



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.