

# ACTUS WORKPLACE LAWYERS

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## **New laws to impose a statutory obligation on employers to prevent sexual harassment**

The Australian Government has introduced a Bill into Parliament to implement several recommendations in the Sex Discrimination Commissioner's 2020 *Respect@Work Report*. Significantly, the new laws will impose a statutory obligation upon employers to prevent sexual harassment, sex discrimination and victimisation at work.

When passed by Parliament, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* will:

- Place a positive duty on employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible;
- Expressly prohibit conduct that results in a hostile workplace environment on the basis of sex;
- Give the Australian Human Rights Commission (AHRC) new compliance powers, including the ability to give compliance notices to employers and enter into enforceable undertakings;
- Empower the AHRC to inquire into systemic, unlawful discrimination;
- Enable unions and representative groups to make representative applications in Federal Courts on behalf of people who have experienced unlawful discrimination;
- Insert cost protections in the *Australian Human Rights Commission Act 1986* for parties involved in unlawful discrimination proceedings. The default position will be that each party bears its own costs, but the Court will be able to award costs to the successful party if it would be just to do so in the circumstances; and
- Require Commonwealth public sector organisations to report to the Workplace Gender Equality Agency on the Agency's gender equality indicators.

The Bill has been referred to the Senate Legal and Constitutional Affairs Legislation Committee for an inquiry. The Committee is required to report to Parliament by 3 November 2022. The Bill is likely to be passed by Parliament in November with the legislative amendments coming into operation soon after.

The introduction of the new Bill into Parliament follows the legislative amendments made by the previous Federal Government in 2021 which implemented a number of other recommendations in the *Respect@Work Report*. The *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*:

- Amended the unfair dismissal laws in the *Fair Work Act 2009* (FW Act) to make specific reference to sexual harassment;
- Expanded the anti-bullying provisions in the FW Act to give the Fair Work Commission expanded powers to deal with sexual harassment in Australian workplaces;

- Creating a new definition of sex-based harassment in the *Sex Discrimination Act 1984* (SD Act); and
- Expanded the coverage of the SD Act to align with the model work health and safety laws by adopting the term 'worker' and 'persons conducting a business or undertaking' (PCBU); and
- Expanded the compassionate leave provisions in the FW Act to include miscarriages.

It is important for all employers to review their policies, systems and approaches to preventing and dealing with sex discrimination, sexual harassment and victimisation in their workplaces.

Actus Workplace Lawyers is available to assist employers with discrimination, sexual harassment and bullying matters. We can assist with legal advice, workplace investigations, reviewing and developing policies, and representation in Courts and tribunals.

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