



Education and Employment Legislation Committee Inquiry into the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

Submission of the Fair Work Commission

July 2021

Introduction

The Fair Work Commission (the Commission) welcomes the opportunity to make a submission to the Education and Employment Legislation Committee (the Committee) inquiry into the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 (the Bill).

The Commission is Australia's national workplace relations tribunal. It is an independent body with the power to carry out a range of functions including:

- dealing with unfair dismissal claims
- dealing with anti-bullying claims
- dealing with general protections and unlawful termination claims
- setting the national minimum wage and minimum wages in modern awards
- making, reviewing and varying modern awards
- assisting the bargaining process for enterprise agreements
- approving, varying and terminating enterprise agreements
- making orders to stop or suspend industrial action
- dealing with disputes brought to the Commission under the dispute resolution procedures of modern awards and enterprise agreements
- determining applications for entry permits; and
- promoting cooperative and productive workplace relations and preventing disputes.

The work of the Commission is carried out by Commission Members, overseen by the President and supported by administrative staff, in accordance with the *Fair Work Act 2009* (FW Act).

The Commission's role is to administer its jurisdiction in accordance with statute. The Commission does not enter legal policy debate other than to point out technical changes that may make administration of the law simpler or where the Commission foresees practical issues should proposed legislation be passed as drafted.

This submission concerns the Bill's proposed amendments to the anti-bullying jurisdiction in the FW Act to provide for the Commission to make orders to stop sexual harassment in the workplace.

This submission seeks a short deferral of the commencement of those amendments to ensure the Commission has time to successfully implement the changes required to case manage and determine applications for orders to stop sexual harassment.

Deferral of commencement

The Bill proposes that the whole of the Act commence the day after the Act receives the Royal Assent.¹

The Commission requests that, rather than commencing the day after Royal Assent, the amendments that extend the anti-bullying jurisdiction to expressly provide for orders to stop sexual harassment² commence no earlier than 2 months after Royal Assent.

While the Commission has well-established, efficient and expert case management and dispute resolution processes in place in the anti-bullying jurisdiction, the Commission seeks a deferral of commencement of the amendments for the following reasons:

¹ Item 2(1) of the Bill.

² The relevant items in Schedule 1 to the Bill are items 4, 5, 6 (definition of 'sexually harassed at work') and 11-28.

1. To provide adequate time to consult with experts and advisory groups on appropriate processes for case managing applications for orders to stop sexual harassment (including ensuring that appropriate confidentiality arrangements are in place).
2. To provide adequate time to engage with industry and employee representatives, frequent users of the Commission's services and other stakeholders.
3. To establish appropriate support services for applicants (which could include triage and referral to external services such as sexual harassment support, counselling and mental health services).
4. To make changes to the Commission's forms and procedural rules.
5. To provide adequate time to train Commission Members, conciliators and case management staff who will deal with sexual harassment cases (in particular, on the nature, drivers and impacts of sexual harassment and on trauma informed practice).
6. To develop tailored information resources for applicants, respondents, Commission staff and Members (including website material, template correspondence, guides and a benchbook).

The Commission's experience in dealing with cases in the anti-bullying jurisdiction is that intensive case management and timely resolution of applications is essential to avoiding further harm to vulnerable parties and damage to work relationships.

The Commission expects a significant increase in applications when the amendments commence, including because of heightened public awareness of workplace sexual harassment. Even prior to the extension of the jurisdiction to sexual harassment, the Commission's antibullying case managers have already anecdotally observed an increase in references to sexual harassment in recent antibullying applications.

The Commission has not received any additional funding or resourcing to implement and administer the extension to the anti-bullying jurisdiction, which also limits the Commission's capacity to operationalise the amendments within a very short lead-in time.

If the requested 2 month deferral of commencement is not granted, there is a significant risk that the Commission's capacity to successfully implement the new jurisdiction and uphold the interests of vulnerable parties will be compromised.