



**Victorian Equal Opportunity  
& Human Rights Commission**

# **Preventing and responding to workplace sexual harassment**

**A QUICK GUIDE FOR EMPLOYERS**

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# **Preventing and responding to workplace sexual harassment**

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**All employers in Victoria have a legal duty under the Equal Opportunity Act 2010 (Vic) ('Equal Opportunity Act') to act to prevent sexual harassment in their workplace. This 'positive duty' requires employers to take proactive steps to eliminate sexual harassment and victimisation – simply responding to complaints that arise is not enough to comply with the law.**

In this quick guide – a companion to our complete *Guideline: Preventing and responding to workplace sexual harassment* – we provide an overview of our best practice framework for preventing and responding to sexual harassment in the workplace, including tips for handling complaints safely and effectively.

This quick guide includes the **six minimum standards** employers must meet to comply with their positive duty to eliminate sexual harassment and victimisation, with concrete examples of what this can look like in practice.

## **Why is prevention important?**

Sexual harassment is harmful and damaging. It detrimentally affects those who experience it, bystanders, employers and the broader community.

Sexual harassment is not just a problem caused by individuals, nor is it an issue confined to particular industries or workplaces. It is a pervasive and systemic problem that impacts on all workplaces. We know that sexual harassment is perpetuated by broader gender inequality in society, which can be damaging to everyone. There is an urgent need for change and an opportunity for employers to lead the way in implementing effective measures to address sexual harassment.

For more information on what drives sexual harassment and its impacts, see Chapter 2 of *Guideline: Preventing and responding to workplace sexual harassment*.



# What is sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature, which could reasonably be expected to make the other person feel offended, humiliated or intimidated. It can be physical, verbal or written (including electronic communication).

The harasser's motivation or intention is irrelevant. A single incident can be enough to constitute sexual harassment – it doesn't have to be repeated.

## **Rita's story – Sexual harassment framed as an expectation of the job<sup>1</sup>**

"On my way to becoming a senior consultant [...] I endured years of sexualised comments from clients assuming I was the secretary and not an equal or senior person in the room. [...] Various bosses told me to wear short skirts to meetings to titillate clients (I'd wear pants instead) and to flirt with clients. Once, I was even asked to sit on the knee of a famous client during a work celebration, and when I seriously questioned this, the answer came that if I 'knew what was good for business' I'd do it."

## **Examples of behaviour that could be workplace sexual harassment**

- A manager making jokes about pornography during a staff video conference.
- Someone asking intrusive questions about a co-worker's sexuality.
- A customer groping or inappropriately touching a worker while being served.
- An employer insisting on hugging the female volunteers when they finish their shift.
- Directives from leadership that female front-of-house staff should wear revealing clothing to attract customers.
- A worker repeatedly texting another worker to tell her she is beautiful, and they want to take her out.
- An employer promising a job applicant a role if they perform sexual favours.
- A staff member repeatedly trying to kiss and grope a co-worker during drinks after work.
- Comments on social media that use sexually explicit language to insult a female staff member.

Sexual harassment can take place in online spaces and through technologies and social media platforms where the conduct is in connection with the employment (for example, during remote work).

## **What is victimisation?**

The Equal Opportunity Act makes it against the law to victimise someone. Victimisation means treating or threatening to treat someone badly (subjecting them to a detriment) because they have:

- made a complaint of sexual harassment or it is believed they might make a complaint
- helped someone else make a complaint
- refused to do something because it would be sexual harassment (or discrimination or victimisation).

### **Examples of victimisation**

- Demoting or threatening to demote someone because they have made a complaint or might make a complaint of sexual harassment.
- Ostracising or excluding a worker in the workplace because they helped a colleague make a complaint.
- Denying a promotion to a staff member because they alleged that someone in the workplace sexually harassed them.
- Moving a worker to another worksite without their permission because they made a complaint.
- Reducing or threatening to reduce someone's shifts or salary because they made a complaint.
- Sacking, or threatening to sack, someone who has made a complaint.

Employers have a positive duty to take reasonable and proportionate measures to eliminate victimisation as far as possible.

### **Noura's story – Being victimised after complaining of unwelcome sexual conduct<sup>2</sup>**

"I'd been a receptionist at a real estate office for about a year when my boss told me that he had only hired me because he thought I was good looking. I asked him if he was serious and he said I could be easily replaced. That sounded like a threat, which made me feel very uncomfortable. But I liked the work and it was convenient for me, so I ignored it and tried to get on with my job. Later that week, he called me into his office and asked me to go out for drink with him, so he could get to know me better. Alarm bells went off again. I emailed a coworker and told them about the remarks and that they were really bothering me. I later found out my email was forwarded to my boss. He called me into his office again and told me, 'Your time's up. Your job just expired.' I was so shocked, I didn't know what to say. I just packed up my stuff and left."

## **Who experiences sexual harassment?**

Workplace sexual harassment is alarmingly widespread. Nationally, one in three people experienced sexual harassment at work in the last five years. For women, the rates are even higher, with 85 per cent of Australian women having been sexually harassed at work at some point in their lives.<sup>3</sup>

Anyone can be sexually harassed. However, most harassers are male and the majority of their targets are women.<sup>4</sup> Certain groups also experience disproportionately high rates of sexual harassment including Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex, Queer and questioning ('LGBTIQ') people, young women, women with disabilities, Aboriginal women and women from multicultural and multifaith backgrounds.<sup>5</sup>

## Who is protected under the law?

The law protects a wide range of workers, including paid staff, contractors, interns, volunteers and job applicants.

Workers are protected at work and in many work-related situations, including if sexual harassment happens at work-related events and during travel, between people sharing the same workplace or between colleagues outside of the standard workplace or regular working hours.<sup>6</sup>

Employers must also protect workers from third-party harassment – that is, harassment by customers, patients, suppliers, clients or other people in the workplace.

### **Shanti's story – Sexual harassment from a patient<sup>7</sup>**

"When I was a medical student [...] I had to visit a patient repeatedly to examine him for an assessment. On the third visit, he asked me if I had a daddy fetish. This obviously made me very uncomfortable but I didn't have time to find another patient, so I had to visit him twice more to complete my assessment."

## Who is responsible if sexual harassment occurs?

While a person who sexually harasses someone else will be personally liable for their own behaviour, in some cases employers can also be held responsible. This is called vicarious liability.

Employers will be vicariously liable for sexual harassment carried out by their workers or agents, unless they can show that they have taken reasonable precautions to prevent the conduct from occurring, and have responded appropriately to resolve incidents of sexual harassment.

# Employers' positive duty to eliminate sexual harassment

This quick guide outlines **six minimum standards** that Victorian employers must meet to comply with their positive duty to eliminate sexual harassment and victimisation. These standards include actions required to prevent and respond to sexual harassment in the workplace.



## Employers' actions must be reasonable and proportionate

Every employer in Victoria must comply with the minimum standards. However, the specific measures or actions required of employers will vary according to the context of their organisations and what is considered to be reasonable and proportionate in all the circumstances. This includes:

- the size of the business or operations
- the nature and circumstances of the business or operations
- the available resources and budget
- business and operational priorities
- the practicability and the cost of the measures.

The implementation examples in this quick guide are relevant for all employers; however, they are predominantly focused on small to medium organisations. Larger organisations (those with 200 or more workers) may be expected to do more and should refer to Chapter 4 of the Commission's *Guideline: Preventing and responding to workplace sexual harassment*.

All employers should consider what measures will be most effective and achievable for their workplace, rather than aiming for minimum compliance.

## **Employers can be investigated if they do not comply with their positive duty**

While the Commission will usually work with employers on a voluntary basis to support them to comply with the law, in some circumstances we can investigate an organisation without their consent. We can apply to the Victorian Civil and Administrative Tribunal (VCAT) to compel the provision of documents or information, or to require a person to answer the Commission's questions.

The outcomes of an investigation can include an agreement with an employer about what action is required, referring the matter to VCAT and/or producing a public report to the Attorney-General or to the Victorian Parliament.

 **Remember: You should keep records.** To demonstrate compliance with the Equal Opportunity Act, it is important to maintain records that show the steps you have taken to prevent and respond to workplace sexual harassment in accordance with the six standards. For an example of what compliance records might include, see the standards framework in Chapter 4 of the Commission's *Guideline: Preventing and responding to workplace sexual harassment*.

# A framework to prevent and respond to sexual harassment

## Minimum standards for employers



### Standard 1: Knowledge

Employers understand their obligations under the Equal Opportunity Act and have up-to-date knowledge about workplace sexual harassment.

Employers understand the law relating to sexual harassment including their positive duty.

Employers understand the drivers and impacts of sexual harassment.

Leaders and supervisors know how to identify and respond to sexual harassment in their workplace.



### Standard 2: Prevention plan

Sexual harassment is prevented through the development and implementation of an effective sexual harassment prevention plan.

Employers have assessed what steps they will take to prevent sexual harassment, including measures in compliance with these standards, and have documented the plan.

Workers and their representatives have an opportunity to contribute to the development or revision of the plan.

Workers understand the plan (including relevant policies and procedures) and know where to find it.

Leaders have implemented the plan and are accountable for the commitments within it.



### Standard 3: Organisational capability

Leaders drive a culture of respect by building organisational capability.

Expectations of respectful workplace behaviour have been set and clearly communicated to workers.

Leaders model respectful workplace behaviour.

Employers have taken steps to ensure workers understand that sexual harassment and victimisation are against the law and will not be tolerated.

Employers encourage and support bystanders to act safely to respond to sexual harassment.



### **Standard 4: Risk management**

Employers have built a culture of safety and address risk regularly.

Employers have regularly identified and assessed risk factors for sexual harassment, including by seeking feedback from workers.

Employers have recognised and treated sexual harassment as a work health and safety risk.

Employers have taken steps to minimise and control workplace risk factors.

Workers understand and are encouraged to use systems in place to address risk.



### **Standard 5: Reporting and response**

Sexual harassment is addressed consistently and confidentially to hold harassers to account, and responses put the victim-survivor at the centre.

A fair and confidential reporting and complaints procedure is prepared in consultation with workers, with victims-survivors' wellbeing prioritised.

Workers know how and where to make a complaint or report, and are supported to do so.

Responses to complaints are timely and consistent, with proportionate disciplinary outcomes.

Workers are safe and supported throughout a complaints process, including through identifying and preventing victimisation.



### **Standard 6: Monitoring and evaluation**

Outcomes and strategies are regularly reviewed, evaluated and improved.

Employers regularly collect and assess reporting and complaints (and other relevant) data for trends, patterns and lessons to drive continuous improvement.

Employers regularly review and update sexual harassment prevention plans (e.g. annually) to drive continuous improvement.

Employers are transparent about trends, patterns and lessons with workers, boards and key stakeholders.

Workers have confidence that sexual harassment is being eliminated in their workplace.



# Standard 1: Knowledge

**Employers understand their obligations under the Equal Opportunity Act and have up-to-date knowledge about workplace sexual harassment.**

## Expected outcomes from meeting this standard

- Employers understand the law relating to sexual harassment including their positive duty.
- Employers understand the drivers and impacts of sexual harassment.
- Leaders and supervisors know how to identify and respond to sexual harassment in their workplace.

## Actions to help you meet Standard 1

- Read key resources including Chapters 2 and 3 of the Commission's *Guideline: Preventing and responding to workplace sexual harassment*.
- Know who to speak to for additional information and guidance, including the Commission, relevant industry regulators or employer associations.
- Subscribe to updates from regulators including the Commission, WorkSafe and the Australian Human Rights Commission.
- Read industry-specific research or reports on workplace sexual harassment.
- Participate in regular, quality education and training sessions on workplace sexual harassment and how to respond to reports, along with all leaders, supervisors and managers.
- Understand your workplace by using the workplace risk assessment tools available from the Commission.

 **Tool:** Employers can use the Commission's risk matrix tool to identify characteristics in their workplace that enable sexual harassment and create barriers for identifying and reporting it. See our *Guideline: Preventing and responding to workplace sexual harassment*.

 **Remember: Leadership is critical.** Leaders play a critical role in implementing all of the six standards. For prevention and response measures to be effective, they must be supported by a genuine and visible commitment from leadership and messaging that champions the elimination of sexual harassment to build a safe, respectful workplace culture.<sup>8</sup>

## Standard 2: Prevention plan

**Sexual harassment is prevented through the development and implementation of an effective sexual harassment prevention plan.**

### Expected outcomes from meeting this standard

- Employers have assessed the steps they will take to prevent sexual harassment, including measures in compliance with these standards, and have documented the plan.
- Workers and their representatives have an opportunity to contribute to the development or revision of the plan.
- Workers understand the plan (including relevant policies and procedures) and know where to find it.
- Leaders have implemented the plan and are accountable for the commitments within it.

### Actions to help you meet Standard 2

- Speak with workers and their representatives to understand what's happening in your workplace and your workers' needs.
- Consider the six standards and plan how your workplace will tailor an approach to addressing sexual harassment through both prevention and response measures.
- Document the plan and any related policies and procedures, and make them available and accessible to workers.
- Discuss the plan and any related policies with workers and provide an opportunity for learning and feedback.
- Identify who is responsible for the measures in your plan and make them accountable through supervision and follow up.

 **Remember: Effective plans are tailored to the workplace.** Tailor the plan to the specific characteristics of the workplace and workforce, addressing any particular risk factors. For example, this might include factoring in the risk of harassment by customers or third parties, or risks arising from remote work or reliance on online platforms and technology.

## Can a policy be a plan?

A policy isn't usually described as a plan. However, a policy document often encompasses planning elements by articulating how an organisation has committed to dealing with sexual harassment. For small organisations and some medium organisations, a sexual harassment policy will suffice as a prevention plan provided it meets the requirements set out below and is reviewed and updated regularly. For larger organisations, a sexual harassment policy and related procedures should be one component of their wider prevention plan or strategy (see Chapter 4 of the *Commission's Guideline: Preventing and responding to workplace sexual harassment* for implementation examples of larger organisations).

### **What should a sexual harassment policy include?**

- A statement that sexual harassment is unacceptable.
- A statement confirming the employer has a legal obligation to eliminate sexual harassment and victimisation (the positive duty).
- The employer's commitment to providing workers with a safe working environment and the standard of behaviour that all workers and others in the workplace are expected to comply with.
- A definition of sexual harassment with reference to the Equal Opportunity Act, including examples.
- An acknowledgement that sexual harassment is driven by gender inequality.
- Details of what will happen if the policy is not complied with, including any workplace action that may be taken if sexual harassment is found to have occurred.
- How and where to report sexual harassment and the available options (self-management, informal, formal internal processes, formal external complaint options).
- A clear statement that the safety and wellbeing of the person disclosing or formally reporting sexual harassment is the employer's priority.
- Information about external agencies that can provide advice, information and support on sexual harassment.
- When the policy will be reviewed.

The policy should be tailored and accessible to workers who may be more vulnerable to experiencing sexual harassment.

# Standard 3: Organisational capability

| Leaders drive a culture of respect by building organisational capability.

## Expected outcomes from meeting this standard

- Expectations of respectful workplace behaviour have been set and clearly communicated to workers.
- Leaders model respectful workplace behaviour.
- Employers have taken steps to ensure workers understand that sexual harassment and victimisation is against the law and will not be tolerated.
- Employers encourage and support bystanders to act safely to respond to sexual harassment.

## Actions to help you meet Standard 3

- Clearly convey to workers what constitutes sexual harassment and victimisation and that neither will be tolerated (for example, discussions with workers individually and at team meetings, through email correspondence or posters placed around the workplace).
- Model respectful, inclusive workplace behaviour and require the same of all leaders, managers and supervisors.
- Provide comprehensive, face-to-face or live online training on sexual harassment and respectful workplace behaviour for all workers, with annual refresher training.
- Include information about sexual harassment and staff conduct in organisational values, employee contracts, codes of conduct, induction processes, notice boards and on the intranet.
- Immediately address inappropriate or enabling workplace behaviour.
- Support workers, including bystanders, to speak up about sexual harassment through training, policy development and leadership.
- Include obligations about sexual harassment and safe work behaviour in job descriptions, performance goals, bonus structures, recruitment and promotion.

 **Remember: Organisational capability is about skills and resources.**

Organisational capability refers to the skills and resources that an organisation has available to meet an objective, such as addressing workplace sexual harassment.<sup>9</sup> Employers must identify relevant skills and resources that can be leveraged or improved to achieve a respectful workplace culture where sexual harassment is not tolerated.

## What should formal training look like?

Effective training will usually be delivered face to face or live online by a skilled expert, with regular refresher training and follow-up engagement with workers. It will also include:

- engaging content, including interactive elements such as role plays
- definitions of sexual harassment, sex discrimination and victimisation
- guidance on identifying sexual harassment, with a range of behavioural examples that include less overt forms of harassment, and how to respond
- information on the gendered drivers of sexual harassment with behavioural examples and evidence
- information on the importance of safe bystander intervention and practical guidance on the steps available to bystanders
- information on the protections available to bystanders and complainants
- information on reporting and complaints pathways and active encouragement to use these pathways.

Training is more likely to be effective in driving culture change where it is framed around agreed organisational values and encourages workers to explore how they can personally, or as a member of group, contribute to change.<sup>10</sup>

# Standard 4: Risk management

| Employers have built a culture of safety and address risk regularly.

## Expected outcomes from meeting this standard

- Employers have regularly identified and assessed risk factors for sexual harassment, including by seeking feedback from workers.
- Employers have recognised and treated sexual harassment as a work health and safety risk.
- Employers have taken steps to minimise and control workplace risk factors.
- Workers understand and are encouraged to use systems in place to address risk.

## Actions to help you meet Standard 4

- Engage with workers and their representatives in safe forums (including via anonymous, confidential surveys) to understand their experiences.
- Use a risk matrix to identify enabling workplace characteristics.
- Assess your workplace against gender equality indicators and track relevant data, such as complaints.
- Use existing work health and safety processes to monitor and address workplace sexual harassment risks.
- Make supervisors and health and safety representatives accountable for monitoring risk and creating safe cultures and systems.
- Take immediate action to control risk factors. For example, remove content of a sexual nature from the workspace, speak to workers about the safe and respectful use of social media at work, develop a process to respond to third-party harassment (such as from clients or customers).
- Plan for longer-term cultural change where appropriate, including improved workplace gender equality.



**Tool:** The Commission's gender equality framework specifies the outcomes employers should work towards to create a gender-equitable workplace. See the appendices in *Guideline: Preventing and responding to workplace sexual harassment*.



**Tool:** The Commission's risk matrix tool will help you identify characteristics in your workplace that enable sexual harassment and create barriers for identifying and reporting it. See the appendices in *Guideline: Preventing and responding to workplace sexual harassment*.

## Understanding who is at risk and why

Some workers are likely to be more vulnerable to sexual harassment or face barriers to reporting sexual harassment when they experience or witness it. This may be because of prevalent attitudes, structural inequality and discrimination that disadvantage certain groups including:

- Aboriginal and Torres Strait Islander Peoples
- workers with disabilities
- people in insecure work (such as contractors, freelancers and casual workers)
- migrant workers including workers on visas sponsored by the employer
- volunteers
- young people or junior workers (such as graduates or interns)
- people who are new to the workplace
- workers who do not speak English as a first language
- women of multicultural and multifaith backgrounds
- members of the LGBTIQ community.

Risk assessments and control measures should consider the makeup of the workforce and the needs and vulnerabilities of these groups. To understand how inequalities can intersect with and drive sexual harassment, employers should read Chapter 2 of *Guideline: Preventing and responding to workplace sexual harassment*.

### **Thao's story – Fear of reporting sexual harassment in casual employment<sup>11</sup>**

"I have a degree from a university in Vietnam but, because my qualifications are not recognised in Australia, I took a casual job as a personal care assistant in an aged care home. One of the GPs who visits the home has made comments that make me feel very uncomfortable. When he sees that I'm alone he says things like, 'I've heard Asian women are good in bed, is that true?' and he has tried to kiss me. It makes me dread going into work. I don't know what to do. I know he shouldn't say and do those things but I'm scared that if I complain I will lose my shifts."

## Standard 5: Reporting and response

**Sexual harassment is addressed consistently and confidentially to hold harassers to account, and responses put the victim-survivor at the centre.**

### Expected outcomes from meeting this standard

- A fair and confidential reporting and complaints procedure is prepared in consultation with workers, with victim-survivors' wellbeing prioritised.
- Workers know how and where to make a complaint or report and are supported to do so.
- Responses to complaints are timely and consistent, with proportionate disciplinary outcomes.
- Workers are safe and supported throughout a complaints process, including through identifying and avoiding victimisation.

### Actions to help you meet Standard 5

- Develop a reporting and complaints procedure that accords with the fundamental principles of fair and sensitive complaint handling (see box below).
- Meet with workers and their representatives to discuss the procedure and clearly communicate the procedure to all workers.
- Outline the multiple avenues available to workers to report sexual harassment in an email to staff, or through posters and information around the workplace.
- Recognise when the organisation is too small to fairly and impartially manage complaints and be aware of external referral options.
- Establish and train equal opportunity contact officers.
- Establish systems to confidentially record and report on complaints for accountability and learning.
- Establish anonymous reporting pathways or other supported reporting mechanisms to address power imbalances within the workplace.

 **Tool:** See the Commission's step-by-step guide to complaint handling for guidance on the process of managing a complaint of sexual harassment. See Section 4.5.3: Responding to complaints in *Guideline: Preventing and responding to workplace sexual harassment*.

 **Tool:** The Commission’s referral guide to support workers will help you assist workers who make a report or complaint of sexual harassment to access relevant support services. See the appendices in *Guideline: Preventing and responding to workplace sexual harassment*.

### What should a reporting and complaints procedure include?

- The types of conduct it covers, including examples of what behaviour amounts to sexual harassment.
- The types of complaints or other conduct it doesn’t cover (for example, safety breaches and discipline for poor work performance).
- Reference to a sexual harassment policy and other relevant workplace policies.
- A commitment to fundamental principles of complaint handling (see over).
- A range of pathways and options for reporting (see Section 4.5.2: Encouraging workers to report sexual harassment in *Guideline: Preventing and responding to workplace sexual harassment*).
- An explanation of how related documents will be treated (including in what circumstances information will be recorded, the management of confidential information and privacy obligations).
- A statement confirming that a person making a report or complaint will not be treated badly (victimised) because they make a complaint.
- When an investigation will be conducted and the factors that will be considered, including the wishes of the complainant.
- The possible outcomes of an investigation including what workplace action could be taken, both disciplinary and non-disciplinary.
- Information on how investigations will be conducted and the decision-making process.
- The date the document was prepared and a date for review.

 **Remember: Take a victim-centric approach.** A victim-centric approach assists employers to meet their positive duty by making it easier for victim-survivors to confidently report sexual harassment. It does this by giving them a say in the process, ensuring they are properly supported and not victimised, and minimising any re-traumatisation.<sup>12</sup> This approach can be adopted while also providing procedural fairness to both parties.

## Fundamental principles of fair and sensitive complaint handling

A reporting and complaints procedure should reflect the following principles:

- **Confidentiality** – during the process, only those who need to know will know. Note, however, that this should not automatically apply once the process is finalised.
- **Timeliness** – action will be taken as soon as reasonably possible, but definitely within two weeks. All parties will be kept updated.
- **Supported** – the process will be victim-centric, while including the right to a support person for both complainant and respondent, and providing referrals for additional support.
- **Right of reply** – parties are provided with sufficient details of any allegations against them, and can make representations and counter-claims during the process and appeal any decision.
- **Fairness** – the process will be impartial and any workplace action (both disciplinary and non-disciplinary action) will be reasonable and proportionate, and alleged harassers will be held to account.

Employers should commit to these principles in a documented reporting and complaints procedure and ensure they inform responses to sexual harassment.

 **Remember: Complainants should not be forced to stay silent on their experience.** When resolving a complaint some employers ask complainants to sign a legal agreement that prevents them from speaking to anyone else about their complaint or the outcome. These agreements should be used sparingly. For more information see Section 4.5.5 Non-disclosure agreements in *Guideline: Preventing and responding to workplace sexual harassment*.



# Standard 6: Monitoring and evaluation

Outcomes and strategies are regularly reviewed, evaluated and improved.

## Expected outcomes from meeting this standard

- Employers regularly collect and assess reporting and complaints (and other relevant) data for trends, patterns and lessons to drive continuous improvement.
- Employers regularly review and update sexual harassment prevention plans (for instance, annually) to drive continuous improvement.
- Employers are transparent about trends, patterns and lessons with workers, boards and key stakeholders.
- Workers have confidence that sexual harassment is being eliminated in their workplace.

## Actions to help you meet Standard 6

- Hold regular, scheduled discussions on the status of your sexual harassment prevention plan with management, workers and health and safety representatives.
- Ask and record: Are the strategies effective? Are they up to date or have circumstances changed? Are there underlying issues that need to be unpacked? Are harassers being held accountable?
- Formally reflect following the resolution of a sexual harassment complaint and implement measures based on lessons.
- Regularly survey workers (confidentially and anonymously) to assess their knowledge on, experience of and willingness to report sexual harassment.
- Track and analyse broader data on gender equality and safety across the organisation (for example, track exit interview data and collect sex-disaggregated data on recruitment, retention and promotion).
- Celebrate success and the stories that reinforce positive values and behaviours.
- Implement a process where complaints automatically trigger a review of workplace policies and practices to uncover additional issues.

 **Remember: A lack of formal complaints doesn't mean sexual harassment is not a problem.** Employers should pay careful attention to the dynamics and culture in their workplace. A lack of complaints may mean low incidence of sexual harassment but it may also mean that people have no confidence in reporting processes and how their organisation will respond.

### **Make reviewing business as usual**

Sexual harassment prevention plans should be regularly reviewed and updated to drive continuous improvement.

Employers should ensure that the process of reviewing policies and procedures is built into business plans and clearly allocated to workers. Reviews should be carried out annually, at least, and may include:

- ensuring policies and processes still meet legal obligations
- making sure documentation is up to date; for example, any cited position titles or contact details are correct
- a review of complaints data to see whether the policies and prevention strategies are effective
- suggestions to improve the policies, staff training or complaints process
- effective communication with staff when policies or processes have been changed
- identifying a date for the next review to be carried out and indicating it on the policy or procedure documents.

The review process is an important requirement for continuous improvement and a chance to reflect on and celebrate the successes your organisation has achieved so far.

The steps employers take to prevent and respond to sexual harassment and information about the success or failure of those steps should be clearly visible to all workers. This transparency is critical to securing workers' support for the employer's prevention plan and faith in their commitment to eliminating sexual harassment.

## Data collection and evaluation

Employers should regularly collect and assess reporting and complaints (and other relevant) data for trends, patterns and lessons to drive continuous improvement.

Other relevant data and information sources include:

- confidential and anonymous organisation-wide surveys
- safe and sensitive discussions with workers and their representatives (including union representatives)
- exit interviews
- absenteeism and turn-over rates, performance and uptake of any employee assistance program counselling (if available)
- gender disaggregated data on gender equality indicators (see the Commission's gender equality framework in *Guideline: Preventing and responding to workplace sexual harassment.*)
- disaggregated data on worker visa and residency status, country of birth, language spoken at home, contract type and other indicators that may indicate particular groups of workers at heightened risk of sexual harassment
- complaint outcomes, including any settlement agreements and the use of non-disclosure agreements.

It is important to invest in robust data collection, reporting and evaluation to determine what works, and what needs to be improved.

# The Commission can help

If you need information on sexual harassment and your rights or obligations under the Equal Opportunity Act, you can contact the Commission's free Enquiry Line on **1300 292 153**.

If you need support complying with obligations under the Equal Opportunity Act, you can contact the Commission's Education Line on **(03) 9032 3467**.

## Related Commission resources

***Guideline: Preventing and responding to workplace sexual harassment – Complying with the Equal Opportunity Act 2010 (Vic) (2020), containing:***

- Standards framework
- Risk assessment tool: Risk matrix
- Gender equality framework
- Referral guide to support workers
- Referral guide for employers

### **Sexual harassment response tool**

This digital tool provides an private online conversation that will help users recognise sexual harassment, and offers suggestions on how to take bystander and first responder action.

- [humanrights.vic.gov.au/resources/respond-to-sexual-harassment](https://humanrights.vic.gov.au/resources/respond-to-sexual-harassment)

# Notes

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- 1 This is based on an excerpt from an anonymous publication, which has been reproduced with the author's permission. Pseudonyms have been added and details changed to protect the writer's privacy. See Anonymous, 'Rewriting the headlines' in Jane Caro (ed.), *Unbreakable: Women Share Stories of Resilience and Hope* (University of Queensland Press, 2017) 190, 191–2.
- 2 The incidents portrayed in this case study are inspired by real enquiries and complaints received by the Commission, but all names and other identifying details have been changed.
- 3 Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (Report, 2018) 18.
- 4 See, for example, *ibid.* 32–5.
- 5 *Ibid.* 8; Marian Baird, Rae Cooper, Elizabeth Hill, Elspeth Probyn and Ariadne Vromen, *Women and the Future of Work* (University of Sydney, Report 1 of The Australian Women's Working Futures Project, February 2018).
- 6 This quick guide uses a broad definition of 'worker' as advised by the International Labour Organization, *Violence and Harassment Convention*, No. 190 (2019, adopted 21 June 2019), Article 2. For the purposes of this quick guide 'worker' includes staff members, employees, fixed-term or contract workers, consultants, volunteers and unpaid interns. It may also include independent contractors who attend the workplace.
- 7 Names and identifying details have been changed to protect the privacy of individuals.
- 8 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 626.
- 9 Victorian Public Sector Commission, *Serving Victoria: A Guide for Public Sector CEOs* (Resource, 11 June 2015).
- 10 Purna Sen et al., 'What will it take?', *Promoting Cultural Change to End Sexual Harassment* (UN Women, September 2019) 35, 38.
- 11 The incidents portrayed in this case study are inspired by real enquiries and complaints received by the Commission, but all names and other identifying details have been changed.
- 12 UN Women's nine core elements of a victim-centred approach to addressing sexual harassment, discussed in Australian Human Rights Commission (n 8) 679–80.



# Contact us

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