



Australian Government
Comcare

Practical guidance
for **EMPLOYERS**



Workplace
SEXUAL HARASSMENT

Never part of the job.

Influencing POSITIVE change

One in three workers experienced sexual harassment at work in the past five years. The majority of workers chose not to report it, as some believed it would be seen as an overreaction, while others felt it was easier to keep quiet. These are findings from *Respect@Work*, the Australian Human Rights Commission's (AHRC) national inquiry into workplace sexual harassment.

In every industry and at every level, workplace sexual harassment is unlawful and harmful to workers, particularly when reporting is poorly handled. It is often an abuse of power and enabled by systemic factors including low diversity, isolated or remote work and poor workplace culture.

For employers and officers (persons conducting a business or undertaking), this is a serious issue that presents a significant financial, legal, and reputational risk. A workplace culture with a strong focus on prevention and early intervention is critical to influencing positive change.



Employer duties and obligations under the *Work Health and Safety Act 2011*

Employers must eliminate and minimise risks to the health and safety of workers and others, including sexual harassment, so far as is reasonably practicable. This includes identifying hazards, assessing and managing risk, consulting with workers, providing education and training, supervising to prevent sexual harassment, establishing processes to report without fear, shame or 'victim blaming', and taking appropriate action to respond to and manage incidents. Employers must, so far as is reasonably practicable, consult and cooperate with businesses that interact with their workers about measures to prevent sexual harassment. An employer's officers must exercise due diligence to ensure the employer complies with its duties.



Sexual harassment – impacts

For people who experience or witness workplace sexual harassment, the following physical and psychological impacts are possible:

- Feelings of isolation, social isolation, or family dislocation
- Loss of confidence and withdrawal
- Physical injuries as a result of assault
- Depression, anxiety, and stress
- Post-traumatic stress disorder (PTSD)
- Illness such as cardiovascular disease, musculoskeletal disorders, immune deficiency, and gastrointestinal disorders (for example, as a result of stress)
- Self-harm or suicide.

For employers, there are significant financial impacts to consider such as lost productivity, staff turnover, reputational damage, litigation, and workers' compensation.



Sexual harassment – definition

Sexual harassment is defined in the *Sex Discrimination Act 1984* (Cth.) as being any unwelcome sexual advance, request for sexual favours or conduct of a sexual nature where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Workplace sexual harassment is not defined in the WHS Act. However, employers have a duty under the Act to eliminate or manage hazards and risks to the health and safety of workers, including to prevent workplace sexual harassment.



What are some examples of sexual harassment?

- Inappropriate and unwelcome physical contact – e.g. touching, hugging, kissing
- Staring or leering
- Intrusive questions about your private life or physical appearance
- Suggestive comments or jokes
- Unwanted invitations – e.g. repeated invitations to go out on dates, requests for sex
- Sexually explicit content – e.g. emails, text messages, calls or online
- Displaying images of a sexual nature around the workplace
- Unnecessary familiarity – e.g. deliberately brushing up against you.



Workers - people most at risk

All workers are at risk of workplace sexual harassment, however, the following groups have been found to be at greater risk:

- Women (experience higher rates of workplace sexual harassment than men)
- Young workers aged less than 30 years
- Lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI) workers
- Aboriginal or Torres Strait Islander workers
- Workers with disability
- Workers from culturally and linguistically diverse (CALD) backgrounds
- Migrant workers or workers holding temporary visas
- People in working arrangements described as 'precarious' or 'insecure'.



Positive workplace culture starts at the top

Building a positive workplace culture starts with strong leadership. Executives, board members and senior managers should model and enforce acceptable behaviours that align with workplace policies to prevent sexual harassment and set a standard that addresses inappropriate behaviour early, and ideally before it escalates.



Prevention – take action early

- **Be aware of heightened risk factors for sexual harassment.** Circumstances where power imbalances exist and industry systemic factors such as low diversity, isolated or remote work and poor workplace culture.
- **Assess and manage risks.** Identify risks inside and outside your organisation, drawing on relevant guidance, evidence, and past experiences to develop an understanding of what they are and what actions to take to reduce or eliminate them. If you are not able to eliminate risks, minimise them so far as is reasonably practicable.
- **Foster a positive workplace culture.** Build a culture of openness, trust and respect that is supported by policies, human resources practices and staff education and training. This helps to minimise the risk of sexual harassment and supports a culture where any instances are either reported or dealt with in a way that minimises harm to workers.
- **Show strong leadership.** Executives and senior managers should set a strong example of the types of behaviours and cultures that prevent workplace sexual harassment.
- **Provide information, training and education.** Adopt new and better approaches to workplace education and training that shows workers, managers and supervisors how to prevent and respond to sexual harassment, actions to take if they experience or witness it and how to report an incident.
- **Measure your effectiveness.** Like any other workplace hazard, employers should measure and understand the prevalence, scope and impacts of sexual harassment and monitor and share the effectiveness of their workplace initiatives to prevent and respond to it.



Policy – set the standard

Everyone in the workplace – employers, workers and third parties – should model acceptable behaviours that foster a positive and respectful workplace culture where workplace sexual harassment is not tolerated. Workplace policies help to set the standard for workers with clear guidance that covers the following:

- **Definition and legislation.** Provide examples of sexual harassment and reinforce the message that this type of behaviour is unlawful and will not be tolerated.
- **Roles and responsibilities.** WHS duties and practical guidance for employees at all levels, including the employer, managers, supervisors, and workers.
- **Standards and behaviours.** Outline the types of behaviours, attitudes, and language that disrespect or exclude people based on gender, gender identity, sexual orientation or assumptions about dominant gender stereotypes and socially prescribed gender roles.
- **Preventative measures.** Education and training, building a positive workplace culture, promoting gender equality and the role of workplace leadership are some examples.
- **Controls and consequences.** What employers will do if workers breach the policy.
- **Actions and reporting.** What workers should do if they experience or witness sexual harassment, how they can report it and the process from there.
- **Support and referrals.** Further information and advice for workers who have experienced or witnessed sexual harassment.



Responding to INCIDENTS

If you feel anyone in your workplace is in immediate danger, call 000 and report the matter to the Police.

The AHRC's *Respect@Work* inquiry found most workers choose not to report incidents of sexual harassment because they are concerned a formal complaint would not be managed appropriately.

Employers should ensure workers understand the reporting process and their reporting options – formal, informal, and anonymous. The process should be actively promoted at work and key workers (contact persons that receive reports) should receive training on supporting and advising complainants. Employers should also implement systems to prevent retaliation and victimisation of people involved in reports of sexual harassment.

After an incident, employers should review their risk management systems to identify and address factors that may have increased the risk of sexual harassment, including industry specific risks, to evaluate what worked and what could be improved.



Reporting – employers play a key role

Some workers that experience or witness workplace sexual harassment choose not to report straight away. If they do report, employers should take the following steps:

- **Act promptly and document the process.** Take action as soon as possible and ensure that all decisions are documented and stored securely.
- **Maintain privacy and confidentiality.** Be clear about how information will be handled in a way that maintains confidentiality and protects the privacy of all parties involved.
- **Communicate clearly and treat everyone fairly.** Outline the reporting process to everyone involved (including both sides of the complaint and witnesses) and share available support and representation options.
- **Protect all people involved from victimisation.** Workers need to feel safe to discuss sexual harassment issues in a workplace culture that protects them from victimisation such as bullying, intimidation or retaliation.
- **Support for workers.** Make it a priority to support the health and wellbeing of workers that do make a report, including before, during and after the process.
- **Referral to other agencies.** When it is not possible to resolve the complaint internally, it is important to respect a worker's desired outcome and preferred way of managing the complaint.
- **Other reporting options.** Provide a variety of reporting options to help protect workers and minimise further harm, such as informal and anonymous reporting. This gives employers the opportunity to intervene early and support victims.
- **Resources for managers.** Provide managers with clear guidance that is easily accessible including information about the causes of sexual harassment, prevention activities and how to respond in a trauma-informed way.

Latest research shows:

39%

Of women and 26% of men have experienced sexual harassment in the workplace in the past five years.

\$3.8B

Workplace sexual harassment cost the Australian economy an estimated **\$3.8 billion in 2018**



The key driver of sexual harassment is power disparity, including gender inequality.



For more information

Employers can refer workers that would like additional support or information to the Australian Human Rights Commission and relevant state and territory anti-discrimination agencies.



For more information

About sexual harassment

- [Australian Human Rights Commission](#)
- [State and Territory WHS regulators](#)
- [Know the Line – Employer Information](#)

Support services for workers

- Employee Assistance Program (EAP)
- 1800RESPECT **1800 737 732**
- [Sexual assault support services](#)
- Lifeline **13 11 14**
- Beyond Blue Support Service **1300 22 4636**
- If anyone in your workplace is in immediate danger, call the Police on **000**
- If anyone in your workplace would like to make a report with the Police and is not in immediate danger, call **131 444**

For employers covered by Comcare, make an inquiry or seek advice via whs.help@comcare.gov.au or call us on **1300 366 979**.

Comcare resources

- Website: comcare.gov.au
- [Workplace sexual harassment: Practical guidance for workers](#)
- [Workplace sexual harassment: Practical guidance for managers and supervisors](#)
- [Regulatory guidance for employers on their work health and safety responsibilities](#)

Safe Work Australia resources

- Website: safeworkaustralia.gov.au
- [Preventing workplace sexual harassment](#)
- [Preventing workplace violence and aggression](#)

- [Work-related psychological health and safety: A systematic approach to meeting your duties](#)
- [Model Code of Practice: How to manage work health and safety risks](#)

Australian Human Rights Commission

- [National Information Service](#)
- [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces \(2020\)](#)
- [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Community Guide \(2020\)](#)

Comcare's position and role

Comcare's purpose is to promote and enable safe and healthy work. We recognise workplace sexual harassment as a psychosocial hazard which has the potential to cause workers psychological or physical harm. As the national work health safety and workers' compensation authority, Comcare's legislated functions include securing the health and safety of workers and workplaces. Our functions also include responding to incidents of psychological harm, educating employers about ways to prevent and manage all forms of harm including, workplace bullying and harassment and encouraging leaders to foster a positive workplace culture where this behaviour is not tolerated. There may be circumstances where an injured employee is entitled to workers' compensation under the *Safety Rehabilitation and Compensation Act 1988*, however as the WHS Act does not provide for compensation, individuals may turn to other organisations for support.