



# **Preventing sexual harassment in retail franchises**

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Investigation under the Equal Opportunity Act 2010

Published by the Victorian Equal Opportunity and Human Rights Commission,  
Level 3, 204 Lygon Street, Carlton, Victoria 3053. August 2022.

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## Acknowledgements

We acknowledge Bakers Delight Holdings Ltd cooperation with this investigation and contributions from key stakeholders in the scoping and conduct of this investigation.

## Privacy

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ISBN: 978-0-6480882-7-1

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# 1

## Investigation summary



**Sexual harassment impacts every workplace. Under the Equal Opportunity Act 2010, duty holders in Victoria have a legal obligation to take action to prevent workplace sexual harassment, not just respond to it. With the cooperation of Bakers Delight Holdings, the Commission has investigated the way Bakers Delight Holdings prevents sexual harassment in its company-owned workplaces and franchise network.**

## Who is this investigation report for?

This investigation report is for any person, but it will specifically assist:

- employers and head franchisors with operations in Victoria to understand their obligations under the *Equal Opportunity Act 2010* to prevent workplace sexual harassment
- workers in the retail industry and workers in franchise businesses in Victoria to understand the obligations of their employers to eliminate sexual harassment in their workplaces.

## 1.1 About the Commission

The Victorian Equal Opportunity and Human Rights Commission (the **Commission**) is the regulator of the *Equal Opportunity Act 2010* (the **Act**). The Act is a Victorian law that aims to make public life, for example the workplace, free from discrimination, sexual harassment and vilification.

The Commission conducts investigations into breaches of the Act in Victoria, focusing on serious and systemic sexual harassment, discrimination, or victimisation — including the failure by duty holders under the Act to eliminate these as far as possible.

This investigation focused on the prevention of sexual harassment in the workplace.

## 1.2 What we investigated

The Commission investigated whether Bakers Delight Holdings has complied with its positive duty to take reasonable and proportionate measures to eliminate workplace sexual harassment as far as possible.

## What is the positive duty?

Under the Act, employers in Victoria have a positive duty to take reasonable and proportionate measures to eliminate workplace sexual harassment, discrimination and victimisation as far as possible. We refer to this legal obligation as ‘the positive duty’. The positive duty requires employers to take action to prevent sexual harassment, not just respond to it when it occurs. Employers must take preventive measures regardless of whether a complaint has been made.

<b>A positive duty</b>	Is something you must <i>actively do</i> , in this case, to prevent workplace sexual harassment.
<b>A negative duty</b>	Is something you must <i>refrain from doing</i> , such as not sexually harassing another person in the workplace.

The Commission and Bakers Delight Holdings have identified steps to strengthen prevention and response frameworks to make Bakers Delight Holdings’ bakeries and head office safer for workers.

## Methodology

This investigation assessed Bakers Delight Holdings’ compliance with the positive duty to eliminate sexual harassment in its:

- company owned stores in Victoria
- head office
- Victorian franchise bakeries.

 The investigation did	 The investigation did not
<ul style="list-style-type: none"><li>• focus solely on sexual harassment prevention including preparedness to respond to reports</li><li>• consider Bakers Delight Holdings’ policies, processes, training and guidance around workplace sexual harassment.</li></ul>	<ul style="list-style-type: none"><li>• consider or investigate individual instances of workplace sexual harassment</li><li>• investigate Bakers Delight franchisee owners or stores</li><li>• engage with Bakers Delight Holdings’ employees or Bakers Delight franchise workers (the focus of this investigation was on how Bakers Delight Holdings was complying with its duty to prevent sexual harassment)</li><li>• consider Bakers Delight Holdings’ compliance with the positive duty to eliminate discrimination and victimisation.</li></ul>

## What we used to assess compliance

We used the Commission's resource: Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act (the **Guideline**) to assess compliance with the positive duty. The Commission released this Guideline in August 2020.

The Guideline is not legally binding, but it is authoritative – a court or the Victorian Civil and Administrative Tribunal (VCAT) may consider evidence of whether organisations have complied with the Guideline when considering whether a breach of the positive duty has occurred.

This Guideline outlines six minimum standards that an employer must meet to comply with the positive duty:



This investigation focuses on Standard 2 and Standard 3, which require employers to have:

- a **Prevention Plan** underpinned by an assessment of sexual harassment risks
- **policies and complaint channels** that are comprehensive, accessible by and communicated to all employees
- regular **comprehensive training** for all employees on sexual harassment.



# 1.3 Why we conducted this investigation

In 2018, a survey by the Australian Human Rights Commission (AHRC) found that almost one in three people (33 per cent) had experienced sexual harassment in the workplace.<sup>1</sup> In 2020/21, 80% of sexual harassment complaints we received occurred in the workplace.

Sexual harassment is damaging to people, teams and workplaces.<sup>2</sup> Anyone can experience workplace sexual harassment, however the AHRC survey found that women, people aged 18–29, LGBTIQ+ people, people identifying as being Aboriginal or Torres Strait Islander and people with disability are more likely to experience sexual harassment at work.<sup>3</sup>

So often, it is left to individuals to push for better management of workplace sexual harassment through their complaints. The Act's **positive duty** is unique, as it removes this burden from individual complainants by requiring employers to have adequate prevention and response frameworks in place, regardless of whether a complaint is made.

An investigation by the Commission can look into whether a duty holder is doing enough to prevent workplace sexual harassment, without relying on complaints being made.

## Why we investigated Bakers Delight Holdings

Bakers Delight Holdings is the head franchisor of the Bakers Delight bakery franchise. Bakers Delight is a well-loved Australian brand, however both the Commission and Bakers Delight Holdings recognise that their bakeries, like many other retail environments, can be high-risk workplaces for sexual harassment.

We did not start this investigation in response to complaints of workplace sexual harassment occurring at Bakers Delight Holdings. This investigation focuses on prevention. We chose to investigate the prevention of sexual harassment at Bakers Delight Holdings because:

- **Bakers Delight bakeries are part of the retail industry**, which is a high-risk industry for sexual harassment<sup>4</sup>
- **Bakers Delight is a franchise** and franchise arrangements can pose complexities for the prevention and response to sexual harassment, for example if there is an unclear delineation of responsibilities between a franchisee owner and a head franchisor.

Bakers Delight Holdings is already taking steps to create safer workplaces for its employees and franchise workers.

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1 Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces, Australian Human Rights Commission (2018).

2 Guideline: Preventing and responding to workplace sexual harassment – Complying with the Equal Opportunity Act 2010, Victorian Equal Opportunity and Human Rights Commission (2020).

3 Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces, Australian Human Rights Commission (2018).

4 Respect@Work: Sexual Harassment National Inquiry Report, Australian Human Rights Commission (2020).

## Risk of sexual harassment in the retail industry

Retail is a high-risk industry for workplace sexual harassment. The retail industry employs a high proportion of workers that are more vulnerable to experiencing sexual harassment, such as:

- **casual workers** who may fear losing shifts if they make a complaint
- **young people** who may be less likely to understand appropriate workplace behaviours and recognise and complain about sexual harassment if they experience or witness it
- **workers new to Australia** who may not understand their workplace entitlements and may fear losing their ability to work if they make a complaint or approach external groups for help.



Retail bakeries have other specific risk factors, including:

- **isolated, early morning work** and in some cases, in **regional or remote locations**
- **barriers to complaining**, particularly for baker's apprentices as their ongoing apprenticeship is linked to their future career aspirations
- **gendered nature of the work**, where it is common for bakers to be men and customer service staff to be young women
- **staff demand** for bakers, who can be in short supply and high demand, creates an incentive for bakery owners to be less likely to take action (when sexual harassment is perpetrated by a baker) and for employees to be less likely to make a complaint against them.

All of these risks and more were identified by Bakers Delight Holdings as part of a sexual harassment risk assessment it conducted internally.

## 1.4 What we found

We found that there were gaps in Bakers Delight Holdings' compliance with the positive duty to prevent workplace sexual harassment. This is significant as Bakers Delight Holdings has received reports from individuals experiencing sexual harassment at work. We do not expect that gaps in compliance will be unique to Bakers Delight Holdings. Other duty holders are likely to have similar gaps in compliance, given the limited knowledge of the positive duty in the community and the relatively recent publication of the Guideline.

Bakers Delight Holdings has already started to take steps towards greater compliance with the positive duty, however more work is required for it to:

- ensure the safety of its employees and franchise workers
- comply with the *Equal Opportunity Act 2010*
- protect the reputation of its brand.

On 2 August 2022 Bakers Delight Holdings entered into an Agreement with the Commission which outlines the steps Bakers Delight Holdings will take towards compliance with the positive duty.

[Read the full agreement online.](#)

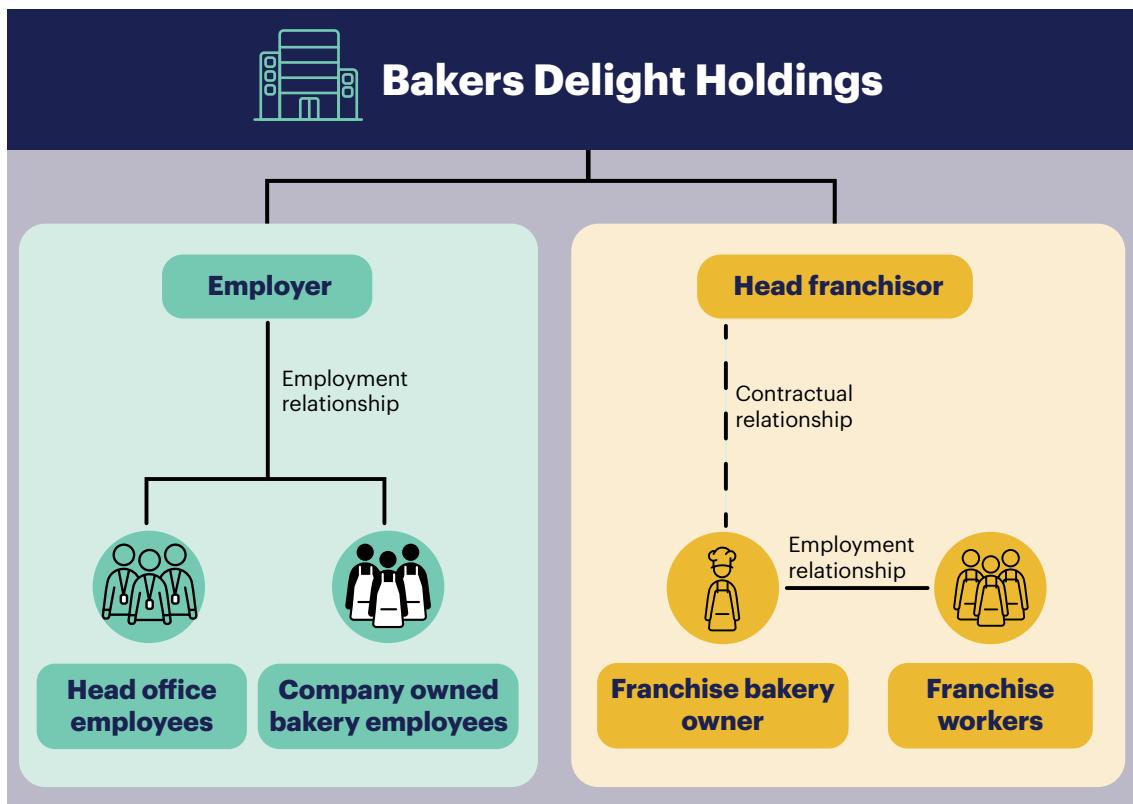
We hope that all employers, particularly in the retail sector and those in franchise arrangements, can learn from the measures that Bakers Delight Holdings is now taking to prevent workplace sexual harassment. We highlight those learnings in this report.

# 2

## Investigation findings

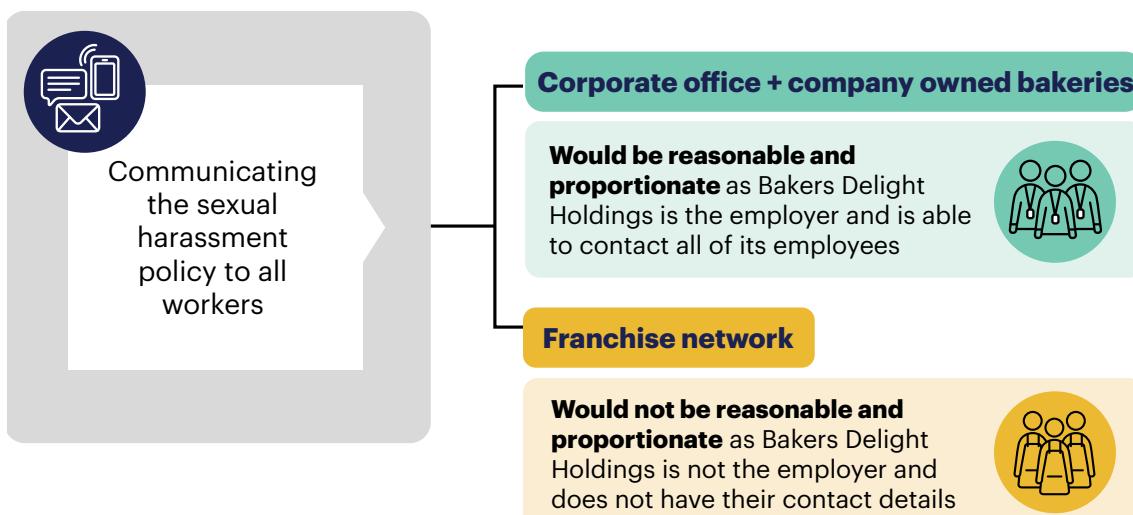


This report details findings about Bakers Delight Holdings, the head franchisor of the Bakers Delight bakery franchise. Bakers Delight Holdings plays two roles:



To comply with the positive duty, Bakers Delight Holdings must take *reasonable* and *proportionate* measures to eliminate sexual harassment as far as possible. Measures that are reasonable and proportionate for it to take in its workplaces (where it is the employer) may be different to those that are reasonable and proportionate for it to take in its franchise network (where it is not the employer).

For example:



For this reason, this report makes two kinds of findings:



**Findings for Bakers Delight Holdings as an employer:**

These findings may be useful for all types of employers across Victoria.



**Findings for Bakers Delight Holdings as a head franchisor:**

These findings may be useful for other head franchisors who have similar characteristics to the Bakers Delight franchise.



# 2.1 Findings for Bakers Delight Holdings as an employer

Bakers Delight Holdings employs workers in its corporate office and company owned bakeries. Like every Victorian employer, Bakers Delight Holdings must comply with the positive duty to eliminate sexual harassment in its workplaces.

## Bakers Delight Holdings as an employer

- Classified as a large employer under the Guideline,<sup>5</sup> with over 200 employees in Victoria.
- Consists of two very different types of workplaces – the head office and bakery environments.

## Requirements for employers

The Guideline outlines clear steps that employers must take to comply with the positive duty. We tested Bakers Delight Holdings' compliance with the following requirements from the Guideline:

- **Prevention plan:** Employers must develop a plan which outlines the measures they will take to prevent and respond to workplace sexual harassment. The development of this plan must be underpinned by an assessment of sexual harassment risks in that workplace and data around the reported prevalence of workplace sexual harassment occurring. This plan must be integrated with the broader work health and safety framework in the workplace.
- **Policies and complaint channels:** Employers must have sexual harassment policies in place that contain all of the elements listed on page 51 in the Guideline (PDF 2MB). These policies and complaint channels must be easily accessible by all employees and regularly communicated by senior leadership.
- **Training:** Employers must provide all employees with sexual harassment prevention and response training (and annual refresher training) that contains all of the elements listed on page 60 in the Guideline (PDF 2MB). Employees responsible for receiving reports of sexual harassment must also receive training to assist them in this role.

Measures to prevent workplace sexual harassment are also an important component of an employer's compliance with the positive duty under the *Occupational Health and Safety Act 2004* in Victoria to reduce risks to health and safety, so far as reasonably practicable. This report focuses on compliance under the *Equal Opportunity Act 2010*.

<sup>5</sup> The Guideline categorises employers based on their size to ensure that required actions to prevent sexual harassment are reasonable and proportionate. The categories are small (fewer than 20 employees and an annual aggregated turnover of less than \$10 million), medium (between 20 and 199 employees) and large (200 or more workers).



## Findings

### Prevention plan

#### Development of a plan

- Bakers Delight Holdings did not have a Prevention Plan in place but is now in the process of developing a Harassment and Bullying Prevention Plan, which will include measures to prevent and respond to sexual harassment.
- Bakers Delight Holdings has not integrated prevention of workplace sexual harassment into its broader work health and safety framework. Failure to do so was also identified in 2021 by external evaluators engaged by Bakers Delight Holdings to assess Bakers Delight Holdings' compliance with key work health and safety requirements. This evaluation was conducted just prior to the launch of this investigation.

#### Risk assessment

- Before 2021, Bakers Delight Holdings had not assessed sexual harassment risks specific to its head office and company owned bakeries. Bakers Delight Holdings conducted its first assessment of sexual harassment risks in 2021.
- This assessment is a positive first step, however improvements can be made in the assessment and corporate response. For example, the risk assessment lists a number of measures that company owned bakeries can take to make their workplace safer, however it is not mandatory for company owned bakeries to undertake these measures (which limits the efficacy of prevention measures). These measures include:
  - > reference checks on new employees
  - > most bakeries ensuring that there are two staff working at all times, typically with an 18-year-old or older person working the closing shift
  - > security cameras
  - > consent being obtained before putting employee phone numbers on the bakery employee contact list.

#### Understanding prevalence

- Bakers Delight Holdings did not have a central register to record employee reports of sexual harassment.
- In 2021 Bakers Delight Holdings conducted a survey of some of its employees asking them whether they had experienced inappropriate behaviors in the workplace and any barriers to complaint. This is a positive step to measure the prevalence of sexual harassment occurring in its workplaces.
- The survey could be improved to ensure Bakers Delight Holdings is getting the best possible data, as the questions did not differentiate between harassment, sexual harassment and bullying, and not all employees were surveyed.



## Findings

### Policies and complaint channels

### Training

#### Content

- Bakers Delight Holdings' sexual harassment policies were not comprehensive and did not contain all the elements listed in the Guideline. Bakers Delight Holdings is currently updating its policies to ensure that the policies:
  - > make it clear that they cover sexual harassment from customers
  - > explain that sexual harassment is prohibited in situations connected to work such as travel, off site business and work social events
  - > provide information and the contact details for external agencies that can provide advice and support
  - > acknowledge that sexual harassment is driven by gender inequality
  - > outline the circumstances in which an investigation will be conducted and the factors that will be considered in making that decision
  - > outline who decides when an investigation will be conducted and what the disciplinary or other outcome(s) may be if a complaint is substantiated
  - > explain how complaint and investigation documents will be treated, for example:
    - when information will be recorded
    - protocols around the management of confidential information
    - privacy obligations.
  - > outline that sexual harassment against a child may constitute child sexual abuse and may require disclosure of information in compliance with the mandatory reporting requirements in Victoria.

#### Communication and accessibility

- Within the investigation timeframe (2018 to 2021), Bakers Delight Holdings had not communicated the existence of workplace sexual harassment policies and complaint channels to employees.
- Policies and complaint channels are not as easily accessible to bakery workers as they are to corporate office workers. Bakery workers do not have access to computers during their shift, or an employee online portal.

#### Provision of training

- Within the investigation timeframe (2018 to 2021), Bakers Delight Holdings had not provided:
  - > its employees with sexual harassment prevention training
  - > its managers (who are often the first point of contact) with training to assist them to respond to workplace sexual harassment reports.

## Next steps

In 2022, Bakers Delight Holdings is in the process of addressing these gaps in compliance with the positive duty, by developing a Prevention Plan, new policies and procedures, a new training module and a dedicated register to record reported inappropriate workplace behaviours. The Commission will be monitoring this work through the Compliance Agreement. [Read the full agreement online.](#)



## 2.2 Findings for Bakers Delight Holdings as a head franchisor

As well as being an employer, Bakers Delight Holdings is also the head franchisor of the Bakers Delight bakery franchise. It is likely that Bakers Delight Holdings has a positive duty to take reasonable and proportionate measures to eliminate sexual harassment in its franchise network as:

- it has a high level of control over its franchise network
- it provides services to franchise bakery owners and workers.

### Level of control and services provided

The level of control Bakers Delight Holdings has within its franchise network means that there are at times overlapping roles and responsibilities between the franchise bakery owner (who is the employer of franchise workers) and Bakers Delight Holdings regarding preventing and responding to sexual harassment in franchise bakeries. For example:

Roles and responsibilities		
	Franchise bakery owner	Bakers Delight Holdings
<b>Training</b>	As the employer, a franchise bakery owner must ensure that franchise workers receive sexual harassment prevention and response training.	<b>However</b> - Bakers Delight Holdings controls the e-learning training system, designs the training available and requires that all franchise workers complete it.
<b>Responding to reports</b>	As the employer, a franchise bakery owner must respond appropriately to any reports of sexual harassment occurring in the bakery.	<b>However</b> - Franchise workers are also told that they can contact Bakers Delight Holdings for advice if they experience workplace sexual harassment. Bakers Delight Holdings may also investigate incidences of sexual harassment that occur in a franchise bakery.
<b>Policies</b>	As the employer, a franchise bakery owner must ensure that there is a sexual harassment policy in place for franchise workers to access.	<b>However</b> - Bakers Delight Holdings offers a template policy document for franchise bakery owners to use, which means it is unclear whether Bakers Delight Holdings or the franchise bakery owner should be responsible if this policy is inadequate.

As a head franchisor, Bakers Delight Holdings delivers services for franchise bakery owners, including:

- provision of guidance, advice and support, on request, to franchise bakery owners in relation to running their business
- maintaining an online Operations Manual that provides guidance and requirements for running a bakery business
- delivery of a 16-week training program for prospective franchise bakery owners.

Bakers Delight Holdings also provides services to franchise workers, even though these workers are not employees of Bakers Delight Holdings, including:

- access to an Employee Assistance Program to support their social and psychological wellbeing
- advice on request, if they experience inappropriate workplace behaviours, including sexual harassment.

Workplace sexual harassment poses a reputational risk not only to franchise bakery owners, but to Bakers Delight Holdings and the entire brand.

## Better practice prevention measures

All franchise arrangements are different, with varying levels of involvement and control from head franchisors. This means that there is not a prescribed set of measures that would be considered reasonable and proportionate for every head franchisor to take to prevent sexual harassment in its franchise network. Notably:

- the Guideline does not outline measures for head franchisors to take to prevent sexual harassment in franchise networks, like it does for employers
- there is no case law around the application of the positive duty in a franchise environment.

However, in recognising that workplace sexual harassment not only poses significant risks to workers but also to franchise brands and reputations, the Commission and Bakers Delight Holdings have agreed upon four areas where Bakers Delight Holdings as a head franchisor is able to take reasonable and proportionate action to prevent sexual harassment occurring in its network:

- **Prevention plan:** Bakers Delight Holdings as a head franchisor will implement a Prevention Plan that clearly outlines the different roles and responsibilities between Bakers Delight Holdings and a franchise bakery owner in relation to preventing and responding to sexual harassment occurring in the network.
- **Guidance and training:** Bakers Delight Holdings will ensure existing training and guidance to franchise bakery owners and franchise workers covers workplace sexual harassment prevention and response. This includes the 16-week training program for prospective franchise bakery owners, the guidance material provided in the online Operations Manual and the online training modules for franchise workers.
- **Monitoring compliance:** Bakers Delight Holdings will utilise existing audits that check the franchise bakery owner's compliance with workplace laws to include the franchise bakery owner's legal obligations to prevent and respond to sexual harassment.

- **Complaint channels and response:** Bakers Delight Holdings will ensure that current channels for franchise bakery owners and workers to report workplace sexual harassment are easily accessible and well communicated. Bakers Delight Holdings will have robust processes in place to guide how it responds to reports, to ensure that the human resources team understands its obligations and that there is a clear protocol to follow for when these types of reports are received.

Head franchisors must also consider their compliance with Victoria's *Occupational Health and Safety Act 2004* which requires that a person who has, to any extent, the management or control of a workplace must ensure (so far as reasonably practicable) that the workplace is safe and without risks to health, which includes risks to psychological health such as workplace sexual harassment.



## Findings

### Prevention plan

#### Development of a plan

- Bakers Delight Holdings' Bullying and Harassment Prevention Plan (under development) will provide an opportunity to clearly articulate roles and responsibilities between Bakers Delight Holdings and franchise bakery owners for preventing and responding to sexual harassment.

#### Risk assessment

- Prevention plans should be informed by a detailed risk assessment.
- In 2021, Bakers Delight Holdings conducted its first assessment of sexual harassment risks that included risks in franchise bakeries.
- Some of the identified mitigation strategies are not mandatory in franchise bakeries which means identified risks are not adequately mitigated.

### Guidance and training

#### Guidance and training for franchise bakery owners

- Bakers Delight Holdings provides prospective franchise bakery owners with a 16-week training program, and ongoing support to operate their franchise bakery through an extensive online Operations Manual.
- Bakers Delight Holdings had not provided franchise bakery owners with information in the Operations Manual or the 16-week training program about:
  - > the requirement for Victorian franchise bakery owners to comply with the positive duty under the Act to prevent sexual harassment in their franchise bakery
  - > how to prevent and respond to sexual harassment in their businesses.
- Bakers Delight Holdings provides a template policy (that covers workplace sexual harassment) for franchise bakery owners to use, however it is not mandatory for franchise bakery owners to implement this policy (or implement their own), and the template does not contain all the elements listed in the Guideline.



## Findings

### Monitoring compliance

#### Training for franchise workers

- Bakers Delight Holdings is responsible for the e-learning training system for franchise workers. Within the investigation timeframe (2018 to 2021), the training system did not include any e-learning modules for franchise workers to complete on sexual harassment prevention or response.

#### Audit program

- Bakers Delight Holdings conducts checks and audits to ensure that franchise bakery owners are meeting Bakers Delight Holding's quality standards and are complying with different workplace laws.
- As part of this audit program Bakers Delight Holdings does not check to ensure that franchise bakery owners are complying with the positive duty or other work health and safety requirements relating to sexual harassment prevention and response.

#### Understanding prevalence

- Bakers Delight Holdings has taken positive steps to measure the prevalence of sexual harassment occurring in the franchise network, and to identify complaint barriers through a survey of some franchise workers.
- The survey could be improved to ensure Bakers Delight Holdings is getting the best possible data, as the survey did not ask respondents whether they were a franchise worker or an employee at a company owned store.
- Bakers Delight Holdings has received reports from franchise workers of alleged sexual harassment occurring in franchise bakeries. Prior to 2021, Bakers Delight Holdings did not have a central register of these reports.



## Findings

### Complaint channels and response

#### Response to complaints

- Bakers Delight Holdings informs franchise workers that they can contact Bakers Delight Holdings if they experience sexual harassment, and that it may investigate instances of sexual harassment occurring in a franchise store.
- Responding to these reports can put Bakers Delight Holdings in a complicated position, as Bakers Delight Holdings is not the employer of these franchise workers and its obligations to the reporter of sexual harassment might not be clear.
- Bakers Delight Holdings does not have policies and processes guiding how its human resources team should respond to reports of sexual harassment occurring in its franchises, and what their obligations are if they receive a report from a franchise worker.

#### Response by Area Managers

- Area Managers are Bakers Delight Holdings employees who work as liaisons between the corporate office and franchise bakeries.
- In the data we received since 2018, there has been an instance where an Area Manager has needed to respond to reports of workplace sexual harassment occurring in a franchise bakery.
- Bakers Delight Holdings has not included the requirement for Area Managers to appropriately respond to reports of sexual harassment in their position descriptions or provided them with training to assist them perform this role.

#### Movement of perpetrators across franchise stores

- Bakers Delight Holdings is not involved in the recruitment of franchise workers, however it may become aware of alleged perpetrators of sexual harassment moving employment between different franchise bakeries. For example, where a franchise bakery owner or a franchise worker contacts Bakers Delight Holdings to report workplace sexual harassment occurring.
- Bakers Delight Holdings should articulate a clear policy position on how it will respond to this issue, as it is complicated. Bakers Delight Holdings is not involved in, and does not have visibility over, the recruitment of franchise workers. However, it could have influence over whether disciplinary action or termination occur, if Bakers Delight Holdings assists a franchise bakery owner to investigate and substantiate an incident of workplace sexual harassment.
- Bakers Delight Holdings will need to weigh its desire to protect franchise workers and the reputation of the brand if it is made aware of a substantiated serious incident, with its privacy obligations including under the *Privacy Act 1988*.

# 3

**What does this  
investigation  
mean for me?**



### **3.1 For retail workers in Victoria**

Your employer has a legal obligation under the *Equal Opportunity Act 2010* to eliminate workplace sexual harassment as far as possible — they must take steps to prevent sexual harassment, not just respond when it occurs. Your employer needs to do what is reasonable and proportionate, so this will look different for each Victorian workplace. At a minimum, to comply with the Act your workplace must:

- have a comprehensive and accessible sexual harassment and complaints policy and procedure that is regularly communicated to you
- provide you with sexual harassment prevention and response training at induction and regular intervals
- have a clear and accessible complaints or reporting channel and act on complaints promptly, fairly, confidentially and impartially.

If you work in a franchise retail store, it is important to understand who your employer is. Each franchise is different, so your direct employer may be the head franchisor, or in many cases the franchise store owner. This should be made clear in your employment contract. Keep this in mind if you are invited to make a report of workplace sexual harassment to your head franchisor. If they are not your employer, their actions and obligations could be different to what you might expect from an employer.



#### **More information**

**Learn more about sexual harassment and how the law protects you:**  
<https://www.humanrights.vic.gov.au/for-individuals/sexual-harassment/>

**Use our sexual harassment support and response tool:** <https://www.humanrights.vic.gov.au/resources/respond-to-sexual-harassment/>

## 3.2 For head franchisors with operations in Victoria

All franchise businesses are different. Some head franchisors will not be involved at all in employment matters of franchise workers. Others will be involved in setting policies, providing training and taking complaints.

Regardless of the level of control, workplace sexual harassment poses a threat to franchise workers, it is damaging to people, teams and workplaces. It also poses a threat to the brand's reputation. For these reasons, head franchisors should consider whether they need to make franchise workplaces safer from sexual harassment.

Head franchisors must also consider their compliance with Victoria's *Occupational Health and Safety Act 2004*. This Act requires that a person who has, to any extent, the management or control of a workplace must ensure (so far as reasonably practicable) that the workplace is safe and without risks to health, which includes risks to psychological health such as workplace sexual harassment.

Head franchisors that are employers have a positive duty to eliminate sexual harassment in that workplace as far as possible, the same as any other employer.



### More information

**Understand the Occupational Health and Safety Act 2004 and workplace sexual harassment:** <https://www.worksafe.vic.gov.au/work-related-gendered-violence-including-sexual-harassment>

## 3.3 For employers in Victoria

If you directly employ workers, then the positive duty applies to you. You have a legal obligation under the Act to eliminate sexual harassment in your workplace as far as possible. However, if you are part of a franchise, you may also receive support and assistance from the head franchisor. This means that some elements of sexual harassment prevention may be covered by the head franchisor.

Every franchise is different, so it is important that you clearly understand the roles and responsibilities between you and the head franchisor when it comes to preventing and responding to sexual harassment, for example:

- Who is responsible for providing sexual harassment training to workers?
- Who will investigate if sexual harassment occurs in your franchise store?
- Are workers able to make complaints of sexual harassment to the head franchisor?



### More information

**Sexual Harassment Guideline for employers and organisations:** <https://www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/>



# Appendices

## Appendix A: Legal framework

### The investigation power

<b>Section 127</b>	The Commission may conduct an investigation into any matter relating to the operation of the Act as long as the matter meets the threshold set out in the Act.
<b>Sub-section 15(4)</b>	A contravention of the positive duty may be the subject of an investigation undertaken by the Commission.
<b>Section 139</b>	After investigating, the Commission may take any action it thinks fit including: <ul style="list-style-type: none"><li>• entering into an agreement with an investigated party about action required to comply with this Act</li><li>• referring a matter to the Victorian Civil and Administrative Tribunal</li><li>• reporting on the matter.</li></ul>

## The positive duty

<b>What is the positive duty?</b>	Under subsection 15(2) of the Act, a duty holder must take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. This is a legal obligation known as the positive duty. It requires duty holders such as Bakers Delight Holdings to take positive steps to prevent these behaviours from occurring, regardless of whether someone has made a complaint. It requires more than just responding when an incident occurs.
<b>Who can make a complaint about the positive duty?</b>	No one can make a complaint about a breach of the positive duty. The positive duty can only be investigated by the Commission. The positive duty puts the onus on a duty holder to comply, rather than on an individual to make a complaint.
<b>Who is a duty holder?</b>	Under subsection 15(1) of the Act, the positive duty applies to a person that has a duty under the Act not to sexually harass. Under the Act, persons with a duty not to engage in sexual harassment include: <ul style="list-style-type: none"><li>• employers and employees (section 93)</li><li>• persons in common workplaces (section 94)</li><li>• persons providing and receiving goods and services (section 99).</li></ul>
<b>How much does a duty holder need to do?</b>	To comply with the positive duty, a duty holder is required to take measures that are reasonable and proportionate to eliminate sexual harassment as far as possible. Under subsection 15(6), in determining whether a measure is reasonable and proportionate the following factors must be considered: <ul style="list-style-type: none"><li>• the size of the person's business or operations</li><li>• the nature and circumstances of the person's business or operations</li><li>• the person's resources</li><li>• the person's business and operational priorities</li><li>• the practicability and the cost of the measures.</li></ul>

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