



**Victorian Equal Opportunity
& Human Rights Commission**

GUIDELINE

Preventing and responding to workplace sexual harassment

Complying with the Equal Opportunity Act 2010

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Preventing and responding to workplace sexual harassment

Complying with the Equal Opportunity Act 2010



Quick navigation for employers

I want to understand sexual harassment at work, why it happens and its impacts.

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I need to know what the Equal Opportunity Act 2010 (Vic) says about sexual harassment and my obligations and liabilities.

Go to Chapter 3: Understanding the law on sexual harassment.

I would like to know what steps I must take to prevent and respond to sexual harassment in my workplace.

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What are the six standards for compliance with the positive duty?

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Commissioner's message



Everyone deserves to feel safe and respected at work. Yet sexual harassment is a common experience for workers, particularly women.

As Victoria's equal opportunity and human rights regulator, we see the broad-ranging impacts of sexual harassment through our complaints and enquiry function, and in our work engaging employers and providers of goods and services. In 2018–19 the Commission received 374 enquiries and 122 complaints about sexual harassment in public life. More than half of all enquiries and 91 per cent of complaints related to harassment at work. These complaints also highlight the gendered nature of sexual harassment: 92.5 per cent of respondents were male and 88 per cent of those who were harassed were women.

The results of the Australian Human Rights Commission's *Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) indicated that one in three people (33 per cent) had experienced workplace sexual harassment in the previous five years, and that women were more likely than men to have experienced

sexual harassment. Similarly, the 'Me Too' movement has highlighted the overwhelming extent of the problem and the failure of current approaches to prevent sexual harassment and hold harassers to account.

There is an urgent need for change and an opportunity for employers to lead the way in implementing effective measures to combat sexual harassment. The case for doing so could not be clearer. Workplace sexual harassment is damaging to victim-survivors and costly for businesses. In 2018, workplace sexual harassment is estimated to have cost the Australian economy \$3.5 billion, including approximately \$2.6 billion in lost productivity. Addressing sexual harassment is not just a legal and moral imperative; it also makes good business sense.

Sexual harassment is not just an individual problem, nor is it an issue confined to particular industries or workplaces. It is a pervasive and systemic problem that impacts all workplaces.

Responding to complaints when they arise is not enough, particularly given the substantial barriers that deter individuals from coming forward to report sexual harassment to their employer or to an external body. Employers have a positive duty under the *Equal Opportunity Act 2010* (Vic) to take proactive steps to prevent harassment from occurring in the first place. It is this proactive, preventative action that will address sexual harassment at a systemic level.

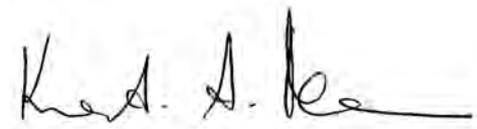
The Commission is committed to supporting employers to meet their legal obligations so that sexual harassment can be addressed at the earliest possible stage. We are pleased to present this guideline – an essential tool for employers of all types in Victoria. This guideline is an update on our earlier 2014 guideline and comes at a pivotal time for many organisational leaders who are ready to commit to the organisational change necessary to prevent harassment and progress gender equality.

This guideline provides a comprehensive best practice framework and encompasses six clear minimum standards that employers must meet to comply with their positive duty, with concrete examples of what this can look like in practice. The standards provide a holistic approach to the problem of sexual harassment in the workplace, requiring preventative measures that address gendered drivers, as well as fair and sensitive complaints and reporting processes and steps to monitor risk and evaluate action.

This change not only creates safer and more respectful workplaces that comply with the law, it also allows workplaces to thrive, with great benefits flowing to workers, clients and service delivery.

We are grateful to the victim-survivors who have allowed us to share their stories and reflections throughout this guideline. These stories are necessary reminders of the damaging impact sexual harassment has on victim-survivors, and the capacity

for poor organisational responses to exacerbate harms. It is a reminder of the harms that all workplaces should proactively seek to prevent.

A handwritten signature in black ink, appearing to read 'Kristen Hilton', written in a cursive style.

Kristen Hilton

**Victorian Equal Opportunity
and Human Rights Commissioner**

1. About this guideline

Key points

- This practice guideline has been developed by the Victorian Equal Opportunity and Human Rights Commission with wide consultation.
- Under the *Equal Opportunity Act 2010* (Vic) ('Equal Opportunity Act'), employers have a duty to take reasonable and proportionate measures to eliminate sexual harassment and victimisation.
- This guideline sets out **six minimum standards** to help employers comply with their positive duty.

This practice guideline has been written for Victorian employers to help them meet their legal obligations under the Equal Opportunity Act. It provides practical guidance on how to prevent and respond to sexual harassment in the workplace, including how to handle complaints safely and effectively.

1.1 About the Victorian Equal Opportunity and Human Rights Commission

The Commission is an independent statutory body with responsibilities under the following laws:

- Equal Opportunity Act
- *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter')
- *Racial and Religious Tolerance Act 2001* (Vic).

Our role is to protect and promote human rights and to eliminate discrimination, sexual harassment and victimisation, to the greatest extent possible. We do this through a range of functions.

Resolve complaints	We resolve complaints of discrimination, sexual harassment, racial and religious vilification and victimisation by providing a free, confidential dispute resolution service.
Research	We undertake research to understand and find solutions to systemic causes of discrimination, sexual harassment and human rights breaches.
Educate	We provide information to help people understand and assert their rights, and conduct voluntary reviews of programs and practices to help organisations comply with their human rights obligations. We also provide education and consultancy services to drive leading practice in equality, diversity and human rights, including a collaborative approach to developing equal opportunity action plans and strategies to address sexual harassment.
Advocate	We raise awareness across the community about the importance of equality and human rights, encouraging meaningful debate, leading public discussion and challenging discriminatory views/behaviours.
Monitor	We monitor the operation of the Charter to track Victoria's progress in protecting fundamental rights.
Enforce	We intervene in court proceedings to bring an expert independent perspective to cases raising equal opportunity, discrimination and human rights issues. We also conduct investigations to identify and eliminate systemic discrimination and sexual harassment.

1.1.1 Developing the guideline

We consulted widely to make sure this guideline is relevant and useful.¹ We spoke with industry bodies, industrial organisations, unions, employers, employee advocacy organisations, as well as other regulators and experts on addressing violence against women. We also spoke with people who have experienced sexual harassment at work, and, with their permission, we have included many of their stories and reflections in this guideline.

The guideline has not been designed to address workplace sex discrimination and gender inequality more broadly. However, this guideline acknowledges those issues are inextricably linked to workplace sexual harassment and the standards will help employers take positive steps towards more equal workplaces.

1.2 Authority and use of this guideline

1.2.1 Authority of this guideline

This guideline is the authoritative and comprehensive guide to the law in Victoria and best practice in preventing and responding to workplace sexual harassment under the Equal Opportunity Act. We have issued this guideline under section 148 of the Equal Opportunity Act. While it is not legally binding, it is authoritative – a court or the Victorian Civil and Administrative Tribunal may consider whether employers have complied with this guideline when hearing a case of sexual harassment.

When investigating systemic issues of sexual harassment, the Commission will assess compliance with the Equal Opportunity Act and whether an employer has complied with their positive duty, with reference to this guideline and the six minimum standards for employers, outlined in Section 1.3: Minimum standards for employers. This guideline supersedes our earlier 2014 guideline and has been developed in response to calls from Victorian employers and the gender equality sector more broadly.

1.2.2 Who is this guideline for?

This guideline is primarily for employers, including leadership team members, board members, human resource professionals, managers and supervisors. It will help employers operating in Victoria, regardless of size or expertise.

Under the Equal Opportunity Act, ‘employer’ has a broad meaning and captures engagement via contracts for services, labour-hire arrangements and independent contractor relations. An employer also includes a person who manages volunteers and unpaid workers such as interns.

This guideline will also assist individuals looking to know what action their current or former employer should take to prevent and respond to sexual harassment, what their rights are, how to support colleagues experiencing sexual harassment and where to go for help.

Finally, as discussed above, this guideline will be authoritative for courts and tribunals in considering a case of sexual harassment.

1.2.3 Why must employers follow this guideline?

Legal responsibilities

Sexual harassment is against the law, whether it happens at work, at work-related events, between people sharing the same workplace or between colleagues outside of the standard workplace or regular working hours.²

Employers in Victoria have a legal duty 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. Where sexual harassment occurs at work and an employer has failed to take appropriate preventative steps, employers may also be held vicariously liable.

The Commission may investigate an employer in certain circumstances where there are reasonable grounds to suspect a breach of the positive duty.³

This guideline provides helpful information on how to meet the positive duty under equal opportunity law. By complying with the positive duty, employers will also be taking steps towards meeting their obligations and avoiding liability under related regulatory schemes.

Remember: The positive duty applies to all Victorian employers.

Regardless of their size or resources, employers must take proactive steps to eliminate sexual harassment and victimisation in the workplace.

Benefits for the workplace and beyond

Aside from avoiding legal liability and protecting workers from injury and harm, there are a range of other important benefits to following this guideline.

Benefits for workplaces

- A workforce who respect and value each other.
- Improved worker wellbeing, morale, job satisfaction⁴ and productivity.⁵
- A safer, more cohesive environment free from workplace harm.
- Increased ability to attract and retain diverse, talented workers.
- Reduced legal, reputational and financial risk.⁶
- Improved corporate social responsibility.⁷
- Positioning the organisation to meet other statutory duties, guidelines, standards, accreditation processes and opportunities.⁸

Benefits for clients and customers

- Improved customer experience and service delivery.
- Improved safety and respect for female (and other vulnerable) clients/customers.
- A more diverse workplace that may better reflect its customer or client base.

Benefits for the community

- Positive role modelling and leadership.
- Building safer and more equitable and respectful communities.
- Workplaces that reflect community attitudes and expectations.

Recent high-profile cases have shown that where an organisation does not have a genuine commitment and a robust plan of action to prevent and address sexual harassment, victim-survivors may turn to the media or litigation, resulting in considerable reputational damage and economic loss to the organisation. Conversely, where organisations show leadership and put effective policies and procedures in place, they are well placed to avoid risk, resolve problems and build thriving, respectful and productive workplaces.

1.2.4 A note on evidence and terminology

This guideline draws on research, best practice evidence and broad-ranging consultation from Australia and overseas. It also draws on our own frontline expertise developed through our complaints and enquiries service, and our legal, education and consultancy services in relation to workplace sexual harassment over the past 40 years. Case studies and quotes have been anonymised to protect the privacy of those involved.

A glossary of terms used throughout this guideline can be found in the appendices.

This guideline focuses on the gendered nature of sexual harassment. In doing so, we use the terms 'men' and 'women', which we intend to be inclusive of all genders, including trans men and trans women. Where relevant, we have also referred to specific impacts on Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex, Queer and questioning ('LGBTIQ') people.

1.3 Minimum standards for employers

The Commission has identified six minimum standards that Victorian employers must meet to comply with their positive duty to eliminate sexual harassment. These include steps to prevent sexual harassment, as well as appropriately responding to sexual harassment when it does occur. These standards are:

Standard 1: Knowledge

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

Standard 2: Prevention plan

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

Standard 3: Organisational capability

Leaders drive a culture of respect by building organisational capability.

Standard 4: Risk management

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

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.

Standard 6: Monitoring and evaluation

Outcomes and strategies are regularly reviewed, evaluated and improved.

For each standard, we have identified the outcomes employers must achieve to comply with the positive duty. These are summarised in the framework over and discussed in detail in Chapter 4.

While these are the essential standards that all Victorian employers must meet, the way in which each employer chooses to implement these requirements will vary depending on the size, resources and nature of their organisation.

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

1.4 Where can I get more information or assistance?

If you need information about 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**. The Commission can work with employers to design tailored education programs and resources, including support for prevention planning to build safe, inclusive, legally compliant workplace cultures. We can also conduct workplace reviews on request to understand or investigate issues and provide advice to help you comply with the Equal Opportunity Act.

If you have a particular matter you need to clarify, you may also consider seeking legal advice, speaking to your employer association or contacting a relevant regulator. Please see the referral guide for employers, located in the appendices.

For more information about sexual harassment (including in other jurisdictions), as well as broader strategies to address gender inequality and gendered violence in the workplace, see further reading, located in the appendices.

For information about support services and referrals for people who have experienced sexual harassment, please see the referral guide to support workers, located in the appendices.

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 2010 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.

Notes

- 1 *Equal Opportunity Act 2010* (Vic) s 148(2) requires the Commission to consult with persons or bodies that we consider to represent the areas or persons to whom the guideline will relate.
- 2 This guideline 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 guideline, ‘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.
- 3 *Equal Opportunity Act 2010* (Vic) s 127.
- 4 Victor Sojo, Robert E Wood and Anna E Genat, ‘Harmful workplace experiences and women’s occupational wellbeing: A meta-analysis’ (2016) 40 *Psychology of Women Quarterly* 10, 14. Notably, this research also found that frequent, ‘low intensity’ sexual harassment (such as jokes or subtle comments) can be equally harmful as infrequent, severe forms of sexual harassment.
- 5 See, for example, Kathi Miner-Rubino, ‘Beyond targets: Consequences of vicarious exposure to misogyny at work’ (2007) 92 *Journal of Applied Psychology*, 1254; Gina Vega and Debra R Comer, ‘Sticks and stones may break your bones but words can break your spirit: Bullying in the workplace’ (2005) 58 *Journal of Business Ethics* 101; Safe Work Australia, *Psychosocial Health and Safety and Bullying in Australian Workplaces* (3rd edn, 2016); Darius K-S Chan et al., ‘Examining the job-related, psychological, and physical outcomes of workplace sexual harassment: A meta-analytic review’ (2008) 32 *Psychology of Women Quarterly*, 362.
- 6 For example, financial loss and economic costs of WorkCover claims, litigation, staff turnover, absenteeism, talent drain and reputational damage.
- 7 There is a growing body of evidence that gender equality and diversity (which are core prevention strategies and related outcomes of eliminating sexual harassment) are good for business and can improve profitability, value creation, innovation and decision-making. See, for example, Vivian Hunt, Sara Price, Sundiatu Dixon-Fyle and Lareina Yee, *Delivering through Diversity* (McKinsey & Company, 2018); Rocio Lorenzo, Nicole Voigt, Miki Tsusaka, Matt Krentz and Katie Abouzahr, *How Diverse Leadership Teams Boost Innovation* (Boston Consulting Group, 2018); Deloitte Access Economics, *Westpac Diversity Dividend Report* (Deloitte, 2017).
- 8 For example, legal duties under work health and safety law, and reporting requirements under the Workplace Gender Equality Agency or forthcoming Victorian Gender Equality Act, as well as Victorian Government gender procurement guidelines, Our Watch’s Workplace Equality and Respect Standards, or other ‘Employer of Choice’ or accreditation processes.

2. Understanding workplace sexual harassment

Key points

- Sexual harassment is unwanted 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 through online spaces and social media platforms).
- Sexual harassment is not just an individual problem, it is a systemic issue driven by the broader discrimination, disrespect and inequality that women experience in everyday life.
- Anyone can be sexually harassed. However, most harassers are male, and the majority of their targets are women.
- Certain groups also experience disproportionately high rates of sexual harassment, including LGBTIQ people, young women, women with disabilities, Aboriginal and Torres Strait Islander women, and women from multicultural and multifaith backgrounds.
- Poor rates of reporting and inadequate responses from employers compound the problem of sexual harassment in the workplace.
- Workplace sexual harassment is widespread across all areas of the workforce and can have profoundly harmful impacts on victim-survivors, as well as others in the workplace.

To properly address and eliminate sexual harassment, we must start with a solid understanding of what sexual harassment is, what drives it, and how it operates in different workplaces. This section introduces research and concepts to help employers recognise workplace sexual harassment and understand why it happens.

2.1 How do I recognise workplace sexual harassment?

2.1.1 Recognising the behaviour

Sexual harassment is unwanted 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).

Examples of behaviour that could be workplace sexual harassment include:

- 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.

Rita's story – Sexual harassment framed as an expectation of the job¹

"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."

 **Remember: Behaviour may be unwelcome even where it is not obviously rejected.** It should not be assumed that behaviour is consensual because the individual has not clearly objected to it or complained about it. Complex workplace dynamics, including power imbalances and concerns about reprisal, may prevent the individual from expressly objecting to the conduct.

2.1.2 Recognising the 'workplace'

Sexual harassment constitutes 'workplace sexual harassment' when it occurs:

- at work (that is, on the work premises as well as in other common areas such as the carpark, lifts, entrance or reception area and bathrooms outside of the work premises)²
- at work-related events, meetings or where people are carrying out work-related functions or activities outside of the physical work premises (for example, at a Christmas party, conference, on a work trip or when travelling to work)

- in online spaces and through technologies and social media platforms where the conduct is in connection with the employment (for example, during remote work)
- between people sharing the same workplace (for example, contractors or people in a co-working space).

Further detail on the legal definition of sexual harassment and the scope are discussed in Section 3.1: What sort of conduct is prohibited under the Equal Opportunity Act?

Sexual harassment and technology

The disruption caused by the COVID-19 pandemic has transformed traditional workplaces, with thousands of workers moving to work from home and relying increasingly on online platforms, often with reduced employer oversight. Technology is changing the way we work and the way we communicate with each other and this can create new opportunities for sexual harassment to occur.

Sexual harassment can often start in ‘real life’ work contexts and carry over to online spaces.³ It can also occur in online spaces from third parties. We know from research that people say things online that they wouldn’t say to someone’s face, particularly when they can hide behind anonymity.⁴

Data from the Office of the eSafety Commissioner also shows that, in general, women are more likely to experience sexual or sex-based cyber abuse – although these statistics don’t record whether abuse is related to the workplace or not.⁵ An Amnesty International poll from 2018 found that 30 per cent of Australian women had been harassed online and, of these, 37 per cent said the threats made them feel physically unsafe.⁶

2.2 What drives sexual harassment at work?

“The symbolism of his gesture was not lost on me. The domination and degradation was palpable.”

Sexual harassment is not just an individual problem, it is a systemic one. To successfully prevent and address sexual harassment, employers should understand the specific drivers that:

- enable sexual harassment to occur in different work contexts
- influence whether victim-survivors report sexual harassment
- influence how people respond to sexual harassment.

Power relations are central to understanding why sexual harassment occurs. Sexual harassment is considered to be an expression and reinforcement of disparities of power that exist in the workplace and in society.⁷

Louisa's story – Sexual assault as sexual harassment⁸

"At 20, I went to work as an unpaid intern in a city office. Within two months, I was sexually assaulted by one of the directors. In the first assault, I was locked in a wheelie bin as 'a joke'. They taped it down with gaffer tape and put me in the elevator. The director 'saved me' from the lift. But he wheeled the bin into his office, locked the door, and helped me climb out by grabbing my crotch. While he had me in this hold, he pulled my hair so my head was forced up to his face and he kissed me, groped my breasts and digitally penetrated me. He blamed me for his loss of control. Then he spent 30 minutes acting as if that hadn't just happened: asking me about my university degree, my ambition, my hopes for a job and how he could introduce me to people in other companies if it didn't work out for me at that one.

By the time he unlocked the door, I wasn't even sure what had just happened to me in the last hour of my life in a white-collar professional environment."

2.2.1 Sexual harassment and gender inequality

Evidence shows that gender inequality is a primary driver of workplace sexual harassment and that it is compounded by low rates of reporting and poor responses by many organisations.⁹

Gender inequality is a form of power disparity. It includes norms and stereotypes, structures and practices that work to disadvantage women. It arises from, and is reinforced by, beliefs and behaviours that exist throughout society, including in workplaces.¹⁰

More than one in five (22 per cent) complaints received by the Commission are from women discriminated against because of characteristics associated with their sex (including breastfeeding, pregnancy, parental status and carer status, as well as sexual harassment).¹¹ Fifty-nine per cent of total complaints under the Equal Opportunity Act are made by women.¹² This data tells us that discrimination against women is widespread in Victoria, both within and outside of the workplace. It is against this backdrop that sexual harassment occurs at work.

Regardless of the gender of the person experiencing sexual harassment, most harassers are male.¹³ In the complaints the Commission receives, more than nine in ten alleged harassers are men.¹⁴

Gender inequality can influence the culture and characteristics of workplaces and industries and drive workplace sexual harassment. Factors that may indicate that gender inequality is a problem for your workplace include low numbers of people working flexibly or a lack of support for flexible work, low numbers of women in senior leadership positions or on governing bodies compared to men, and unequal pay between men and women.

Gender norms also partly explain why LGBTIQ people experience workplace sexual harassment at higher rates.¹⁵ Research shows that men are most often sexually harassed when they are perceived to have violated traditional masculine social norms, and their harassers are usually male.¹⁶ The Commission's work with Victoria Police has identified homophobia, transphobia, and hypermasculine and heteronormative cultural norms as key drivers of sexual harassment towards LGBTIQ employees.¹⁷

 **Tool:** Developing a gender equality plan will assist employers to address sexual harassment, sex discrimination and gender inequality. Employers can use the Commission's gender equality framework, located in the appendices, which sets out the key domains of workplace gender equality and the outcomes employers should seek.

2.2.2 Beliefs that embed gender inequality and enable sexual harassment

Attitudes about gender – including rigid stereotypes about the way women and men should behave – can:

- enable sexual harassment¹⁸
- influence people's understanding of whether sexual harassment has occurred
- influence people's perception of whether some forms of sexual harassment are acceptable behaviour
- affect people's views about the credibility of the victim-survivor, lead to victim blaming and prevent harassers from being held accountable.¹⁹

Workers bring their own worldview with them to work, including their own set of values, beliefs and experiences. While employers are not required to change an individual's worldview, they do have a responsibility to promote respect and inclusion, and set expectations about what is and is not acceptable behaviour at work. Addressing gendered beliefs that enable sexual harassment, such as beliefs that lead to victim blaming, while taking steps to advance gender equality is key to preventing workplace sexual harassment.²⁰

2.2.3 Sexual harassment and intersectionality

Other inequalities can also drive sexual harassment at work and can make it difficult for people to report the harassment.

Intersectionality is a framework for identifying and analysing the dynamics of power and inequality.²¹ An intersectional approach acknowledges that workplace inequality and resulting harms, including sexual harassment, are never the result of a single factor such as sex, race, disability, gender identity or sexual orientation. Rather, they arise due to intersecting power relations and experiences.

This approach helps us understand why sexual harassment disproportionately affects some groups of workers and why it will often be experienced together with other forms of discrimination (referred to as 'intersectional discrimination').²² This includes those who experience inequality or disadvantage on the basis of disability, religious or political belief, race, gender identity, sexual orientation, socioeconomic background, marital status, age, educational background or visa status.

As with gender inequality, sexual harassment and discrimination against people in these groups is driven by harmful attitudes and stereotypes, as well as structures or systems that maintain existing power disparities. These intersect with and contribute to the gendered drivers of sexual harassment.

2.2.4 Workplace characteristics that produce risk

“I became preoccupied with my safety and sometimes took to wearing my running shoes to bed in case I was attacked at night.”

Workplace characteristics – including the circumstances of an individual’s employment and the nature of the work and workplace – may also inadvertently create opportunities for sexual harassment to occur.

These workplace characteristics can include:

- **workplace features** – for example, hierarchical structures and leaders with unquestioned authority
- **workplace environment** – for example, isolated work areas or the open display of sexual materials, or sharing of sexual images via phones and computers
- **workplace composition** – for example, a male-dominated workforce or client base, or a cohort of workers who are casually employed, or on short-term contracts
- **workplace trends** – for example, high staff turnover, or a concentration of men in senior positions
- **workplace requirements** – for example, travel and overnight stays or the expectation to attend events where alcohol is served.

These characteristics may enable sexual harassment, create opportunities for it to occur or produce barriers that prevent those experiencing sexual harassment from confidently reporting it.

 **Tool:** Employers can use the risk matrix tool in the appendices to identify characteristics in their workplace that enable sexual harassment and create barriers for identifying and reporting it.



Sexual harassment, insecure work and the impact of COVID-19

The rise of the gig economy and the impacts of the COVID-19 pandemic have diminished job security and economic freedom for many workers, particularly women. Evidence shows that people in insecure work are at greater risk of sexual harassment and experience significant barriers to reporting it.²³ Casual workers, independent contractors and people on fixed-term contracts may have little bargaining power and no traditional management structures or human resources representative to take concerns to. They may not have access to paid leave and may fear not having their contract renewed, or having their casual hours reduced, if they raise concerns or take time off work.

The COVID-19 pandemic has exacerbated job insecurity and highlighted existing gender inequalities at work. Jobs occupied by women have decreased by eight per cent, while those worked by males have decreased by nearly six per cent.²⁴ Some of the industries hardest hit by the pandemic response, such as hospitality and retail, are the largest users of casual employment and are also female dominated.²⁵ Women are already more likely to experience reduced job security. In 2019, women made up 56 per cent of casual workers across all industries (although men's share is on the increase).²⁶ Women are also more likely to be on short-term contracts than men.²⁷ Whereas, workers on temporary visas, people with disabilities and people whose first language is one other than English are overrepresented in the gig economy as independent contractors.²⁸

Because of these systemic and cultural drivers, sexual harassment cannot be prevented by approaching it on a case-by-case basis. Well planned, targeted measures that address known risks and drivers will be more effective to prevent workplace sexual harassment from occurring (see Standard 4: Risk management in Section 4.4).²⁹

2.3 Who is affected?

“I felt trapped, uncomfortable, constantly on guard and paranoid, unable to trust or differentiate between genuine interactions and predatory or clandestine behaviour.”³⁰

As mentioned above, anyone can experience workplace sexual harassment and it is not limited to conduct by men towards women.³¹ However, some groups are more likely to experience it. Women are sexually harassed far more often than men.³²

Commission data snapshot

In 2018–19, the Commission received 374 enquiries and 122 complaints about sexual harassment in public life. More than half of the enquiries and 91 per cent of the complaints related to sexual harassment at work.

Of the 122 complaints:

- 93 per cent of respondents (or alleged harassers) were men
- 88 per cent of complainants were women
- 22 per cent of complainants also claimed victimisation
- 54 per cent of complainants also claimed a type of discrimination.³³

The Australian Human Rights Commission's 2018 *Fourth National Survey on Sexual Harassment in Australian Workplaces* found that in the last five years:

- women were more likely than men to have been sexually harassed in the workplace (39 per cent of women compared with 26 per cent of men)
- people aged 18–29 (45 per cent) were more likely than other age groups to have experienced workplace sexual harassment. One in five 15–17-year-olds were sexually harassed at work
- LGBTIQ people were significantly more likely to experience sexual harassment compared to heterosexual people
- seventy-seven per cent of people with an intersex variation reported experiencing sexual harassment, significantly more than those without an intersex variation (32 per cent)
- people identifying as being Aboriginal or Torres Strait Islander were significantly more likely to have experienced workplace sexual harassment than those who did not identify as such (53 per cent compared to 32 per cent)
- people with disability were also more likely to have experienced workplace sexual harassment than those without a disability (44 per cent compared to 32 per cent).

The survey also found that around two in five instances of workplace sexual harassment had been witnessed by someone else (also known as a bystander).

There was no significant difference in the experience of workplace sexual harassment based on the main language spoken at home. In contrast, a 2018 University of Sydney study found that women born in Asia and women of culturally and linguistically diverse backgrounds reported experiencing sexual harassment at twice the rate of the surveyed population.³⁴

For these groups, and other people who face marginalisation or disadvantage, sexual harassment will commonly occur with other forms of discrimination or vilification. This is called intersectional discrimination. These workers may face additional barriers to reporting and accessing support, resolution and/or justice.

2.4 What is the scale of workplace sexual harassment?

Workplace sexual harassment is widespread. Nationally, one in three people have experienced sexual harassment at work in the last five years.³⁵ 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.³⁶

However, most sexual harassment goes unreported.³⁷ Barriers to reporting are discussed in Section 2.6: What prevents people from reporting sexual harassment?

Sexual harassment can occur in any workplace. However, evidence shows it is more common in certain sectors and industries, including:

- the legal industry – 36 per cent of Victorian workers (61 per cent of female workers, 12 per cent of male workers)³⁸
- accommodation and food services – 39 per cent of Australian workers (48 per cent of female workers, 25 per cent of male workers)³⁹
- retail trade – 42 per cent of Australian workers (50 per cent of female workers, 32 per cent of male workers)⁴⁰
- information, media and telecommunications – 81 per cent of Australian workers (80 per cent of female workers, 83 per cent of male workers).⁴¹

As discussed above, there are certain workplace and organisational characteristics that increase the vulnerability of individuals experiencing sexual harassment. When employers understand what enables or drives sexual harassment at work, they can put strategies in place to prevent and monitor the risk of sexual harassment occurring.

✓ **Leading practice example: Understanding sexual harassment in the legal sector**

In 2019, the Victorian Legal Services Board and Commissioner (VLSB+C) undertook a profession-wide study on sexual harassment in Victoria's legal sector.⁴² The study included two surveys: one directed at practitioners on the prevalence and forms of sexual harassment in the legal industry, and one directed at principals to understand what measures were in place to prevent sexual harassment. The study was the first of its kind to be undertaken by an Australian legal regulator.

The study found that sexual harassment was commonly experienced by women, with 61 per cent of women and 12 per cent of men reporting that they had experienced sexual harassment while working in a legal workplace in Victoria. The survey also identified that junior women were most at risk of experiencing sexual harassment, with 59 per cent of victims having fewer than six years' experience. The perpetrators were overwhelming men (90 per cent) who were typically in a more senior role (72 per cent) and generally aged over 40 (66 per cent).

The study also found that many workplaces did not have the policies, procedures or reporting mechanisms in place to address sexual harassment, and that training about sexual harassment was rare.

The study's results also demonstrated that those working in senior leadership positions thought that sexual harassment occurred rarely, while 50 per cent of individual practitioners reported witnessing or hearing about sexual harassment in the workplace. The VLSB+C has drawn on this data to develop a targeted strategy to decrease the prevalence of sexual harassment in Victoria's legal workplaces.

Additionally, the VLSB+C study has led to further reviews of the legal sector. In 2020, the Victorian Government announced a review into practices to prevent and address sexual harassment in the state's courts and the Victorian Civil and Administrative Tribunal. Separately, the government will also be conducting a review into the sexual harassment policies and practices of law firms that provide services to government.

2.5 What are the impacts?

“I am a shell of my former self, a speck of the brave person that I was. I had my way of life, my self-esteem, my respect and my dignity stripped from me in the most terrifying of situations.”⁴³

Sexual harassment can have profoundly harmful impacts on victim-survivors, as well as others in the workplace and the wider community.

Impacts on individuals	Impacts on bystanders, managers and human resource personnel	Impacts on employers	Impacts on the community
<ul style="list-style-type: none"> • hurt, humiliation, stress, anxiety and fear • leaving the workplace, or time away from work • reduced financial security and career prospects • adverse impacts on physical and mental health • adverse impacts on personal and family relationships. 	<ul style="list-style-type: none"> • negative health and occupational outcomes • vicarious trauma and ‘burn out’ • stress and anxiety. 	<ul style="list-style-type: none"> • reduced productivity • decreased job satisfaction, team morale, performance and reduced credibility of managers • reputational damage • economic loss and business risk associated with WorkCover claims, litigation, increased insurance premiums and staff turnover. 	<ul style="list-style-type: none"> • reinforcement of harmful attitudes and stereotypes about women and men • women are deterred from seeking public leadership roles or positions in male-dominated industries • contributes to the gender pay gap.

“I had to quit my dream job, go into debt and change my whole career track. I’ll never get to where I could have if he’d just left me alone and let me do my job.”

For some people, the impacts of sexual harassment are immediate and temporary. For others, they can be lifelong. The impacts on women are particularly significant. This is because sexual harassment commonly occurs in conjunction with sex-discrimination. It is also common for women to have a previous experience of sexual harassment and therefore suffer cumulative harms.⁴⁴

| “I can’t forget, I vividly remember ... It has left a scar.”⁴⁵

Similarly, the impact of sexual harassment on members of the LGBTIQ community is likely to be heightened due to prior experiences of discrimination and exclusion.⁴⁶ The Commission’s research with Victoria Police on workplace harm to LGBTIQ employees – which included sexual harassment – identified that employees who do not conform to a heteronormative policing stereotype have been greatly affected. The impacts of workplace harm have been mental, physical and emotional detriment. In some cases, it has stifled or ended careers.⁴⁷

Recent research has conservatively estimated that workplace sexual harassment cost the Australian economy as much as \$3.8 billion in 2018. This included lost productivity to workplaces and an estimated cost to employers of \$2.6 billion (or \$1053 on average per victim-survivor).⁴⁸

2.6 What prevents people from reporting sexual harassment?

| “I told my former manager what was going on and he recommended I look for a new job.”

While workplace sexual harassment is disturbingly common, evidence shows that most incidents go unreported. The Australian Human Rights Commission recently found that fewer than one in five people (17 per cent) who were sexually harassed at work in the previous five years made a formal report or complaint.⁴⁹ In some industries, reporting can be even lower.⁵⁰

| “I wanted to report it, but I felt like it would be career suicide. He was a shareholder and I was a nobody.”

The reasons people don’t report sexual harassment include:

- not knowing what constitutes sexual harassment or where to go for help
- community attitudes that condone, excuse, minimise or deny sexual harassment
- fear of reprisal and victimisation, such as being sacked, losing shifts or being denied promotions or opportunities
- inadequate support from supervisors, those in management and co-workers to make a complaint
- lack of faith that a complaint will be effectively managed (that is, believing nothing will change)
- lack of job security, particularly for migrant workers, workers on temporary visas, casual or contract workers
- trauma and shame.

| “I felt so stupid and ashamed. I thought if I told someone they would just blame me and ask me why I let this happen.”

It is important to remember that some groups face additional barriers to reporting workplace sexual harassment, accessing their legal rights and being believed. This includes young people, people with a disability, Aboriginal and Torres Strait Islander Peoples and people for whom English is a second language.⁵¹

2.6.1 The burden of reporting sexual harassment

Workplaces and the legal system usually place the burden of identifying and reporting sexual harassment on the person who experiences it. Individuals are often deterred from reporting sexual harassment because of the risk to their personal and professional lives, as well as their health, wellbeing and financial security.

To encourage victim-survivors to come forward, reporting systems need to be genuinely accessible, transparent and efficient. Workers will have more faith in a reporting pathway if it is applied fairly and consistently and holds harassers to account.

Jessica's story – How a poor employer response can significantly affect someone's career and mental health

Jessica⁵² was an engineer at a male-dominated consulting firm. Six years into Jessica's employment, Josh – a partner in the firm – was appointed as Jessica's supervisor. Josh started persistently making unwelcome advances towards Jessica and sending personal text messages to her after hours, including late at night. He would regularly insist that Jessica accompany him to after work drinks and told her that he found her attractive.

As part of her work, Jessica was required to travel with Josh to client meetings, interstate and on overnight trips. She became increasingly anxious and uncomfortable around him. Jessica never responded positively to Josh's advances and indicated that she wasn't interested in him romantically, but she was also worried about damaging their working relationship. Jessica felt trapped because Josh was her supervisor and had considerable power over her career.

Eventually, during a work trip, Josh's behaviour became too much for Jessica and she confronted him, telling him that his advances made her extremely uncomfortable. After that, Josh's behaviour towards Jessica changed. Instead of propositioning her he became dismissive and critical. Jessica was branded 'difficult'. When she complained to a senior manager, they began micromanaging her and then she started to be assigned to projects that did not relate to her role and did not align with her career aspirations or interests. Then she was told that she was going to be transferred to a different role. When she questioned why this was happening, Jessica was told she was 'aggressive'. She sought confidential advice from a former manager about the situation and he recommended she look for a new job. Jessica developed significant anxiety due to the harassment and her subsequent treatment and understood her only choice was to leave the workplace.

Notes

- 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 *Ewin v Vergara* (No 3) [2013] FCA 1311 [43].
- 3 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 130.
- 4 *Ibid.* 78.
- 5 *Ibid.* 130.
- 6 Amnesty International, 'Australia: Poll reveals alarming impact of online abuse of women' (Webpage) <<https://www.amnesty.org.au/australia-poll-reveals-alarming-impact-online-abuse-women>>.
- 7 Purna Sen et al., *Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo* (UN Women, November 2018) 10.
- 8 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. Anonymous (n 1) 190, 194–5.
- 9 Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, *Change the Story: A Shared Framework for the Primary Prevention of Violence against Women and their Children in Australia* ('Change the Story') (Our Watch, 2015) 6, 8; Australian Human Rights Commission (n 3) 149–50, referring to women's inequality demonstrated by women's under-representation in Australian parliaments, senior leadership roles in Australian workforces, the gender pay gap and higher levels of unemployment than men.
- 10 Sexual harassment commonly occurs in the context of "the structures of discrimination against women", meaning "the forms of subordination of women that are deeply rooted in our thinking, our myths, and in our individual, institutional, and social ways of functioning", Rebecca J Cook, 'Structures of discrimination' (2012) 28(1) *Macalaster International* 33, 33.
- 11 Victorian Equal Opportunity and Human Rights Commission, 2018–2019 dispute resolution data.
- 12 *Ibid.*
- 13 See, for example, Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (Report, 2018) 32–5.
- 14 Victorian Equal Opportunity and Human Rights Commission data for the 2018–2019 financial year shows that 92.5 per cent of respondents in sexual harassment complaints made to the Commission are male. A complainant may make a complaint against their employer as having primary responsibility for ensuring the workplace is free from sexual harassment, discrimination and victimisation. They can also make a complaint against one or more persons who are alleged to have subjected them to sexual harassment. In sexual harassment complaints, a complainant may refer to individual co-workers as being responsible for the sexual harassment but not name them as an individual respondent to a complaint and choose to engage in dispute resolution only with their employer. In a high proportion of cases of sexual harassment where the individual person responsible for the sexual harassment is not named as a respondent, the alleged harasser is male.
- 15 Australian Human Rights Commission (n 13) 28.
- 16 Australian Human Rights Commission (n 3) 163–4.
- 17 Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police* (Report, May 2019) 33.
- 18 Kim Webster et al., *Australians' Attitudes to Violence against Women and Gender Equality. Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) Research Report 03/2018* (ANROWS, 2018) 5.
- 19 *Change the Story* (n 9) 23–4.
- 20 Australian Human Rights Commission (n 3) 363.
- 21 Jasmine Chen, *Intersectionality Matters: A Guide to Engaging Immigrant and Refugee Communities in Australia* (Multicultural Centre for Women's Health, 2017) 5.
- 22 M Hach and R Aryal-Lees, *Workplace Equality: A Model for Preventing Violence against Migrant and Refugee Women* (Multicultural Centre for Women's Health, 2019).
- 23 Anthony D LaMontagne, Peter M Smith, Amber M Louie, Michael Quinlan, Jean Shoveller and Aleck S Ostry, 'Unwanted sexual advances at work: Variations by employment arrangement in a sample of working Australians' (2009) 33(2) *Australian and New Zealand Journal of Public Health* 173.
- 24 Australian Bureau of Statistics, *Jobs and Wages by Sex* (16 June 2020) 6160.0.55.001 – Weekly Payroll Jobs and Wages in Australia, Week ending 30 May 2020 <<https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6160.0.55.001Main%20Features3Week%20ending%2030%20May%202020?opendocument&tabname=Summary&prodno=6160.0.55.001&issue=Week%20ending%2030%20May%202020&num=&view=>>>.

- 25 In 2016, the hospitality sector accounted for 20 per cent of all casual workers employed in Australia and the retail sector accounted for 15 per cent. Geoff Gilfillan, 'Characteristics and use of casual employees in Australia' (Research Paper, Parliamentary Library, Parliament of Australia, 19 January 2018) 9.
- 26 Workplace Gender Equality Agency gender workplace statistics show that since 2013–14, casual employment has increased for women by 1.8 per cent, and for men by 3.9 per cent. Workplace Gender Equality Agency, 'WGEA data explorer' (Webpage) <https://data.wgea.gov.au/industries/1#gender_comp_content>.
- 27 The most recent figures from the Australian Bureau of Statistics (2013) showed that 203,800 women and 163,400 men were in fixed contracts. A 2018 discussion paper from the McKell Institute argues this is due to the fact that the industries in which fixed-term contracts are concentrated are those industries dominated by women. Lillian Alexander, 'Understanding insecure work in Australia' (Discussion Paper, McKell Institute, 27 June 2019) 6–7.
- 28 Data from the 2019 national survey, *Digital Platform Work in Australia: Preliminary Findings from a National Survey*, reported in Australian Human Rights Commission (n 3) 193.
- 29 Australian Human Rights Commission (n 13) 479.
- 30 Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase 3 Audit and Review* (Report, August 2019) 15.
- 31 In *Thomas v Alexiou* [2008] VCAT 2264, VCAT found Mr Alexiou, a director of a small business, sexually harassed Mr Thomas, an apprentice, over a three-and-a-half-year period. The conduct included repeatedly propositioning him to share a shower, making unwelcome sexual advances by touching his genitals and, in a number of incidents, physically restraining him to do so. In *Sammut v Distinctive Options Limited* [2010] VCAT 1735, a female colleague sexually harassed Mr Sammut by repeatedly putting both arms around him to hug him despite him requesting her not to do so on more than one occasion.
- 32 Australian Human Rights Commission (n 13) 21, 27.
- 33 Victoria Equal Opportunity and Human Rights Commission, *Annual Report 2018–19* (Report, 2019) and internal data analysis.
- 34 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).
- 35 Australian Human Rights Commission (n 13) 8.
- 36 *Ibid.* 18.
- 37 *Ibid.* 67.
- 38 Victorian Legal Services Board + Commissioner, *Report on the Sexual Harassment Study: Findings of 2019 Study of Legal Professionals and Legal Entities* (Report, 2020) 13.
- 39 Australian Human Rights Commission (n 13) 59.
- 40 *Ibid.* 59.
- 41 *Ibid.* 59.
- 42 See Victorian Legal Services Board + Commissioner (n 38).
- 43 Victorian Equal Opportunity and Human Rights Commission (n 30) 15.
- 44 Australian Human Rights Commission (n 3) 264.
- 45 Genevieve Allison, 'Manager of Coloria D'Italia jailed for sexually assaulting young female waiter', *Herald Sun* (online 3 November 2019) <<https://www.heraldsun.com.au/news/law-order/manager-of-colori-ditalia-restaurant-jailed-for-sexually-assaulting-young-female-waiter/news-story/Of50d2846ba92ff109674846bb65edec?btr=19659667410a61326c1f548f37cd335c>>.
- 46 Victorian Equal Opportunity and Human Rights Commission (n 17) 31–3.
- 47 *Ibid.* 4.
- 48 Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace* (Final Report, March 2019) 5.
- 49 Australian Human Rights Commission (n 13) 73.
- 50 For example, formal reporting of sex discrimination and sexual harassment remains low in Victoria Police compared to the reported rates of harm – only 11 per cent of survey respondents who told us they had experienced sexual harassment between December 2015 and October 2018 formally reported it to Victoria Police. Victorian Equal Opportunity and Human Rights Commission (n 30) 17.
- 51 US Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the workplace, *Report of Co-Chairs Chai R Feldblum and Victoria A Lipnic* (June 2016) 12–13; Sandra L Fielden et al., 'A model of racialized sexual harassment of women in the UK workplace' (2009) 62(1) *Sex Roles* 20, 28, 31; *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016), vol. v, 183–4.
- 52 Names and identifying details have been changed to protect the privacy of individuals.

3. Understanding the law on sexual harassment

Key points

- Sexual harassment and victimisation in the workplace are unlawful under Victoria's Equal Opportunity Act and federal anti-discrimination laws.
- The law protects a wide range of workers, including paid staff, contractors, interns, volunteers and job applicants.
- Employers can be held legally responsible for the actions of their staff.
- Employers have a duty to eliminate discrimination, sexual harassment and victimisation in the workplace. This is called the positive duty.
- Generally, if employers comply with their positive duty obligations, as outlined in Chapter 4 of this guideline, they will also be taking important steps towards meeting their obligations under other laws dealing with sexual harassment.

The prohibition of sexual harassment under the Equal Opportunity Act captures a broad range of behaviour. This includes sexual or romantic advances, requests for sexual favours and conduct that is of a sexual nature. It is also unlawful to treat a person badly for raising a complaint of sexual harassment. This is known as victimisation.

3.1 What sort of conduct is prohibited under the Equal Opportunity Act?

3.1.1 The legal definition of sexual harassment

The Equal Opportunity Act defines sexual harassment as occurring when a person:

- makes an unwelcome sexual advance, or
- makes an unwelcome request for sexual favours, or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be **offended, humiliated or intimidated**.

The definition of sexual harassment involves a subjective test (was the behaviour unwelcome?) and an objective test (what would a reasonable person anticipate in the circumstances?). The reasonable person test is a tool used to objectively assess whether a person *should have anticipated* the conduct would cause the other person to experience offence, humiliation or intimidation.

 **Remember: The harasser's motive or intention is irrelevant.**¹ While everyone is different and has their own tolerance levels, what is important under the law is how a reasonable person would assess all the circumstances and anticipate how the *other person* would experience the conduct. It is not a test of how any person would react or experience the conduct, but rather the person who is subjected to the behaviour.

Case law – The employer, not the victim-survivor, must prevent sexual harassment – GLS v PLP²

This case demonstrates that it is the employer's responsibility to ensure sexual harassment does not take place. It is not up to the worker to reject the harasser in an 'effective' manner.

Alan was Sharon's employer. Alan made repeated advances towards and requests of a sexual nature to Sharon, including showing her pornographic material, making sexual comments and sending her sexual text messages. Although she rejected him, he continued – saying Sharon's body language contradicted her words. He also said Sharon did not try to escape when he embraced her or refuse to engage in conversations of a sexual nature with him. Sharon felt deeply uncomfortable but did not want to upset her employer. She sought psychiatric counselling and treatment.

The Tribunal found that Alan's behaviour constituted sexual harassment because it was unwelcome and not solicited or invited by Sharon, and a reasonable person would have anticipated that she would have found it offensive or intimidating. Sharon was awarded \$100,000 in damages. The Tribunal took into account that Sharon had suffered significantly as a result of the incidents and that she would likely need to continue psychiatric counselling and treatment into the future.

3.1.2 Behaviour that may amount to sexual harassment

Unwelcome physical contact can include:

- any act of physical intimacy including hugs, patting, pinching, fondling, grabbing, rubbing, touching and tickling in an intimate manner
- making gestures of a sexual nature (for example, with the body or hands) in a person's presence or leering and staring
- sexual assault, indecent exposure, physical assault and stalking.³

Unwelcome verbal, written and electronic communications can include:

- requesting sex or acts of a sexual nature
- making comments of a sexual nature in a person's presence
- sending unsolicited love letters
- repeatedly inviting someone on a date
- commenting, or asking intrusive questions, about someone's private life, sexuality or how they look
- making sexually explicit telephone calls and sending messages in emails, text messages or on social networking sites using work equipment or personal equipment at work
- displaying or exposing someone to offensive imagery or conduct of a sexual nature; for example, screen savers, photos, calendars or objects.

 **Remember: A single incident can be enough to constitute sexual harassment – it doesn't have to be repeated.** And, while conduct based on mutual attraction between consenting adults would not be against the law, sexual conduct that has been welcomed in the past can become unwanted. For instance, when a relationship has ended but one person continues to pursue contact or harass the other person.

3.1.3 Behaviour that may amount to victimisation

The Equal Opportunity Act makes it unlawful to victimise someone because they have raised a sexual harassment complaint. Victimisation means treating or threatening to treat someone badly (subjecting them to a detriment) because they have:

- made a complaint or allegation of sexual harassment or it is believed they might make a complaint
- helped someone else make a complaint of sexual harassment
- refused to do something because it would be sexual harassment (or discrimination or victimisation).⁴

Victimisation can include, but is not limited to:

- demoting or threatening to demote someone because they have made a complaint or might make a complaint
- ostracising or excluding a worker in the workplace because they helped a colleague make a complaint
- denying a promotion to a complainant because they alleged that someone in the workplace sexually harassed them
- moving a worker who has made a complaint to another worksite without first checking if they want to move
- 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.

Victimisation includes behaviour towards people who have, or might, complain of sexual harassment, as well as bystanders or people perceived to have helped a person make a complaint of sexual harassment.

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

3.2 Who is protected against sexual harassment in the workplace?

Sexual harassment is against the law when it happens in one of the areas of public life protected by the Equal Opportunity Act, including when it occurs:

- by employers and employees (sections 27 and 93 of the Equal Opportunity Act)
- in common workplaces (section 94)
- by partners in firms (section 95)
- in industrial organisations (section 96)
- by members of qualifying bodies (section 97)
- in educational institutions (section 98)
- in the provision of goods and services (sections 99 and 125)
- in the provision of accommodation (section 100)
- in clubs (section 101)
- in local government (section 102).

The following people are protected from workplace sexual harassment under the Equal Opportunity Act:

- workers, volunteers and unpaid workers such as interns⁵
- job applicants
- people sharing a workplace, such as contractors⁶
- people in a common workplace.⁷

This means sexual harassment by supervisors and managers, colleagues, customers, clients, volunteers or other people with whom a worker interacts in the course of doing their job is against the law. People who are in the course of applying for a job, such as during an interview or selection process, are also protected from being sexually harassed under the Equal Opportunity Act.

Andrea's story – Sexual harassment from a senior worker⁸

"I assisted a surgeon for a number of years and there was lots of sexual harassment. One day at work I felt someone touch my bottom and he leant in and whispered to me, 'You might be needing this later'. I reached into the back pocket of my scrubs and he'd left a sachet of lube in there.

He also used to suggest to me in the tearoom that I should put some portions of butter in my bra to warm them up and soften them for him, so he could spread them on his toast."

3.2.1 Work-related situations where sexual harassment is against the law

There is broad coverage under the Equal Opportunity Act of work-related situations where sexual harassment may occur. For example, sexual harassment is unlawful in a 'common workplace'. This means any place where a person attends for the purpose of carrying out any functions in relation to their employment, occupation, business, trade or profession. The place does not need to be a person's principal place of business or employment. 'Common workplace' also includes common areas such as lifts, kitchens and toilets.⁹ This means individuals are protected from conduct even when one person is a contractor, agency or temporary worker or is attending the workplace for a work-related reason.

3.2.2 Sexual harassment can happen in 'out-of-work' settings

Individuals are protected from sexual harassment that takes place in settings that are connected to work but are outside the ordinary physical location of the workplace or outside normal working hours. For example, sexual harassment can commonly occur in the following work settings:

- during work-related functions, travel, accommodation and excursions outside of the office if supported or paid for by the employer¹⁰ (for example, at a Christmas party, conference or work trip, or when travelling to work)
- between workers in residential accommodation provided by the employer¹¹
- during private functions in private residences if there has been sexual harassment occurring in the workplace and it continues in the private setting¹²
- in online spaces and through technologies and social media platforms where the conduct is in connection with the employment (for example, during remote work).

Electronic communications using text, or social media platforms, may still be connected to the workplace even when they occur outside of ordinary work hours or while working remotely. The conduct must have a sufficient connection to work, which depends on the facts of each case (for case law examples, see Section 3.3.3: Vicarious liability).

3.3 Who is responsible and what are my duties as an employer?

Everyone in the workplace has a responsibility to treat others with respect and professionalism. However, employers have particular legal responsibilities. Under the Equal Opportunity Act, the harasser (for example, the worker found to have sexually harassed another person) and the employer can both be found liable for sexual harassment that occurs in the workplace. An employer can be found legally responsible (that is, vicariously liable) for the actions of its worker(s) if it failed to prevent or properly respond to the harassment.

3.3.1 The positive duty

Under the Equal Opportunity Act, employers have a duty to eliminate discrimination, sexual harassment and victimisation in the workplace.¹³ This is called the positive duty. The positive duty requires much more than just responding to complaints as they arise. The positive duty is about being proactive and identifying problems and taking reasonable and proportionate measures to eliminate the causes

of sexual harassment, as far as possible, that may be part of the systems or culture in the workplace.

In Chapter 4, we set out **six minimum standards** that all employers must follow in order to comply with the positive duty under the Equal Opportunity Act. The standards require actions be taken to both *prevent* and *respond* to sexual harassment.

While every employer in Victoria must comply with the minimum standards, the specific measures or actions required of employers vary according to the context of their organisations and what is considered to be reasonable and proportionate in all the circumstances, including:

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

To reflect this, examples of how to implement the standards in Chapter 4 have been grouped for small, medium and large organisations.

3.3.2 Enforcement of the positive duty

The Commission can encourage and facilitate compliance with the positive duty through our education, research, review and investigative functions.

We can use our investigative function where we have reasonable grounds to suspect that the positive duty has been breached, the matter is serious in nature, relates to a group of persons and cannot reasonably be expected to be resolved through dispute resolution or at the Victorian Civil and Administrative Tribunal (VCAT).¹⁴ For example, if we received multiple reports of sexual harassment occurring in the same workplace and the employer has not taken any action to respond. We must also be satisfied that the investigation would advance the objectives of the Equal Opportunity Act.

The Commission will usually work with employers on a voluntary basis to support them to comply with the law. However, we can investigate without the consent of an employer. We can apply to 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.

3.3.3 Vicarious liability

Workers who sexually harass others can be held personally liable under the Equal Opportunity Act. Employers can also be held legally responsible for acts of sexual harassment committed by workers or agents that occur in their workplace or in connection with their workers' employment. This is known as vicarious liability.¹⁵ In order to minimise or remove liability, employers need to demonstrate that they have taken reasonable steps to prevent sexual harassment from occurring in the workplace and that they have responded appropriately to resolve incidents of sexual harassment.

By complying with the positive duty and the standards set out in this guideline, employers will be less likely to be found vicariously liable if sexual harassment occurs in their workplace.

An employer will be found to be vicariously liable if:

- the sexual harassment complained of occurs in the course of employment, and
- the employer has not taken reasonable precautions to prevent the person (for example, a worker) from contravening the Equal Opportunity Act (that is, harassing another worker).

Although employers cannot be held vicariously liable for the conduct of third parties (such as customers or clients), the positive duty requires employers to take reasonable and proportionate steps to prevent this conduct from occurring (see Section 4.4.3: Implementing safe systems to address risk).

Vicarious liability for conduct outside of the regular workplace or work hours

Employers can be held vicariously liable under the Equal Opportunity Act even where sexual harassment occurs outside the ordinary physical workplace and outside office hours. This is the case if the sexual harassment occurs in connection with a worker's employment, as discussed in Section 3.2: Who is protected against sexual harassment in the workplace?

Case law – Sexual harassment in 'out-of-work' settings

Case law demonstrates that whether sexual harassment occurs in the course of employment depends on the circumstances. The relationship between those involved and the circumstances are just as important as where the incident took place.

Employer's liability for harassment at work-related events facilitated by the employer – A v K Ltd & Z¹⁶

Laura and Yiannis worked together. They both went to a work-related function. Following the function they, and other workers, went to a bar. The employer authorised and paid for the supply of alcohol at the bar. While at the bar, Yiannis got a little bit drunk and made jokes and comments of a sexual nature towards Laura. He repeatedly asked her to come back to his hotel room, which was being paid for by the employer as he had travelled for the function from interstate.

When Laura filed proceedings for sexual harassment, her employer asked the Tribunal to strike out the application because the behaviour had not happened at work. The Tribunal refused and ordered the case to go to trial. The Tribunal held that the employer may be found vicariously liable for Yiannis' behaviour because both events had been facilitated, and paid for, by the employer and had therefore occurred in the course of employment.

Employer's liability where workplace sexual harassment culminates in out-of-work sexual assault – Lee v Smith¹⁷

Steve and Hui Yin worked together. Steve had been sexually harassing Hui Yin at work for a few months. One night, they both attended after-work drinks at one of their colleague's home. While they were there, Steve raped Hui Yin.

The employer was held vicariously liable because, even though the incident took place at a private function, it arose out of a work situation and was the culmination of a series of incidents of sexual harassment that took place in the workplace. Steve and his employer were ordered to jointly pay Hui Yin almost \$400,000 in damages.

Steve's behaviour was also a criminal offence.

Vicarious liability for volunteer conduct

An employer can be held vicariously liable for sexual harassment by a volunteer or unpaid worker if that harassment occurs in the course of their employment.

Under Part 6 of the Equal Opportunity Act, employees are defined to include volunteers and unpaid workers for the purposes of sexual harassment. This means they are both protected from sexual harassment at work and can be liable for it. Vicarious liability operates to make employers liable for sexual harassment that occurs in the course of employment, including harassment against or by volunteers or unpaid workers.

3.3.4 Authorising or assisting sexual harassment

It is against the law for a person to request, instruct, induce, encourage, authorise or assist someone to sexually harass another person.¹⁸ This means that employers could be liable for actions or decisions that could result in one of their workers sexually harassing another.

Examples of conduct that authorises or assists sexual harassment may include:

- a recruitment agent referring an applicant to an employer, despite knowing complaints of sexual harassment have been made against that employer by previous workers¹⁹
- a manager continuing to place female trainees under the supervision of a worker who is known to have sexually harassed young female workers in the past.

3.4 Which other laws relate to sexual harassment?

In addition to the Equal Opportunity Act, there is other legislation that makes sexual harassment unlawful.

3.4.1. Victorian Laws

Occupational Health and Safety Act

The *Occupational Health and Safety Act 2004* (Vic) provides that an employer must maintain a work environment that is safe and without health risks for their employees, so far as reasonably practicable. Employees include independent contractors and any employees of the independent contractor. Employers must eliminate risks to health and safety so far as is reasonably practicable. If it is not possible to eliminate the risks, they must be reduced so far as is reasonably practicable.

Employers must provide and maintain safe systems of work, and give employees the necessary information, instruction, training and supervision to do their job safely and without risks to health.

Employers must also ensure that, so far as reasonably practicable, people other than employees are not exposed to risks to their health and safety arising from the business. WorkSafe Victoria recognises that 'health' includes psychological health, and that gendered violence (including sexual harassment) is a serious work health and safety (WHS) issue.²⁰

Crimes Act

The *Crimes Act 1958* (Vic) makes it against the law to:

- rape, sexually assault or stalk another person
- threaten to commit a sexual offence or obtain a sexual act by threat or fraud
- give someone an intoxicating substance for a sexual purpose
- abduct or detain another person for a sexual purpose
- expose another person to sexual activity knowing that seeing the activity will cause the other person to experience fear or distress.

These are serious criminal offences that carry sentences for imprisonment.

3.4.2 Federal laws

Sex Discrimination Act

The federal *Sex Discrimination Act 1984* (Cth) ('Sex Discrimination Act') prohibits sexual harassment and operates concurrently with the Equal Opportunity Act. The Sex Discrimination Act defines sexual harassment in the same way as the Equal Opportunity Act.

The Sex Discrimination Act covers 'work-related' sexual harassment, which can take place:

- at the location of someone working remotely who is harassed by email, on a social networking site, or by mobile phone
- on work-related trips such as training, conferences, or in hotels, cars, trains etc.
- at social events such as work lunches, office parties, or work gatherings at bars and restaurants
- in the workplaces of interns, trainees and apprentices.

Where sexual harassment has occurred under federal and state or territory laws, a person can choose to pursue action in either jurisdiction. When deciding which jurisdiction to choose, the person who has experienced sexual harassment should consider which jurisdiction will serve them the best.

Fair Work Act

The *Fair Work Act 2009* (Cth) ('Fair Work Act') makes it against the law to bully another person in the workplace. Bullying occurs when a person or a group of people repeatedly behave unreasonably towards a worker or a group of workers at work, and the behaviour creates a risk to health and safety. Bullying behaviour may involve any of the following types of behaviour, which may also constitute sexual harassment in some circumstances:

- aggressive or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or 'initiation ceremonies'
- exclusion from work-related events
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- displaying offensive material
- pressure to behave in an inappropriate manner.

It is also unlawful under the Fair Work Act's general protections provisions for an employer to take adverse action or discriminate against an employee or prospective employee because of their sex or sexual orientation (or another protected attribute). Sexual harassment may constitute adverse action taken against a worker because of their sex.

3.4.3 How compliance with the positive duty can help employers comply with other obligations

Generally, if employers comply with their positive duty obligations under the Equal Opportunity Act, they will also be taking important steps towards meeting their obligations under the above laws. Actions might also be relevant to reporting obligations under the *Workplace Gender Equality Act 2012* (Cth) and the *Gender Equality Act 2020* (Vic) ('Gender Equality Act').

The Gender Equality Act applies to public sector organisations that have 50 or more employees. From 31 March 2021, these organisations will be required to develop a Gender Equality Action Plan every four years, which includes strategies for improving gender equality and preventing sexual harassment in the workplace.

Notes

- 1 *Equal Opportunity Act 2010* (Vic) s 10.
- 2 *GLS v PLP* [2013] VCAT 221.
- 3 Some sexual harassment (such as rape, sexual assault, stalking, obtaining a sexual act by threat or fraud) may constitute a sexual offence under criminal law. See *Crimes Act 1958* (Vic) ss 21A, 38, 40, 41, 43–48.
- 4 *Equal Opportunity Act 2010* (Vic) s 104.
- 5 *Equal Opportunity Act 2010* (Vic) ss 93–94.
- 6 *Equal Opportunity Act 2010* (Vic) s 93(1).
- 7 *Equal Opportunity Act 2010* (Vic) s 94.
- 8 Names and identifying details have been changed to protect the privacy of individuals.
- 9 The ‘workplace’ is not confined to the physical location used by the workers. It also extends to common areas such as lifts, entrances, reception areas, corridors, kitchens and toilets of the premises. See *Ewin v Vergara (No 3)* [2013] FCA 1311 [43].
- 10 See *A v K Ltd & Z* [2008] VCAT 261.
- 11 See *South Pacific Resort Hotels Pty Ltd v Trainor* [2005] FCAFC 130. In this case, the employer provided accommodation to the workers in its hotel complex.
- 12 See *Lee v Smith* [2007] FMCA 59.
- 13 *Equal Opportunity Act 2010* (Vic) s 15.
- 14 *Equal Opportunity Act 2010* (Vic) s 127.
- 15 *Equal Opportunity Act 2010* (Vic) s 109.
- 16 *A v K Ltd* [2008] VCAT 261.
- 17 *Lee v Smith* [2007] FMCA 59.
- 18 *Equal Opportunity Act 2010* (Vic) ss 105–106.
- 19 *Elliott v Nanda* [2001] FCA 418.
- 20 WorkSafe Victoria, *A Guide for Employers: Work-related Gendered Violence Including Sexual Harassment* (Resource, December 2019).

4. Complying with the positive duty to eliminate sexual harassment

Key points

- The Commission has identified six minimum standards for compliance with the positive duty to eliminate sexual harassment and victimisation under the Equal Opportunity Act.
- These standards include actions required to prevent and respond to sexual harassment in the workplace.
- The steps required to comply with the standards will vary depending on the size and resources of the employer.

The six standards

Standard 1: Knowledge

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

Standard 2: Prevention plan

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

Standard 3: Organisational capability

Leaders drive a culture of respect by building organisational capability.

Standard 4: Risk management

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

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.

Standard 6: Monitoring and evaluation

Outcomes and strategies are regularly reviewed, evaluated and improved.

As discussed in Chapter 3, the Equal Opportunity Act requires employers to take proactive steps, that are reasonable and proportionate, to eliminate sexual harassment in the workplace.

Standards 1–4 (outlined in Sections 4.1–4.4) are directed towards prevention – that is, stopping sexual harassment from happening in the first place.

Standards 5–6 (outlined in Sections 4.5–4.6) are about responding to sexual harassment – by creating robust reporting and complaints procedures and establishing monitoring and evaluation processes. Setting up an effective and transparent response framework also demonstrates that sexual harassment will not be tolerated and can help prevent sexual harassment from happening in the first place.



For each standard, we have identified the outcomes employers must achieve to comply with the positive duty. Also see the framework to prevent and respond to sexual harassment at the end of Chapter 1.

While these are the essential standards that all Victorian employers must meet, the way in which each employer chooses to implement these requirements will vary depending on the size, resources and nature of their organisation. Employers must take action that is reasonable and proportionate.

For example, how a small building business implements the positive duty might be very different to how a medium suburban accounting firm, a regional TAFE or a large corporation does. This chapter provides guidance on how to approach these standards and examples of what implementation might look like for small, medium and large organisations. All employers should consider what measures will be most effective and achievable for their workplace, rather than aiming for minimum compliance.

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.¹

Remember: Whether you are a small, medium or large organisation, you must take reasonable and proportionate measures. Within the context of this guideline, a small organisation is defined as having fewer than 20 workers and an annual aggregated turnover of less than \$10 million. A medium organisation has between 20 and 199 workers and a large organisation has 200 workers and above.²

The Commission can help

If employers need support to meet these standards, the Commission has a range of education and consultancy services that are customised to the workplace. We support organisations to conduct confidential workplace reviews, provide tailored education programs and assist employers to prepare an action plan to meet their positive duty. Employers can also seek support from other regulators, such as their relevant employer association, human resources professional, law firm or consultant (see the referral guide for employers, located in the appendices).

4.1 Standard 1: Knowledge

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

Outcomes

- 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.

Examples of actions to implement Standard 1

Small organisations



- Owners/managers read these guidelines and related resources.
- Owners/managers know where to go for advice, information and support if required.

Medium organisations



- Employers review any industry-specific research or reports on workplace sexual harassment.
- Employers subscribe to updates from regulators and peak bodies.
- Senior management regularly complete quality sexual harassment prevention training and education.
- Key senior workers are designated with responsibility for maintaining up-to-date knowledge on sexual harassment.



Large organisations

- All leaders, managers and supervisors attend tailored training to develop a solid understanding of the issues, their obligations, and best practice approaches to ensure safe work cultures free of sexual harassment.
- Systems are established to monitor and communicate across the workplace developments in sexual harassment and equal opportunity law, evidence and best practice.
- Experts are engaged to provide training, support and advice.

The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.

Maintain records

Records of compliance with this standard might include:

- attendance records for training sessions or modules
- a signed and dated copy of this guideline
- position descriptions or work plans with mandatory learning requirements.

Under Standard 1: Knowledge, employers need to first build their knowledge and skills in order to champion and ensure a safe culture free of sexual harassment. Employers should understand what drives and contributes to sexual harassment at work, and the impacts on workers as discussed in this guideline.

Training and education sessions for employers, and other relevant resources, will assist employers to build both the knowledge and skills required to prevent and respond to sexual harassment in the workplace – and to successfully implement Standards 2–6.

4.1.1 Understand your obligations

Employers must have a thorough understanding of the law and their obligations under the Equal Opportunity Act, as a first step to learning what is required to effectively eliminate sexual harassment. In doing so, they will understand what conduct constitutes sexual harassment and victimisation and their positive duty to eliminate it (see Chapter 3).

This will support employers to confidently identify unlawful workplace sexual harassment when it occurs, including conduct that may be less overt and how they should respond.

Remember: You can't fix what you can't see. Sexual harassment is not always obvious. Employers must have enough knowledge to identify when and how it is happening, who is being affected and what the impacts are.

Apart from this guideline, there are other avenues available to employers to obtain the knowledge required to comply with their positive duty. Employers should ensure they are aware of the resources and supports available to them, starting with the referral guide for employers and further reading, both located in the appendices.

4.1.2 Understand the underlying drivers and impacts

Employers should understand the cultural and systemic drivers of sexual harassment as well as the impacts, particularly in relation to more vulnerable workers (see Chapter 2).

Building an understanding of the underlying drivers of sexual harassment starts with employers being informed of sexual harassment issues in their workplace or industry. This requires employers to have knowledge of how sexual harassment may play out in their organisational context, considering workplace demographics, dynamics and trends. For example, employers should know the gender, age and employment type (casual or contract) of workers at different levels and in different roles and consider how vulnerable workers may be to harassment.

Gender inequality and other power imbalances that are present in workplaces are central to understanding why workplace sexual harassment occurs.³ Understanding the workplace characteristics and cultures that maintain these power imbalances is fundamental to developing effective measures to eliminate sexual harassment. Employers can do this by assessing their workplaces against gender equality indicators (see Section 4.4.1: Identify and assess risk) and scrutinising the attitudes and culture of the workplace.



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



Remember: Sexual harassment is not just a problem caused by individuals. It is a systemic and cultural issue that cannot be effectively addressed on an incident-by-incident basis. Employers must recognise the drivers of workplace sexual harassment and understand that workplaces have a responsibility to address the problem.

4.1.3 Know how to identify and respond to sexual harassment

In addition to having a foundational knowledge of sexual harassment and relevant obligations, employers should also develop their skills to identify sexual harassment in their workplace and to respond appropriately.

Qualified training providers and consultants can assist employers to build these key skills. Employers can contact the Commission's education and consultancy service for tailored training and to develop a whole-of-organisation response.

Some employers may be able to access sector-specific support and resources from an employer association or industry-specific regulator, such as the Victorian Chamber of Commerce and Industry, the Australian Prudential Regulation Authority or the Victorian Legal Services Board.

Training and education approaches for workers are discussed in Section 4.3.3: Building workers' understanding of sexual harassment, in relation to Standard 4: Risk management.

4.2 Standard 2: Prevention plan

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

Outcomes

- 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.

Examples of actions to implement Standard 2

Small organisations

- Prepare a document setting out the approach and plan to prevent sexual harassment in compliance with these standards.
- Schedule to send a regular email or have a discussion with all workers on recognising sexual harassment, reminding them that it is against the law and will not be tolerated.
- Identify how key information about sexual harassment and complaint pathways will be communicated to workers (posters, emails, meetings, etc.).

Medium organisations

- Develop a comprehensive, written sexual harassment policy supported by a suite of procedures (see below 'What should a sexual harassment policy include?').
- Develop a sexual harassment plan for improving preventative measures and addressing risks in the workplace, including gender equality indicators.
- Identify who is responsible for measures in the prevention plan and incorporate these goals into work or performance plans.
- Develop or implement tools and resources to embed prevention of sexual harassment into day-to-day practice.
- Publish sexual harassment policies and strategies on the organisation's website to demonstrate its commitment.
- Include information on the sexual harassment plan in formal and informal training or information sessions for workers.
- Invite feedback on the plan and monitor awareness and accessibility, from workers in team meetings or through organisation-wide surveys.



Large organisations

- Develop a formal sexual harassment plan (or implementation framework) with measurable activities, outputs, accountabilities and outcomes that are publicly reported against.
- Educate leadership on identifying resistance and backlash to the sexual harassment plan, and best practice approaches to address it.
- Promote the organisation's sexual harassment policies and plan to others in the industry or sector, suppliers and customers.

The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.

Maintain records

Records of compliance with this standard might include:

- emails to staff or meeting notes
- a policy and related suite of procedures
- tools and resources, including how they were distributed to workers
- a sexual harassment strategy or action plan and related frameworks.

Standard 2 requires employers to develop and implement an effective sexual harassment prevention plan to map out how the organisation will proactively address sexual harassment. The plan should incorporate measures adopted in compliance with the six standards, including measures in place to address identified risks.

To ensure the plan is appropriately tailored to the workplace and supported by all workers, it must be developed with workers, giving them opportunities to express their needs and provide input. Workers should be able to understand the plan and easily access it. To drive continuous improvement, actions set out in the plan should be clearly articulated and measurable, with a clear line of accountability.

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.

4.2.1 Developing and documenting the plan

Employers must carefully assess what steps they will take to address sexual harassment and document their plan.

Determining the content of the plan will require consideration of both prevention and response measures that employers will adopt, including as required by these standards. Employers will need to consider:

- existing systems or procedures in place to address sexual harassment and how these will be revised
- existing information on risks for their workplace or industry and what immediate and longer-term measures will be taken to address these risks
- how risk will be continuously monitored and addressed, including by incorporating sexual harassment into existing WHS frameworks
- what steps will be taken to educate workers, including ensuring they are aware of their rights and obligations, and understand the plan and associated documents
- how complaints or reports of sexual harassment will be received and addressed, and what steps will be taken to encourage reporting and ensure workers understand complaint pathways
- who will be responsible for implementing the plan and how progress will be measured and reported
- when the plan will be reviewed and how workers will be engaged to provide feedback.

For a small business, the plan may simply be communicated by an email setting out the approach they will take to prevent and address sexual harassment.

For larger organisations, the plan will document the various actions the employer has committed to. As part of their plan, most organisations will have a formal sexual harassment policy. For larger organisations, their plan will include a comprehensive strategy or action plan linked to a set of policies and procedures.

What should a sexual harassment policy include?

Employers must develop and implement a sexual harassment plan tailored to the size and resources of their organisation. For many organisations, this will include a sexual harassment policy.

Where a sexual harassment policy is developed, it should be easily accessible to all workers and at a minimum 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 (such as clients or contractors) are expected to comply with
- a definition of sexual harassment with reference to the Equal Opportunity Act, with behaviour examples including that the policy includes electronic communication such as SMS, email and social media, with a variety of practical examples of the conduct captured
- an acknowledgement that sexual harassment is driven by gender inequality
- 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 and formal internal processes, formal external complaint options); see Section 4.5.2: Encouraging workers to report sexual harassment
- 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, including that people who experience sexual assault can report their experience to the police
- when the policy will be reviewed.

It is important to understand that some workers are more vulnerable to sexual harassment than others; for example, young or junior workers, people who are new to the workplace, people in insecure work (such as contractors), migrant workers, people with a disability or people who do not speak English as a first language. The policy should be tailored and accessible to workers who may be more vulnerable.

4.2.2 Consult with workers and their representatives

Employers must ensure that workers and their representatives have an opportunity to contribute to the development or revision of the prevention plan.

This requires consultation with workers. Consulting with workers will help employers tailor their plan and identify realistic, reasonable and appropriate measures to eliminate sexual harassment. Employers should also consult with workers' representatives, including the relevant union, equal opportunity contact officers and health and safety representatives (where in place), to draw on their experience, knowledge and ideas. This will also ensure employers have a realistic picture of what is going on in the workplace – especially as individual workers who have experienced harassment may feel too unsafe or uncomfortable to speak about it.

Good consultation involves:

- tailoring the process to your workforce so staff feel comfortable in taking part; for example, women may prefer to share their experiences in female-only groups; established diversity and inclusion groups (such as LGBTIQ employee networks) should be utilised
- asking open-ended general questions to encourage staff to share insights⁴
- giving workers examples of what can constitute sexual harassment (noting that people are more likely to recognise sexual harassment when given a description of behaviour, rather than a legal definition)
- sharing any information in a timely manner and in plain language that can be readily understood by all workers, including in other languages where appropriate
- giving all workers a reasonable opportunity to express their views and provide feedback and input on the plan
- making sure workers' views are considered
- providing follow up information about the plan and how workers' views have been incorporated
- complying with any industrial instruments, such as enterprise agreements, modern awards or contracts of employment.

✓ **Leading practice example: Screen Australia⁵**

Screen Australia has developed two central strategies to address workplace sexual harassment:

- ‘Gender Matters’ – a program introduced in 2015 to address the gender imbalance and create culture change within the Australian screen industry
- Code of Conduct to Assist the Prevention of Sexual Harassment.

In developing its Code of Conduct, Screen Australia recognised the risks associated with the screen industry’s reliance on “irregular freelance and contract work”, which means workers move between workplaces and employers regularly.

The Code includes several positive features:

- It raises awareness of sexual harassment and abuse and sets clear expectations of everyone involved in a production.
- Its objectives include “making the law clear, visible and accessible” and “leading cultural change within the industry”.
- It requires producers, as far as reasonably practicable, to “make it clear to every participant in a production that there is zero tolerance for sexual harassment”, provide a copy of the Code of Conduct to all participants, and place abridged versions of the Code in poster form in prominent places in the workplace.
- It requires producers to designate a suitably qualified and experienced Sexual Harassment Prevention Contact to deal with sexual harassment complaints and be available to everyone participating in the production.
- When a project is completed, the producer must provide Screen Australia with a Code Compliance Report in the form of a statutory declaration. Failure to do so is considered to be a breach of contract and Screen Australia may withhold payments or deem that producer ineligible for further funding.

4.2.3 Communicate the prevention plan to workers

Workers must understand the prevention plan, including relevant policies and procedures, and know where to find it.

This requires employers to actively ensure that once the prevention plan is finalised, it is promoted and communicated to all workers, including at induction and through regular refresher training. The plan and any related policies and procedures can also be communicated and promoted through, for example, notice boards, team meetings, emails, the intranet and by management regularly discussing it with their team(s). It is usually not enough to post the plan in one location or promote it once. Ideally, staff should be able to access the plan and any relevant policies and procedures privately, even from home (for example, while on sick leave or working remotely).

 **Remember: Developing the plan and filing it away or sticking it on the wall is not enough.** You must actively ensure your workers understand and can readily access the sexual harassment prevention plan, including any policies and procedures. The plan should be promoted in various ways. If there is a multi-ethnic workforce that includes workers who are unable to read and understand English, the plan, related documents and communications about it should be made available in different languages.

 **Leading practice example: Swinburne University**

Swinburne University is part of a national initiative, Respect. Now. Always., to prevent sexual assault and sexual harassment. In 2017, Swinburne participated in Australia's first National University Student Survey on Sexual Assault and Sexual Harassment run by the Australian Human Rights Commission. It committed to adopt all recommendations made by the resulting report, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*. Swinburne then commissioned PricewaterhouseCoopers (PwC) to conduct an independent expert review of its policies and response pathways in relation to sexual assaults and sexual harassment.

PwC identified the following 'good practice' elements:

- commitment to continuous improvement in the prevention of, and response to, sexual assault and sexual harassment
- a suite of policies and procedures, which clarify and formalise key processes
- collaboration with external agencies, including the Victorian Vice Chancellor Committee Safe Campus Working Group and Victoria Police
- developing internal committees and advisory bodies to facilitate internal communication and ensure a continued focus on preventing and responding to sexual assault and sexual harassment
- creating a Safer Community Unit, which case manages incidents of sexual assault and sexual harassment, seeks to ensure that the response to all referrals and incident reports is effective and appropriate and carries out detailed trend analysis on reported incidents on a monthly basis
- providing Health and Wellbeing Services, which includes a free, confidential and independent advocacy service, and a 24-hour crisis phone line staffed by qualified crisis support workers
- building the knowledge and capability of staff through a range of mandatory and voluntary training modules
- compulsory Consent Matters training for all student residents, which is strictly enforced through residential license agreements and resulted in a 99 per cent completion rate as at July 2018
- risk assessment and restrictions on alcohol consumption on campus; where alcohol is available at on-site events, there must be physical security, a staff presence and a risk assessment.

Since 2017, Swinburne has been annually publishing the number of reports of sexual assault both on and off campus.

4.2.4 Anticipate and address resistance

Resistance or 'backlash' is a common part of any cultural change process and may be encountered when implementing a sexual harassment prevention plan.⁶ Addressing sexual harassment requires calling out sexist attitudes and disrupting practices that maintain gender inequality. This may be confronting for people who are advantaged by the status quo or fear being personally affected by the change – particularly where long-held values and assumptions are challenged.⁷ Where the importance of the prevention plan and the case for change is not clearly communicated by employers, resistance may also be driven by a lack of understanding or a sense of 'change fatigue'.⁸

Subtle resistance may play out as denying the problem exists and de-prioritising the issue. More explicit forms of resistance can include undermining, bullying or punishing people who seek to raise the issue. It may also include disrupting training sessions or refusing to take part, openly challenging workplace policies and complaint processes and seeking to co-opt change processes (for example, claiming 'reverse discrimination').⁹

Dealing with resistance

It is important to think about resistance at each step of developing and delivering a sexual harassment plan. This might include:

- examining the workplace culture to identify and anticipate common misconceptions or forms of resistance
- making a strong case for change that is tailored to the shared values and identity of the workplace and outlines the benefits of change to all staff at all levels
- ensuring leaders are genuinely and visibly supportive of, and invested in, sexual harassment strategies
- creating opportunities for safe and open dialogue
- preparing responses to common resistance tactics without getting defensive or de-railed – directly address behaviours that reflect sexism or discrimination
- taking care not to inadvertently feed myths or stereotypes in communications about sexual harassment (such as the idea that men will 'lose' out)
- celebrating success – this is crucial to maintain momentum, increase support and demonstrate that resistance will not win.¹⁰

Handling resistance well can be a powerful way to demonstrate an organisation's genuine commitment to change, solidify efforts and build workforce solidarity and trust.

 **Remember: Resistance is normal.** It is often a sign that you are making progress and people are processing change. Consistent, visible messaging by leaders will help people accept the change.

4.3 Standard 3: Organisational capability

Leaders drive a culture of respect by building organisational capability.

Outcomes

- 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.

Examples of actions to implement Standard 3

Small organisations



- Speak with workers, send emails, and display posters, notices or brochures in the workplace that clearly state what constitutes sexual harassment and victimisation, and that they will not be tolerated.

Medium organisations



- Comprehensive, face-to-face or live online training on sexual harassment and respectful workplace behaviour for all staff.
- Annual refresher training for all staff.
- Create a local sexual harassment working group or network.
- Require all managers and supervisors to model respectful workplace behaviour.
- Speak about sexual harassment and appropriate workplace behaviour in team meetings.
- Include information about sexual harassment and staff conduct in organisational values, employee contracts, codes of conduct, induction processes, notice boards and on the intranet.
- Leaders address inappropriate comments and behaviour and create an environment that supports others to speak up, including bystanders.

Large organisations

- Leaders join groups, such as Male Champions of Change, and apply learnings to accelerate organisational cultural change.
- Take an innovative approach to training (for example, invest in customised training that is rolled out and reinforced regularly, and focuses on values and culture).
- Additional, dedicated skills training for supervisors.
- Include obligations about sexual harassment and safe work behaviour in job descriptions, performance goals, bonus structures, recruitment and promotion processes.

The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.

<p>Maintain records</p>	<p>Records of compliance with this standard might include:</p> <ul style="list-style-type: none"> • correspondence with staff and meeting notes • policies, codes of conduct and employee contracts • training attendance records • induction manuals • senior leader and manager position descriptions and work plan documents.
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Standard 3 requires employers to drive a culture of respect by building organisational capability. Organisational capability refers to the skills and resources that an organisation has available to meet an objective, such as addressing workplace sexual harassment.¹¹ Standard 3 is critical to the successful implementation of Standard 2: Prevention plan, and Standard 4: Risk management. It will also help build workers confidence to use reporting and complaint processes and procedures (Standard 5: Reporting and response).

Employers who have built their knowledge in compliance with Standard 1: Knowledge will be well equipped to focus on extending this knowledge across the workforce to promote cultures of respect, as required by Standard 3: Organisational capability.

Employers must identify what relevant skills and resources can be leveraged or improved to achieve a respectful workplace culture where sexual harassment is not tolerated. This will include consideration of the role of leadership and messaging, and the knowledge and skills of workers at all levels.

 **Remember: Leaders must demonstrate a genuine commitment to addressing sexual harassment and act accordingly.** A comprehensive sexual harassment plan will be useless if workers think their boss doesn't actually support it.

4.3.1 Setting and communicating behaviour expectations

Employers must set and clearly communicate to workers the expectation for respectful workplace behaviour. This must include a clear message that sexual harassment will not be tolerated and that all workers – regardless of whether they are 'high-value' workers, junior staff or temporary workers – are required to demonstrate respectful workplace behaviour.

This clear messaging from leadership and senior management is important to demonstrate an employer's commitment to maintaining or building a respectful workplace culture.

4.3.2 Leading a culture of respect

Leaders, including managers and supervisors, are integral in implementing all of the six standards, but are particularly important in driving a respectful workplace culture. Depending on the circumstances, leaders may need to work to reset, shift or strengthen existing cultures to promote respect.

There must be clear, unambiguous and visible support from leaders for preventing and addressing sexual harassment and its drivers. Leaders must be seen to be ‘champions’ for eliminating sexual harassment and, in doing so, be accountable for ensuring a respectful work culture.

This includes leaders at all levels modelling respectful behaviour, including by calling out inappropriate conduct, creating an environment where bystanders are encouraged to safely speak up, and complainants are supported and protected from victimisation.

Employers can build leadership capability to meet these requirements by embedding managers’ and supervisors’ responsibilities in key organisational structures, including:

- ensuring recruitment processes properly screen candidates for prior workplace behaviour, and assess values and understanding of respectful behaviour
- implementing mandatory, regular training for workplace leaders on preventing sexual harassment, including how to initiate conversations with staff, or respond to a report of sexual harassment (see Section 4.3.3: Building workers’ understanding of sexual harassment)
- ensuring expectations and responsibilities for managers and supervisors are clearly set and reflected in codes of conduct, contracts, and performance appraisal processes
- creating remuneration or other incentives that reward leaders who act to prevent sexual harassment and foster a respectful workplace.¹²

There should also be a regular check or review of leaders to ensure they are fulfilling these responsibilities and have the necessary skills and capabilities. This may require boards holding senior leaders to account.

To drive cultural change these behavioural expectations should also be incorporated into workplace policies and processes, including induction and training procedures, codes of conduct and work performance plans. They should also be reflected in materials that are readily available to workers (such as sexual harassment policies or plans, posters or brochures in the workplace).

 **Remember: Communication and transparency are essential.** Leaders should consistently communicate to staff their support for organisational change and what action is being taken to address sexual harassment and its precursors, including acknowledging when incidents have occurred and been resolved (while maintaining the victim-survivor’s confidentiality).

✓ **Leading practice example: Leaders supporting safe conversations about discrimination and sexual harassment**

In 2018–19, leaders from seven diverse organisations across Victoria partnered with the Commission to implement an innovative pilot program aimed at building the capability of their organisations to address the underlying drivers of sexual harassment and to build cultures of respect.

The program, 'Raise It! Conversations about sexual harassment and discrimination', focused on building workers' and managers' confidence and competence to start conversations about sexual harassment and discrimination at work and to take action in responding to incidents.

The Raise It! program included:

- a preliminary policy wellness check to assess the current workplace environment and culture of safety (including policies, leadership support, workplace culture and resources)
- an interactive education program to support workers and managers to start conversations about sexual harassment and discrimination at work
- practical resources to help continue these conversations in everyday work life.

Key to the success of the program in each organisation was the clear and genuine commitment of leaders to drive culture change, inspire positive participation from staff and lead by example by supporting staff impacted by discrimination and sexual harassment. In some cases, leadership also decided to nominate a 'champions network' across the organisation to lead program implementation, to maximise the reach and impact of the program.

4.3.3 Building workers' understanding of sexual harassment

To support workers to contribute to a respectful workplace culture, employers should ensure all workers properly understand what workplace sexual harassment is, and why it is against the law and contrary to the organisation's values and objectives.

Employers can facilitate this learning by engaging workers in regular conversations about sexual harassment in the workplace and what is appropriate, and by supporting leaders to continue these conversations at team levels. Employers may also consider providing accessible information and resources, or online learning.

Training and education initiatives can also be effective avenues for learning. When delivered as part of a broader strategy, they may also influence behavioural and cultural change in the workplace.

Where possible, employers should take steps to include sexual harassment education and training as a core requirement for all staff. This can be achieved by incorporating compulsory training into induction programs and an annual schedule of core training (for example, alongside WHS and other essential training) or performance appraisal schemes.

There is no one-size-fits-all model for formal training. It is important for employers to ensure initiatives are tailored to the specific needs of their workforce and industry, as well as to the audience. Employers should consider whether particular cohorts of workers would benefit from targeted training about their rights and how to report harassment.¹³

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.

Employers should aim to update training initiatives to ensure they remain evidence-based and in line with best practice.¹⁴ 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 a group, contribute to change.¹⁵

The Commission can design and deliver both face-to-face and live online tailored education. We can also assist you to develop a program and resources that will address sexual harassment and help meet your organisation's positive duty in an effective way.

4.3.4 Encouraging bystanders to safely act

Encouraging and supporting bystanders to act safely to respond to sexual harassment, as well as to the behaviour that drives it, will also assist employers to build a respectful workplace culture.

Bystander intervention can include a worker diffusing a situation, telling someone that a sexually explicit or sexist joke isn't funny, or helping a person who is experiencing sexual harassment to get away from the harasser or get help.¹⁶

Encouraging bystanders to act safely is critical in building a positive and equitable workplace culture.¹⁷ However, the potential backlash and isolation for speaking up should be noted, and systems and resources to assist bystanders should be provided and put in place.

All policies and training should aim to support bystander intervention and describe:

- the important role of bystanders in intervention and reporting
- practical examples to demonstrate how bystanders can safely intervene in a variety of scenarios
- the harm (psychological and social) that sexual harassment can have on bystanders witnessing or becoming aware of sexual harassment
- the support available for bystanders who witness, are made aware of, intervene in or report sexual harassment
- that it is against the law to victimise someone for making a complaint under the Equal Opportunity Act or for helping someone else to make a complaint.

4.4 Standard 4: Risk management

Employers have built a culture of safety and address risk regularly.	
Outcomes	<ul style="list-style-type: none"> • 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.
Examples of actions to implement Standard 4	
<i>Small organisations</i>	<ul style="list-style-type: none"> • Hold safe and sensitive conversations with staff about their feeling of safety and risk of harm on at least an annual basis, and following any incidents or ‘near misses’. • Take immediate action where possible to address risks. • Implement safe systems of work that minimise risk (such as requiring two people to be rostered on to a retail shop in the evening).



<p>Medium organisations</p>	<ul style="list-style-type: none"> • Identify workplace risks using the risk matrix tool in the appendices. • Engage worker representatives (such as equal opportunity contact officers, or union delegates) in conversations on safety. • Make supervisors and health and safety representatives accountable for monitoring risk and creating safe cultures and systems. • Establish, support and consult with equal opportunity contact officers, health and safety committees and representatives. • Address inappropriate behaviour that creates an unsafe workplace culture. • Use exit interviews as an opportunity to ask departing staff about their views of compliance with sexual harassment policies and unmitigated risks. • Measure gender equality in your organisation.
<p>Large organisations</p>	<ul style="list-style-type: none"> • Conduct and analyse confidential staff surveys about experiences of sexual harassment in the workplace and related behaviours. • Develop and implement a formal risk management framework or incorporate risks into existing WHS management frameworks. • Establish consultative mechanisms with union delegates, staff committees, equal opportunity contact officers and health and safety representatives. • Track relevant data, such as formal and informal complaints, rates of staff absenteeism and exit interviews. • Implement regular auditing policies, procedures and work systems. • Engage external expertise.
<p>The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.</p>	
<p>Maintain records</p>	<p>Records of compliance with this standard might include:</p> <ul style="list-style-type: none"> • a completed risk matrix or risk framework • survey results or notes from consultations with staff • written policies or processes to address workplace risk, including a sexual harassment policy or complaints procedures • position descriptions or work plans • a sexual harassment action plan or policy • analysis of data relating to sexual harassment, including reporting figures and gender equality indicators.

Workplace culture is far more influential than any written policy or procedure. It defines the workplace environment and the unwritten rules of how workers behave with each other. Standard 4 recognises that to build a culture of safety, employers must understand their workforce and take steps to actively monitor and promptly address risk.

These processes must engage workers so that their experiences of safety and risk can be captured, as well as to ensure safe work practices are understood and adopted across the workplace. The risk of sexual harassment must be taken seriously and recognised as a genuine WHS risk, including by incorporating risk-monitoring measures into existing WHS frameworks. This requires employers to take steps to eliminate or control workplace risk factors, so far as reasonably practicable, and to encourage workers to use the systems in place to address risk.

✓ **Leading practice example: Victoria Police review**

In 2015, Victoria Police recognised it had an entrenched and systemic problem of sexual harassment and sex discrimination within the organisation. Understanding that to achieve real change would require external expertise and the accountability of taking action on a public stage, Victoria Police engaged the Commission to conduct an independent review. The review considered Victoria Police's compliance with the Equal Opportunity Act and the prevalence of sexual harassment and other harms within the workplace.

Victoria Police:

- invested in a comprehensive, external review that had three phases and lasted five years
- cooperated fully throughout the review and accepted all recommendations
- made four public apologies over five years
- created specialist units to respond to experiences of sexual harassment and workplace harm
- established an interim restorative engagement scheme in partnership with the Commission and committed to creating a permanent redress and restorative engagement scheme for current and historic cases of workplace harm
- improved safety and removed new recruits from its Academy who were identified as posing a risk of perpetrating workplace harm
- supported a dedicated, separate report into the experiences of LGBTIQ staff.

As part of the review, Victoria Police also implemented a wide range of initiatives to progress gender equality within the organisation more broadly. These initiatives helped to address some of the drivers of, and poor responses to, sexual harassment that had previously been in place.

4.4.1 Identify and assess risk

Employers must regularly identify and assess risk factors for sexual harassment, including by seeking direct feedback from workers.

In order to scan the workplace for risk, employers should refer to the risk matrix tool in the appendices and consult with workers and their representatives such as union delegates, equal opportunity contact officers and health and safety representatives. Risk assessments should identify the likelihood of different forms of sexual harassment occurring and the potential harm that would flow to workers if the risk were realised. This will help employers identify risks that should be addressed as a priority.

Where possible, employers should carry out anonymous and confidential workplace surveys, and use data from exit interviews, to identify the prevalence and nature of sexual harassment in the workplace and any contributing factors. The purpose is to understand whether workers know what sexual harassment is, whether they know what to do if they experience or witness it, and whether there are any potential barriers to reporting sexual harassment, both for people experiencing sexual harassment and for those witnessing it. Employers should also try to ascertain whether workers feel safe at work and to understand the risks of harm they perceive.

Employers must ensure that any surveys or interviews during this stage are accessible to different groups in the workplace. Employers should consult with staff – particularly women and other people more vulnerable to sexual harassment – to identify and address risk.

Employers must also recognise that some workers are likely to be more vulnerable to sexual harassment. This may be because of prevalent attitudes, structural inequality and discrimination that disadvantage certain groups, including:

- young people or junior workers (such as graduates or interns)
- people who are new to the workplace
- Aboriginal and Torres Strait Islander Peoples (Aboriginal Victorians)¹⁸
- 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
- workers who do not speak English as a first language
- women of multicultural and multifaith backgrounds
- members of the LGBTIQ community.

Gender inequality

Gender inequality is a key driver of sexual harassment in workplaces and is therefore integral to assessing an organisation's risk of sexual harassment. By assessing an organisation against gender equality indicators, employers can identify underlying structural or cultural factors that enable or drive sexual harassment.

Gender equality indicators¹⁹ include:

- the gender composition of all levels of the workforce, including leadership and management positions
- the gender composition of governing bodies (such as boards)
- the ratio of male and female new hires and internal promotions
- equal remuneration for work of equal or comparable value across all levels of the workforce, irrespective of sex
- rates of sexual harassment and sex discrimination in the workplace
- the availability and uptake of family violence leave, flexible work arrangements and working arrangements supporting employees with family or caring responsibilities
- gendered segregation within the workplace
- attitudes in the workplace.

Where an organisation is tracking poorly, it may mean that recruitment and progression processes need to be revised, that more work needs to be done to support flexible work and respond to gendered harms, or attitudes and culture need to be reset.



Tool: The Commission's gender equality framework, located in the appendices, sets out what outcomes employers should work towards to create a gender equal workplace.

4.4.2 Work health and safety

Employers must recognise and treat sexual harassment as a WHS risk. This means employers should use existing systems and processes for managing WHS risks or hazards to eliminate or control the risk of sexual harassment occurring, so far as reasonably practicable. For example, once risks for sexual harassment have been identified, they should be included in risk registers and management frameworks for active monitoring along with other occupational hazards. Incident reports and compensation claims should also be monitored for sexual harassment. Work health and safety meetings and consultations should include discussions about risks and actual incidents of sexual harassment.

Health and safety representatives will be key to identifying risks and assessing the adequacy of measures, and in reviewing the effectiveness of those measures.

Employers and people with management or control of a workplace are required to set standards that provide a safe workplace for all employees. Workplace standards should include clear expectations about behaviours, attitudes and language that disrespect or exclude people based on sex, gender identity, sexual orientation or assumptions about dominant gender stereotypes and socially prescribed gender roles. They need to specify examples of types of behaviours that are and are not allowed. Standards should be set out in policies and procedures, included in induction and workplace training, and modelled by managers and supervisors. This way everyone in the workplace clearly understands what is acceptable and can be proactive in avoiding, and even challenging, unacceptable behaviours.

4.4.3 Implementing safe systems to address risk

Employers must also assess and take steps to mitigate risks of sexual harassment occurring. This must include immediate action to rectify environmental risks – such as removing content of a sexual nature from the workspace (such as posters) and addressing staff on the use of social media in the workplace – implementing security measures and ensuring change room areas provide adequate privacy.

Employers must also adopt safe systems of work and encourage workers to utilise them. This could, for example, include procedures for the use of duress alarms for isolated in-home care workers, or a policy that workers staying back late use a cab-charge to get home.

Some risk factors cannot be addressed immediately. For instance, addressing an entrenched culture of sexism will require longer-term planning with a range of measures to work towards change.

Equal opportunity contact officers

Equal opportunity contact officers can play a key role in helping organisations build a culture of safety and to monitor risks. A contact officer is a vital first point of contact for someone who thinks they may be experiencing discrimination, sexual harassment or victimisation in the workplace.

Contact officers are staff who have volunteered to take on the role and are then specially trained in equal opportunity law (including in responding to sexual harassment). Informed but impartial, supportive but neutral, contact officers provide an opportunity for their colleagues to talk informally about their concerns, identify their issues, get informed and weigh up the best options for resolution.

By working together with other contact officers and pooling their knowledge about the issues they see emerging (while maintaining confidentiality of individual complainants), contact officers can help their organisation identify systemic risks of sexual harassment and help design effective prevention and early intervention strategies. The Commission's education team can provide more information about contact officers and available training.

Third parties

Employers should also consider the risk of sexual harassment arising from third parties, such as customers, patients, suppliers or clients. This should include consideration of risks arising in physical workplaces and in online spaces. Third parties can pose a significant risk – according to a 2019 national survey, more than a third of sexual harassment incidents in the fast-food and retail industries were perpetrated by a customer (36 per cent).²⁰

Shanti's story – Sexual harassment from a patient²¹

"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."

Steps to prevent sexual harassment by third parties could include:

- including sexual harassment by third parties in sexual harassment policies and processes for making a complaint
- performing risk assessments of third-party perpetrated sexual harassment, including of areas where staff are left alone with third parties to see what steps can be taken to reduce the risk
- implementing appropriate control measures to address risks identified; for example:
 - putting up signs directed at third parties stating that sexual harassment is unlawful and will not be tolerated
 - installing additional lights in car parks or other secluded areas
 - escorting workers to cars after dark
- establishing reporting processes and encouraging workers to report all incidents of sexual harassment by third parties regardless of the severity

- establishing formal procedures for dealing with sexual harassment perpetrated by third parties, including response actions such as calling the police, or banning a customer from the workplace
- referencing the sexual harassment plan (including policies and procedures) in supplier contracts.

Whatever the systems employers develop to address their specific workplace risks, these must be clearly communicated to workers, who must be actively encouraged to utilise them. Employers should consider incorporating information on these systems into sexual harassment training initiatives.

4.5 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.

Outcomes

- 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.

Examples of actions to implement Standard 5

Small organisations

- Develop a reporting and complaints procedure that commits to fundamental principles of fair and sensitive complaint handling (see Section 4.5.1).
- Meet with workers and their representatives to discuss the procedure and clearly communicate it to all workers.
- Promote multiple avenues to report sexual harassment in an email to staff, or 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 (see 'When should external processes be used?' in Section 4.5.3).





Medium organisations

- Incorporate steps in the complaints procedure that support the complainant’s choice and control over the process.
- Establish and train equal opportunity contact officers.
- Deliver dedicated training for supervisors and managers to ensure they have the knowledge, skills and support to have sensitive conversations and manage complaints properly.
- Establish systems to confidentially record and report on complaints for accountability and learning. For example, having a standing agenda item at senior management meetings to analyse and discuss complaint trends and any organisational risks.



Large organisations

- Establish anonymous or other supported reporting mechanisms to address power imbalances within the workplace.

The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.

Maintain records

Records of compliance with this standard might include:

- posters or brochures setting out complaint pathways
- a complaints and reporting procedure
- a sexual harassment policy document
- attendance records for equal opportunity contact officer training sessions
- complaints, including the response taken and the outcome (kept confidentially and securely stored).

Research has previously shown that poor complaint handling is a major reason matters escalate to legal proceedings.²² Whereas, responding appropriately and learning from complaints is key to maintaining a respectful and high-performing workforce. Poor complaint handling can also add to a complainant’s distress.

Standard 5 requires employers to implement a fair and confidential reporting and complaints procedure in consultation with workers. Workers must know how to make a complaint or report, and the procedure for reporting and responding to complaints must prioritise the complainant’s wellbeing and choice in the process. Where alleged harassers are found to have engaged in sexual harassment, employers must hold them to account by responding consistently with existing policies, and by implementing outcomes that are proportionate to the seriousness of the conduct and the harm caused.

“The investigation was the hardest part. I felt like I was on trial. I had to relive the whole, terrifying situation while everyone judged me.”

 **Remember: If someone is experiencing sexual harassment, or has witnessed it, they are doing your organisation a service by coming forward.** They are giving you the chance to put a stop to further harm and make important changes to improve your workplace for everyone.

The language of report and complaint handling

In this section of the guideline, we refer to 'complainants' and 'respondents', as opposed to 'victim-survivors' and 'harassers'. This language should be used by employers when responding to complaints to ensure the process is fair and impartial.

A *complaint* is a formal report of sexual harassment lodged with an employer or an external agency, requiring a formal and individualised response.

The *complainant* is a person who makes a formal or informal complaint of sexual harassment.

The *respondent* is the person the complaint is about.

The *parties* are the people involved in a complaint, that is, the complainant and the respondent.

A *bystander* is someone who witnesses or overhears the sexual harassment.

A *disclosure* or *report* is information provided by a worker about an experience or incident of harassment. The report may be made by the worker who has experienced harassment or by a bystander. It could be an anonymous report. It requires action but may not lead to a formal complaint.

4.5.1 Developing a reporting and complaints procedure

Employers must develop a fair and confidential reporting and complaints procedure in consultation with workers that ensures complainants' wellbeing alongside procedural fairness for both parties. Workers are more likely to support and utilise a complaints procedure that is seen to be fair and that will not cause them further harm.

Employers should develop a procedure that commits to the following fundamental principles of fair and sensitive complaint handling:

- **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 (see Section 4.5.5: Non-disclosure agreements).
- **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 the 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 the respondent 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. The procedure should be documented in simple language, with clear headings, in an accessible form and provided to all staff.

By preparing the procedure in consultation with workers (see Section 4.2.2: Consult with workers and their representatives) workers are more likely to have trust in the procedure, including that complaints will be handled fairly, sensitively and confidentially.

Complaints processes will be most effective where they are also supported by a prevention plan encompassing measures to prevent sexual harassment occurring and address underlying issues.

Why is a victim-centric approach important?

A victim-centric approach makes it easier and more likely for those who experience sexual harassment to report it. This is important because of factors that have historically made it difficult and distressing for complainants to report sexual harassment.

Because employers can be held liable for workplace sexual harassment, there has previously been a tendency for employers to downplay or deny sexual harassment when it is reported,²³ or require complainants to prove allegations to an unreasonably high standard of proof.²⁴ This approach prioritises the avoidance of legal liability and the preservation of business reputation, and aligns the employer's interests with that of the respondent.²⁵ Some consider these responses are part of a wider "cultural bias towards not believing women".²⁶

Employer responses to reports that do not consider the complainant's wishes or wellbeing can also cause substantial distress, in some cases more damaging than the sexual harassment itself.²⁷ A 2018 national survey found that 43 per cent of people who made a formal report were victimised, with negative consequences experienced as a result of their report.²⁸

These factors together contribute to those who experience sexual harassment being less willing to report it,²⁹ which in turn undermines employers' efforts to prevent sexual harassment in the workplace and comply with their positive duty.

A victim-centric approach addresses these barriers and encourages reporting by giving the complainant a say in the process, ensuring they are properly supported and are not penalised for making a complaint. This requires compassionate and sensitive responses to complaints in a non-judgemental manner and ensuring the complainant is engaged in the process, while seeking to minimise any re-traumatisation.³⁰ Importantly, this approach can be adopted while also providing procedural fairness to both parties.

What should a reporting and complaints procedure include?

A reporting and complaints procedure should set out:

- 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 above)
- a range of pathways to report and response options (see Section 4.5.2: Encouraging workers to report 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, and how that information will be recorded and shared (for example, with the complainant)
- information on how investigations will be conducted and the decision-making process (see Section 4.5.3: Responding to complaints)
- the date the document was prepared and a date for review.

Impartial investigations

It is important that the person investigating a complaint of sexual harassment is both impartial and is perceived by the parties to be impartial. Impartiality is essential to procedural fairness and natural justice. This means that the person investigating the conduct must be able to remain objective when assessing the evidence and arriving at a decision, without bias or favour for one party.

When selecting an internal investigator, employers must consider the hierarchy and make-up of the workplace and avoid selecting a person who has a personal or close relationship with one of the parties or is in the same team.

This will be more difficult for small organisations, which should be prepared to engage outside, expert investigators when a formal investigation is warranted.³¹ Where this occurs, employers should be cautious of not exerting undue influence on investigations.³²

4.5.2 Encouraging workers to report sexual harassment

Employers must ensure workers know how and where to make a complaint or report and are supported to do so.

Reporting and complaints procedures and pathways must be readily available to all workers. This information should be included in orientation kits or resource folders on the intranet or internet or displayed around the workplace. They should also be accessible to workers out of the office, for example, on sick leave.

Workplace training, information or education on sexual harassment should include guidance on the employer's complaints and reporting procedures.

Providing education to help staff have conversations about sensitive topics like sexual harassment will also support workers to use complaint processes.

Complaints procedures should not place a time limit on when a complaint or report can be received. Workers should be encouraged to make timely complaints, while being reassured that they will not be criticised or treated poorly because of any delay.

 **Remember: Encouraging reports of sexual harassment will help you understand and address the problem.** Otherwise, the problem will continue without the opportunity to learn and rectify the issue.

A range of pathways for reporting and response

The reporting and complaints procedure must allow for different reporting and response options. This will support complainants to come forward by giving them flexibility to choose the pathway that is right for them.

The procedure should list who a report or complaint can be made to, offering options to report to a range of people in different roles, for example, any supervisor or manager, human resource personnel, a contact officer, a health and safety officer, union representative or the board. Complainants should be free to report to someone outside of their business unit, for example, where the respondent is their manager or a member of the leadership team. The contact details of equal opportunity contact officers, health and safety officers, union representatives and external agencies, such as the Commission, should be included in the procedure.

The procedure should also provide for a range of options for responding to a report of sexual harassment and seeking to reach a resolution. See the table over, which considers the advantages and disadvantages of several options.

Some issues may, however, warrant immediate escalation to a formal process regardless of the person's preference. Particularly if they are serious, constitute criminal behaviour³³ or pose a risk to the health and safety of others in the workforce.³⁴ Guidance on when complaints will be automatically escalated should be included in the reporting and complaints procedure and clearly communicated to staff.



A range of response options

Self-management

The complainant is supported to resolve the matter on their own, provided they feel confident and safe to do so.

Example

The complainant raises the issue with the other person and asks them to change their behaviour.

Advantages

Self-management can resolve issues quickly and quietly, be non-threatening, build respect and preserve relationships.

Disadvantages

In some instances, it may result in victimisation or further harm or leave the complainant feeling isolated or unsupported. Employers may also miss opportunities to deal with broader cultural and systemic issues.

Remember

In some circumstances, self-management may be inappropriate, such as if there is a power imbalance between the parties, if it has been attempted unsuccessfully before, or if it raises safety concerns. Self-management is never appropriate if it is unsafe or against the complainant's wishes. Make sure to follow up with the complainant after any attempt at self-management to assess if further support or escalation is needed.

Informal (internal) management

Resolving the issue internally, without a formal response or investigation.

Example

A manager who receives a complaint takes informal action, as agreed with the complainant. For example, the manager speaks to the worker to raise concerns about their behaviour, facilitates a discussion or mediation, observes matters with a view to stepping in if the behaviour happens again, or puts new practices in place such as changing the roster, reconfiguring the workspace or organising training.

Advantages

Informal management is quick and adaptable, can solve problems indirectly without confronting or alerting the respondent or identifying the complainant; it is generally less intimidating for the complainant, and can foster a culture of open and respectful conversations about behaviour and appropriate boundaries.

Disadvantages

Outcomes are unenforceable and may vary widely.

Remember

Any action that is taken should be agreed upon with the complainant. Informal responses are not appropriate for serious behaviour that would warrant discipline if substantiated, criminal conduct or where other workers may be at risk.

A range of response options

Formal (internal) complaint

Dealing with a matter using formal internal processes, with documented findings.

Example

A written statement is made to someone in a position of authority or a representative from human resources, which is impartially investigated. Following an investigation, a formal finding is made and discipline or other action is taken when allegations are substantiated.

Advantages

Outcomes can be more readily documented, enforced and monitored. Complaints can be handled consistently, allowing employers to identify patterns or 'hidden' issues and address them at an organisational level. If required, a formal record of the investigation can be produced; for example, if the matter escalates to litigation or a complaint is made to an external agency.

Disadvantages

May be more time-consuming for the employer and more emotionally draining for the parties.

Remember

Employers must be vigilant against the risk of victimisation and re-traumatisation for complainants.

External complaint

Referring the matter to an external body.

Example

The complainant makes a complaint to the Commission and the parties agree to participate in a free, confidential dispute resolution process. Alternatively, depending on the circumstances, the complainant may choose to go to a union, to the Australian Human Rights Commission, or to the Fair Work Commission.

Advantages

An independent, expert body can assist the employer and the parties to reach an outcome or resolution by agreement. Outcomes may become legally enforceable.

Disadvantages

The external process takes the complaint out of the workplace and may take longer to resolve. The employer (and/or individual facing the allegations) usually becomes a respondent to the complaint. If the employer does not voluntarily participate, the complaint cannot be resolved. If the matter cannot be resolved, the matter may be escalated to a formal court or tribunal process, which can be time-consuming, costly and more adversarial. Final determinations are usually public.

Remember

Each external body has a different jurisdiction and process with different benefits and outcomes. It is important to be guided by the person who has experienced sexual harassment and support them to make their own informed choice. For further information on external options, see the referral guide to support workers, located in the appendices.



Police reporting and investigation

Complainants have the right to decide if they want to make a report of criminal behaviour to the police and should be supported to do so. Employers should consult with the police to determine whether a workplace investigation is likely to adversely impact any criminal investigation or proceedings. Precautionary action should be considered.

Mika's story – Response failing to put the victim-survivor's safety and emotional wellbeing at the centre³⁵

“There were a few cases of mild harassment in [my] first paid job – but one senior male consultant was particularly sleazy. Every excuse he got, he'd bail me up in a corner or corridor, earnestly propositioning me while my male and female peers would do their best to neutralise his overt behaviour. Everyone knew never to leave me in a position where I would be left alone with him. One afternoon at work drinks, he told me that he fancied me so much that he dreams about 'eating my pussy 24 hours a day'. I was 22 years of age; he was well over 50. [...] I took my concerns to the all-male management team, who were not so well behaved themselves. Thankfully, they agreed his conduct was out of order and spoke to him.

A week later, I was asked to go to his office – I was told not to worry, because it was here that I would be offered an apology, and he had been cautioned and warned. But there was no way I was going anywhere near his office: it was double brick, with no windows, only a door.”

4.5.3 Responding to complaints

Employers must ensure that responses to complaints are timely and consistent with set policies and processes, with proportionate disciplinary outcomes.

There is no one-size-fits-all approach to handling complaints of sexual harassment. Employers should adopt a reporting and complaints procedure that is tailored to their particular workplace and work culture.

To help get started, however, here are the basics of a suggested approach to receiving a complaint or report of sexual harassment.

A step-by-step guide to responding to complaints

1

Listen to the complainant's story

- Show empathy, respect and concern while remaining impartial. Avoid judging or blaming the complainant for the behaviour and emphasise that sexual harassment is never the fault of the person who experiences it.
- Respond promptly and commit to taking the next step within a reasonable period of time, at least within two weeks.
- Keep a confidential record of their report.

2

Assess the situation to determine if immediate action is necessary

- Consider whether urgent or precautionary workplace action (pending investigation) is necessary to avoid further harm.
- In all cases, the proposed urgent or precautionary action should be discussed and agreed with both parties, with regard to principles of procedural fairness and natural justice.
- No adverse conclusions should be presumed due to the action taken or agreed.
- Urgent action might include relocating the respondent or changing working hours or shifts, or talking with the complainant about what measures they would like to ensure their physical and psychological safety. In the case of serious allegations, urgent action can include temporarily suspending the respondent.

3

Provide information, referrals and options to the complainant

- Explain the complaint process, confidentiality, relevant timelines and options to the complainant.
- Explain any limits to confidentiality, or obligations supervisors or managers are required to take (such as recording the incident or escalating the complaint).
- Explain the criteria for whether or not an investigation will be undertaken and how it applies to the complaint.
- Inform the complainant that they are entitled to have a support person with them throughout the process.
- Support the complainant to lead the process and decide on the next steps that are right for them.
- Ask the complainant what outcome they are seeking. If that outcome is not available, explain this and discuss what a successful resolution might otherwise look like from the complainant's or organisation's perspective.
- Provide referrals to relevant support services (for further information, see the referral guide to support workers, located in the appendices).

- Remind all parties and bystanders that victimisation is against the law and will not be tolerated. Discuss any urgent action that might be required to protect against it, or to otherwise protect the complainant's safety, privacy and ability to do their job, while the complaint process ensues.

4

Decide whether to informally resolve the matter or to investigate

- The decision of whether to investigate should be made with consideration of:
 - the seriousness of the allegation
 - the wishes of the complainant
 - the health, safety and wellbeing of the complainant and other workers
 - the outcomes sought and any legal obligations.
- The decision and reasons should be recorded and communicated to the parties.
- The absence of any corroborating evidence or independent witnesses is not a valid reason not to investigate, nor is the timeliness of the complaint.
- If informally resolving the complaint, record the outcome and follow up with the complainant (go to step six).

5

Formally investigate (with the complainant's consent as appropriate)

- Advise the parties of the investigation process and the potential outcomes, including any outcomes that will be out of scope (for instance, that the investigation will not conclude with a finding of civil or criminal wrongdoing). Advise the respondent that relevant details of any outcome will be disclosed to the complainant.
- Choose the investigator, including whether they will be an in-house or externally engaged person. The investigator should be impartial, objective and have the necessary skills to conduct the investigation.
- Provide procedural fairness to both the parties, including sufficient information about the allegations and any potential workplace or disciplinary action that may be taken if the complaint is substantiated.
- Be impartial when speaking with both parties and keep them informed while the complaint is being resolved.
- Take notes and keep appropriate (confidential) records.
- Engage with the complainant in a sensitive and respectful manner, giving them as much choice and control over the process as practicable.
- Consider all information and evidence including direct evidence of the allegations (such as documentation of the conduct or witness accounts) and surrounding evidence (such as evidence that the complainant discussed their concerns to a co-worker or doctor). Parties cannot be compelled to give evidence.
- The absence of independent witnesses or directly corroborating evidence should not be solely relied on to find a complaint is unsubstantiated. Investigators should be prepared to interview the parties and make a credibility assessment where evidence is in conflict or not available.

Remember: Apply a civil standard of proof. Investigators must determine overall whether it is more likely than not that the conduct occurred ('the balance of probabilities'). In the case of *Briginshaw v Briginshaw*, the court said that more serious allegations will require stronger evidence to meet this standard.³⁶ This means the seriousness of the allegation must be considered. However, employers must not apply a higher standard of proof (such as a criminal standard – 'beyond a reasonable doubt') to serious allegations.

6

Take action to resolve the complaint

- If satisfied that it is more likely than not that the conduct occurred, take action that holds the respondent to account for their behaviour and minimises adverse impacts on the complainant, bystanders and other workers. Actions could include, for example:
 - a change to working hours or locations
 - an apology by the respondent
 - an agreement on protocols to manage the relationship moving forward
 - refresher sexual harassment prevention training
 - coaching or performance counselling of the respondent
 - disciplinary action such as a formal warning, suspension, demotion or dismissal.
- Regardless of whether the complaint is substantiated, communicate relevant details of the outcome to the complainant and the respondent.
- If the complaint is not substantiated, consider what action could still be taken to prevent sexual harassment from occurring in the future, including monitoring the situation, reminding the parties of expected behaviour, conducting further training and awareness raising for workers.
- Where a complaint is not substantiated this does not mean that the conduct did not occur. Accordingly, the complainant should be treated sensitively, including being reassured that they will not face victimisation because of the outcome, and being offered referrals to relevant support services.
- Document any decisions or outcomes. Ensure any decision-making framework for disciplinary action is consistently followed.
- Advise the parties of any relevant options for internal review or appeal of the decision; for example, review by a more senior staff member or an external investigator.
- Schedule a time to follow up with all parties to ensure that relevant actions are being completed, the complainant has the support they need, and issues have not resurfaced.

7

Record data

- Enter the incident into an appropriate, secure, confidential data-collection or reporting tool and safely store relevant records.

8

Debrief and reflect on lessons learned to prevent sexual harassment in the future

- Consider whether the complaint points to a broader problem in the workplace. While maintaining confidentiality, consider what wider workplace changes could be made as a result of this complaint and what further investigation and consultation might be needed to uncover and address what is happening in the workplace. This step may be necessary even where the complaint has been found to be unsubstantiated.
- Reflect on the strengths and weaknesses of how the complaint was handled. If safe and appropriate, this could include seeking feedback from workers who engaged with the process about what they felt worked well and what could be improved.

Consistent and proportionate responses regardless of the respondent's seniority

“I reported the incident and just got transferred to a role that did not align with my career aspirations. I was told I was ‘difficult’. He got to keep working in my dream job with no repercussions.”

Employers must ensure that investigation and complaint processes are applied consistently and impartially, regardless of the position or seniority of the respondent or complainant. This is integral to ensuring workers have faith that complaints processes are fair and consistent.

Employers should also ensure that:

- the outcomes for the respondent (where the complaint is substantiated) are proportionate and appropriate to the seriousness of the conduct and hold the respondent to account
- external complaint processes are utilised where appropriate
- non-disclosure agreements are not used to silence complainants or hide the prevalence of sexual harassment (see Section 4.5.4: Supporting workers through complaints processes).

Although employers may perceive there to be benefit in protecting senior or high-value respondents from disciplinary action or a complaints process, this approach overlooks the true cost of unaddressed sexual harassment in the workplace.³⁷ Prioritising a respondent's continued employment and reputation over the complainant's interests will not prevent workplace sexual harassment from occurring. Harassers will be encouraged to repeat their behaviour because they believe they can act with impunity³⁸ and employees experiencing sexual harassment will be deterred from reporting it because of a loss of faith in the employer's processes and leadership generally.³⁹

What to do when a bystander or other person anonymously reports sexual harassment but does not wish to make a complaint

Some workers may want to disclose an experience of sexual harassment without making a formal or informal complaint. They may report anonymously or ask that it remain confidential. A report of sexual harassment (even an anonymous report) should be a trigger for action. It is crucial that employers respect the complainant's privacy and wishes, but these do not override the positive duty to eliminate sexual harassment from the workplace. Employers must consider the risk to other workers and take action to eliminate, or minimise, that risk as far as possible.

There are a number of steps employers can take without identifying the complainant, nor the respondent or incident that has been raised. For example:

- recording the report in a de-identified way while ensuring the confidentiality of the complainant
- reiterating to all staff the organisation's sexual harassment policy, complaints procedure and available supports, and inviting workers to make complaints
- monitoring the alleged respondent's behaviour and intervening if new issues arise
- speaking with other members of the alleged respondent's team to identify whether there is a cultural issue or pattern of conduct, or surveying staff more broadly
- monitoring closely to ensure victimisation does not occur and intervening where issues arise
- having a system to collect de-identified information and data provided by disclosures, while maintaining confidentiality
- implementing new procedures or work systems that reduce the likelihood or opportunity for further harassment.

Employers should offer the worker referrals to counselling or other support and communicate the options for making a formal or informal complaint at a later time.

Critically, employers should also consider whether the incident raises broader cultural or systemic problems in the workplace and investigate those issues as well as the efficacy of the strategies, policies and procedures currently in place.

✓ **Leading practice example: Employer learns from complaints and implements genuine and effective systemic changes in response**⁴⁰

Sumitra worked in manufacturing. When she bent over to pick up the items necessary to do her job, her co-worker Ian would tell her to lift her dress higher and ask whether she was coming on to him. Ian talked about her breasts and how he wanted to touch them. As a result of Ian's behaviour, Sumitra developed anxiety and left her employment. Sumitra made a WorkCover claim, which was accepted. She also lodged a complaint of sexual harassment with the Commission.

When contacted by the Commission, Sumitra's employer sought to resolve the complaint as quickly as possible and did not wish to ask any questions or investigate Sumitra's allegations. Her employer admitted the business was growing rapidly and no systems had been put in place to deal with complaints of sexual harassment.

During the conciliation conference, Sumitra's employer agreed to conduct equal opportunity training and implement policies and procedures around sexual harassment, discrimination and bullying within six months. The employer committed to provide proof that Ian had attended and completed this training. Ian agreed to provide Sumitra with a signed apology letter. The respondents also agreed to pay Sumitra \$15,000 compensation for the hurt and humiliation she suffered.

Unsubstantiated complaints versus false complaints

Sexual harassment can often occur without any witnesses or direct evidence to support the complainant's allegations. Where an employer determines that a complaint does not meet the civil standard of proof, this does not mean that a complaint is fabricated or that the harassment did not occur. Employers should record the outcome of the complaint as 'unsubstantiated' and advise the parties of the same. Employers should avoid making statements that suggest the conduct did not occur, or that the complainant was lying. In the 'Step-by-step guide to responding to complaints' above, see step six for an example of what action can be taken where a complaint is not substantiated.

Employers should also ensure that a reporting and complaints procedure provides reassurance that complainants will not be subjected to workplace action or victimisation if their complaint isn't upheld. Employers should avoid making findings that an allegation is false or malicious, unless they have strong and compelling evidence to support this conclusion.

Serina's story – The impact of the harassment and her employer's failure to respond effectively to her complaint

Serina⁴¹ worked for a large company that publicly professed to support gender equality. While she was pregnant, her manager made a series of comments that made her feel uncomfortable, anxious and offended. For example, Serina's manager said that "women going on maternity leave make life difficult" and that Serina should wait until "her boobs get big and men stare at them all the time". Serina told her manager these comments weren't appropriate, but the manager said it was "just a joke". Serina found working for this manager increasingly anxiety-provoking and ended up complaining to human resources who said they would look into the matter.

Serina subsequently spoke with a number of other colleagues who said her manager had been "doing stuff like that for ages" and "that's just the way he is".

Serina later applied for a promotion and was offered an interview. When she arrived at the interview, she was dismayed to find that her manager was on the interview panel. Serina was so anxious about her manager being on the selection panel, that she was unable to perform well in her interview. She was not offered the job.

Serina made a complaint to her organisation stating that, in her view, it was inappropriate for her manager to be a part of the interview and selection process given the complaint she had previously made. Her employer dismissed her concerns. Serina was left with severe anxiety, which impacted her health and wellbeing during pregnancy. She also felt disillusioned and angry with her workplace. After completing her parental leave, she did not return to this employer.

What to do if the complainant or respondent leaves the workplace before a complaint can be investigated

Employers' legal obligations do not end just because a person leaves the workplace. While employers may no longer be able to formally investigate the matter (depending on the circumstances), employers can – and must – still take action to address any residual risk and impacts being felt within the workplace. For example, employers should:

- continue to provide support to the complainant (if still employed), along with any bystanders or other workers who may be affected
- closely monitor the respondent (if still employed) – this could involve initiating formal performance management processes as appropriate
- provide clear messaging to the workforce that sexual harassment is against the law and will not be tolerated
- use the opportunity to reflect, learn and improve
- record the allegation and ensure systems are in place to alert appropriate personnel of the record if the respondent seeks reemployment with the organisation in future (if appropriate considering any privacy obligations that apply).

To generate learnings and improvements as a result of the complaint, employers could:

- invite the complainant to provide feedback on the complaints process and their experience in an exit interview
- formally evaluate what is and isn't working in their approach to sexual harassment
- review and update any sexual harassment policies, procedures and action plans in light of the complaint and broader issues it raised
- seek independent advice on their compliance with the positive duty
- implement an anonymous staff survey to better understand the issues in the workplace.

When should external processes be used?

In some circumstances, handling a sexual harassment complaint internally may be impractical, counterproductive or irresponsible. For example, in circumstances where:

- the complainant does not want the matter dealt with internally
- the employer does not have the capacity or expertise to effectively manage the complaint internally
- the organisation is too small to be able to maintain all parties' trust and confidentiality and remain or appear impartial; this includes where the investigator has a personal or other connection to the parties and cannot objectively consider the evidence.
- there are multiple allegations or multiple respondents, revealing a complex or systemic issue
- the respondent is the boss, chief executive officer or another senior figure
- there are allegations that the employer has not managed complaints properly in the past, which mean the parties and/or broader workforce are unlikely to have trust in the process or outcomes
- the matter involves criminal behaviour and/or the employer has legal obligations to report it externally.

External agencies such as the Commission or Victoria Police (for criminal matters) can receive complaints and referrals. Employers may also choose to engage a reputable independent specialist investigator to gather evidence objectively before managing the complaint themselves.

Alternatively, where appropriate, employers can seek expert advice to assist them to deal with matters themselves.

Referring a complaint externally does not mean the employer has discharged their positive duty. Employers must still carefully consider any further action or risks to address within the workplace more broadly.

Additional reporting obligations for children and young people

Children and young people are employed (and volunteer) in a range of industries and businesses in Victoria. This includes family businesses, entertainment and advertising where there is no minimum age for employment. Children are also employed in other industries such as retail and hospitality where the minimum age of employment is 13 years.

Sexual harassment against a child may constitute child sexual abuse. In Victoria, all adults must report a reasonable belief that a sexual offence has been committed by an adult against a child under the age of 16 years to the Victoria Police. If you fail to report, you may be charged with a criminal offence.⁴²

Organisations that employ children (whether paid or unpaid) must also implement the Child Safe Standards⁴³ and may have reporting obligations under the *Children, Youth and Families Act 2005* (Vic).⁴⁴

Some professions may also have mandatory reporting obligations (for example, where sexual misconduct involves a health practitioner).⁴⁵ Employers should seek legal advice about complying with any additional mandatory reporting obligations.

✓ **Leading practice example: Employer engaging openly and respectfully in dispute resolution in a way that makes the complainant feel heard and validated**

Sakura⁴⁶ worked as a cashier in a large chain store. Her co-worker Joshua regularly winked and made kissing gestures towards her, which made her feel embarrassed. Joshua would stare at her thighs when she sat down, point at her and say, "That's a very nice dress and really nice sexy legs". He also said he would like to give her CPR as "all she needs is a sloppy kiss from him and then she would feel better".

When Sakura reported Joshua's behaviour to her supervisor, she was told to forget about it – "that's just how Joshua is". She later felt her colleagues were treating her differently and heard them say things like, "Don't look at Sakura the wrong way, she'll get upset". Sakura then learned that Joshua had touched a colleague inappropriately. Sakura supported this colleague to complain to the human resources team and outlined her own experiences in the process. Months went by, but Sakura heard nothing. She lodged a complaint with the Commission.

At the conciliation meeting at the Commission, the employer greeted Sakura warmly and thanked her for giving them the opportunity to work with her and resolve the issues. They listened actively and intently as Sakura outlined her experience. The employer immediately apologised to her for her experience and for its handling of the matter. The employer said it had failed Sakura in not looking into her concerns properly and assured her it was now undertaking a complete overhaul of its policies, procedures and protocols around bullying, discrimination and harassment. Sakura's employer explained that Joshua had been given a first and final warning for his conduct and that he had then chosen to retire. The employer reiterated how important and valued Sakura was to the organisation, committed to rebuild the employment relationship between Sakura and her direct supervisor and paid her \$13,000 in general damages for its mishandling of her concerns.

4.5.4 Supporting workers through complaints processes

Employers must ensure all workers (complainants, bystanders and affected others) are properly supported throughout a complaints process, including through identifying and avoiding victimisation.

For complainants in particular, making a report of sexual harassment can be a daunting and confronting experience. Many people who experience sexual harassment are worried they won't be believed or afraid they'll lose their job or jeopardise their career.

Some important ways to support workers when dealing with a complaint or disclosure of sexual harassment include:

- taking a victim-centric approach to the complaint including by listening without judgement, keeping the complainant informed at key stages and aiming to resolve the process without unreasonable delays
- supporting complainants to access relevant support services (see the referral guide to support workers, located in the appendices)

- engaging or appointing a suitable investigator to investigate the complaint impartially and sensitively
- considering the capacity of the complainant, the respondent or any witnesses to safely participate in a complaints process, including any relevant health conditions or disabilities and basing any decisions on medical evidence
- ensuring the complainant and respondent know they each are entitled a support person of their choice (which may include a union representative) in interviews and throughout the investigation
- focusing on outcomes that will help create a safe workplace where the complainant and others can continue to flourish and contribute
- recognising and minimising the impacts on bystanders and the workplace more broadly, particularly where complainants disclose to a colleague before speaking to their manager or where other team members witness the harassment
- managing staff communications effectively, taking into account the importance of transparency and accountability, as well as obligations of confidentiality, procedural fairness and natural justice
- providing sufficient support to managers and human resources staff and ensuring they are fully trained and skilled to hold sensitive conversations and respond appropriately to complaints
- understanding and utilising the role of equal opportunity contact officers, health and safety representatives, union delegates and leaders (at all levels) to support complaints processes and model appropriate responses and behaviours.

✓ **Leading practice example: Restorative engagement**

Where there are multiple alleged instances of sexual harassment, including historical allegations, employers may wish to engage the Commission to offer a restorative engagement process to staff.

A restorative pathway offers opportunities for healing, is non-adversarial and is not evidence focused. It does not necessarily require a respondent to participate in the process but facilitates a formal response from the employer, which may also result in internal disciplinary action against the respondent. It provides employers with an opportunity to convey their commitment to change. It can lead to improvements in the management of preventative initiatives.

Our restorative engagement scheme for Victoria Police employees

As part of our *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police*, we delivered an interim restorative engagement process.

This was open to current and former employees of Victoria Police who had experienced sex discrimination and/or sexual harassment. Employees accessed the scheme by submitting a complaint form but were not required prove the conduct alleged.

The scheme involved Victoria Police and the complainant agreeing to conciliate the matter at the Commission, with a senior representative of Victoria Police attending. Following restorative engagement principles, the Commission facilitated a process of learning and acknowledgement. Common outcomes included a written statement of regret, reinstatement of leave and payment of medical expenses and compensation.

A senior member explained how beneficial the process was to leadership, "It's a useful and a really good process to show Victoria Police is willing to listen and we can take learnings about what we need to change after hearing what has been said to us in this process [...] As a senior leader, you can go in and listen and you can learn and it never ceases to amaze me, the power of an apology."⁴⁷

Avoiding victimisation

“The way HR talked to me when I complained was more humiliating than anything he did.”

As outlined in Section 3.1.3: Behaviour that may amount to victimisation, it is against the law to treat, or threaten to treat, someone detrimentally because they have or may be likely to make a complaint. It is also against the law to victimise a person for supporting someone else to make a complaint.⁴⁸

Victimisation undermines the effectiveness of complaints and reporting procedures by deterring reports. It also adds to the distress of complainants.

To avoid victimisation occurring following a complaint or report of sexual harassment, employers should ensure that:

- workers are aware that it is unlawful and will not be tolerated
- at the commencement of a complaint process or investigation, parties to a complaint are reminded that victimisation will not be tolerated
- following a complaint, employers monitor for victimisation, including by having open, regular communication with the complainant and other workers
- workers are encouraged and supported to report victimisation
- swift and decisive action is taken to discipline workers engaging in victimisation.

Where a complainant's preferences are not ascertained or are assumed, action that an employer considers to be beneficial or protective may in fact be detrimental. For instance, changing the complainant's shifts so they are not rostered to work with the respondent, without asking first. Taking a victim-centric approach to a complaint and allowing it to be guided by the complainant will also support employers to avoid victimisation.

4.5.5 Non-disclosure agreements

“My complaint was upheld and my boss admitted what he'd done, but I had to sign a non-disclosure agreement. I see him every now and again at industry functions and I always break into a panic. But I can never explain to anyone why. I worry about how many other women he's hurt because I was forced to stay silent.”

Where the outcome of an investigation includes payment of financial compensation to the complainant, an employer may ask the complainant to sign a 'non-disclosure agreement' or a settlement agreement that includes a 'confidentiality clause'. These agreements prohibit the parties from talking about the settlement and in some cases the existence of the complaint itself.

The use of non-disclosure agreements raises challenging issues. They can be beneficial in providing a complainant with confidentiality, privacy and finality in relation to complaints. However, they have also been used to protect the reputation of respondents and businesses at the expense of complainants' wellbeing. They also mask the prevalence of sexual harassment and contribute to a culture of silence.⁴⁹

Confidentiality is important when investigating a complaint of sexual harassment, but it is not always appropriate to require a complainant to keep all the details of the complaint and the final outcome confidential.

Non-disclosure agreements should be used sparingly; for example, when a complainant has requested confidentiality around their experience.⁵⁰ When they are used, non-disclosure agreements should be carefully tailored.

Employers should not view non-disclosure agreements as the default

An employer should consider whether the use of non-disclosure agreements may prevent their organisation from identifying and learning from systemic issues of harassment in an open and transparent manner. They should also consider whether it will undermine efforts to ensure workers have confidence that sexual harassment is being eliminated in their workplace.

Employers should carefully consider the individual circumstances of each case when determining whether a non-disclosure agreement is appropriate, including:

- who is requesting confidentiality and whether there is a clear reason why it is required
- who benefits from the requirement and the benefits of not using a non-disclosure agreement or confidentiality clause
- the potential impact of the agreement on the complainant and the workplace culture.⁵¹

Non-disclosure agreements should be drafted in plain English and set out clearly what information can and cannot be disclosed.⁵² Employers should also consider drafting agreements in such a way that:

- provides 'carve-outs', which permit the complainant to speak to some third parties, such as a medical professional, or a relevant regulator or authority (such as the Commission)
- tailors the confidentiality clause or agreement to only prohibit certain disclosures (such as the disclosure of the settlement sum)
- explains the reasons for requiring confidentiality and what disclosures are protected⁵³
- details the rights that the complainant retains to, where necessary, discuss the circumstances in which their previous employment ended with a prospective employer
- makes the complainant's confidentiality obligations conditional on the respondent not misrepresenting any past interactions between the complainant and the respondent⁵⁴
- requires the employer to implement systemic preventative measures to eliminate sexual harassment in the workplace and meet its positive duty under the Equal Opportunity Act (such as training or improvements to policies and procedures)⁵⁵
- requires the respondent to participate in preventative or corrective opportunities provided by the employer
- allows information about the incident to be released if another complaint is received against the same respondent.⁵⁶

Complainants should be given sufficient time to consider the agreement and confidentiality clauses, including time to seek legal advice.

 **Remember: The use of non-disclosure agreements contributes to a culture of silence.** Non-disclosure agreements contribute to underreporting of sexual harassment by keeping the problem of sexual harassment and the steps taken to address it hidden. Silencing those who have been brave enough to make complaints deters others from coming forward.

Employers should maintain a confidential, central record of non-disclosure agreements and monitor their use to ensure they are being used appropriately and to identify any systemic issues and measures needed to address them.

Employers will not meet their positive duty where they use broad standard-form agreements as a matter of course and without taking reasonable and proportionate steps to eliminate harassment. Non-disclosure agreements should only be used in a way that promotes and supports systemic change and reduces sexual harassment.

4.6 Standard 6: Monitoring and evaluation

Outcomes and strategies are regularly reviewed, evaluated and improved.	
Outcomes	<ul style="list-style-type: none"> • 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.
Examples of actions to implement Standard 6	
<i>Small organisations</i>	<ul style="list-style-type: none"> • Regular, scheduled discussions at management meetings, board meetings, workers meetings and health and safety committee meetings (where these are in place). • 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?
<i>Medium organisations</i>	<ul style="list-style-type: none"> • Formally reflect following the resolution of a complaint and implement measures based on lessons where possible. • Conduct anonymous, confidential surveys on a regular basis to assess workers' 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).



Large organisations

- Develop a monitoring and evaluation framework and implementation plan.
- Engage external expertise and conduct compliance audits on a regular basis.
- Implement a process where complaints automatically trigger a review of workplace policies and practices to uncover additional issues.
- Measure indicators of gender equality and address areas of weakness.
- Celebrate success and the stories that reinforce positive values and behaviours.
- Report deidentified complaints and complaint trends to the board and anonymised complaint data to shareholders or the public.

The examples above for small organisations also apply to medium and large organisations. Similarly, the examples for medium organisations also apply to large organisations.

Maintain records

Records of compliance with this standard might include:

- meeting notes or survey results
- reporting and complaints registers
- data reports and workplan outcomes
- a monitoring framework and evaluation reports
- a revised sexual harassment plan or policy.

Standard 6 requires employers to regularly review and evaluate their approach to preventing sexual harassment, including by collecting relevant data and information to prompt ongoing reflection and continuous improvement. These processes must be open and transparent wherever possible, to ensure accountability.

4.6.1 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.

Leading employers strive for continuous improvement and seek to adjust their approach if their initial efforts fail to produce results. It is important to invest in robust data collection, reporting and evaluation to determine what works and what needs to be improved.

Employers should start by establishing yearly reviews of their sexual harassment plan, assessing what actions have been taken and how effective they have been in addressing sexual harassment. The review should be informed by consultation with workers and their representatives.

For example:

- appropriately resourcing and implementing robust data collection and analysis, monitoring and reporting tools and protocols supported by processes to address risks and issues

- regularly conducting organisation-wide anonymous surveys and focus groups to track worker knowledge of sexual harassment and relevant policies, experience of harassment, willingness to report, perceptions of gender equality, safety and trust in leadership
- engaging with the relevant union to understand the number of sexual harassment complaints or reports received
- monitoring workplace data (such as exit interviews where these are in place, absenteeism, turnover rates, uptake of employee assistance program counselling and performance) for trends, patterns and lessons
- monitoring gender disaggregated data on workplace gender equality indicators (see Section 4.4.1: Identify and assess risk, and the gender equality framework in the appendices)
- monitoring 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
- monitoring the outcome of complaints including any settlement agreements to ensure non-disclosure agreements are being used sparingly and appropriately (see Section 4.5.5: Non-disclosure agreements)
- having clear lines of accountability and setting targets for improvement and establishing penalties for when they are not met
- incorporating responsibility for achieving outcomes into leaders' key performance indicators and bonus structures
- reporting publicly on incidents of sexual harassment and progress to eliminate it
- being unafraid to adjust an approach if past strategies are unsuccessful.

Legislation: Workplace gender audits under the Gender Equality Act 2020

The Gender Equality Act 2020 will apply to Victorian public sector organisations that have 50 or more employees.

From 31 March 2021, these organisations will be required to develop a Gender Equality Action Plan every four years, which includes strategies for improving gender equality and preventing sexual harassment in the workplace.

Before developing their plan, these organisations must undertake a workplace gender audit to assess the state of gender equality in their workplace.⁵⁷ These audits must be based on gender-disaggregated data and, if available, data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.

The audit must consider the following information or data:

- any gender equality targets or quotas
- disadvantage or discrimination experienced in the workplace in addition to gender inequality
- the gender composition of all levels of the workforce
- gender composition of governing bodies (such as boards)
- remuneration across all levels of the workforce
- rates of sexual harassment in the workplace
- recruitment and promotion practices in the workplace
- the availability and utilisation of family violence leave, flexible working arrangements and working arrangements supporting employees with family or caring responsibilities
- gendered segregation within the workplace.

4.6.2 Make reviewing business as usual

Employers should regularly review and update sexual harassment prevention plans 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.

While the review process is an important requirement for continuous improvement, it's also a chance to reflect on and celebrate the successes your organisation has achieved so far.

 **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 may also mean that people have no confidence in reporting processes and how their organisation will respond.

Triggers for immediate action

It's important that employers establish triggers for immediate action, separate to any regular or annual reviews of policies and procedures. For example, if through monitoring complaints, a worrying trend emerged or new information came to light, employers should go back to Standard 1: Knowledge and recommence working their way through the standards by checking:

- their level of knowledge
- the effectiveness of the prevention plan
- the accuracy and adequacy of risk management
- the effectiveness of capability uplift measures in driving a respectful workplace culture
- whether reporting and response procedures are effective.

Triggers for immediate action should include serious incidents of sexual harassment, or incidents involving a senior worker, increased anonymous reporting, high rates of absenteeism or turnover rates for female workers. Broader indicators of gender inequality in the workplace should also prompt immediate action. See the gender equality framework, located in the appendices, for guidance on the relevant indicators.

4.6.3 Transparency

Employers must be transparent about trends, patterns and lessons with workers, boards and key stakeholders and ensure they have confidence that sexual harassment is being eliminated in their workplace. This requires visibility of the steps employers take to prevent and respond to sexual harassment and information about the success or failure of those steps.

This transparency is critical to securing workers' support for the employer's prevention plan and faith in their commitment to eliminating sexual harassment. Transparency also provides incentives for improvement by providing a measure of accountability for employers.⁵⁸

Employers should consider using de-identified information to speak to workers following a complaints process, setting out the employer's response and reiterating behaviour expectations. Employers should seek feedback and be open about lessons learned.

For medium and larger organisations, steps should be taken to regularly report to boards, governing bodies or external agencies on data and trends that indicate the prevalence of sexual harassment and outcomes of prevention strategies. Annual data should be published and communicated to workers and stakeholders. Workers should also be notified of revisions to prevention plans and associated policies and the rationale for change.

Measures for transparency should be expressed openly and included in relevant plans and policy documents. They must also be balanced with the confidentiality and privacy concerns for workers, including by ensuring confidentiality in complaint handling processes.

Notes

- 1 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 626.
- 2 These definitions have been set with reference to definitions used by Australian Bureau of Statistics, *Small Business in Australia, 2001* (Catalogue No. 1321.0, 23 October 2002) and the Australian Taxation Office, 'Small business entities' (Webpage, 30 May 2019) <<https://www.ato.gov.au/Forms/Deductions-for-prepaid-expenses-2019/?page=5>>.
- 3 Australian Human Rights Commission (n 1) 138–53.
- 4 Australian Human Rights Commission (n 1) 716.
- 5 Screen Australia, 'Submission No. 239 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (7 February 2019) 2–4.
- 6 Chief Executive Women and Male Champions of Change, *Backlash and Buy-In: Responding to the Challenges in Achieving Gender Equality* ('Backlash and Buy-In') (Report, 2018) 9.
- 7 VicHealth, *(En)countering Resistance: Strategies to Respond to Resistance to Gender Equality Initiatives* (2018) 3.
- 8 *Backlash and Buy-In* (n 6) 10.
- 9 VicHealth (n 7) 3–4.
- 10 For more detail, see VicHealth (n 7); *Backlash and Buy-In* (n 6); Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase 3 Audit and Review* (Report, August 2019) 248–50.
- 11 Victorian Public Sector Commission, *Serving Victoria: A Guide for Public Sector CEOs* (Resource, 11 June 2015).
- 12 Australian Human Rights Commission (n 1) 662.
- 13 Australian Human Rights Commission (n 1) 676.
- 14 See, for example, UN Women, 'What will it take? Promoting cultural change to end sexual harassment' ('What will it take?') (Discussion Paper, September 2019) 34–9.
- 15 *Ibid.* 35, 38.
- 16 VicHealth, *Take Action: Empowering Bystanders to Act on Sexist and Sexually Harassing Behaviours* (2019) 5.
- 17 The Australian Human Rights Commission notes the usefulness of bystander action in preventing sexual harassment because "[I]t recognises that people across the community (not only victims or perpetrators) have the potential to influence the gendered drivers of violence against women", Australian Human Rights Commission (n 1) 369.
- 18 'Aboriginal' is used as a broad term intended to include Aboriginal and Torres Strait Islander Peoples.
- 19 *Gender Equality Act 2020* (Vic) s 3; Our Watch, *Workplace Gender Equality Indicators* (Key Progress Indicators) (Resource, 2017).
- 20 Australian Human Rights Commission, *Everyone's Business: Survey on Sexual Harassment of Members of the Shop, Distributive and Allied Employees' Association* (2019) 11.
- 21 Names and identifying details have been changed to protect the privacy of individuals.
- 22 Australian Human Rights Commission, *Encourage, Support, Act! Bystander Approaches to Sexual Harassment in the Workplace* (2012) 39.
- 23 Professor P McDonald and Professor S Charlesworth, 'Submission No. 170 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (January 2019) 12; Australian Human Rights Commission (n 1) 678.
- 24 *Ibid.* 12.
- 25 'What will it take?' (n 14) 29.
- 26 Harmers Workplace Lawyers, 'Submission No. 366 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (28 February 2019) 1.
- 27 Australian Human Rights Commission (n 1) 263.
- 28 Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (Report, 2018) 73.
- 29 Australian Human Rights Commission (n 1) 678.
- 30 UN Women's nine core elements of a victim-centred approach to addressing sexual harassment discussed in Australian Human Rights Commission (n 1) 679–80.
- 31 Lisa Corrente, 'Key reasons for hiring an external investigator', *Association of Workplace Investigators* (Webpage) <https://www.awi.org/page/External_Investigate?&hhsearchterms=%22lisa+and+corrente%22>.
- 32 Association of Workplace Investigators, *Guiding Principles for Conducting Workplace Investigations* (September 2012).

- 33 Some sexual harassment (such as rape, sexual assault, stalking, obtaining a sexual act by threat or fraud) may constitute a sexual offence under criminal law. See *Crimes Act 1958* (Vic) ('Crimes Act') ss 21A, 38, 40, 41, 43–48. There is, generally, no requirement under the Crimes Act for an employer to report a sexual offence to police. However, the Crimes Act does require reporting of sexual offences if the worker experiencing the offence is under 16 years of age. It is a criminal offence for anyone above the age of 18 who has information that leads them to form a reasonable belief that a sexual offence has been committed against a child (defined as a person under the age of 16) to not disclose that information to the police. See Crimes Act s 327(2). It is also an offence to impede the apprehension, prosecution, conviction or punishment of someone you believe to have committed an indictable offence, or to accept a benefit to withhold information that may be of assistance in securing the prosecution or conviction of a person who has committed a serious indictable offence (such as rape, sexual assault, etc.). See Crimes Act ss 325–326.
- 34 Under the *Occupational Health and Safety Act 2004* (Vic) ('Occupational Health and Safety Act'), employers must provide and maintain a working environment that is safe and without risks to health. Employers can be prosecuted and penalised for failing to do so. Employers also have a duty to notify WorkSafe immediately after becoming aware that certain incidents have occurred in a workplace under their management and control. See Occupational Health and Safety Act, ss 21, 38. Some organisations may also have reporting obligations under the Child Safe Standards. See Commission for Children and Young People, 'The Child Safe Standards' (Webpage) <<https://ccyp.vic.gov.au/child-safety/being-a-child-safe-organisation/the-child-safe-standards>>.
- 35 This is an excerpt from an anonymous publication, which has been reproduced with the author's permission. Pseudonyms have been added and some 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, 198–9.
- 36 *Briginshaw v Briginshaw* [1938] HCA 34.
- 37 It has been estimated that in 2018, sexual harassment cost \$2.6 billion in lost productivity and \$0.9 billion in other financial costs, with employers bearing 70 per cent of the financial costs. These costs include short-term absences from work, reduced productivity, increased staff turnover and expending of resources in responding to complaints. There can also be a real risk of reputational damage to employers who are found to be protecting employees who sexually harass. Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace* (Final Report, March 2019).
- 38 Australian Human Rights Commission (n 1) 156.
- 39 Victorian Equal Opportunity and Human Rights Commission (n 10) 6.
- 40 This case study has been drawn from the Victorian Equal Opportunity and Human Rights Commission's dispute resolution practice. Names and identifying details have been changed to protect the privacy of the people involved.
- 41 Names and identifying details have been changed to protect the privacy of individuals.
- 42 *Crimes Act 1958* (Vic) s 327(2).
- 43 *Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015* (Vic).
- 44 *Children, Youth and Families Act 2005* (Vic) ss 183–184.
- 45 Australian Health Practitioner Regulation Agency and the National Boards, *Guidelines: Mandatory Notifications about Registered Health Practitioners* (March 2020).
- 46 This case study has been drawn from the Victorian Equal Opportunity and Human Rights Commission's dispute resolution service. Names and identifying details have been changed to protect the privacy of the people concerned.
- 47 Victorian Equal Opportunity and Human Rights Commission (n 10) 129.
- 48 *Equal Opportunity Act 2010* (Vic) s 103.
- 49 Australian Human Rights Commission (n 1); Professor Judith Bessant, 'Submission No. 188 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (January 2019) 3.
- 50 Victorian Equal Opportunity and Human Rights Commission, 'Submission No. 372 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (February 2019) 44.
- 51 United Kingdom Equality and Human Rights Commission, *The Use of Confidentiality Agreements in Discrimination Cases* (Guidance, 2019) 20.
- 52 Australian Human Rights Commission (n 1) 564.
- 53 United Kingdom Equality and Human Rights Commission, *Turning the Tables: Ending Sexual Harassment at Work* (Report, 2018) 16–17.
- 54 Law Council of Australia, 'Submission No. 249 to Australian Human Rights Commission', *National Inquiry into Sexual Harassment in Australian Workplaces* (26 February 2019) 37.
- 55 Victorian Equal Opportunity and Human Rights Commission (n 50) 44.
- 56 Law Council of Australia (n 54) 37.
- 57 Gender Equality Act 2020 (Vic) s 11.
- 58 Australian Human Rights Commission (n 1) 642.



Appendices – Practical guidance and support

Risk assessment tool: Risk matrix

Employers can use this matrix to scan their workplace for characteristics that may enable or drive sexual harassment and create barriers for identification and reporting.

	Signs your workers may be at risk of sexual harassment
Workplace characteristics	Sex-segregated workplaces (where work is typically or historically performed by men or women) and workplaces with rigid workplace norms based on gender stereotypes.
	Leaders with unquestioned, discretionary authority to hire, fire and promote.
	Hierarchical or command and control workplace structures.
	Workplaces that protect 'high-value' or 'indispensable' workers from accountability for unacceptable behaviour.
	Workplaces that value profit over protecting workers, enabling customers/clients to harass workers.
	High pressure workplaces such as frontline and emergency services, with an attitude that workers need to let off steam to deal with the pressures of work and certain behaviours don't need to be taken seriously.
	Short-term contracts with a reliance on reputation and word-of-mouth for securing the next job (e.g. individuals in the fashion and entertainment industries and junior doctors completing their placement training).
Work environment	Some areas in or around the workplace are isolated, poorly lit or intimidating to enter.
	Sexualised or sexist materials are on display (e.g. posters, calendars, screensavers).
	Lack of privacy or security for workers using bathrooms/ change rooms.
	In-home work (such as providing childcare, nursing, cleaning services, aged or disability care) with direct client contact and little or no oversight.
Workplace composition	Male-dominated workforce, management, leadership or board.
	Male-dominated customer or client base.
	Small businesses where confidentiality and confidence to raise issues may be difficult to achieve.
	A cohort of young workers (including under 18 years), interns, apprentices, graduates or other junior workers.

	A cohort of women from migrant and non-English speaking backgrounds, people on employer-sponsored visas, and women with disabilities.
	A cohort of people in insecure work, such as casuals, contractors, short-term workers, temporary workers and freelancers.
Workplace trends	High staff turnover, particularly of female or junior workers.
	Gender differences in shifts or teams (e.g. women more reluctant to work with particular workers or take on particular tasks).
	Concentration of men in senior positions and men being promoted more often than women.
Workplace requirements	Different uniform requirements for men and women, or prescriptive dress codes or expectations for how women should look at work (such as high heels, skirts and makeup).
	Travel and overnight stays.
	Placements in regional or remote locations where workers may be socially isolated.
	Frequent formal or informal client functions or after-work events.
	Shift work, after-hours and longer hours.
	Workplaces where alcohol is served and workers are encouraged to socialise outside of work hours.
	Workplaces where workers interact directly with customers or consumers.
Workplace behaviours	'Everyday sexism', such as sexist jokes, and homophobia/transphobia in the workplace.
	Gendered and binary networking events or mentoring opportunities (e.g. work lunches at men's clubs, invitations to play golf with the boss).
	Differences in the unspoken expectations of male and female workers (e.g. women routinely being the ones to take minutes, organise catering, prepare rooms for meetings and clean up after events).
	Male workers dominate meetings or decisions.

Gender equality framework

 Leadership	 Values	 Representation and equal pay
<p>Leaders understand the harmful nature of gender inequality and how it is compounded by other forms of disadvantage.</p>	<p>Workers understand and recognise the problem of gender inequality and the need for improvement.</p>	<p>Women are equally represented across the workforce.</p>
<p>Leaders promote gender equality in the workplace and take necessary action towards achieving gender equality.</p>	<p>Workers behave respectfully to one another and reject gender stereotypes.</p>	<p>Workers receive equal pay and superannuation for work of comparable value.</p>
<p>Leaders and senior staff are held to account for their behaviour and the culture of their workplaces.</p>		<p>Women are equally represented in leadership positions, including boards.</p>
 Pregnant workers	 Recruitment and progression	 Safety and respect in the workplace
<p>Pregnant workers are supported and no worker experiences pregnancy discrimination.</p>	<p>Recruitment, promotion and selection processes are fair and impartial, and mechanisms exist to address and reduce bias.</p>	<p>Comprehensive measures are in place to eliminate sex discrimination, sexual harassment and victimisation.</p>
<p>Parenting and caring responsibilities are not barriers to progression and promotion.</p>	<p>Women have equal access to professional development and training.</p>	<p>A best practice, victim-centric reporting and complaints process is in place that workers trust as being fair.</p>
		<p>Responses to sexual harassment and discrimination are timely, thorough and consistent.</p>



Women's voices

Women's perspectives and experiences are elevated across the organisation.

Processes for public consultation and feedback are inclusive of women and value women's participation.

Leaders anticipate and plan for the gendered impacts of public-facing services, projects or initiatives.



Flexible work

All workers are supported to work flexibly.

There is increased uptake of flexible work.

Procedures and conditions to support family violence leave are in place, and there is flexibility for people experiencing family violence.



Data collection and reporting

Key gender equality indicators, including targets and quotas, are regularly collected and reported on.

Gender disaggregated data is collected, along with data about Aboriginality, age, disability, ethnicity, gender identity, race, religion and sexual orientation.

Data analysis is supported by processes to address risks and issues.



Monitoring and evaluation

Gender equality strategies or action plans are regularly reviewed and updated in consultation with workers.

The impact of gender equality strategies is regularly assessed, including through analysis of data, to drive continuous improvement.

Progress is measured against any set targets and quotas relating to gender equality.

Referral guide for employers

This is a referral guide to assist employers who are seeking further assistance with meeting their legal obligations under the Equal Opportunity Act or complying with other obligations relating to workplace sexual harassment.

Equality and anti-discrimination

Victorian Equal Opportunity and Human Rights Commission

If you need information about sexual harassment and your obligations under the Equal Opportunity Act, you can contact the Commission's free enquiry service, speak with our education experts or visit our website.

- Enquiry Line: 1300 292 153 or (03) 9032 3583 Mon–Fri 9am–12.30pm and 1.30pm–4.30pm
- Education Line: (03) 9032 3467
- Email: enquiries@veohrc.vic.gov.au
- Live chat: livechat.humanrights.vic.gov.au
- Web: humanrights.vic.gov.au

Australian Human Rights Commission (AHRC)

The AHRC has a National Information Service to provide information and referrals for individuals and employers on discrimination, sexual harassment and human rights issues.

- National Information Service: 1300 656 419 or (02) 9284 9888
- Email: infoservice@humanrights.gov.au
- Small business enquiry form: humanrights.gov.au/small-business-enquiry-form
- The AHRC also has a range of resources for employers available on its website: humanrights.gov.au/education/employers

Health and safety

WorkSafe

WorkSafe is Victoria's health and safety regulator and the manager of Victoria's workers compensation scheme. WorkSafe considers work-related gendered violence and sexual harassment to be serious work health and safety issues.

- Advisory service phone: 1800 136 089 Mon–Fri 7.30am–6.30pm
- Web: worksafe.vic.gov.au

Employment

Fair Work Commission (FWC)

The FWC is Australia's national workplace relations tribunal with power and functions to deal with anti-bullying issues upon formal lodgement of an application. The FWC also facilitates the Workplace Advice Service – a free legal assistance program available to small businesses with enquiries relating to dismissal, general protections or workplace bullying.

- Phone: 1300 799 675 (not for legal advice) Mon–Fri 9am–5pm
- Web (general): fwc.gov.au
- Workplace Advice Service: fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service
- Online lodgement service: fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-an-application

Fair Work Ombudsman (FWO)

The FWO is an independent statutory office that provides free services to all workers and employers in Australia. The FWO is also responsible for enforcing the Fair Work Act. The FWO provides information and education about Australia's workplace relations system, fair work practices, rights and obligations.

- Phone: 13 13 14 Mon–Fri 8am–5.30pm
- Online help: fairwork.gov.au/how-we-will-help/get-help
- Web (general): fairwork.gov.au

Referral guide to support workers

This referral guide is a tool to help employers assist any worker who has experienced sexual harassment and to help them find the support they need.

Support for sexual assault

Victorian Centres Against Sexual Assault (CASA)

CASA provides confidential support and intervention for women, children and men who are victim-survivors of sexual assault and who have experienced or been affected by sexual harassment.

You can be referred to your local CASA or contact it directly. CASA can provide counselling services, or link you to legal services and healthcare (including collection of forensic evidence).

- Phone: 1800 806 292 (24 hours)
- Email: casa@thewomens.org.au
- Web: casa.org.au

Victorian Sexual Assault Crisis Line (SACL)

SACL provides advice on services available in cases of sexual assault (emergency healthcare, protection services, police complaints processes).

- Phone: 1800 806 292 (24 hours) – diverts to local CASA services during standard business hours
- Email: SACLFeedback@thewomens.org.au
- Web: sacl.com.au
- Police/emergency contact line: (03) 8345 3494
- SACL admin line: (03) 8345 3201

National Sexual Assault, Domestic Family Violence Counselling Service (1800RESPECT)

Qualified and experienced counsellors provide free telephone and online counselling, information and assistance to access other services. This service is open to all people in Australia affected by sexual assault and domestic and family violence (including family and friends).

- Phone: 1800RESPECT (1800 737 732) (24 hours)
- Web: 1800respect.org.au

Victoria Police

Many forms of sexual harassment in the workplace also constitute sexual offences under criminal law.

For more information about the process of reporting a sexual offence or sexual assault, please refer to the 'Reporting sexual offences to police' guide available on the Victoria Police website: police.vic.gov.au/resources-and-fact-sheets-0#reporting-sexual-offences-booklet.

Psychological, counselling and general support

Beyond Blue

Provides free information and support to help people work through mental health issues and achieve their best possible mental health.

- Phone: 1300 224 636 (24 hours)
- Web: beyondblue.org.au

No to Violence (men's referral service)

Provides confidential men's family violence telephone counselling, information and a referral service. No to Violence is a central point of contact for men taking responsibility for their violent behaviour.

- Phone: 1300 766 491 (for interpreter, call TIS National on 131 450) Mon–Fri 8am–9pm; weekends 9am–5pm
- Live Chat now (national) Mon–Fri 8am–9pm; weekends and public holidays 10am–3pm
- Web: ntv.org.au

Mensline

A national phone and online support service for men that includes video counselling.

- Phone: 1300 789 978
- Web: mensline.org.au

Switchboard

Switchboard Victoria provides peer-driven support services for LGBTIQ people, their families, allies and communities.

- Phone: 1800 184 527
- Webchat: qlife.org.au/resources/chat
- Web: switchboard.org.au

WIRE: Women's Support Line

WIRE provides free support, referral and information for all Victorian women, nonbinary and gender-diverse people. 'Any woman. Any issue.'

- Phone: 1300 134 130 Mon–Fri 9am–5pm
- Email: inforequests@wire.org.au
- Web: wire.org.au

Healthcare support

General practitioner (GP)

You can speak to your GP about issues of workplace sexual harassment and ask for a referral to relevant health and counselling services. Contact your regular GP or a trusted GP.

Emergency healthcare support

Emergency healthcare support includes services such as post-sexual assault forensic evidence gathering, relevant healthcare to prevent pregnancy, and treatment to prevent sexually transmitted infections (STIs).

- Sexual Assault Crisis Line: 1800 806 292 (24 hours) – diverts to local CASA services during standard business hours
- Email: casa@thewomens.org.au
- Web: casa.org.au

Multicultural Centre for Women's Health Information Line

This information line provides information specifically for women from migrant and refugee backgrounds, as well as information to health and other service providers on how to best support migrant and refugee women.

- Phone: 1800 656 421

Legal information and support

Victorian Equal Opportunity and Human Rights Commission

The Commission provides information about discrimination and sexual harassment through its Enquiry Line and online resources. The Commission also takes complaints through its free dispute resolution service.

- Enquiry Line: 1300 292 153 or (03) 9032 3583 Mon–Fri 9am–12.30pm and 1.30pm–4.30pm
- Phone (general): 1300 891 848
- Hearing impaired: 1800 555 660 (NRS Helpdesk)
- Interpreters: 1300 152 494
- Email: enquiries@veohrc.vic.gov.au
- Live chat: livechat.humanrights.vic.gov.au
- Web: humanrights.vic.gov.au

Victoria Legal Aid (VLA)

VLA provides free legal services to support people with legal problems, including issues of sexual harassment.

- Phone: 1300 792 387 Mon–Fri 9am–5pm
- Web: legallaid.vic.gov.au

Women's Legal Service Victoria

This legal service provides free legal services to women experiencing disadvantage who are facing legal issues arising out of relationship breakdown and violence.

- Phone (metropolitan area): (03) 8622 0600 Tue and Thu 5.30–7.30pm
- Phone (regional): 1300 133 302 Tue and Thu 5.30–7.30pm
- Web: womenslegal.org.au

Victorian Trades Hall Council Women's and Equality Team

The Women's and Equality Team can provide advice over the phone and referrals regarding issues of gendered violence in the workplace within the industrial setting. Both union and non-union members can contact the team.

- Phone: (03) 9659 3533
- Email: info@vthc.org.au

Victorian Aboriginal Legal Service (VALS)

VALS provides free legal information, referrals, advice and casework assistance to Victorian Aboriginal and Torres Strait Islander Peoples on a range of legal issues, including discrimination and sexual harassment.

- Phone: (03) 9418 5999 or 1800 064 865 (toll free)
- Web: vals.org.au

Young Workers Centre

The Young Workers Centre provides information and support to young workers who want to learn more about their rights at work or who need assistance in resolving workplace issues.

- Phone: 1800 714 754
- Text: 'HELP' and your name to 0448 791 922
- Web: youngworkers.org.au

Community and Public Sector Union (CPSU)

The CPSU provides free legal advice and support services to CPSU members on issues including workplace conflict, harassment and bullying. Contact the CPSU through your workplace delegate or directly.

- Phone: (03) 8620 6369 or 1300 137 636
- Web: cpsu.org.au

Department of Justice and Community Safety – Victims of Crime

The Department of Justice and Community Safety provides free information and advice on reporting a crime, information about your rights, the court process and other services that can help you.

- Phone: 1800 819 817 Mon–Sun 8am–11pm
- Text: 0427 767 891
- Web: victimsofcrime.vic.gov.au

Australian Human Rights Commission (AHRC)

The AHRC is a national service provider that provides support on issues of sex discrimination and sexual harassment. The AHRC also takes complaints.

- National Information Service: 1300 656 419
- TTY: 1800 620 241
- Interpreting service (call and ask to connect to AHRC): 131 450
- Hearing or speaking impairment (call and ask to connect to AHRC): 133 677 or 1300 555 727
- Web: humanrights.gov.au

JobWatch

JobWatch provides legal information and support on employment rights related issues, including sexual harassment and discrimination.

- Phone: (03) 9662 1933 (metropolitan), 1800 331 617 (regional Victoria)
- Email: jobwatch@jobwatch.org.au
- Web: jobwatch.org.au

Fair Work Commission (FWC)

The FWC is Australia's national workplace relations tribunal with power and functions to deal with anti-bullying issues upon formal lodgement of an application. The FWC also facilitates the Workplace Advice Service – a free legal assistance program that offers advice on legal issues including workplace bullying.

- Phone: 1300 799 675 (not for legal advice) Mon–Fri 9am–5pm
- Web (general): fwc.gov.au
- Workplace Advice Service: fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service
- Online lodgement service: fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-an-application

Fair Work Ombudsman (FWO)

The FWO is an independent statutory office that provides free services to all workers and employers in Australia. The FWO is also responsible for enforcing the Fair Work Act. The FWO provides information and education about Australia's workplace relations system, fair work practices, rights and obligations.

- Phone: 13 13 14 Mon–Fri 8am–5.30pm
- Online help: fairwork.gov.au/how-we-will-help/get-help
- Web (general): fairwork.gov.au

Digital tools

Talk to Spot

Spot is a safe, anonymous way to document harassment and discrimination. Spot is a chatbot and, once you input an incident form, you can email it to yourself or keep it safely online until you need to download it.

- Web: talktospot.com

Sexual harassment response tool

This digital tool from the Victorian Equal Opportunity and Human Rights Commission helps people recognise sexual harassment, and offers suggestions on how to take bystander and first responder action.

- humanrights.vic.gov.au/resources/respond-to-sexual-harassment

Glossary of key terms

Bystander	Someone who witnesses or overhears sexual harassment.
Complainant	A person who makes a formal or informal complaint of sexual harassment.
Confidentiality agreement	See definition of non-disclosure agreement below.
Contact officer	Equal opportunity contact officers are staff who have volunteered to take on the role and are then specially trained in equal opportunity law (including in responding to sexual harassment). Contact officers are supported but remain impartial, enabling workers to talk informally about their concerns, identify their issues and weigh up the best options for resolution.
Discrimination	<p>Unfavourable treatment based on a protected attribute (or a characteristic that a person with that attribute generally has).</p> <p>Discrimination can be direct and indirect.</p> <p>Direct discrimination happens when someone is treated unfavourably because of an attribute protected by the <i>Equal Opportunity Act 2010 (Vic)</i>.</p> <p>Indirect discrimination happens when there is an unreasonable requirement, condition or practice that disadvantages a person, or a group of people, because of a protected attribute.</p> <p>The attributes that are most relevant to sexual harassment and to the content of this guideline are sex, sexual orientation, gender identity, pregnancy, breastfeeding and parental or carer status. In some cases, the attributes of race, religious belief and activity, and disability may also be relevant to why a person has been targeted or the kind of sexual harassment they have been exposed to.</p>
Employee	This guideline uses a broad interpretation of the term 'worker' – see definition of worker below.
Employer	Under the <i>Equal Opportunity Act 2010 (Vic)</i> , 'employer' means someone who employs or engages another person under a contract of service. It also includes non-standard engagement such as labour-hire arrangements, independent contractor relations and other quasi-employment relationships.

<p>Gender equality</p>	<p>Gender equality requires:</p> <ul style="list-style-type: none"> • women and men to be treated the same because they are equal (formal equality) • equality of opportunity and results, which sometimes necessitates non-identical treatment to address biological, and socially and culturally constructed differences between women and men (substantive equality) • the redistribution of power and resources among women and men, the transformation of institutions, systems and structures that cause inequality, and the modification of harmful norms, prejudices and stereotypes that deny women their autonomy and agency, and the opportunity to develop their abilities, pursue their professional careers and make choices without the limitations they set for women (transformative equality) <p>For more details, see our <i>Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase 3 Audit and Review</i> (Report, August 2019) 44; and Section 4.1 more broadly.</p>
<p>Gender inequality</p>	<p>The unequal distribution of power, resources, opportunity, and value afforded to men and women in a society due to prevailing gendered norms and structures.</p> <p>For more information, see Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and the Victorian Health Promotion Foundation (VicHealth), <i>Change the Story: A Shared Framework for the Primary Prevention of Violence against Women and their Children in Australia</i> (2015) 8.</p>
<p>Gender norm</p>	<p>Social norms (or expectations) that relate specifically to gender differences. They are unwritten rules and shared social expectations about how women and men should behave. For example, that men are natural leaders and women are natural carers. In some settings, accepted norms might also include that ‘boys will be boys’ and that it is OK to leer, ‘wolf-whistle’ or make sexist jokes.</p>
<p>Gender stereotype</p>	<p>A widely held but fixed and oversimplified image or idea of what a woman and a man are. For example, that men are superior to women, and that men are strong, stoic and dominant, while women are gentle, emotional and submissive.</p>
<p>Harasser</p>	<p>A person who is alleged to have sexually harassed another person. This term is used throughout the guideline in place of ‘perpetrator’. The term ‘respondent’ is used when discussing complaint handling.</p>
<p>Health and safety representative</p>	<p>Health and safety representatives are the elected and voluntary representatives of employees in a designated work group. They have certain powers under health and safety legislation and play an important role in making Victorian workplaces safer. Health and safety representatives provide employees with a way to have their views and concerns about health and safety heard. Employers are required to consult with health and safety representatives on all work health and safety matters.</p>
<p>Intersectional discrimination</p>	<p>Intersectional discrimination occurs when people with multiple protected characteristics (such as sex, age, race, disability or gender identity) experience multiple forms of inequality and discrimination that overlap and intersect in a unique way.</p>

Intersectionality	<p>Intersectionality is a framework for identifying and analysing the dynamics of power and inequality. An intersectional approach acknowledges that inequality and associated harms are never the result of a single factor such as sex, race, disability, gender identity or sexual orientation. Rather, they arise due to intersecting power relations and experiences. These characteristics influence how a person is placed in relation to power structures and systems, and will in turn have a bearing on their risk of certain harms (like sexual harassment) and their experience of those harms.</p> <p>For more information, see Jasmine Chen, <i>Intersectionality Matters: A Guide to Engaging Immigrant and Refugee Communities in Australia</i> (Multicultural Centre for Women's Health, 2017) 5.</p>
LGBTIQ	Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex, Queer and questioning.
Non-disclosure agreement	<p>Sometimes referred to as a 'confidentiality agreement' or a 'confidentiality clause'. A legal agreement, contract or term within an agreement made between parties (usually the complainant and respondent employer) preventing certain types of information from being discussed or disclosed. If a person breaches a non-disclosure agreement, they can be sued for damages in court. If the person is still employed, they may face other penalties or disciplinary measures.</p>
Positive duty	Under the <i>Equal Opportunity Act 2010 (Vic)</i> , employers have a duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible.
Precautionary action	Action taken by an employer before an investigation of sexual harassment has concluded that is necessary to protect the wellbeing and safety of the complainant or other workers.
Prevention plan	A document setting out the steps employers will take to address sexual harassment, including measures in compliance with the standards.
Respondent	The alleged harasser, person or employer who has a complaint of sexual harassment made about them.
Sexual harassment	Unwanted 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).
Supervisor	This term is used to include managers and any worker with a responsibility to supervise, manage or direct other workers.
Vicarious liability	Vicarious liability refers to employers' legal responsibility for unlawful actions undertaken by their agents or employees. Employers can be held legally responsible for acts of discrimination or harassment that occur in the workplace or in connection with a person's employment.

Victim-centric	<p>(From the Australian Human Rights Commission, <i>Respect@Work: Sexual Harassment National Inquiry Report (2020)</i> 679–80.)</p> <p>A victim-centric approach gives priority to the victim-survivor’s wishes, safety, and wellbeing in all matters and procedures. This ensures the compassionate and sensitive responses to complaints in a non-judgemental manner. It tries to ensure the complainant is engaged in the process, while seeking to minimise any re-traumatisation.</p>
Victim-survivor	<p>Someone who has experienced sexual harassment. This term is used to acknowledge that not everyone who has been harassed views themselves as a ‘victim’; whereas some people might feel that the term ‘survivor’ doesn’t emphasise strongly enough that a perpetrator is at fault. We recognise that there isn’t a single term that can fully encapsulate the experiences of all people who have experienced sexual harassment.</p>
Victimisation	<p>Victimisation occurs when a person punishes or threatens to punish another person because they have:</p> <ul style="list-style-type: none"> • asserted their rights under the <i>Equal Opportunity Act 2010 (Vic)</i> • made a complaint or allegation of a contravention of the Equal Opportunity Act (formal or informal) • helped someone else make a complaint • refused to do something because it would be discrimination, sexual harassment or victimisation.
Work-related gendered violence	<p>Any behaviour, directed at any person, or that affects a person, because of their sex, gender identity or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety.</p> <p>For more information, see WorkSafe Victoria, <i>A Guide for Employers: Work-related Gendered Violence Including Sexual Harassment</i> (Resource, December 2019).</p>
Worker	<p>The term ‘worker’ is used to include a staff member, employee, fixed-term or contract workers, consultants, volunteers and unpaid interns. It may also include independent contractors who attend the workplace, for the purposes of this guideline.</p>
Workplace action	<p>Action taken by an employer in response to a complaint about discrimination, sexual harassment or victimisation. Workplace action may extend from urgent or precautionary steps such as relocating either party until the complaint has been investigated, or disciplinary action taken as a consequence of an investigation.</p>
Workplace harm	<p>Workplace harm is used as an umbrella term to refer to sexual harassment, discrimination and victimisation. It also includes bullying.</p>

Further reading

Resources from the Commission

- Victorian Equal Opportunity and Human Rights Commission, *Proud, Visible, Safe: Responding to Workplace Harm Experienced by LGBTI Employees in Victoria Police* (Report, May 2019).
- Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment, Including Predatory Behaviour, in Victoria Police: Phase 3 Audit and Review* (Report, August 2019).
- Victorian Equal Opportunity and Human Rights Commission, *Preventing and Responding to Workplace Sexual Harassment: Quick Guide for Employers* (2020).

Resources from other leading organisations

- Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (Report, 2018).
- Australian Human Rights Commission, *Respect@Work: Community Guide to the Sexual Harassment National Inquiry Report* (2020).
- Chief Executive Women and Male Champions of Change, *Backlash and Buy-In: Responding to the Challenges in Achieving Gender Equality* (2018).
- eSafety Commissioner, 'COVID-19: An online safety kit for parents and carers'.
- Gender Equity Victoria, 'Social media toolkit'.
- M Hach and R Aryal-Lees, *Workplace Equality: A Model for Preventing Violence against Migrant and Refugee Women* (Multicultural Centre for Women's Health, 2019).
- Our Watch, 'Workplace Equality and Respect Standards'.
- VicHealth, *(En)countering Resistance: Strategies to Respond to Resistance to Gender Equality Initiatives* (2018).
- VicHealth, *Take Action: Empowering Bystanders to Act on Sexist and Sexually Harassing Behaviours* (2019).
- Workplace Gender Equality Agency, 'Gender Equality Strategy Guide' and 'Gender Equality Diagnostic Tool'.
- WorkSafe, *A Guide for Employers: Work-related Gendered Violence Including Sexual Harassment* (March 2020).



Contact us

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Interpreters	1300 152 494
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Website	humanrights.vic.gov.au
Follow us on Twitter	twitter.com/VEOHRC
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