

Stop bullying and sexual harassment orders under the Industrial Relation Commission's new jurisdiction

Issue	Stop bullying orders	Sexual harassment orders
Who can apply for an order?	<ul style="list-style-type: none"> An employee (including a 'worker' within the meaning in the WHS Act – this includes sole traders and employees of labour hire organisations) who reasonably believes that they have been <i>"bullied at work"</i>, and who is not able to apply for a stop bullying order by the FWC; or Their union. <p>Employees cannot commence both a claim under anti-discrimination legislation (Federal or State) and an application for a stop bullying order.</p>	<ul style="list-style-type: none"> An employee, prospective employee, or person conducting a business or undertaking who "alleges" that they have been sexually harassed in contravention of the new prohibition against sexual harassment; or Their union. <p>An application must be made no later than 24 months after the alleged sexual harassment.</p> <p>A person cannot commence both a claim under anti-discrimination legislation (Federal or State) and an application for a sexual harassment order.</p>
The conduct that is 'stopped' or remedied	<p>Bullying at work – an employee is bullied at work if:</p> <ul style="list-style-type: none"> an individual, or group of individuals, repeatedly behave unreasonably towards the employee or a group of employees that they are part of; the behaviour occurs whilst the employee is at work; and that behaviour creates a health and safety risk. <p>Reasonable management action is not bullying.</p>	<p>Sexual harassment in connection with work – <i>see above</i>.</p>
Procedural steps after an application	Conciliation must occur first.	Conciliation must occur first.

	<p>Unresolved matters are arbitrated, where the IRC can then make only one of two orders:</p> <ol style="list-style-type: none"> 1. a stop bullying order (<i>see below</i>); or 2. an order dismissing the application. 	<p>Unresolved matters are arbitrated, where the IRC can then make only one of two orders:</p> <ol style="list-style-type: none"> 3. a sexual harassment order (<i>see below</i>); or 4. an order dismissing the application.
<p>What orders can the IRC make?</p>	<p>The IRC can make a stop bullying order, which is in effect “any order it considers appropriate” to prevent an employee from being bullied at work, if it is satisfied that:</p> <ul style="list-style-type: none"> • the employee has been bullied at work; and • there is a risk that the employee will continue to be bullied at work. <p>A stop bullying order can apply to individual employees or to an employer.</p> <p>Without limiting the kinds of orders that could be made, the IRC may order:</p> <ul style="list-style-type: none"> • payment of compensation for loss or damage (up to \$100,000); • a prohibition on continuing or repeated bullying; • the performance of reasonable action to redress loss or damage; • the publication of an apology; or • the development and implementation of a program or policy aimed at eliminating bullying. <p>Notably, the focus of any order is on “prevention”, but can include the payment of compensation for past conduct.</p>	<p>The IRC can make a sexual harassment order, which is in effect “any order it considers appropriate”, if it is satisfied that an employee has been sexually harassed in connection with work.</p> <p>A sexual harassment order can apply to individual employees or to a vicariously liable employer.</p> <p>Without limiting the kinds of orders that could be made, the IRC may order:</p> <ul style="list-style-type: none"> • payment of compensation for loss or damage (up to \$100,000); • a prohibition on continuing or repeated sexual harassment; • the performance of reasonable action to redress loss or damage; • the publication of an apology; or • the development and implementation of a program or policy aimed at eliminating sexual harassment.
<p>Breaching an order</p>	<p>Liable for a civil penalty of up to \$18,870 for individuals or otherwise up to \$93,900.</p>	<p>Liable for a civil penalty of up to \$18,870 for individuals or otherwise up to \$93,900.</p>