

# Sexual harassment applications in the Western Australian Industrial Relations Commission for WA workers

## A Circle Green Community Legal claim guide

### Introduction

This claim guide is for:

- WA workers who wish to apply to the Western Australian Industrial Relations Commission to deal with a sexual harassment referral/stop sexual harassment order for conduct that started **on or after 31 January 2025**; or
- WA workers who wish to apply to the Western Australian Industrial Relations Commission for a stop sexual harassment order for conduct commencing **before 31 January 2025**.

The information below has been written to assist you with the practical process of making a sexual harassment application to the Western Australian Industrial Relations Commission. If you are not yet ready to make a claim and you are seeking more general information, you may wish to view our resource [“Q&A: Sexual harassment against WA workers”](#).

If you need legal advice before making a claim, you can [submit an application for advice to us here](#) or see our [private solicitors list here](#).

This claim guide is provided as general information only and is not intended to be a substitute for legal advice. By using the information on this page, you agree to our full [disclaimer](#).

### Key terms used

This information resource uses a number of key terms. You can click on our glossary in a new window and read what the key term means. See our glossary here: <https://circlegreen.org.au/resource/glossary-workplace-law/>

We encourage you to read this claim guide from start to finish. If you are looking for a specific piece of information, you can click on any heading below to skip to that section.

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## Overview

The Western Australian Industrial Relations Commission (**WAIRC**) can deal with applications in relation to sexual harassment.

Applications can be made for two types of orders:

- stop sexual harassment orders; and
- orders for a sexual harassment referral.

A stop sexual harassment application is intended to prevent sexual harassment from occurring in the future, whereas a sexual harassment referral can result in compensation for past and future loss suffered as a result of sexual harassment. You can make one application that deals with both issues.

It's also possible to make a sexual harassment referral to the Industrial Magistrates Court (**IMC**). The IMC has additional powers and can order that penalties be awarded against a person involved in sexual harassment (in addition to any compensation awarded). This guide focuses on the WAIRC, which is not a court and therefore may be more accessible than the IMC. The WAIRC also allows you to combine the two types of claims, whereas the IMC cannot hear a stop sexual harassment claim. If you are seeking penalties, you may wish to read more about the IMC process on their website.

## Background

On 31 January 2025 there were significant changes to the way the WAIRC handles workplace sexual harassment. Because of this, the type of application that you can make depends on when the sexual harassment occurred.

1. for sexual harassment that occurred **before 31 January 2025**, eligible state system workers can make a stop sexual harassment application.
2. for sexual harassment that occurred **on or after 31 January 2025**, eligible WA workers can make an application for both stop sexual harassment orders and a sexual harassment referral. An application can be made for either, or both.
3. If the sexual harassment started before 31 January 2025 but continued past that date, the WAIRC can only consider the earlier conduct in relation to a stop sexual harassment order. So if you are seeking compensation and the sexual harassment started before 31 January 2025, it may be that a claim to the Fair Work Commission or the Australian Human Rights Commission is a better option.

This publication is focused on the process of making a claim to the WAIRC, and presumes you have decided to make this type of claim, or are considering it. If you want more general information about workplace sexual harassment including other claim options, please see Circle Green's ["Q&A: Sexual harassment against WA workers"](#).

If there is a risk of violence or physical assault, you should call the police. These are criminal matters.

## Claim information

### Stop sexual harassment compared to sexual harassment referral

As outlined above, some applicants can ask for stop sexual harassment orders and make a sexual harassment referral at the same time.

#### Stop sexual harassment

A stop sexual harassment application is aimed at improving your work situation so you can continue your job. It is commonly used to stop sexual harassment and to reduce contact at work with the perpetrator. Some other orders can be made (discussed further below), but compensation cannot be ordered.

***A stop sexual harassment application is primarily used to address future conduct – i.e. to improve the situation going forward.***

#### Sexual harassment referral

A sexual harassment referral considers loss that you have suffered, and whether or not compensation should be awarded for this loss. You can ask for compensation from the perpetrator for sexually harassing you, but also from your employer (or principal) for failing to prevent the sexual harassment from occurring.

***A sexual harassment referral is primarily used to address past conduct – i.e. to compensate you for loss you have suffered, or will suffer, for actions that have occurred in the past.***

You can make an application for both types of claims. For example, if you feel like you have suffered a loss, but you are also concerned about sexual harassment continuing to occur at work, you could make a combined application that asks for both types of orders. There is only one application form and the WAIRC deals with both claims as a single process.

This summary above is simplified to help explain the situations in which the different claims might be appropriate. However, there are a broad range of orders that can be made for both claim types so we recommend you read the entire claim guide before deciding which type of claim or claims to make.

For the rest of the claim guide, we discuss both claim types together, noting differences where they are relevant.

### Who is eligible?

You can make a sexual harassment application to the WAIRC if you are a state system “worker”.

A “worker” is a broad term, and includes:

- an employee;
- a contractor or subcontractor;
- an employee of a contractor or subcontractor;

- an employee of a labour hire company;
- an outworker;
- an apprentice or trainee;
- a work experience student; and
- a volunteer, except for volunteers at a volunteer association which has no employees.

If you are seeking stop sexual harassment orders, you also need to be connected with the workplace. Stop sexual harassment orders are focused on improving the working environment in the future, so useful orders can't be made if there is no ongoing connection to the workplace.

## **Time limits**

Sexual harassment referrals must usually be made within 24 months after the alleged sexual harassment. If more time than this has passed then the WAIRC may decide not to deal with the sexual harassment dispute and may dismiss the application.

There is no time limit for stop sexual harassment applications. However, the WAIRC can only handle a stop sexual harassment application if there is still a risk that you will continue to be sexually harassed.

Generally, this means a claim will only be appropriate if you are still working in the workplace where the sexual harassment took place.

## **What may be sexual harassment?**

Sexual harassment at work is where a person (or persons):

- makes an unwelcome sexual advance;
- makes an unwelcome request for sexual favours; or
- engages in other unwelcome conduct of a sexual nature.

This behaviour must be in circumstances where a reasonable person would have expected that the person targeted would be offended, humiliated or intimidated. These circumstances may include:

- the relationship between the individuals;
- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed; and
- other relevant circumstances.

Intent is not relevant. It does not matter whether the perpetrator meant for their actions to offend, humiliate or intimidate you.

Examples of conduct that may be sexual harassment include:

- unwelcome touching, staring or gestures that have a sexual nature;
- sexually suggestive comments, jokes, or images;

- sharing sexually explicit content, such as photographs, emails or text messages;
- unwanted requests for dates or sex; and
- intrusive questions about a person's private life, sex life, or body.

A single incident can be sexual harassment.

## **Who can I bring the application against?**

An eligible worker can bring an application against:

- the person or persons engaging in the sexual harassment; and/ or
- the principal.

A principal is normally the person who pays you and controls your workplace. If you are an employee then the principal is your employer.

You may look to include the principal where they have been vicariously liable. This means you are saying that your employer (or other type of principal) is also responsible for what happened because they didn't do enough to prevent sexual harassment from occurring in the workplace.

However, the principal will not be vicariously liable if they prove that they took all reasonable steps to prevent the employee or agent from doing acts that contravene the prohibition on sexual harassment in connection with work.

The onus will be on the principal to show that they took all reasonable steps to prevent the sexual harassment.

In this claim guide, references to the "employer" generally also refer to the "principal" of a contractor making an application.

## **What outcomes can the WAIRC order?**

Each person's situation will be different. You should think about your specific circumstances and your workplace when asking for orders. The WAIRC is not limited to making the orders you ask for, but it will likely consider them.

### Stop sexual harassment orders

If you have made an application for a stop sexual harassment order the WAIRC can make any order it considers appropriate to prevent you from being sexually harassed at work (other than the payment of money). The WAIRC's focus is on sorting out the issues and allowing you to return to work as normal.

Keep in mind that the WAIRC can only make an order if it finds there is a risk of continued sexual harassment.

Some possible orders include:

- requiring the person or group to stop sexually harassing you;
- the employer having to regularly monitor the person or group;
- preventing unsupervised contact between you and the person or group at work;

- making sure people are following the employer’s sexual harassment policy;
- requiring information and additional support and training to be given to workers; and
- a review of the employer’s sexual harassment policy.

### Sexual harassment referral

If your application includes a sexual harassment referral, then compensation can be awarded and there is no cap on compensation.

Compensation can be sought for lost wages, as well as for non-financial losses such as hurt, stress and humiliation. If you are claiming for mental distress, you should be prepared to show losses flowing from that – for example the medical bills you incurred seeing a medical professional, or other losses you can identify.

The WAIRC is not limited to making compensation orders, although this is the most common type of order.

In conciliation, you are free to negotiate for any outcome you want. Conciliation is discussed further below.

### Penalties

The sexual harassment referral laws include a “civil penalty provision”. This means that when the law is breached, penalties can be awarded.

However, the WAIRC cannot award penalties. If it’s important to you that penalties be awarded then you should consider lodging your claim in the IMC.

A penalty is like a fine and is awarded in addition to any compensation and other orders. You can ask that the penalty be paid to you, but it is up to the Court.

### **Costs**

There may be an application fee for making your claim. You can check the [website of the WAIRC](#) for up to date information on application fees. If there is a fee and you cannot afford to pay the fee, you can contact the registry to ask how you can apply for a fee waiver.

The WAIRC cannot make a costs order for legal fees. This means that you cannot be ordered to pay the lawyer or agent fees of the other party, even if you lose the matter. In the same way, you can’t ask for the other party to pay your legal fees, even if you are successful. All parties are responsible for their own legal fees.

The WAIRC can sometimes make an order for other costs, like the travel costs for witnesses to attend a hearing. However, these are not normally significant.

### **Representation**

Conciliations and hearings at the WAIRC are designed to be navigated by an ordinary person without a lawyer or other representation. However, a person can choose to be represented by a lawyer or an agent in proceedings. This is different from having a support person attend a conference or hearing to provide emotional support. Being represented by a lawyer or agent means that they speak and act on your behalf at the proceedings.

If you have a representative, you will include their name in the application form and the WAIRC will generally send correspondence to them after that point (unless you ask for it to be sent to you). If you want to be represented after your matter has commenced, then you should fill out a [Form 11 – Notification of Representative Commencing or Ceasing to Act](#).

## Claim process

You start a claim by filing a [Form 22 – Application for a Stop Sexual Harassment Order and/or a Sexual Harassment Referral](#) and paying a filing fee, if applicable.

If it is available, you may use the Commission's online lodgment system to lodge your Form 22. Alternatively, you may lodge your completed form, along with any relevant attachments, in any of the following ways:

- in person at the Commission's Registry, located at Level 17, 111 St Georges Terrace, Perth WA 6000; or
- by post to Locked Bag No. 1, Cloisters Square, Perth WA 6850; or
- by email to [Registry@wairc.wa.gov.au](mailto:Registry@wairc.wa.gov.au)

Application details and rules can change over time. If you are having trouble making your application, you can call the registry on (08) 9420 4444.

## Completing the form

You will need to fill in your details and the details of your employer (or other principal, if you are a contractor). You should make sure you are using your employer's legal name and not their trading name. The employer will generally be the "First respondent"

You can find your employer's legal name on the Australian federal government's business register.

Go to <https://abr.business.gov.au/> and enter your employer's ABN. You can find the ABN on a pay slip or group certificate.

You also need to fill in the details of the person (or persons) that sexually harassed you. The perpetrator will be the Second respondent (and third etc. if there are multiple perpetrators).

You will also need to include the outcome you are seeking by making the claim – this could be simply a stop sexual harassment order, or you could be asking for compensation or you could be asking for both. See the section above on outcomes for more information. You are not limited to these outcomes and you can ask for other orders – for example that the employer implement an improved sexual harassment policy and conduct training.

If you are asking for compensation, at this stage you don't need to set out the amount you are seeking. However, you will need to turn your mind to this issue for the purposes of negotiating in the conciliation stage. If the matter proceeds to a hearing, you will need to provide more specifics.

## Response

The WAIRC will then send a copy of your application to you and to the respondents you have named; this includes the employer and any person who has engaged in the sexual harassment. If there is information you don't want provided to the other parties, or you have safety concerns about your contact details, you can contact the registry to discuss options.

The respondents are required to file a response to your application, and the WAIRC will forward their response to you (or your representative).



## Conciliation

Generally, the next step the WAIRC will take once the employer has sent a response is to schedule a conciliation conference. A conciliation conference is private and confidential, and will usually include you, the respondents and a WAIRC Commissioner or other conciliator.

The conciliator is a neutral party and is there to assist you and your employer to come to an agreement and avoid the more formal process of a hearing. They are not there to advocate for one side, but to assist with the process.

At certain points the conciliator may speak to each party alone to assist with the negotiation process.

Conciliation can be a good opportunity to try and resolve the matter outside of the more stressful and formal process of a hearing. It is a good idea to approach the conciliation with an open mind and be prepared to negotiate.

Circle Green and the WAIRC have published a video guide that shows you what to expect from a conciliation at the WAIRC. [Click here to see the video.](#)

You can also read the [WAIRC's fact sheet on conciliations.](#)

## Resolution at conciliation

It may be that you are able to come to an agreement in conciliation. It is standard for this type of an agreement to be put in writing.

Sometimes a settlement agreement is drawn up on the spot and becomes binding when accepted and signed by the parties.

It may be that your employer wants a lawyer to draw up a settlement agreement which will be sent to you after the conciliation, so even though an agreement has been reached there is not an opportunity to close the matter on the spot.

If you are making an agreement to settle, it's important to be clear as to whether the agreement is settling just your sexual harassment claim, or all possible claims. It is quite common for employers to want to settle all claims.

Employers may also want non-disparagement and confidentiality clauses in the agreement. This means that you can't speak badly about them, or even discuss the claim or the sexual harassment (there are some limited exceptions, for example seeking legal advice).

If it's important to you that you be able to talk about your experiences, then it's a good idea to raise this issue in the conciliation. Otherwise, the other party may incorrectly assume that they are able to include these types of clauses in a written agreement.

A written agreement is normally in the form of a deed. It's important that you read and understand all the clauses of the deed because you are agreeing to them if you sign it. You may wish to seek legal advice if you don't understand all the clauses.

## No resolution at conciliation

If there is no resolution at conciliation then normally the next step is to proceed to a hearing. The WAIRC can organise a second conciliation if they think there is still a chance of settling the matter, but this is not common.

You are not required to proceed to a hearing. If you don't want to take the matter further you can discontinue (end) the claim by [filing a Form 1A](#). It is entirely up to you whether or not to proceed and you should discontinue the claim if it is the best choice for you. However, you should think carefully when making the decision as it's unlikely you will be able to revive the claim or make a new claim to the WAIRC on the same facts.

You don't need a lawyer to proceed to a hearing and many applicants successfully represent themselves. However, a hearing is more formal and procedural than a conciliation. While there are not strict rules of evidence as there are in a court, you are still expected to make legal arguments, present evidence and examine witnesses (where relevant). Preparation can be a significant investment of time and many applicants find the process stressful.

## Hearing

If you choose to proceed to a final hearing, the next step is likely to be a preliminary hearing such as a directions hearing. A directions hearing sets out what the parties have to do before the final hearing, and the time frames for doing those things.

A final hearing involves a Commissioner hearing evidence from the people involved in the case, including witnesses, and making a decision. This may feel like more of a traditional court process where both parties argue their case.

For more information on hearings you can read the [WAIRC's fact sheet on hearings](#).

## Interpreters and other requirements

The WAIRC can arrange for an interpreter to assist you at your conciliation or hearing. You do not have to pay for the interpreter. However, you must tell the WAIRC as soon as possible that you will need an interpreter, and the language you require.

You can also request other things from the WAIRC if you require something to be able to participate, for example a hearing loop or wheelchair access.

You can include this request in your application form. If you have already lodged your application you can contact the registry.

## Related resources

- [Q&A: State or National system for WA employees](#)
- [Q&A: Bullying against WA workers](#)
- [Q&A: Sexual harassment against WA employees](#)
- [Q&A: Contractor or employee for WA workers](#)
- [Q&A: Dismissal for WA employees](#)

## Further information and assistance

### Circle Green Community Legal

WA employees can request free and confidential legal assistance with employment and workplace discrimination issues from Circle Green Community Legal.

Complete an online request: [circlegreen.org.au/get-help](https://circlegreen.org.au/get-help)

Telephone enquiries: 08 6148 3636 (Please note that we do not provide on demand legal advice)

For further information on our Workplace law services, please visit:

[circlegreen.org.au/workplace](https://circlegreen.org.au/workplace)

Courts & Commissions	Government departments & other supports
<p><b>Western Australian Industrial Relations Commission</b></p> <p>Phone: (08) 9420 4444 or 1800 624 263</p> <p>Web: <a href="https://www.wairc.wa.gov.au/">https://www.wairc.wa.gov.au/</a></p> <p><b>Industrial Magistrates Court</b></p> <p>Telephone: 08 9420 4467</p> <p>Web: <a href="https://www.imc.wa.gov.au/">https://www.imc.wa.gov.au/</a></p>	<p><b>WorkSafe</b></p> <p>Phone: 1300 307 877</p> <p>Web: <a href="http://www.dmirs.wa.gov.au/worksafe">http://www.dmirs.wa.gov.au/worksafe</a></p>

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