



Fact sheet

Respect@Work - Changes to the Sex Discrimination Act 1984 and the Australian Human Rights Commission Act 1986

(September 2021)

Background

On 11 September 2021 the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth) (**the Act**) came into effect. The Act makes important amendments to the *Sex Discrimination Act 1984* (Cth) (**the SDA**) which were recommended by the Australian Human Rights Commission in the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. The changes were made to provide better protection for workers from sexual harassment and other forms of sex discrimination in the workplace.

Key changes

The Act makes four important changes, these are:

- Prohibiting sex-based harassment in all areas of public life covered by the SDA
- Expanding the coverage of the SDA and who is protected by the SDA, particularly in relation to sexual harassment
- Clarifying that victimisation under the SDA can form the basis of a civil action for unlawful discrimination
- Providing that a complaint under the SDA can now be terminated if lodged more than 24 months after the alleged conduct. This replaces the 6 month timeframe.

Sex-based harassment

The Act amends the SDA to make it clear that it is unlawful to harass a person on the ground of their sex. Sex-based harassment is now specifically made unlawful in all areas of public life covered under the SDA.

Sex-based harassment is defined as unwelcome conduct of a seriously demeaning nature by reason of the person's sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Expanded coverage

The Act amends the SDA to:

- expand the coverage of the protection against sexual harassment to all workplaces and workers. This means that interns, volunteers, students, self-employed workers are now protected from harassment. The harassment provisions in the SDA now adopt the concepts of 'worker' and 'a person conducting a business or undertaking' used in work health and safety law.
- clarify that the scope of the SDA extends to Members of Parliament, their staff and judges at all levels of government
- ensure that the SDA protects public servants at all levels of government, from harassment and discrimination in the workplace. The Act removes the exemption that applied to state public servants and employees of state instrumentalities.
- extend the accessory/ancillary liability provisions in the SDA so that a person who causes, instructs, induces, aids or permits another person to engage in sexual harassment or sex-based harassment can also be found to be liable for the conduct.

Victimisation

The Act changes the SDA to clarify that victimisation can form the basis of a civil action for unlawful discrimination.

Time Limitations

There is no specific time frame in which a complaint must be lodged with the Commission. The Act amends the *Australian Human Rights Commission Act 1986* (Cth) so that the President can now terminate a complaint alleging unlawful discrimination under the SDA if the complaint was lodged more than 24 months after the alleged acts, omissions or practices took place. This change applies to termination decisions made after 11 September 2021 (the date of the amendment). Prior to this amendment, the President had the power to terminate a complaint lodged more than 6 months after the alleged events.

Disclaimer: The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.