

Workplace **SEXUAL HARASSMENT**

Never part of the job.

**Regulatory guidance
for employers on their
work health and safety
responsibilities.**



Australian Government
Comcare

Managing workplace sexual harassment

If you feel anyone in your workplace is in immediate danger, call 000 and report the matter to Police. If anyone in your workplace would like to make a report with Police and is not in immediate danger, call 131 444.

Sexual harassment is a known cause of physical and psychological harm in the workplace. Therefore, managing the risks of workplace sexual harassment must be a part of your approach to ensuring the health and safety of your workers. This includes managing the risk of your workers being sexually harassed, while at work, by managers, supervisors, contractors, other workers, customers, clients and other persons.

This guide provides information about preventing and responding to sexual harassment in the workplace, to assist employers in the Commonwealth work health and safety (WHS) jurisdiction to comply with their duties under the *Work Health and Safety Act 2011* (WHS Act), and should be read in conjunction with the Safe Work Australia (SWA) guide [Preventing workplace sexual harassment: national guidance material](#).

Under the WHS Act, a person conducting a business or undertaking (referred to in this guide as 'employer') must ensure, so far as is reasonably practicable, the health and safety of workers and other persons at the workplace.

What is workplace sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where the possibility of that reaction could be reasonably anticipated in the circumstances. At the national level, sexual harassment is unlawful under the *Sex Discrimination Act 1984* (Cth). Sexual harassment is also prohibited by state and territory anti-discrimination laws.

Sexual harassment can take various forms. It can include unwelcome hugging, kissing or other types of inappropriate physical contact, staring or leering, intrusive questions about a person's private life or physical appearance, repeated unwanted invitations to go out on dates, requests for sex, or sexually explicit emails, calls, text messages or online interactions.

Such behaviour does not have to be directed at a specific person. Sexual harassment includes behaviour that makes the working environment uncomfortable or threatening in a sexually hostile way, such as displaying sexually offensive pictures or a culture of suggestive comments or jokes.

Sexual harassment can happen during working hours and at work-related activities such as training courses, conferences, trips, and work-related social activities. It might come from workers, a supervisor or manager, or from customers or clients.

More information is available in SWA's national guidance on [workplace sexual harassment](#) which is based on the model work health and safety laws (model WHS laws).

Impacts of workplace sexual harassment

The consequences and cost of not addressing workplace sexual harassment may be high for the harassed individual in terms of physical and psychological harm and for the employer in terms of lost productivity, reputational damage, and significant financial loss. Workplace sexual harassment can also have an adverse impact on workers witnessing the unacceptable behaviour.

Workplace sexual harassment varies in severity and its effect on workers. Different individuals can perceive and react to this sort of behaviour in different ways, which can make workplace sexual harassment a complex area for employers to manage. Overt forms of workplace sexual harassment are generally easier to identify and act upon, however there are many examples that are more subtle, such as sexist remarks, crude language, jokes, 'horseplay' and an overall workplace culture that is degrading.

The impacts of workplace sexual harassment depend largely on individual circumstances and settings, however there are often significant economic and social costs for workers, their families, their employers, and the wider community.

Impacts on health and safety

For the person who experiences workplace sexual harassment and anyone who witnesses the behaviour, physical and psychological impacts can include:

- feelings of isolation, social isolation, or family dislocation
- loss of confidence and withdrawal
- physical injuries because 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.

The impact of multiple legislative and issue resolution frameworks

Workplace health and safety laws are clear. Managing the risks of workplace sexual harassment must be a part of your approach to ensuring the health and safety of your workers. However when workplace obligations have not been met, a range of laws can come into play. These laws include work health and safety laws, discrimination and equal opportunity laws, workplace relations laws, workers' compensation laws and criminal laws at Commonwealth, state, and territory levels. These laws facilitate different, but sometimes similar, outcomes. Depending on what outcomes are sought by the individual, the pathways through the legal system and issue resolution processes can be different. See **For more information** for relevant resources.

Comcare can assist employers and individuals to understand the work health and safety duties and frameworks associated with workplace sexual harassment.

Compliance with the Work Health and Safety Act 2011

Duties under the Work Health and Safety Act 2011

The WHS Act seeks to protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work. It does this by providing a framework for employers to systematically manage risks, including the risk of workplace sexual harassment, throughout the organisation at all levels.

The WHS Act does not expressly refer to the risk of workplace sexual harassment. However, the WHS Act imposes a duty on employers to eliminate or manage hazards and risks to the health and safety of workers at work, including to prevent workplace sexual harassment.

Officer duties

Section 27 of the WHS Act imposes a positive duty on officers¹ in your organisation to exercise 'due diligence' to ensure that you, the employer, comply with your duties. Due diligence requires officers to take a proactive role in ensuring your organisation has systems and procedures in place to meet its WHS obligations. A failure to exercise due diligence may attract significant personal liability for officers under the WHS Act.

Worker duties

While at work, workers have a duty under section 28 of the WHS Act to take reasonable care that their acts or omissions do not adversely affect the health and safety of others, including co-workers. This includes not acting in a manner which would constitute sexual harassment. A worker's duties also include complying, so far as they are reasonably able, with any reasonable instruction given by the employer regarding workplace sexual harassment. They must also cooperate with any reasonable policy or procedure relating to workplace sexual harassment that has been notified to them.

Duties of other persons

Other persons at your workplace who are not workers, for example customers and clients, have a duty under section 29 of the WHS Act to take reasonable care that their acts or omissions do not adversely affect the health and safety of workers or any other persons. This includes not acting in a manner which would constitute sexual harassment.

Workers and other individuals who commit offences against the WHS Act can face financial and custodial penalties.

Managing the risk of sexual harassment in your workplace

An employer has a duty under the WHS Act to eliminate risks to health and safety of workers and other persons so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks, they must be minimised so far as is reasonably practicable. This means the employer must do what is reasonably practicable to manage the risk of workplace sexual harassment.

Detailed guidance on identifying and managing risks associated with workplace sexual harassment, and what may be reasonably practicable in terms of the WHS Act, is contained in SWA's national guidance on [workplace sexual harassment](#).

¹ 'Officer' is defined in section 4 of the [WHS Act](#)

National guidance

SWA's national guidance refers to the duties of employers under model WHS laws, such as the WHS Act, including your duties to:

- provide and maintain a work environment that is without risk to the health and safety of workers
- provide adequate and accessible facilities for the welfare of workers to carry out their work
- give workers the necessary information, instruction, training or supervision to do their job safely and without risks to health
- consult with health and safety representatives and workers about health and safety issues that may directly affect them.

The national guidance also provides information about the risk management approach that should be taken to prevent workplace sexual harassment, which includes:

- identifying hazards; including the need to consult with workers when gathering information
- assessing risks; based on the likelihood and consequence of sexual harassment in the workplace
- controlling the risks; through a reasonably practicable and proactive approach, with consideration being given to matters such as:
 - the physical work environment
 - safe work systems and procedures
 - third party sexual harassment
 - addressing unwanted or offensive behaviour early
 - reporting of incidents
 - workplace behaviour policies
 - information, instruction, training and supervision
 - manager training
 - reviewing risk control measures to ensure they remain effective.

Notifying Comcare

The WHS Act requires employers to notify Comcare of the death of a person, serious injuries or illnesses of a person and dangerous incidents arising out of a business or undertaking.² Unless a workplace sexual harassment incident meets these criteria, it would not be considered notifiable.

Comcare's website contains information and online forms to assist employers notify Comcare of notifiable incidents.³ Comcare also has a contact email address (whs.help@comcare.gov.au) and contact number (**1300 366 979**) where employers, workers or a member of the public can raise with Comcare general work health and safety concerns or complaints.

² Refer to Part 3 of the [WHS Act](#)

³ Comcare website - [Responding to an incident | Comcare](#)

Comcare's response to information or complaints about workplace sexual harassment

As an employer, you should have an agreed issue resolution procedure in place for responding to work health and safety issues or complaints or, if there is no agreed procedure, you must apply the default procedure for issue resolution set out in regulation 23 of the *Work Health and Safety Regulations 2011*.

If a worker asks Comcare to assist with a workplace sexual harassment complaint, Comcare will ask the worker whether they or their representative have raised the matter with you. Ordinarily, Comcare may require you and the worker to make reasonable attempts to resolve the matter in terms of the agreed or default issue resolution procedure. Comcare may assist the worker in raising their complaint with you, if they have difficulties doing so.

Comcare may decide not to become actively involved in the worker's individual complaint where the complaint may be better addressed by other means. However, Comcare may conduct an inspection to determine whether your work health and safety management system includes policies, training and reporting mechanisms, that prevent and manage the risk of workplace sexual harassment.

Referral to other organisations

Workers can turn to other organisations, including the Australian Human Rights Commission (AHRC) and state and territory anti-discrimination agencies, that have powers and functions under other laws (for example the *Sex Discrimination Act 1984* administered by the AHRC) which can facilitate issue resolution procedures and potentially achieve the outcomes the worker may be seeking. There may be a need for you to support a worker who is accused of workplace sexual harassment, including to ensure procedural fairness.

Where Comcare intervenes, we will ask the worker about the outcomes they are seeking from their complaint to inform whether Comcare is the relevant agency to pursue those outcomes.

Comcare is more likely to intervene where significant harm has occurred or where serious deficiencies exist in an organisation's work health and safety systems, which may expose workers to an increased risk of workplace sexual harassment. If serious non-compliance with the WHS Act is identified, there are a range of enforcement options available to remedy this.

Details of Comcare's enforcement options can be found in Comcare's current [Compliance and Enforcement Policy](#).

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 Police and is not in immediate danger, call **131 444**.

Reporting options for workers

- Workers can [find out more information](#) or [make a complaint](#) to the Australian Human Rights Commission or their relevant state or territory anti-discrimination body. A solicitor advocate or union can also make a complaint to the Commission on their behalf.
- [WHS regulators](#) may be able to investigate on behalf of workers if they feel they have been discriminated against for raising a health and safety issue. For workers covered by Comcare, they can also 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 employers](#)
- [Workplace sexual harassment: Practical guidance for managers and supervisors](#)
- [Workplace sexual harassment: Practical guidance for workers](#)

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 resources

- [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 \(2020\)](#)

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



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