



Upcoming changes to state employment laws in WA

Sexual harassment changes

A new express prohibition on sexual harassment is being introduced in the state industrial relations system, along with additional avenues for workers to seek orders and compensation where they have been sexually harassed in connection with work.

These new provisions in the *Industrial Relations Act 1979* (IR Act) have been introduced by the *Industrial Relations Legislation Amendment Act 2024* and will commence on 31 January 2025.

This fact sheet outlines:

- the new prohibition on sexual harassment in connection with work
- vicarious liability for employers and principals
- resolution of sexual harassment claims.

Prohibition on sexual harassment in connection with work

From 31 January 2025, there will be an express prohibition on sexual harassment in connection with work in the IR Act. The IR Act will provide that a person must not sexually harass another person in connection with the other person being a worker or seeking to become a worker in a particular business or undertaking.

A person conducting a business or undertaking is also a worker, and therefore protected by the prohibition on sexual harassment in connection with work, if they are an individual who is carrying out work in that business or undertaking.

The prohibition will include sexual harassment perpetrated by third parties such as customers or clients of a business. It can therefore encompass an individual who is a national system employer or employee.

The new prohibition reflects the prohibition on sexual harassment in the federal *Fair Work Act 2009*.

State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws that will commence on 31 January 2025. For details on the changes visit www.demirs.wa.gov.au/new-employment-laws.

Vicarious liability

Under the new provisions, an employer or a person who engages another person as an agent ('the principal') may be vicariously liable for acts of their employees or agents. This means that, if an employee or agent, in connection with their employment or agent's duties, sexually harasses a person in the connection with work, the IR Act applies to the principal as if the principal had also sexually harassed the other person.

This will not apply if the principal proves they took all reasonable steps to prevent the employee or agent from doing acts that would contravene the prohibition on sexual harassment. For example, did the principal develop and implement workplace sexual harassment policies and engage in periodic reinforcement of those policies. What 'reasonable steps' are may depend on the size of the organisation, the nature of its workforce and any history of sexual harassment.

Sexual harassment proceedings

Stop sexual harassment applications

Existing provisions in the IR Act enable a worker to make a stop sexual harassment application seeking a stop sexual harassment order from the Western Australian Industrial Relations Commission (WAIRC). Under these provisions, the WAIRC can make any order it considers appropriate to prevent a worker being sexually harassed by an individual, other than an order requiring payment of compensation. The purpose of a stop sexual harassment order is to prevent future sexual harassment where there is a risk that the worker will continue to be sexually harassed at work by the individual.

These provisions have been retained in the IR Act.

Sexual harassment referrals

New additional provisions will allow a person to make a sexual harassment referral to the WAIRC alleging sexual harassment in connection with work. The WAIRC may then conciliate and arbitrate the claim.

Where the WAIRC arbitrates a sexual harassment referral and determines that a person has sexually harassed another person in connection with work, it will be able to make a range of orders. This may include one or more of the following:

- an order for compensation for loss or injury suffered because of the sexual harassment;
- an order for an amount for remuneration lost because of the sexual harassment;
- an order requiring a person to do a specified thing or cease a specified activity to redress loss or injury suffered because of the sexual harassment;
- an order for the purpose of preventing any future sexual harassment; and/or
- any other order the WAIRC thinks appropriate.

These orders are intended to remedy past harm as well as prevent future harm. There does not have to be a risk that the person will continue to be sexually harassed for these orders to be made and the employee does not have to still be employed by a particular employer.

The WAIRC will be able to make an order in relation to the person who engaged in the sexual harassment and any person who is vicariously liable for the person's sexual harassment of the aggrieved person.

There will be no limit on the amount of compensation that the WAIRC may award in sexual harassment referral proceedings.

Time frame

The WAIRC may dismiss a sexual harassment proceeding commenced more than 24 months after an alleged instance of sexual harassment.

Enforcement in the IMC

Contravention of the prohibition on sexual harassment

The prohibition on sexual harassment will be a civil penalty provision and a contravention of the prohibition will be enforceable in the Industrial Magistrates Court (IMC). The IMC will be able to issue penalties and make the same orders that the WAIRC may make when the WAIRC is dealing with a sexual harassment referral e.g. orders for compensation.

Contravention of an order made by the WAIRC or the IMC

A person will be able to take proceedings in the IMC for the enforcement of orders relating to sexual harassment made by the WAIRC or the IMC.

Limitations on multiple actions

The new provisions will not exclude or limit the operation of other State or Commonwealth laws that are capable of operating concurrently with the IR Act provisions. This includes the *Fair Work Act 2009*, *Equal Opportunity Act 1984* and *Sex Discrimination Act 1984*.

This means that a person will not be prevented from making a claim regarding a particular allegation of sexual harassment in connection with work to a different tribunal – for example, to the Equal Opportunity Commission, the Fair Work Commission or the Australian Human Rights Commission.

Multiple actions relating to the same allegation of sexual harassment will, however, be prevented. This means that a person cannot receive compensation for the same sexual harassment conduct from multiple bodies.

A person also cannot make an application to both the WAIRC and the IMC in relation to the same allegation that a person was sexually harassed in connection with work.

These restrictions will not apply to an application for a stop sexual harassment order. For example, a person will not be prevented from seeking both a stop sexual harassment order from the WAIRC and commencing proceedings in the IMC in relation to an alleged contravention of the prohibition on sexual harassment.

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