



Prevention of sexual harassment in the workplace

Background

In March 2020 the Australian Human Rights Commission released the Respect@Work: Sexual Harassment National Inquiry Report.¹ Its overarching recommendation is that more must be done to eliminate and prevent sexual harassment in the workplace and that the world of work must reform at all levels to achieve real change.

The 2018 National Survey on Sexual Harassment² provides a clear picture of the pervasiveness of sexual harassment in Australian workplaces. The results indicate that 33% of people who had been in the workforce have experienced workplace sexual harassment. Almost two in five women (39%) and just over one in four men (26%) have experienced sexual harassment in the workplace in the past five years. Aboriginal and Torres Strait Islander peoples were more likely to have experienced workplace sexual harassment than people who are non-Indigenous (53% and 32% respectively).³

Gender inequality is the key power disparity that drives sexual harassment. Other forms of discrimination and disadvantage that create power imbalances in the workplace and in society can also drive sexual harassment.

Eliminating sexual harassment in the workplace requires more than having a policy and complaints mechanism in the workplace. It requires workplace culture that makes it clear that any form of sexual harassment is unacceptable and will not be tolerated. Employers must create workplaces where it is safe for workers to report sexual harassment and ensures people who have experienced sexual harassment do not experience negative consequences as a result of reporting.

The Sex Discrimination Act⁴ and state/territory anti-discrimination laws make sexual harassment unlawful in certain areas of public life, including employment. Certain types of sexual harassment are also criminal offences.

Definition

Sexual harassment is any unwanted or unwelcome sexual behaviour where a reasonable person would have anticipated the possibility that the person harassed would feel offended, humiliated or intimidated. It can be physical, verbal or written (including electronic communication). It can occur between a worker and anyone whom the worker comes in contact with through work, including managers, colleagues, patients, clients, residents and their families, visitors and volunteers.

Examples of sexual harassment include:

- comments about a person's private life or the way they look;
- sexually suggestive behaviour, such as leering, staring or unwelcome touching;
- brushing up against someone, touching, fondling or hugging;
- sexually suggestive comments or jokes;
- displaying sexually suggestive screen savers, photos, calendars or objects around the workplace;
- repeated requests for social engagements outside of the workplace;
- requests for sex; and
- communicating content of a sexual nature (such as pornography or rude jokes) through email, text messages or posts on social networking sites.



It is the policy of the Australian Nursing and Midwifery Federation that:

1. All members of the nursing and midwifery workforce have a right to be treated with respect, dignity and as equals.
2. Employers have a positive duty to take reasonable and proportionate measures to eliminate sexual discrimination, harassment and victimisation in the workplace.
3. Employers must have an organisation wide framework of prevention and response to sexual harassment across the following domains:
 - a. **Leadership** - the development and display of strong leadership, that contributes to cultures that prevent workplace sexual harassment.
 - b. **Risk assessment and transparency** - greater focus on identifying and assessing risk, learning from past experience and transparency, both within and outside of workplaces about sexual harassment, to mitigate the risk it can pose to businesses. This can help improve understanding of these issues and encourage continuous improvement in workplaces.
 - c. **Culture** - the building of cultures of trust and respect, that minimise the risk of sexual harassment occurring and, if it does occur, ensuring it is dealt with in a way that minimises harm to workers. This includes the role of policies and human resources practices in setting organisational culture.
 - d. **Knowledge** - new and better approaches to workplace education and training, to demonstrate an employer's commitment to addressing harassment and initiate change by developing a collective understanding of expected workplace behaviours and processes.
 - e. **Support** - prioritising worker wellbeing and provision of support to workers, including before they make a report, as well as after they report and during any formal processes.
 - f. **Reporting** - increasing the options available to workers to make a report of workplace sexual harassment and address barriers to reporting, and creating new ways for business owners and employers to intervene to address sexual harassment, other than launching a formal investigation. Adopting a victim-centred approach to the way investigations are conducted when a report is made can minimise unnecessary harm to workers.
 - g. **Measuring** - the collection of data at a workplace-level and industry-level, to help improve understanding of the scope and nature of the problem posed by sexual harassment. This includes understanding the prevalence, nature and impacts of workplace sexual harassment as well as the effectiveness of workplace initiatives designed to address it.
4. To support the above framework employers must have a policy for the elimination of sexual harassment in the workplace that:
 - a. Includes a statement that sexual harassment in the workplace is unacceptable and will not be tolerated.
 - b. Acknowledges that the employer has a legal obligation to eliminate sexual harassment and victimisation and that this is a positive duty.
 - c. Acknowledges that sexual harassment is driven by gender inequality.
 - d. States the employer's commitment to providing workers with a safe working environment and the standard of behaviour that all workers and others in the workplace (such as clients or contractors) are expected to comply with.



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- e. States what will happen if the policy is not complied with, including any workplace action that may be taken if sexual harassment is found to have occurred.
- f. States how and where to report sexual harassment and the available options which should include self-management, informal and formal internal processes, and formal external complaint options.
- g. Includes a clear statement that the safety and wellbeing of the person disclosing or formally reporting sexual harassment is the employer's priority.
- h. Includes information about external agencies that can provide advice, information and support and support on sexual harassment, including that people who experience sexual assault can report their experience to the police.
- i. States when the policy will be reviewed.

Complaints process

5. In conjunction with the policy employers must have a process for making complaints or reporting incidents of sexual harassment. The complaints process should:
 - a. List who a report or complaint can be made to, offering options to report to a range of people in different roles, for example, any supervisor or manager, human resource personnel, a contact officer, a health and safety officer, union representative or the board.
 - b. Provide for complainants to report to someone outside of their business unit, for example, where the respondent is their manager or a member of the leadership team. The contact details of equal opportunity contact officers, health and safety officers, union representatives and external agencies, such as the Commission, should be included in the procedure.
 - c. Not place a time limit on when a complaint or report can be received. Workers should be encouraged to make timely complaints, while being reassured that they will not be criticised or treated poorly because of any delay.
 - d. Provide that complaints can be made by the person or persons experiencing sexual harassment or by a representative, including a union representative, on behalf of an individual or a number of individuals.
 - e. Provide that reports can be made by bystanders within a workplace who observe sexual harassment in the workplace and offer bystanders the same mechanisms and supports as primary complainants.

Development and communication of policy and complaints procedures

6. Workplace policy and complaints procedures in relation to sexual harassment must be:
 - a. Developed in consultation with workers, Health and Safety Representatives (HSRs), Health and Safety Committees and union representatives.
 - b. Made accessible to workers and be easily understood. Where appropriate it must be translated into languages spoken and read in the workplace.
 - c. Included in orientation kits or resource folders on the intranet or internet or displayed around the workplace. It should also be accessible to workers out of the office, for example, on sick leave.



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- d. Incorporated into induction and ongoing education and professional development programs. Workplace training, information or education on sexual harassment should include guidance on the employer's complaints and reporting procedures. Providing education to help staff have conversations about sensitive topics like sexual harassment will also support workers to use complaint processes.

Employer obligations

7. Employers have an obligation to provide workers with a working environment that is free from the risk of sexual harassment by:
 - a. Creating obligations at all levels of management to be leaders in modelling behaviour that discourages sexual harassment and that promotes gender equality, trust and respect in the workplace.
 - b. Encouraging workers who have experienced sexual harassment to feel safe to make reports or complaints.
 - c. Training managers to ensure they know what to do if they see, experience, or have a worker approach them about sexual harassment.
 - d. Encouraging workers, visitors, patients or clients who witness sexual harassment to speak up against the behaviour and to follow procedures provided in policy.
 - e. Making clear that sexual harassment instigated by visitors, family members, friends, patients and clients of health and aged care services is not acceptable and will not be tolerated.
 - f. Internal/external reporting of incidents of sexual harassment as required
 - g. Ensuring continuous risk assessments are conducted to identify and minimise the risk of sexual harassment in the workplace. Risk assessments should address both cultural and physical factors that may increase the risk of sexual harassment occurring. Risk assessments must be conducted in consultation with workers, HSRs and health and safety committees.
 - h. The risk assessment process should include :
 - (i) identifying hazards
 - a. factors that can contribute to sexual harassment include:
 - power imbalances along gendered lines
 - workplace culture that supports sexual harassment including where lower level (but still unacceptable) forms of harassment are accepted
 - isolated worker or remote work locations
 - worker interactions with members of the public
 - b. areas of concern can be identified by
 - walk through and inspection of physical environment
 - consideration of work practices including work with minimal supervision
 - observation of workplace culture
 - observation of how workers communicate and interact with one another



- staff surveys
 - exit interviews
- (ii) assessing risks
- a. after identification the hazards, assess risks to health and safety
- (iii) controlling risks
- a. providing safe physical work environment and safe work systems
 - b. addressing unwanted or offensive behaviour early
 - c. regular communication with workers
 - d. regular evaluation of work practices in consultation with workers and representatives
 - e. implementation of workplace behaviour policies and promoting respectful and inclusive workplace cultures from all levels of staff
 - f. using information, instruction, training and supervision to support overall prevention strategy
- (iv) monitoring and reviewing effectiveness of control measures.
- i. Being transparent in reporting incidents of sexual harassment and measures taken in response to address incidents and remove risk of sexual harassment. Ensuring organisational reporting must be de-identified and ensuring the privacy and confidentiality of complainants.
 - j. Ensuring that where parties enter a settlement arising from a complaint of sexual harassment that involves parties signing a non-disclosure agreement that such an agreement reflects best practice and does not preclude organisations from obligations to report incidents of sexual harassment as set out in paragraph 7(esh).

The ANMF considers sexual harassment to be a serious work, health and safety issue and supports a risk management and preventative approach, in consultation with workers, HSRs and health and safety committees, in accordance with relevant jurisdictional work, health and safety legislation.

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References

1. Australian Human Rights Commission (2020). *Respect@Work: National inquiry into sexual harassment in Australian workplaces*. Sydney: AHRC. Available at <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>
2. Australian Human Rights Commission (2018). *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*. Sydney: AHRC. Available at <https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>
3. Ibid. p 8.
4. *Sex Discrimination Act 1984*. Available at: <https://www.legislation.gov.au/Details/C2018C00499>

This policy should be read in conjunction with the ANMF Prevention of occupational violence and aggression in the workplace Policy, available at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>