decision to issue or cancel a notice). Alternatively, it may be possible for the worker to apply for this decision to be reviewed by the FWC.

Generally, parties to proceedings before the FWC pay their own costs. However, the FWC can order a party to pay the other party's cost if satisfied in certain circumstances, such as if a party acts unreasonably or the matter was commenced vexatiously.

A prosecution for an offence under the WHS Act or WHS Regulations can only be brought by the Commonwealth Director of Public Prosecutions, Comcare or an inspector with the written authorisation of Comcare.

The penalties for a WHS offence vary, but may include fines of up to \$3 million for body corporates and up to \$600,000 and/or five years' imprisonment for individuals for Category 1 offences.



The court can also make orders:

- to publicise the offence, its consequences and the penalty imposed
- requiring the offender to remedy any matter caused by the offence that is within the offender's power to remedy
- requiring the offender to undertake a project for the general improvement of WHS.

Generally, a WHS prosecution will only proceed if there is a reasonable prospect of conviction.

Resources

- [Workplace sexual harassment webpage](#)
- [Practical guidance for workers](#)
- [Practical guidance for managers and supervisors](#)
- [Practical guidance for employers](#)
- [Regulatory guidance for employers on their WHS responsibilities](#)



Fair Work Commission

The Fair Work Commission (FWC) is Australia's national workplace relations tribunal, established by the *Fair Work Act* (2009).

The FWC may be able to assist in workplace sexual harassment matters where sexual harassment is relevant to an application lodged in respect of:

- an order to stop sexual harassment or an order to stop bullying and sexual harassment (stop sexual harassment order)
- general protections
- unlawful termination
- unfair dismissal.

Jurisdiction

All of Australia (subject to eligibility criteria). Refer to the FWC website for further information on eligibility.

Cost to lodge an application

The cost to lodge an application with the FWC changes on 1 July each year. The current cost can be found at www.fwc.gov.au/apply-or-lodge/fees-and-costs. Application fees can be waived in cases of serious financial hardship.

Generally, parties to proceedings before the FWC or a court pay their own costs. The FWC or a court can order a party to pay the other party's costs in certain circumstances. For example, if a party acts unreasonably or the matter was commenced vexatiously.

When an application might be dismissed

The FWC has discretion to dismiss an application on its own initiative or where another party has applied to dismiss the application. Examples of circumstances where the FWC may dismiss an application include where the application:

- is not made in accordance with the Fair Work Act
- is frivolous or vexatious
- has no reasonable prospects of success.

Contact information

- Website: www.fwc.gov.au/



- Phone: 1300 799 675
- [Online enquiry form](#)
- [Language help for non-English speakers](#)

Stop sexual harassment orders

A stop sexual harassment order is an order the FWC can make to prevent ongoing sexual harassment at work. The order can be issued following a single instance of sexual harassment.

Making an application

A person (applicant) can apply for a stop sexual harassment order if they:

- are a worker (unless they are a member of the Defence Force)
- work in a constitutionally covered business
- are still connected to the workplace where the conduct occurred, and
- reasonably believe they have experienced sexual harassment at work.

A worker is any individual who performs work in any capacity, including:

- an employee
- a contractor or subcontractor
- a small business owner who works in business
- an employee of a contractor or subcontractor
- an employee of a labour hire agency
- an outworker
- an apprentice or trainee
- a student on work experience
- a volunteer.

A workplace is a constitutionally-covered business if it is:

- a constitutional corporation, including:
 - proprietary limited (Pty Ltd) companies
 - foreign corporations
 - trading or financial corporations formed within the Commonwealth of Australia.



- the Australian Government
- a Commonwealth authority, which means:
 - a body corporate established for a public purpose by or under a Commonwealth law, or
 - a body corporate incorporated under a Commonwealth, state or territory law where the Commonwealth has a controlling interest in that body.
- a body corporate incorporated in a territory of Australia
- a business or organisation conducted principally in a territory of Australia or a place acquired by the Commonwealth for public purposes.

The alleged sexual harassment must have occurred when the worker was at work. A worker can be at work even when they're working away from the work premises

Timeframe for lodging an application

There is no timeframe for a worker to lodge an application. However, the worker must still have a connection to the workplace where the alleged conduct occurred. This is because an application to stop sexual harassment cannot succeed where there is no future risk of sexual harassment at work by the person or persons accused of the sexual harassment

Time taken to process an application

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

Dispute resolution process

Once an application for a stop sexual harassment order is lodged, the FWC will contact the applicant to explain the process and next steps.

The FWC will internally review the application to ensure it is complete and valid, and confirm the applicant's intention to proceed. If the application is accepted, the FWC will serve the application on the applicant's employer/principal and any person named in the application (that is, the person or persons accused of the sexual harassment).

To resolve the matter, the FWC may hold a conciliation or mediation, conference or formal hearing. Conciliation or mediation is an informal, voluntary and private discussion to help parties identify issues and reach agreement to resolve the dispute.

Outcomes of a conciliation can include:

- changes in work arrangements, including in lines of reporting
- an apology



- commitments to investigate a complaint or engage an external investigator
- implementation of staff training
- review and updating of policies and procedures
- increased transparency in complaints reporting
- conducting a safety risk assessment of the workplace.

If conciliation or mediation is unsuccessful, the application may proceed to a preliminary conference before a member of the FWC to see if the matter can be resolved. If a preliminary conference is unsuccessful, the matter may be listed for a determinative conference (held in private) or a hearing (generally conducted in public) where the presiding member will determine whether or not to make an order to stop sexual harassment.

What if the application is unresolved or a party is unhappy with the outcome?

A person may, within 21 days and with the FWC's permission, appeal a decision of the FWC. The FWC must grant permission for the appeal if satisfied it is in the public interest to do so. This is a discretionary assessment and permission is typically granted if there is an arguable case of appealable error.

If a person does not comply with a stop sexual harassment order, enforcement of the order can be sought through proceedings in the Fair Work Division of the Federal Circuit and Family Court of Australia, the Fair Work Division of the Federal Court of Australia or an eligible State or Territory Court. Failure to comply with a stop sexual harassment order may result in the court imposing a pecuniary penalty or making other orders.

You can also [contact the Fair Work Ombudsman](#) for help.

Resources

- [Sexual harassment webpage](#)
- [Stop sexual harassment order benchbook](#)
- [Stop sexual harassment order application form](#)

General protections

The general protections provisions of the Fair Work Act protect workplace rights. Under these laws, a worker is protected from harmful action (adverse action) by their employer where that action is taken for a prohibited reason.



Making an application

A general protections application can be lodged by an employee or prospective employee (such as a job applicant) who has been subjected to adverse action by their employer or prospective employer:

- for exercising, or proposing to exercise, or to prevent the employee exercising, a workplace right (such as making a complaint about workplace sexual harassment)
- because of their sex (noting that workplace sexual harassment may constitute a form of sex discrimination)
- not hiring someone.

Some of the general protections also extend to independent contractors and prospective employees, but not volunteers.

In the case of independent contractors, adverse action can include:

- ending or refusing to enter into a contract with an independent contractor
- discriminating against an independent contractor in the terms and conditions offered to them
- altering an independent contractor's position to their detriment
- refusing to make use of an independent contractor's services
- refusing to supply goods or services to an independent contractor.

Timeframe for lodging an application

For general protections applications involving dismissal, the application must be lodged within 21 days of the dismissal taking effect. This timeframe can only be extended in exceptional circumstances.

For general protections applications not involving dismissal, the application can be lodged up to six years after the incident.

Dispute resolution process

The FWC has separate processes for dealing with general protections applications depending on whether the adverse action taken by the employer involved dismissal of the worker.

For applications not involving dismissal

Once an application is lodged with the FWC, it will be checked to ensure it is complete and valid and to confirm the applicant's intention to proceed. If the application is accepted, it



will be listed for a conference. If the respondent does not agree to participate in a conference, or the dispute is unresolved after a conference, the applicant may choose to apply to a court to deal with the matter.

Alternatively, the applicant can choose to go straight to court, rather than first making an application with the FWC.

For applications involving dismissal

Once an application is lodged with the FWC, it will be checked to ensure it is complete and valid and to confirm the applicant's intention to proceed. If the application is accepted, it will be listed for a conference.

At the conference, an independent conciliator will guide the discussion to help both sides resolve the issues and avoid a more formal court hearing. If successful, the matter will be resolved with the parties agreeing to terms of settlement. If the dispute is not resolved by conference, an FWC Member will determine whether the parties have made reasonable attempts to resolve the matter. If the FWC Member is not satisfied of this, a supplementary conference may be held.

If the FWC Member is satisfied that all reasonable attempts to resolve the dispute have been unsuccessful, they will issue a certificate. The applicant has 14 days from when the certificate was issued, to either:

- make a general protections application to a court, to have the dispute determined, or
- if both parties to the dispute agree, can apply to the FWC to arbitrate the matter.

An applicant cannot do both.

FWC arbitration

If both parties agree to the FWC arbitrating a general protections dismissal dispute, there will be a formal hearing involving the examination and cross-examination of witnesses.

Following arbitration, the FWC can order:

- reinstatement of the person
- payment of compensation
- payment for remuneration lost
- continuity of the person's employment
- the period of the person's continuous service with the employer be maintained.



What if a party is unhappy with the Commission's decision?

If a party is unhappy with the FWC's arbitration decision, they may, within 21 days and with the FWC's permission, appeal the decision of the FWC. The FWC must grant permission for the appeal if satisfied it is in the public interest to do so. This is a discretionary assessment and permission is typically granted only if there is an arguable case of appealable error.

General protections court applications

Court applications can be made for general protections applications involving and not involving dismissal. However, in the case of a dismissal dispute, the applicant must go to the FWC first.

If the court is satisfied a person has contravened, or proposes to contravene, the general protections provisions, it may make any order it considers appropriate, including ordering an injunction, compensation or reinstatement.

If a person does not comply with an order to pay the applicant compensation or to reinstate them, enforcement of the order can be sought through proceedings in the Fair Work Division of the Federal Circuit and Family Court of Australia (FCFCoA) or Federal Court of Australia (FCA). Failure to comply with an order may result in the court imposing a pecuniary penalty or making other orders.

You can also [contact the Fair Work Ombudsman](#) for help.

Resources

- [About the general protections laws](#)
- [General protections benchbook](#)
- [Fair Work Commission application form \(general protections application involving dismissal\)](#)
- [Fair Work Commission application form \(general protections application not involving dismissal\)](#)
- [FCFCoA application form \(general protection application involving dismissal\)](#)
- [FCFCoA application form \(general protections application not involving dismissal\)](#)
- [FCA application form \(Form 79\) \(general protection application involving dismissal\)](#)
- [FCA application form \(Form 81\) \(general protection application not involving dismissal\)](#)



Unlawful termination

Unlawful termination occurs when an employer ends a person's employment, and the reason is or includes a reason that is prohibited by the Fair Work Act (for example, because of your sex, sexual orientation, marital status etc). Unlawful termination provisions protect people who are not entitled to make a general protections dismissal application.

Making an application

Unlawful termination claims can be made by employees who are not in the national system, national system employees who are not entitled to make a general protections application or industrial associations entitled to represent the industrial interests of such employees.

Timeframe for lodging an application

A worker must lodge an application within 21 days after the employment was terminated. This timeframe can only be extended in exceptional circumstances.

Dispute resolution process

Once an application is lodged with the FWC, it will be checked to ensure it is complete and valid and to confirm the applicant's intention to proceed. If the application is accepted, it will be listed for a conference.

At the conference, an independent conciliator will guide the discussion to help both sides resolve the issues and avoid a more formal court hearing. If successful, the matter will be resolved with the parties agreeing to terms of settlement. If the dispute is not resolved by conference, an FWC Member will determine whether the parties have made reasonable attempts to resolve the matter. If the FWC Member is not satisfied of this, a supplementary conference may be held.

If the FWC Member is satisfied that all reasonable attempts to resolve the dispute have been unsuccessful, they will issue a certificate. The applicant has 14 days from when the certificate was issued, to either:

- make an unlawful termination application to a court, to have the dispute determined, or
- if both parties agree, can apply to the FWC to arbitrate the matter.

An applicant cannot do both.

FWC arbitration

If both parties agree to the FWC arbitrating an unlawful termination dispute, there will be a formal hearing involving the examination and cross-examination of witnesses.



Following arbitration, the FWC can order:

- reinstatement of the person
- payment of compensation
- payment for remuneration lost
- continuity of the person's employment
- the period of the person's continuous service with the employer be maintained.

What if a party is unhappy with the Commission's decision?

If a party is unhappy with the FWC's arbitration decision, they may, within 21 days and with the FWC's permission, appeal the decision of the FWC. The FWC must grant permission for the appeal if satisfied it is in the public interest to do so. This is a discretionary assessment and permission is typically granted only if there is an arguable case of appealable error.

Unlawful Termination court applications

If the court is satisfied a person has contravened the unlawful termination provisions, it may make any order it considers appropriate, including ordering an injunction, compensation or reinstatement.

If a person does not comply with an order to pay the applicant compensation or to reinstate them, enforcement of the order can be sought through proceedings in the Fair Work Division of the FCFCoA or FCA. Failure to comply with an order may result in the court imposing a pecuniary penalty or making other orders.

You can also [contact the Fair Work Ombudsman](#) for help.

Resources

- [Unlawful termination webpage](#)
- [General protections benchbook](#) (see specifically the unlawful termination section)
- [Fair Work Commission application form](#)
- [FCFCoA application form](#)
- [FCA application form \(Form 80\)](#)



Unfair dismissal

The unfair dismissal provisions in the Fair Work Act may arise in relation to workplace sexual harassment if the alleged harasser or victim of the workplace sexual harassment has been dismissed.

An unfair dismissal is one where the FWC finds that:

- the employee was dismissed
- their dismissal was harsh, unjust or unreasonable
- the dismissal was not a case of genuine redundancy, and
- the dismissal was not consistent with the Small Business Fair Dismissal Code if the employee was employed by a small business (fewer than 15 employees).

An act of workplace sexual harassment can be considered serious misconduct and may constitute a valid reason for the harasser's dismissal.

If an employee who is the victim of workplace sexual harassment is dismissed by their employer for reasons connected to the harassment (for example, making a complaint about the sexual harassment), the employee may be able to make an application for unfair dismissal. Additionally, the dismissal could also be in breach of the general protections provisions of the Fair Work Act. If the person is eligible for either an unfair dismissal application or general protections dismissal application, they must consider which of the two options will deliver the best possible outcome. Legal advice may be required to make this decision.

Making an application

A dismissed employee of a national system employer can make an application if:

- they've completed the minimum employment period (one year if working for a small business or six months for all other employers), and
- a modern award or enterprise agreement covers their employment, or they earn below the high income threshold (changes 1 July each year, see www.fwc.gov.au/high-income-threshold).

Employees who are in the national system include:

- all employees in Victoria (with limited exceptions in relation to State public sector employees), the Northern Territory and the Australian Capital Territory



- all employees on Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands
- those employed by private enterprise in New South Wales, Queensland, South Australia and Tasmania
- those employed by local government in Tasmania
- those employed by a constitutional corporation in Western Australia (including Pty Ltd companies) – this may include some local governments and authorities
- those employed by the Commonwealth or a Commonwealth authority
- waterside employees, maritime employees or flight crew officers in interstate or overseas trade or commerce.

Unpaid workplace participants (such as volunteers, interns and work experience students) are unlikely to be eligible to make an unfair dismissal application.

Timeframe for lodging an application

A worker must lodge an application for unfair dismissal within 21 days of their dismissal taking effect. This timeframe can only be extended in exceptional circumstances.

Dispute resolution process

Once an application is lodged with the FWC, it will be checked to ensure it is complete and valid and to confirm the applicant's intention to proceed. If the application is accepted, it will be listed for a conference.

If the employer (respondent) believes the FWC does not have jurisdiction to consider the application or that the applicant is ineligible to make the application, the respondent can lodge a jurisdictional objection. The FWC may resolve a jurisdictional objection jurisdictional hearing. If the objection is upheld by the FWC, the application will be dismissed. If the objection is dismissed, the application will proceed to a conciliation.

At the conference, an independent conciliator will guide the discussion to help both sides resolve the issues and avoid a more formal court hearing. If conciliation is successful, the matter will be settled with terms of settlement as agreed to by the parties. If conciliation is unsuccessful, the matter will proceed to arbitration before a FWC Member.

If conciliation is successful, the matter will be settled with terms of settlement as agreed to by the parties. If conciliation is unsuccessful, the matter will proceed to arbitration.

To determine if a dismissal is unfair, the FWC must consider if the dismissal was harsh, unjust or unreasonable, including:



- whether a valid reason for the dismissal existed relating to the employee's capacity or conduct (including in respect of the safety and welfare of other workers)
- whether the employee was notified of that reason
- whether the employee was given an opportunity to respond
- any unreasonable refusal to allow the employee to have a support person present to assist at any discussions relating to the dismissal
- if the dismissal related to unsatisfactory performance—whether the employee was warned about their performance before the dismissal
- the size of the employer's enterprise
- the degree to which human resources expertise is lacking in the enterprise
- any other matters the FWC considers relevant.

If the FWC is satisfied that the applicant was unfairly dismissed, it can order:

- their reinstatement
- continuity of their employment (that the applicant is considered to have remained an employee during the period between their dismissal and reinstatement)
- payment of compensation
- payment for lost remuneration.

If a person does not comply with an order of the FWC, enforcement of the order can be sought through proceedings in the Fair Work Division of the (FCFCoA) or (FCA). Failure to comply with an order may result in the court imposing a pecuniary penalty or making other orders.

What if a party is unhappy with the Commission's decision?

A person may, within 21 days and with the FWC's permission, appeal a decision of the FWC. The FWC must grant permission for the appeal if satisfied it is in the public interest to do so. This is a discretionary assessment and permission is typically granted only if there is an arguable case of appealable error.

Resources

- [Unfair dismissals webpage](#)
- [Unfair dismissals benchbook](#)
- [Unfair dismissal application form](#)



Western Australian Equal Opportunity Commission

The Western Australian Equal Opportunity Commission (WAEOC) is responsible for the administration of the *Equal Opportunity Act 1984 (WA)* (Equal Opportunity Act). The WAEOC investigates and conciliates complaints of discrimination, including in respect of workplace sexual harassment.

Jurisdiction

Western Australia

Timeframe for lodging a complaint

A complaint should be lodged within 12 months of the date the alleged conduct occurred. This timeframe can be extended in certain circumstances.

Cost to lodge a complaint

Free

Time taken to process a complaint

Generally, the process takes approximately five to six months.

Making a complaint

A complaint can be made by a person (complainant) who believes they have experienced sexual harassment on their own behalf as well as the behalf of others, or by a trade union on their behalf. Based on the scope of s 24 of the *Equal Opportunity Act*, unpaid workplace participants (such as volunteers, interns and students) may be unable to make a complaint of workplace sexual harassment to the WAEOC.

Dispute resolution process

A complaint should be lodged in writing to the WAEOC. Once the complaint is lodged, it will be subject to preliminary assessment by the WAEOC. If the WAEOC cannot assist, the complainant will be referred elsewhere.

If the WAEOC accepts the complaint, they'll let the person who the complaint is about know. The WAEOC may also ask them for their side of the story. The WAEOC will investigate the complaint, after which the complaint may proceed to conciliation.

When a complaint might be dismissed

The WAEOC may dismiss a complaint if:

- it's frivolous, vexatious, misconceived or lacking in substance



- relates to an act that is not unlawful under the *Equal Opportunity Act*
- it is withdrawn
- the complainant is not pursuing, or has abandoned, the complaint.

What if a complaint is unresolved or a party is unhappy with the outcome?

The complainant may, within 21 days, request the WAEOC to refer the complaint to the State Administrative Tribunal (SAT) for determination. The WAEOC can also refer a complaint to the SAT if it considers that complaint cannot be resolved by conciliation, conciliation has been unsuccessful, or the nature of the complaint is such that it should be referred to the SAT.

If the SAT finds the complaint substantiated, it may order:

- the respondent to pay compensation to the complainant not exceeding \$40,000
- the respondent be enjoined from continuing or repeating any conduct in breach of the Act
- the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant
- void in whole or in part any contract or agreement made in contravention of the Act
- decline to take any further action in the matter.

Generally, parties before SAT pay their own costs. SAT can order that one party pay another party's costs, having regard to the conduct of the parties and the nature of the matter. However, these costs orders are rare.

Contact information

- Website: www.wa.gov.au/organisation/equal-opportunity-commission
- Translated versions of the website can be found at: www.wa.gov.au/organisation/equal-opportunity-commission
- Email: eoc@eoc.wa.gov.au
- Phone: 1800 198 149
- Physical address: Albert Facey House, 469 Wellington Street, Perth WA 6000

Resources

- [Sexual harassment fact sheet](#)
- [Complaint process fact sheet](#)



- [Online complaint and enquiry form](#)



Western Australian Industrial Relations Commission

The Western Australian Industrial Relations Commission (WAIRC) is an independent tribunal established under the *Industrial Relations Act 1979* (WA) that deals with workplace relations matters in the state of Western Australia. The WAIRC aims to prevent and settle industrial or employment disputes, including in relation to workplace sexual harassment, by assisting the parties in dispute through a conciliation process to reach an agreement. If the dispute cannot be resolved by agreement, the WAIRC may arbitrate the matter by hearing and making a legally binding ruling.

Jurisdiction

Western Australia

Cost to lodge an application

It costs a fee to lodge an application with the WAIRC, for more information see: www.wairc.wa.gov.au/about-us/fees/. At any stage during proceedings, the WAIRC can make an order for a party to pay another party's costs but not for legal fees.

Contact information

- Website: www.wairc.wa.gov.au/
- Phone: (08) 9420 4444
- Mail: Locked Bag 1, Cloisters Square, Perth WA 6850
- [Online enquiry form](#) (scroll to the bottom of the webpage)

What if a party is unhappy with a decision by the WAIRC?

If a party is not satisfied with a decision of the WAIRC, whether in respect to a stop bullying or sexual harassment application or an unfair dismissal claim, they may be able to, within 21 days of the decision, appeal the decision to the Full Bench.

Generally, the grounds of appeal need to demonstrate clearly that the original decision:

- did not properly account for the evidence at the hearing
- erred in the application of the relevant law (which includes case law).

The Full Bench may make any order as to costs it considers appropriate but must not award costs for legal fees unless the other party has committed a serious contravention or brought the proceedings frivolously or vexatiously.



Given the legal complexity of most appeals, it is recommended that the party seeking to appeal the decision seek independent legal or industrial advice before lodging their appeal.

Stop Bullying or Sexual Harassment Application

A stop bullying or sexual harassment application is an application made by a worker (applicant) because the worker reasonably believes that they have been bullied or sexually harassed at work by an individual or group of individuals.

Timeframe for lodging an application

There is no time limit for making a stop bullying or sexual harassment application.

Time taken to process an application

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, per s 51BK(1) of the *Industrial Relations Act 1979* (WA).

Making an application

The WAIRC can deal with a stop bullying or sexual harassment application from a public sector worker as well as a private sector worker, where their employer is unincorporated (that is, where their employer is a partnership, sole trader, or corporation that does not substantially engage in trading or financial activities. This includes some local governments and not-for-profit organisations.

Dispute resolution process

After the applicant has lodged a stop bullying or sexual harassment application, the WAIRC will check that it contains all the required information and if the form is complete, send a copy to their employer and/or the person they allege has engaged in bullying and/or sexual harassment (respondent).

The first stage of the process is usually for the WAIRC to assist the parties to reach agreement. If the matter goes to a hearing the parties will have an opportunity to provide background and supporting documents.

The WAIRC can only make an order to stop bullying and/or sexual harassment if there is a risk that the applicant will continue to be bullied or sexually harassed at work by the particular individual or group. Accordingly, orders cannot be made where there is no risk of the bullying behaviour or sexual harassment continuing, for example if the respondent or applicant is no longer working at the workplace where the alleged bullying or sexual harassment occurred.



The WAIRC is unable to award compensation in bullying or sexual harassment matters.

Resources

- [Information for Parties and Representatives](#)
- [Stop bullying or sexual harassment – information for employees](#)
- [Responding to a stop bullying or sexual harassment application](#)
- [Application form for an Order to Stop Bullying or Sexual Harassment \(or Both\)](#)
- [Fact sheet about conciliation conferences](#)
- [Fact sheet about hearings](#)

Unfair dismissal

An unfair dismissal claim may arise in relation to workplace sexual harassment if the alleged harasser or victim of the workplace sexual harassment has been dismissed.

Timeframe for lodging an application

An application should be made within 28 days of the date of dismissal, unless the WAIRC decides that it would be unfair not to accept the application.

Making an application

The WAIRC can only deal with unfair dismissal applications from private sector employees where the employer is unincorporated (that is, where the employer is a partnership, sole trader, or is a corporation which does not substantially engage in trading or financial activities). This includes some local governments and non-for profit organisations.

The WAIRC cannot deal with an unfair dismissal application from a private sector employee where the employer is a trading, financial or foreign corporation (a 'constitutional corporation'), or the Commonwealth government. Claims of unfair dismissal by many government employees are dealt with by the Public Service Appeal Board.

To make an unfair dismissal application, the dismissed worker (applicant) will need to show they:

- were an employee
- have been dismissed from your employment
- were employed by a State system employer



- their contract of employment was for a salary less than the amount prescribed by the Commission
- their dismissal was harsh, oppressive or unfair.

Employees on probation or who are employed for less than three months, or employees employed to provide domestic services in a private home, may make a claim of unfair dismissal but, in deciding whether a dismissal was unfair, the WAIRC will take these factors into account.

The WAIRC cannot determine an unfair dismissal application if:

- the dismissed worker was a government officer or another type of government employee
- the dismissed worker's employment was not covered by an industrial instrument and their salary is greater than the prescribed salary cap (see: www.wairc.wa.gov.au/resources/maximum-salary-level-for-lodging-certain-claims/).

Dispute resolution process

After the applicant submits their application, the WAIRC will check the form to make sure that it contains all the required information and if the form is complete, provide a copy of it to their former employer. If the employer intends to respond to the claim, they must provide a response to the application within 21 days of being provided a copy.

The matter will then proceed to a conciliation conference conducted by a WAIRC Commissioner who will help the parties to resolve their employment dispute. The purpose of the conciliation is to explore whether an agreement can be reached between the parties, not to decide who is right or wrong.

Conciliation conferences are private and are conducted on a 'without prejudice' basis. This means that what is discussed at a conciliation conference cannot be used against one of the parties if the matter goes to hearing. This allows the parties to explore possible settlement options without fear of the other side using any offers or concessions made at the conference as an admission to various aspects of a claim. The conference is not recorded, and no transcript is produced. Any visual or audio recording is strictly prohibited. An agreement may be reached during or after the conference, the parties have control over the outcome before the matter reaches the hearing stage.

Agreement may be reached during or after the conference. If agreement is not reached, the WAIRC may hold further conferences depending on the circumstances, or list the matter for hearing. A hearing is where the WAIRC receives arguments and evidence from both parties



and makes a binding decision on a matter. There are two types of hearings: interlocutory or preliminary hearings and substantive hearings.

Interlocutory or preliminary hearings

There may be issues that have to be determined by the WAIRC before the merits or substance of an application can be dealt with. These preliminary (or interlocutory) matters may relate to an issue with the applicant's claim that needs to be resolved before the rest of the matter can proceed, such as an application for discovery of documents.

Some examples of preliminary issues include:

- whether the Commission has jurisdiction to deal with the application;
- whether the employee is under the salary cap; or
- whether the Commission can accept an application that was made out of time.

There may be one or more interlocutory hearings before the substantive hearing to deal with preliminary or procedural issues.

Substantive hearing

A substantive hearing is where the WAIRC hears and determines the substance or merits of the employment or industrial issues in dispute. If the applicant's unfair dismissal application is successful, the WAIRC can award reinstatement or compensation up to a maximum of 6 months of the applicant's remuneration.

If the former employer does not comply with the WAIRC's order, the applicant can apply to the Industrial Magistrates Court to have the order enforced. The Industrial Magistrates Court, in addition to making a number of other orders, can also impose a penalty of up to \$13,000 on the employer for non-compliance with the WAIRC's order.

Resources

- [Unfair dismissal – information for employees](#)
- [Responding to an unfair dismissal application](#)
- [Fact sheet about conciliation conferences](#)
- [Fact sheet about hearings](#)



WorkCover WA

WorkCover WA is the government agency responsible for regulating and administering the workers' compensation scheme in Western Australia under the *Workers' Compensation and Injury Management Act 1981 (WA)*.

Jurisdiction

Western Australia

Timeframe for lodging a claim

Generally, within 12 months of the date of injury. However, a claim will not automatically be declined due to a delay in the claim being made.

Cost to make a claim

Free

Claim decision timeframe

Upon receipt of a claim, workers' compensation insurers have 14 days to accept or dispute the claim. An insurer may also 'pend' a claim to seek further information before making a claim decision.

Making a claim

A worker who suffers a personal injury by accident or disease arising out of or in the course of their employment, may make a claim. This includes any physical or mental ailment, disorder, defect, or morbid condition, whether of sudden or gradual development. For a disease, employment must also be a significant contributing factor to the disease.

A worker is any person:

- who has entered into or works under a contract of service or apprenticeship with an employer
- to whose service any industrial award or industrial agreement applies
- engaged by another person under a contract for service under specific circumstances.

Claims management process

The worker must notify their employer as soon as practicable after suffering a work injury. The worker must lodge their claim form and first certificate of capacity with their employer.

Within five working days of receiving the claim, the employer must complete their part of the form and forward the claim to their insurer.



Within 14 days after receiving the claim, the insurer must accept or deny liability, or place the claim on hold if more information is required to make a claim decision.

If a pending claim is still undecided after 10 days, the claim is deemed to be in dispute and the worker can request the insurer to make a decision. If the claim is still unresolved, the worker may lodge an application with the WorkCover WA Conciliation and Arbitration Services (CAS) to resolve the dispute.

When a claim might be denied

Compensation is not payable for an injury that is attributable to:

- the worker's voluntary consumption of alcohol or drugs, or both, which impairs the worker's proper functioning, unless the injury has serious and permanent effects or results in death
- the worker's failure, without reasonable excuse, to use protective equipment, clothing or accessories provided by their employer for the worker's use, unless the injury has serious and permanent effects or results in death
- other serious and wilful misconduct, unless the injury has serious and permanent effects or results in death
- mental injury caused wholly or predominately by management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer.

A claim may be denied because:

- the claimant is not considered a worker
- the injury is not deemed work-related
- the medical diagnosis does not fully or accurately reflect the facts.

What if a party is unhappy with the outcome?

A party can bring a dispute about a claim before the CAS. In the first instance, an attempt will be made to resolve the dispute by agreement with the assistance of a Conciliation Officer.

At the private conciliation conference, each party is given the opportunity to present their position and support it with evidence and other information. The Conciliation Officer does not determine the outcome of the dispute but will facilitate the parties to come to an agreement.



If conciliation is unsuccessful, a party can apply within 28 days to the Arbitration Service to have the dispute arbitrated. An Arbitrator will make a binding determination on the dispute. For instance, an Arbitrator can confirm, vary or revoke the insurer's claim decision.

There is no fee required to lodge an application for conciliation or arbitration.

In limited circumstances, a party can, within 28 days of the arbitration decision, appeal that decision at the District Court of Western Australia. For proceedings before a court, costs are always at the discretion of the court. However, the general rule is that 'costs follow the event'. That is, the unsuccessful party is ordered to pay the costs of the successful party.

Contact information

- Website: www.workcover.wa.gov.au/
- Mail or in person: 2 Bedbrook Place, Shenton Park WA 6008
- Phone: 1300 794 744
- Online enquiry: www.workcover.wa.gov.au/contact-us/

Resources

- [Making a claim webpage](#)
- [Resolving a dispute webpage](#)
- [Frequently Asked Questions for workers](#)
- [Frequently Asked Questions for employers](#)
- [Workers' compensation claim form](#)



WorkSafe WA

WorkSafe WA is the WHS regulator in WA.

Jurisdiction

Western Australia

When to report a WHS issue

A person can report a WHS issue to WorkSafe WA after attempts have been made to resolve the matter internally within the workplace.

Cost to report

Free

Reporting a WHS issue

Employers have a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of their workers while they are at work by eliminating risks to health and safety.

A worker who experiences workplace sexual harassment can report the matter as a WHS issue to WorkSafe WA. The definition of worker includes employees, contractors, subcontractors, labour hire employees, self-employed workers, trainees, volunteers and work experience students.

Dispute resolution procedure

The parties to a WHS issue should attempt to resolve the matter internally through a consultative process. Where consultation in the workplace has not resolved the problem, a party may report the matter to WorkSafe WA and request an inspector's intervention.

Once a complaint is made, WorkSafe WA will assess the information and classify the matter in line with its investigation criteria. Not all complaints will result in an investigation by an inspector. If an inspector needs more information to clarify the concerns, they may contact the reporting party to ask some questions and discuss the complaint.

If an investigation takes place and reveals non-compliance with WHS laws, WorkSafe WA may take enforcement action, including issuing improvement or prohibition notices, prosecution action, other sanctions or a combination of these.



When a WHS issue might not be investigated

To maintain a proportionate response, WorkSafe WA devotes most of its investigation resources to the most serious circumstances. WorkSafe WA cannot investigate all issues of non-compliance or incidents it is notified of.

In selecting which matters to investigate and in deciding the level of resources to be used, WorkSafe WA will consider the:

- severity and scale of potential or actual harm
- seriousness of any potential breach of the law
- duty holder's compliance history, including such matters as prior convictions and notices issued
- high risk and strategic enforcement priorities
- practicality of achieving results
- wider relevance of the event, including matters of significant community concern or emerging issues
- nature and quality of information provided
- knowledge of the effectiveness of any consultative mechanism used at the workplace.

WorkSafe WA adopts the Western Australian Director of Public Prosecution's principles that a proposed prosecution must disclose a prima facie case and should be in the public interest before it can proceed. That is, if the available evidence is believed by the court, is it capable of proving, beyond reasonable doubt, all the elements of the relevant offence.

The most common reason that WorkSafe WA does not proceed with a recommended prosecution is that there is no prima facie case. There may be evidence capable of proving some of the elements of the offence, but not all. This is not enough to proceed. Where the available material does not support a prima facie case, the prosecution will not proceed.

What if a party is unhappy with the outcome?

If a party (applicant) is unhappy with a decision of a WorkSafe WA inspector, they can request an internal review of that decision. After considering a request for a review, WorkSafe WA will communicate the outcome to the applicant. If the applicant does not agree with WorkSafe WA's decision, they can seek an external review of the decision by the Work Health and Safety Tribunal (WHST).

An application to the Tribunal should be lodged with the Western Australian Industrial Relations Commission within the timeframes specified in the *Work Health and Safety Act*



2020 (WA) and the *Work Health and Safety (General) Regulations 2022 (WA)* for the type of decision being reviewed.

Each party pays their own costs before the WHST, including legal costs if a party decides to engage a lawyer or paid agent to represent them.

Contact information

- Website: www.commerce.wa.gov.au/worksafe
- Phone: 1300 307 877
- Email: wscallcentre@dmirs.wa.gov.au
- Mail: Locked Bag 100, East Perth WA 6892
- Physical address: Mason Bird Building, 303 Sevenoaks Street, Cannington WA 6107

Resources

- [Mentally healthy workplace resources](#)
- [Mentally healthy workplaces codes of practice](#)



Quick reference guide

Agency	Description	Contact information
<p>Australian Human Rights Commission</p>	<p>The Australian Human Rights Commission investigates and resolves complaints of discrimination and breaches of human rights, including complaints of sexual harassment under the <i>Sex Discrimination Act</i> 1984 (Cth).</p>	<ul style="list-style-type: none"> • Website: https://humanrights.gov.au/ • Email: infoservice@humanrights.gov.au • National Information Service: 1300 656 419
<p>Comcare</p>	<p>As the national work health and safety (WHS) and workers' compensation authority, Comcare's legislated functions include securing the health and safety of workers and workplaces. Comcare has a workers' compensation role in respect of workplace sexual harassment where that conduct has resulted in an injury or illness to the worker.</p> <p>Comcare administers the <i>Work Health and Safety Act</i> 2011 (Cth) and <i>Work Health and Safety Regulations</i> 2011 (Cth) and is the national regulator for WHS in the Commonwealth jurisdiction.</p>	<ul style="list-style-type: none"> • Website: www.comcare.gov.au/ • Email: general.enquiries@comcare.gov.au or whs.help@comcare.gov.au • Phone: 1300 366 979 • Mail: GPO Box 9905, Canberra ACT 2601 • Online enquiry form • Translation and interpreter service: 13 14 50 • Teletypewriter (TTY) users call 133 677 and ask for 1300 366 979 • Speak and Listen users call 1300 555 727 and ask for 1300 366 979



	<p>Comcare has regulatory functions and powers, including to enforce compliance with WHS laws. This includes in respect of workplace sexual harassment where the alleged conduct constitutes a WHS risk to workers.</p>	<ul style="list-style-type: none">• Internet relay users connect to the National Relay Service (NRS) and ask for 1300 366 979• Video relay users can choose the available NRS video relay contact on Skype and ask for 1300 366 979• SMS relay users call 0423 677 767 and ask for 1300 366 979
Fair Work Commission	<p>The Fair Work Commission (FWC) is Australia's national workplace relations tribunal, established by the Fair Work Act. The FWC may be able to assist in workplace sexual harassment matters where sexual harassment is relevant to an application lodged in respect of:</p> <ul style="list-style-type: none">• an order to stop sexual harassment or an order to stop bullying and sexual harassment (stop sexual harassment order)• general protections• unlawful termination• unfair dismissal.	<ul style="list-style-type: none">• Website: www.fwc.gov.au/• Phone: 1300 799 675• Online enquiry form• Language help for non-English speakers
Fair Work Ombudsman	<p>The Fair Work Ombudsman can provide employees and employers with general information about protections from sexual harassment, prevention and managing sexual harassment in the workplace.</p>	<ul style="list-style-type: none">• Website: www.fairwork.gov.au/• Phone: 13 13 94• Mail: Fair Work Ombudsman, GPO Box 9887, Perth WA



Western Australian Equal Opportunity Commission	<p>The Western Australian Equal Opportunity Commission (WAEOC) is responsible for the administration of the <i>Equal Opportunity Act 1984 (WA)</i>. The WAEOC investigates and conciliates complaints of discrimination, including in respect of workplace sexual harassment.</p>	<ul style="list-style-type: none">• Website: www.wa.gov.au/organisation/equal-opportunity-commission• Translated versions of the website: www.wa.gov.au/organisation/equal-opportunity-commission• Email: eoc@eoc.wa.gov.au• Phone: 1800 198 149• Physical address: Albert Facey House, 469 Wellington Street, Perth WA 6000
Western Australian Industrial Relations Commission	<p>The Western Australian Industrial Relations Commission (WAIRC) is an independent tribunal established under the <i>Industrial Relations Act 1979 (WA)</i> that deals with industrial matters in the state of Western Australia.</p> <p>The WAIRC aims to prevent and settle industrial or employment disputes, including in relation to workplace sexual harassment, by assisting the parties in dispute through a conciliation process to reach an agreement. If the dispute cannot be resolved by agreement, the WAIRC may arbitrate the matter by hearing and make a binding ruling.</p>	<ul style="list-style-type: none">• Website: www.wairc.wa.gov.au/• Phone: (08) 9420 4444• Mail: Locked Bag 1, Cloisters Square, Perth WA 6850• Online enquiry form (scroll to the bottom of the webpage)



WorkCover WA	WorkCover WA is the government agency responsible for regulating and administering the workers' compensation scheme in WA under the <i>Workers' Compensation and Injury Management Act 1981 (WA)</i> .	<ul style="list-style-type: none">• Website: www.workcover.wa.gov.au/• Phone: 1300 794 744• Mail or in person: 2 Bedbrook Place, Shenton Park WA 6008• Online enquiry
WorkSafe WA	WorkSafe WA is the WHS regulator in WA.	<ul style="list-style-type: none">• Website: www.commerce.wa.gov.au/worksafe• Phone: 1300 307 877• Email: wscallcentre@dmirs.wa.gov.au• Mail: Locked Bag 100, East Perth WA 6892• Physical address: Mason Bird Building, 303 Sevenoaks Street, Cannington WA 6107



Further information

Website: respectatwork.gov.au