

# Stop workplace bullying or sexual harassment in the Western Australian Industrial Relations Commission (for state system employees)

## A Circle Green Community Legal claim guide

### Introduction

This claim guide is for state system employees in Western Australia who wish to make a bullying and/or sexual harassment claim.

There are two systems of employment law in Western Australia: a state system and a national system. For more information, please see our [publication “Q&A: State or National System for WA Employees”](#) from the workplace resources section of our website.

The information below has been written to assist you with the practical process of making an unfair dismissal 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 publications on our workplace resources page 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/>

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

### What is bullying?

A claim to stop workplace bullying can be made to the Western Australian Industrial Relations Commission (**WAIRC**) if:

- while you're 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 employees"](#).

### What is sexual harassment?

A claim to stop sexual harassment can be made to the WAIRC if while you are at work someone:

- 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 you would be offended, humiliated or intimidated. It does not matter whether the perpetrator meant for their actions to offend, humiliate or intimidate you.

For more information about workplace sexual harassment, 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.

## Eligibility

You can make a claim to the WAIRC if you are a "worker", and you work for a state 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 state 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 and/or sexual harassment claim within any specific period of time. However, you should keep in mind the following information if you are thinking of making a claim.

## Bullying

The WAIRC 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.

## Sexual harassment

The WAIRC can only handle a sexual harassment claim if there is still a risk that you will continue to be sexually harassed by the same person or group. This means you can only make a claim if you are still working in the workplace where the sexual harassment took place. Unlike a bullying claim, you do not need to have experienced repeated instances of sexual harassment. It is enough if the sexual harassment occurred once.

## Outcomes

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.

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

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

- any outcomes of an investigation into the alleged bullying and/or sexual harassment carried out by someone else;
  - For example, the outcomes of an investigation into bullying and/or sexual harassment 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 WAIRC will consider if your employer has a workplace bullying and/or sexual harassment policy and any outcomes of using these policies to try and sort out your issues.
- any other matters that the WAIRC thinks are relevant.

Some possible orders include:

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

## 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.

## Representation

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

It is not necessary to be represented in the WAIRC. However, if you choose to be represented, any adult person can represent you as an agent, trade union, or legal practitioner.

You must give your authority by lodging a Form 11 – Representative Commencing or Ceasing to Act.

The WAIRC Registry can provide you with a list of legal practitioners.

## Interpreters and other requirements

The WAIRC 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 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 (eg a hearing loop). The WAIRC will try to make arrangements for you.

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

## Claim process

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

### Starting a claim

To make a claim you must complete a Form 14 –Application for an Order to Stop Bullying or Sexual Harassment (or Both).

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

You will need to lodge the Form 14 with the WAIRC and pay the filing fee. Information about fees can be found here: <https://www.wairc.wa.gov.au/about-us/fees/>

You can lodge your form online, by post, by email, or in person at the WAIRC Registry. See the end of this Claim Guide for the WAIRC's details.

If paying the filing fee will cause you serious financial hardship, you can apply to the WAIRC for the filing fee to be waived contacting the WAIRC Registry before lodging your Form 14.

### Response

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

After gathering information about the claim from all parties, the WAIRC will decide how to deal with your claim. The WAIRC may dismiss your claim if it thinks that your claim has no merit.

Sometimes, the WAIRC can also refer matters to WorkSafe, the work health and safety regulator. In Western Australia.

Otherwise, the WAIRC can decide to deal with your claim by conciliation, arbitration, or take other appropriate action. If this happens, the WAIRC 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 WAIRC to adjourn the meeting and explain the reason why you can't be there. The WAIRC will only adjourn the meeting if you have a good reason.

## Conciliation

Conciliation is an informal meeting, which aims to sort out your issues. There will be an independent person (a conciliator), who will guide the conversation. The conciliator is usually a WAIRC member, who will not take sides.

The WAIRC will try conciliation first. The other option is arbitration, which is more formal (further information below).

Conciliations are on a “without prejudice” basis. This means that things you say during conciliation generally cannot be used in an arbitration hearing.

Conciliations also happen “off the record”, meaning that there will be no transcript or record of the conversations that take place. There may a written record taken of the outcome of the conciliation.

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

- 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 conciliator might find common ground, or suggest possible solutions.

Conciliation conferences are usually held in person at the WAIRC offices. This means that it is likely that you will have to see the person who has bullied and/or sexually harassed you.

Conciliations may also be held over the phone if there is a reason that you or another party cannot go to the conciliation in person (eg if you live in a rural, regional, or remote area).

### Preparing for conciliation

Some things you can do to prepare for conciliation 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 conciliation;
- finding all relevant documents - eg diary notes, letters or emails with your employer about the bullying and/or sexual harassment, any formal written complaints;
- considering bringing along a support person or legal representative (the WAIRC Registry can provide you with a list of lawyers); 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 conciliation

If you reach an agreement, the conciliator can help to record the agreement in writing. They may also make an order that discontinues (ie stops) your claim.

If you do not reach an agreement, the claim will usually go to arbitration.

See Circle Green's Q&As "[Q&A: Conciliation conferences for WA employees](#)" for more information.

## **Arbitration**

An arbitration is a formal hearing run by the WAIRC. Arbitrations are usually held in public, which means that anyone can go to them. Sometimes the WAIRC will hold arbitrations in private, but there needs to be a good reason for doing this.

The WAIRC will make a decision, which you and the employer must follow. The decision will be recorded in a public document on the WAIRC website.

You can reach an agreement with the employer at any time before the arbitration happens. You should tell the WAIRC if this happens.

## **Discontinuing your claim**

You can discontinue (ie stop) your claim at any time by lodging a Form 1A - *Multipurpose Form* with the WAIRC.

## **Enforcing an order**

If the WAIRC makes an order and it is breached, the person breaching the order can be required to pay a fine. Currently, the fine can be up to \$13,000 for people and \$65,000 for companies. This fine can be paid to 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 WAIRC order, you would need to make a separate claim. You would need to make this separate claim to the Industrial Magistrates Court, not to the WAIRC. You should seek legal advice before making this kind of claim.

## **Appeals**

If you don't agree with a decision made by the WAIRC, you can apply to the WAIRC to appeal it. You must be able to convince the WAIRC that it should grant permission for your appeal because your appeal is in the public interest.

If you want to appeal a decision, you will need to lodge a Form 8 – *Notice of Appeal Against a Decision made by the Commission or the Industrial Magistrates Court* with the WAIRC within 21 days of the date of the decision.



After you do this, the WAIRC 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://portal.wairc.wa.gov.au/forms>

- Form 14 – Application for an Order to Stop Bullying or Sexual Harassment (or Both)
- Form 11 - Notification of Representative Commencing or Ceasing to Act
- Form 1A - Multipurpose Form
- Form 8 – Notice of Appeal Against a Decision made by the Commission or the Industrial Magistrates Court

## Related resources

- [Q&A: State or National system for WA employees](#)
- [Q&A: Bullying against WA workers](#)
- [Q&A: Conciliation conferences 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 WA</b></p> <p>Telephone: 1300 307 877</p> <p>24 hour serious incident and fatality reporting line: 1800 678 198</p> <p>Web: <a href="https://www.commerce.wa.gov.au/worksafe/">https://www.commerce.wa.gov.au/worksafe/</a></p> <p><b>Wageline</b></p> <p>Phone: 1300 655 266</p> <p>Web: <a href="https://www.dmirs.wa.gov.au/contactwageline">https://www.dmirs.wa.gov.au/contactwageline</a></p>

### Disclaimer:

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