

# Stop workplace bullying claim in the Fair Work Commission (for national system employees)

## Circle Green Community Legal Claim Guide

### Introduction

This claim guide is for national system employees in Western Australia who wish to make a bullying claim.

There are two systems of employment law in Western Australia: a state system and a national system. If you are unsure which system you fall under, please see our publication: [“Q&A: State or national for WA employees”](#).

The information below has been written to assist you with the practical process of making a bullying claim. If you are not yet ready to make a claim and you are seeking more general information, you may wish to view our Q&A resources first. 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

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/>

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## Overview

### What is bullying?

A claim to stop workplace bullying can be made to the Fair Work Commission (**FWC**) if:

- while you are at work, a person or group repeatedly behaves unreasonably towards you, or a group of workers that you are part of;
- the behaviour creates a risk to your health and safety;
- the behaviour is not reasonable management action that is carried out in a reasonable manner; and
- there is a risk that you will continue to be bullied at work by the person or group.

For more information about workplace bullying, please see Circle Green's ["Q&A: Bullying against WA workers"](#).

### Eligibility

You can make a claim to the FWC if you are a "worker", and you work for a national system employer. 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.

To find out whether you work for a national system employer, you can call Wageline. You can also read Circle Green's ["Q&A: State or National system for WA employees"](#).

### Time limits

You don't need to make a bullying claim within any specific period of time. However, you should keep in mind the following information if you are thinking of making a claim.

### What is bullying?

The FWC can only handle a bullying claim if:

- you have been repeatedly bullied; and
- there is a risk that you will continue to be bullied by the same person or group.

This means you can only make a claim if you are still working in the workplace where the bullying took place. It also means you can only make a claim if you can show that the bullying was repeated, and not a one-off incident.

## Outcomes

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

The FWC can make any order it considers appropriate to prevent you from being bullied at work. However, it cannot make an order that you be paid money. It also cannot order reinstatement (ie getting your job back). The FWC's focus is on sorting out the issues and allowing you to return to work as normal.

In making an order, the FWC must consider (if it is aware of them):

- any outcomes of an investigation into the alleged bullying carried out by someone else;
  - for example, the outcomes of an investigation into bullying done by a workplace health and safety regulator, like WorkSafe.
- any procedures available to you to sort out the issues, and any outcomes from using those procedures; and
  - for example, the FWC will consider if your employer has a workplace bullying policy and any outcomes of using these policies to try and sort out your issues.
- any other matters that the FWC thinks are relevant.

Some possible orders include:

- requiring the person or group to stop bullying;
- 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 anti-bullying policy;
- requiring information and additional support and training to be given to workers; and
- a review of the employer's workplace bullying.

## Costs

You cannot usually ask for another party (ie someone you have named in your claim) to pay your costs. In other words, if you lose, generally you will not have to pay the employer's legal costs.

However, you can apply to the FWC for orders that another party pay some or all of your costs if:

- the other party responded to your claim vexatiously (ie to annoy, embarrass, harass you); or
- it should have been reasonably obvious to the other party that their response to your claim was not likely to succeed.
- If you want to apply for costs for either of the reasons above, then you need to lodge a Form F6 – Application for costs within 14 days after the FWC has finished dealing with your matter.

The forms can be found here: <https://www.fwc.gov.au/apply-or-lodge/forms>

## Representation

Anyone can help you prepare and lodge your claim with the FWC. You do not need the FWC's permission for someone to assist you with preparing your claim.

However, generally you will need permission from the FWC if you want a lawyer or paid agent (ie someone that charges or receives a fee) to represent you at your mediation, conference, or hearing. The FWC may grant permission if it would help the matter to be dealt with more efficiently, or if it would be unfair not to allow you to be represented. If you are seeking permission to be represented, you must notify all other parties to the claim that you are seeking this permission.

You do not need the FWC's permission if you want to be represented by a lawyer or paid agent who is:

- an employee or officer of:
  - an organisation;
  - a peak council; or
  - a bargaining representative that is representing you (eg a union officer); or
- a bargaining representative.

You also do not need to FWC's permission to be represented if you are going to a FWC conference that is being heard by a staff member of the FWC. A staff member of the FWC is anyone other than the President, a Vice-President, a Deputy-President, a Commissioner, or an Expert Panel Member of the FWC. The notification of the meeting will tell you who the conference is being heard by.

## Interpreters and other requirements

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

You can also request other things from the FWC if you require something to be able to participate (eg a hearing loop). The FWC will try to make arrangements for you.

If you need an interpreter, or have other requirements, then you can include these things in your Form F72. You can also contact the FWC Registry after you lodge your claim. The details of the FWC Registry are at the end of this Claim Guide.

## Claim process

The flow chart at the end of this section shows the FWC process for dealing with your claim.

The length of this process will depend on how busy the FWC is, and how urgently your matter needs to be dealt with.

### Starting a claim

To make a claim you must complete a Form F72 – Application for an order to stop bullying here: <https://www.fwc.gov.au/apply-or-lodge/forms>

You should include any reasons why your claim should be dealt with urgently (if any).

You will need to lodge the Form F72 with the FWC and pay a filing fee. More information about fees can be found here; <https://www.fwc.gov.au/apply-or-lodge/fees-and-costs>

You can lodge your form by email, fax, express post, or in person at one of the FWC's offices. See the end of this Claim Guide for the FWC's details.

You can apply to the FWC for the filing fee to be waived by lodging a Form F80 – Waiver of application fee if paying the filing fee will cause you serious financial hardship. Your application to have the filing fee waived must be lodged at the same time you lodge your Form F72 claim.

### Response

The FWC must start dealing with your claim within 14 days after it is lodged. The FWC may do this by asking the parties questions or asking parties for further information. The FWC does not conduct investigations into allegations of workplace bullying.

After gathering information about the claim from all parties, the FWC will decide how to deal with your claim. If the FWC thinks that your claim is not likely to succeed, your claim may be dealt with (and may be dismissed) early in the process.

Sometimes, the FWC can also refer matters to a work health and safety regulator. In Western Australia, that regulator is WorkSafe.

Otherwise, the FWC can decide to deal with your claim by mediation, conference, or hearing. If this happens, the FWC will send you a written notice telling you the date and time of the meeting – this is called a Notice of Listing.

If you can't be there on the date or at the time stated in the Notice of Listing, you can ask for your matter to be adjourned (postponed). As soon as you know that you won't be able to be there, you should ask the FWC to adjourn the meeting and explain the reason why you can't be there. The FWC will only adjourn the meeting if you have a good reason.

### Mediation

If the FWC decides that mediation is the best way to resolve your claim, you will be invited to go to mediation with the other parties.

Mediation is an informal, confidential, voluntary process. It can be in person, by telephone, or by video conference. The FWC encourages mediations by telephone to make them as quick and

easy as possible. This also means that you wouldn't need to see the person who has bullied you in person.

The mediation is usually run by a Commission Member or by one of the FWC's mediators. They are independent and will not take sides.

Mediations are on a "without prejudice" basis. This means that things you say during mediation generally cannot be used in a conference or hearing.

Mediations also happen "off the record", meaning that there will be no transcript or record of the conversations that take place. There may be a written record taken of the outcome of the mediation.

At the start of the mediation, the mediator will usually explain their role and how the mediation will be run. After that, the mediator:

- will allow each party to briefly outline their position, including what happened, and what they want;
- may allow or ask questions;
- may talk to each party on their own to come up with possible solutions; and
- will try and help the parties to reach an outcome.

For example, the mediator might find common ground, or suggest possible solutions.

### Preparing for mediation

Some things you can do to prepare for mediation include:

- knowing your claim – refresh your memory about what happened. It can be useful to write a short summary of events to help you during the mediation;
- finding all relevant documents - eg diary notes, letters or emails with your employer about the bullying, any formal written complaints; and
- seeking legal advice if possible (a link to our online Get Help form is at the end of this Claim Guide).

### Reaching an agreement at mediation

If you reach an agreement, the mediator can help to record the agreement in writing.

If you do not reach an agreement, the claim will go to a conference or hearing.

## **Conferences and hearings**

Conferences and hearings take place before Commission Members.

A conference is less formal than a hearing, and usually takes place in private. The Commission Member may make a decision about the claim at a conference, or may ask the parties to provide further information before making a decision. The Commission member's decision will usually include whether the bullying occurred, and what can be done to resolve it. They can also arrange for the matter to go to a hearing.

A hearing in anti-bullying matter will be open to the public unless specific orders have been made for it to take place in private. Hearings are formal proceedings.

At the conference and/or hearing you should be prepared to answer questions about the alleged bullying and provide support for the orders you are asking for. If you do not attend a conference or hearing when required, the FWC can still make orders.

## Enforcing an order

If the FWC makes an order and it is breached, the person breaching the order can be required to pay a fine. This fine can be paid to the Commonwealth, a particular organisation, or a particular person (including you).

If you are looking for a person and/or company to be fined for breaching a FWC order, you would need to make a separate claim. You would need to make this separate claim to a court, not to the FWC. The courts that you can make this claim to are the Federal Court, the Federal Circuit and Family Court, or an eligible State or Territory court (in Western Australia, the District Court of Western Australia or Magistrates Court of Western Australia). You should seek legal advice before making this kind of claim.

## Appeals

If you don't agree with a decision made by the FWC, you can apply to the FWC to appeal it. You must be able to convince the FWC that:

- it should grant permission for your appeal because your appeal is in the public interest; and
- there was an error in the original decision.

If you want to appeal a decision, you will need to lodge a Form F7 – Notice of appeal with the FWC within 21 days of the date of the decision.

After you do this, the FWC will contact you about preparing, lodging, and serving (giving) other documents to the other parties to your appeal. The deadlines for doing these steps can be specific and short. The requirements for these extra documents can be technical and quite formal, so you should seek legal advice before lodging an appeal.

## Forms

The following forms can be found here: <https://www.fwc.gov.au/apply-or-lodge/forms>

- Form F72 – Application for an order to stop bullying
- Form F80 – Waiver of application fee
- Form F6 – Application for costs
- Form F7 – Notice of appeal

## Related resources

- [Q&A: State or National system for WA employees](#)
- [Q&A: Bullying against WA workers](#)
- [Stop bullying benchbook](#)



## 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)

#### Commissions

##### Fair Work Commission

Phone: 1300 799 675  
Email: [perth@fwc.gov.au](mailto:perth@fwc.gov.au)  
(enquiries only)  
Email: [melbourne@fwc.gov.au](mailto:melbourne@fwc.gov.au)  
(to lodge a claim form)  
Web: <https://www.fwc.gov.au>

#### Government departments & other supports

##### Fair Work Ombudsman infoline

Telephone: 13 13 94  
Web: <https://www.fairwork.gov.au/>

##### WorkSafe

Phone: 1300 307 877  
Web: <http://www.dmirswa.gov.au/worksafe>

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