

Sexual harassment regulation map

This table is designed to give employers a snapshot of three key regulatory schemes that are relevant to employers' obligations and responsibilities to prevent and respond to workplace sexual harassment. It is not an exhaustive summary of the components of each scheme and is not intended to stand in place of legal advice.

	Equality and anti-discrimination	Health and safety	Employment	
Legislation	<p>Equal Opportunity Act 2010 (Vic) ('Equal Opportunity Act')</p>	<p>Sex Discrimination Act 1984 (Cth) ('Sex Discrimination Act')</p> <p><i>Australian Human Rights Commission Act 1986</i> (Cth) (AHRC Act)</p>	<p>Occupational Health and Safety Act 2004 (Vic) ('OHS Act')</p> <p>Workplace Injury Rehabilitation and Compensation Act 2013 ('WIRC Act')</p>	<p>Fair Work Act 2009 (Cth) ('Fair Work Act')</p>
Protection for workers	<p>The Equal Opportunity Act prohibits workplace sexual harassment, discrimination and victimisation by employers and employees.</p>	<p>The Sex Discrimination Act prohibits workplace sexual harassment by employers and employees.</p>	<p>The OHS Act does not expressly prohibit sexual harassment, but indirectly provides protection from sexual harassment as a workplace hazard or risk.</p> <p>Where a worker suffers injury – arising out of, or in the course of or due to the nature of, employment – that was significantly contributed to by work-related sexual harassment, they may make a claim for compensation under the WIRC Act.</p>	<p>The Fair Work Act does not expressly prohibit sexual harassment. The Fair Work Act does provide protections against bullying and taking adverse action in breach of general protections.</p> <p>Workers may apply for a stop-bullying order, which may indirectly provide protection from sexual harassment.</p> <p>The general protections prohibit adverse action against an employee if the action is because of their sex, sexual orientation and/or pregnancy. They also prohibit a person from taking adverse action against another person because they have exercised a workplace right, including under anti-discrimination laws. The law is not clear as to whether adverse action may capture sexual harassment. Workers should seek their own legal advice.</p>
Coverage	<ul style="list-style-type: none"> • Employees • Contractors • Volunteers and unpaid workers • Job applicants • People sharing a common workplace 	<ul style="list-style-type: none"> • Employees • Contractors • Job applicants • People sharing a common workplace • Doesn't cover volunteers or unpaid workers • Doesn't cover Victorian public servants 	<ul style="list-style-type: none"> • Employees • Contractors and their employees • Other persons in the workplace including volunteers, unpaid workers and members of the public 	<p>Different categories of people can make general protections and workplace bullying applications:</p> <p>General protections</p> <ul style="list-style-type: none"> • Employees • Prospective employees • Contractors • Prospective contractors <p>Workplace bullying</p> <ul style="list-style-type: none"> • Employees • Contractors or subcontractors • Outworkers • Volunteers • Apprentices, trainees and students gaining work experience
Positive duty for employers	<p>Yes, employers must take reasonable and proportionate measures to eliminate sexual harassment, victimisation and discrimination.</p>	<p>No, but employers can be held responsible for breaches of the law.</p>	<p>Yes, employers must:</p> <ul style="list-style-type: none"> • provide and maintain a work environment that is safe and without risk to the health and safety of employees, so far as reasonably practicable • eliminate or control risks to health and safety, so far as reasonably practicable • provide and maintain safe systems of work, and give employees the necessary information, instruction, training or supervision to do their job safely and without risks to health • consult with employees and health and safety representatives about health and safety issues • ensure that people other than employees are not exposed to risks to their health or safety arising from the business, so far as is reasonably practicable. 	<p>No, but employers can be held responsible for breaches of the law.</p>

	Equality and anti-discrimination	Health and safety	Employment	
Employer's responsibility for actions of employees	Employers will be liable for sexual harassment perpetrated by their employees and agents that occurs in the course of employment unless they have taken reasonable precautions to prevent the conduct.	Employers will be liable for sexual harassment perpetrated by their employees and agents in connection with the employment unless they have taken all reasonable steps to prevent the conduct.	A worker may apply to access no-fault WorkCover entitlements where they suffer injury arising out of, or in the course of employment where work-related sexual harassment was a significant contributing factor to the injury. Different rules may apply for common law damages claims and workers should seek legal advice.	Where an employee engages in bullying conduct at work, they and their employer may be issued with a stop-bullying order. Employers will be liable for conduct that an employee, officer or agent engages in on behalf of the employer that is within the scope of that person's actual or apparent authority .
Regulator	Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	Australian Human Rights Commission (AHRC)	WorkSafe Victoria (WorkSafe)	Fair Work Ombudsman (FWO)
Regulator enforcement and compliance powers	<ul style="list-style-type: none"> Investigate employers if there is a serious matter that relates to a group, there are reasonable grounds to suspect one or more breaches of the Equal Opportunity Act have occurred and it cannot be reasonably expected to be resolved in dispute resolution or litigation at the Victorian Civil and Administrative Tribunal (VCAT) Request information to conduct an investigation Apply for a VCAT order to compel the production of documents, information or compel attendance at the Commission to answer questions 	<ul style="list-style-type: none"> Investigate alleged breaches by the Commonwealth Government and Commonwealth agencies Enter workplaces, inspect and seize things/documents Examine witnesses and documents Report to the Minister on laws that should be made, or action taken With leave, intervene in legal proceedings 	<ul style="list-style-type: none"> Inspecting workplaces and conducting investigations Enforcing compliance measures (e.g. improvement notices, prohibition notices) Requiring duty holders to remedy contraventions Imposing alternative punitive measures (e.g. enforceable undertakings, letters of caution) Compel the production of documents Criminal prosecutions 	<ul style="list-style-type: none"> Enter premises (and interview, inspect and make copies while on premises) Require names and addresses to be provided Require records or documents to be produced Issue FWO notices to provide information, produce documents or attend and answer questions Issue infringement notices Issue compliance notices Accept enforceable undertakings with employers Initiate civil penalty proceedings against employers <p>The Fair Work Commission (FWC) can also make stop-bullying orders under the Fair Work Act and can consider applications alleging breaches of the general protections provisions.</p>
Help and information (for employers and workers)	Victorian Equal Opportunity and Human Rights Commission (VEOHRC) <ul style="list-style-type: none"> Web: humanrights.vic.gov.au Workplace hub: humanrights.vic.gov.au/hub/workplace-rights Enquiry Line: 1300 292 153 or (03) 9032 3583 	Australian Human Rights Commission (AHRC) <ul style="list-style-type: none"> Web: humanrights.gov.au Ph: 1300 656 419 	WorkSafe Victoria (WorkSafe) <ul style="list-style-type: none"> Web: worksafe.vic.gov.au Advisory service: 1800 136 089 	Fair Work Ombudsman (FWO) <ul style="list-style-type: none"> Web: fairwork.gov.au Ph: 13 13 94 Fair Work Commission (FWC) <ul style="list-style-type: none"> Web: fwc.gov.au Ph: 1300 799 675 <p>Small business employers and workers can request assistance from the Fair Work Commission's Workplace Advice Service via the FWC's website. The enquiry must relate to dismissal, general protections or workplace bullying: fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service</p>

Complaints and dispute resolution

Complaints process	VEOHRC offers a voluntary, free, confidential and impartial dispute resolution service.	The AHRC offers a free, confidential and impartial dispute resolution service.	For disputed workers compensation claims, the Accident Compensation Conciliation Service (ACCS) provides dispute resolution between the relevant parties, which may involve employers or insurers and the worker. Workers can call WorkCover Assist (a free service provided by WorkSafe) for help with workers compensation disputes. WorkCover Assist <ul style="list-style-type: none"> Web: workcoverassist.vic.gov.au Ph: (03) 9941 0537 Email: workcoverassist@workcoverassist.vic.gov.au 	After receipt of an anti-bullying application, the FWC can deal with the application in a number of ways including mediation between the parties where appropriate. The FWC can also facilitate a conference or hearing. The FWC must start to deal with a stop-bullying application within 14 days of the application being made. After receipt of a valid general protections application, the FWC can facilitate a confidential and impartial conciliation between the parties.
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Time limits	<p>It is best to submit a claim to VEOHRC or to VCAT within 12 months of the alleged conduct.</p>	<p>It is best to submit a claim to the AHRC within six months of the alleged conduct.</p>	<p>Workers should inform employers of their injury within 30 days from the time the worker becomes aware of a work-related injury (includes mental injuries).</p> <p>Employers must submit a claim to WorkSafe Agent within 10 days of receiving it from the worker.</p>	<p>If a discrimination or adverse action claim involves dismissal, workers must submit a claim within 21 days after the dismissal took effect.</p> <p>If a discrimination or adverse action claim does not involve dismissal, workers must submit a claim within six years of the alleged conduct.</p> <p>There is no time limit for the lodgement of stop-bullying applications, but the conduct must be ongoing and still present a risk to health and safety. The applicant must also still be employed or in a contractual relationship with the employer or principal.</p>
Decision maker	<p>For matters that do not resolve at VEOHRC, the worker may proceed to VCAT.</p> <p>*Workers can also choose to initiate a claim at VCAT directly without first participating in dispute resolution at VEOHRC.</p>	<p>For matters that do not resolve at the AHRC, the worker may proceed to the Federal Court of Australia (FCA) or the Federal Circuit Court of Australia (FCCA).</p>	<p>For workers compensation matters that do not resolve at the ACCS, the worker may proceed to the Magistrates' Court of Victoria.</p>	<p>For stop-bullying applications: the FWC</p> <p>For general protections matters that do not resolve at conciliation, the parties may consent to arbitration by the FWC, or the applicant may proceed to the Federal Court of Australia (FCA) or the Federal Circuit Court of Australia (FCCA).</p>
Litigation outcomes	<p>If a complaint of sexual harassment is made out, VCAT can make an order:</p> <ul style="list-style-type: none"> that the respondent refrain from further breaches of the Equal Opportunity Act that the complainant be financially compensated for loss, damage or injury suffered in some circumstances, that the respondent undertake training, change a policy or take other proactive steps in some circumstances, that one party pay the other party's legal costs. <p>VCAT can also make a declaration that the respondent breached the law.</p>	<p>If a complaint of sexual harassment is made out, the FCA or FCCA can order:</p> <ul style="list-style-type: none"> that the respondent does not repeat or continue the unlawful conduct that the worker be reinstated that the complainant be compensated for lost income and hurt and distress any reasonable act or course of conduct to redress any loss or damage suffered by the applicant the variation or termination of a contract to redress any loss or damage that the unsuccessful party pays the other party's legal costs. <p>The FCA or FCCA can also make a declaration that the respondent breached the law.</p>	<p>WorkCover statutory entitlements (including weekly payments, treatment expenses, permanent impairment benefit for people with permanent disabilities, superannuation payments).</p> <p>Payment of damages for workers who have a basis to sue their employer for damages under common law.</p>	<p>If a general protections claim is made out, the FCA or FCCA can order:</p> <ul style="list-style-type: none"> reinstatement of the worker payment of financial compensation for lost income and hurt and distress an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention that the employer pays a civil penalty in some circumstances, that one party pays the other party's legal costs. <p>Following arbitration of a general protections claim, the FWC has the power to order:</p> <ul style="list-style-type: none"> reinstatement of the worker payment of compensation to the person, including lost income an order to maintain the continuity of the person's employment, or an order to maintain the period of the person's continuous service with the employer. <p>Stop-bullying orders can be anything that the FWC considers necessary to stop the bullying, including orders for:</p> <ul style="list-style-type: none"> the individuals or group to stop the specified behaviour regular monitoring of behaviours by an employer compliance with an employer's anti-bullying policy the provision of information and additional support and training to workers, and a review of the employer's workplace bullying policy. <p>The FWC cannot order payment of compensation as part of a stop-bullying order.</p>

Employers that comply with the positive duty set out in section 15 of the *Equal Opportunity Act 2010 (Vic)* will be taking steps towards meeting related work health and safety obligations, and avoiding legal liability and enforcement action for matters arising under other equality and employment laws. See our *Guideline: Preventing and responding to workplace sexual harassment* for the six minimum standards employers must meet to comply with the positive duty, and concrete examples of what this can look like in practice.