

President's statement

Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021

Justice Ross, President

Melbourne, 8 October 2021

[1] This statement sets out the consultation and engagement process the Fair Work Commission (Commission) is undertaking in order to implement changes to the *Fair Work Act 2009* (Fair Work Act) made by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (the Respect at Work Amendment Act).

Background

[2] The Respect at Work Amendment Act received Royal Assent on 10 September 2021 and commenced operation on 11 September 2021. It amends the Fair Work Act, the *Sex Discrimination Act 1984*, and the *Australian Human Rights Act 1986*. The amendments include an extension of the stop bullying provisions in the Fair Work Act so the Commission can make orders to stop sexual harassment in the workplace. Applications for such orders can be made to the Commission from 11 November 2021. The amendment relating to the extension of the stop bullying jurisdiction is the main focus of our consultation and engagement process.

[3] Other amendments arising from the Respect at Work Amendment Act include:

- defining 'sexually harass' and 'sexually harassed at work'
- confirming sexual harassment can be conduct amounting to a valid reason for dismissal
- expanding the definition of 'serious misconduct' to include sexual harassment
- amending the NES compassionate leave entitlements so employees can access up to 2 days of compassionate leave if the employee, or their spouse or de facto partner, has a miscarriage

Implementation report

[4] The Commission is today publishing an implementation report which discusses the Commission's expanded jurisdiction to deal with sexual harassment in the workplace following the amendments outlined above.

[5] The purpose of the implementation report is to support engagement and consultation with the Commission's stakeholders and the public more generally

about the implementation of the expanded jurisdiction, including on proposed procedural matters and draft materials.

Consultation and engagement process

- [6] The Commission is committed to working with other agencies to ensure the amendments to the Fair Work Act are implemented efficiently and effectively.
- [7] The Commission has engaged with experts on the Respect@Work Council and the Australian Human Rights Commission. Over the coming weeks the Commission will engage directly with key stakeholders including, the Australian Council of Trade Unions, the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Business Council of Australia, Council of Small Business Organisations Australia, the Law Council of Australia, the Commission's Small Business Reference Group, partners involved in the Commission's Workplace Advice Service and the Fair Work Ombudsman. I thank all of these organisations for taking the time to provide comment on the implementation of the Commission's expanded jurisdiction.
- [8] In addition, members of the public are invited to comment on anything contained in the implementation report and the draft materials prepared by the Commission. In particular, the Commission is calling for feedback on:
- Draft revised forms F72, F73, and F74
 - Proposed case management process
 - Draft sexual harassment bench book
 - Proposed changes to the *Fair Work Commission Rules 2013*.
- [9] Feedback on the proposed changes to the *Fair Work Commission Rules 2013* is to be sent to consultation@fwc.gov.au by **25 October 2021**.
- [10] All other feedback is to be sent to consultation@fwc.gov.au by **Monday 1 November 2021**.

PRESIDENT