



# Guide to external pathways in New South Wales 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 New South Wales (NSW) 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 a 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 most 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.

## Industrial Relations Commission of New South Wales

Employees not covered by Australia's national workplace relations system may be able to seek help from their relevant state industrial relations body. In NSW, this is the Industrial Relations Commission. State public sector or local government employees in New South Wales who have been dismissed in connection with workplace sexual harassment, may be able to lodge an unfair dismissal claim with the 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. Full Stop Australia offers a 24/7 Sexual Violence Helpline for anyone in NSW impacted by sexual assault (including friends, families and supporters). You can contact the helpline on 1800 424 017 and find more information at: <https://fullstop.org.au/>.

### 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](mailto: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 Line operates 24 hours a day, 7 days a week and offers professional help, advice and referrals to local mental health services to everyone in NSW. You can call the service on 1800 011 511 and find more information on the [NSW Health 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 can provide 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](#).

### **LawAccess NSW**

LawAccess NSW is a free government telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW. LawAccess NSW can refer you to the community legal centre that's most appropriate for your legal issue. You can call LawAccess NSW on 1300 888 529 and find more information at: <http://www.lawaccess.nsw.gov.au/>.

### **Legal aid**

Legal aid commissions can provide a range of services, including information, legal advice and representation in courts and tribunals. You can find more information about legal aid



in NSW and check whether you are eligible to access their services at:

[www.legalaid.nsw.gov.au/get-legal-help](http://www.legalaid.nsw.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 NSW, including in respect of employment, discrimination and human rights matters:

- National Aboriginal and Torres Strait Islander Legal Services (national service): <https://www.natsils.org.au/>
- Aboriginal Legal Service (ACT and NSW): <https://www.alsnswact.org.au/>
- Wirringa Baiya – Aboriginal Women’s Legal Centre (NSW): <https://www.wirringabaiya.org.au/>

### **LGBTIQ+ workers**

#### **Counselling**

QLife is a national service that may be able to provide free counselling and support to LGBTIQ+ people: <https://qlife.org.au/get-help>.



## Legal services

The Inner City Legal Centre may be able to provide free legal assistance to LGBTIQ+ people in NSW, including on employment, discrimination and human rights matters:

<https://www.iclc.org.au/>.

## Workers with disability

The Australian Centre for Disability Law may be able to provide free legal assistance to persons with disability in NSW, including in respect of disability discrimination and human rights: <https://disabilitylaw.org.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](mailto: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.



## Anti-Discrimination NSW

Anti-Discrimination NSW (ADNSW) handle complaints of discrimination covered by the Anti-Discrimination Act 1977 (NSW) (Anti-Discrimination Act), which includes complaints of sexual harassment. ADNSW assist parties to a complaint to find a way of resolving the matter according to the law.

### **Jurisdiction**

New South Wales

### **Timeframe for lodging a complaint**

Generally, a complaint should be lodged within 12 months of the date the alleged conduct occurred. However, ADNSW takes a flexible approach to this timeframe, which can be extended.

### **Cost to lodge a complaint**

Free

### **Time taken to process a complaint**

Generally, the process takes approximately 5 months. ADNSW must keep the parties updated about the progress of the investigation at least every 90 days.

### **Making a complaint**

A complaint can be made by a person (or persons) who believe they have experienced unlawful discrimination (including sexual and sex-based harassment), or by their agent. Workers in various employment arrangements can make a complaint of workplace sexual harassment, including volunteers and unpaid trainees.

### **Dispute resolution process**

A complaint should be lodged in writing. Once received, the complaint will be subject to a preliminary assessment by ADNSW. ADNSW may refer a person where appropriate to another service.

If ADNSW accepts the complaint, they'll let the person who the complaint is about (the respondent) know. ADNSW may also ask them for their side of the story. More information may also be sought from the person making the complaint (the complainant).

Following this, a complaint may proceed to a conciliation conference facilitated by an ADNSW conciliator. At conciliation, both parties attempt to find a way to resolve the complaint.





Outcomes from a conciliation can include an apology or statement of regret, a commitment to train relevant staff, or financial compensation. To be binding, both parties must voluntarily agree to any outcomes.

### **When a complaint might be terminated**

A complaint may be terminated if ADNSW considers:

- it is frivolous, vexatious, misconceived or lacking in substance
- no part of the alleged conduct could amount to a contravention of the Anti-Discrimination Act or regulations
- the nature of the alleged conduct alleged is such that further action is not warranted
- another more appropriate remedy has been, is being, or should be, pursued
- the subject-matter of the complaint has been, is being, or should be, dealt with by another person or body
- the respondent has taken appropriate steps to remedy or redress the conduct, or part of the conduct, complained of
- it is not in the public interest to take any further action in respect of the complaint or any part of the complaint.

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

If a complaint is not resolved by conciliation, the complainant may request, within 21 days, for ADNSW to refer the matter to the NSW Civil and Administrative Tribunal (NCAT). Other options for referral are available.

If the Tribunal finds the complaint substantiated in whole or in part, it may make an order:

- that the respondent pay the complainant damages not exceeding \$100,000
- enjoining the respondent from continuing or repeating any unlawful conduct
- that the respondent perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant
- that the respondent publish an apology or a retraction (or both)
- declaring void in whole or part any contract or agreement made in contravention of the Anti-Discrimination Act or regulations
- declining to take any further action in the matter.

Each party pays their own costs in matters before NCAT. However, NCAT can order a party to pay the other party's costs if there are special circumstances to warrant this.





### Contact information

- Website: <https://antidiscrimination.nsw.gov.au/>
- Phone: (02) 9268 5555 or 1800 670 812
- Email: [complaintsadb@justice.nsw.gov.au](mailto:complaintsadb@justice.nsw.gov.au)
- Mail: Locked Bag 5000, Parramatta NSW 2124 effective 22 June 2022
- [Online enquiry form](#)

### Resources

- [How to make a complaint webpage](#)
- [Translated versions of the ADNSW complaint form](#)
- [How we handle your complaint webpage](#)
- [Conciliation conferences webpage](#)
- [Sexual harassment fact sheet](#)
- [Sexual harassment complaint case studies](#)



## 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 5 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](mailto: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: <https://www.comcare.gov.au/>
- Email: [general.enquiries@comcare.gov.au](mailto:general.enquiries@comcare.gov.au) or [whs.help@comcare.gov.au](mailto: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 5 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* (Cth).

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)

### 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 <https://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 if satisfied 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/](http://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 under 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).

Adverse action by an employer can include:

- dismissing the employee
- injuring the employee in their employment
- altering the employee's position to the employee's prejudice
- discriminating between the employee and other employees of the employer
- 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 certain exceptional circumstances.

For general protections applications not involving dismissal, the application can be lodged up to 6 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 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***

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, a 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, apply to the FWC to arbitrate the matter.

An applicant cannot do both.

### ***FWC arbitration***

If both parties agree to the FWC arbitrating 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, 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 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**

- [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](http://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 the terms of settlement as agreed to by the parties. If conciliation is unsuccessful, the matter will proceed to arbitration before a FWC Member.

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 Federal Circuit and Family Court of Australia or Federal Court of Australia. 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](#)



## icare NSW

icare is a NSW government agency which provides workers' compensation insurance to many public and private sector employers in NSW and their workers.

### **Jurisdiction**

New South Wales

### **Timeframe for lodging a claim**

A claim should be lodged as soon as possible after the date of injury and, in any event, within six months of the date of injury (or up to three years for an injury causing death or serious and permanent disablement).

### **Cost to lodge a claim**

Free

### **Time taken to process a claim**

Generally, liability for the claim will be determined within 21 days (or one month for claims in respect of a lump sum compensation payment). While liability is being determined, a worker may be entitled to provisional payments for medical expenses within 7 calendar days of lodging their claim.

### **Making a claim**

A worker who suffers a personal injury (including any impairment of their physical or mental condition) arising out of or in the course of work, can make a claim.

Broadly speaking, a worker is a person who has entered into or works under a contract of service or a training contract with an employer.

Volunteers can also lodge a claim with icare if they have suffered an injury or illness while undertaking an authorised activity as a volunteer with certain state government and other volunteer agencies.

It is important to note that not all employers are covered for workers compensation by icare. Your employer will advise you if they are self-insured or have a policy through a specialised insurer.





## Claims management process

As soon as practicable after a worker suffers a work injury, they must notify their employer of that injury. Within 48 hours of that notification, the employer must notify icare of the worker's injury.

Once a worker has made their claim, their employer must forward the claim to icare within seven days. For NSW government employees, the employer will make the claim on the worker's behalf. For all other workers, if their employer has not notified their icare of the worker's injury, the worker can lodge the claim with icare directly. In most cases, icare will determine liability within seven business days of being notified and must do so within 21 days.

## When a claim might be denied

icare will not pay compensation for an injury that is:

- a heart attack or stroke, unless the nature of work results in significantly greater risk
- proved to be solely attributable to the serious and wilful misconduct of the worker, unless the injury results in death or serious and permanent disablement
- intentionally self-inflicted
- a psychological injury if the injury was wholly or predominantly caused by reasonable action taken by the employer (for example, with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal).

A claim may also be denied because:

- the claimant is not considered a worker
- the injury is not deemed sufficiently work-related
- the medical diagnosis does not fully or accurately reflect the facts
- the worker has already recovered damages from their employer (for example, as part of a settlement agreement) in respect of the same injury.

## What if a party is unhappy with the outcome?

If a party to the claim wishes to dispute the determination of liability, they can lodge a dispute with icare. icare will review the matter and decide whether to affirm, change or withdraw the decision.

If liability for the claim remains disputed, a party can lodge an application with the Personal Injury Commission (PIC) to determine the matter.





Initially, PIC will attempt to resolve the dispute by inviting both parties and their representatives to attend a teleconference. If the parties cannot resolve the matter at this stage, it will proceed to a conciliation conference. If the dispute is not resolved at the teleconference or conciliation conference, it will progress to a formal arbitration hearing where PIC will decide the dispute.

A party may request to appeal a decision by PIC. The decision will be internally reviewed by PIC's President or a deputy president, with the member either confirming or revoking the decision. If either party is aggrieved by the determination made by the member, they can appeal to the NSW Court of Appeal on grounds that the law was applied incorrectly.

Generally, in matters brought before court, 'costs follow the event'. That is, the unsuccessful party will usually be order to pay the costs of the successful party.

### Contact information

- Website: <https://www.icare.nsw.gov.au/>
- Phone: 13 77 22
- Email: [piclaims@icare.nsw.gov.au](mailto:piclaims@icare.nsw.gov.au)
- Mail: GPO Box 4052, Sydney NSW 2001

### Resources

- [Workers' compensation claims webpage](#)
- [Injury notification online form](#)
- [Report an injury or incident lodgement form](#)



## Industrial Relations Commission of New South Wales

The Industrial Relations Commission (IRC) of New South Wales is established under the *Industrial Relations Act 1996* with conciliation and arbitral functions, including deciding claims of 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.

### Jurisdiction

New South Wales

### Timeframe for lodging an application

An application for unfair dismissal should be lodged within 21 days from the date on which the dismissal took effect. If it is made later than that, the applicant (the person who has been dismissed) must provide reasons why the claim is late.

The IRC will consider the following when deciding whether to allow a late application:

- the reason for, and the length of, the delay
- any hardship that may be caused to the applicant or the employer if the application is or is not rejected
- the conduct of the employer relating to the dismissal.

### Cost to lodge an application

As of 22 July 2022, it costs an \$91.00 fee to lodge an unfair dismissal application. Fees can be waived in certain circumstances, including financial hardship. For more information please see: <https://irc.nsw.gov.au/irc/practice-and-procedures/fees.html>.

Generally, parties before the IRC pay their own costs. The IRC can order a party to pay another party's costs, however, such orders are rare.

### Time taken to process an application

Generally, it takes between two to nine months for the IRC to finalise an unfair dismissal matter, with a majority of applications finalised within six months.

### Making an application

An unfair dismissal claim can be made by a NSW state public sector or local government employee who is:



- covered by a State industrial award or enterprise agreement, or
- award free and earns no more than \$162,000.

An unfair dismissal claim may not be able to be made by:

- employees of private sector employers if dismissed after 1 January 2010
- apprentices or trainees
- independent contractors
- employees on a three month probation period if determined in advance
- some casual employees
- employees on contracts of employment for a specified period of time less than six months
- employees engaged under a contract of employment for a specific task.

### **Dispute resolution process**

To make a claim, applicants must complete an application form. The application can be lodged online, in person or by mail by the applicant or by their solicitor, agent or union representative.

Once an application is submitted to the IRC, the applicant will be provided with a date, time and location for conciliation. In the Sydney Metropolitan area, most cases are listed for conciliation within 3 weeks of receipt of the application. Where the workplace is located outside the Sydney Metropolitan area, cases may take slightly longer to progress.

The IRC will provide the applicant's employer (respondent) with a copy of the application and details for the first conciliation. The employer will be required to submit their response to the application within 10 days of receipt. The employer's response is an opportunity for the respondent to give details of their position in respect of the applicant's claim.

Conciliation is an important first step in resolving an unfair dismissal claim - it is very important that both parties attend. The purpose of conciliation is to try and resolve a claim by agreement without proceeding to a full hearing. The outcome of conciliation may be a settlement between the parties on agreed terms.

If a claim is not settled by conciliation, it will proceed to an arbitration hearing where a member of the IRC will hear evidence and make a decision that is binding on the parties. A claim may not proceed to arbitration unless all reasonable attempts to settle it by conciliation have been made.

Where the IRC upholds a claim for unfair dismissal, it may order an employer to:



- reinstate the employee to their former position
- re-employ the employee in another position that the employer has available
- provide back pay and other entitlements owing from the time of the dismissal, where reinstatement or re-employment is ordered
- compensate the employee by ordering payment of an amount not exceeding the remuneration of the employee during the six months before the dismissal, where reinstatement or re-employment is considered impracticable
- not dismiss the employee, where dismissal has been threatened.

### **What if a party is unhappy with the IRC's decision?**

If a party is unhappy with the arbitration decision, they can apply to appeal the matter before a Full Bench of the IRC. The decision or purported decision of the IRC on appeal may only be challenged through judicial review by the Supreme Court of NSW.

For proceedings at court, the general rule is that 'costs follow the event'. That is, the unsuccessful party is ordered to pay the costs of the successful party. It is at the discretion of the court to make such orders as to costs that the court considers fair and reasonable in the circumstances.

### **Contact information**

- Website: [www.irc.nsw.gov.au/](http://www.irc.nsw.gov.au/)
- Phone: 02 8688 3516
- Interpreter Service: 131 450
- Physical address: Level 10, 10-12 Smith Street, Parramatta NSW 2150
- Mail: PO Box 927, Parramatta NSW 2124

### **Resources**

- [Unfair dismissal online application form](#)
- [Employer's response to unfair dismissal application form](#)
- [Guide to conciliation](#)
- [Guide on 'What happens if conciliation fails?'](#)
- [Guide to preparing for arbitration](#)



## SafeWork NSW

SafeWork NSW is the WHS regulator in New South Wales. SafeWork NSW provides advice to workers, workplaces and the general community about workplace safety.

### Jurisdiction

New South Wales

### When to report a WHS issue

A person can report a WHS issue to SafeWork NSW if attempts to resolve the matter internally within the workplace are inappropriate or unsuccessful.

### Cost to report

Free

### Reporting a WHS issue

Under WHS laws, employers have a primary duty of care for the health and safety of everyone in the workplace, including workers and visitors.

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

### Dispute resolution procedure

If a worker has a WHS issue, they can try to resolve it within their workplace by:

- reporting the issue verbally to their supervisor or manager
- reporting the issue through the workplace's hazard reporting procedures
- raising the issue with the health and safety representative
- raising the issue with management through their union representative.

If none of the above courses of action are appropriate or successful, the worker can contact SafeWork NSW by phone, email or anonymously via its 'Speak Up' app, for assistance. Once a worker raises an issue with SafeWork NSW, it will be treated as a 'request for service' (RFS) and allocated a unique identification number. Within one business day of receiving an RFS, SafeWork NSW will assess any issues raised and determine the appropriate response in accordance with its *National compliance and enforcement policy*.

In response to an RFS, SafeWork NSW may:



- refer the matter if it's outside its jurisdiction
- ask for more information if insufficient information was provided
- if the issues raised are assessed as low risk, send an administrative response to the worker's employer drawing attention to the matters for action, as required (generally occurs within 3 business days)
- conduct a verification visit to assess what action the employer took after receiving the administrative response (generally occurs within three months)
- have an inspector visit the workplace if the issues raised are of a moderate to high risk (generally occurs within 1 business day for high risks and three to five business days for moderate risks).

SafeWork NSW may undertake an investigation to:

- determine exactly what caused the incident
- the lessons learnt to improve workplace safety and prevent future injuries,
- whether prosecution is warranted.

### **When a WHS issue might not be investigated**

SafeWork NSW will not consider a WHS issue if it is outside its jurisdiction. The response SafeWork NSW takes will depend on its assessment of the level of risk the matter presents within the workplace.

### **What if a party is unhappy with the outcome?**

A person can request in writing that SafeWork NSW start a prosecution if:

- they believe a category 1 or 2 offence under the *Work Health and Safety Act 2011 (NSW)* has occurred
- at least six months (but not more than 18 months) have passed following the incident and SafeWork NSW has not commenced a prosecution.

A category 1 offence occurs when a person has a health and safety duty, and without reasonable excuse engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness, and the person engages in the conduct with gross negligence, or is reckless as to the risk to an individual of death or serious injury or illness. Prosecutions for a category 1 offence are rare.

A category 2 offence occurs where a person has a health and safety duty and fails to comply with that duty, and the failure exposes an individual to a risk of death or serious injury or illness.



SafeWork NSW will provide a written response to a prosecution request within three months, and advise whether an investigation has been completed, and if a prosecution will be brought. If a decision is made not to prosecute, SafeWork NSW must provide the reasons for that decision. Following this, a person can ask the NSW Director of Public Prosecutions to further consider the matter.

### Contact information

- Website: <https://www.safework.nsw.gov.au/>
- Phone: 13 10 50
- Mail: Locked Bag 2906, Lisarow NSW 2252
- Voice calls or TTY call 133 677 and ask for 13 10 50
- Speak and listen service call 1300 555 727 and ask for 13 10 50
- SMS relay service on 0423 677 767 and type 13 10 50
- Make an internet relay call and type 13 10 50
- [‘Speak Up’ anonymous reporting](#)

### Resources

- [Sexual harassment webpage](#)
- [Code of Practice - Managing psychosocial hazards](#)



## Quick reference guide

Agency	Description	Contact information
<b>Australian Human Rights Commission</b>	The Australian Human Rights Commission investigates and resolves complaints of discrimination and breaches of human rights, including complaints of sexual harassment under the Sex Discrimination Act 1984 (Cth).	<ul style="list-style-type: none"> <li>• Website: <a href="https://humanrights.gov.au/">https://humanrights.gov.au/</a></li> <li>• Email: <a href="mailto:infoservice@humanrights.gov.au">infoservice@humanrights.gov.au</a></li> <li>• National Information Service: 1300 656 419</li> </ul>
<b>Comcare</b>	<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 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.</p>	<ul style="list-style-type: none"> <li>• Website: <a href="https://www.comcare.gov.au/">https://www.comcare.gov.au/</a></li> <li>• Email: <a href="mailto:general.enquiries@comcare.gov.au">general.enquiries@comcare.gov.au</a> or <a href="mailto:whs.help@comcare.gov.au">whs.help@comcare.gov.au</a></li> <li>• Phone: 1300 366 979</li> <li>• Mail: GPO Box 9905, Canberra ACT 2601</li> <li>• <a href="#">Online enquiry form</a></li> <li>• Translation and interpreter service: 13 14 50</li> <li>• Teletypewriter (TTY) users call 133 677 and ask for 1300 366 979</li> <li>• Speak and Listen users call 1300 555 727 and ask for 1300 366 979</li> </ul>





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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.

- 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

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**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 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.

- Website: <https://www.fwc.gov.au/>
- Phone: 1300 799 675
- [Online enquiry form](#)
- [Language help for non-English speakers](#)

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**Fair Work  
Ombudsman**

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.

- Website: [www.fairwork.gov.au/](http://www.fairwork.gov.au/)
- Phone: 13 13 94



		<ul style="list-style-type: none"> <li>• Mail: Fair Work Ombudsman, GPO Box 9887, Sydney NSW</li> </ul>
<b>Anti-Discrimination NSW</b>	Anti-Discrimination NSW (ADNSW) handles complaints of discrimination covered by the Anti-Discrimination Act 1977 (NSW), which includes complaints of sexual harassment. ADNSW assist parties to a complaint to find a way of resolving the matter according to the law.	<ul style="list-style-type: none"> <li>• Website: <a href="https://antidiscrimination.nsw.gov.au/">https://antidiscrimination.nsw.gov.au/</a></li> <li>• Email: <a href="mailto:complaintsadb@justice.nsw.gov.au">complaintsadb@justice.nsw.gov.au</a></li> <li>• Phone: (02) 9268 5555 or 1800 670 812</li> <li>• Mail: Locked Bag 5000, Parramatta NSW 2124</li> </ul>
<b>icare NSW</b>	icare is a NSW government agency which provides workers' compensation insurance to many public and private sector employers in NSW and their workers.	<ul style="list-style-type: none"> <li>• Website: <a href="https://www.icare.nsw.gov.au/">https://www.icare.nsw.gov.au/</a></li> <li>• Email: <a href="mailto:piclaims@icare.nsw.gov.au">piclaims@icare.nsw.gov.au</a></li> <li>• Phone: 13 77 22</li> <li>• Mail: GPO Box 4052, Sydney NSW 2001</li> </ul>
<b>Industrial Relations Commission of New South Wales</b>	The Industrial Relations Commission of New South Wales is established under the Industrial Relations Act 1996 (NSW) with conciliation and arbitral functions, including deciding claims of unfair dismissal.	<ul style="list-style-type: none"> <li>• Website: <a href="http://www.irc.nsw.gov.au">http://www.irc.nsw.gov.au</a></li> <li>• Phone: 02 8688 3516</li> <li>• Interpreter Service: 131 450</li> <li>• Mail: PO Box 927, Parramatta NSW 2124</li> <li>• Physical address: Level 10, 10-14 Smith Street, Parramatta NSW 2150</li> </ul>



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**SafeWork NSW**

SafeWork NSW is the WHS regulator in NSW. SafeWork NSW provides advice to workers, workplaces and the general community about workplace safety.

- Website: <https://www.safework.nsw.gov.au/>
  - Phone: 13 10 50
  - Mail: Locked Bag 2906, Lisarow NSW 2252
  - Voice calls or TTY call 133 677 and ask for 13 10 50
  - Speak and listen service call 1300 555 727 and ask for 13 10 50
  - SMS relay service on 0423 677 767 and type 13 10 50
  - Make an internet relay call and type 13 10 50
  - [‘Speak Up’ anonymous reporting](#)
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## Further information

Website: [respectatwork.gov.au](https://respectatwork.gov.au)