

# Work Health and Safety (Sexual and gender-based harassment Code of Practice) Approval 2024

Notifiable instrument NI2024–399

made under the

*Work Health and Safety Act 2011*, section 274 (Approved Codes of Practice)

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## 1 Name of instrument

This instrument is the *Work Health and Safety (Sexual and gender-based harassment Code of Practice) Approval 2024*.

## 2 Commencement

This instrument commences on 11 November 2024.

## 3 Code of Practice Approval

Under section 274 of the *Work Health and Safety Act 2011* (the Act) and being satisfied that this code of practice was developed by a process described in s274 (2) of the Act, I approve the attached Sexual and gender-based harassment Code of Practice.

Mick Gentleman  
Minister for Industrial Relations and Workplace Safety  
17 July 2024



**ACT**  
Government

# Sexual and gender-based harassment

Code of Practice

August 2024

**Disclaimer**

This code is based on a national model code of practice developed by Safe Work Australia under the national harmonisation of work health and safety legislation and has been approved under section 274 of the *Work Health and Safety Act 2011* (ACT), following the legislated consultation.

This code of practice commenced in the Australian Capital Territory on the date it was published on the ACT Legislation Register.

Safe Work Australia is an Australian Government statutory agency established in 2009. Safe Work Australia includes Members from the Commonwealth, and each state and territory, Members representing the interests of workers and Members representing the interests of employers.

Safe Work Australia works with the Commonwealth, state and territory governments to improve work health and safety and workers' compensation arrangements. Safe Work Australia is a national policy body, not a regulator of work health and safety. The Commonwealth, states and territories have responsibility for regulating and enforcing work health and safety laws in their jurisdiction.

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# Foreword

This code of practice (Code) on sexual and gender-based harassment is an approved Code under section 274 of the [Work Health and Safety Act](#) (the WHS Act).

An approved code of practice provides practical guidance on how to achieve the standards of work health and safety (WHS) required under the WHS Act and the [Work Health and Safety Regulations](#) (the WHS Regulation), and effective ways to identify and manage risks.

A code of practice can assist anyone who has a duty of care in the circumstances described in the code of practice. Following an approved code of practice will assist the duty holder to achieve compliance with the health and safety duties in the WHS Act and WHS Regulation, in relation to the subject matter of the code of practice. Like regulations, codes of practice deal with particular issues and may not cover all relevant hazards or risks. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and WHS Regulation. Courts may regard a code of practice as evidence of what is known about a hazard, risk, risk assessment or risk control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code of practice relates. For further information see the Interpretive Guideline: [The meaning of 'reasonably practicable'](#).

Compliance with the WHS Act and WHS Regulation may be achieved by following another method if it provides an equivalent or higher standard of WHS than the code.

An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice.

## Scope and application

This Code is intended to be read by a person conducting a business or undertaking (PCBU). It provides practical guidance to PCBUs on how to manage health and safety risks arising from sexual and gender-based harassment at work.

This Code may be a useful reference for other persons interested in the duties under the WHS Act and WHS Regulation.

This Code applies to the performance of work and to all workplaces covered by the WHS Act.

**This Code is intended to be read and applied in conjunction with the Code of Practice: [Managing psychosocial hazards at work](#).** Sexual and gender-based harassment often occurs in conjunction with other psychosocial hazards and as a PCBU you must consider the interaction between these hazards when managing risks to the health and safety of workers and others.

## How to use this code of practice

This Code includes references to the legal requirements under the WHS Act and WHS Regulation. These are included for convenience only and should not be relied on in place of the full text of the WHS Act or WHS Regulation. The words 'must', 'requires' or 'mandatory' indicate a legal requirement exists and must be complied with.

The word 'should' is used in this Code to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

# 1. Introduction

## 1.1 What is sexual and gender-based harassment?

This Code addresses a range of harassment and behaviours based on gender and sex that create a risk of harm at work. [Appendix A](#) provides definitions and descriptions of some of these behaviours to assist duty holders to recognise and understand them, including:

- sexual harassment
- sex- or gender-based harassment and discrimination
- hostile working environments on the grounds of sex; and
- gendered violence.

However, WHS laws require PCBU to manage all WHS risks, even where the behaviour is not specifically described in this Code or may not meet definitions or thresholds set by other legal frameworks.

**Sexual harassment** is an unwelcome sexual advance, or an unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature in circumstances in which a person reasonably feels offended, humiliated, or intimidated<sup>1</sup>.

Sexual harassment can be a form of gender-based harassment. The term **gender-based harassment** is used in this Code to describe unwelcome conduct based on a person's gender, sex, or sexuality.

## 1.2 Where may sexual and gender-based harassment occur?

This Code addresses sexual and gender-based harassment at work. A 'workplace' means a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. This means sexual and gender-based harassment at work can happen:

- at a worker's usual workplace
- where a worker is working remotely, including if the person's workplace is their home
- in a place where the worker is undertaking work at a different location (such as a client's home)
- where the worker is engaging in work-related activities such as conferences, training, work trips, work-related events or if you, as the PCBU, host a work-related social activity like a Christmas party
- by phone, email, camera or online (such as through social media platforms)
- by misusing shared workplace technologies (such as shared calendars); or
- at worker accommodation (such as accommodation provided at fly-in, fly-out sites).

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<sup>1</sup> Based on the definition in the [Discrimination Act 1991](#) (ACT).

## 1.3 What might sexual and gender-based harassment look like?

Sexual and gender-based harassment can be a one-off incident or repeated behaviour, and may constitute criminal offences. It can be obvious or subtle.

Examples of these behaviours include:

- actual or attempted rape or sexual assault
- physical assault, abuse or threats targeted at an individual because of their sex, gender or sexuality
- inappropriate physical contact including unwelcome touching, hugging, kissing or cornering
- being followed or watched inappropriately, either in person or via technology
- sexual gestures or indecent exposure
- sexualised comments about a person's appearance or clothing, or derogatory comments because clothing does not conform to an individual's understanding of gender expression
- derogatory, offensive, or demeaning comments about a person because of their sex, sexuality, or gender
- sharing personal information regarding a person's sexuality or gender identity without their consent
- comments, insults or 'jokes' of a sexually suggestive or explicit nature, or which are sexist or gendered
- inappropriate staring or leering that makes a person feel uncomfortable
- deliberately misgendering someone, using incorrect pronouns or deadnaming (calling a person by their birth name when they have changed their name as part of their gender transition) to demean or belittle them
- intrusive questions or comments about a person's private life (e.g. relationship status or gender affirmation experience), physical appearance or bodily functions (e.g. menstruation, anatomy or intersex variation)
- sharing or threatening to share an intimate image or video without consent
- spreading sexual rumours about a person
- sexually explicit images, videos, cartoons, drawings, photographs
- repeated or inappropriate invitations to go out on dates or advances and requests or pressure for sex or other sexual acts
- comments about a person's sexual performance or appearance (e.g. rating people on their sexual desirability); and
- gendered double-standards or different repercussions for the same actions such as excluding a person from training, promotions or opportunities based on their sex, gender or sexuality.

Workers and others may be exposed to sexual and gender-based harassment through verbal communications, including over the phone or video. They may also be exposed to these hazards through written words, pictures, or other imagery, in person or through emails, text

messages, social media, posters and other publications.

Acts such as sexual assault, physical assault, indecent exposure, stalking, sharing intimate images or videos without consent and obscene or threatening communications (e.g. phone calls, letters, emails, text messages, voice messages and posts on social media) may be offences under criminal law. Even where a matter is being investigated by police, the WHS risks must be addressed.

Overt forms of sexual and gender-based harassment may be easier to identify and address. More subtle forms like sexist remarks, crude language and an overall workplace culture that is degrading or intimidating also create a risk to health and safety. However, these forms of harmful behaviours can be more difficult to identify.

Sexual and gender-based harassment can also be behaviour that while not directed at a particular person, affects someone who is exposed to it or witnesses it (such as overhearing a conversation, rumours, seeing sexually explicit posters or homophobic and transphobic material in the workplace).

Sexual and gender-based harassment may come from other workers of the business or undertaking including managers, supervisors, colleagues, or subordinates. It may come from another PCBU or their workers that share premises or work on the same tasks.

It may also come from third-parties such as customers, clients, patients, students, visitors and others. In some contexts, such as behaviour by patients or minors, sexual harassment may be described as sexually inappropriate behaviours. Even where the ‘harasser’ may not be legally culpable for their actions, the WHS risks from the behaviour must still be managed by you as a PCBU.

### **Workers under 18**

Workers who are minors, that is under the age of 18, may be particularly vulnerable to sexual and gender-based harassment. Several factors may make these workers more vulnerable:

- sexual and gender-based harassment is driven by power imbalance. Minors are likely to perceive they have less power than older workers regardless of workplace hierarchy
- minors are likely to have less experience recognising harassing behaviour and may have less confidence to call it out; and
- minors learn workplace norms in their first jobs. If they see or experience harassment in their first workplaces, they may come to believe that such behaviours are appropriate or “normal”.

Sexual behaviour directed at workers under the age of 18 may constitute child-based sexual offences. Children often see grooming behaviours as friendship and may not identify the risks. If you have workers under the age of 18 you must ensure you have identified the hazards they may be exposed to at work and implemented all reasonably practicable control measures.

Control measures could include providing additional supervision, providing training on acceptable behaviours in the workplace, not assigning them to certain tasks and vetting other workers they will work closely with (e.g pre-employment checks or [working with vulnerable people registration](#)). Supervisors to workers who are minors should have a working with vulnerable people registration.

If you suspect sexual behaviour directed at a worker under the age of 18, you should contact child welfare authorities or Police. You, or your workers, may also have mandatory reporting obligations.



## 1.4 Who is affected?

While anyone can experience sexual or gender-based harassment, there are certain groups of people who are more likely to experience it. Men, women, non-binary and gender diverse people experience sexual harassment, however women are significantly more likely to experience it than men, and men are significantly more likely to commit sexual or gender-based harassment than women. Factors which may increase the likelihood of a worker experiencing sexual or gender-based harassment include:

- workers who are new to the workforce
- workers under 30 years of age
- LGBTIQ+ workers
- workers who do not conform to traditional gender stereotypes
- Aboriginal or Torres Strait Islander workers
- workers with a disability
- workers from culturally and linguistically diverse backgrounds
- migrant workers
- workers holding temporary visas; and
- people in insecure working arrangements (e.g. casual or labour hire).

### Interaction and intersectionality

PCBUs must consider how sexual and gender-based harassment will interact or combine with other psychosocial hazards. Intersectional harassment can increase both the likelihood of sexual and gender-based harassment occurring and the severity of harm it can cause.

For example, a migrant worker with a disability is more likely to experience harassment but also may not have the same supports in place to report the behaviour. As such they may be exposed for a longer time increasing the severity of harm.

Gender inequality is a key driver, or underlying cause, of sexual and gender-based harassment at work. Other forms of disadvantage such as power imbalances based on age, sex, gender, sexuality, migration status, race and disability can combine (intersect) and increase a person's exposure to hazards and vulnerability.

This can intensify an individual's experience of harassment and discrimination and is referred to in this Code as intersectional harassment or the intersectional nature of harassment.

Failure to manage and appropriately respond to other forms of harassment and discrimination may encourage a culture of disrespect and increase the likelihood of sexual and gender-based harassment occurring. Workers are less likely to report sexual and gender-based harassment if they perceive other harassment and discrimination, such as bullying and racism, are not appropriately addressed. This may lead to more frequent, prolonged, and severe exposure to psychosocial risks.

The Code of Practice: [Managing psychosocial hazards at work](#) provides information about psychosocial hazards, including other forms of harassment and discrimination.

## 1.5 Impacts of sexual and gender-based harassment

Sexual and gender-based harassment can cause physical and psychological harm to the person it is directed at and anyone witnessing the behaviour. Furthermore, this can lead to significant social and economic costs for workers, their family, their organisation and the wider community. The impacts include:

- decreased job satisfaction, commitment to work and productivity as well as negative impacts on a person's job or career, or financial situation
- pressure on relationships with family, friends, and romantic partners
- emotional and cognitive reactions such as loss of confidence and self-esteem, irritability, anger, tearfulness, and mood swings
- behavioural changes such as withdrawal and substance abuse
- physical injuries as a result of assault, physical reactions such as headaches, indigestion, tiredness and loss of appetite
- illness such as cardiovascular disease, musculoskeletal disorders, immune deficiency and gastrointestinal disorders, and may also contribute to chronic health conditions (e.g. as a result of stress); and
- stress, depression, anxiety, post-traumatic stress disorder (PTSD), self-harm or suicidal thoughts.

### Supporting workers

There are a range of options and assistance available to workers impacted by sexual and gender-based harassment.

When dealing with a report of sexual or gender-based harassment and discussing options, it is important to respect the affected worker's desired outcome and preferred way of managing the incident. This should include consideration of how the disclosure of the complaint may impact the worker.

Workers may also need assistance to access support services. Workers should be provided with a range of options and allowed to seek the support that best suits their needs. [Appendix B](#) provides links to relevant resources.

## 1.6 WHS duties

### WHS Act section 19

Primary duty of care

### WHS Regulation Division 3.2.11

Psychosocial risks

### WHS Regulation Part 3.1

Managing risks to health and safety

A **PCBU** must ensure, so far as is reasonably practicable, workers and other persons are not exposed to risks to their psychological or physical health and safety, including risks from psychosocial hazards such as sexual and gender-based harassment. A PCBU must eliminate health and safety risks at work, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.

PCBUs must formally notify WorkSafe ACT as soon as they become aware of a sexual assault incident (including a suspected incident) in their workplace, under part 3 of the [Work Health and Safety Act 2011](#).

For more information on notifying WorkSafe ACT visit their [website](#).

A range of other duties apply to managing the risk of sexual and gender-based harassment, such as duties for consultation and the duties of officers, workers, and other persons at the workplace.

If you have management or control of a workplace, you have additional duties under WHS laws.

### **WHS Act section 27**

#### Duty of officers

**Officers**, such as company directors, must exercise due diligence to ensure the business or undertaking complies with its WHS duties. This includes taking reasonable steps to ensure the PCBU has and uses appropriate resources and processes to eliminate or minimise risks of sexual and gender-based harassment. For example, ensuring the PCBU has safe systems of work and safe work environments to eliminate or minimise the risk.

### **WHS Act section 28**

#### Duties of workers

**Workers** must take reasonable care for their own psychological and physical health and safety and take reasonable care not to adversely affect the health and safety of other persons. Workers must comply with reasonable health and safety instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to workers. For example, not sexually harassing anyone in the workplace.

### **WHS Act section 29**

#### Duties of other persons at the workplace

**Other persons at the workplace** must take reasonable care for their own psychological and physical health and safety and must take reasonable care not to adversely affect other people's health and safety. For example, a customer in a hospitality venue must not sexually harass staff. They must comply, so far as they are reasonably able, with reasonable instructions given by the PCBU to allow them to comply with the WHS Act and WHS Regulation.

Further details of duties applying to psychosocial hazards including sexual and gender-based harassment can be found in the Code of Practice: [Managing psychosocial hazards at work](#).

### **Other legal frameworks applying to sexual and gender-based harassment**

WHS laws do not operate in isolation and other laws may also apply. For example, workplace relations, criminal, anti-discrimination, privacy and workers' compensation laws.

#### **Positive duty in the Sex Discrimination Act (Respect@Work)**

The Commonwealth *Sex Discrimination Act 1984* (SDA) also includes a positive duty to prevent sexual harassment (and other related unlawful conduct) which operates concurrently with WHS duties. PCBUs must take reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct that is unlawful under the SDA, including:

- sex discrimination in a workplace context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct that amounts to subjecting a person to a hostile work environment on the grounds of sex; and
- certain acts of victimisation.

The PCBU must eliminate, as far as possible, unlawful conduct in the workplace carried out by the PCBU themselves, workers, the PCBU's agents and, in some circumstances third parties such as customers, clients, patients, services users, patrons, suppliers, students, parents, carers and visitors. See the [Australian Human Rights Commission](#) for further information and guidance on the duties under the SDA.

Your obligations under the SDA are in addition to your existing WHS duties as a PCBU. While there are similarities between duties under the SDA and WHS laws, the duties are different. Complying with the SDA requirements alone will not necessarily ensure that you are meeting your WHS duties.

Additionally, part 9 of the ACT's [Discrimination Act 1991](#) establishes a positive duty on an organisation, business, or any individual with organisational management responsibility for an organisation or business, to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification. Under the Act, a positive duty to make reasonable adjustments to accommodate a person's particular needs across all protected attributes (including gender identity, sex and sexuality) under [the legislation](#), will apply.

Sexual harassment and discrimination and/or vilification based on sex, sexuality and gender identity is unlawful conduct under the *Discrimination Act 1991*.

The *Discrimination Act 1991* also makes victimisation an unlawful act. It is unlawful for a person to subject, or threaten to subject, another person to any detriment because the other person has taken discrimination action.

## 2. Risk management process

To meet your duties to ensure health and safety, you, as the PCBU, must eliminate or minimise the risk of sexual and gender-based harassment so far as is reasonably practicable. To achieve this, just as for any other hazard, you can apply the risk management process described in the Code of Practice: [How to manage work health and safety risks](#).



The risk management process involves four steps:

1. **Identify hazards** - find out what could cause harm.
2. **Assess risks**, if necessary - understand the nature of the harm the hazard could cause, how serious the harm could be and the likelihood of it happening. This step may not be necessary if the risks and controls are known.
3. **Control risks** - implement the most effective control measures that are reasonably practicable in the circumstances and ensure they remain effective over time. This means you must:
  - eliminate risks, if reasonably practicable to do so
  - if it is not reasonably practicable to eliminate the risks, minimise the risks so far as is reasonably practicable in the circumstances by assessing the risks and implementing appropriate control measures; and
  - ensure those control measures remain effective over time.
4. **Maintain and review control measures** to ensure they are effective, used correctly and working as planned and make changes as required.

Risk management is a proactive process that helps you respond to change and facilitate continuous improvement in your business. It should be planned, systematic and cover all reasonably foreseeable hazards and associated risks. If control measures are not working effectively, you should repeat the risk management process. In the event of an injury or incident at work, the risk assessment process is essential in identifying whether different or additional measures need to be taken to prevent a recurrence of the injury or incident.

The risk management process may be implemented in different ways depending on the size and nature of your business or undertaking. Larger businesses and those in sectors where workers are exposed to more or higher risks are likely to need more complex, sophisticated risk management and consultation processes to meet their WHS duties.

You should record your risk management process and the outcomes, including your consultation with workers. This allows you to demonstrate you have met your WHS duties and will assist you when you need to monitor or review the hazards you have identified and controls you have put in place. Further information and a template risk register are provided in the Code of Practice: [Managing psychosocial hazards at work](#).

## 2.1 Consulting throughout the risk management process

### CONSULTING WITH WORKERS

#### WHS Act section 47

##### Duty to consult workers

A PCBU must consult with workers and their health and safety representatives (HSRs), if any, at each step of the risk management process. This includes when identifying and assessing the risk of sexual and gender-based harassment and making decisions about what control measures to implement to prevent it from occurring.

All consultation must include any HSRs representing your workers. References to consultation with workers in this Code includes consultation with any HSRs.

Workers may be aware of certain tasks or aspects of their work that place them at risk of sexual and gender-based harassment. Seeking this information from workers can be particularly important when identifying the risk of sexual and gender-based harassment that is subtle or hidden from view.

Workers and their representatives might also have suggestions for practical and effective control measures. For example, workers may have ideas to improve the design and layout of the workplace to minimise the risk of sexual and gender-based harassment. Workers can also help identify if control measures might introduce new hazards or risks to health and safety you may not be aware of.

Consider whether your existing consultation arrangements are appropriate for identifying, assessing, and controlling psychosocial hazards, including sexual and gender-based harassment. You must consult with workers and their HSRs on any changes to agreed consultation arrangements.

You should consider whether your consultation mechanisms are accessible to all workers, particularly those who may be at greater risk of sexual and gender-based harassment, and whether you need additional consultation mechanisms to ensure workers have a range of ways they can choose to contribute their views and concerns. For example:

- focus group discussions (e.g. with workers in specific roles or who undertake specific tasks that may place them at greater risk)
- culturally safe consultation mechanisms to suit your workplace

- translated materials to meet the language needs of workers and interpreters to support consultation
- private and confidential individual discussions; and
- anonymous worker surveys.

Workers may feel more comfortable sharing their views with their HSR, who can then represent the views of workers in their workgroup.

Any personal or confidential information provided during consultation should not be disclosed without the consent of the worker.

In addition to your consultation arrangements, you should establish a separate mechanism for workers to report sexual and gender-based harassment if it occurs. Further detail on reporting and investigation can be found in [Chapter 7](#) of this Code.

## CONSULTING WITH OTHER DUTY HOLDERS

### **WHS Act section 14**

Duties are not transferable

### **WHS Act section 16**

More than 1 person can have a duty

### **WHS Act section 272**

No contracting out

More than one person can have the same WHS duty at the same time. The WHS Act provides that where more than one person has a duty for the same matter, each person retains responsibility to meet their duty in relation to the matter and must do so to the extent to which they can influence and control the matter.

Duty holders cannot transfer their duty to another person or contract out their health and safety duties. Duty holders can make arrangements or agreements with other duty holders to assist with meeting their duties.

### **WHS Act section 46**

Duty to consult with other duty holders

As a PCBU, you must also consult, cooperate and coordinate activities with all other persons who have a WHS duty in relation to the same matter, so far as is reasonably practicable.

For example, you might share a duty if you are involved in the same activities (e.g. your workers interact with workers of other PCBUs in the supply chain), have a duty of care for the same worker or workers (e.g. labour hire agency, host employer and building owner) or share the same workplace (e.g. work site with subcontractors; building foyer in a multi-tenanted building; joint venture mine site).

Consulting, cooperating, and coordinating with other duty holders can help you more easily and effectively control the risk of sexual and gender-based harassment, and assist each of you to comply with your duty. For example, if you engage workers through a labour-hire company, consulting and cooperating as part of contract negotiations can help ensure workers have training on the nature of sexual and gender-based harassment and the control measures in place to prevent it and have clear reporting avenues if they experience it.

Further detail on the duty to consult with workers and other duty holders can be found in the Code of Practice: [Work health and safety consultation, cooperation and coordination](#) and the Code of Practice: [Managing psychosocial hazards at work](#).



# 3. Identifying sexual and gender-based harassment

Sexual and gender-based harassment is a pervasive hazard occurring across all industries and the risk can be present in any workplace.

Identifying hazards is the first step of the risk management process.

As the PCBU you must identify risks of sexual and gender-based harassment to your workers, or to others arising from the work of your business or undertaking.

Identifying the risks of sexual and gender-based harassment involves understanding situations in which it could occur, including:

- when and where (e.g. at the usual workplace; while making deliveries; via email)
- how it could occur (e.g. from contact with customers or the public, or from other workers)
- the potential nature of the harassment (e.g. verbal or physical, overt, subtle); and
- who is likely to be affected.

You must identify where sexual or gender-based harassment is a reasonably foreseeable hazard that could give rise to risks to health and safety. This means identifying where it happens or could happen.

Sexual and gender-based harassment can harm workers both when they are directly exposed to instances of harassment as well as when they are exposed to the *risk* of it occurring. For example, workers exposed to sexual and gender-based harassment are likely to experience stress from the initial incident as well as ongoing stress if they perceive the risk has not been controlled, even if the harassment does not occur again. In this situation, despite the hazard rarely occurring, the stress itself may be prolonged and cause harm.

Overt or severe forms of sexual and gender-based harassment (such as sexual assault) may be easier to identify. However, more subtle forms like crude language, sexist remarks, inappropriate leering or staring may not be reported and can be more difficult to identify.

Sexual and gender-based harassment can come from a range of sources including:

- **Internal** - from other workers however they are engaged (e.g. employees, contractors, subcontractors or volunteers) and at any level (e.g. supervisors or managers, co-workers at the same level or workers below their level); and
- **External** - from third parties such as from customers, clients, patients, residents, students, parents, carers, service providers, businesses (e.g. between a plumbing and an electrical sub-contractor at the same work site; or a delivery person and a retail worker), members of the public or anyone else workers deal with at work.

It may be easier to identify hazards if:

- managers regularly talk to workers about workplace concerns and sexual and gender-based harassment is recognised as a WHS issue





- managers and workers attend training on sexual and gender-based harassment and have a good understanding of what it is and the relevant workplace policies in place to address this conduct; and
- workers feel safe and comfortable to raise concerns about sexual and gender-based harassment or other workplace conduct issues.

## 3.1 Methods of identifying sexual and gender-based harassment

### CONSULT WORKERS

You must consult with your workers and their representatives when identifying the risk of sexual and gender-based harassment at work. This includes consulting on hazards and risks related to the existing work and work environment, as well as risks related to proposed changes to work that affect health and safety.

Consultation should focus broadly on identifying the *risk* of sexual and gender-based harassment. While past instances of sexual and gender-based harassment can help to you to identify when, where, and how harassment might occur, consultation to identify this hazard should be broader. Even where sexual and gender-based harassment has not occurred or been formally reported, there may be situations workers encounter as part of their work which make them vulnerable to it. Workers may be more comfortable engaging in consultation focused on the hazard and risk, rather than past instances. A broader focus on the hazard and risk can also help to manage confidentiality and privacy issues.

Your consultation on other psychosocial hazards, particularly other harmful behaviours such as bullying, harassment and discrimination, may also help you to identify risks of sexual and gender-based harassment.

### COLLECT AND REVIEW DATA AND INFORMATION

Review any relevant information or records you hold that may identify sexual and gender-based harassment. For example, records of past incidents (including grievance and bullying complaints), exit interviews or surveys.

For large and medium organisations that are large enough to assure anonymity, anonymous worker surveys can be an effective way of collecting information on sexual and gender-based harassment where workers do not feel comfortable reporting it or feel the incidents do not warrant reporting, for example, subtle harassment like sexual 'jokes'.

Seek information and advice on the circumstances where sexual harassment may occur in your industry and work activities from the WHS regulator, industry associations, unions, technical specialists, and similar workplaces. Specific advice is particularly helpful in complex or high-risk situations. For example, where workers are exposed to sexual and gender-based harassment from an individual to whom they owe a duty of care (e.g. nurses or teachers).

Understand the worker demographics of your workplace to identify power disparities in working relationships and gaps in knowledge (e.g. gender, role, reporting lines, seniority, locations, tenure, job security, pay and other personal characteristics).

## CONSIDER WORK TASKS AND THE DESIGN OF WORK

Look at the way work is designed including the tasks performed, how and when they are carried out. Some tasks may have higher risks of sexual and gender-based harassment, for example tasks:

- associated with sexist jokes and sexual innuendo
- requiring interaction with customers, clients, patients, or other persons, either face-to-face, on the phone or online
- being performed in remote locations, people's homes or in other work environments where access to support and supervision is not immediately available; or
- involving attendance at conferences, excursions, and social events as part of work duties, including overnight travel.

Consider how work is allocated, including the skills and experience of the workers and the number of workers assigned to a task. Consider how gender stereotypes may impact the risks involved with certain tasks.

For some tasks the risk of sexual and gender-based harassment may be higher if they are done by a single worker (e.g. cleaning an occupied hotel room), whereas other tasks may have a higher risk if two workers are assigned (e.g. cleaning a small, isolated storeroom).

## CONSIDER THE PHYSICAL WORK ENVIRONMENT

Walk through and assess the physical work environment to identify areas where there may be greater risks. For example:

- Are there areas with limited natural surveillance or inadequate lighting (e.g. storerooms, stairwells or facilities for workers such as laundries and gyms)?
- Are there areas that restrict movement (e.g. where workers would need to touch each other to move past) or prevent workers maintaining their personal space?
- Are workers working in isolated areas away from other workers or with limited access to help and support (e.g. in patients' or clients' homes)?
- Are there posters or pictures on display that may make workers uncomfortable, constitute sexual or gender-based harassment, or create a culture that makes harassment more likely (e.g. involving sexism, harmful gender stereotypes, sexual innuendo, objectification or nudity)?
- Are workers in close proximity to clients, customers, or other third parties, including the public? Are amenities, such as bathrooms, in an isolated location or do workers share amenities with customers?
- Are workers required to change clothing or shower at work? If so, are there risks associated with the facilities provided?
- Are workers working from home or other locations which may allow covert sexual and gender-based harassment to occur online or through phone communication?
- Are there any risks associated with worker accommodation (e.g. is it secure, does it provide adequate privacy and are workers required to use communal facilities such as showers and laundries)?

Consider the online working environment if relevant and how work is conducted using technology. Consider the risks of sexual and gender-based harassment occurring through the use of technology such as phone, email, camera, online platforms and shared

workplace technologies such as shared calendars.

## OBSERVE AND CONSIDER WORK AND BEHAVIOURS

Observe how workers and others at the workplace interact. The presence of other harmful behaviours may indicate a risk of sexual and gender-based harassment.

- observe how leaders, managers, supervisors, workers and others interact (e.g. are there poor relationships or do workers avoid being around certain people?)
- identify trends or patterns in behaviour that may highlight areas of concern or affected workers (e.g. think about whether a worker is performing differently, suddenly taking more personal leave, withdrawing from colleagues, not attending work functions, or if a work group has had a number of resignations)
- listen to how workers speak, whether they use crude language, innuendo and offensive 'jokes'; and
- consider whether there is an acceptance of inappropriate behaviour by workers, managers or third parties (e.g. racially or sexually crude conversations, hazing rituals, innuendo or offensive 'jokes' are part of the accepted culture).

## CONSIDER WORKFORCE STRUCTURE, DEMOGRAPHICS AND CULTURE

A risk of sexual and gender-based harassment can exist even in workplaces which have not had incidents in the past or incidents have not been reported. Things that increase the likelihood of sexual and gender-based harassment include:

- workplaces that are male dominated or with gendered segregation along occupational lines
- a workplace culture that makes sexual or gender-based harassment more likely (e.g. a culture that includes or normalises sexism, harmful gender stereotypes, sexual innuendo or nudity)
- tolerance for breaking workplace rules and breaching policies more generally (e.g. breaking rules around the safe use of equipment or the personal use of workplace resources)
- power imbalances along gendered lines (e.g. workplaces where one gender holds the majority of management and decision-making positions or where significant power disparities are present)
- a lack of diversity in the business or undertaking, including rigid gender roles
- workplaces with 'high value' employees (e.g. where the workplace is hesitant to take disciplinary action against harassers due to the potential losses to the business or undertaking)
- workplaces organised according to a strict hierarchical structure (e.g. where there are limited options to identify, report or manage harmful behaviours outside a strict hierarchical structure; workplaces where managers have significant control over workers' careers; where workers are expected to follow directions without question)
- use of alcohol at work activities or work events; and
- poor understanding among workers, including managers and leaders, of the nature, drivers and impacts of sexual and gender-based harassment.

## HAVE A REPORTING MECHANISM AND ENCOURAGE REPORTING

As the PCBU you should establish a mechanism (or mechanisms) for workers to report sexual and gender-based harassment, including reporting by workers who experience, witness, or hear about sexual and gender-based harassment. This should protect the privacy of workers who make reports and allow for anonymous reporting where possible. Your reporting mechanism should suit your business size and circumstances and be proportionate to the risks in your business.

### A lack of reports

As the PCBU you should not rely only on formal reports. A lack of reports does not necessarily mean that sexual and gender-based harassment is not happening. Only a fraction of workers who experience harassment report the conduct.

The absence of reports where sexual and gender-based harassment is likely to be occurring may indicate that existing reporting mechanisms do not meet the needs of workers and need to be changed.

You should seek to address the reasons workers might not report sexual and gender-based harassment. These reasons include:

- workers are not aware of or do not understand what should be reported and how
- processes do not meet the needs and preferences of workers
  - including the processes for making complaints; the handling of complaints and potential outcomes (e.g. a proportionate response; a person-centred approach; an outcome that supports the psychological and physical health and safety of the workers involved)
- workers do not have confidence in how a report would be handled
  - workers are not aware of or do not understand the PCBU's reporting process, including how to report, particularly for workers from a cultural or linguistically diverse background
  - workers have misconceptions about the process (workers view reporting only as a method to punish the harasser and do not understand its role in preventing future occurrences)
  - workers are concerned that the PCBU's processes will not be followed by those handling complaints
  - workers are concerned that reports will be ignored, or they won't be believed; other workers will not provide an accurate account; reports won't be handled respectfully and confidentially; outcomes will not be appropriate; nothing will be done and reporting will make the situation worse; or
  - concern over how information will be handled
- workers are concerned about possible negative impacts of making a report
  - a perpetrator may have organisational power over them (e.g. a manager or supervisor) or is in a position of influence (e.g. a client)
  - they will be blamed or accused of overreacting
  - additional harm to their health and safety from emotional impacts of making a complaint, discrimination, or retribution by management or other workers; or

- negative impacts on their reputation, job or career prospects
- cultural factors and taboos.

In encouraging reporting, you should specifically consider the needs and concerns of vulnerable workers, such as workers who are new and inexperienced, migrant workers, workers who may face intersectional harassment and discrimination, and workers who are in less secure forms of employment.

Workers should be encouraged to report sexual and gender-based harassment and behaviour that causes concern, according to the reporting mechanisms established by the PCBU. You can do this by:

- providing workers with a range of accessible and user-friendly ways to report harassment informally, formally, anonymously and confidentially
- provide multiple points of contacts for reporting harassment (e.g. in case the usual reporting channel is part of the problem)
- addressing the needs and preferences of those harassed where possible, such as offering different options to resolve a request for help or a complaint
- avoiding the use of confidentiality clauses in settlement agreements except where to protect the harassed person. Where used, confidentiality clauses should be as limited as possible in scope and duration
- talking to workers to make sure they understand how to report harassment or behaviours of concern, their right to representation and the support, protection and advice available
- training key workers (contact persons) to receive reports of sexual and gender-based harassment and give support and advice, and training peer-support advocates
- helping workers understand the processes of how reports of sexual and gender-based harassment will be dealt with
- providing a clear process for reporting to organisational leaders and board members
- providing the outcome of any investigation to the individual who reported experiencing harassment
- providing supportive, consistent and, if possible, confidential responses to reports
- ensuring reports and incidents are resolved in a timely and transparent manner with a range of potential proportionate outcomes; and
- implementing systems to prevent retaliation and victimisation of people involved in reports of sexual and gender-based harassment<sup>2</sup>.

### **Discriminatory, coercive, or misleading conduct**

The WHS Act prohibits a person from engaging in discriminatory, coercive, or misleading conduct in relation to a WHS matter. This includes where a worker has raised an issue or concern about WHS, such as reporting sexual or gender-based harassment.

<sup>2</sup> Section 68 of the [Discrimination Act 1991](#) (ACT) makes victimisation an unlawful act.

## 4. Assessing the risks

Once you, as the PCBU, have identified where and when the risk of sexual and gender-based harassment may occur, and who might be affected, you can assess the risk it creates to workers. Consider the duration, frequency, and severity of exposure:

- **Duration** – how long is the worker exposed to the risk?
- **Frequency** – how often is the worker exposed to the risk?
- **Severity** – how severe is the harassment?

You must also consider whether there are other hazards present and how the interaction between hazards may affect the risk.

The risk to workers increases when exposure to hazards is more severe (e.g. exposed to a risk of sexual assault), more frequent (e.g. occurring on every shift), or is longer in duration (e.g. being exposed to the risk for several hours). Frequent or prolonged exposure to forms of sexual harassment that are considered subtle or less serious can have a similar impact on someone's psychological health as a single, 'more severe' incident. Sexual and gender-based harassment can be a one-off incident or repeated behaviour.

The risks also increase when workers are exposed to a combination of the above mechanisms. For example, short term but severe exposure to the risk of sexual and gender-based harassment is more likely to harm workers if they are also exposed to chronic (long duration), but less severe hazards.

In assessing the risk you should consider:

- the effectiveness of existing control measures and whether they control all forms of sexual and gender-based harassment
- how work is actually done, rather than relying on written manuals and procedures; and
- infrequent or abnormal situations (e.g. workers and others not following policies or processes; working unusual hours; manager absences), as well as how things are normally meant to occur.

### 4.1 Intersectional nature of harassment

While anyone can experience sexual or gender-based harassment, there are certain groups who are more likely to experience it. Some workers may be at greater risk because of their sex, gender, sexuality, age, race, migration status, disability, and literacy. The risk of experiencing harm rises when a person faces multiple forms of harassment or discrimination. Workers who experience multiple forms of harassment and discrimination may be less likely to report sexual harassment concerns or incidents.

[Section 1.4](#) of this Code provides further information.



## 4.2 Interaction with other psychosocial hazards

The WHS Regulation requires you to consider how psychosocial hazards may interact or combine.

Sexual and gender-based harassment rarely occur in isolation from other psychosocial hazards. Psychosocial hazards such as high job demands, violence and aggression, poor organisational justice, low job control, poor support, remote or isolated work, and bullying may increase the risk of sexual and gender-based harassment. Workers may be less likely to report harassment risks if other WHS hazards are poorly managed.

Psychosocial hazards interact and combine to change or increase risks. Workers are more likely to be exposed to sexual and gender-based harassment, and that harassment is more likely to cause harm, if they are also exposed to other psychosocial hazards.

Further information is available in the Code of Practice: [Managing psychosocial hazards at work](#).



# 5. Controlling the risk

## WHS Regulation section 36

### Hierarchy of controls

Once you, as the PCBU, have identified and assessed the risk of sexual and gender-based harassment, you are in a position to control the risk in consultation with your workers.

You must eliminate risks to health and safety if it is reasonably practicable to do so. If it is not reasonably practicable to eliminate the risks, you must minimise risks so far as is reasonably practicable using the hierarchy of controls.

The hierarchy of controls ranks control measures from the highest level of protection and reliability to the lowest and requires duty holders to minimise risks by one or more of the following methods:

- **Substitution:** substituting the hazard for something safer
- **Isolation:** Isolating the hazard from people, which can involve physically separating someone from the hazard with a barrier. For example, placing barriers between workers and customers where there is a risk of assault; and
- **Engineering controls:** A control measure that is generally physical in nature, including a mechanical device or process.

Where the hazard and risk remain after implementing substitution, isolation and engineering controls, then **administrative controls** must be implemented to minimise the hazard and risk, so far as reasonably practicable.

You should consider administrative controls last and use them in combination with more effective controls. This is because they are less reliable due to their dependence on human behaviour.

If risk remains after applying substitution, isolation, engineering, and administrative control measures, PCBU's must minimise the remaining risk by ensuring the **provision and use of suitable PPE**, so far as is reasonably practicable.

Every workplace is different. The best combination of control measures to eliminate or minimise the risk of sexual and gender-based harassment in your workplace will be tailored to your organisation's size, type, work activities, location, and workforce.

Information on the process to identify and select reasonably practicable control measures is provided in the Code of Practice: [Managing psychosocial hazards at work](#) and the Interpretive Guideline: [The meaning of 'reasonably practicable'](#).





## WHS Regulation section 55D

### Control measures

The WHS Regulation requires that in determining control measures you have regard to all relevant matters, including:

- the duration, frequency, and severity of the exposure of workers and other persons to the risk of sexual and gender-based harassment
- how sexual and gender-based harassment and other psychosocial hazards may interact or combine
- the design of work, including job demands and tasks
- the systems of work, including how work is managed, organised and supported
- the design and layout, and environmental conditions, of the workplace, including the provision of:
  - safe means of entering and exiting the workplace
  - facilities for the welfare of workers
- the design and layout and environmental conditions of workers' accommodation
- the plant, substances, and structures at the workplace
- workplace interactions or behaviours; and
- the information, training, instruction, and supervision provided to workers.

Further information and examples of these are provided in the sections below. Not all examples will be relevant or reasonably practicable in all circumstances. You must consult with your workers, and their representatives, and consider the circumstances of your work and workplace when making decisions about what control measures to implement to prevent sexual and gender-based harassment.

The most effective way to control a hazard is to not introduce the hazard in the first place. For example, considering the risks and designing the layout of buildings or new processes to avoid introducing hazards. Additionally, part 9 of the ACT's [Discrimination Act 1991](#) establishes a positive duty on an organisation, business, or any individual with organisational management responsibility for an organisation or business, to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.

## 5.1 Duration, frequency, and severity

As the PCBU you must consider how long (duration), how often (frequency) and how significantly (severity) your workers are exposed to psychosocial hazards. This impacts the level of risk. Where it is not reasonably practicable to eliminate the risk of sexual and gender-based harassment, you may be able to minimise the risk by reducing the duration, frequency, and severity of exposure to harassment or the risk of harassment.

For example, you may be able to reduce the severity of exposure by introducing physical barriers to eliminate or minimise the risk of sexual assault, even if you are unable to eliminate the risk of verbal harassment.

Sexual and gender-based harassment is a hazard regardless of whether an incident has occurred. Workers may experience stress whenever there is a risk they may be exposed to harassment (e.g. they are afraid of being harassed). Furthermore, the absence of a previous incident should not be taken to mean that the risk has been managed so far as is reasonably practicable.

The Code of Practice: [Managing psychosocial hazards at work](#) provides further information.

## 5.2 Interaction of psychosocial hazards

As the PCBU you must consider how sexual and gender-based harassment may interact or combine with other psychosocial hazards to increase the risks.

You may be able to minimise the risk of sexual and gender-based harassment by controlling other psychosocial hazards such as low support and poor organisational justice. Controlling these hazards can reduce the likelihood of sexual and gender-based harassment occurring. For example, the psychosocial hazard of low job control may prevent workers adapting the way they work to avoid sexual and gender-based harassment and providing greater job control may reduce the risk of it occurring.

Where you have minimised the risk of sexual and gender-based harassment so far as is reasonably practicable, you may be able to further minimise the risk of *harm* from it by controlling other psychosocial hazards, both by reducing underlying levels of stress and by providing appropriate support to affected workers following an instance of sexual or gender-based harassment.

The Code of Practice: [Managing psychosocial hazards at work](#) provides information on managing psychosocial hazards.

## 5.3 Design of work, including job demands and tasks

When controlling the risk of sexual and gender-based harassment, you must consider whether risks can be eliminated or minimised by changing how work is designed, in consultation with your workers.

Where you have identified a risk of sexual and gender-based harassment associated with particular tasks, consider changing:

- **the task:** for example, provide bar service rather than table service; avoid sales scripts with sexual innuendo and sexualised uniforms where not relevant to the role (e.g. sex work)
- **when the task is done:** for example, empty bins into an outside skip the following morning rather than in darkness or while intoxicated people may be gathered in the area
- **where the task is done:** for example, meet with clients in the office rather than their homes or isolated environments; move tasks to more visible areas of the workplace
- **how the task is done:** for example, deliver services online; do the task with other workers; assign workers to work in pairs or small groups; and
- **skills and capabilities:** for example, ensure project teams have the right mix of skills and gender ratios; assign experienced workers to supervise junior workers.

## Roles with a sexual component

Workers in roles with a sexual component must still be protected from sexual harassment. The definition of sexual harassment includes the elements of conduct being unwelcome, in circumstances in which a person reasonably feels offended, humiliated, or intimidated. Workers in these roles may face increased risks of harassment.

Where a role or task has a sexual component, it is particularly important to consult workers and ensure they are comfortable with, and consent to, the task and how it will be undertaken. For example, using intimacy coordinators in the entertainment industry to ensure actors are safe during intimate scenes; consulting sex workers on the services being offered, and where and how work is done, to manage risks of sexual harassment and sexual assault.

For more guidance regarding the sex work industry, please see the [Sex Work Code of Practice](#).

## 5.4 Systems of work, including how work is managed, organised and supported

As the PCBU you must consider the systems of work when determining control measures. Systems of work are organisational rules, policies, procedures, and work practices used to organise, manage, and carry out work.

Some systems of work may increase the risk of sexual and gender-based harassment. For example:

- working alone without the means to access support from other workers
- personal phone numbers or social media accounts being used for work purposes
- shared calendars among workers being used to track a colleague's movement or daily activities and engage in stalking or other unwanted behaviours
- work video communication platforms being used to take photos without permission or knowledge
- rules which prevent workers leaving a situation before it escalates
- lack of policies to prevent excessive consumption of alcohol at work events; or
- systems that confer a high level of individual authority and discretion on a supervisor or manager (e.g. allocation of overtime, promotion and training opportunities, or delivery of induction training).

It may not always be possible, or reasonably practicable, to design out risks that arise from such systems of work, but you must consider systems of work when controlling the risk of sexual and gender-based harassment.

Well-designed systems of work can control the risk of sexual and gender-based harassment. For example:

- maintain communications with workers working alone (e.g. regularly checking in with workers conducting home visits)
- factor safety into the design and use of any shared workplace technologies (e.g. shared calendars)

- ensure transparent and fair systems for allocation of work and the granting of promotion and training opportunities
- ensure breaks are scheduled to minimise opportunities for people to be left isolated in the workplace for periods of time and locate break areas in an appropriately visible location
- provide managers and supervisors with the authority and resources to implement and effectively maintain control measures. Allocate clear accountabilities for monitoring, reviewing and maintaining controls
- provide systems for workers to get immediate assistance from supervisors and managers if they experience sexual or gender-based harassment or identify an increased risk (e.g. a group of intoxicated and rowdy customers)
- provide appropriate systems to alert workers to information about risks and control measures for patients, students, customers or clients known to present a particular risk of sexual or gender-based harassment
- avoid workers working alone where possible (e.g. work in pairs; have security personnel present at closing time; provide workers a safe escort to their transport)
- avoid workers being alone with third parties where there is a risk of harassment (e.g. patients, students, clients or others)
- where workers work in pairs allow them input on who they are paired with (e.g. allow confidential requests not to work with someone where they have concerns about their behaviour)
- provide multiple avenues for ongoing supervision and support for workers, especially new, young and inexperienced workers
- ensure identified risks, control measures and processes for reporting and responding to instances of sexual and gender-based harassment are widely communicated and regularly reviewed
- allow workers to refuse or suspend service, where they are able to safely do so, if people fail to comply with the expected standard of behaviour and ban them from future service if necessary; and
- establish processes to block or otherwise manage online sexual and gender-based harassment.

## 5.5 Design and layout, and environmental conditions, of the workplace

You, as the PCBU, must consider the design and layout, and environmental conditions of the workplace when controlling the risk of sexual and gender-based harassment.

Poor workplace design and layout can increase the risk of sexual and gender-based harassment. It can create the conditions where harassment can occur more easily, be more severe and go unnoticed. For example, workplaces with poor:

- visibility (e.g. production lines with long distances between workstations and areas of low visibility)
- security and privacy (e.g. workplaces that require workers to change before and after their shifts but do not provide appropriate and secure facilities); and

- layout (e.g. layouts that are adequate for those on day shift but provide less visibility of others during afternoon and night shifts with fewer workers).

Workplace design that accounts for the nature of the work and risks involved, including the risk of sexual and gender-based harassment, can help you ensure workers' safety. For example:

- provide visibility and natural surveillance:
  - ensure factories and warehouses provide for good natural surveillance or install cameras in areas such as stairwells or thoroughfares where workers could become isolated
  - use clear or semi opaque glass or screens to improve natural surveillance in areas such as offices, storerooms and other segregated areas
  - provide variable lighting inside vehicles operated at night to ensure the driver can monitor passenger behaviour without reducing their visibility of the road; and
  - ensure internal and external lighting provides good visibility, including safe entry and exit to the workplace.
- improve security and privacy:
  - prevent public or unnecessary access to areas workers work in alone or at night (e.g. security fences on construction sites, access via a security card or code, asking guests to leave the room while workers clean)
  - install electronically controlled doors with viewing panels that allow surveillance of public areas before the doors are opened from the inside
  - install video surveillance in areas that can be accessed by the public, both as a deterrent and to identify concerns
  - separate workers from the public with fixed or removable barriers (e.g. high counters, furniture, screens on counters or screens between drivers and passengers)
  - ensure vehicles have central locking
  - provide an alternate entrance and exit if there is a risk workers could be followed by customers, clients, or patients; and
  - ensure worker facilities and amenities provide privacy and security (e.g. separate staff toilets where there is a risk of sexual or gender-based harassment from customers or patients and secure change rooms and wash facilities for staff who need to change at work). Consider all-gender/gender neutral bathrooms.
- consider the workplace layout:
  - provide space for workers to conduct their tasks and move about freely without physical contact
  - arrange furniture and partitions within the workplace to ensure good visibility of service areas, improve natural surveillance and avoid restrictions on movement
  - ensure there are no areas where workers could become trapped, such as rooms with keyed locks
  - provide workers with a safe place to retreat to avoid harassment
  - ensure supervisors have visibility of their staff and space and access to provide support when required; and
  - use furniture, barriers, screens, or high counters to separate workers from the public.

- consider the design and layout, and environmental conditions when work is conducted away from the usual workplace:
  - select conference venues with appropriate facilities
  - consider the safety of accommodation used for work trips (e.g. select hotels with secure and private rooms and with safe access to transport and other required amenities)
  - ensure technology used when away from the usual workplace is safe (e.g. monitor apps used to communicate for inappropriate behaviour, allow parties to be locked out of the platform after hours, or use quarantine or filtering functions pending review); and
  - where necessary consult, cooperate and coordinate with other PCBUs such as the owners of hotels or meeting venues to identify and manage risks.

## 5.6 Worker accommodation

When controlling the risk of sexual and gender-based harassment you, as the PCBU, must consider the design and layout and environmental conditions of worker accommodation you own, manage or control. For example:

- ensure worker accommodation is secure, both for the worker while they are occupying it and their possessions while they are temporarily away (e.g. while they are on shift)
- manage the risk of lost or stolen means of access (e.g. lost keys and access cards), ensure each key only opens the necessary room and ensure access can be promptly removed if necessary (e.g. electronic key card access which can be reprogrammed or locks which can be rekeyed)
- provide security personnel on site with regular patrols and security cameras
- provide well-lit access to and from accommodation and areas workers may need to access at night, such as eateries, laundries, or other common areas
- consider the layout and allocation of worker accommodation and common areas
- manage risks associated with shared accommodation and limit who can access accommodation; and
- implement strategies to prevent the misuse of alcohol including intoxication in worker accommodation.

## 5.7 Plant, substances and structures at the workplace

As the PCBU you must consider the plant, substances and structures at the workplace when determining control measures for sexual or gender-based harassment. Plant (e.g. machinery, equipment, appliances and tools), structures and substances used at work can increase or control the risk of psychosocial hazards.

Well-designed and maintained plant and structures can help you to manage risks of sexual and gender-based harassment. For example:

- install and maintain effective communication systems like phones, intercoms and alarm systems



- ensure effective communication systems for workers working alone or in remote or isolated environments
- equip vehicles with devices allowing you to locate drivers in distress (e.g. GPS tracking systems)
- provide lifting equipment to assist in handling patients to minimise the need for close physical proximity
- design structures with sufficient space inside to allow workers to pass without physical contact (e.g. walk in freezers)
- provide equipment to enable patients requiring care to carry out intimate tasks themselves where possible
- select equipment which avoids placing workers in vulnerable positions (e.g. provide mops to clean floors instead of handheld sponges); and
- install software that blocks client communications that use sexually explicit or offensive language and prevents access to explicit web content.

## 5.8 Workplace interactions or behaviours

As the PCBU you must consider workplace interactions and behaviours when determining control measures for sexual or gender-based harassment. The way workers interact with each other and other persons at work, their behaviour and relationships can introduce psychosocial hazards, including the risk of sexual and gender-based harassment. However, supportive leadership, positive relationships and professional and respectful interactions can help to minimise these risks.

Poor organisational culture can hamper efforts to prevent or control the risk of sexual and gender-based harassment by discouraging workers from seeking and providing support, reporting hazards, participating in consultation, and hampering effective implementation of internal policies. Leaders demonstrating poor behaviour are likely to contribute to poor organisational culture. You can minimise the risks of sexual and gender-based harassment by influencing workplace interactions and behaviours.

In managing the behaviours and interactions among workers, you can:

- set, model and enforce acceptable behaviour standards for all people in the workplace
- address inappropriate or harmful behaviours early, even if workers ‘seem ok with it’ or no one raises a concern
- address bullying, aggression, other harassment, discrimination and incivility or disrespect early and appropriately. This not only prevents behaviours escalating, but workers are less likely to report sexual harassment if other harmful behaviours are not addressed
- implement policies and strategies to address gender inequality, lack of diversity and power imbalances at work
- ensure responsible service of alcohol at work-related events; and
- ensure workers understand what they should do if they experience or see sexual or gender-based harassment in the workplace and are aware of and trained on the organisation's policies.

In managing the behaviours of others in the workplace, such as customers, clients, patients, visitors, students, and members of the public you can:

- clearly communicate to clients and customers that sexual and gender-based harassment is not tolerated (e.g. in service agreements, contracts or on signage) and have policies and processes for handling inappropriate behaviours from others in the workplace
- actively address stereotypes or sexual content in your communications (e.g. ensure advertising does not appear to condone sexual harassment of workers)
- ban or refuse service to persons with a history of sexual or gender-based harassment (e.g. patrons at pubs or clients at gyms). If service is necessary, such as for medical care, put in place additional measures to protect workers and others (e.g. requiring attendance at a clinic rather than providing in-home care)
- encourage workers to keep records and screenshots if harmful behaviour occurs online or through phone communication and report the behaviour to their supervisor
- set, model and enforce acceptable behaviour standards for all people in the workplace
- foster a positive and respectful work culture where sexual and gender-based harassment is not tolerated
- implement policies and strategies to address gender inequality, lack of diversity and power imbalances in the business or undertaking; and
- ensure responsible service of alcohol in the workplace or at work-related events and exclude customers who are intoxicated.

## WORKPLACE POLICIES ON HARMFUL BEHAVIOURS

A workplace policy addressing harmful behaviours can help set clear expectations about behaviours at the workplace and during work-related activities. It can provide important information for workers, supervisors, and managers.

Policies alone are administrative controls which may not be the most effective control measure, particularly when used in isolation. However, a policy can be used to document more effective and reliable control measures and ensure information on your controls and processes is transparent and shared with everyone involved. The existence of a policy at a workplace does not in itself manage the risk of sexual and gender-based harassment. PCBU's should demonstrate knowledge of the policy and its implementation to effectively control risks, in combination with other controls.

You may have a separate policy on sexual and gender-based harassment or one policy which covers several WHS issues (e.g. all harmful behaviours, all psychosocial risks or all WHS risks). You may have a sexual and gender-based harassment policy that focuses only on behaviours and interactions at the workplace or incorporate these elements into a broader policy on the business or undertaking's risk management process to prevent sexual and gender-based harassment, including the control measures you have in place.

A workplace policy dealing with sexual and gender-based harassment may include:

- your duties as the PCBU and the duties of all levels of worker, including managers and supervisors
- the process you will follow to manage the risk of sexual and gender-based harassment
- definitions of sexual and gender-based harassment, examples of types of behaviours that are not allowed and a clear statement that sexual harassment is unlawful and is unacceptable wherever and whenever it takes place, including from third-parties such as clients, customers, patients, students, services user, visitors and members of the public
- workplace standards about behaviours, attitudes and language that disrespects or



excludes people based on sex, gender, sexuality or assumptions about gender stereotypes and socially prescribed gender roles

- information about online sexual and gender-based harassment and rules about the appropriate use of social media and technology
- the possible consequences of breaching the policy and how a breach and any sanction will be determined
- what a worker can/should do if they experience or witness sexual or gender-based harassment
- information on the options workers have to report sexual and gender-based harassment
- the process the organisation will undertake when receiving a report or dealing with a concern, including keeping people safe while the matter is dealt with, options for how a complaint can be addressed and when an external or independent third-party may be engaged to investigate; and
- the support services available and referral information for all people involved.

Everyone can, and should, play a role in preventing sexual and gender-based harassment. Workplace policies should be developed in consultation with your workers and their representatives, and all workers must be made aware of the policies and behaviour standards expected of them.

### **Worker Duties**

Workers also have duties under WHS laws. Workers must take reasonable care for their own psychological and physical health and safety, and not adversely affect the health and safety of other persons. Workers must comply with reasonable health and safety instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to workers.

For example, a worker must cooperate with a policy communicated to them stating they must not sexually harass other workers or participate in, encourage, or condone sexual harassment.

## **5.9 Information, training, instruction and supervision provided to workers**

As the PCBU you must consider workplace information, training, instruction, and supervision provided to workers when determining control measures for sexual or gender-based harassment.

Information, training, instruction and supervision may be necessary so control measures can be implemented effectively (e.g. provide training on processes implemented to control sexual and gender-based harassment). Supervision may also directly control some sexual and gender-based harassment risks, for example, providing supervision for workers interacting with patients.

Information, training, and instruction can have two aspects:

- firstly, increasing workers' understanding of, and knowledge and capability to participate in, the risk management process, including implementing and maintaining the control measures the workplace has in place to prevent sexual and gender-based harassment; and
- secondly, influencing worker behaviour in terms of not harassing others and responding appropriately if sexual or gender-based harassment does occur.

Information, training, and instruction should be provided to workers at all levels of an organisation and be easily accessible. It must be provided in a form that can be understood by all workers, for example workers who are culturally or linguistically diverse. Induction and training processes should ensure new workers receive timely training and it should be provided at appropriate intervals (e.g. refresher training).

You should take a trauma-informed approach to training and instruction (e.g. not using detailed or explicit examples of sexual assault in training or asking participants to disclose personal traumatic experiences and including content warnings at the beginning of training where the risk cannot be sufficiently minimised). Information about trauma informed approaches is included in [section 7.3](#) of this Code.

Depending on the size and nature of your business or undertaking, and the risks involved, this may be done by:

- verbally informing and reminding all workers about the workplace policies, procedures, and systems of work
- displaying the policy on notice boards
- publishing the policy on the staff intranet or emailing it to workers
- distributing brochures or displaying posters; and
- providing formal training on preventing sexual harassment, including through induction processes for new workers.

Information, training, instruction, and supervision for sexual and gender-based harassment should be appropriate to the different roles, responsibility, skills and capabilities of your workers.

Information, training, instruction, and supervision to support implementation of control measures may be focused on sexual and gender-based harassment or incorporated into broader induction, policy and procedures training. For example, where the same control measures, such as locking doors, are used to control a range of risks.

Information, training, instruction, and supervision on sexual and gender-based harassment control measures may include:

- providing information on the risks and the control measures you have implemented to prevent and address sexual and gender-based harassment where workers have a role in implementing the controls or ensuring they remain effective (e.g. maintaining safe systems of work)
- training workers on how to deal with difficult customers, students, patients, or clients (including those displaying inappropriate or unlawful behaviour), when and how to escalate issues to senior workers and procedures to report sexual and gender-based harassment; and
- providing information, instruction, and supervision to workers in relation to clients or patients that pose a particular risk, including about the risk and how that risk should be controlled.

Information, training, and instruction on sexual and gender-based harassment can help to build a respectful culture and influence individual behaviour. It may include:

- what sexual and gender-based harassment are and that the behaviour is unlawful - it is important that all workers have a strong understanding of the range of behaviours that can constitute sexual and gender-based harassment
- the nature and prevalence of sexual and gender-based harassment
- that certain forms of sexual and gender-based harassment (e.g. assault, indecent exposure, stalking, sexual assault, and obscene or threatening communication) can be criminal offences and may be investigated by the police
- drivers of sexual and gender-based harassment, including gender inequality, and cultural and systemic drivers
- understanding diversity, including the concepts of gender, sexuality, disability, and cultural and linguistic diversity
- the impact of sexual and gender-based harassment and victimisation, including physical harm, psychological harm, and economic impacts
- workplace policies, including acceptable standards of behaviour, consequences for breaches of the policy and ensuring people involved in complaints will not be victimised
- communication skills and how to respond to sexual and gender-based harassment, including strategies for addressing inappropriate behaviour
- bystander-intervention training so people know what to do if they witness sexual or gender-based harassment
- workers' right to cease unsafe work (including when and how it can be exercised); and
- internal and external reporting mechanisms if sexual or gender-based harassment occur and the support available.

It is important that information is provided regularly and reinforced in systems of work, similar to education about other WHS risks.

## MANAGER AND SUPERVISOR TRAINING

Sexual and gender-based harassment training for managers can:

- provide managers and supervisors with a better understanding of what sexual and gender-based harassment are, their drivers and impacts
- help managers and supervisors contribute to the PCBU's risks management processes
- help managers and supervisors implement the PCBU's policies and procedures to prevent sexual and gender-based harassment
- provide managers and supervisors with the skills to step in and take immediate action if they witness sexual or gender-based harassment occurring in the workplace, or lower-level disrespectful behaviour that creates a risk of harassment; and
- provide managers and supervisors with the skills to respond and support their staff, including through referral to appropriate services, if sexual or gender-based harassment occur.

## CONTACT OFFICER TRAINING

Some organisations have one or more contact officers as a first point of contact for someone who may experience or witness sexual and gender-based harassment at work. Contact officers can provide information and support to workers as well as apply your organisation's policies and procedures when a complaint is raised. You may wish to engage an external contact officer if appropriate.

You should provide training for workers who are or may become contact officers for sexual and gender-based harassment concerns or complaints. Training can help provide contact officers with the knowledge and skills to:

- understand the nature and impacts of sexual and gender-based harassment
- apply effective communication and listening skills, including trauma-informed approaches to sexual and gender-based harassment
- explain options to address concerns and resolve complaints
- explain the legal protections and support available to workers
- determine when a concern or complaint should be escalated; and
- understand the challenges that contact officers might face and how to manage these, including potential impacts on the mental health of contact officers.

## 6. Maintain and review

The last step of the risk management process is to maintain control measures and review their effectiveness to ensure they are working as planned.

As the PCBU you must review and modify or replace a control measure if it is not working effectively.

Reviewing control measures should be done regularly and must be done:

- when the control measure is not eliminating or minimising the risks so far as is reasonably practicable
- before a change at the workplace that is likely to give rise to a new or different health and safety risk that the control measure may not effectively control
- if a new hazard or risk is identified
- if the results of consultation indicate a review is necessary; or
- if a HSR requests a review because they reasonably believe one of the above has occurred and it has not already been adequately reviewed.



Reports and complaints (including informal complaints) from workers may identify new sexual or gender-based harassment risks or risks that have not been controlled so far as is reasonably practicable. This should trigger a review of whether your existing control measures are effective, if your response procedures worked the way they were supposed to and whether new risks have been identified that also need to be managed.

Common review methods include inspecting the workplace, consultation, and analysing reports. You can use the same methods as in the initial hazard identification step to check control measures. You must also consult your workers and their HSRs.

The person reviewing your control measures should have the authority and resources to conduct the review thoroughly and be empowered to recommend changes where necessary.

Questions to consider may include:

- Are control measures working effectively, without creating new or increased risks?
- Have workers reported feeling uncomfortable with other workers, customers, patients, students or clients?
- Have all sexual and gender-based harassment risks been identified?
- Have risks changed or are they different from what you previously assessed?
- Are workers actively involved in the risk management process?
- Are workers openly raising health and safety concerns and reporting problems promptly?
- Has instruction and training been provided to all relevant workers?
- Are there any upcoming changes that are likely to result in a worker being exposed to risks of sexual or gender-based harassment?
- Are new control measures available that might better control the risks?

- Have risks been eliminated or minimised as far as is reasonably practicable?

If the effectiveness of the control measures is in doubt, go back through the risk management steps, review your information, and make further decisions about control measures.

# 7. Investigating and responding to reports

A PCBU's internal WHS investigation should focus on protecting workers and others from harm by identifying whether there is a risk of sexual or gender-based harassment that has not been controlled so far as is reasonably practicable, or there are more effective and reliable control measures available. A WHS investigation does not require a formal complaint.

While a WHS investigation focuses on the risks and control measures, it may need to address the behaviour of individuals, such as whether they have followed health and safety policies that have been communicated to them.

An investigation may itself introduce WHS risks – these risks must be eliminated or minimised so far as is reasonably practicable. This can be done by:

- ensuring the investigation is fair, transparent and timely
- ensuring the investigation is impartial and takes a non-biased approach, especially in environments with a lack of diversity, including in management and leadership
- ensuring decision makers are appropriately trained, unbiased and accountable where they have discretion over reporting and systems
- ensuring due process for both those who raised the issue and any workers who have had allegations made about them
- taking a trauma informed approach (see [section 7.3](#))
- ensuring workers have access to support
- maintaining appropriate privacy and confidentiality of all workers involved; and
- ensuring appropriate information about the outcome of any investigation is provided to the individual who reported experiencing the harassment.

A WHS investigation may occur in parallel with other investigations such as an investigation into whether there has been a breach of employment codes of conduct, professional standards, or other legal frameworks. Workers may also take a complaint to an external body, such as the ACT Human Rights Commission or Women's Legal Centre (see [Appendix B](#)).

## 7.1 Nature of investigation

As a PCBU the nature of your WHS investigation should be proportionate to the risks and suit the circumstances. When deciding the nature of an investigation consider the:

- level of risks involved
- complexity of the situation; and
- number of workers involved or affected.

A formal investigation may not always be the most effective option. For example, the best response to a first incident of a worker using inappropriate language may be immediate informal discussions with the workers involved. The earlier problems can be identified and addressed, the less likely a formal and complex investigation will be required.

Whether a formal investigation is conducted should also be considered carefully in the context of other workplace laws and discrimination laws in order to preserve the viability of any external complaints process.

Small businesses may require assistance if a matter is complex or has a high risk. You can seek advice from your industry body or a WHS expert.

While WHS investigations are not focused on individual actions but on the risks to health and safety from the actions, they should still take a trauma informed approach.

## 7.2 Selecting an investigator

It is important to find an investigator who is likely to have the confidence of all parties involved where possible. They should be impartial and have the skills and knowledge, such as cultural competency, to identify sexual and gender-based harassment, assess the risks and recommend appropriate controls.

An external investigator may be required if an impartial internal investigator is not available, for example where a matter involves an allegation about the behaviours of a senior manager. When selecting an external investigator, you should ensure they have the expertise and knowledge to conduct investigations in a trauma informed way, and that they do not have any conflicts of interest.

## 7.3 Trauma informed approach

The concept of a trauma-informed approach means workplace systems recognise and acknowledge that worker experience of trauma may impact how those experiencing trauma from sexual and gender-based harassment or with a history of trauma interact with systems and processes. For example, trauma may impact how a worker responds or recalls events and can describe them to an investigator. A trauma informed approach to investigation procedures and practices supports workers trust and participation. This can include principles of:

- **Safety**, both physical and emotional (e.g. Does the investigation process consider the emotional safety and wellbeing of affected individuals, or is the process likely to distress someone with a history of trauma? Does the process ensure the affected person is protected against retaliation, re-victimisation and re-traumatisation?)
- **Trust** (e.g. Is the process sensitive to people's needs, empowering to affected individuals, offering some flexibility and opportunity for choice where reasonably practicable? Are workers supported to make informed choices, given timely information about the process/their rights? Does the process offer suitable support for the affected person?)
- **Equity and respect** (e.g. Does the process ensure interpersonal respect, acknowledge diversity in all its forms and is it inclusive? Does the process ensure all parties are kept informed in a timely and consistent manner throughout the process and ensure all parties are listened to with empathy and without judgment?)
- **Hope** (e.g. Does the process assume optimism and the possibility of recovery and resolution?)



## 7.4 Confidentiality

It is important that PCBUs develop supportive environments where workers feel safe to raise sexual and gender-based harassment risks and disclose instances of harassment, including as part of an investigation. All workers should be made aware of any mandatory reporting or disclosure obligations that apply to you as the PCBU or employer, either under relevant laws or as part of the worker's employment contract, that may limit confidentiality. Workers should be made aware of how their personal information will be managed and protected when making a report as well as external options to make a complaint.

Confidentiality clauses in settlement agreements should not be used in a way that creates a WHS risk and must not be used in a way that prevents identification and management of risks to WHS. For guidance on the use of confidentiality clauses in the settlement of a workplace sexual harassment matter see the [Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints](#).

# 8. Leadership and culture

## 8.1 Leadership

Leaders have an important role in creating safe and respectful workplaces that are proactive in managing the risks of sexual and gender-based harassment. Leadership in health and safety is more than talking about it or making statements of your commitment. To manage WHS risks from sexual and gender-based harassment leaders should ensure they understand:

- the prevalence, nature, and drivers of sexual and gender-based harassment
- where there are risks of sexual and gender-based harassment in their workplace; and
- how the risks are being controlled or if they are not, what controls need to be implemented.

Leaders should ensure the organisation has effective communication processes to maintain their awareness and understanding of risks in the workplace.

They should take proactive steps to ensure the business or undertaking has effective governance arrangements to allow it to address sexual and gender-based harassment and that the resources required are provided. Their commitment to preventing sexual and gender-based harassment should be demonstrated in the organisational priorities they set and the way they choose to measure the organisation's success. They should ensure this commitment is effectively communicated across the organisation.

They should ensure that WHS management and human resources policies and strategies are well aligned and appropriately integrated. For example, human resources policies and approaches to recruitment, performance management, misconduct, promotion, accountability, and support will impact the effectiveness of WHS risk management.

Leaders set the standard for acceptable behaviour within an organisation. They should model attitudes and behaviours that show respect for all workers and actively call out and address inappropriate behaviour.

### OFFICER DUTIES UNDER WHS LAWS

Senior leaders who are **officers** under the WHS Act, such as company directors, have a duty to exercise due diligence to ensure the PCBU complies with its duties under the WHS Act and WHS Regulation. For sexual and gender-based harassment, this means the officer must take reasonable steps to:

- have effective consultation, coordination, and cooperation processes. For example, periodically visits sites to talk with workers and supervisors about hazards
- acquire and keep up-to-date knowledge of WHS matters, including sexual and gender-based harassment. For example, by attending information sessions such as conferences, reading relevant publications and journals, and requesting and reading internal information and reports
- gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the sexual and gender-based harassment risk associated with those operations
- ensure the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise the risk of sexual and gender-based harassment from work carried out by the business or undertaking

- ensure the PCBU has appropriate processes for receiving and considering information regarding incidents and risk of sexual and gender-based harassment and responding in a timely way to that information
- ensure the PCBU has, and implements, processes for complying with any duty or obligation they have under the WHS Act and WHS Regulation. For example, takes active measures to ensure that the PCBU is complying with its duties, such as requesting information on risk assessments and incident notifications rather than waiting for information to be provided; and
- verify the provision and use of the resources and processes mentioned above and that they are performing effectively. For example, checks the approach to systematic WHS management and key performance indicators are appropriate, seeks out their own information on the organisation's WHS performance, and insists that reports are provided to them promptly and their feedback actioned.

For information on officers and their duties see the Interpretive Guideline: [The health and safety duty of an officer under section 27.](#)

## 8.2 Culture

Organisational culture is made up of:

- the values and behaviours that workers share and show; and
- the shared attitudes and beliefs in the workplace's written and unwritten rules.

Good organisational culture recognises that diverse and inclusive workplaces lead to better outcomes in all aspects of an organisation's work.

If workers know their leaders place high importance on, and demonstrate, appropriate and respectful behaviour, it becomes part of everyday work.

Workers are more likely to:

- display appropriate behaviours
- ensure sexual and gender-based harassment is identified as a health and safety issue
- feel safe to report sexual and gender-based harassment; and
- make preventing and addressing sexual and gender-based harassment part of the organisation's culture.

An organisational culture that tolerates or accepts workplace sexual and gender-based harassment can contribute to the prevalence of such harassment.

It is important to understand your organisational culture. This can be achieved by assessing the existing culture to understand the values, attitudes, beliefs, and behaviours regarding sexual and gender-based harassment. This can be done by consulting workers and through surveys, focus groups, workplace observations and speaking with workers.

Leadership has an important role in changing an organisation's culture to be one that prevents sexual and gender-based harassment and there are a range of practical measures you can take. For example:

- not displaying and actively removing inappropriate images in the workplace (e.g. inappropriate calendars or advertisements)
- ensuring the organisation's performance management, recruitment and promotion

policies and practices place value on respectful behaviour and diversity

- ensure, in consultation with workers, uniforms and advertisements do not sexualise workers unless an integral part of the role i.e. sex work
- take reports of sexual and gender-based harassment seriously and respond in a prompt and supportive way in keeping with organisational policies
- ensure social activities are inclusive and appropriate
- ensure your workplace policies reflect the culture you wish to establish and set a clear standard for appropriate behaviour
- empower workers to refuse, restrict or suspend service if people fail to comply with the expected standard of behaviour
- celebrating diversity by, for example, marking days of significance such as Wear it Purple Day or International Women's Day
- ensure managers and leaders hold regular informal or formal discussions about the importance of health and safety issues including sexual and gender-based harassment in the workplace; and
- train workers on the nature, drivers and impacts of sexual and gender-based harassment as part of induction training and regular training.

# Appendix A – Glossary – Gender-based harmful behaviours

## **Sexual harassment**

Sexual harassment is an unwelcome sexual advance, or an unwelcome request for sexual favours, or other unwelcome conduct of a sexual nature in circumstances in which a person reasonably feels offended, humiliated, or intimidated.

## **Sex- or gender-based harassment**

Sex- or gender-based harassment is any unwelcome conduct of an offensive or demeaning nature by reason of the person's gender, sex, or sexuality, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

## **Hostile working environments**

A hostile work environment is an environment that is offensive, intimidating or humiliating to a person because of their sex or characteristics linked to their sex<sup>3</sup>

## **Discrimination**

Discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics. This can include direct or indirect discrimination on the basis of sex, gender or sexuality<sup>4</sup>.

## **Gendered violence**

Gendered violence is a broad term that captures any behaviour directed at any person or that affects a person because of their sex, gender, or sexuality, or because they do not adhere to socially prescribed gender roles. For example, this includes violence targeted at someone because they identify as lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQ+).

Socially prescribed gender roles are society's traditional ideas about how men and women should look or act, what characteristics they should have, or their roles in the workplace, home, or public life.

## **Misgendering or deadnaming**

Purposely misgendering, focusing on a person's birth-assigned sex or purposely deadnaming a person (deadnaming means using a person's former name without their consent) can be a form of discrimination or harassment if it is done in a manner that indicates hostility.

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<sup>3</sup> Definitions of sex-based harassment and hostile working environments are based on definitions in the *Sex Discrimination Act 1984* (Cth). Definition of sexual harassment based on the definition in the *Discrimination Act 1991* (ACT).

<sup>4</sup> A person *directly* discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes (e.g gender, sex or sexuality).

A person *indirectly* discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes. See the [Discrimination Act 1991](#) (ACT).

**Intersectional harassment**

Intersectional harassment is when someone experiences harassment or discrimination based on multiple aspects of their identity, such as their race, gender, disability, sexual orientation, or social class.

**Positive Duty**

Part 9 of the ACT's [Discrimination Act 1991](#), establishes a positive duty on an organisation, business, or any individual with organisational management responsibility for an organisation or business, to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.

# Appendix B – Resources

There are a range of avenues to address sexual harassment at work and to access support.

Even where sexual harassment is being addressed through another avenue, PCBUs must manage the WHS risk to ensure the health and safety of their workers and others, so far as is reasonably practicable.

## ACT WHS REGULATOR

[WorkSafe ACT](#) is the ACT's work health and safety regulator and is responsible for enforcing compliance with WHS laws.

PCBUs must formally notify WorkSafe ACT as soon as they become aware of a sexual assault incident in their workplace, under part 3 of the *Work Health and Safety Act 2011*. For more information on notifying WorkSafe ACT [visit their website](#).

## POLICE

If you believe workplace sexual harassment involves criminal conduct, including actual or attempted sexual assault, you can report the matter to police.

The Police Assistance Line operates 24 hours a day, 7 days a week and allows the reporting of crime over the phone with the information being made immediately available to your local police.

Phone: 131 444 (in cases of emergency, please call 000)

Website: [www.aic.gov.au/contact-us/report-crime](http://www.aic.gov.au/contact-us/report-crime)

## HUMAN RIGHTS AGENCY

Human rights agencies can investigate reports about human rights breaches and discrimination, including workplace sexual harassment:

[ACT Human Rights Commission](#)

## FAIR WORK COMMISSION

If you are a worker and have been treated unfairly or punished by your employer because you reported sexual harassment, you may be able to make a complaint to the Fair Work Commission.

In certain circumstances, they also have the power to issue a 'stop sexual harassment order' to try to stop the harassment from continuing. For more information or to check your eligibility, contact the Fair Work Commission.

Phone: 1300 799 675

Website: [fwc.gov.au](http://fwc.gov.au)

## FAIR WORK OMBUDSMAN

The Fair Work Ombudsman is Australia's national workplace relations regulator. It provides employees and employers with information and advice about workplace entitlements and obligations.

The Fair Work Ombudsman can provide general information about protections from sexual harassment, preventing and managing sexual harassment in the workplace.



Phone: 13 13 94 Website: [fairwork.gov.au](http://fairwork.gov.au)

## WORKERS' COMPENSATION

If a worker sustains a physical or mental injury from workplace sexual harassment requiring medical attention or time off work, they may be able to access worker's compensation.

The [WorkSafe Act website](#) provides further information on how to make a workers compensation claim. Note- WorkSafe ACT does not provide workers' compensation insurance or have a role in making decisions on claims.

## MENTAL HEALTH SUPPORT

There are a range of mental health bodies that can provide individual support to workers.

The National Mental Health Commission provides a list of organisations providing mental health support.

Website: [www.mentalhealthcommission.gov.au/find-support](http://www.mentalhealthcommission.gov.au/find-support)

## DOMESTIC, FAMILY AND SEXUAL VIOLENCE RESOURCES

1800RESPECT is the national domestic, family and sexual violence counselling, information and support service. It can be contacted on 1800 737 732 or via online chat at [www.1800respect.org.au](http://www.1800respect.org.au)

[Canberra Rape Crisis Centre](#) provides sexual assault counselling, crisis support, advocacy, conducts community education and facilitates support groups. An Aboriginal Outreach support worker is available for women and children.

Phone: (02) 6247 2525

[Forensic & Medical Sexual Assault Care \(FAMSAC\)](#) provides forensic examination and medical care following sexual assault. This should be attended to as soon as possible. A doctor is on call 365 days a year, 24 hours a day for cases of recent sexual assault.

[Domestic Violence Crisis Service](#) provides information, support, referral, and counselling service for individuals in crisis affected by domestic violence.

Phone: (02) 6280 0900

[Domestic Violence and Protection Order Unit \(Legal Aid\)](#) this area of the Magistrates Court provides individuals assistance with Domestic Violence and Personal Protection orders.

Phone: (02) 6217 4299

[Victim Support ACT](#) provides victims of crime with counselling and other support services. Also provides information on your rights and entitlements, as well as advocacy and assistance with the criminal justice system.

Phone: 1800 822 272

### [Women's Legal Centre ACT](#)

Women's Legal Centre helps women on low incomes with their legal issues, including domestic and family violence. Aboriginal women run the Mulleun Mura Program and can help Indigenous women and families get legal help.

Phone: (02) 6257 4377 or 1800 634 669