

WHAT IS TAKING SHAPE, A LOOK INTO RESPECT@WORK LEGISLATIVE REFORMS

After being introduced to federal parliament on 24 June 2021, the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (Bill) is currently before the Senate. As the Bill inches towards becoming law, we have summarised some of the key changes that will result from the Bill's passage through the parliament.

The Bill implements a number of key recommendations from the Australian Human Rights Commission's 'Respect@Work Report', which was published in January 2020. Not all of the AHRC's recommendations have found their way into the Bill – importantly, the government has chosen not to enact a positive duty requiring employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible.

Summary of the key features of the Bill

Key proposed changes to the <i>Fair Work Act 2009</i> (Cth) (FW Act)	
Stop sexual harassment orders	The Fair Work Commission (FWC) would be empowered to issue 'stop sexual harassment orders' by expanding and adding to the current anti-bullying jurisdiction under the FW Act. To make a stop sexual harassment order, the FWC will need to be satisfied that a worker has been sexually harassed at work by one or more individuals, and there is a risk that the worker will continue to be sexually harassed at work. Unlike in anti-bullying cases, there is no requirement for sexual harassment to be repeated.
Sexual harassment constitutes valid reason for dismissal and serious misconduct	A note would be inserted into section 387 of the FW Act to clarify that sexual harassment is a valid reason for dismissal for the purposes of the unfair dismissal jurisdiction. The <i>Fair Work Regulations 2009</i> (Cth) have also been amended to include sexual harassment in the definition of 'serious misconduct'.
Compassionate leave for miscarriages	In a lesser known but important amendment, the Bill would clarify that miscarriage is a permissible occasion for the purposes of access to compassionate leave for both a woman who experiences miscarriage and their partner.

Key proposed changes to the <i>Sex Discrimination Act 1984</i> (Cth) (SD Act) and the <i>Australian Human Rights Commission Act 1986</i> (Cth) (AHRC Act)	
Broadening the application of the SD Act	The Bill would broaden the application of the SD Act to cover 'workers', in a similar vein to WHS legislation, meaning that non-employees such as volunteers and interns will now have the benefit of the legislation. The application of the SD Act would also be expanded to include public figures, such as judges, members of parliament, and their staff.
Prohibition on sex-based harassment	'Sex-based harassment' would be expressly prohibited. Sex-based harassment is defined as unwelcome conduct of a seriously demeaning nature towards a person harassed by reason of their sex in circumstances where a reasonable person would have anticipated that the person would be offended, humiliated or intimidated. In contrast to the existing prohibition on sexual harassment, this protection captures conduct which is not sexual in nature.

**Extending the
time limit for SDA
claims**

In recognition of the prevalence of historical sexual harassment complaints, the time period in which complaints under the SD Act can be made to the AHRC will be extended from six months to 24 months.

We are continuing to monitor for developments as the Bill passes through parliament. In the meantime, if you have any questions or require workplace relations assistance, please contact:



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