



LEGISLATION UPDATE

Respect at Work Bill

On 24 June 2021 the Federal Government introduced the [Sex Discrimination and Fair Work \(Respect at Work\) Amendment Bill](#) into Parliament, which forms part of the [Government's response](#) to the Sex Discrimination Commissioner's [Respect@Work report](#).

The Bill seeks to make changes to the Fair Work Act (FW Act), the Sex Discrimination Act (SD Act) and the Australian Human Rights Commission Act. The Bill will likely be debated in Parliament during the August sittings following a Senate Inquiry in relation to the Bill which is due to report by 6 August 2021.

While the provisions of the Bill are not yet law, employers may wish to familiarise themselves with the changes as broad support from both sides of Parliament is expected. It may be prudent for some employers to start to review any policies or training they may have in relation to sexual harassment and appropriate workplace behaviour.

SUMMARY OF THE KEY PROPOSED CHANGES EMPLOYERS SHOULD BE AWARE OF:

- 1. Unfair Dismissal:** The FW Act would be amended to clarify that sexual harassment can be conduct amounting to a valid reason for dismissal in determining whether a dismissal was harsh, unjust or unreasonable. The Government has also indicated that it will amend the definition of 'serious misconduct' in the FW Regulations to include sexual harassment.
- 2. Stop Sexual Harassment Order:** The existing anti-bullying jurisdiction in the FW Act would be amended to make it clear that the Fair Work Commission can make an order to stop sexual harassment in the workplace (preventative rather than monetary). Distinct from existing stop bullying orders, the conduct would not need to be repeated to qualify.
- 3. Expansion of Application of Sex Discrimination Act:** The protection from sexual harassment under the SD Act would be expanded to include those not previously covered such as interns, volunteers, and self-employed workers. This is designed to align with the model Work Health and Safety law.
- 4. Prohibition on Sex-Based Harassment:** Sex-based harassment would be prohibited under the SD Act, which would be defined as unwelcome conduct of a seriously demeaning nature by reason of the person's sex, in circumstances which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. This is relevant to both employees, and employers who can be held vicariously liable for the conduct of their workers. Ancillary liability provisions will also apply, meaning for example, a supervisor may be held liable as an 'accessory' to the sex-based harassment if they aided and permitted its continuation.
- 5. Complaints:** Instead of the current six months, a complaint under the SD Act could only be terminated if it is made more than 24 months after the alleged unlawful conduct took place.
- 6. Victimisation:** The Bill would provide that victimising conduct (such as threatening or subjecting a person to detriment for taking action such as lodging a complaint) can form the basis of a civil action for unlawful discrimination (in addition to a criminal complaint) under the SD Act.
- 7. Miscarriage leave:** The Bill would clarify that women who experience a miscarriage, and their partners, will have access to existing rights for up to two days of compassionate leave.