PRACTICE NOTE NO. 35

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Issued pursuant to s 185A of the *Industrial Relations Act 1996* (NSW)
and s 15 of the *Civil Procedure Act 2005* (NSW)

SEXUAL HARASSMENT APPLICATIONS

COMMENCEMENT

1. This Practice Note commenced on 13 October 2025. This amendment is effective from 10 August 2026.

APPLICATION

2. This Practice Note applies to applications for a sexual harassment order made under s 144P of the Act. This Practice Note does not apply to an application for civil penalties for a contravention of a sexual harassment order nor an application for civil penalties for a contravention of the prohibition on sexual harassment in connection with work.

BEFORE COMMENCING PROCEEDINGS

3. Many workplaces have policies and processes to prevent and respond to sexual harassment. A person considering making a sexual harassment application, where safe to do so, should try to resolve their grievance through those processes before commencing proceedings in the Commission. This may include making a formal complaint with their employer.

4. A person may not make a sexual harassment application and a claim under anti-discrimination law for the same conduct. However, a person may make a sexual harassment application and make a work health and safety claim for the same conduct at the same time.

COMMENCEMENT OF PROCEEDINGS

5. A sexual harassment application may be commenced by filing Form 64A – Application for Sexual Harassment Order by email to IRC.Registry@courts.nsw.gov.au. Alternatively, a sexual harassment application can be filed in person or by post in accordance with r 2.5 of the *Industrial Relations Commission Rules 2022* (NSW) (the **Rules**). It is intended that a sexual harassment application will be able to be filed using the Online Registry, and once that is possible it can only be filed by email if for some reason it cannot be filed using the Online Registry.

6. A sexual harassment application should name each of the following persons as a respondent:

   a. if orders are sought against them, the person(s) alleged to have sexually harassed the applicant;

   b. even if orders are not sought against that them, the employer or person who engaged the applicant; and

   c. even if orders are not sought against them, the employer or principal of the person(s) alleged to have sexually harassed the applicant (if known).

7. If no orders are sought against person(s) alleged to have sexually harassed the applicant then if known such person(s) can be identified in the application but they need not be named as respondent(s).

8. Applicants should be aware that including the person(s) who they allege sexually harassed them as respondent(s) in the application will result in those person(s) being served with the application under r 3.5 of the Rules. Applicants should consider that in deciding whether to name that person as a respondent.

   a. If the person(s) alleged to have sexually harassed the applicant are not named as respondent(s) in the application they will not be served by the Commission with the application initially.

   b. Pursuant to r 3.5(5) of the Rules, an additional respondent can be added by the Commission at any time during the proceeding. If not named as a respondent at the outset person(s) identified by the applicant as allegedly having sexually harassed them must be added as respondent(s) no later than the arbitration stage.

9. If the applicant is an industrial organisation the sexual harassment application should identify the employee(s) who it claims were sexually harassed and their employer or person who engaged them.

10. A sexual harassment application should include sufficient details of the conduct alleged for the respondent(s) to be able to understand and respond to the allegations being made. This will include:

    a. when the conduct occurred;

    b. who engaged in the conduct; and

    c. a description of the conduct itself.

11. If the applicant is worried about particular information being passed on to the person(s) alleged to have sexually harassed the applicant and the employer or principal of that person(s), they can provide an incomplete sexual harassment application and then contact the Registry to talk about whether the information should be provided.

SERVICE OF SEXUAL HARASSMENT APPLICATION BY REGISTRY

12. After a sexual harassment application is filed, the Registry will serve the sexual harassment application on the following persons pursuant to r 3.5(2) of the Rules:

a. any persons the application identifies as having engaged in sexual harassment, and

b. the employer or principal of any persons the application identifies as having engaged in sexual harassment.

13. The Industrial Registrar may require an applicant to provide further details in their application before the Registrar serves the application.

14. An Applicant should not serve a sexual harassment application on any respondent.

RESPONSE TO SEXUAL HARASSMENT APPLICATION

15. The person(s) the application identifies as having engaged in sexual harassment and the employer or principal of that person(s) must file and serve a response within seven days after service of the sexual harassment application on that respondent.

16. The Commission may direct that a respondent must file such a response.

17. A Response to a Sexual Harassment Application should be made by filing Form 64B – Response to Sexual Harassment Application by email to IRC.Registry@courts.nsw.gov.au. Alternatively, a Response to a Sexual Harassment Application can be filed in person or by post in accordance with r 2.5 of the Rules. It is intended that a Response to a Sexual Harassment Application will be able to be filed using the Online Registry, and once that is possible it can only be filed by email if for some reason it cannot be filed using the Online Registry.

PROCEDURAL APPLICATIONS

18. In this Practice Note to make "a written application" means to make an application pursuant to UCPR Part 18 or to make a request in writing addressed to the Industrial Registrar sent to IRC.Registry@courts.nsw.gov.au or by post.

19. A written application can only be made after a party has informed the other party or parties of the application and sought their agreement to the request in the application.

20. A written application must:

a. identify the matter number;

b. set out in succinct terms what is requested;

c. provide short reasons; and

d. state the other party's or parties' response(s) to the application.

21. All written communications to the Industrial Registrar must be copied to the other party or parties at the time they are sent.

22. A written application that does not comply with these requirements will ordinarily be rejected and required to be resubmitted.

23. Some procedural applications need to be supported by evidence and require a formal determination. Where that is the case, the Commission will make directions for the application to be heard and determined. That can include requiring the applicant for

the procedural application to file a notice of motion with a supporting affidavit where that has not already been done.

24. The Commission may hear related matters together or separately. The parties should indicate if there are related matters before the Commission, and if they would prefer their matter is considered together with, or separately from, those related matters. The Commission will determine whether the related matters are considered together or separately.

CONDUCT OF SEXUAL HARASSMENT APPLICATION

25. Pursuant to r 4.9 of the Rules, a Commission member may determine the best procedure to deal with a sexual harassment application. Where required, a Commission member may, among other things:

    a. conduct procedural listings and conciliations in private, with parties kept separate, or online rather than in-person;

    b. require the attendance of any person at the initial or subsequent listings whose presence the Commission considers would help in the resolution of the application; and

    c. direct that any listing not be published on the Commission's daily court list.

26. A Commission member may determine the best procedure for any sexual harassment application on its own initiative, or on the written application of a party.

ADDING OR REMOVING A RESPONDENT

27. At any time, a Commission member may add or remove respondents as required to ensure the proper determination of the sexual harassment application.

28. A Commission member may add or remove a respondent on its own initiative, or on the written application of a party.

ALLOCATION OF LISTING DATE FOR CONCILIATION

29. A sexual harassment application will usually be listed for conciliation before a member of the Commission within 21 days after the application is filed.

30. A request to delay or change the date or time set for the conciliation requires a written application and will be granted only on clear and compelling grounds. The consent of the other party or parties to the adjournment will be a factor taken into account, but is not determinative.

LISTING LOCATION AND AVL REQUESTS

31. The parties will be sent a notice of listing with the time and location of the conciliation hearing.

32. The conciliation of a sexual harassment application is ordinarily listed before the Commission at Level 10, 10 Smith Street, Parramatta. Where the parties are located in the Newcastle region a conciliation may be listed at Newcastle Court House, 343 Hunter Street, Newcastle. A conciliation may also be listed at 47 Bridge Street, Sydney.

33. The Commission prefers to have conciliation hearings listed in person, however where one or more parties are located in a regional or remote area, or it is otherwise inappropriate to list the matter in-person, it may be listed to occur via audio/visual link (AVL).

34. A written application may be made for the conciliation to be listed for a hearing via AVL. Such an application is to be made by the applicant at the time the sexual harassment application is filed and by a respondent as soon as practicable. In such a case, the party seeking that conciliation by conducted by AVL should follow the process set out above under the heading "Procedural Applications".

CONCILIATION

35. Parties, legal practitioners, industrial agents and others who appear before the Commission should do all they can to facilitate the just, quick and cheap resolution of matters before the Commission.

36. If both parties are represented, the Commission expects that their representatives will make contact with the opposing party prior to the conciliation to attempt to narrow the issues in dispute and to explore the basis on which the matter might be resolved. Where one or more parties are unrepresented, there is no expectation that this will occur.

37. Applicants are to attend the conciliation whether or not they are represented. Respondents, including those who are legally represented, must ensure that there is a person in attendance at the conciliation with the power to make decisions to enable the resolution of the matter.

38. At the conciliation parties and their representatives will be expected to:

    a. identify the real issues in dispute;

    b. express the basis on which they are willing to resolve the matter; and

    c. use their best efforts to resolve the issues in dispute.

39. In many cases there is only one conciliation. The Commission member will consult with the parties during conciliation to assess whether a further conciliation would be beneficial.

40. If an applicant fails to appear at a conciliation and has not provided a clear and compelling reason for their non-attendance, this may result in the matter being dismissed.

PRELIMINARY ISSUES

41. A preliminary issue is a threshold question that a party asserts that the Commission should determine before the substantive merits of the matter can be considered. They include issues such as whether the Commission has jurisdiction, whether an applicant has standing to bring the matter, whether a party should be joined or removed, whether an application is out of time, or whether statutory preconditions have been met. A preliminary issue may be raised by a party or identified by the Commission.

42. A respondent in their response, or any party in their written application, may indicate that they do not object to conciliation taking place prior to the hearing of a preliminary issue.

43. In deciding whether a preliminary issue will be determined prior to conciliation, the Commission member will consider the overriding objective of the just, quick and cheap resolution of the real issues in dispute and the interests of justice.

44. Upon deciding that a preliminary issue needs to be determined the Commission will set a date to hear that question and issue directions. The Commission can, however, determine that a preliminary question be determined at the same time as the substantive issues in the matter.

DIRECTIONS FOR ARBITRATION

45. When the Commission determines that all reasonable attempts have been made to achieve a conciliated resolution, the Commission will ordinarily set a date for the arbitration hearing and make directions for evidence and submissions to be filed. The Commission will make the "Usual Directions", which can be found on the Commission's website, unless there is good reason to make different directions. Parties should attend the conciliation with their preferred dates for an arbitration hearing.

46. If a party wishes to exercise its right under s 173 of the Act to have a different member of the Commission conduct the arbitration hearing, such an application should be made at or immediately after the conclusion of the conciliation. A failure to do so does not prevent a later application being granted.

FURTHER CONCILIATION

47. A request for further conciliation can be made at any time by written application. If the request is made during arbitration, it can be made orally.

48. Usually, the Commission will only accede to the request for a further conciliation if the parties' consent to the application.

49. Further conciliation will usually be conducted by the Commission member who presided in respect of the first conciliation.

50. The listing of a further conciliation does not excuse the parties from complying with directions made in the proceedings unless an order is made by the Commission to that effect.

REQUEST TO VARY DIRECTIONS AND VACATE HEARING DATES

51. Parties are required to comply with any directions made by the Commission.

52. A request to vary a direction must be made by a written application prior to the date for compliance and must strictly comply with the requirements for a procedural application at paragraphs [16]-[22] above. It must also address whether the hearing dates will be impacted by the proposed amendment.

53. A contested application to vary a direction that will impact on hearing dates must be made by notice of motion with supporting evidence. An application to vacate dates for arbitration will be granted only on clear and compelling grounds.

FAILURE TO ATTEND

54. If a party fails to attend a listing of the matter, the application may be heard and determined in the absence of that party.

55. Where the applicant fails to attend a conciliation or hearing and has not provided a clear and compelling reason for their non-attendance, the Commission may dismiss the application. Before doing so, the Commission may adjourn the matter and direct that notice be given to the applicant advising that the application may be dismissed if there is no attendance at the adjourned hearing.

56. Where the respondent fails to attend, the Commission may proceed to determine the matter in their absence, including making orders as to liability and remedy, provided the applicant has presented sufficient evidence to support the claim.

57. The Commission may also dismiss the proceedings for other reasons, including where they are frivolous, vexatious, disclose no reasonable cause of action, or constitute and abuse of process.

JUSTICE I TAYLOR
PRESIDENT
3 AUGUST 2025

Amendment History:

5 December 2025: This Practice Note replaced former Practice Note 34 Stop Sexual Harassment Applications which was issued on 13 October 2025.

10 August 2026: This Practice Note replaced former Practice Note 35 Stop Sexual Harassment Applications which was issued on 5 December 2025.