

# Policy and strategy guidance: Sexual harassment, harassment on the ground of sex and discrimination

## Disclaimer:

*The ideas and suggestions contained within this guide are used or adopted entirely at the discretion and own risk of employers. The Workplace Gender Equality Agency (WGEA) cannot accept any responsibility or liability for outcomes resulting from the use of this document, either directly or indirectly.*

*This resource **does not** provide specific guidance on how employers can comply with other legislative obligations, including but not limited to:*

- *positive duty obligations under the Sex Discrimination Act 1984 (Cth)*
- *obligations under work health and safety laws*
- *obligations under workplace or industrial relations laws, such as the Fair Work Act 2009 (Cth)*
- *obligations under any state or territory anti-discrimination laws.*

## About this guide

This guide refers to [Gender Equality Indicator \(GEI\) 6: Sexual harassment, harassment on the ground of sex or discrimination](#). The GEIs represent the key areas where workplace gender inequality persists and where progress towards gender equality can be achieved through focused action. This guide is designed to help employers develop a sexual harassment, harassment on the ground of sex and discrimination **policy** or **strategy** that supports gender equality in the workplace.

Please see WGEA's [Reporting Guide](#) for general information on policies and strategies.

## Key terms

### Sexual harassment

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'.

Sexual harassment can also occur in a sexually charged or 'hostile' work environment, even if the conduct is not directed at a specific person.

Examples of sexual harassment include:

- inappropriate physical contact
- unwelcome touching, hugging, cornering or kissing
- intrusive questions about a person's private life or physical appearance
- sexually suggestive comments or jokes that offend or intimidate
- unwelcome conduct of a sexual nature that occurs online or via some form of technology, including on virtual meetings
- actual or attempted rape or sexual assault.

For a comprehensive list of examples, see Respect@Work, [Defining workplace sexual harassment](#).

## Harassment on the ground of sex

Harassment on the ground of sex, or sex-based harassment, is 'any unwelcome conduct of a seriously demeaning nature by reason of the person's sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated'.

Examples of harassment on the ground of sex include:

- asking intrusive personal questions based on a person's sex
- making inappropriate comments and jokes to a person based on their sex
- displaying images or materials that are sexist, misogynistic or misandrist
- making sexist, misogynistic or misandrist remarks about a specific person
- requesting a person to engage in degrading conduct based on their sex.

Harassment on the ground of sex and sexual harassment can occur in combination, but the behaviours constituting each differ in nature.

## Discrimination

There are two kinds of discrimination that can occur in the workplace: [direct and indirect](#).

**Direct 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 includes, for example, an employer refusing to hire a suitably qualified candidate based on their gender.

**Indirect discrimination** happens 'when an unreasonable rule or policy applies to everyone but has the effect of disadvantaging some people because of a personal characteristic they share'. For example, a policy outlining that only full-time employees are eligible for promotion could discriminate against women, who are more likely than men to work part-time to manage their caring responsibilities.

## Workplace

A workplace is any place where work is carried out for a business or undertaking, and any place where a worker goes or is likely to be while at work. Sexual harassment can take place in a worker's usual workplace; where a worker is working remotely, including at their home; in clients' offices or homes; during work-related activities such as conferences, work trips, training or work-related social activities; and online (including by email) or by phone.

Sexual harassment can be perpetrated by employers, supervisors, co-workers, clients, customers and patients. It can take place outside of work hours.

# Why is preventing sexual harassment, harassment on the ground of sex and discrimination important for workplace gender equality?

Sexual harassment, harassment on the ground of sex and discrimination reflect and reinforce gender inequality in the workplace, and women and gender-diverse people are more likely to experience sexual harassment in the workplace than men.

Employers have a positive duty to prevent unlawful behaviours, including sexual harassment, harassment on the ground of sex and discrimination in connection with the workplace, under the *Sex Discrimination Act 1984* (Cth). Sexual harassment is also prohibited under the *Fair Work Act 2009* (Cth).

The positive duty under the *Sex Discrimination Act 1984* complements the positive duty existing under model work health and safety laws: a person conducting a business or undertaking must do all that they can to eliminate or minimise the risk of sexual harassment at work.

Workplaces can use formal policies and strategies to encourage cultural change and create a workplace culture that promotes gender equality and prevents sexual harassment, harassment on the ground of sex and discrimination.

For more information on positive duty and work health and safety obligations, see:

- [The positive duty under the Sex Discrimination Act | Australian Human Rights Commission](#)
- [The prohibition on workplace sexual harassment | Fair Work Commission](#)
- [Workplace sexual harassment | Safe Work Australia](#)

## Sexual harassment, harassment on the ground of sex and discrimination policy inclusions

The below table lists potential policy inclusions by topics relevant to a sexual harassment, harassment on the ground of sex and discrimination policy.

Topic	Inclusions
Expected standards of behaviour	<ul style="list-style-type: none"><li>→ Minimum standards of behaviour, including expectations of safety, respect and inclusive conduct in all workplace-related activities</li><li>→ Commitment to addressing expected standards of behaviour in recruitment and performance management processes</li><li>→ <a href="#">Definitions and examples</a> of sexual harassment, harassment on the ground of sex and discrimination</li></ul>
Prevention	<ul style="list-style-type: none"><li>→ The organisation's zero-tolerance approach to sexual harassment, harassment on the ground of sex and discrimination and its legal obligation of a positive duty to provide a safe</li></ul>

	<p>workplace, free of sexual harassment, harassment on the ground of sex and discrimination</p> <ul style="list-style-type: none"> <li>○ How the organisation will demonstrate meeting this obligation</li> <li>→ Sexual harassment risk assessment and management processes, including how risks can be reported and how control measures will be monitored, implemented and reviewed <ul style="list-style-type: none"> <li>○ In addition to common risks, consider industry-specific risks such as live-in arrangements, male-dominated industries, isolated working environments, technology-facilitated sexual harassment, and risks posed by third parties (for example clients, patients or customers)</li> </ul> </li> <li>→ Requirements regarding frequency and nature of education and training on respectful workplace conduct, sexual harassment, harassment on the ground of sex and discrimination for managers and staff</li> <li>→ Leadership accountabilities and responsibilities for prevention of and response to sexual harassment, including accountability measures in manager KPIs</li> <li>→ Commitment to transparency and sharing relevant de-identified information, where safe to do so, to build confidence in reporting processes and prevent similar incidents taking place in the future</li> <li>→ Commitment to a diverse and inclusive workplace, acknowledging that gender inequality is a contributing factor to workplace sexual harassment</li> </ul>
<p><b>Reporting sexual harassment</b></p>	<ul style="list-style-type: none"> <li>→ How information will be handled and stored to protect privacy and confidentiality, including guidelines for human resources or designated responding staff</li> <li>→ Commitment to ensuring complaints processes are developed according to person-centric<sup>1</sup> principles and are clearly signposted</li> <li>→ Internal reporting processes, including: <ul style="list-style-type: none"> <li>○ informal reporting options</li> <li>○ formal reporting options</li> <li>○ anonymous reporting</li> <li>○ support for workers before, during and after reporting processes</li> </ul> </li> <li>→ External reporting options, including: <ul style="list-style-type: none"> <li>○ <a href="#">Australian Human Rights Commission</a></li> <li>○ <a href="#">Fair Work Commission</a></li> <li>○ Relevant state or territory anti-discrimination board</li> <li>○ Relevant state or territory police force</li> </ul> </li> </ul>

<sup>1</sup> Being 'person-centred' means keeping the individual who has experienced sexual harassment at the centre of decisions made as part of the process of responding to the incident.

	<ul style="list-style-type: none"> <li>○ Relevant state or territory workplace health and safety regulators</li> <li>→ Bystander intervention and reporting, including acknowledgement that while encouraging bystander intervention is a key part of ensuring a positive workplace culture, systems and resources to help bystanders need to be in place</li> </ul>
<p><b>Responding to sexual harassment</b></p>	<ul style="list-style-type: none"> <li>→ Employer’s responsibility to take a trauma-informed,<sup>2</sup> person-centred approach when responding to reports of sexual harassment</li> <li>→ Processes: <ul style="list-style-type: none"> <li>○ Informal resolution</li> <li>○ Work health and safety investigation</li> <li>○ Formal investigation</li> <li>○ Agreement on the investigator of an incident</li> <li>○ Grievance process</li> </ul> </li> <li>→ Actions to be taken when reported behaviour constitutes a work health and safety risk, is a criminal offence, or requires disciplinary action</li> <li>→ Possible outcomes for involved parties</li> <li>→ Commitment to procedural fairness and protecting the rights of involved parties</li> <li>→ Guidelines for human resources or other designated responding staff on confidentiality and privacy</li> </ul>
<p><b>Record-keeping</b></p>	<ul style="list-style-type: none"> <li>→ What records of correspondence in relation to reports of sexual harassment will be kept</li> <li>→ How records of correspondence will be kept, in accordance with relevant legislation</li> </ul>
<p><b>Monitoring and evaluation</b></p>	<ul style="list-style-type: none"> <li>→ Frequency and nature of reporting to the governing body and management on sexual harassment, harassment on the ground of sex and discrimination – including workplace sexual harassment prevalence, prevention and response – and actions taken as a result: <ul style="list-style-type: none"> <li>○ How outcomes of sexual harassment, harassment on the ground of sex and discrimination complaints, including employment outcomes for involved parties, will be monitored</li> </ul> </li> </ul>

<sup>2</sup> Taking a ‘trauma-informed’ approach means understanding the impacts of trauma, promoting safety, supporting agency for individuals affected by sexual harassment, fostering environments and relationships that enable safe disclosure of trauma and appropriate responses, and understanding that recovery from a sexual harassment incident can be achieved.

### Additional considerations

- Avenues for staff to seek support and further information
- Response to intentionally falsified or vexatious reports
- Protection against victimisation or other adverse action for alleging or reporting sexual harassment, harassment on the ground of sex or discrimination
- Processes relating to the use of non-disclosure or confidentiality agreements
- Expectations and management of personal/intimate relationships
- Process for development and review of the policy, including consultation with employees, unions, or industry groups

## Better practice in preventing and responding to sexual harassment, harassment on the ground of sex and discrimination

Beyond ensuring the inclusions above are captured in a sexual harassment, harassment on the ground of sex and discrimination policy, employers can generate positive change in their workplaces by measuring their performance against the Respect@Work Council's *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment* and identifying areas for improvement. This framework is person-centred and trauma-informed, practical and outcomes-focused, and adaptable for use by employers of all sizes and across all industries.

To deepen their insights into how to prevent sexual harassment in their workplace, employers can collect and analyse information on prevalence – making sure to situate their results in the context of national surveys, which indicate that the full extent of workplace sexual harassment is not being captured. See *Using evidence to improve workplace sexual harassment prevention and response* for advice and practical considerations to keep in mind when collecting this information.

Employers should also focus on “repair” and “recovery” following the resolution of a sexual harassment incident – and treat this period “as a safety, wellbeing and/or talent retention issue to be actively managed.” Employers must continue to support the reporting individual to recover and focus, too, on repairing workplace relationships more broadly.

To learn more about how employers can make an active commitment to workplace gender equality, and to become a WGEA Employer of Choice for Gender Equality, visit the Employer of Choice citation program's [application page](#).