



New South Wales

Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Industrial Relations Act 1996* (**the Act**) for the following purposes—
 - (i) to authorise the Industrial Relations Commission (the **Commission**) to make orders to prevent and remedy bullying at work and sexual harassment in connection with work,
 - (ii) to create civil penalties relating to bullying at work, sexual harassment in connection with work and other matters,
 - (iii) to make further provision for and consolidate existing provisions dealing with proceedings for contraventions of civil penalty provisions,
 - (iv) to make further provision for matters concerning principles of association and victimisation in relation to being a member or not being a member of an industrial organisation,
 - (v) to make further provision for gender equality in the objects of the Act and during bargaining and disputes,
 - (vi) to address other miscellaneous and consequential matters.
- (b) to make miscellaneous amendments to the *Work Health and Safety Act 2011*.

This Bill also makes consequential amendments to the *Industrial Relations (General) Regulation 2020*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

Amendments relating to bullying, sexual harassment and gender equality

Schedule 1[1] proposes additional objects of the Act in relation to gender equality, bullying and sexual harassment.

Schedule 1[3] and [6] provide that bargaining in good faith includes parties providing relevant information about gender equality for employees for certain purposes.

Schedule 1[9] inserts proposed Chapter 3A, sections 144A–144W. The chapter authorises the Commission to conciliate, arbitrate and make orders concerning—

- (a) the bullying of employees at work at proposed Chapter 3A, Part 1, and
- (b) persons sexually harassing employees, prospective employees and persons conducting a business or undertaking at proposed Chapter 3A, Part 2.

Proposed Chapter 3A, Part 1 enables an employee who is bullied at work to seek an order from the Commission to stop and remedy the bullying.

Proposed section 144A extends the definition of *employee* under the part so that a worker within the meaning of the *Work Health and Safety Act 2011* may apply for a stop bullying order. However, the definition does not include a worker who may apply for a stop bullying order under the *Fair Work Act 2009* of the Commonwealth. The proposed section also includes a definition for a **stop bullying order**.

Proposed section 144B provides that the proposed part does not prevent a person from seeking other orders from the Commission under the Act, unless otherwise specified.

Proposed section 144C defines the kind of bullying behaviour, under the defined term **bullied at work**, for which an order may be sought. The proposed section also provides that, if reasonable management action has been carried out in a reasonable way, the Commission must in effect dismiss the application for a stop bullying order.

Proposed section 144D permits an employee who reasonably believes that the employee has been bullied at work, or an industrial organisation on behalf of the employee, to apply for a stop bullying order. The proposed section also sets out procedural matters relating to applications in the event there is more than one person affected by the bullying.

Proposed section 144E provides the Commission must endeavour, by all means it considers proper and necessary, to settle an application for a stop bullying order by conciliation.

Proposed section 144F requires the Commission to arbitrate the application for a stop bullying order if, in the Commission's opinion, all reasonable attempts to settle the application by conciliation have been made but have been unsuccessful. The Commission must either make a stop bullying order or dismiss the application.

Proposed section 144G provides that the Commission may make a stop bullying order to remedy and prevent bullying if the Commission is satisfied the employee has been bullied at work and there is a risk the employee will continue to be bullied at work. The Commission may make any orders, including for the payment of damages to the employee by way of compensation for loss or damage suffered from the bullying and a prohibition on continuing or repeating the bullying. However, the Commission must not order a payment of damages of more than \$100,000 for each employee.

Proposed section 144H creates a civil penalty for contravening a stop bullying order.

Proposed section 144I limits when a stop bullying order may be applied for or the kinds of orders that may be sought where matters have been commenced concerning the same conduct under anti-discrimination laws.

Proposed section 144J disapplies the *Work Health and Safety Act 2011*, section 115 to allow an employee who has applied for a stop bullying order to make an application or commence proceedings for a matter under that Act relating to the same conduct as the stop bullying order.

Proposed Chapter 3A, Part 2 prohibits the sexual harassment of a person in connection with the person's work and enables a person who is sexually harassed in connection with the person's work to seek an order from the Commission to remedy and prevent the sexual harassment.

Proposed section 144K includes definitions for the part and extends the definition of **employee**.

Proposed section 144L sets out a definition for **sexual harassment**.

Proposed section 144M provides that the proposed part does not prevent a person from seeking other orders from the Commission under the Act unless otherwise specified by the Act and, in relation to a person conducting a business or undertaking, the proposed part does not apply to the person if the person is a national system employer within the meaning of the *Fair Work Act 2009* of the Commonwealth.

Proposed section 144N creates a civil penalty where a person sexually harasses another person if the harassment occurs in connection with the person being an employee, a prospective employee or a person conducting a business or undertaking.

Proposed section 144O provides that a person is vicariously liable, and taken to have contravened the proposed section 144N, if the person's employee or agent sexually harasses a person in contravention of the proposed section 144N and the harassment is in connection with the employment of the employee or duties of the agent as an agent. However, the person is taken not to have contravened the proposed section 144N if the person proves the person took all reasonable steps to prevent the employee or agent from doing the acts that would contravene proposed section 144N.

Proposed section 144P permits a person (the **aggrieved person**) who alleges they have been sexually harassed in contravention of the proposed section 144N, or an industrial organisation on the person's behalf, to apply for a sexual harassment order from the Commission. The proposed section also sets out procedural matters relating to applications in the event there is more than one person affected by the sexual harassment.

Proposed section 144Q prevents a person making an application for a sexual harassment order more than 24 months after the alleged contravention of proposed section 144N.

Proposed section 144R provides that the Commission must endeavour, by all means the Commission considers proper and necessary, to settle an application for a sexual harassment order by conciliation.

Proposed section 144S requires the Commission to arbitrate if, in the Commission's opinion, all reasonable attempts to settle the application by conciliation have been made but have been unsuccessful. The Commission must make a sexual harassment order or dismiss the application.

Proposed section 144T authorises the Commission to make a sexual harassment order to remedy and prevent the sexual harassment if the Commission is satisfied the aggrieved person has been sexually harassed in contravention of proposed section 144N. The order may apply to either, or both, the person or persons who have contravened the proposed section 144N and a person who has contravened the proposed section 144N by operation of proposed section 144O. The Commission may make any orders, including the payment of damages to the aggrieved person as compensation for loss or damages suffered from the sexual harassment and a prohibition on the sexual harassment continuing or repeating. However, the Commission must not order a payment of damages to the aggrieved person of more than \$100,000.

Proposed section 144U creates a civil penalty for contravening a sexual harassment order.

Proposed section 144V limits when a sexual harassment order may be applied for or the kinds of orders that may be sought where matters have been commenced concerning the same conduct under anti-discrimination laws.

Proposed section 144W disapplies the *Work Health and Safety Act 2011*, section 115 to allow a person who has made a sexual harassment order to also make an application, or commence proceedings, under that Act relating to the same conduct to which the application for the order applies.

Amendments relating to civil penalties and civil penalty proceedings

Schedule 1[11] specifies that proceedings under the proposed Chapter 7, Part 6, Division 2 relating to civil penalty contraventions may only be exercised by the Commission in Court Session.

Schedule 1[23] and [29]–[31] make consequential amendments given the civil penalties under Chapter 3A relating to bullying and sexual harassment. Schedule 1[23] requires a person acting on behalf of an industrial organisation who receives money in relation to a civil penalty under Chapter 3A for an employee to pay it as soon as practicable to the employee. Schedule 1[29] permits a person affected by a contravention, other than a contravention under section 136A or 357, to make an application for a civil penalty order. Schedule 1[30] requires a sexual harassment order to be made before an application for a civil penalty order may be made in relation to the same, or substantially the same, conduct.

Schedule 1[28] inserts proposed Chapter 7, Part 6, Division 2. This division consolidates existing provisions relating to civil penalties and civil penalty orders under the Act and deals with other matters concerning civil penalties, including proceedings for contravention of civil penalties.

Proposed section 400A contains definitions for the division.

Proposed section 400B provides that the proposed division does not apply to section 139 or Schedule 6.

Proposed section 400C provides that a contravention of a civil penalty provision is not an offence.

Proposed section 400D provides that proceedings for civil penalty orders must only be heard by the Commission in Court Session or the Local Court constituted as the Industrial Magistrate (an *industrial court*). The proposed section only permits the Local Court to hear proceedings concerning contraventions of the civil penalty provision under section 357.

Proposed section 400E permits an industrial organisation, employer, inspector and a person authorised by the Minister to commence proceedings for a civil penalty order in certain circumstances.

Proposed section 400F imposes a 6-year time limit on the making of an application for a civil penalty order starting from the day on which the alleged contravention occurred.

Proposed section 400G provides that a civil penalty proceeding is a civil proceeding for all purposes.

Proposed section 400H provides that the industrial court may order a civil penalty amount be paid to a person, including the State or an industrial organisation and that penalty may be recovered in the same way as the recovery of penalties imposed for an offence.

Proposed section 400I permits the Commission in Court Session to grant an injunction on the imposition of a civil penalty order to restrain a person from committing further or other contraventions.

Proposed section 400J permits the industrial court in proceedings for a civil penalty order to award costs.

Proposed section 400K replicates the Act, section 357(7)(c) that permits the application of provisions in the Act or other Acts dealing with criminal proceedings to apply to proceedings for civil penalty orders under the Act by the regulations, with or without modification.

Proposed sections 400L–400P deal with the interaction of proceedings for civil penalty orders under the Act with other civil or criminal proceedings.

Proposed section 400L declares a person must not be punished twice by a civil penalty under the Act and another Act for the same conduct.

Proposed section 400M provides that civil penalty proceedings must not commence if the person to be punished has already been convicted of a criminal offence for a corresponding offence.

Proposed section 400N provides that civil penalty proceedings are stayed if criminal proceedings are commenced, or have already commenced, against the person for a corresponding offence. The proposed section does not prevent the commencement of proceedings for a civil penalty order.

Proposed section 400O provides that criminal proceedings may be commenced against a person for a corresponding offence relating to a civil penalty order against the person regardless of whether the order has been made.

Proposed section 400P provides that evidence given by an individual in civil penalty proceedings against the person is not admissible in criminal proceedings for a corresponding offence. It does not apply to criminal proceedings for false information given in proceedings for the civil penalty order.

Schedule 1[18]–[22], [25]–[27], [32]–[35] make amendments consequent on proposed Chapter 7, Part 6, Division 2.

Amendments relating to principles of association

Schedule 1[14] set outs the activities a member of an industrial organisation is entitled to do. **Schedule 1[13]** makes a consequential amendment.

Schedule 1[15] sets out additional matters for which an employee or prospective employee must not be victimised by an employer or industrial organisation and makes minor drafting updates.

Schedule 1[16] re-inserts the subsection relating to the reverse onus of proof for victimisation with amendments. The item amends the reverse onus of proof for employers or industrial organisations in relation to proceedings concerning the victimisation of an employee or prospective employee for matters specified under the Act, section 210. The amendment introduces an objective test requiring the Commission to be satisfied, objectively, that the alleged matter was not a substantial and operative cause of the detrimental action. In forming its view, the Commission may have regard to conscious and unconscious factors for the alleged matter.

The proposed amendment is in response to the decision of the High Court of Australia in *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32, relating to the reverse onus of proof under the *Fair Work Act 2009* of the Commonwealth, to the extent to which the matter may inform the interpretation of the reverse onus of proof under the Act. The proposed amendment clarifies that the reasoning of the majority of the Full Federal Court of Australia in *Barclay v The Board of Bendigo Regional Institute of Technical and Further Education* [2011] FCAFC 14 is the preferred test when determining if the presumption has been rebutted.

Schedule 1[17] limits when an order in relation to victimisation may be applied for or the kinds of orders that may be sought where matters have been commenced concerning the same conduct under anti-discrimination laws.

Amendments relating to Commission, functions and procedures

Schedule 1[2] amends the definition of *industrial matters* to include the return to work for employees who have received a workplace injury.

Schedule 1[5] permits the Commission to make a recommendation or direction in a conciliation for an industrial dispute regardless of whether a party to the industrial dispute consents or agrees with the making of the recommendation or giving of the direction by the Commission. The proposed amendment also requires a party to provide written reasons for non-compliance with a recommendation or direction of the Commission made during conciliation proceedings within the time determined by the Commission.

Schedule 1[7] authorises the Commission in arbitration proceedings to make an order or determination with prospective application, whether on an interim or final basis, including an order or determination about the interpretation or application of an industrial instrument for the purposes of resolving an industrial dispute.

Schedule 1[8] creates a civil penalty for contravening an order or determination, including an order or determination about the interpretation or application of an industrial instrument, made on a final basis by the Commission in arbitration.

Schedule 1[10] specifies the extent of the Commission's powers in relation to employees who have received a workplace injury.

Schedule 1[12] provides that proceedings on an appeal or case stated from an Industrial Magistrate or another court do not have to be heard only by the Full Bench of the Commission in Court Session.

Schedule 1[24] increases the small claims jurisdiction threshold from \$10,000 to \$100,000.

Miscellaneous matters

Schedule 1[4] provides that one or both parties during a bargain may declare mutual gains bargaining is unresolved whether or not a facilitator is being used.

Schedule 1[36] amends the heading of the Act, section 405 to clarify the section is about the relationship between the Act and the *Police Act 1990*.

Schedule 1[37] provides that a decision of the Commission made under Chapter 2, Part 6 or Chapter 5, Part 1 which deals with principles of association is not otherwise affected if inconsistent with the *Police Act 1990* in certain circumstances as set out under section 405.

Schedule 1[38] and [39] insert savings and transitional provisions.

Schedule 1[40] and [41] make consequential amendments to the Dictionary.

Schedule 2 Amendment of Industrial Relations (General) Regulation 2020

Schedule 2[1] and [2] make consequential amendments as a result of additional civil penalty provisions proposed by the Bill.

Schedule 2[3] makes a consequential amendment by removing the prescribed maximum amount for a small claim as a result of Schedule 1[24].

Schedule 3 Amendment of Work Health and Safety Act 2011 No 10

Schedule 3 amends the *Work Health and Safety Act 2011*, including by inserting proposed Part 5, Division 7A, to provide for disputes relating to work health and safety matters. The proposed division deals with matters that include the following—

- (a) notices that may be given to the Industrial Relations Commission about a dispute,
- (b) actions the Industrial Relations Commission may take to settle a dispute,
- (c) powers of the Industrial Relations Commission to review a decision made by an inspector,
- (d) how costs must be apportioned for a dispute notified to the Industrial Relations Commission,
- (e) appeals to a decision made by the Industrial Relations Commission under the proposed division.

The schedule also inserts proposed sections 271AA and 271AB to provide that the regulator may enter into an information sharing arrangement with certain agencies, including certain regulator agencies, and the particulars of the arrangement.



New South Wales

Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Industrial Relations and Other Legislation Amendment (Workplace Protections) Bill 2025

No , 2025

A Bill for

An Act to amend the *Industrial Relations Act 1996* in relation to bullying at work and sexual harassment in connection with work; to amend the *Work Health and Safety Act 2011* to provide for matters relating to work health and safety disputes and other miscellaneous matters; and for other purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—		1
1 Name of Act		2
This Act is the <i>Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025</i> .		3
		4
2 Commencement		5
This Act commences as follows—		6
(a)	for Schedule 1[1], [3], [6], [9], [22], [23], [29]–[31], [39] and [41] and Schedule 3—on a day or days to be appointed by proclamation,	7
		8
(b)	otherwise—on the date of assent to this Act.	9

Schedule 1 **Amendment of Industrial Relations Act 1996 No 17**

[1] **Section 3 Objects**

Omit section 3(f). Insert instead—

- (f) to prevent and eliminate discrimination, bullying and sexual harassment in the workplace,
- (f1) to achieve gender equality in the workplace, and in particular—
 - (i) to ensure equal remuneration for men and women doing work of equal or comparable value, and
 - (ii) to eliminate gender-based undervaluation of work,

[2] **Section 6 Definition of industrial matters**

Insert after section 6(2)(e)—

- (e1) the return to work for employees who have received a workplace injury,

[3] **Section 129M Meaning of “good faith” in mutual gains bargaining**

Insert after section 129M(1)(b)—

- (b1) without limiting paragraph (b), providing other parties, as soon as practicable, with relevant information about gender equality in the workplace for the employees concerned necessary to enable the other parties to make informed contributions to negotiations,

[4] **Section 129P Provisions applying if mutual gains bargaining unresolved**

Omit section 129P(1)(b). Insert instead—

- (b) one or both of the parties, whether or not the services of a facilitator have been used.

[5] **Section 134 Conciliation of dispute**

Omit section 134(2) and (2A). Insert instead—

(2) **Recommendations or directions**

During conciliation proceedings, the Commission may make a recommendation or give a direction to the parties to the industrial dispute.

- (2A) The Commission may make the recommendation or give the direction regardless of whether a party to the industrial dispute consents or agrees with the making of the recommendation or the giving of the direction.
- (2B) A party’s failure to comply with a recommendation or direction may not be penalised but may be taken into account by the Commission in exercising the Commission’s functions under this Act.
- (2C) A party that does not comply with a recommendation or direction must, in the time determined by the Commission, give written reasons to the Commission for not complying.
- (2D) Without limiting subsection (2), the Commission may make a recommendation to the parties to undertake mutual gains bargaining under Chapter 2A.

[6] **Section 134(4)(c)**

Omit the paragraph. Insert instead—

(c)	disclosed relevant information for the purposes of negotiation, including information about gender equality in the workplace for the employees concerned necessary to enable the other parties to make informed contributions to negotiations.	1 2 3 4
[7]	Section 136 Arbitration of dispute	5
	Omit section 136(1)(d). Insert instead—	6
(d)	make an order or determination with prospective application, whether on an interim or final basis, including an order or determination about the interpretation or application of an industrial instrument for the purposes of resolving the dispute,	7 8 9 10
(e)	make another kind of order it is authorised to make, including on an interim basis.	11 12
[8]	Section 136A	13
	Insert after section 136—	14
136A	Civil penalty for breach of final order	15
	A person to whom an order or determination made by the Commission on a final basis under section 136(1)(d) applies must not contravene the order or determination.	16 17 18
	Maximum civil penalty—\$25,000.	19
[9]	Chapter 3A	20
	Insert after Chapter 3—	21
	Chapter 3A Bullying and sexual harassment	22
	Part 1 Stop bullying at work	23
144A	Definitions	24
	In this part—	25
	<i>employee</i> —	26
(a)	includes a worker within the meaning of the <i>Work Health and Safety Act 2011</i> , and	27 28
(b)	does not include a worker who may apply to the Fair Work Commission for an order under the <i>Fair Work Act 2009</i> of the Commonwealth, section 789FC.	29 30 31
	<i>stop bullying order</i> means an order made under section 144G.	32
144B	Application of part	33
	This part does not limit another order that a person may seek from the Commission under this Act unless otherwise specified by this Act.	34 35
144C	Definition of bullied at work	36
(1)	For this part, an employee is <i>bullied at work</i> if, while the employee is at work—	37 38
(a)	an individual, or group of individuals, repeatedly behaves unreasonably towards—	39 40

	(i) the employee, or	1
	(ii) a group of employees of which the employee is a member, and	2
	(b) the behaviour creates a risk to health and safety.	3
(2)	Subsection (1) does not apply to reasonable management action carried out in a reasonable way.	4 5
144D	Application for stop bullying orders	6
(1)	The following persons may apply to the Commission for a stop bullying order—	7 8
	(a) an employee who reasonably believes the employee has been bullied at work,	9 10
	(b) an industrial organisation on behalf of the employee.	11
(2)	The industrial organisation may make one application on behalf of a number of employees who were bullied at work in related circumstances.	12 13
(3)	Subsection (2) does not prevent the Commission from hearing a number of applications under this part together or individually.	14 15
144E	Conciliation of applications	16
	The Commission must endeavour, by all means the Commission considers proper and necessary, to settle the application by conciliation.	17 18
144F	Arbitration where conciliation unsuccessful	19
(1)	When, in the opinion of the Commission, all reasonable attempts to settle the application by conciliation have been made but have been unsuccessful, the Commission must determine the application by making—	20 21 22
	(a) a stop bullying order, or	23
	(b) an order dismissing the application.	24
(2)	Nothing in this section prevents further conciliation from being attempted before the Commission makes an order.	25 26
144G	Stop bullying orders	27
(1)	The Commission may make any order it considers appropriate to prevent an employee from being bullied at work by the individual or group if the Commission is satisfied that—	28 29 30
	(a) the employee has been bullied at work, and	31
	(b) there is a risk that the employee will continue to be bullied at work.	32
(2)	The order may apply to the following—	33
	(a) the individual or one or more individuals in the group,	34
	(b) the employee's employer,	35
	(c) a person conducting a business or undertaking if the bullying occurs in connection with the business or undertaking.	36 37
(3)	Without limiting the kinds of orders made under subsection (1), the Commission may order one or more of the following—	38 39
	(a) the payment of damages to the employee as compensation for loss or damage suffered from the bullying,	40 41
	(b) a prohibition on continuing or repeating the bullying,	42

(c)	the performance of reasonable actions or a course of conduct to be carried out to redress loss or damage suffered by the employee,	1
(d)	the publication of an apology or retraction,	2
(e)	the development and implementation of a program or policy aimed at eliminating bullying.	3
(4)	The Commission must not order a payment of damages of more than \$100,000 for an employee.	4
(5)	In determining the terms of the order, the Commission must take into account all of the following—	5
(a)	other grievance or dispute procedures available to the employee that the Commission is aware of,	6
(b)	outcomes, whether interim or final, the Commission is aware of from other—	7
(i)	investigations into the conduct the subject of the application, or	8
(ii)	grievance or dispute procedures carried out in response to the conduct the subject of the application,	9
(c)	other matters the Commission considers relevant.	10
144H	Contravention of stop bullying order	11
	A person to whom a stop bullying order applies must not contravene a term of the order.	12
	Maximum civil penalty—	13
(a)	for an individual—\$18,870, or	14
(b)	otherwise—\$93,900.	15
144I	Multiple actions under anti-discrimination laws not permitted	16
(1)	A person must not apply for a stop bullying order if—	17
(a)	the person has commenced proceedings or made an application or complaint in relation to the same conduct under an anti-discrimination law, and	18
(b)	the proceedings, application or complaint has not been withdrawn or failed for want of jurisdiction.	19
(2)	A person must not recover compensation under a stop bullying order if the person has received compensation for the matter under an anti-discrimination law.	20
144J	Actions under work health and safety laws permitted	21
	The <i>Work Health and Safety Act 2011</i> , section 115 does not apply in relation to an application for a stop bullying order.	22
	Note— This section allows a person to apply for a stop bullying order and also commence a proceeding or make an application in relation to the same conduct under WHS laws.	23

Part 2 Prohibition on sexual harassment in connection with work

Division 1 Preliminary

144K Definitions

In this part—

aggrieved person—see section 144P(1)(a).

employee—

(a) includes a worker within the meaning of the *Work Health and Safety Act 2011*, and

(b) does not include a national system employee within the meaning of the *Fair Work Act 2009* of the Commonwealth.

person conducting a business or undertaking does not include a person who is a national system employer within the meaning of the *Fair Work Act 2009* of the Commonwealth.

sexual harassment order means an order made under section 144T.

144L Definition of sexual harassment

(1) In this part, **sexual harassment** has the same meaning as in the *Anti-Discrimination Act 1977*, section 22A.

Note—The meaning in the *Anti-Discrimination Act 1977*, section 22A is as follows—

A person sexually harasses another person if—

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or

(b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person, and

the conduct, advance or request occurs in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

(2) For subsection (1), the circumstances to be taken into account include, but are not limited to, the following—

(a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour or national or ethnic origin of the other person,

(b) the relationship between the other person and the person who made the advance or request or who engaged in the conduct,

(c) a disability, if any, of the other person,

(d) another relevant circumstance.

144M Application of part

This part does not limit another order a person may seek from the Commission under this Act unless otherwise specified by this Act.

Division 2 Prohibition on sexual harassment

144N Prohibition on sexual harassment in connection with work

A person must not sexually harass another person (the **protected person**) in connection with the protected person being—

(a) an employee, or

	(b) a prospective employee, or	1
	(c) a person conducting a business or undertaking.	2
	Maximum civil penalty—	3
	(a) for an individual—\$18,870, or	4
	(b) otherwise—\$93,900.	5
	Note— An application for a civil penalty order for an alleged contravention of this section must not be made unless a sexual harassment order has been made. See section 400E(2).	6
		7
		8
144O	Vicarious liability	9
	(1) A person contravenes section 144N if—	10
	(a) an employee or agent of the person does an act that contravenes section 144N, and	11
		12
	(b) the act is in connection with the employment of the employee or the duties of the agent as an agent.	13
		14
	(2) For a person who has contravened section 144N by operation of this section, this Act applies in relation to the person as if the person had also done the act.	15
		16
	(3) This section does not apply if the person proves that the person took all reasonable steps to prevent the employee or agent from doing acts that would contravene section 144N.	17
		18
		19
Division 3	Applications in response to alleged sexual harassment	20
144P	Application for Commission to deal with sexual harassment in connection to work	21
		22
	(1) The following persons may apply for a sexual harassment order—	23
	(a) a person (an <i>aggrieved person</i>) who alleges the aggrieved person has been sexually harassed in contravention of section 144N by one or more other persons,	24
		25
		26
	(b) an industrial organisation on behalf of the aggrieved person.	27
	(2) The industrial organisation may make one application on behalf of a number of aggrieved persons who allege a contravention of section 144N in related circumstances.	28
		29
		30
	(3) Subsection (2) does not prevent the Commission from hearing a number of applications under this part together or individually.	31
		32
144Q	Time limit for making applications	33
	An application under this part must be made not later than 24 months after the alleged contravention of section 144N.	34
		35
144R	Conciliation of applications	36
	The Commission must endeavour, by all means the Commission considers proper and necessary, to settle the application by conciliation.	37
		38
144S	Arbitration where conciliation unsuccessful	39
	(1) When, in the opinion of the Commission, all reasonable attempts to settle the application by conciliation have been made but have been unsuccessful, the Commission must determine the application by making—	40
		41
		42
	(a) a sexual harassment order, or	43

	(b) an order dismissing the application.	1
	(2) Nothing in this section prevents further conciliation from being attempted before the Commission makes an order.	2 3
Division 3	Orders to stop and remedy sexual harassment	4
144T	Sexual harassment orders	5
	(1) The Commission may make any order the Commission considers appropriate if the Commission is satisfied that the aggrieved person has been sexually harassed in contravention of section 144N by the person or persons.	6 7 8
	(2) The order may apply to the following—	9
	(a) the person or persons who have contravened section 144N,	10
	(b) a person who has contravened section 144N by operation of section 144O.	11 12
	(3) Without limiting the kinds of order that may be made under subsection (1), the Commission may make an order to prevent the sexual harassment or remedy the contravention, including an order for one or more of the following—	13 14 15
	(a) the payment of damages to the aggrieved person as compensation for loss or damage suffered from the sexual harassment,	16 17
	(b) a prohibition on continuing or repeating the sexual harassment,	18
	(c) the performance of reasonable actions or a course of conduct to be carried out to redress loss or damage suffered by the aggrieved person,	19 20
	(d) the publication of an apology or retraction,	21
	(e) the development and implementation of a program or policy aimed at eliminating sexual harassment.	22 23
	(4) The Commission must not order a payment of damages of more than \$100,000 for an aggrieved person.	24 25
	(5) In determining the terms of the order, the Commission must take into account all of the following—	26 27
	(a) other grievance or dispute procedures available to the aggrieved person that the Commission is aware of,	28 29
	(b) outcomes, whether interim or final, the Commission is aware of from other—	30 31
	(i) investigations into the conduct the subject of the application, or	32
	(ii) grievance or dispute procedures carried out in response to the conduct the subject of the application,	33 34
	(c) other matters the Commission considers relevant.	35
144U	Contravention of sexual harassment order	36
	A person to whom a sexual harassment order applies must not contravene a term of the order.	37 38
	Maximum civil penalty—	39
	(a) for an individual—\$18,870, or	40
	(b) otherwise—\$93,900.	41
144V	Multiple actions under anti-discrimination laws not permitted	42
	(1) A person must not apply for a sexual harassment order if—	43

(a)	the person has commenced proceedings or made an application or complaint in relation to the same conduct under an anti-discrimination law, and	1 2 3
(b)	the proceedings, application or complaint has not been withdrawn or failed for want of jurisdiction.	4 5
(2)	A person must not recover compensation under a sexual harassment order if the person has received compensation for the matter under an anti-discrimination law.	6 7 8
144W	Actions under work health and safety laws permitted	9
	The <i>Work Health and Safety Act 2011</i> , section 115 does not apply in relation to an application for a sexual harassment order.	10 11
	Note— This section allows a person to apply for a sexual harassment order and also commence a proceeding or make an application in relation to the same conduct under WHS laws.	12 13 14
[10]	Section 146E	15
	Insert after section 146D—	16
146E	Matters concerning injured workers	17
(1)	The Commission may only deal with an industrial matter referred to in section 6(2)(e1) in relation to an employee if the employee is not a national system employee within the meaning of the <i>Fair Work Act 2009</i> of the Commonwealth.	18 19 20 21
(2)	The Commission does not have the power under this Act to compensate an employee for a workplace injury unless otherwise permitted by this Act.	22 23
[11]	Section 153 Jurisdiction of Commission in Court Session	24
	Insert after section 153(1)(g)—	25
	(g1) proceedings under Chapter 7, Part 6, Division 2,	26
[12]	Section 153(2)	27
	Omit “and (j)”.	28
[13]	Section 209A	29
	Insert before section 209—	30
209A	Definition	31
	In this part—	32
	<i>industrial organising activities</i> —see section 209(3).	33
[14]	Section 209 Freedom of association	34
	Insert after section 209(2)—	35
(3)	A member of an industrial organisation is entitled to do the following activities (<i>industrial organising activities</i>)—	36 37
(a)	organise or promote a lawful activity for or on behalf of the industrial organisation,	38 39
(b)	encourage or participate in a lawful activity organised or promoted by the industrial organisation,	40 41

	(c)	participate in industrial action organised or promoted by the industrial organisation,	1 2
	(d)	comply with a lawful request made by or requirement of the industrial organisation,	3 4
	(e)	represent or advance the view, claims or interest of the industrial organisation,	5 6
	(f)	pay a fee or charge to an industrial organisation,	7
	(g)	seek to be represented by an industrial organisation.	8
[15]	Section 210		9
		Omit the section. Insert instead—	10
	210 Freedom from victimisation		11
	(1)	An employer or industrial organisation must not victimise an employee or prospective employee because the person—	12 13
	(a)	is or was a member or an official of an industrial organisation of employees or otherwise an elected representative of employees, or	14 15
	(b)	does not belong to an industrial organisation of employees or holds a certificate of conscientious objection to becoming a member of an industrial organisation of employees, or	16 17 18
	(c)	engages or proposes to engage in industrial organising activities, or	19
	(d)	refuses to engage in industrial action or another industrial organising activity, or	20 21
	(e)	participates or proposes to participate in proceedings relating to an industrial matter, or	22 23
	(f)	exercises or proposes to exercise functions conferred under this Act, or	24
	(g)	has a role or responsibility under industrial relations legislation or an industrial instrument, or	25 26
	(h)	engages in or proposes to engage in a public or political activity, unless it interferes with the performance of the employee's duties, or	27 28
	(i)	is entitled to a benefit or claims a benefit to which the person is entitled under industrial relations legislation or an industrial instrument, or	29 30
	(j)	is entitled to a benefit or claims a benefit—	31
	(i)	under either or both of the following—	32
	(A)	the <i>Workers Compensation Act 1987</i> ,	33
	(B)	the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , or	34 35
	(ii)	in relation to other entitlements for a workplace injury, or	36
	(k)	has a characteristic protected from discrimination under the <i>Anti-Discrimination Act 1977</i> , or	37 38
	(l)	makes a complaint or inquiry—	39
	(i)	about the person's employment, or	40
	(ii)	to a public authority about the person's employer, including about matters other than about the person's employment, or	41 42
	(m)	makes a complaint about a workplace matter that the person considers is not safe or a risk to health or exercises functions under the <i>Work Health and Safety Act 2011</i> , Part 5, or	43 44 45

(n)	informs a person of an alleged breach by an employer of industrial relations legislation or of an industrial instrument, or	1 2
(o)	informs a person of an alleged breach of the <i>Protection of the Environment Operations Act 1997</i> by an employer, or	3 4
(p)	informs a person of or gives evidence in relation to a notifiable occurrence within the meaning of the <i>Rail Safety National Law (NSW)</i> , or	5 6 7
(q)	informs a person of or gives evidence in relation to a breach or alleged breach of the <i>Dangerous Goods (Road and Rail Transport) Act 2008</i> or the regulations under that Act, or a provision of a law of another State or Territory that corresponds to that Act or those regulations, or	8 9 10 11
(r)	reports a matter relating to the safety or reliability of railway, bus or ferry operations to the Chief Investigator, within the meaning of the <i>Transport Administration Act 1988</i> , or a person employed in the Transport Service, or	12 13 14 15
(s)	assists the Independent Pricing and Regulatory Tribunal or Scheme Administrator in the exercise of its functions under the <i>Electricity Supply Act 1995</i> .	16 17 18
(2)	The matters referred to in subsection (1)(m)–(s) do not limit the kind of complaint or inquiry referred to in subsection (1)(l).	19 20
(3)	Subsection (1)(j) does not apply to matters concerning the dismissal of an employee to which the <i>Workers Compensation Act 1987</i> , Part 8 applies.	21 22
[16]	Section 213 Enforcement	23
	Insert after section 213(4)—	24
(5)	In proceedings under this section to enforce the provisions of section 210—	25
(a)	it is presumed that an employee or prospective employee who suffers a detriment as a result of action by the employer or industrial organisation was victimised because of a matter referred to in section 210 alleged by the applicant to be the cause of the detrimental action, and	26 27 28 29
(b)	the presumption is rebutted if the employer or industrial organisation satisfies the Commission that, objectively, the alleged matter was not a substantial and operative cause of the detrimental action, and	30 31 32
(c)	for paragraph (b), the Commission may have regard to conscious and unconscious factors for the alleged matter when determining if the alleged matter was not a substantial and operative cause of the detrimental action.	33 34 35 36
[17]	Section 213A	37
	Insert after section 213—	38
213A	Multiple actions under anti-discrimination laws not permitted	39
(1)	A person must not apply for an order under this part if—	40
(a)	the person has commenced proceedings or made an application or complaint in relation to the same conduct under an anti-discrimination law, and	41 42 43
(b)	the proceedings, application or complaint has not been withdrawn or failed for want of jurisdiction.	44 45

(2)	A person must not recover compensation under an order made under this part if the person has received compensation for the matter under an anti-discrimination law.	1 2 3
[18]	Section 357	4
	Omit the section. Insert instead—	5
	357 Civil penalty for breach of industrial instruments	6
	A person must not contravene a provision of an industrial instrument.	7
	Maximum civil penalty—\$10,000.	8
	Note— See the <i>Interpretation Act 1987</i> , which provides contravene includes a failure to comply.	9 10
[19]	Section 359 Injunction to restrain further contraventions of industrial instruments	11
	Omit the section.	12
[20]	Section 360 Advertisements that contravene industrial instruments	13
	Omit “under this Part” from section 360(3). Insert instead “under Part 6”.	14
[21]	Section 362 Power to amend proceedings	15
	Insert “for a matter arising” after “If in any proceedings” in section 362(1).	16
[22]	Section 363, heading	17
	Omit “ contravention of, or under, industrial instrument ”.	18
	Insert instead “ certain contraventions ”.	19
[23]	Section 363	20
	Omit “(within the meaning of Part 2).” from section 363(1)(b). Insert instead—	21
	within the meaning of Part 2, or	22
	(c) money paid or purporting to be paid in respect of a civil penalty provision under Chapter 3A.	23 24
[24]	Section 379 Small claims procedures	25
	Omit “\$10,000” from section 379(3)(a). Insert instead “\$100,000”.	26
[25]	Chapter 7, Part 6, heading	27
	Omit the heading. Insert instead—	28
	Part 6 Criminal and civil proceedings	29
[26]	Chapter 7, Part 6, Division 1	30
	Insert before section 396—	31
	Division 1 Offences	32
[27]	Section 399A	33
	Insert after section 399—	34

399A	Payment of penalties	1
(1)	If a penalty for an offence has been imposed under this Act in proceedings instituted by an officer of an industrial organisation, the court concerned may order that the penalty or part of the penalty be paid to the Industrial Registrar for payment to the industrial organisation.	2 3 4 5
(2)	In any other case, a penalty recovered must be paid into the Consolidated Fund or as otherwise provided by law.	6 7
[28]	Chapter 7, Part 6	8
	Insert after section 399A—	9
	Division 2	
	Civil penalties	10
	Subdivision 1	
	Preliminary	11
400A	Definitions	12
	In this division—	13
	<i>civil penalty order</i> means an order imposing a monetary penalty made by an industrial court under section 400D for contravention of a civil penalty provision.	14 15 16
	<i>civil penalty proceeding</i> means a proceeding for a civil penalty order.	17
	<i>civil penalty provision</i> means a section or subsection of this Act that has at its end the words “maximum civil penalty”.	18 19
	<i>corresponding offence</i> , in relation to a contravention of a civil penalty provision, means an offence constituted by conduct that is the same or substantially the same as the conduct constituting the contravention.	20 21 22
	<i>industrial court</i> means—	23
	(a) the Commission in Court Session, or	24
	(b) the Local Court constituted for this part by an Industrial Magistrate sitting alone.	25 26
400B	Application of division	27
	This division does not apply to section 139 or Schedule 6.	28
400C	Contravention of civil penalty provision	29
	A contravention of a civil penalty provision is not an offence.	30
	Subdivision 2	
	Civil penalty proceedings	31
400D	Civil penalty orders	32
(1)	An industrial court may, on an application referred to in section 400E, order a person to pay a monetary penalty if the industrial court is satisfied the person has contravened the civil penalty provision.	33 34 35
(2)	The monetary penalty must not be more than the amount specified at the end of the civil penalty provision following the words “Maximum civil penalty”.	36 37
(3)	To avoid doubt, the industrial court may make an order under this section in addition to other orders.	38 39
(4)	The Local Court only has jurisdiction to consider applications for contraventions of the civil penalty provision under section 357.	40 41

400E	Application for civil penalty orders	1
	The following persons may apply to the industrial court for a civil penalty order—	2
		3
	(a) an industrial organisation—	4
	(i) concerned in the industry to which the proceedings relate, or	5
	(ii) on behalf of the person affected by the contravention if the person is a member of the industrial organisation,	6
		7
	(b) an industrial organisation or employer bound by the industrial instrument concerned,	8
		9
	(c) an inspector,	10
	(d) a person authorised by the Minister or this Act to institute proceedings for offences.	11
		12
400F	Time limit for applications	13
	An application for a civil penalty order must be made within 6 years of the alleged contravention.	14
		15
400G	Procedure and evidence	16
	(1) A civil penalty proceeding is a civil proceeding for all purposes.	17
	(2) Evidence given in proceedings for the recovery of money under this chapter, Part 2 is not admissible in proceedings for a civil penalty order for contravention of an industrial instrument.	18
		19
		20
400H	Payment and recovery of penalty	21
	(1) The industrial court may order that the monetary penalty under a civil penalty order is paid to the following—	22
		23
	(a) the State,	24
	(b) an industrial organisation,	25
	(c) another person.	26
	(2) The provisions of any Act relating to the recovery of penalties imposed for an offence apply in the same way for a recovery of a monetary penalty.	27
		28
400I	Injunctions to restrain further contraventions	29
	(1) The Commission in Court Session may, on the imposition of a civil penalty order by the Commission in Court Session or another industrial court, grant an injunction to restrain the person from committing further or other contraventions.	30
		31
		32
		33
	(2) The injunction may be granted on application or on the Commission's own initiative.	34
		35
	(3) A person who disobeys an injunction is guilty of contempt of the Commission and may be dealt with accordingly.	36
		37
	Note— Section 180 deals with proceedings for contempt.	38
400J	Costs	39
	(1) The industrial court may award costs to either party in a civil penalty proceeding and assess the amount of those costs.	40
		41

(2)	Costs must not be awarded against an applicant referred to in section 400E except in the circumstances in which costs can be awarded against the applicant as a prosecutor in criminal proceedings.	1 2 3
400K	Application of criminal procedures for civil penalty proceedings	4
(1)	The regulations may apply a provision of this Act or another Act relating to criminal proceedings, with or without modification, to this part.	5 6
(2)	A provision applied by the regulations applies to a contravention of a civil penalty provision and civil penalty proceedings in the same way as it applies to criminal proceedings for an offence under this Act.	7 8 9
	Subdivision 3 Interaction with criminal and other civil proceedings	10
400L	Civil double jeopardy	11
	If a person is ordered to pay a civil penalty in relation to particular conduct, the person is not liable to be ordered to pay a civil penalty under another provision of an Act in relation to the conduct.	12 13 14
400M	Civil proceedings after criminal proceedings	15
	The industrial court must not make a civil penalty order against a person if the person has been convicted of a corresponding offence.	16 17
400N	Criminal proceedings during civil proceedings	18
(1)	Civil penalty proceedings are stayed if criminal proceedings are started or have already started against the person for a corresponding offence.	19 20
(2)	The civil penalty proceedings may be resumed if the person is not convicted, otherwise the proceedings are dismissed.	21 22
(3)	This section does not prevent the commencement of civil penalty proceedings.	23
400O	Criminal proceedings after civil proceedings	24
	Criminal proceedings may be commenced against a person for a corresponding offence regardless of whether a civil penalty order has been made against the person.	25 26 27
400P	Evidence given in civil penalty proceedings not admissible in criminal proceedings	28 29
(1)	Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if—	30 31
(a)	the individual previously gave the information or produced the documents in civil penalty proceedings against the individual for a contravention of a civil penalty provision, whether or not a civil penalty order was made, and	32 33 34 35
(b)	the criminal proceedings are for a corresponding offence.	36
(2)	This section does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in civil penalty proceedings.	37 38
	Division 3 Miscellaneous	39
[29]	Section 400E Application for civil penalty orders	40
	Insert before section 400E(a), as inserted by Schedule 1[28]—	41

(a1)	a person affected by the contravention, other than a contravention of section 136A or 357,	1 2
[30]	Section 400E(2)	3
	Insert at the end of section 400E, as inserted by Schedule 1[28]—	4
(2)	An application for a civil penalty order for an alleged contravention of the civil penalty provision under section 144N must not be made unless a sexual harassment order has been made for the same or substantially the same conduct constituting the alleged contravention.	5 6 7 8
[31]	Section 400J Costs	9
	Insert “(1)(a)–(d)” after “section 400E” in section 400J(2), as inserted by Schedule 1[28].	10
[32]	Section 400, heading	11
	Insert “and contraventions” after “Offences”.	12
[33]	Section 400(3)	13
	Omit the subsection. Insert instead—	14
(3)	Nothing in this section affects any liability imposed on a corporation—	15
(a)	for an offence committed by the corporation under this Act or the regulations, or	16 17
(b)	for a contravention of a civil penalty provision by the corporation.	18
[34]	Section 402 Recovery of penalty by appointment of receiver	19
	Insert “or contravention” after “for an offence” wherever occurring in section 402(1).	20
[35]	Section 403 Payment of penalties	21
	Omit the section.	22
[36]	Section 405, heading	23
	Omit the heading. Insert instead—	24
	405 Relationship between Act and Police Act 1990	25
[37]	Section 405(3)	26
	Omit the subsection. Insert instead—	27
(3)	This section does not affect a decision of the Commission—	28
(a)	under Chapter 2, Part 6, or	29
(b)	under section 213 in relation to sections 209 and 210(1)(a)–(d).	30
[38]	Schedule 4 Savings, transitional and other provisions	31
	Insert at the end of the schedule, with appropriate part and clause numbering—	32
	Provisions consequent on Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025	33 34 35
	Definition	36
	In this part—	37

<i>amending Act</i> means the <i>Industrial Relations and Other Legislation Amendment (Workplace Protections) Act 2025</i> .	1 2
Conciliation of disputes	3
Section 134, as amended by the amending Act, Schedule 1[5] extends to an industrial dispute and the conciliation of an industrial dispute commenced before the commencement of the amending Act, Schedule 1[5].	4 5 6
Arbitration of disputes	7
Section 136, as amended by the amending Act, extends to proceedings commenced before the commencement of the amending Act, Schedule 1[7].	8 9
Onus of proof for victimisation	10
For proceedings under section 213 in relation to section 210 that commenced before the commencement of the amending Act, Schedule 1[16]—	11 12
(a) section 210(2) as in force immediately before the commencement continues to apply, and	13 14
(b) section 213(5) does not apply.	15
Increase to small claims threshold	16
For proceedings commenced before the commencement of the amending Act, Schedule 1[24]—	17 18
(a) section 379(3) and the <i>Industrial Relations (General) Regulation 2020</i> , clause 43 as in force immediately before the commencement continue to apply, and	19 20 21
(b) section 379(3) does not apply.	22
Relationship between Act and Police Act 1990	23
An amendment to section 405 by the amending Act applies only to a decision made on or after the commencement of the amending Act, Schedule 1[37].	24 25
References in Schedule 6 to amended or omitted provisions	26
A reference in Schedule 6, clause 16(7) to a provision omitted or amended by the amending Act continues to apply as if the Act had not been amended by the amending Act.	27 28 29
[39] Schedule 4	30
Insert at the end of the schedule, with appropriate clause numbering—	31
Information about gender equality in mutual gains bargaining and disputes	32
(1) Section 129M, as amended by the amending Act, does not apply to mutual gains bargaining commenced before the commencement of the amending Act, Schedule 1[3].	33 34 35
(2) Section 134, as amended by the amending Act, Schedule 1[6], does not apply to an industrial dispute commenced before the commencement of the amending Act, Schedule 1[6].	36 37 38
[40] Dictionary	39
Insert in alphabetical order—	40
<i>anti-discrimination law</i> means the following—	41

- (a) the *Anti-Discrimination Act 1977*, 1
- (b) the *Age Discrimination Act 2004* of the Commonwealth, 2
- (c) the *Disability Discrimination Act 1992* of the Commonwealth, 3
- (d) the *Fair Work Act 2009* of the Commonwealth, 4
- (e) the *Racial Discrimination Act 1975* of the Commonwealth, 5
- (f) the *Sex Discrimination Act 1984* of the Commonwealth. 6
- (g) the *Equal Opportunity Act 2010* of Victoria, 7
- (h) the *Anti-Discrimination Act 1991* of Queensland, 8
- (i) the *Equal Opportunity Act 1984* of Western Australia, 9
- (j) the *Equal Opportunity Act 1984* of South Australia, 10
- (k) the *Anti-Discrimination Act 1998* of Tasmania, 11
- (l) the *Discrimination Act 1991* of the Australian Capital Territory, 12
- (m) the *Anti-Discrimination Act 1992* of the Northern Territory, 13
- civil penalty order**, for Chapter 7, Part 6, Division 2—see section 400A. 14
- civil penalty proceeding**, for Chapter 7, Part 6, Division 2—see section 400A. 15
- civil penalty provision**—see section 400A. 16
- corresponding offence**, for Chapter 7, Part 6, Division 2—see section 400A. 17
- industrial court**, for Chapter 7, Part 6, Division 2—see section 400A. 18
- industrial organising activities**, for Chapter 5, Part 1—see section 209A. 19

[41] Dictionary 20

Omit the definition of **employee**. Insert in alphabetical order— 21

aggrieved person, for Chapter 3A, Part 2—see section 144K. 22

employee— 23

(a) for this Act—see section 5, or 24

(b) for Chapter 3A, Part 1—see section 144A, or 25

(c) for Chapter 3A, Part 2—see section 144K. 26

person conducting a business or undertaking— 27

(a) for this Act—has the same meaning as in the *Work Health and Safety Act 2011*, or 28

(b) for Chapter 3A, Part 2—see section 144K. 29

sexual harassment—see section 144L. 30

sexual harassment order, for Chapter 3A, Part 2—see section 144K. 31

stop bullying order, for Chapter 3A, Part 1—see section 144A. 32

33

Schedule 2	Amendment of Industrial Relations (General)	1
	Regulation 2020	2
[1] Clause 42A Industrial Magistrate—civil procedure		3
Omit “, section 357” from clause 42A(4).		4
[2] Clause 42A(4)		5
Omit “an industrial instrument”. Insert instead “a civil penalty provision”.		6
[3] Clause 43 Maximum amount payable on small claims applications		7
Omit the clause.		8

Schedule 3 Amendment of Work Health and Safety Act 2011 No 10

[1] Section 4 Definitions

Insert in alphabetical order—

registered organisation means—

- (a) an industrial organisation of employees under the *Industrial Relations Act 1996*, or
- (b) an association of employees registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth

[2] Section 26A

Insert after section 26—

26A Duty of persons conducting business or undertaking—code of practice

A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act—

- (a) comply with the code, or
- (b) manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.

[3] Section 97A

Insert after section 97—

97A Person conducting business or undertaking to give copy of provisional improvement notice to regulator

- (1) This section applies if a health and safety representative issues a provisional improvement notice to a person conducting a business or undertaking.
- (2) As soon as practicable after the provisional improvement notice is issued, the person conducting the business or undertaking must give the regulator a copy of the notice.

Maximum penalty—50 penalty units.

[4] Part 5 Consultation, representation and participation

Insert after Division 7—

Division 7A Work health and safety disputes

102A Definitions

In this division—

dispute means a dispute about a WHS matter that exists between any of the following persons—

- (a) a person conducting a business or undertaking,
- (b) a worker affected by the WHS matter,
- (c) a health and safety representative affected by the WHS matter,
- (d) a registered organisation for a worker affected by the WHS matter.

	<i>health and safety committee matter</i> means the constitution of a health and safety committee under section 76.	1
		2
	<i>relevant union</i> , for a worker, means a union that represents the worker.	3
	<i>WHS matter</i> means any of the following matters—	4
	(a) a work group determination matter,	5
	(b) a work group variation matter,	6
	(c) access to information by a health and safety representative under section 70(1)(c),	7
		8
	(d) a request by a health and safety representative for a person assisting the representative to have access to the workplace under section 70(1)(g),	9
		10
	(e) a matter mentioned in section 72(2)(a) or (b) or (4) relating to training for a health and safety representative,	11
		12
	(f) a health and safety committee matter,	13
	(g) a matter about work health and safety that is an issue to which Division 5 applies,	14
		15
	(h) an issue about cessation of work under Division 6.	16
	<i>work group determination matter</i> means the negotiation for the determination of a work group under section 52(1).	17
		18
	<i>work group variation matter</i> means the negotiation for a variation of an agreement concerning the determination of a work group under section 52(4).	19
		20
102B	Application of division	21
	This division applies in relation to any of the following disputes—	22
	(a) a dispute about a WHS matter that is a work group determination matter, work group variation matter or health and safety committee matter, if—	23
		24
	(i) an inspector has been appointed to assist the parties to the dispute to reach an agreement about the matter, and	25
		26
	(ii) the inspector has made a decision relating to the dispute under section 54(2) or 76(6),	27
		28
	(b) a dispute about a WHS matter, other than a WHS matter mentioned in paragraph (a), whether or not an inspector has been appointed to assist in resolving the dispute.	29
		30
		31
		32
102C	Notice of dispute may be given to Industrial Relations Commission	33
	(1) A party to the dispute may give the Industrial Registrar written notice of the dispute.	34
		35
	(2) The notice must state each of the following—	36
	(a) the names of the parties to the dispute,	37
	(b) the workplace where the dispute exists,	38
	(c) the WHS matter the subject of the dispute,	39
	(d) if, under this part, an inspector has been appointed to assist the parties to reach an agreement or resolve the dispute—whether a decision made by the inspector to exercise, or not to exercise, compliance powers under Part 10 is subject to review under Part 12.	40
		41
		42
		43
	(3) On receiving the notice, the Industrial Registrar must immediately publish the notice on the NSW industrial relations website within the meaning of the <i>Industrial Relations Act 1996</i> .	44
		45
		46

(4)	If a relevant union for a worker affected by the WHS matter is not named as a party to the dispute in the notice, the union may notify the Industrial Registrar, in writing, that the union wants to participate in the resolution of the dispute.	1 2 3
(5)	A relevant union that gives notice under subsection (4) is taken to be a party to the dispute for the purposes of this division.	4 5
102D	Effect of notice of dispute on involvement of inspector	6
(1)	This section applies if—	7
(a)	the dispute is a dispute mentioned in section 102B(b), and	8
(b)	notice of the dispute is given under section 102C(1).	9
(2)	A party to the dispute must not ask the regulator to appoint an inspector to assist in resolving the dispute and the regulator must not appoint an inspector to assist in resolving the dispute.	10 11 12
(3)	If an inspector has already been appointed to assist in resolving the dispute, the inspector must take no further action to attempt to assist to resolve the dispute.	13 14
(4)	Subsection (3) applies subject to any order made by the Industrial Relations Commission in relation to the dispute, including, for example, an order mentioned in section 102E(3) or directions mentioned in section 102F(3)(a)(iii).	15 16 17 18
102E	Action for settling dispute	19
(1)	This section applies if notice of a dispute has been given under section 102C.	20
(2)	The Industrial Relations Commission may deal with the dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration.	21 22
(3)	Without limiting subsection (2), if the Industrial Relations Commission deals with the dispute by arbitration, the Commission may make an order the Commission considers appropriate for the prompt settlement of the dispute.	23 24 25
(4)	A person must not contravene an order made under subsection (3).	26
	WHS civil penalty provision.	27
	Maximum penalty—100 penalty units.	28
102F	Review of particular decisions made by inspector	29
(1)	Subsections (2)–(5) apply if a dispute relates to any of the following decisions (an <i>original decision</i>) made by an inspector—	30 31
(a)	a decision by an inspector under section 54(2) or 76(6),	32
(b)	a decision (a <i>compliance decision</i>) made by an inspector to exercise, or not to exercise, compliance powers under Part 10 to assist in resolving the dispute.	33 34 35
(2)	In dealing with the dispute under this division, the Industrial Relations Commission may review the decision.	36 37
(3)	If the Industrial Relations Commission reviews an original decision under subsection (2), the Commission—	38 39
(a)	may decide to—	40
(i)	confirm or vary the original decision, or	41
(ii)	set aside the original decision and substitute another decision the Commission considers appropriate, or	42 43

	(iii)	set aside the original decision and return the matter to the inspector who made the decision with directions the Commission considers appropriate, and	1
			2
	(b)	must give the regulator notice of—	3
		(i) the Commission’s decision to review the original decision, and	4
		(ii) any decision made by the Commission under paragraph (a) (the <i>review decision</i>).	5
			6
			7
(4)		Despite section 102E(3), the Industrial Relations Commission must not make an order under this division staying the operation of the original decision.	8
			9
(5)		Subsections (6)–(8) apply if the dispute relates to an original decision that is a compliance decision.	10
			11
(6)		The notice mentioned in subsection (3)(b) must state that any review of the compliance decision, or any stay of the operation of the compliance decision, under Part 12 ends on the making of the Industrial Relations Commission’s decision to review the compliance decision under this section.	12
			13
			14
			15
(7)		A compliance decision reviewed by the Industrial Relations Commission under this section is, from the time the Commission decides to review the decision, taken not to be a reviewable decision under section 223.	16
			17
			18
(8)		If the compliance decision is or has been the subject of review proceedings under Part 12—	19
			20
	(a)	any review of the compliance decision, or any stay of the operation of the compliance decision, under that part ends when the Industrial Relations Commission decides to review the compliance decision, and	21
			22
			23
	(b)	subsection (6) does not affect the validity of any action taken under Part 12 before the making of the Industrial Relations Commission’s decision to review the compliance decision.	24
			25
			26
102G		Decision not to deal with dispute	27
(1)		The Industrial Relations Commission may decide not to deal with a dispute about a WHS matter if—	28
			29
	(a)	notice of the dispute was not given in accordance with section 102C, or	30
	(b)	the Industrial Relations Commission considers the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance.	31
			32
			33
(2)		Subsection (1) does not limit the grounds on which the Industrial Relations Commission may decide not to deal with the dispute.	34
			35
(3)		The Industrial Relations Commission may make a decision under subsection (1) on the Commission’s own initiative.	36
			37
102H		Costs	38
(1)		A party to a dispute notified to the Industrial Relations Commission under this division must bear the party’s own costs in relation to the dispute.	39
			40
(2)		However, the Industrial Relations Commission may order a party (the <i>first party</i>) to pay costs incurred by another party in relation to the dispute if the Commission is satisfied—	41
			42
			43
	(a)	the WHS matter the subject of the dispute is frivolous, vexatious, misconceived or lacking in substance, and	44
			45

	(b) the first party notified the dispute to the Commission or has otherwise acted without reasonable cause in relation to the dispute.	1 2
	(3) If the Industrial Relations Commission orders the payment of costs, the amount ordered may be recovered as a debt.	3 4
	(4) Subsection (3) does not limit other ways in which amounts may be recovered on an order of the Industrial Relations Commission.	5 6
102I	Appeal	7
	A person dissatisfied with a decision made by the Industrial Relations Commission under this division may appeal under the <i>Industrial Relations Act 1996</i> , Chapter 4, Part 3.	8 9 10
[5]	Section 118 Rights that may be exercised while at workplace	11
	Insert after section 118(1)(d)—	12
	(d1) take measurements or conduct tests directly relevant to the suspected contravention,	13 14
	(d2) take photos and videos directly relevant to the suspected contravention,	15
[6]	Section 223 Which decisions are reviewable	16
	Insert after section 223(1), table, items 1 and 3, column 3, item (3) wherever occurring—	17
	(4) A union that represents a worker whose interests are affected by the decision.	18
[7]	Section 223(1), table, item 2, column 3	19
	Insert after item (2)—	20
	(3) A union that represents a worker whose interests are affected by the decision.	21
[8]	Section 223(1), table, items 4, 9A, 9B, 10 and 11, column 3	22
	Insert after item (5) wherever occurring—	23
	(6) A union that represents a worker whose interests are affected by the decision.	24
[9]	Section 223(1), table, items 7 and 8, column 3	25
	Insert after item (4) wherever occurring—	26
	(5) A union that represents a worker whose interests are affected by the decision.	27
[10]	Section 223(1), table, items 9 and 12, column 3	28
	Insert after item (6) wherever occurring—	29
	(7) A union that represents a worker whose interests are affected by the decision.	30
[11]	Section 230 Prosecutions	31
	Omit section 230(1)(c). Insert instead—	32
	(c) a registered organisation that has a member or members who are concerned in the matter to which the proceedings relate.	33 34
[12]	Section 230(2A) and (2B)	35
	Insert after section 230(2)—	36
	(2A) The regulator must, as soon as practicable after bringing proceedings for an offence against this Act that has been raised with the regulator by a registered	37 38

	organisation, notify the registered organisation that the regulator has brought the proceedings.	1
		2
(2B)	A failure by the regulator to notify a registered organisation as required by subsection (2A) does not affect or invalidate proceedings brought by the regulator.	3
		4
		5
[13]	Section 230(3)	6
	Omit the subsection. Insert instead—	7
(3)	A registered organisation may bring proceedings for an offence against this Act only if—	8
		9
(a)	the registered organisation has consulted with the regulator about the registered organisation's intention to bring the proceedings, and	10
		11
(b)	the regulator has declined to bring the proceedings.	12
[14]	Section 230(6)	13
	Omit the subsection. Insert instead—	14
(6)	The court before which proceedings for an offence against this Act are brought by a registered organisation may direct that a portion of the fine or other penalty imposed in the proceedings be paid to the registered organisation.	15
		16
		17
[15]	Section 232(2) and (3)	18
	Omit section 232(2). Insert instead—	19
(2)	A proceeding for an offence may be brought after the end of the applicable limitation period in subsection (1) with the leave of the court.	20
		21
(3)	A court may grant leave under subsection (2) only if the court is satisfied the granting of the leave is in the interests of justice.	22
		23
[16]	Section 271 Confidentiality of information	24
	Insert after section 271(3)(c)—	25
(c1)	to any of the following persons relating to an inspection or investigation of a matter raised by the person with the regulator—	26
		27
(i)	an employee association officer,	28
(ii)	an employer organisation officer,	29
(iii)	a health and safety representative, or	30
(c2)	if the document is a notice required to be displayed under section 210, or	31
[17]	Section 271(3B)	32
	Insert after section 271(3A)—	33
(3B)	A person may disclose information, or give access to a document or the use of information or a document, that is authorised under subsection (3)(a)–(c2), (e) or (f) only if the disclosure, access or use would not prejudice an ongoing investigation, prosecution or other exercise of compliance powers.	34
		35
		36
		37
[18]	Section 271AA	38
	Insert after section 271A—	39

271AA Exchange of information

- (1) The regulator may enter into, or approve of, an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the regulator and the relevant agency.
- (2) The information to which an information sharing arrangement may relate includes the following—
 - (a) information relating to investigations, law enforcement, assessment of complaints, licensing, authorisations, notifiable incidents, dispute resolution and monitoring of work health and safety and compliance,
 - (b) other information relating to work health and safety,
Example— persons conducting a business or undertaking, workers, workplaces, plant, substances, structures and education and training in relation to work health and safety
 - (c) other information of a type prescribed by the regulations.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite another Act or law of the State, authorised—
 - (a) to request and receive information held by the other party to the information sharing arrangement, and
 - (b) to disclose information to the other party.
- (4) Subsection (3) applies only to the extent that the information is reasonably necessary to assist in—
 - (a) the exercise of the regulator’s functions under this Act, or
 - (b) the exercise of the relevant agency’s functions under another Act.
- (5) This section does not—
 - (a) limit the functions that may be exercised by the regulator under section 152, or
 - (b) limit section 271A or 271B, or
 - (c) require the regulator to provide information to a relevant agency only in accordance with an information sharing arrangement if the information may otherwise be lawfully provided, or
 - (d) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (6) Section 271(2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.
- (7) This section does not limit or otherwise affect section 271(4).
- (8) In this section—

information includes reports, recommendations, opinions, assessments and operational plans, whether or not in written form.

law enforcement agency means—
 - (a) the NSW Police Force or the police force of another State or Territory or of an overseas jurisdiction, or
 - (b) the Australian Federal Police, or
 - (c) the New South Wales Crime Commission, or
 - (d) the Australian Crime Commission, or

(e)	another authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction.	1 2 3
	relevant agency means—	4
(a)	a law enforcement agency, or	5
(b)	another agency of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction, or	6 7
(c)	another person or body that—	8
	(i) exercises public official functions, and	9
	(ii) is prescribed by the regulations.	10
[19] Section 271AB		11
	Insert before section 271B—	12
271AB Multi-party information sharing arrangement		13
(1)	The regulator may enter into an arrangement (an information sharing arrangement) with regulatory agencies for the purposes of sharing or exchanging information held by the regulator and the regulatory agencies.	14 15 16
(2)	The arrangement may only relate to information about the regulatory functions of one or more of the parties to the arrangement.	17 18
(3)	A party to the arrangement may, despite another Act or law, share information to which the arrangement relates with another party if the information is reasonably necessary for the exercise of regulatory functions by the other party.	19 20 21 22
(4)	This section does not—	23
	(a) limit the functions that may be exercised by the regulator under section 152, or	24 25
	(b) limit section 271A or 271B, or	26
	(c) require the regulator to share information with regulatory agencies only in accordance with the arrangement if the information may otherwise be lawfully shared, or	27 28 29
	(d) limit the operation of another Act or law under which regulatory agencies are authorised or required to disclose information to another person or body.	30 31 32
(5)	Section 271(2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.	33 34
(6)	This section does not limit or otherwise affect section 271(4).	35
(7)	In this section—	36
	regulatory agencies means the following—	37
	(a) a government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> ,	38 39
	(b) a council, county council or joint organisation within the meaning of the <i>Local Government Act 1993</i> ,	40 41
	(c) an agency, or a class of agencies, of the Commonwealth, another State or Territory that—	42 43
	(i) exercises regulatory functions, and	44
	(ii) is prescribed by the regulations.	45

<i>regulatory functions</i> , of a regulatory agency, means the following—	1
(a) investigation, enforcement or prosecution of a law of the State by the agency,	2 3
(b) assessment or monitoring of compliance with a law of the State by the agency,	4 5
(c) functions of the agency relating to the resolution of complaints or disputes,	6 7
(d) functions of the agency relating to authorisations, licensing, registration or accreditation,	8 9
(e) other functions of the agency prescribed by the regulations.	10