



# Guide to external pathways in South Australia 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 South Australia (SA) 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 an workplace 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 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 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.

## South Australian Employment Tribunal

Employees not covered by Australia's national workplace relations system may be able to seek help from their relevant state industrial relations body. In SA, this is the South Australian Employment Tribunal. State public sector or local government employees in SA who have been dismissed in connection with workplace sexual harassment, may be able to lodge an unfair dismissal claim with the South Australian Employment Tribunal.

## 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. In SA, Yarrow Place Rape & Sexual Assault Service offers assistance: [www.wchn.sa.gov.au/our-network/yarrow-place](http://www.wchn.sa.gov.au/our-network/yarrow-place).

### 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 SA Health Mental Health Triage Service operates 24 hours a day, 7 days a week and provides advice and information to people experiencing a mental health emergency or crisis situation. You can call the service on 13 14 65 and find more information on the [SA 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 offer 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](#).

### **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 SA and check whether you are eligible to access their services at: <https://lsc.sa.gov.au/contact>.

### **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](#).

## Other advocacy services

### 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.

### Working Women's Centres

Working Women's Centres are not-for-profit, community organisations can provide information and support on work related issues to women employees and women who wish to work. You can find further information about the Working Women's Centre in SA at: [wwcsa.org.au/contact/](http://wwcsa.org.au/contact/).

## Aboriginal and Torres Strait Islander workers

The following services may be able to provide free legal assistance that may be available to Aboriginal and Torres Strait Islander peoples in SA, 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 Rights Movement: <https://www.alrm.org.au/>.

## LGBTIQ+ workers

### Counselling

The following services may be able to provide free counselling and support to LGBTIQ+ people in SA:

- QLife (national service): <https://qlife.org.au/get-help>
- Uniting Communities Bfriend: <https://www.unitingcommunities.org/service/community-support/lgbtiqa-support>.



## Workers with disability

South Australian Community Legal Centres may be able to provide free legal assistance to persons with disability in SA, including in respect of disability discrimination and human rights: <https://saccls.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.



## 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. 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 five 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: [www.comcare.gov.au/](http://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 five 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.

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). Refer to the FWC website for further information on eligibility.

### 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 [www.fwc.gov.au/apply-or-lodge/fees-and-costs](http://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 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 exceptional circumstances.

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

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 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 involving dismissal***

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 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 a 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 the matter, 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](#)



## Office of the Commissioner for Equal Opportunity, South Australia

The South Australian Office of the Commissioner for Equal Opportunity (OCEO) is responsible for preventing certain kinds of discrimination based on sex, race, disability, age or various other grounds. Under the *Equal Opportunity Act 1984 (SA)* (Equal Opportunity Act), the OCEO can help people resolve discrimination, sexual harassment or victimisation complaints.

### **Jurisdiction**

South Australia

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

A complaint should be lodged within 12 months of the date the alleged conduct occurred. This timeframe can be extended in certain circumstances.

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

Free

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

Generally, the process takes between approximately two to three months.

### **Making a complaint**

A complaint can be made by a person (the complainant) who believes they have experienced sexual harassment. If the complainant has an intellectual disability, the complaint may be made on their behalf by a person who is, in the opinion of the OCEO Commissioner, a suitable representative of their interests. Workers in various employment arrangements can make a complaint of workplace sexual harassment.

### **Dispute resolution process**

A complaint should be lodged in writing to the OCEO. Once the complaint is lodged, the OCEO must give a written summary of the complaint to the person who the complaint is about (the respondent). If the complaint is accepted, it will be subject to a preliminary investigation by the OCEO. If the OCEO cannot assist, the complainant will be referred elsewhere. Otherwise, the complaint will progress to conciliation.

Outcomes agreed to at conciliation can include:

- a private or public apology



- changes to policies and procedures
- equal opportunity training
- job re-instatement
- compensation for financial loss or injury to feelings.

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

The OCEO may decline a complaint if:

- it is frivolous, vexatious, misconceived or lacking in substance
- the complainant has died, is unable to be contacted, does not want to proceed, or otherwise has evidenced a lack of interest in proceeding, or has unreasonably refused or failed to cooperate
- there is no reasonable prospect of an order being made by the South Australian Civil and Administrative Tribunal (SACAT) or of an order being made that is more favourable to the complainant than offers refused by the complainant in conciliation proceedings
- a criminal investigation is being conducted, or a person has been or is to be charged with a criminal offence, in relation to the same subject matter as the complaint.

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

If a complaint is unresolved by conciliation, the complaint can be referred to the SACAT for determination. In some cases, the OCEO can arrange and pay for a lawyer to assist the parties if a complaint is referred to the SACAT.

If the SACAT is satisfied that the respondent has breached the Equal Opportunity Act, it may order the respondent:

- pay compensation to a person for loss or damage arising from the breach
- refrain from further contravention of the Act
- perform specified acts with a view to redressing loss or damage arising from the contravention or remedying a discriminatory or unlawful act.

Each party pays their own costs in matters before SACAT. However, SACAT can order a party to pay the other party's costs in certain circumstances, such as if the matter involves complicated legal issues or if a party has behaved unreasonably.

### **Contact information**

- Website: [www.equalopportunity.sa.gov.au/](http://www.equalopportunity.sa.gov.au/)
- Email: [OCEO@sa.gov.au](mailto:OCEO@sa.gov.au)



- Mail: GPO Box 464, Adelaide SA 5001
- Phone: (08) 7322 7070
- TTY: phone 133 677 then ask for AGD on 1800 177 076
- Speak and Listen: phone 1300 555 727 and ask for AGD on 1800 177 076
- Internet Relay: connect to the [National Relay Service](#) and ask for AGD on 1800 177 076
- [Online enquiries form](#)

### Resources

- [Complaint process](#)
- [Making a complaint fact sheet](#)
- [Responding to a complaint fact sheet](#)
- [What is conciliation fact sheet](#)
- [Online complaint form](#)



## ReturnToWork SA

ReturnToWork SA (RTWSA) is responsible for providing work injury insurance and regulating the South Australian Return to Work scheme. RTWSA provides insurance to protect South Australian businesses and their workers in the event of a work injury and to support recovery and return to work. Crown and self-insured employers are also a significant part of the Return to Work Scheme and they have direct responsibility and management of work injury claims in their workplaces.

### **Jurisdiction**

South Australia

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

A claim should be lodged within six months of the date of injury.

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

Free

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

Generally, a majority of claims for physical injuries are determined within 10 business days of receipt. However, claims for mental health injuries are more complex in nature and take longer to establish whether or not the worker is eligible for assistance.

### **Making a claim**

A worker may make a claim for compensation for an injury (physical or mental) that arises from their employment.

A worker is a person who performs work under a contract of service (as defined by the *Return to Work Act 2014*). Certain volunteers, such as those volunteering with the SA Country Fire Services, SA State Emergency Services and in marine rescue, may be entitled to access workers' compensation. It's unlikely, however, that other unpaid workplace participants (such as interns and work experience students) are covered.

### **Claims management process**

Within 24 hours, or as soon as practicable, after a worker suffers a work injury, the worker must notify their employer of the injury. Within five business days of the date of injury the employer, if not self-insured, must forward the injury notification to their claims agent.

Once this has happened, a worker can lodge a compensation claim with their employer, or their employer's claims agent. On receipt of the claim, the compensating authority may





undertake investigations and inquiries to determine claim liability. This may include requiring the worker to attend an examination by an independent health practitioner.

If an employer disputes the claim, an investigation into the grounds on which the employer disputes the compensability of the injury will be conducted.

Following these processes, a determination will be made whether to accept or reject the claim.

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

If a party is unhappy with the claim determination, they may, within one month of that decision, request a review of that decision by the South Australian Employment Tribunal. When an application is made to the Tribunal, the compensating authority is requested by the Tribunal to reconsider the determination first.

The compensating authority must, within 10 business days, make its reconsideration decision to either confirm or vary the original decision. If a party is unhappy with the reconsideration decision, the matter will proceed before the Tribunal.

If the matter is not settled at conciliation, the Tribunal will consider the matter and can:

- affirm, vary, or set aside the decision and substitute its own decision
- send the matter back to the decision-maker for reconsideration
- make any other orders it considers appropriate, including in relation to costs.

### **When a claim might be denied**

Compensation is not payable for:

- a psychiatric injury that is the result of reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker or a decision not to renew or extend a contract of service
- a psychiatric injury that is the result of a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment
- a psychiatric injury that is the result of reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment
- an injury which arises in the course of the worker's involvement in a social or sporting activity that doesn't form part of their employment nor is undertaken at their employer's direction or request



- an injury wholly or predominantly attributable to the serious and wilful misconduct of the worker or the influence of alcohol or a drug voluntarily consumed by the worker.

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.

### Contact information

- Website: [www.rtwsa.com/](http://www.rtwsa.com/)
- Phone: 13 18 55
- Email: [info@rtwsa.com](mailto:info@rtwsa.com)
- [General enquiry online form](#)
- Physical address: 400 King William Street, Adelaide SA 5000 Australia

### Resources

- [Reporting an injury or making a claim](#)
- [Claim Frequently Asked Questions](#)
- [Request a call back](#)
- [Claim form](#)



## SafeWork SA

SafeWork SA is the WHS regulator in South Australia. SafeWork SA investigates workplace incidents and enforces WHS laws in South Australia.

### **Jurisdiction**

South Australia

### **When to report a WHS issue**

A person can report a WHS issue to SafeWork SA after attempts have been made to resolve the matter internally within the workplace.

### **Cost to report**

Free

### **Reporting a WHS issue**

An employer has a primary duty to ensure, so far as is reasonably practicable, that the health and safety of their workers is not put at risk. This duty applies to all participants in the workplace, including employees, clients, visitors, customers and volunteers.

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

### **Dispute resolution procedure**

Where a worker raises a WHS concern, all parties must meet or communicate with each other to help resolve the issue internally, having regard to the:

- immediacy of the risk
- number and location of workers affected
- resolution measures, either temporary and/or permanent, that should be implemented and who will be responsible.

If the WHS issue is resolved, details of the matter and the resolution should be set out in a written agreement, if any party to the issue requests it. If an agreement is prepared, all parties should be satisfied that the agreement accurately reflects the resolution, and a copy should be provided to everyone involved.

Where a WHS issue is unresolved, a party may contact SafeWork SA for assistance, including by lodging a psychological risk complaint and requesting that an inspector be appointed.



Once a complaint is lodged, SafeWork SA will review the information provided and an inspector will contact the worker to discuss their allegations. Details of the complaint will be provided to the worker's employer, however, the complainant's details will remain anonymous to the employer.

If a SafeWork SA inspector decides to visit the workplace, they may:

- inspect the workplace
- speak to the manager, or person in control of the workplace, workers or the health and safety representative
- review health and safety documentation
- speak to the employer about identified hazards and the controls the employer has in place.

Following an inspection, the inspector may issue:

- an improvement notice directing a person or organisation to undertake corrective action for an identified risk
- a prohibition notice directing the cessation of any activity that creates an immediate risk to the health or safety of workers, visitors, or members of the public
- an expiation notice (an on-the-spot fine) for an identified breach of relevant WHS laws.

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

SafeWork SA will not consider a WHS issue if it is outside its jurisdiction. Complaints are prioritised according to the risk to the health and safety of people in the workplace.

During an investigation, SafeWork SA must remain impartial and will not:

- advocate for an individual
- become involved in the details of a workplace conflict
- provide legal advice
- mediate between persons involved
- secure an apology or compensation
- remove an alleged bully from the workplace.

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

A person impacted by a decision of a SafeWork SA inspector may seek an internal review of that decision. Applications for review of a decision about an improvement, prohibition or non-disturbance notice, should be lodged within 14 days. SafeWork SA will review all



material and decide within 14 days whether to confirm, vary or set aside the original decision. A person impacted by that decision may request an external review through the South Australian Employment Tribunal (SAET).

At any stage during proceedings before the SAET, the Tribunal can make an order for a party to pay another party's costs. In making the order, SAET may have regard to any factors it considers relevant, including the conduct of the parties.

A person may ask SafeWork SA to bring a prosecution if:

- they believe a category 1 or 2 offence under the *Work Health and Safety Act 2012 (SA)* has occurred
- no prosecution has been brought between six to twelve months after the event has occurred.

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 is reckless as to the risk to an individual of death or serious injury or illness.

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 SA will provide a written response to a prosecution request within 3 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 SA must provide the reasons for that decision.

Following this, a person can ask the SA Director of Public Prosecutions (DPP) to further consider the matter. Within 1 month, the DPP will consider the request and advise SafeWork SA in writing as to whether the DPP considers that a prosecution should be brought.

### **Contact information**

- Website: [www.safework.sa.gov.au/](http://www.safework.sa.gov.au/)
- Email: [help.safework@sa.gov.au](mailto:help.safework@sa.gov.au)
- Phone: 1300 365 255
- Mail: GPO Box 465, Adelaide, SA 5001
- [Online enquiry form](#)



## Resources

- [Sexual harassment webpage](#)
- [Sexual harassment advice for workers](#)
- [Sexual harassment advice for employers](#)
- [Psychological risk complaint form](#)
- [Free advisory service for small to medium businesses request form](#)



## South Australian Employment Tribunal

The South Australian Employment Tribunal (SAET) is a statutory independent tribunal that resolves workplace-related disputes and issues, 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

South Australia

### Timeframe for lodging an application

An application for unfair dismissal should be lodged within 21 days from the date the dismissal took effect. If this timeframe is missed, SAET may deal with the application if there are exceptional circumstances that caused the delay.

A dismissal generally takes effect on the last day that the dismissed employee worked. However, an employer may continue to pay wages during a period of notice on termination but not require the employee still attend work. In this case, the dismissal takes effect at the end of the notice period.

### Cost to lodge an application

Free. At any stage during proceedings, SAET can make an order for a party to pay another party's costs. SAET may have regard to any factors it considers relevant, including the conduct of the parties.

### Time taken to process an application

Generally, SAET resolves a majority of unfair dismissal applications within three months.

### Making an application

An unfair dismissal application can be made if:

- the employee is employed by the South Australian State Government, a State Government business enterprise, or the local government sector
- the employee was dismissed at the initiative of their employer, were forced to resign because of the actions of their employer, or their employer substantially changed the basis of their employment.

A dismissed employee may not be able to make an unfair dismissal application if they are:

- on probation



- a casual worker
- an apprentice
- are a non-award employee whose remuneration immediately before the dismissal took effect is \$153,990 or more a year, from 1 January 2022
- are covered by an award that makes specific rules concerning unfair dismissal.

If the dismissed employee's employer is within the private sector, the non-government social and community services sector, the Commonwealth Public Service or is a university, the Fair Work Commission has jurisdiction to deal with the claim.

### **Dispute resolution process**

A dispute before SAET is resolved through agreement at a conference, conciliation or mediation, or through a decision at a hearing.

After an application has been lodged, SAET aims to schedule a conciliation conference within four weeks. The conciliation conference is an attempt for the parties to try to settle the matter by agreement. It is informal and private with each party given an opportunity to explain their position.

Both parties must attend the conference, during which the SAET Commissioner may speak to each party separately to explore and develop settlement options.

In order for a dismissal to be 'unfair', SAET must find that, on the balance of probabilities, the dismissal was harsh, unjust or unreasonable. If SAET decides the employee was unfairly dismissed, SAET can make a number of orders, including that the dismissed worker:

- be re-employed to the same position
- be re-employed in a different position or capacity
- receive compensation (not more than six months' remuneration or \$76,995, whichever is the greater).

If the employee was dismissed from the public sector for misconduct, SAET may order that they are re-employed but receive some disciplinary action for their misconduct.

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

If a party is unhappy with the SAET's decision, they can, within 28 days of the decision, lodge an appeal to the Full Bench of the South Australian Employment Court (SAEC). The SAEC can order a party to pay the other party's costs if the Court is of the opinion it is just to do so in the circumstances.





### Contact information

- Website: [www.saet.sa.gov.au/](http://www.saet.sa.gov.au/)
- Email: [saet@sa.gov.au](mailto:saet@sa.gov.au)
- Phone: (08) 8207 0999
- Physical address: Level 6 Riverside Centre, North Terrace, Adelaide SA 5000
- Mail: PO Box 3636, Rundle Mall SA 5000

### Resources

- [Unfair dismissal application form](#)
- [What you can expect webpage](#)



## Quick reference guide

Agency	Description	Contact information
<p><b>Australian Human Rights Commission</b></p>	<p>The Australian Human Rights Commission investigates and resolves complaints of discrimination and breaches of human rights, including complaints of sexual harassment under the <i>Sex Discrimination Act 1984</i> (Cth).</p>	<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>
<p><b>Comcare</b></p>	<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 <i>Work Health and Safety Act 2011</i> (Cth) and <i>Work Health and Safety Regulations 2011</i> (Cth) and is the national regulator for WHS in the Commonwealth jurisdiction.</p>	<ul style="list-style-type: none"> <li>• Website: <a href="http://www.comcare.gov.au/">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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	<p>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.</p>	<ul style="list-style-type: none"><li>• Internet relay users connect to the National Relay Service (NRS) and ask for 1300 366 979</li><li>• Video relay users can choose the available NRS video relay contact on Skype and ask for 1300 366 979</li><li>• SMS relay users call 0423 677 767 and ask for 1300 366 979</li></ul>
<b>Fair Work Commission</b>	<p>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:</p> <ul style="list-style-type: none"><li>• an order to stop sexual harassment or an order to stop bullying and sexual harassment (stop sexual harassment order)</li><li>• general protections</li><li>• unlawful termination</li><li>• unfair dismissal.</li></ul>	<ul style="list-style-type: none"><li>• Website: <a href="http://www.fwc.gov.au/">www.fwc.gov.au/</a></li><li>• Phone: 1300 799 675</li><li>• <a href="#">Online enquiry form</a></li><li>• <a href="#">Language help for non-English speakers</a></li></ul>
<b>Fair Work Ombudsman</b>	<p>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.</p>	<ul style="list-style-type: none"><li>• Website: <a href="http://www.fairwork.gov.au/">www.fairwork.gov.au/</a></li><li>• Phone: 13 13 94</li></ul>

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<p><b>Office of the Commissioner for Equal Opportunity, South Australia</b></p>	<p>The South Australian Office of the Commissioner for Equal Opportunity (OCEO) is responsible for preventing certain kinds of discrimination based on sex, race, disability, age or various other grounds. Under the <i>Equal Opportunity Act 1984 (SA)</i>, the OCEO can help people resolve discrimination, sexual harassment or victimisation complaints.</p>	<ul style="list-style-type: none"> <li>• Mail: Fair Work Ombudsman, GPO Box 9887, Adelaide SA</li> <li>• Website: <a href="http://www.equalopportunity.sa.gov.au">www.equalopportunity.sa.gov.au</a></li> <li>• Email: <a href="mailto:OCEO@sa.gov.au">OCEO@sa.gov.au</a></li> <li>• Mail: GPO Box 464, Adelaide SA 5001</li> <li>• Phone: (08) 7322 7070</li> <li>• TTY: phone 133 677 and ask for AGD on 1800 177 076</li> <li>• Speak and Listen: phone 1300 555 727 and ask for AGD on 1800 177 076</li> <li>• Internet Relay: connect to the <a href="#">National Relay Service</a> and ask for AGD on 1800 177 076</li> <li>• <a href="#">Online enquiries form</a></li> </ul>
<p><b>ReturnToWork SA</b></p>	<p>ReturnToWork SA (RTWSA) is responsible for providing work injury insurance and regulating the South Australian Return to Work scheme. RTWSA provides insurance to protect SA businesses and their workers in the event of a work injury and to support recovery and return to work. Crown and self-insured employers are also a significant part of the Return to Work Scheme and</p>	<ul style="list-style-type: none"> <li>• Website: <a href="http://www.rtwsa.com/">www.rtwsa.com/</a></li> <li>• Email: <a href="mailto:info@rtwsa.com">info@rtwsa.com</a></li> <li>• Phone: 13 18 55</li> <li>• Physical address: 400 King William Street, Adelaide SA 5000 Australia</li> <li>• <a href="#">General enquiry online form</a></li> </ul>



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they have direct responsibility and management of work injury claims in their workplaces.

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**SafeWork SA**

SafeWork SA is the WHS regulator in SA. SafeWork SA investigates workplace incidents and enforces WHS laws in SA.

- Website: [www.safework.sa.gov.au/](http://www.safework.sa.gov.au/)
- Email: [help.safework@sa.gov.au](mailto:help.safework@sa.gov.au)
- Phone: 1300 365 255
- Mail: GPO Box 465, Adelaide, SA 5001
- [Online enquiry form](#)

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**South Australian Employment Tribunal**

The South Australian Employment Tribunal (SAET) is a statutory independent tribunal that resolves workplace-related disputes and issues, including deciding claims of unfair dismissal.

- Website: [www.saet.sa.gov.au/](http://www.saet.sa.gov.au/)
  - Email: [saet@sa.gov.au](mailto:saet@sa.gov.au)
  - Phone: (08) 8207 0999
  - Mail: PO Box 3636, Rundle Mall SA 5000
  - Physical address: Level 6 Riverside Centre, North Terrace, Adelaide SA 5000
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## Further information

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