

Outline of the proposed rule changes

Summary of proposed amendments to the Fair Work Commission Rules 2013

General

The procedural rules of the Fair Work Commission (Commission) are the *Fair Work Commission Rules 2013* (the Rules). The Rules and changes to the Rules are made under s.609 of the *Fair Work Act 2009* (Cth) (the Act).

Proposed changes to the Rules are set out in the draft *Fair Work Commission Amendment (Stop Sexual Harassment) Rules 2021* and are described below.

Purpose of the proposed rule changes

The *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* commenced on 11 September 2021. It extends the Commission's stop bullying jurisdiction (Part 6-4B of the Act) so that the Commission can also make orders to stop sexual harassment in the workplace. Applications for orders to stop sexual harassment can be made from 11 November 2021.

The President of the Commission will approve changes to the Commission forms relating to applications for orders to stop bullying—the Form F72, Form F73 and Form F74—so that they also deal with applications for orders to stop sexual harassment (and applications for orders to stop both bullying and sexual harassment).

The proposed changes to the Rules reflect the changes to the Commission forms. The rules relating to applications for orders to stop bullying would be changed so that they also deal with applications for orders to stop sexual harassment (and applications for orders to stop both bullying and sexual harassment).

Details of the proposed Fair Work Commission Amendment (Stop Sexual Harassment) Rules 2021

Rule 1 – Name

This rule provides that the name of the amending instrument is the Fair Work Commission Amendment (Stop Sexual Harassment) Rules 2021 (the Amendment Rules).

Rule 2 – Commencement

This rule provides that the Amendment Rules commence on 11 November 2021.

Rule 3 – Authority

This rule notes that the Amendment Rules are made under the Act.

Rule 4 – Schedules

This rule provides that the Rules are amended as set out in Schedule 1 to the Amendment Rules and that any other item in Schedule 1 has effect according to its terms.

Schedule 1 – Amendments to the Fair Work Commission Rules 2013

Items 1–7

Items 1–7 amend Rules 12(2)(b)(ii), 23A, 45(2) and clause 1 of Schedule 1 to the Rules.

Presently:

- Rule 12(2)(b)(ii) provides that permission is not required for a person to be represented by a lawyer or paid agent in a conference conducted by a Commission staff member in relation to an application for an order to stop bullying.
- Rule 23A deals with requirements for lodging responses to applications for orders to stop bullying.
- Rule 45(2) requires that if the Commission is to serve a copy of an application for orders to stop bullying, it must omit the part of the application dealing with the application fee.
- Schedule 1 includes requirements for service of the Commission forms relating to applications for orders to stop bullying.

Items 1–7 insert 'or sexual harassment' after 'bullying' or 'bullying behaviour' in rules 12(2)(b)(ii), 23A (heading), 23A(1) (note 2), 23A(3), 23A(3) (note 2), 45(2) (heading) and clause 1 of Schedule 1 (note 2), so that those rules deal with applications for orders to stop sexual harassment (and applications for orders to stop both bullying and sexual harassment) in the same way that they deal with applications for orders to stop bullying.

Item 8

Item 8 amends details of the Commission approved forms F72, F73 and F74 in the table in clause 1 of Schedule 1 to the Rules, including the form titles and the service requirements for those forms:

- in column 2, references to 'anti-bullying' are replaced with 'stop bullying or sexual harassment';
- in column 3, the titles of Commission approved forms F72 and F73 are updated by inserting 'or sexual harassment (or both)' after 'bullying';
- in column 3 the title of form F74 is updated to 'Response from a person named as having engaged in bullying or sexual harassment (or both)';
- in column 5, in relation to forms F73 and F74, the description of the person serving the form is amended for clarity to 'Person making the response';
- in column 6, 'or sexual harassment (or both)' is inserted after 'bullying behaviour';
- in column 6, the service requirements for form F74 are corrected to require that the application be served on each person named in the application as having engaged in bullying behaviour or sexual harassment (or both), *other than the person making the response*;
- in column 6, the service requirements in relation to forms F72, F73 and F74 are amended for clarity;
- in column 7, in relation to forms F73 and F74, in column 7 'or sexual harassment (or both)' is inserted after 'bullying'.