

Disrupting the System

Preventing and responding to
sexual harassment in the workplace

Sexual Harassment: Practical resources and tools





Over the course of developing the *Disrupting the System* report, the Champions of Change Coalition heard from our Members that sharing practical tools and templates would be highly valuable.

The Champions of Change Coalition reviewed existing policies and procedures from many of our Member organisations representing a range of industries and sectors, as well as best practice guidelines and recommendations from leading Australian and international reviews, reports and inquiries.

The Champions of Change Coalition know that developing policy and processes can be a time-consuming undertaking for organisations. We share the following resources so that you can adapt or adopt them for your own context and accelerate change.

The resources shared in this extract are examples or amalgams from our Member organisations and should not be taken as legal advice.

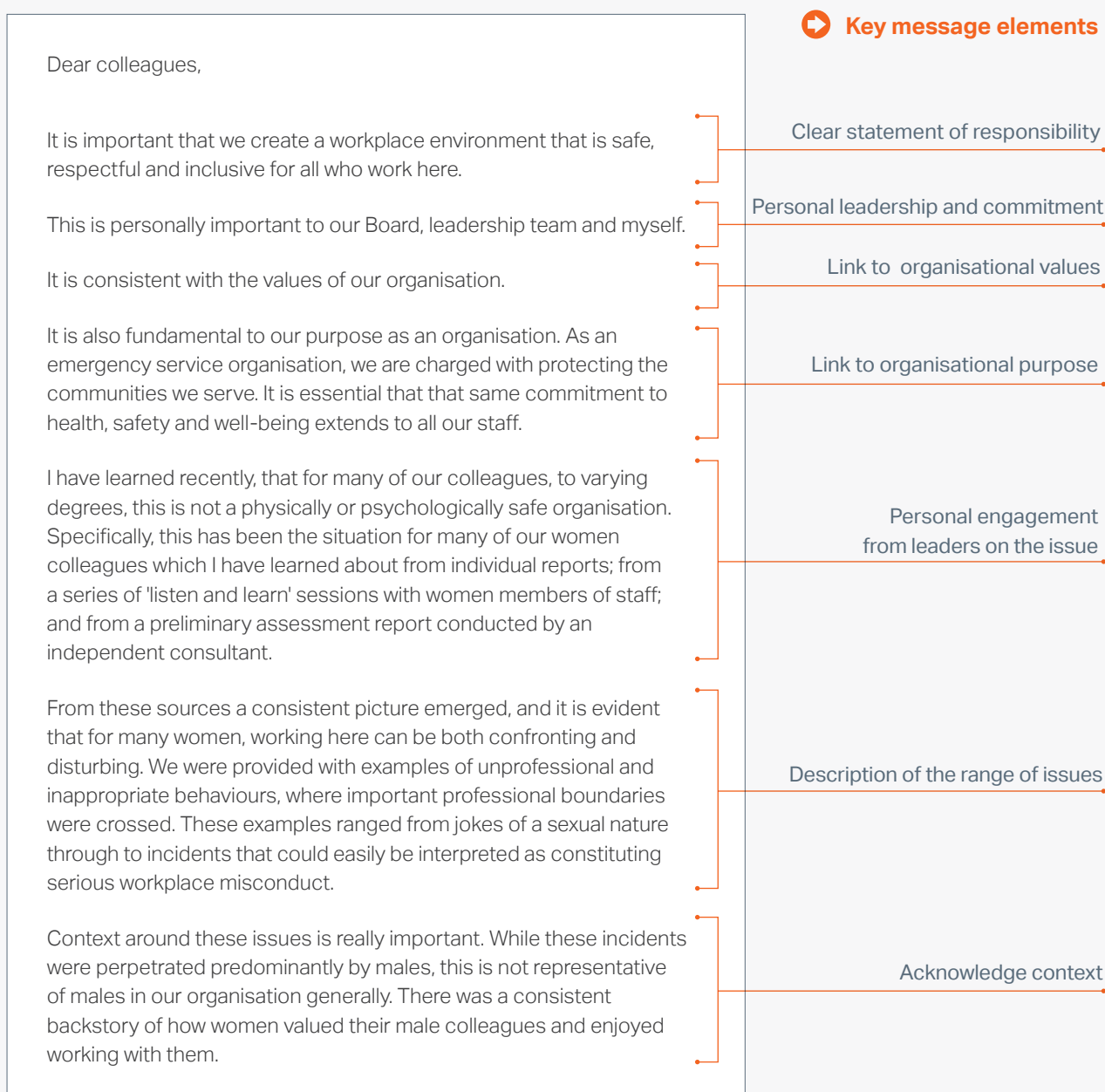
Advice from your legal, human resources and communications team is essential in customising these tools and templates for your organisations.

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Example leadership statement

The following leadership statement is adapted from a version shared by one of our Members. It is provided as an example structure that leaders could adapt or customise for their organisation. For a leadership statement to have authenticity and impact, there are key message elements that must personally come from leaders.



It is also fair to say that on many of the occasions that were identified, there may not have been any serious intent to cause offence. These issues often appear to arise as a product of a mainly male-dominated workplace that existed 20 to 30 years ago, at a time when these behaviours were tolerated, especially in workplaces modelled on old systems of work. It is, however, important to note, that although these behaviours may have been tolerated at that time, they were neither legal nor acceptable. And regardless of whether or not there is an intent to cause offence, it is still inappropriate behaviour.

We need to be mindful of others' feelings, and to be prepared to speak up, not only when we may be offended ourselves, but when we feel that someone else may be uncomfortable. For those of us who have worked here for a long time, it is too easy to overlook how difficult it may be for a newer member of staff to feel that they can speak up themselves.

I believe that all of us know inherently what constitutes professional and appropriate conversation and behaviour. It is an integral, critical component of being competent in our roles, including knowing how to speak respectfully and courteously to a wide variety of people, in many diverse situations. We do this every day representing our organisation. It is not difficult to translate this to interactions with our colleagues.

It is important to remember that this is a good place to work, and is an organisation that has much to be proud of. However, these issues demonstrate that we have a way to go and that there is scope for improvement.

And there needs to be a clear understanding that inappropriate workplace behaviours will not be tolerated into the future.

I acknowledge there are sensitivities around these issues for many people. We have our Contact Officers, Employee Assistance Program, line managers and network to provide guidance and support as necessary.

And as always, I am happy to discuss this further with any of you, in whatever manner you feel most comfortable with.

Best wishes

Key message elements

Link to gender inequality in the workplace and new employee, organisation and community expectations and standards on the issues

Reinforce expectations of employees to speak up when they see the behaviour

Reinforce expectations for all employees to treat each other with dignity and respect as a mark of professionalism

Acknowledge there is work to be done and change is required

Affirm zero tolerance approach

Highlight referral pathways

Personal commitment

What to look for when scanning for sexual harassment in the workplace

This resource has been replicated with permission from the Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment. - Complying with the Equal Opportunity Act 2010* can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

 Signs your workers may be at risk of sexual harassment	
Workplace characteristics	<ul style="list-style-type: none"> Sex-segregated workplaces (where work is typically or historically performed by men or women) and workplaces with rigid workplace norms based on gender stereotypes (e.g. 'men work in the mines, women in the office').
	<ul style="list-style-type: none"> Leaders with unquestioned, discretionary authority to hire, fire and promote.
	<ul style="list-style-type: none"> Hierarchical or command and control workplace structures.
	<ul style="list-style-type: none"> Workplaces that protect 'high-value' or 'indispensable' workers from accountability for unacceptable behaviour.
	<ul style="list-style-type: none"> Workplaces that value profit over protecting workers, enabling customers/clients to harass workers.
	<ul style="list-style-type: none"> High-pressure workplaces such as frontline and emergency services work, with an attitude that workers need to let off steam to deal with the pressures of work and certain behaviours don't need to be taken seriously.
	<ul style="list-style-type: none"> Short-term contracts with a reliance on reputation and word-of-mouth for securing the next job (e.g. individuals in the fashion and entertainment industries and junior doctors completing their placement training).
Work environment	<ul style="list-style-type: none"> Some areas in or around the workplace are isolated, poorly lit or intimidating to enter.
	<ul style="list-style-type: none"> Sexualised or sexist materials are on display (e.g. posters, calendars, screensavers).
	<ul style="list-style-type: none"> Lack of privacy or security for workers using bathrooms/change rooms.
	<ul style="list-style-type: none"> In-home work (such as providing childcare, nursing, cleaning services, aged or disability care) with direct client contact and little or no oversight.
Workplace composition	<ul style="list-style-type: none"> Male-dominated workforce, management, leadership or board.
	<ul style="list-style-type: none"> Male-dominated customer or client base.
	<ul style="list-style-type: none"> Small businesses where confidentiality and confidence to raise issues may be difficult to achieve.
	<ul style="list-style-type: none"> A cohort of young workers (including under 18 years), interns, apprentices, graduates or other junior workers.
	<ul style="list-style-type: none"> A cohort of women from migrant and non-English speaking backgrounds, people on employer-sponsored visas, and women with disabilities.
	<ul style="list-style-type: none"> A cohort of people in insecure work, such as casuals, contractors, short-term workers, temporary workers and freelancers.



Signs your workers may be at risk of sexual harassment

Workplace trends	<ul style="list-style-type: none">• High staff turnover, particularly of female or junior workers.
	<ul style="list-style-type: none">• Gender differences in shifts or teams (e.g. women more reluctant to work with particular workers or take on particular tasks).
	<ul style="list-style-type: none">• Concentration of men in senior positions and men being promoted more often than women.
Workplace requirements	<ul style="list-style-type: none">• Different uniform requirements for men and women, or prescriptive dress codes or expectations for how women should look at work (such as high heels, skirts and make-up).
	<ul style="list-style-type: none">• Travel and overnight stays.
	<ul style="list-style-type: none">• Placements in regional or remote locations where workers may be socially isolated.
	<ul style="list-style-type: none">• Frequent formal or informal client functions or after-work events.
	<ul style="list-style-type: none">• Shift work, after-hours and longer hours.
	<ul style="list-style-type: none">• Workplaces where alcohol is served and workers are encouraged to socialise outside of work hours.
	<ul style="list-style-type: none">• Workplaces where workers interact directly with customers or consumers.
Workplace behaviours	<ul style="list-style-type: none">• 'Everyday sexism', such as sexist jokes, and homophobia/transphobia in the workplace.
	<ul style="list-style-type: none">• Gendered and binary networking events or mentoring opportunities (e.g. work lunches at men's clubs, invitations to play golf with the boss).
	<ul style="list-style-type: none">• Differences in the unspoken expectations of male and female workers (e.g. women routinely being the ones to take minutes, organise catering, prepare rooms for meetings and clean up after events).
	<ul style="list-style-type: none">• Male workers dominate meetings or decisions.

Addressing everyday sexism

This resource is an extract from the Champions of Change Coalition report *We Set the Tone: Eliminating Everyday Sexism*. The full report can be found at championsofchangecoalition.org/reports-and-resources/. We welcome you to access the full report to adapt or adopt for your own context.

Everyday sexism occurs as the name suggests, in both formal and casual interactions between people. It happens in daily life. It happens frequently in workplaces.

They are sometimes the little things, said or done in a moment, that play into stereotypes of gender. Perceived as too small to make a fuss about, we let them pass. At other times, there is no question that they overstep the mark.

In our contexts, everyday sexism also comes into play at critical decision points affecting the progress and careers of women and men, influencing who to appoint, develop, sponsor, reward or promote.

Everyday sexism is frequently invisible, and often accepted. Because it is hard to speak up when it occurs, it continues unchecked.

In examining this topic, we have learned that context, culture, generational differences and norms are among some of the factors that underpin everyday sexism.

Most people do not want to be accused, let alone guilty, of sexist behaviour. Yet often, well-intentioned words, actions and decisions are not received that way. Worse, they can be outright offensive.

We hope this report encourages an open and respectful conversation about everyday sexism, with the goal of creating fairer, more positive and inclusive organisational environments for all.

Examples of everyday sexism:		Actions to address it:	
Insults masquerading as jokes	The most frequently encountered form of everyday sexism, experienced by all, consists of sexist remarks or jokes, and insulting terms based on gender.	Respond to 'jokes'	<ul style="list-style-type: none">• Do not validate humour that is explicitly or implicitly sexist or offensive by laughing, staying silent, or making excuses.• Call out the joke, for example, say: 'What did you mean by that comment?'• If you miss the moment to call it out, don't let it pass – ensure both the joker and those who heard it are aware of your stance.
Devaluing women's views or voice	Many women experience: <ul style="list-style-type: none">• men interrupting or talking over them.• men explaining things to them as if they have no prior skills or knowledge, when they do have them.• their views not listened to or supported until restated by a man.	Value women's voices	<ul style="list-style-type: none">• Ensure an equal share of voices at meetings you lead or attend.• Before closing a meeting or agenda item, ensure everyone has been provided the opportunity to comment or contribute.• Ensure all contributions/ contributors to a discussion or initiative are acknowledged – beyond the most senior and/or vocal.• Adopt the Panel Pledge to ensure high-profile discussions and forums include the voices and experiences of women.

Examples of everyday sexism:		Actions to address it:	
Role stereotyping	Assumptions are made about suitability for roles and tasks on the basis of gender.	Make role stereotyping a thing of the past	<ul style="list-style-type: none"> • Ensure critical and ancillary roles at functions, meetings and in your workplace are shared equally amongst all employees, for example rotate meeting note-taker and chair. • Question assumptions about the type of work, especially physical, that people can and cannot do.
Preoccupation with physical appearance	Comments about body shape, size, physical characteristics or dress over skill and competence are frequent. This is amplified for women with a public profile or in the media.	Keep the focus on capability, not appearance	<ul style="list-style-type: none"> • Keep conversations focused on content and capabilities, rather than physical appearance. • Be vigilant when introducing women, for example, as speakers or at meetings where comments about appearance can undermine credibility.
Assumptions that caring and careers don't mix	<p>Employees encounter gendered assumptions about parenting roles, with women being:</p> <ul style="list-style-type: none"> • subjected to comments that infer poor parenting for prioritising work equally with family. • questioned about their commitment to work because they work flexibly. • expected to explain why they don't have children. <p>Men can be discouraged from or denied access to flexible work because everyday sexism assumes caring is not a man's role.</p>	Support personal choices about caring and careers	<ul style="list-style-type: none"> • Check whether you are making assumptions about or choices for employees regarding how they value or prioritise their career. • Ensure equal access to flexible work arrangements for women and men within your organisation.
Unwarranted gender labelling	<p>Women are often described as being too bossy or not assertive enough – or the flip side – too 'emotional' or 'nice'.</p> <p>Men can be told they are too soft and not competitive enough.</p>	Challenge gender labelling	<ul style="list-style-type: none"> • Recognise where gender stereotypes are being applied to assess performance or leadership capability. • Reframe a discussion anytime an employee or candidate is assessed as 'too' anything – 'too bossy', 'too soft' or 'too emotional'. • Use the <i>In the Eye of the Beholder</i> report to reflect on your use of merit in your decisions about people.

Questions for leaders responding to sexual harassment cases

The following questions were shared by one of our Champions of Change Coalition Members. They have been used in his organisation to guide the response of the leadership team to behavioural issues that had been raised. They have been shared so that others may adapt or adopt them for their own decision-making processes.

- Is the behaviour disrespectful or illegal?
- Is the behaviour consistent with the values of our organisation?
- Is the behaviour consistent with my personal commitment and/or our organisation's commitment to advance gender equality?
- Is the behaviour consistent with our commitment to providing safe, respectful and inclusive environments for all?
- Does this meet the standard of behaviour expected by people who matter to our organisation – employees, customers, clients, patients, passengers and players?

The role of policy in preventing sexual harassment

In seeking to understand the role of policy in preventing sexual harassment, we reviewed policies of several Member organisations representing a range of industries and sectors. We share our insights and an example policy for others to adapt and adopt for their own context. **Neither the insights or example policy included here are intended, or should be taken as legal advice.**

In recent years, many organisations have tightened existing policy to reflect their 'zero tolerance' stance; however, by its nature, policy continues to serve as less of a prevention or protection tool for people who experience sexual harassment than a safety net for organisations to mitigate vicarious and other liability by articulating action and consequences for offenders and to reflect best practice.

We know that policy is not a preventer or a panacea. However, in practice, robust policy is the cornerstone of good governance for many organisations, so we need to evolve it from a minimum standard and enhance it for the current context.

A standalone sexual harassment policy demonstrates that preventing and responding to sexual harassment is a priority for the organisation and provides clear options for redress for specific behaviour and may be easier to navigate for a person in distress or trauma.

Other related documents or policies, for example a Code of Conduct, should reflect the same values in a cohesive way, as this will amplify the effectiveness of all policies. Best practice policy development recommends that to be effective, a standard or template policy should not be adopted without adapting it to your organisation's context and workforce.

An effective policy should:

- Articulate expectations that employees will behave in ways that are safe, respectful and inclusive.
- Educate employees on the range of behaviours that may be considered sexual harassment, and explains they are both unacceptable and unlawful
- Prioritise prevention through a safety lens.
- Explain the role everyone plays in intervention and action when behaviour is inconsistent with expectations.
- Outline how the organisation will respect for and support victims.
- Define the steps it will take to resolve issues and respond to offenders.
- Be fully supported by the Board (or equivalent) and senior leaders of the organisation making their communication, actions and personal behaviour congruent.

Policy and process enhancements to drive system change

	Elements	Minimum requirements	Mature application	Enhancements to drive system change
Dimensions	Principle	<ul style="list-style-type: none"> Processes exist that define the issue and follow basic principles of procedural fairness. Compliance with minimum action provides reasonable comfort to an organisation that, on paper, it will avoid legal liability. Risks nevertheless exist that the processes described in the policy will not be followed. 	<ul style="list-style-type: none"> Processes have been developed following consideration of the experience of complainants, the respondents and line management attempting to implement/apply the policy. Mature application provides reasonable comfort to an organisation that harassment or inappropriate responses will only occur through outlier employees. 	<ul style="list-style-type: none"> Legal policies form the foundations/beginning of an ongoing conversation aimed at prevention and early intervention. Gender inequality is acknowledged as a key driver of sexual harassment, and articulated. This proactive approach eschews reliance on formal complaints as an indicator of anything.
	Communication	<ul style="list-style-type: none"> Policy is distributed to all employees on commencement. Policy is easily accessible on the organisation's intranet. 	<ul style="list-style-type: none"> Policy is translated into relevant languages. Policy accessible to all employees appropriate to their workplace, eg. posters in lunch rooms. Policy provided on commencement and explained during induction. Expectations are outlined in employment contracts and cross-referenced in other policies, eg. IT, Code of Conduct, OHS. 	<ul style="list-style-type: none"> Expected behaviour of clients/customers/patients is communicated, eg. articulated in contract terms, posters in public areas. Regular communications regarding the behaviour expected of all employees in regard to sexual harassment. De-identified case studies shared to help employees navigate the nuances.
	Education	<ul style="list-style-type: none"> (Policy states that) employees will receive training on sexual harassment on induction. (Policy states that) employees will receive regular training to maintain awareness of the issue and the organisation's response to allegations. 	<ul style="list-style-type: none"> Training includes opportunities for active engagement by employees on context, how behaviour might be experienced by others, and what an appropriate organisational response should be. 	<ul style="list-style-type: none"> Response and support teams are trauma-informed and have broad capabilities to support a range of resolution options including counselling, mediation and investigation.
	1. The organisation's stance on sexual harassment	<ul style="list-style-type: none"> Unequivocal message that the organisation has a 'zero tolerance' approach to sexual harassment. Often included as part of a broader statement about 'appropriate workplace behaviour' or 'prohibited conduct' including bullying, discrimination and harassment. 	<ul style="list-style-type: none"> Acknowledgement that sexual harassment is unlawful and that the organisation has a real interest in preventing sexual harassment. Statement that the policy applies at all levels of the organisation, including to sponsors, clients and visitors. 	<ul style="list-style-type: none"> The organisation's 'zero tolerance' position is clearly defined. Prevention and early intervention is our priority, as well as the care of people impacted. There is a shared responsibility for early intervention.
	2. Legal and policy framework	<ul style="list-style-type: none"> Clearly stated, legally correct definition. 	<ul style="list-style-type: none"> Reference to relevant Commonwealth, State or Territory laws that apply to the organisation. Detailed definition that addresses how the tests are applied (eg. that the capacity to offend is assessed on an objective basis). 	<ul style="list-style-type: none"> Reference to the International Labour Organization (ILO) convention that upholds the right of everyone to a world of work free from violence and harassment, and that such behaviour can constitute a human rights violation or abuse.

Elements		Minimum requirements	Mature application	Enhancements to drive system change
3.	Definition of sexual harassment	<ul style="list-style-type: none"> Defines scope of application to employees, contractors and clients. 	<ul style="list-style-type: none"> Examples of behaviour that could constitute sexual harassment. References behaviour that is not sexual harassment (in particular, intimate personal relationships). 	<ul style="list-style-type: none"> Acknowledgment that sexual harassment is driven by/underpinned by gender inequality. Highlight the range of behaviours that constitute sexual harassment.
4.	Roles and responsibilities	<ul style="list-style-type: none"> Managers must monitor the workplace to ensure appropriate standards of contact are observed in their work area. Managers should receive and refer complaints (circumstances in which to escalate). State that bystanders are supported to act if sexual harassment is witnessed. 	<ul style="list-style-type: none"> Managers treat complaints seriously and take immediate action to investigate and resolve the issue. Provide training to line managers in modelling appropriate behaviour and responding to issues of sexual harassment (including active steps to prevent victimisation). Tips on what to do if sexual harassment is witnessed and appropriate responses. 	<ul style="list-style-type: none"> All leaders are accountable for leading through their own behaviour and preventing sexual harassment in their teams. Employees actively encouraged, supported and expected to speak up and take action when they see or know of sexual harassment in the workplace.
5.	Options for reporting issues	<ul style="list-style-type: none"> Identify multiple internal officers, inside and outside line management to make complaints. 	<ul style="list-style-type: none"> External avenues (eg. relevant Equal Opportunity Commission, Australian Human Rights Commission). Guidance about the circumstances in which it is usually preferable to utilise one response avenue over others. 	<ul style="list-style-type: none"> Multiple safe and trusted internal pathways are available including independent, safe spaces for people to get information and help to deal with the issue in their preferred manner. Anonymous reporting options are available.
6.	Resolution options	<ul style="list-style-type: none"> Informal and formal resolution options. 	<ul style="list-style-type: none"> Ensure robust processes that protect against the organisation's legal liability and validate disciplinary action, eg. mitigate against unfair dismissal claims. 	<ul style="list-style-type: none"> Emphasis on less adversarial processes that prevent repetition, validate the experience, stop the behaviour, and offer restorative outcomes.
7.	Complaint handling principles	<ul style="list-style-type: none"> Description of process. 	<ul style="list-style-type: none"> Identification of indicative timelines, roles and expectations at each stage. 	<ul style="list-style-type: none"> Referrals for additional external or specialist support for all parties. Principles of procedural fairness and natural justice outlined.
8.	Outcomes for offenders	<ul style="list-style-type: none"> State that disciplinary action may include apology counselling, transfer, dismissal or demotion. 	<ul style="list-style-type: none"> Guidance about the matters that will be considered when determining the discipline. Guidance about how victimisation or vexatious complaints will be treated. 	<ul style="list-style-type: none"> Organisation action that also informs future prevention efforts. Clear articulation of transparency principles that apply to senior leaders and employees of legitimate public interest.
9.	Confidentiality of investigation	<ul style="list-style-type: none"> Confidentiality of complainant and respondent wherever possible. 	<ul style="list-style-type: none"> Guidance about limits on the organisation's capacity to maintain confidentiality. 	<ul style="list-style-type: none"> Expectations of all parties to keep details confidential to enable the investigation to be undertaken unimpeded. Articulation of principles of transparency that will guide the organisation's action and respond to, for example, the media.
10.	Follow up	<ul style="list-style-type: none"> Statements about victimisation of both the complainant and the respondent. 	<ul style="list-style-type: none"> Follow up with complainant and respondent a few months after the allegation is processed to monitor relationships and to check whether management action was appropriate to findings and to timing. 	<ul style="list-style-type: none"> Review policy, investigation and process, and education in light of information and insights obtained during the investigation. Improvements are made where necessary.

Example policy

This sample policy is an example of a standard policy with enhancements to drive system change. It is shared so that others may adapt or adopt it for their own context. To ensure this policy is effective for your organisation's context, this example policy should be worked through and thoughtfully adapted to your organisation and workforce. **This example policy is not intended nor should be taken as legal advice.**

1 Our position

Sexual harassment, in all its forms, is an abuse of power. It represents behaviours that are beneath the standards we expect from every one of us and across our organisation. It is unethical and against the law.

Sexual harassment takes a psychological, emotional and physical toll and has detrimental consequences on the careers and personal lives of those affected, as well as their families and those close to them.

Sexual harassment in any form is completely at odds with our aspiration to create a safe, respectful and inclusive workplace.

We will act to prevent sexual harassment and provide safe and effective responses for those impacted within, and connected to our organisations, ensuring well-being, that their wishes are listened to, prioritised and inform the action we take.

This is the commitment of our Board and senior leaders.

It is expected that this is the shared responsibility of everyone who works in our organisation – to behave in a way that ensures the safety and well-being of others and is respectful and inclusive. It is also an expectation that, if it is safe to do so, you intervene or report when you see or know of behaviour that may cause offence, distress or harm to others.

We will educate and support everyone connected with our organisation on how to prevent, intervene early and respond to offensive behaviour to ensure sexual harassment is eradicated from our work environment.

1.1 Zero tolerance

At <organisation>, we have a 'zero tolerance' approach to sexual harassment in the workplace.

By this we mean we will be proactive in eradicating the behaviour – in all its forms. Zero tolerance also means there will be action and consequences that are appropriate and proportionate considering the offender's behaviour and the impact of their actions, and taking into account the wishes of the person subjected to the harassment.

It is important to note that zero tolerance does not mean we respond in the same way to every incident, for example, through automatic dismissal.

Often people who report sexual harassment do not wish the offender's employment to be terminated, but want the behaviour to stop, an apology and for it not to happen to anyone else. Just as responses that are too weak can permit sexual harassment to continue, responses that are seen as disproportionately severe can stop people coming forward.

2 Understanding sexual harassment

2.1 Drivers of sexual harassment

Sexual harassment rarely occurs as an aberration in organisations or in isolated incidents. The existence of sexual harassment reflects an environment that overlooks or excuses disrespectful behaviour towards others, particularly women and people who do not conform to expected gender roles, such as LGBTIQ+ people.

Although called 'sexual harassment' and referring to behaviour that manifests as conduct of a sexual nature, this behaviour is not about consensual sex and sexual attraction, but rather about unwelcome behaviour that is experienced as offensive, demeaning, humiliating and/or intimidating. In many cases, it is about exerting power and position over others who are perceived to be, or are in fact, more vulnerable. This can even be the case between peers or co-workers.

Sexual harassment is particularly prevalent where gender inequality exists – where organisation demographics, values and structures prioritise men and workplace cultures reinforce rigid gendered norms and sexist attitudes.

Other factors such as age, gender identity, sexual orientation, Indigeneity, other cultural and linguistic diversity, and disability have also shown to increase the likelihood a person may experience sexual harassment.

2.2 Definition

Although varying in legal definition under different jurisdictions, sexual harassment is generally characterised by behaviour that is unwanted, sexual in nature and reasonably anticipated to offend, humiliate, demean or intimidate.

<Insert legal definition from relevant jurisdiction>

2.3 Understanding the context of sexual harassment

When it comes to understanding a person's experience of sexual harassment, context is essential. Context is the lens through which a person experiences the behaviour of others. Context filters intent and can amplify impact or give behaviour a different nature.

It explains why a certain behaviour, for example, a kiss or a touch on the back is experienced in one context as 'ok', and 'not ok' in another.

Contextual factors that come into play may include:

- Relationship and power disparity between the parties.
- The history of the relationship.
- Previous patterns of behaviour between the parties (i.e. one-off incident or pattern).
- Tone, verbal and non-verbal cues.
- Position in the organisation.
- Employment status, job security and the nature of work.
- Where and when the incident takes place.
- Personal characteristics of age, gender identity, sexual orientation, Indigeneity, other cultural and linguistic diversity, and disability which can make people more subject to sexual harassment.

All of these factors combine to shape a person's experiences of sexual harassment, and in turn can guide responses.

When you overlay context onto a behaviour, such as a kiss, the change of dynamic is clear: a kiss hello from a colleague you have a longstanding friendship with; a kiss from a manager along with a salacious 'look' at a work social function; a kiss from a senior male leader (who has power over your career progress) in his office after hours – all of these are a 'kiss' but with varying levels of discomfort, offence and impact because of context.

It is therefore important to understand that:

- Sexual harassment can still occur even when the offender does not intend it – innocent or humoured intent, or poor judgement of the offender is irrelevant.
- A lack of objection to behaviour at the time it occurs does not infer that the behaviour is welcome or that it is acceptable for the behaviour to continue at another time.
- There is no requirement that behaviour be repeated – a one-off incident, as well as a pattern of behaviour can both be sexual harassment.
- Consumption of alcohol is not an excuse or extenuating circumstance.
- There are some behaviors that are criminal offences and context is irrelevant.

2.4 Recognising sexual harassment

Sexual harassment takes many forms. It can be a one-off incident or a pattern of behaviour. Examples of behaviour that could be considered sexual harassment include:

<Insert context-specific examples drawn from your organisation's experiences as relevant>.

- Unwelcome comments about looks, dress, hairstyles.
- Repeated and inappropriate invitations to drinks, dinner, non-work-related social events.
- Jokes of a sexual nature or about a person's sexual orientation or gender identity.
- Unwelcome light touch gestures, e.g. an arm around, a kiss hello.
- Degrading comments.
- Sexual objectification of people.
- Repeated requests for dates.
- Personal contact via email or social media that is out of context, out of work hours.
- Ongoing unwelcome contact (e.g. in person, phone, social media) following the end of a consensual relationship.
- Staring or leering.
- Sexually explicit pictures, posters or gifts.
- Whistling, catcalling, honking.
- Intrusive questions or comments about private life, gender identity, sexual orientation, sexual relationships and sexual practices.
- Sexually explicit comments in emails, SMS, phone messages or social media.
- Touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps, or putting hands in a person's pocket.
- Forced intimacy, e.g. touching, massaging, hugging, cornering or kissing.
- Exposing self.
- Coercing people to look at pornography.
- Requesting intimate images/video of someone.
- Requests or pressure for sex or other sexual acts in exchange for favourable treatment.
- Sharing intimate images/video of someone without consent.
- Stalking, following, watching.
- Actual or attempted sexual assault or rape.

2.5 Where and how sexual harassment may occur

Location

Our world of work is expansive. Therefore, so too are the locations and circumstances in which sexual harassment may occur:

- In the workplace, during work hours, including common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets.
- Work-related locations including client sites, worksites, public spaces where work is conducted, remote sites, international offices.
- Beyond the usual workplace and outside normal working hours where there is a link to employment such as conferences, social events, business trips, after parties.
- Online via technology and social media, irrespective of whether work resources were used.

Relationships

Our work relationships are extensive which gives rise to the potential for workplace sexual harassment to occur between:

- Employees of the same organisation including manager/employee or co-workers.
- An employee and potential employee.
- An employee and someone connected to the organisation for work purposes: volunteer, intern, work experience or consultant.

Customers

Customers, clients, contractors, investors, patients, passengers, patrons and supporters are all people of value to our organisations and offensive behaviour by them towards our employees or towards them by our employees is also unacceptable.

2.6 Personal relationships

Sexual, romantic or intimate interaction that is entered into freely and reciprocated between consenting employees is not a form of sexual harassment. However, if people behave in sexually inappropriate ways at work, it could still create a sexualised atmosphere that is unwanted by others in the workplace.

Some personal relationships need to be disclosed as they give rise to perceived, potential and/or actual conflicts of interest, for example, where one person has significant influence over the other's opportunities, remuneration and progress; where there is significant power imbalance between parties (i.e. seniority differences); where the relationship is potentially disruptive to team dynamics or has potential reputational implications for the organisation.

Full and early disclosure of these relationships to the relevant manager is required so that any implications can be understood and parties can work together on any action that may be required to resolve any actual or potential conflict.

Sexual harassment may arise in situations where the personal relationship ends and the intimate behaviour of one of the parties is no longer welcome. Support should be sought from the relevant manager or Employee Assistance Program as soon as possible if you are concerned about your behaviour or the behaviour of your ex-partner.

3 Laws and policies

Behaving in a way that is consistent with our values of safety, respect and inclusion requires more than just compliance with the relevant law, which sets out minimum standards and obligations.

3.1 International standards

Our position on sexual harassment is aligned with international standards, as set out in several international human rights and labour conventions, which establish obligations to prevent sexual harassment in the world of work, recognising sexual harassment as a form of discrimination, as well as a labour and human rights issue. The International Labour Organization (ILO) convention upholds the right of everyone to a world of work free from violence and harassment, and states that such behaviour can constitute a human rights violation or abuse.

- [C190 – Violence and Harassment Convention, 2019 \(N.190\)](#)

3.2 Applicable legislation

Sexual harassment is unlawful and prohibited in Australia by both State and Commonwealth legislation. Some of the relevant Federal and State Acts are listed below:

<Insert as relevant for example>

- *Age Discrimination Act 2004* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Fair Work Act 2009* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Workplace Gender Equality Act 2012* (Cth)

3.3 Employer and individual legal obligations

The laws give rise to potential legal liability for sexual harassment for individuals and our organisation.

Individuals may be liable for their own behaviour if they sexually harass another person. In some cases, this may also be criminal conduct.

Observers and other individuals may be liable if they request, instruct, induce, encourage, authorise or assist someone to sexually harass another person.

Employers are also responsible for sexual harassment that occurs in the workplace and may be liable for failing to prevent or properly respond to sexual harassment, which is known as vicarious liability.

This policy provides guidance on how employers and individuals can meet their obligations under that law by prioritising the prevention and early intervention of sexual harassment and contributing to build a workplace that is safe, respectful and inclusive.

3.4 Relevant organisational policies

This policy operates in conjunction with the following organisation policies:

<Insert as relevant. Note these documents should be checked and edited to ensure they all reflect the same values in a cohesive way, as this will amplify the effectiveness of all policies>.

- Code of Conduct
- Workplace Health and Safety
- Anti-discrimination or equality policy
- IT policy.

4 Everyone has a role to play

Everyone has a role to play in preventing and responding to sexual harassment. This is entirely consistent with our existing workplace health and safety obligations to protect each other from harm to our health and safety, including psychological harm.

Without exception, everyone is expected to behave in ways that are safe, respectful and inclusive. People who speak up about or report concerning behaviours they see or know of make a valuable contribution to the health and safety of our workplace by supporting someone who may be subjected to the behaviour and preventing escalation or repeat behaviour.

There are specific expectations depending on your role:

Board/Executive

- Ensure sexual harassment prevention and early intervention are a leadership priority and organisation systems are in place to support this.
- Require regular reporting of frequency and types of incidents, immediate outcomes and long-term implications for parties involved.
- Support external transparency of incidents involving senior leaders and where there is legitimate public or stakeholder interest.
- Prioritise the care and support of those impacted in the organisation's approach to resolving the issue.

Leaders

- Identify, address and educate about behaviour that enables or condones sexual harassment, including tolerance for everyday sexism.
- Speak up when you see, know of or can anticipate the likelihood of sexual harassment.
- Create an environment that encourages teams to feel safe speaking up about or reporting sexual harassment they experience or know of.
- Support an individual who is impacted and understand how they would like the issue managed.
- Prioritise the care and support of those impacted when responding to issues raised with you or observed.
- Report to the Executive and Board on incidents, immediate outcomes and long-term implications for parties involved.
- Speak openly and confidentially with the impacted team/stakeholders about any incidents/outcomes and reinforce expectations of safe, respectful and inclusive behaviour.

Teams/Colleagues

- Behave in a way that creates a safe, respectful and inclusive environment and prioritises looking after the safety of others.
- Speak up when you see, know of or can anticipate the likelihood of sexual harassment.
- Intervene in a way that is comfortable for you and if you feel safe to do so, to redirect the conversation or stop the behaviour.
- Ensure the person impacted is safe and check in on them if appropriate.
- Listen to the experience of the person impacted without judgement or preconceived solutions – understand how they would like you to help.
- Participate in any inquiries or investigations about incidents.
- Keep details of the incident or investigation confidential.

Internal advisory or support team

- Support the individuals impacted and understand how they would like the issue managed.
- Provide access to EAP, peer or specialist support for all parties.
- Ensure impartial, capable people (internal or external to the organisation) are available who can explain concerns about behaviour or support conversations to resolve the issue.
- Investigate the issue or engage an external investigator where appropriate.
- Ensure privacy, confidentiality, due process and natural justice is adhered to throughout.

<Insert **Identifying, understanding and responding when sexual harassment occurs** model from the Champions of Change Coalition report *Disrupting the System: Preventing and responding to sexual harassment in the workplace*. Refer to page 56-57>.

5 Reporting sexual harassment

To help you choose how you wish to report concern about someone's behaviour, we offer multiple options so you can speak with whomever you are most comfortable.

Reports can be made by people directly impacted or others who observe or know of sexual harassment.

You will not be restricted by a time limitation between the incident and reporting the issue to us. We understand that people will share their experience when they feel comfortable and that it may take time to process what has happened and feel ready to talk. Knowing about incidents and issues is helpful for our organisation's future efforts to prevent repeat and escalated incidents.

It is important to note that there are time limitations for lodging a complaint with an external body, for example within six months of the incident if you wish the Australian Human Rights Commission to assist.

You will see from the information below, letting the organisation know about sexual harassment does not necessarily trigger a formal investigation, although that may be appropriate in some cases. Support, advice and early intervention may resolve the issue and it will also help us understand what is happening in the organisation.

There will be no repercussions for those who report issues. Repercussions are unlawful as well as against the values and policies of the organisation.

<Insert organisation-specific reporting pathways as relevant. For example:>.

Safe and Respectful Workplace Leaders/Contact Officers

- Our organisation has a network of Safe and Respectful Workplace Leaders/Contact Officers who can listen to your concerns, talk with you about your options, where you can get personal support and the different ways the organisation could help you to resolve the issue.

Managers

- You can speak to any member of our leadership team if you are uncomfortable speaking with your own manager in the first instance. Managers can listen to your concerns, talk with you about your options, where you can get support and the different ways the organisation could help you to resolve the issue.
- Managers can also provide feedback to the person who engaged in the behaviour on your behalf or support you to have a conversation with that person.
- There are some circumstances where a manager may need to refer the issue to the organisation's expert advisory team, for example, where the behaviour is serious, creates risk to the psychological and physical safety of others or where it involves a senior member of the organisation.

People and Culture/Professional Standards/Integrity Team

- Our <insert, e.g. People and Culture> team can be contacted directly. They can help in various ways depending on your wishes and the circumstances of the issue. They will:
 - Listen to your concerns, talk with you about your options, where you can get personal support and the different ways the organisation could help you to resolve the issue.
 - Provide feedback to the offender on your behalf or support you to have a conversation with that person.
 - Initiate a formal process to investigate, where appropriate (using an internal or external investigator), make formal findings and take disciplinary action where appropriate.

Anonymous reporting

- In some circumstances, you may prefer to tell the organisation about the issue without being identified. You can do this by contacting <insert details of anonymous reporting option or similar>.

External body

- You may wish to seek help from an external body or authority who can provide information about your options and in some cases may be able to provide a free, confidential dispute resolution process, which may be legally enforceable. Some organisations who specialise in independent resolution of sexual harassment include:
 - Australian Human Rights Commission.
 - Relevant State Equal Opportunity Commission.
 - Relevant State Workplace Health and Safety Body.

6 Ways we can help

Resolution options

There are a number of ways we can help to resolve the issue depending on your wishes, the context and circumstance.

We know that what most people who experience sexual harassment want is for the behaviour to stop, to have their experience validated, their organisation to know that it happened, and for it not to happen to anyone else. In many cases, all people want from the person who harassed them is an apology.

Wherever possible, we will prioritise early intervention and informal pathways that deliver these types of outcomes.

We will support your wishes to progress from one pathway to another once the process has commenced if you feel that is a more appropriate way for the issue to be resolved, for example, starting out wishing for an investigation and then deciding a more informal process would be preferable.

There are, however, times when the circumstances of the issue mean we must take more formal steps to resolve the issue, such as a formal investigation or referring the matter to the police. Decisions to escalate issues will be made after consideration of the wishes of the person impacted, the seriousness of the behaviour, the context, the seniority of the offender, the impact on the individual, the risk to the psychological and physical safety of others, and the likelihood that the behaviour is also a criminal offence.

Option	What this might involve
Early intervention	<p>The objective of early intervention is to let a person know their behaviour is offensive, have the behaviour stop and prevent escalation or repeat behaviour. Responding to issues through early intervention may include:</p> <ul style="list-style-type: none"> • Raise it with the person, if you feel safe and comfortable to do so. • Raise it with an observer, seeking help to speak to the person or intervene either in the moment or if it happens again. • We encourage observers and those who know of potentially offensive behaviour to: <ul style="list-style-type: none"> ◦ Intervene in a way that is comfortable for them and if they feel safe to do so, to redirect the conversation or stop the behaviour. ◦ If safe to do so, separate the offender from the situation, e.g. remove the offender before circumstances escalate. ◦ Speak up publicly/in the moment to address the comment or behaviour. ◦ Encourage the offender to reflect on their behaviour, including apologising to the person or people impacted. • Seek advice or support from your preferred contact, e.g. your manager, peer contact, or your organisation's advisory/integrity team.
Informal pathways	<p>The objective of an informal pathway is to provide the offender with the opportunity to stop their behaviour, ensuring they also get a clear message their behaviour is offensive and may constitute sexual harassment. It can provide a safe way for individuals to raise issues about behaviour without being identified. Informal pathways alert the organisation about the issue and understand what it needs to do to prevent escalation or repeat behaviour. Responding to issues through informal pathways may include:</p> <ul style="list-style-type: none"> • A manager speaking to the offender about their behaviour. • Facilitating or mediating an open and respectful conversation between the parties. • An anonymous report. • Putting system changes in place to prevent further issues, such as moving or changing the shifts of the offender. • The organisation initiating further reviews to understand any underlying cultural issues and taking preventative action such as education.
Formal pathways	<p>The objective of a formal pathway is to initiate fair and confidential inquiries to fully understand the circumstances of a reported issue by impartial, capable internal or external investigators. It protects the person impacted from further harm by ensuring the person is safe and support is in place. The issue is documented, findings are made, proportionate disciplinary action can be taken and restorative action identified. Responding to issues through informal pathways may include:</p> <ul style="list-style-type: none"> • Written statements and interviews about the incident. • Speaking to witnesses. • Gathering other relevant evidence. • Putting the allegations to the person and giving them the opportunity to respond. • Weighing up all the facts and making a decision about whether the behaviour has breached relevant policies and codes of conduct. • Ensuring there are proportionate consequences for substantiated sexual harassment.

Option	What this might involve
External pathways	<p>The objective of an external pathway is to provide the individual the choice to have the issues resolved by an independent, expert body that can assist the employer and the parties to reach an outcome or resolution. It is important to note that there are time limitations for lodging a complaint, for example, within six months of the incident if you wish the Australian Human Rights Commission to assist.</p> <p>Responding to issues through external pathways may include:</p> <ul style="list-style-type: none"> • Participating in mediated discussions. • Parties agreeing to outcomes or resolutions, including compensation. • Escalating the issues to a formal Court or Tribunal if the matter cannot be resolved by conciliation. • Findings and determinations are usually made public.
Where the alleged behaviour may be a criminal offence	<p>The most serious sexual harassment may also be considered an offence under Criminal Law. In that instance, it may be appropriate to refer the issue to the police. We will assist you in whatever way we can, such as contacting the police on your behalf or accompanying you to make the report should you choose to do so.</p>

7 How we will respond

Prioritising your safety and well-being

- If you make a report of sexual harassment, we will ensure you are supported and involved in the decision about how to handle the issue. We will respect your wishes and best interests but this does not mean they solely decide the organisation's response or the consequences for the offender.
- Issues raised are taken seriously and viewed with integrity. We may take interim action in the interests of health and safety that is supportive and sensitive to the possibility that the reported behaviour occurred, without making conclusions.
- If you share your experience, we will, to the extent possible, ensure you do not need to retell your story to multiple people.
- Everyone directly impacted by an issue, including those who report and alleged offenders, will have access to trained confidantes/peer support advocates or referral pathways to external support services.
- All parties involved will be kept well informed and supported throughout the process.
- Investigations will be concluded as quickly as possible while ensuring the approach is ethical over expedient.
- Confidentiality will be maintained.

Procedural fairness and natural justice

- All investigations will be conducted to ensure there is procedural fairness and natural justice, irrespective of your position in the organisation. This means:
 - giving someone the opportunity to understand the allegations made against them and to respond.
 - providing appropriate support for individuals involved including the person subjected to the harassment and the alleged offender, such as referral to external support services.
 - facilitating a timely and objective process.
 - substantiating decisions.
 - ensuring outcomes are reasonable and proportionate.
 - maintaining confidentiality throughout.

Referrals for support

- There are a number of places where you can get specialist external support including:
 - Employee Assistance Program.

<Insert as relevant, including organisations that can support the specific needs of diverse groups (e.g. CALD, LGBTI or disability services)>.

8 Possible outcomes

Consequences for offenders

- The decision about any outcomes of a sexual harassment investigation will take all the circumstances of the case into consideration including the seriousness of the behaviour, the context, the impact on the individual, the seniority of the offender and relevant industrial instruments.
- There are a range of outcomes and implications for a person's employment that our organisation might consider once a report of sexual harassment is substantiated. This may include, but will not be limited to:
 - Requirement to participate in education or behaviour change coaching.
 - Disciplinary action against the person found to have engaged in harassment.
 - An apology from the offender (structured with support people).
 - Consequences for the position and remuneration of the offender such as demotion; transfer to another location; withholding remuneration increases or bonus payments; removal from sponsorship or high-potential talent or leadership programs; removal of leadership responsibilities.
 - Termination of employment.

Restorative actions for the individual impacted

- We will work with you to understand and implement, where possible, any actions that may help you to recover from the incident, rebuild relationships at work and continue a successful career with our organisation.

Organisation action

- On an ongoing basis, our organisation will take steps to identify the potential risk of sexual harassment. After an incident, it may be necessary to undertake a review of a particular work site or environment and implement targeted interventions such as culture surveys and further education.
- Transparency of the existence of incidents and sharing de-identified case studies will ensure the organisation and its employees continue to build capability in preventing sexual harassment.

Reprisals and victimisation

- If any person is found to have victimised, harassed or taken reprisal action against people who intervene to stop sexual harassment, report sexual harassment or participate in any inquiries or investigations relating to an allegation of sexual harassment, they may be subject to separate disciplinary action.
- This includes any action that treats someone adversely, such as ostracising a colleague, reducing their shifts or overtime opportunities, giving them menial jobs, relocating them against their wishes, taking them off key client accounts/key projects, and giving them a poor performance review.

Information or claims without substance

- While claims without substance are rare, if any person is found to have knowingly provided false information, knowingly made allegations of sexual harassment without any substantive merit or for vexatious or malicious reasons, they may be subject to separate disciplinary action.

9 Privacy, confidentiality and transparency

Confidentiality and privacy

The nature of sexual harassment and obligations that our organisation has when it is made aware of sexual harassment means that there are limits to what may or may not be disclosed.

Confidentiality in sexual harassment cases means only those who need to know about the issue in order to help resolve it and prevent further incidents will know the details. This means there may be times when we cannot meet a person's request that the information 'goes no further' than the person they reported the issue to. This is particularly the case, for example, when the issues are serious, involves someone senior in the organisation or there are psychological and safety risks to others.

Our organisation will prioritise and protect the identity of a person impacted, and anyone else that the investigation reveals has been subjected to harassment. We absolutely preserve the right to keep all details of issues confidential while investigations are underway, including in regard to media inquiries.

While the individual subjected to the alleged harassment will sometimes feel frustrated by a workplace investigation process, it is impossible to fairly investigate an allegation if the issues involved are being openly discussed amongst staff and/or the media at the same time.

We will therefore ask and expect people who report issues, participate in inquiries or are the subject of inquiries about their behaviour to keep all details of the issues confidential until the investigation is concluded. Failure to do so may result in further consequences or disciplinary action.

Once the matter is finalised, we will not restrict the impacted person's right to speak in their personal capacity, with any potential issues arising from this for their own consideration.

Transparency with external stakeholders

The following principles set out our approach to communicating about sexual harassment cases in particular *where the allegation demands investigation, where the offender or alleged offender is one of our organisation's senior leaders and where there is legitimate public or stakeholder interest.*

1. Our organisation will be transparent with internal and external stakeholders about the fact that sexual harassment claims exist.
2. The identity of those involved will be protected by our organisation at all times during the investigation process.
3. We will ask everyone involved to keep any workplace investigation process confidential while that process is underway with an exception for receiving expert counselling or support.
4. Once any investigation is complete, our organisation will not restrict the complainant's right to speak.
5. Where there is a legitimate public or stakeholder interest and an investigation has found that allegations are substantiated, our organisation may identify the offender.
6. Where an investigation has substantiated the allegations, we will be transparent about the outcomes and where an alleged offender leaves our organisation, we will be transparent about the fact of any financial settlement as part of that departure.
7. If a financial settlement is reached with the complainant, the fact of the settlement will be disclosed by our organisation to relevant stakeholders, together with the restrictions it imposes but not the amount.

Internal transparency

In order for everyone to be assured that issues are taken seriously, we are committed to sharing what we can about sexual harassment cases we deal with, while respecting the privacy of the people involved.

This does not mean full disclosure of all the details, but rather considered sharing of relevant information in order to encourage organisational learning and prevent similar cases from happening in the future.

10 Reporting and evaluation

The prevention of and response to sexual harassment is priority at <organisation> and, consistent with any other core organisation metric, is reported to our Board/Executive on a regular basis to help inform further action our organisation needs to take to eradicate sexual harassment.

This includes <insert as relevant>:

- Number of investigations: open, closed.
- De-identified case studies of serious incidents.
- Average length of investigation to resolution.
- Number of employee days lost, e.g. standdown, stress leave.
- High-level outcomes of investigations.
- Consequences for offenders including value of any settlements.
- Restorative action taken for the individuals impacted.
- Root cause analysis and organisation corrective actions.
- Long-term impact monitoring.

This policy will be reviewed on an <insert as relevant, e.g. annual basis> as part of our ongoing commitment to continuously improve our prevention efforts, create an environment that encourages early intervention on issues by everyone, and respect and support people who may be impacted by sexual harassment.

Personal relationships at work

Personal relationships can be conflated with sexual harassment and be challenging for organisations to know what role they should play and when. Sexual, romantic or intimate interaction that is entered into freely and reciprocated between consenting employees is not a form of sexual harassment. However, it is important to note that if people behave in sexually inappropriate ways at work, it could still create a sexualised atmosphere that is unwanted by others in the workplace.

This resource is indicative of the approaches from various Member organisations. It provides some guidance on what may be considered a personal relationship, and when and how they might need to be disclosed to the organisation. It is shared so that others may adapt or adopt it for their own context.

Definition

A close personal relationship is difficult to define because personal relationships can take many forms and can mean different things to different people and relationships can evolve over time.

Many long-term platonic or intimate relationships form through work connections.

While we respect the privacy of employees, sometimes the nature of the relationships formed gives rise to actual, potential or perceived conflicts of interest or compromised objectivity when it comes to important work-related decisions or actions.

Characteristics of a personal relationship

- Close or immediate family members.
 - Spouse, de facto or domestic partner.
 - Children including stepchildren, parents, brothers or sisters.
 - Definition may be extended in some workplaces to grandparents, aunts, uncles, nieces, nephews or grandchildren whether by blood or marriage.
- Current or past consensual romantic, intimate or sexual relationships.
 - May be on a casual, periodic or regular basis and may or may not constitute a primary relationship.
- A close, platonic friendship.

Circumstances in which the relationship may have adverse impacts

Personal relationships give rise to complexities and conflicts in some circumstances, including where:

- A direct report, management or strong collaboration relationship exists.
- There is an actual or possible power imbalance between the parties, e.g. where one is more senior than the other.
- One may have significant influence over another's recruitment/engagement, performance, progress, opportunities or finances.
- One individual is a senior leader or a significant stakeholder of public interest.
- The relationship leads to disruption or negatively impacts the working environment of others.
- There is an actual or perceived reputation damage for the organisation.

Principles for individual/organisation response

- Early and confidential disclosure by the individual(s) involved if the relationship meets the characteristics and circumstances identified above, with the objective of understanding implications rather than judgemental or punitive responses.
- Collaborative consideration and agreement of alternate arrangements to manage any potential impacts.
- Expectations that the parties will behave towards each other in work contexts and in front of colleagues in a professional and respectful way.
- Discretion and confidentiality is expected by both individuals and the organisation.
- Communication within the organisation will be collaboratively agreed and transparent as appropriate.
- Concealment of the relationship will be considered more seriously than full and early disclosure.

Questions for individuals and organisations to consider

- What assessment would a reasonable person make of the circumstances?
- Could my involvement in this relationship cast doubt on my or my organisation's integrity and the values we hold?
- If I saw someone else doing this, would I suspect that they might have a conflict of interest?
- If I did participate in this relationship, would I be happy if my colleagues and the public became aware of my involvement and any association or connection?
- How would I feel if my actions were covered by the media? Would they embarrass me, my family or the organisation?
- Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others?

Board reporting on sexual harassment

This reporting framework draws on the insight of Champions of Change Coalition Members with extensive Board safety reporting experience and has been adapted for a sexual harassment context. It is shared so that others may adapt or adopt it for their own context.

Internal reporting

There are a range of metrics reported to Boards on safety, with additional information provided depending on the metric.

At a minimum, safety is a mandatory monthly report to the full Board, with detailed reviews conducted by the relevant committee (for example, the Health, Safety and Environment Committee) as required.

It is recommended that sexual harassment reporting is anchored in safety reporting and included in the current safety reporting cadence, to provide Boards with a full picture of the physical and psychological safety culture in their workplace.

Consistent with safety, it is incumbent on Board members to request this information and interrogate 'zero' numbers because we know under-reporting is common: low or no reporting is a more likely scenario than low or no incidents.

The table below describes current safety reporting requirements in typical ASX entities and aligns this against a potential framework for reporting to Boards on sexual harassment.

Safety metric	Equivalent sexual harassment metric
Fatality/Significant Injury <ul style="list-style-type: none">Reported to the Board within 24 to 48 hours of incident occurring.Detailed follow-up report provided along with management presentation which includes:<ul style="list-style-type: none">Details of the event.Initial management response.Root cause analysis.Corrective actions.	Significant incident defined as: <ul style="list-style-type: none">Serious incident, e.g. sexual assault.Incident involving a senior employee or where there is legitimate public or stakeholder interest.High profile incidents. Reporting requirement: <ul style="list-style-type: none">Reported to the Board within 24 to 48 hours of incident.Ongoing updates at key points of the process, as required, until resolution.Remains on monthly report for 12 months after the incident close to understand restorative action taken for all parties (e.g. behaviour change counselling, implications for bonus/pay review) and long-term impact (e.g. resignation). Reporting to include: <ul style="list-style-type: none">Details of the incident.Initial management response.Root cause analysis.Corrective actions including making inquiries about additional impacted people.Immediate outcome of the investigation.Value of any settlements.Restorative action taken for all parties.Long-term impact monitoring.

Safety metric	Equivalent sexual harassment metric
<p>Medically Treated Injury/Lost Time Injury/Recordable Case</p> <ul style="list-style-type: none"> Reported to the Board monthly. Relates to an injury that has occurred and requires medical treatment, time off work or restricted duties. Reporting seeks to understand whether the safety management system is working and uncover systemic issues and must include: <ul style="list-style-type: none"> Number of incidents. Types of incidents. Days lost by employee (an indicator of severity). 	<p>Recordable incident defined as:</p> <ul style="list-style-type: none"> Incident that requires formal investigation. Where either party requires time away from work, i.e. respondent stood down, stress leave. <p>Reporting requirement:</p> <ul style="list-style-type: none"> Reported to the Board monthly. <p>Reporting to include:</p> <ul style="list-style-type: none"> Number of investigations: open, closed. Key themes/issues. Length of investigation to resolution. Number of employee days lost, e.g. standdown, stress leave. Outcomes of investigation. Corrective actions including risk assessments. Value of any settlements. Restorative action taken for all parties. Long-term impact monitoring.
<p>Near Miss/Potential Hazard</p> <ul style="list-style-type: none"> Reported to the Board monthly. Relates to something that has occurred which hasn't resulted in injury but could have, can include first aid treatment. Reporting seeks to understand the cultural clues to the potential of injury or harm and must include: <ul style="list-style-type: none"> Number of incidents. Types of incidents. 	<p>Cultural indicators defined as:</p> <ul style="list-style-type: none"> Issues informally raised, not requiring investigation. Information derived from a range of tools the organisation may employ depending on the maturity of feedback systems in place, including: <ul style="list-style-type: none"> People and Culture (HR) operations. Whistleblowers. Employee Assistance Program reports. Online reporting tools for peer feedback on behaviour. Internal advisors, e.g. Contact Officers. Results of climate, engagement or pulse surveys; everyday sexism surveys. <p>Reporting requirement:</p> <ul style="list-style-type: none"> Reported to the Board monthly. Supported by a detailed discussion with the CEO speaking to key aspects of the reporting every six months. <p>Reporting to include:</p> <ul style="list-style-type: none"> Number of incidents. Key themes. Corrective actions including risk assessments.

Board reporting on sexual harassment

External reporting

The following is an example statement on the prevalence and consequences for sexual harassment incidents that organisations may adapt or adopt for inclusion in organisation annual reports

In FY2020, there were XX sexual harassment matters informally and formally addressed by the organisation compared to XX in FY2019.

- The key themes of the matters were <insert for example, jokes and comments of a sexual nature; inappropriate contact following the end of a consensual relationship; forced intimacy; repeated propositions and requests for sex>.
- The average length of time it took to resolve these issues was X days.
- For X matters, termination of employment was the outcome (compared to X in FY2019).
- The value of financial settlements that related to these departures was a total of \$XX (compared to X in FY2019).
- For X matters, a formal warning was issued (compared to X in FY2019). Additional consequences were applied as appropriate including additional training, removal of delegated authorities or permissions, adjustments to profit share and/or impact to promotion.
- Of the X matters, X have resulted in individuals subsequently leaving the organisation and X individuals had their profit share reduced by an average of x%.
- The organisation undertook the following preventative action as a result <e.g. sexual harassment survey, education, leadership sessions, revised policy>

Understanding sexual harassment in your organisation

In our experience, understanding the prevalence, manifestations and culture of sexual harassment is critical for leadership accountability, targeted action and monitoring progress. The following statements are excerpts from employee engagement surveys conducted by Member organisations. They are shared so others may adapt or adopt them for their own context.

Before sexual harassment surveys are administered, expert advice is recommended to ensure survey participants are supported and not subjected to potential harm.

Example culture survey questions

- I think I could report instances of dishonest or unethical practices to the appropriate level of authority without fear.
- Senior leaders support diversity and inclusion in the workplace.
- In our organisation, sex-based harassment is not tolerated.
- My immediate manager effectively works with people who are different from themselves (e.g. gender, racial/ethnic background, lifestyle, etc.).
- It is safe to speak up about potential issues or problems in our organisation.
- Employees are treated with respect regardless of their role.
- My immediate manager genuinely supports equality among all genders.
- In this organisation, it is safe to raise issues of sexual harassment without fear of victimisation or negative career implications.

These statements should be supported by a five-point scale, for example, Agree/Tend to Agree/Don't Know/Tend to Disagree/Disagree.

» National survey on sexual harassment in Australian workplaces

In 2018, the Australian Human Rights Commission conducted *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces (2018)*.

Survey results and survey questions to adapt or adopt for your organisation can be found on the Australian Human Rights Commission website and we encourage you to contact them for support and advice.

Example prevalence questions (from Victorian Public Service survey)

1. During the last 12 months in your current organisation, have you experienced any of the following behaviours at work?

[Select all that apply]

- ☐ Sexually suggestive comments or jokes that made you feel offended (in either a group or one-on-one situation)
- ☐ Intrusive questions about your private life or comments about your physical appearance
- ☐ Unwelcome touching, hugging, cornering or kissing
- ☐ Inappropriate physical contact (including momentary or brief physical contact)
- ☐ Repeated or inappropriate invitations to go out on dates
- ☐ Sexual gestures, indecent exposure or inappropriate display of the body
- ☐ Any other unwelcome conduct of a sexual nature
- ☐ Repeated or inappropriate advances on email, social networking websites or internet chat rooms by a work colleague
- ☐ Sexually explicit email or SMS message
- ☐ Request or pressure for sex or other sexual act
- ☐ Sexually explicit pictures, posters or gifts that made you feel offended
- ☐ Sexually explicit posts or messages on social media (including Facebook, Snapchat, Instagram, etc.)
- ☐ Inappropriate staring or leering that made you feel intimidated
- ☐ No, I have not experienced any of the above behaviours.

2. How often have you experienced these behaviours?

- ☐ At least once a day
- ☐ Once every few days
- ☐ Once a week
- ☐ Once a month
- ☐ Less than once a month

3. Which of the following best describes the person(s) who behaved in that way?

[Select all that apply]

- ☐ Colleague
- ☐ Group of colleagues
- ☐ My immediate manager or supervisor
- ☐ A more senior manager than my manager
- ☐ Someone I supervise or manage
- ☐ Client/customer/patient/stakeholder
- ☐ Member of the public

4. When the harassment happened to you, did you respond in any of the following ways?

[Select all that apply]

- ☐ Tried to laugh it off or forget about it
- ☐ Pretended it didn't bother you
- ☐ Avoided the person(s) by staying away from them
- ☐ Told the person the behaviour was not OK
- ☐ Avoided locations where the behaviour might occur
- ☐ Took time off work
- ☐ Sought a transfer to another role/location/roster
- ☐ Told a colleague
- ☐ Told a manager
- ☐ Told Human Resources
- ☐ Told a friend or family member
- ☐ Told someone else
- ☐ Submitted a formal complaint (go to last question)
- ☐ Other

5. Please tell us why you did not submit a formal complaint

[Select all that apply]

- ☐ I believed there would be negative consequences for my reputation [e.g. that I would be blamed or not believed or thought to be overreacting.
- ☐ I believed there would be negative consequences for my career [e.g. opportunities for promotion, risk of being fired.
- ☐ I didn't think it would make a difference.
- ☐ I believed there would be negative consequences for the person I was going to complain about.
- ☐ I didn't need to because I made the harassment stop.
- ☐ I didn't need to because I no longer had contact with the harasser(s).
- ☐ I didn't know who to talk to or how to make a complaint.
- ☐ I was advised not to by a colleague or colleagues.
- ☐ I was advised not to by family or friend(s).
- ☐ Other

6. Were you satisfied with the way your formal complaint was handled?

- ☐ Yes
- ☐ No
- ☐ Don't know

Employee education: Champions of Change Coalition collaboration on the SBS Inclusion Program

Developing and implementing education programs on gender equality and related topics such as sexual harassment in the workplace can be cost prohibitive for many organisations. This is particularly so as employee, organisation and community expectations and standards on these issues continue to evolve rapidly.

In 2019, Champions of Change Coalition partnered with Australian media company, SBS – a Member of our National 2016 Group – to develop a comprehensive, accessible and scalable online gender equality learning program following adult learning principles.

The gender equality module forms part of the SBS Inclusion Program and was produced using the combined expertise and experience of our Coalition. It covers a range of topics including:

- Why gender equality in the workplace matters
- Women in leadership
- Everyday sexism
- Sexual harassment
- The gender pay gap
- Recruitment and promotions
- Flexibility
- Workplace responses to domestic violence

Participants learn how gender inequality manifests in organisations; how to consider the impact of certain behaviours such as those covered in this report; and actions leaders and employees can take to create more safe, respectful and inclusive workplaces for all.

Working with SBS, we have been able to create a product that specifically targets employees and middle managers who we know are often hard to reach but critical stakeholders to engage in the advancement of women in our workplaces and society.

SBS has made a considerable investment in developing the Inclusion Program, and while there is a cost to purchase it from SBS, there are clear economies of scale for organisations in accessing pre-prepared and regularly updated resources that are aligned to our gender equality goals.

For more information visit: <https://inclusion-program.com.au/gender>

A range of pathways for reporting and response

This resource has been replicated with permission from the Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010* (refer to page 74) can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

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

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

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

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

A range of response options	
Self-management	Informal (internal) management
<p>The complainant is supported to resolve the matter on their own, provided they feel confident and safe to do so.</p> <p>Example</p> <p>The complainant raises the issue with the other person and asks them to change their behaviour.</p> <p>Advantages</p> <p>Self-management can resolve issues quickly and quietly, be non-threatening, build respect and preserve relationships.</p> <p>Disadvantages</p> <p>In some instances, it may result in victimisation or further harm or leave the complainant feeling isolated or unsupported. Employers may also miss opportunities to deal with broader cultural and systemic issues.</p> <p>Remember</p> <p>In some circumstances, self-management may be inappropriate, such as if there is a power imbalance between the parties, if it has been attempted unsuccessfully before, or if it raises safety concerns. Self-management is never appropriate if it is unsafe or against the complainant's wishes. Make sure to follow up with the complainant after any attempt at self-management to assess if further support or escalation is needed.</p>	<p>Resolving the issue internally, without a formal response or investigation.</p> <p>Example</p> <p>A manager who receives a complaint takes informal action, as agreed with the complainant. For example, the manager speaks to the worker to raise concerns about their behaviour, facilitates a discussion or mediation, observes matters with a view to stepping in if the behaviour happens again, or puts new practices in place such as changing the roster, reconfiguring the workspace or organising training.</p> <p>Advantages</p> <p>Informal management is quick and adaptable, can solve problems indirectly without confronting or alerting the respondent or identifying the complainant; it is generally less intimidating for the complainant, and can foster a culture of open and respectful conversations about behaviour and appropriate boundaries.</p> <p>Disadvantages</p> <p>Outcomes are unenforceable and may vary widely.</p> <p>Remember</p> <p>Any action that is taken should be agreed upon with the complainant. Informal responses are not appropriate for serious behaviour that would warrant discipline if substantiated, criminal conduct or where other workers may be at risk.</p>

A range of pathways for reporting and response

A range of response options	
Formal (internal) complaint	External complaint
<p>Dealing with a matter using formal internal processes, with documented findings.</p> <p>Example</p> <p>A written statement is made to someone in a position of authority or a representative from human resources, which is impartially investigated. Following an investigation, a formal finding is made and discipline or other action is taken when allegations are substantiated.</p> <p>Advantages</p> <p>Outcomes can be more readily documented, enforced and monitored. Complaints can be handled consistently, allowing employers to identify patterns or 'hidden' issues and address them at an organisational level. If required, a formal record of the investigation can be produced; for example, if the matter escalates to litigation or a complaint is made to an external agency.</p> <p>Disadvantages</p> <p>May be more time-consuming for the employer and more emotionally draining for the parties.</p> <p>Remember</p> <p>Employers must be vigilant against the risk of victimisation and re-traumatisation for complainants.</p>	<p>Referring the matter to an external body.</p> <p>Example</p> <p>The complainant makes a complaint to the Commission and the parties agree to participate in a free, confidential dispute resolution process. Alternatively, depending on the circumstances, the complainant may choose to go to a union, to the Australian Human Rights Commission, or to the Fair Work Commission.</p> <p>Advantages</p> <p>An independent, expert body can assist the employer and the parties to reach an outcome or resolution by agreement. Outcomes may become legally enforceable.</p> <p>Disadvantages</p> <p>The external process takes the complaint out of the workplace and may take longer to resolve. The employer (and/or individual facing the allegations) usually becomes a respondent to the complaint. If the employer does not voluntarily participate, the complaint cannot be resolved. If the matter cannot be resolved, the matter may be escalated to a formal court or tribunal process, which can be time-consuming, costly and more adversarial. Final determinations are usually public.</p> <p>Remember</p> <p>Each external body has a different jurisdiction and process with different benefits and outcomes. It is important to be guided by the person who has experienced sexual harassment and support them to make their own informed choice.</p>

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

Response provided by: Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010* (refer to page 81) can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

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

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

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

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

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

Responding to reports

This resource has been replicated with permission from the Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment. - Complying with the Equal Opportunity Act 2010* (refer to page 77) can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

Employers must ensure that responses to complaints are timely and consistent with set policies and processes, with proportionate disciplinary outcomes. There is no one-size-fits-all approach to handling complaints of sexual harassment. Employers should adopt a reporting and complaints procedure that is tailored to their particular workplace and work culture. To help get started, however, here are the basics of a suggested approach to receiving a complaint or report of sexual harassment.

A step-by-step guide to responding to complaints

1. Listen to the complainant's story

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

2. Assess the situation to determine if immediate action is necessary

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

3. Provide information, referrals and options to the complainant

- Explain the complaint process, confidentiality, relevant timelines and options to the complainant.
- Explain any limits to confidentiality, or obligations supervisors or managers are required to take (such as recording the incident or escalating the complaint).
- Explain the criteria for whether or not an investigation will be undertaken and how it applies to the complaint.
- Inform the complainant that they are entitled to have a support person with them throughout the process.
- Support the complainant to lead the process and decide on the next steps that are right for them.
- Ask the complainant what outcome they are seeking. If that outcome is not available, explain this and discuss what a successful resolution might otherwise look like from the complainant's or organisation's perspective.
- Provide referrals to relevant support services see 'Referrals to external organisations' on page 120).
- Remind all parties and bystanders that victimisation is against the law and will not be tolerated. Discuss any urgent action that might be required to protect against it, or to otherwise protect the complainant's safety, privacy and ability to do their job, while the complaint process ensues.

4. Decide whether to informally resolve the matter or to investigate

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

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

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

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

Responding to reports

6. Take action to resolve the complaint

If satisfied that it is more likely than not that the conduct occurred, take action that holds the respondent to account for their behaviour and minimises adverse impacts on the complainant, bystanders and other workers. Actions could include, for example:

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

7. Record data

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

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

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

When should external processes be used?

Response provided by: Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010* (refer to page 84) can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

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

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

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

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

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

Responding to reports

? What should you do if the complainant or harasser leaves the workplace before a complaint can be investigated?

Response provided by: Victorian Equal Opportunity and Human Rights Commission. The source document *Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010* (refer to page 84) can be found at www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/.

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

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

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

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

Responding to historical reports of sexual harassment

This resource draws on our experience of responding to historical allegations of sexual harassment for our Members and others to consider. It is not intended to account for every scenario or offer legal advice, which may be required in some cases.

There may be instances where your organisation needs to respond to historical reports of sexual harassment. That is, when allegations of sexual harassment are made or resurface about the past behaviour of a current employee and where some time has elapsed since the incident. It may relate to their time with a previous employer or be raised by a former employee of your organisation.

How organisations respond, irrespective of the time that has elapsed, is important because it ensures consideration is given to the risk of a having a repeat offender in a workplace; reinforces what an organisation values and prioritises and demonstrates to internal and external stakeholders that sexual harassment is treated as a serious workplace issue.

Suggested actions

Understand the circumstances of the issue:

- **Speak to the person who raised the issue** or the person who was the subject of the harassment to understand their wishes, noting it may not always be possible to do this.
- **Speak with the person who was alleged to have sexually harassed** to understand the circumstances and their perspective.
- **Contact the former employer** to understand the circumstances, whether an investigation was conducted and what the outcome of the investigation was.
- **Make inquiries** about whether other people in your organisation have experienced or observed similar behaviour from the person.

Respond to internal and external stakeholder questions:

- **Respond to any inquiries** (for example media) consistent with the Champions of Change Coalition transparency principles outlined in *Disrupting the System: Preventing and responding to workplace sexual harassment*. This is particularly important in circumstances involving high-profile employees.
 - Confirm the fact of the allegation(s) and that the organisation is taking steps to understand the full picture.
 - Protect the identity of all parties until you have further information and an assessment is made by the organisation.
 - When your inquiries are concluded, be transparent with your stakeholders, as appropriate, about the steps you have taken to understand the issue, your assessment and any action your organisation has taken.

Support the people involved:

- **Offer support** as needed to the person who has been impacted by the allegations.
- **If appropriate, reach out to the person** who raised this historical issue to refer them to external support organisations who may be able to help them with any unresolved concerns.

Responding to historical reports of sexual harassment

Organisations are likely to discover one of three outcomes:

- **The issue was unresolved**, for example an investigation was not conducted, the investigation was never completed because of poor process or because the alleged offender resigned before the investigation was complete:
 - You may need to initiate your own inquiries to understand the circumstances, if appropriate.
 - You may then need to make an assessment of what most likely happened, based on the information you have available.
- An investigation was conducted by the former employer and the former employer advises the **allegations were unsubstantiated**:
 - Your organisation does not need to make any further inquiries into the matter, other than to understand the circumstances so you can respond appropriately.
- An investigation was conducted by a former employer and the **allegations were substantiated**:
 - Your organisation should endeavour to understand the seriousness of the issue, time passed, context of the matter and action taken by the former employer and employee (for example, restorative actions, further education).

In deciding what action to take next, there are some important considerations for organisations:

- Whether the person who was accused of sexual harassment had failed to disclose details of this issue or provided false information when asked at the time they joined your organisation.
- Whether the person who sexually harassed has insight into the impact of their behaviour or is potentially at risk of reoffending.
- Whether in today's context, recent, substantiated sexual harassment by a senior leader responsible for employee engagement and organisational culture impacts their ability and credibility to hold a leadership position now or in the future.

Referrals to external organisations

This is a list of organisations that can help individuals seek advice and support about matters related to sexual harassment. Many offer workplaces support and education services.

Federal	
Australian Human Rights Commission	www.humanrights.gov.au Info Line: 1300 656 419 (local call) TTY: 1800 620 241 (toll free) Fax: (02) 9284 9611 Online: complaintsinfo@humanrights.gov.au
Community Legal Centres Australia	www.nacclc.org.au/directory Phone: (02) 9264 9595
New South Wales	
NSW Anti-Discrimination Board	https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_contactus/adb1_contactus.aspx Phone: (02) 9268 5544 Free call: 1800 670 812 Email: adbcontact@justice.nsw.gov.au
Legal Aid NSW	https://www.legalaid.nsw.gov.au Legal Helpline: 1 300 888 529
Victoria	
Victorian Equal Opportunity and Human Rights Commission	https://www.humanrights.vic.gov.au/for-individuals/sexual-harrassment/ Phone: 1300 292 153 Email: enquiries@veohrc.vic.gov.au
Victoria Legal Aid	https://www.legalaid.vic.gov.au Phone: 1300 792 387 Online chat: https://www.legalaid.vic.gov.au/get-legal-services-and-advice/free-legal-advice/get-help-online-with-legal-help-chat
Queensland	
QLD Human Rights Commission	https://www.qhrc.qld.gov.au/your-rights/sexual-harassment Phone: 1300 130 670, TTY: 1300 130 680 Email: info@qhrc.qld.gov.au
Western Australia	
WA Equal Opportunity Commission	www.eoc.wa.gov.au Phone: (08) 9216 3900 Email: eoc@eoc.wa.gov.au
South Australia	
SA Equal Opportunity Commission	https://eoc.sa.gov.au Phone: (08) 8207 1977 or 1800 188 163 Email: EOC@sa.gov.au If you are deaf, hard of hearing and/or have a speech impairment, contact us via: TTY: by phoning 133 677 then asking for AGD on 1800 177 076 Speak and Listen by phoning: 1300 555 727 and ask for AGD on 1800 177 076 Internet Relay: by connecting to the National Relay Service and asking for AGD on 1800 177 076
Working Women's Centre SA	https://wwcsa.org.au Phone: (08) 8410 6499 or 1800 652 697

Northern Territory	
NT Anti-Discrimination Commission	https://adc.nt.gov.au Phone: (08) 8999 1444 or 1800 813 846 Email: antidiscrimination@nt.gov.au
NT Working Women's Centre	https://www.ntwwc.com.au Phone: (08) 8981 0655 or 1800 817 055 Email: admin@ntwwc.com.au
ACT	
ACT Human Rights Commission	https://hrc.act.gov.au/discrimination/sexual-harassment/ Phone: (02) 6205 2222 TTY: (02) 6205 1666 FAX: (02) 6207 1034 Email: human.rights@act.gov.au Victims Support ACT: 1800 822 272 (free call)
Tasmania	
Equal Opportunity Tasmania	https://equalopportunity.tas.gov.au Phone: (03) 6165 7515 or 1300 305 062 Email: office@equalopportunity.tas.gov.au
Specialist services	
Disability discrimination	<p>If you are Deaf, have a hearing or speech impairment; you can use the National Relay Service to access any of the services listed. For other services for people with a disability, contact AccessHub</p> <p>People With Disability Australia https://pwd.org.au/get-help/discrimination/ For advocacy support, please call us on 1800 843 929 (toll free) or Email: info@wayfinderhub.com.au.</p> <p>Australia Centre for Disability Law (NSW) Voice: 1800 800 708 (9:30am to 12:30pm, Monday, Wednesday and Thursday) National Relay Service: If you are deaf, or have a hearing or speech impairment, you can contact us through the National Relay Service (NRS). Ask for Australian Centre for Disability Law on 1800 800 708. Email: advice@disabilitylaw.org.au or info@disabilitylaw.org.au (for non-legal advice) https://disabilitylaw.org.au Disability Discrimination Legal Service (Victoria) Phone: (03) 9654 8644 Email: info@ddls.org.au www.ddls.org.au </p>
Aboriginal and Torres Strait Islander Legal Services	<p>National Aboriginal and Torres Strait Islander Legal Services Phone: (03) 9418 5928 http://www.natsils.org.au/MembersPartners.aspx (Access State and Territory based services)</p>
Migrant legal service	<p>Migrant Employment Legal Service (NSW) Phone: (02) 8002 1203 https://mels.org.au/contact/</p>
LGBTQ legal services	<p>Inner City Legal Centre (NSW) https://www.iclc.org.au/ LGBTIQ Legal Service (VIC) https://lgbtiqlegal.org.au LGBT legal service (QLD) https://lgbtilegalservice.org.au</p>

Disrupting the System

This resource is an extract from *Disrupting the System - Preventing and responding to sexual harassment in the workplace*. Find the full report here:

championsofchangecoalition.org/resource/disrupting-the-system/

About Champions of Change Coalition

Champions of Change Coalition Members include CEOs, secretaries of government departments, non-executive directors and community leaders. Champions of Change believe gender equality is a major business, economic, societal and human rights issue. Established in 2010, by Elizabeth Broderick AO, our mission is to step up beside women to help achieve gender equality and a significant and sustainable increase in the representation of women in leadership.

championsofchangecoalition.org

