

Disrupting the System

Preventing and responding to
sexual harassment in the workplace

Building confidence and trust in workplace responses to sexual harassment



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Introduction



Organisations in the Champions of Change Coalition have made good progress in developing systems to prevent sexual harassment in the workplace, but many still grapple with how to manage reports of sexual harassment and adequately resolve issues when they occur.

Many employees do not speak up when sexual harassment occurs because they lack confidence in their organisation's ability to resolve the issue appropriately. When they do, they find the processes and systems for responding to sexual harassment can be harmful. People impacted by sexual harassment often describe responses as inadequate and traumatic, and sometimes more traumatic than the incident itself.

Low levels of trust correspond to low levels of reporting, preventing leaders from truly understanding what's happening in their organisation and how to create safer, more inclusive workplaces.

Building trust and confidence in reporting systems requires a fundamental shift in the way organisations view reports and reporters of sexual harassment. Organisations need to shift from viewing sexual harassment as a complaint with the potential to damage reputations to an opportunity to 'repair' harm and help the organisation learn so further harm is prevented.

It has become increasingly evident that person-centred and trauma-informed processes have been a missing part of workplace responses to sexual harassment that have largely addressed sexual harassment as an issue of legal risk rather than human harm.

Rather than asking 'tell me what happened and prove it' organisations need to be asking people to 'tell me about the impact' and 'Are you OK? How can we help repair the situation?'

Zero tolerance positions need to evolve to include an expectation of zero harm.

These principles equally apply to other harmful behaviours in the workplace (for example, bullying, racism, homophobia, ablism, sex-based harassment and hostile workplace environments that often accompany sexual harassment).

Revised mindsets and processes, reoriented systems, and investment in building new capability are essential to underpin and embed a new approach.

In this resource, we share practical steps that organisations can take to develop more person-centred, trauma-informed, safe and fair approaches to workplace sexual harassment.

The alternative models put forward aim to build trust among employees and improve outcomes for individuals and organisations following the occurrence of sexual harassment. They are drawn from emerging practice across Member organisations, many of whom are trialling and continuing to evolve their practice to create better outcomes for the individuals impacted. They are not intended to be, nor should they be taken as, legal advice.

Effective responses need to be person centred, trauma-informed, and safe and fair.



Our commitment

Our commitment and obligation is to eradicate sexual harassment from our organisations. Until such time, our goal is for all organisations to have a safe and fair response systems that prioritise people's wellbeing, healing and recovery.

We know that we don't have all the answers. However, we stand by our long-term commitment to share our insights as we learn, as we have done in this resource, in the hope that others may adopt, adapt and enhance this approach.

Our thanks

In developing this resource, we engaged with a range of stakeholders, including people in organisations responsible for sexual harassment responses, commercial lawyers, human rights experts, and experts working in trauma-informed specialist response services.

We also reviewed 19 independent inquiries and workplace culture reviews with a focus on sexual harassment undertaken in Australia between 2020 and 2023. Collectively, these reviews collate personal experiences and stories of harm from over 70,000 people, representing a workforce population of around 3.5 million people.

We acknowledge the many people who have raised their own experiences of sexual harassment and brought this issue to light, often at great personal and professional cost.

What leaders can do – now

New approaches to building trusted, person-centred, trauma-informed, safe and fair reporting systems to resolve workplace sexual harassment are outlined in the following pages. As first steps, leaders can take specific and immediate action in the following ways:

- 1 ➤ Understand what happens in your organisation when people report sexual harassment and assess the adequacy and personal impact of current processes.
- 2 ➤ Provide the resources – people, time, money and imperative – to build the organisation's capability to respond to reports of sexual harassment in a person-centred, traumainformed, safe and fair way.
- 3 ➤ Establish metrics to monitor how effective and trusted your response process are, for example, end-to-end duration of the process, retention, rates of substantiation and increased reporting.
- 4 ➤ Ensure leadership statements and organisational policies on sexual harassment emphasise commitment to repair, recovery and support for all affected individuals – and that this support is not contingent on a person making a formal report.

Guide for readers



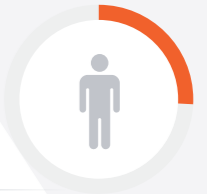
Sexual harassment takes many forms and is always contextual. Rather than provide examples throughout this resource, we invite readers to apply the following approaches to instances of sexual harassment within their organisations.

Experiences of the Australian workforce

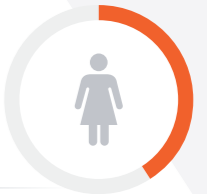


1/3
of workers have been sexually harassed in the workplace in the past 5 years.

26% of men were sexually harassed at work in the past 5 years.



41% of women were sexually harassed at work in the past 5 years.



67% of non-binary people were sexually harassed at work in the past 5 years.*



18%
of workers made a formal report after experiencing sexual harassment in the workplace in the past 5 years. This was similar for men and women (18% for men and 19% for women).**

44% of workers who made a formal report said their workplace provided wellbeing support during and after reporting.



40% of workers who made a formal report said that no changes occurred at their workplace as a result and for two-thirds the harassment continued.



People who report sexual harassment experience negative consequences: **13%** are ostracised, victimised or ignored by colleagues; **13%** are forced to resign; **12%** are labelled a troublemaker; **10%** are denied work opportunities.



* As the survey captured a small number of non-binary respondents in the workplace in the past 5 years (n=56), this result should be interpreted with caution.

** Due to the small number of survey respondents who identified as non-binary, the data for non-binary people could not be reported. Source: Australian Human Rights Commission (2022) Time for Respect: Fifth National Survey on Workplace Sexual Harassment. At: humanrights.gov.au/time-for-respect-2022

Why many current systems and processes to respond to workplace sexual harassment don't work

Current sexual harassment response systems have primarily been built to address grievances, deliver disciplinary outcomes and mitigate organisational, legal and reputational risk. This approach has deprioritised the needs of the person impacted, heightened the stigma of being a 'complainant' and led to chronic underreporting and poor outcomes for all.

When workplace sexual harassment is predominantly viewed through a legal lens, evidentiary standards and burdens of proof are often applied to an unnecessarily high degree, leading to a significant proportion of unsubstantiated – and, from the perspective of the person impacted, largely unresolved – reports.

The perspectives of individuals and organisations on responses to workplace sexual harassment are misaligned, and this is contributing to the prevalence of underreporting, mistrust and poor outcomes.



People do not report sexual harassment because of the inadequacies in the current reporting system that harm the person impacted and result in them feeling it is not worth it and it is easier to keep quiet.

Employees perspectives and experiences	≠	Organisational perspectives and experiences
<ul style="list-style-type: none"> There is not enough support for those who have experienced sexual harassment at work, for witnesses, for those accused or for those people dealing with reports – both during the reporting process and afterwards. Response processes often fail to consider and protect the cultural safety and inclusion of people impacted who experience additional barriers based on individual characteristics including (but not limited to) race, LGBTIQ+ status and disability. 	<p>Support systems</p>	<ul style="list-style-type: none"> Many businesses do not have the capability to provide person-centred, trauma-informed, safe and fair support and responses for those impacted by sexual harassment at work, whether internally or externally through employee assistance programs (EAPs) or other providers. There is inadequate support for those charged with leading organisational responses to reports of sexual harassment, as well as for those who are directly involved.
<ul style="list-style-type: none"> Employees do not wish to disclose sensitive and/or personal information to managers or colleagues who are ill-equipped to respond and are unsure of how 'serious' an incident needs to be to warrant a report. They may also fear that a confidential report won't be kept confidential. The personal cost to career and reputation of reporting sexual harassment is often seen as outweighing the benefit of doing so. 	<p>Reporting inhibitors</p>	<ul style="list-style-type: none"> Anonymous reporting systems and whistleblower hotlines are often not set up to adequately respond to the specific needs of those reporting sexual harassment at work, and sometimes incorrectly escalate disclosures (e.g. to boards). A report can result in fractured relationships within teams and have ongoing impacts.

Employees perspectives and experiences	≠	Organisational perspectives and experiences
<ul style="list-style-type: none"> When reports are made, the person impacted becomes a party to a process they have no control over, and are often required to tell their story multiple times, resulting in further trauma. Drawn-out processes and poor communication on progress can also cause further harm. The ramifications for an accused person may not match the wishes of the person who has been sexually harassed at work. For example, a person may fear the person they report will lose their job when they simply want the reported behaviour to stop. The high rate of unresolved reports sends a message to people who have experienced sexual harassment that they will not be believed. At the same time, it sends a message that frivolous or vexatious claims are abundant. 	<p>Resolution</p>	<ul style="list-style-type: none"> Managers are unaware of the range of options available to them to resolve matters and prevent escalation. The tendency is to default towards formal investigations to manage organisational legal and reputational risk first and foremost. Evidentiary standards and burden of proof are often applied to an unnecessarily high degree leading to a significant proportion of unsubstantiated reports. There is a lack of clear guidance about roles and responsibilities – particularly for people, safety, legal, communications and leadership teams.
<ul style="list-style-type: none"> There is limited assistance provided to impacted individuals, including people who experience, people accused of, and those who observe or respond to sexual harassment. Teams are not supported to reintegrate/repair following an outcome, and opportunities for the person accused of sexual harassment to change their behaviour are not provided. 	<p>Recovery</p>	<ul style="list-style-type: none"> People who experience sexual harassment often leave organisations, even if the issue is 'resolved', as there is inadequate ongoing support as well as stigma attached to being a 'complainant'. Organisations are not treating the post-resolution period as a safety, wellbeing and/or talent retention issue to be actively managed.

* Australian Human Rights Commission (2022) Time for Respect: Fifth National Survey on Workplace Sexual Harassment. At humanrights.gov.au/time-for-respect-2022

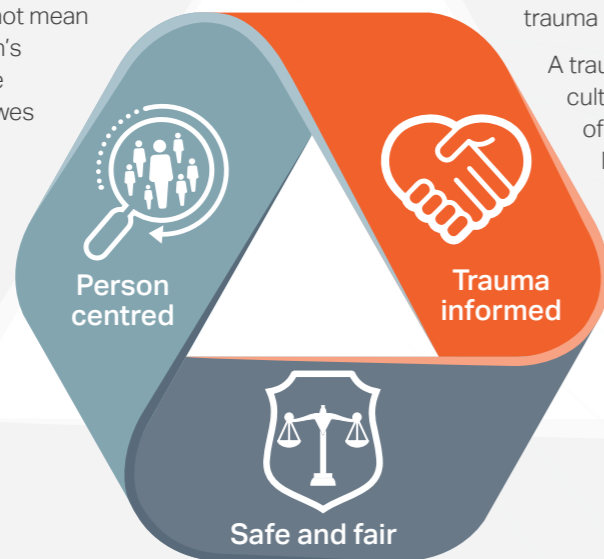
Three essential principles underpin effective responses



A **person-centred** response means putting the individual impacted by sexual harassment at the centre of any response to the behaviour. It is about listening to and supporting people. A person-centred approach keeps the person at the centre of decision making and planning and gives that person choices about how the organisation should respond.

It respects the wishes and best interests of the person impacted, but does not mean they solely decide the organisation's response or consequences for the offender, as the organisation still owes a duty of care to keep everyone in the workplace safe.

A person-centred approach also recognises that the affected person will share their experience when they feel comfortable, and that it may take them time to process what has happened to them and feel ready to talk.



A **trauma-informed** response means understanding how exposure to emotionally disturbing and/or physically threatening events can affect a person psychologically.*

A trauma-informed response prioritises making people feel safe to disclose their experience and offers choice and control over the process.

It requires moving away from processes that focus primarily on whether unlawful behaviour has or hasn't occurred, and toward ones that address and remedy the impact of harmful behaviour on people, acknowledging that past and present trauma inform that impact.

A trauma-informed approach is respectful of cultural background and aware that aspects of a person's identity – such as age, First Nations background, ethnic background, sex, gender, class or disability – may affect how they respond to workplace sexual harassment.

A **safe and fair** response means there is care for both parties without compromise to process. It recognises that when sexual harassment takes place at work, workplaces have obligations to ensure their response protects the health and safety of the person reporting the incident and all others impacted by it.

Workplaces also need to take actions to prevent reoccurrence, and to fulfil legal obligations to ensure procedural fairness for those who are accused of sexual harassment and that their workplaces are safe and healthy for all employees.

A safe and fair response ensures accountability but has proportionate actions and outcomes.

Building trust and confidence in reporting systems requires a fundamental shift in the way organisations view reports and reporters of sexual harassment.

Person-centred



Trauma-informed



Safe and fair



Revised mindsets and processes, reoriented systems, and investment in building new capabilities are essential to underpin and embed a new approach.

See Australian Human Rights Commission guidelines for further information at: humanrights.gov.au/sites/default/files/factsheet_-_person-centred_and_trauma-informed_approaches_to_safe_and_respectful_workplaces_0.pdf.

* Trauma is more commonplace than people may realise. The Australian Child Maltreatment Study underscores its prevalence in the population. The survey found that, in childhood aged up to 18: **32.0%** had experienced physical abuse; **28.5%** had experienced sexual abuse; **30.9%** had experienced emotional abuse; **8.9%** had experienced neglect; **39.6%** of respondents had been exposed to domestic violence between parents.

Specialist advice, support and training on trauma-informed care is available from organisations such as [Full Stop Australia](#) and [Blue Knot Foundation](#).

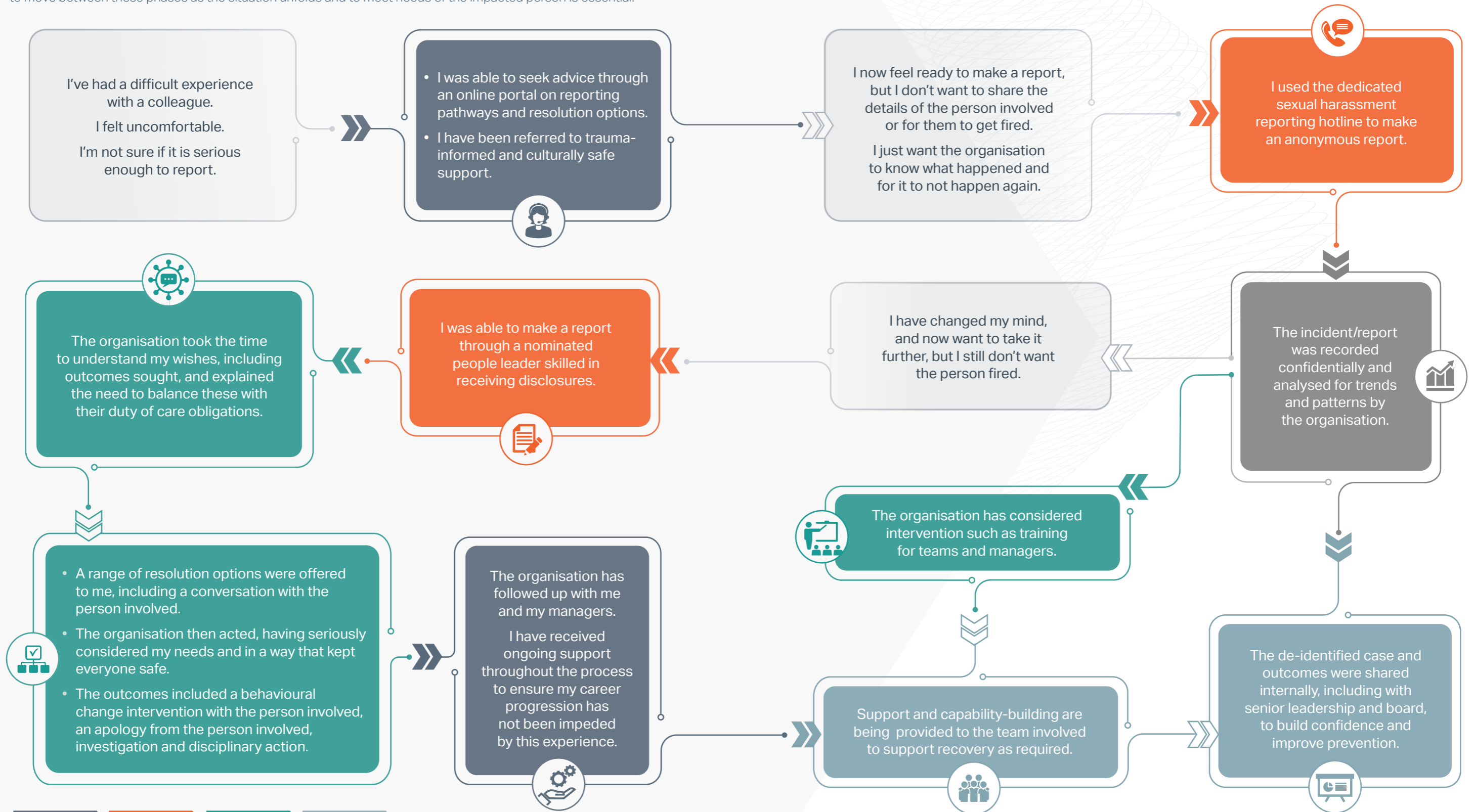
Characteristics of trusted reporting and response processes



	Support	Reporting	Resolution	Recovery	
Expectations	Specialised end-to-end support underpins every phase of the process	Multiple reporting options are available and people leaders are equipped to receive disclosures	A range of resolution pathways are available, with particular focus on early interventions managed by appropriately skilled people	Ongoing recovery and post-resolution care is delivered by appropriately skilled people.	
Organisational benefits	We have systems in place to ensure our people can access appropriate support throughout the process so that they can deal with issues early, heal from the impacts of harmful behaviour and re-engage in the workforce	We have a better understanding of how often, where and why harmful behaviours are occurring in our workplace to help us prevent and manage risks.	We are able to intervene early to prevent escalation, minimise harm to individuals and teams, change behaviour and retain talent	We learn from incidents to help manage risk, improve processes and prevent reoccurrence We share our learnings and build trust in our approach	
Intention	Person centred	<ul style="list-style-type: none"> Support is provided for everyone impacted by workplace sexual harassment (whether or not the individual chooses to formally report an incident), including during the reporting process and afterwards 	<ul style="list-style-type: none"> People have multiple avenues to report sexual harassment and receive support as the organisation's first response 	<ul style="list-style-type: none"> People impacted by workplace sexual harassment are aware of the options for resolution and are informed and updated throughout the process, including on the outcome of the process 	<ul style="list-style-type: none"> There is an intentional post-resolution plan to help teams and individuals recover from incidents of sexual harassment at work
	Trauma informed	<ul style="list-style-type: none"> Specialised trauma-informed support ensures the physical, psychological, cultural and emotional safety of individuals 	<ul style="list-style-type: none"> People impacted by sexual harassment are listened to free from judgement, blame or bias, and are empowered with options 	<ul style="list-style-type: none"> As far as possible, the process follows the wishes of the person impacted by sexual harassment in terms of how they would prefer to resolve the issue 	<ul style="list-style-type: none"> The organisation learns from people impacted by sexual harassment and uses their input to improve prevention and response
	Safe and fair	<ul style="list-style-type: none"> Inappropriate behaviour is identified early in order to intervene and help individuals change their behaviour before it becomes more problematic 	<ul style="list-style-type: none"> All those involved in a report have clear information about the process for dealing with the report and when there is an obligation for the organisation to act 	<ul style="list-style-type: none"> Early intervention is preferable, and where investigations are necessary, their focus is on determining the severity of the conduct and manage risk so the organisation can keep everyone safe. Clear information is provided to all parties on procedural fairness and outcomes 	<ul style="list-style-type: none"> The organisation has processes to monitor long-term impacts to retention and progression of people impacted by sexual harassment
Specialised end-to-end support underpins every phase of the process		Specialised end-to-end support underpins every phase of the process			
Experience of impacted person	<p>I feel supported at each point of the process, regardless of my decision to progress the matter or not.</p>	<p>I know I can speak up without negative consequences and my concerns will be taken seriously.</p>	<p>I have had options and input into the way this has been managed and I am satisfied with the outcome.</p>	<p>My relationships at work are repaired, I am supported to move forward, and the organisation knows how to prevent future incidents.</p>	

An example of how person-centred, trauma-informed, safe and fair reporting might work in practice

The following pathway shows one experience an employee may have following an incident of sexual harassment – the process is not linear, but all elements of support, reporting, resolution and recovery are present. Flexibility to move between these phases as the situation unfolds and to meet needs of the impacted person is essential.



Considerations for organisations

Cultural safety and inclusion in response and recovery systems

LGBTIQ+ people, Aboriginal and Torres Strait Islander people, young people, people with disability, and culturally and racially marginalised people experience workplace sexual harassment at significantly higher rates than other groups of people. In the past 5 years, the following groups experienced workplace sexual harassment at rates disproportionate to the total population of workers in Australia (33%):*

56% of Aboriginal and Torres Strait Islander people

47% of people aged between 15–17

46% of people aged between 18–29

48% of people with a disability

46% of people who have identified as gay, lesbian, bisexual, pansexual, queer, asexual, undecided, not sure or questioning

70% of people with an intersex variation

Organisations can take the following actions to address this:

- ✓ **Ensure leaders and key staff** receiving disclosures of sexual harassment are trained in cultural safety and inclusive approaches for groups at greater risk of sexual harassment.
- ✓ **Seek input from subject matter experts,** communities, advocates and employees (for example through employee resource groups) to ensure sexual harassment response systems and processes meet the needs of high-risk groups.
- ✓ **Have a list of specialist support services** that can be provided and offer these to all individuals rather than putting the onus on them to request specialist support.
- ✓ **Ask people who experience sexual harassment to identify specific or additional supports** or processes that may meet their specific needs.

Cultural safety for First Nations people in the context of sexual harassment

Cultural Safety is “an environment that is safe for First Nations people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning, living and working together with dignity and truly listening”.* Cultural safety is about more than just being aware of First Nations cultures. For First Nations people, experiences of workplace harm take place in a context of institutional racism, intergenerational trauma and exclusion from services.

In the context of workplace sexual harassment, cultural safety is about a commitment to addressing specific barriers for First Nations people and redesigning systems to address racism and discrimination to ensure that all people have access to support, resolution and recovery options that are safe for them. Cultural safety is consistent with a person-centred and trauma-informed approach. Specific barriers can include the experiences of First Nations people being minimised, or the response to sexual harassment failing to recognise the compounding impacts of intergenerational trauma.

Intersecting inequality in the context of sexual harassment

Building on a culturally safe response, an inclusive approach would also seek to address barriers experienced due to intersecting inequalities based on race, sexual orientation and gender identity, disability and age. For example, for LGBTIQ+ people, experiences of sexual harassment can be compounded by homophobic or transphobic discrimination and stereotypes in the workplace. In some cultures there is significant stigma and even shame attached to making a ‘complaint’, and this can prevent people from using the ‘standard’ reporting pathways.

In organisations that are not culturally safe and inclusive, the burden falls on the individuals who are marginalised (for example, First Nations people, LGBTIQ+ people, people with disability) navigate the barriers.

In a culturally safe and inclusive workplace all people are more likely to feel comfortable to speak up in a way that is safe for them when they witness or experience harm because they trust they will be supported and respected when they do.

* Victorian Government Department of Health, Aboriginal and Torres Strait Islander cultural safety. At: www.health.vic.gov.au/health-strategies/aboriginal-and-torres-strait-islander-cultural-safety

* Source: Australian Human Rights Commission (2022) Time for Respect: Fifth National Survey on Workplace Sexual Harassment. At: humanrights.gov.au/time-for-respect-2022

Providing an anonymous reporting option

Enabling people to report workplace sexual harassment anonymously removes a key barrier to reporting – fear of retribution and negative consequences – and gives organisations a ‘pulse’ on potential hotspots and high-risk situations.

Addressing concerns about the effectiveness of anonymous reporting

There are concerns that anonymous reporting will mean that organisations are not able to act on incidents.

Not so. There are many early intervention and preventative actions that organisations can take such as identifying ‘hot spots’ and high-risk situations, issuing communications about behavioural standards, providing education, training and engaging managers/supervisors. Anonymous reports can also be used to initiate a 360 review or team ‘health check’. Some organisations identify ‘prescribed circumstances’ in which an organisation seeks to take action in response to an anonymous disclosure that are clearly explained to people, for example, where there is an ongoing safety risk or in the case of serious misconduct.

Anonymous reporting may lead to vexatious or retaliatory reports that cannot be proven or disproven.

Research shows that a very small minority of reports or complaints are vexatious, so this should not be a reason to not offer the option of anonymous reporting. Organisations can also provide clear guidance on how vexatious or retaliatory complaints will be handled.

Anonymous reporting platforms are not always fit for purpose, for example, repurposed existing services such as whistleblower hotlines

Many organisations are experiencing challenges with using existing whistleblower hotlines to address sexual harassment reports. Many whistleblower services, designed for dealing with fraud, misconduct or other governance issues, are set up to channel reports to boards or risk committees and are ill-equipped to offer the appropriate support for someone who has experienced sexual harassment. It is not always transparent to people using whistleblower hotlines how their report will be managed or used, and who within the organisation will see it. There are also governance standards attached to whistleblower reports, which limit options for organisations to intervene early and with more informal resolution options. There are also concerns about the security of information and data and limitations of privacy, and the trauma-informed capabilities of some providers.


Organisations can take the following actions in setting up anonymous reporting systems:

- ✓ **Make the benefits of anonymous reporting options clear** for those who wish to use them – as well as any limitations of these options.
- ✓ **Provide immediate access** to a professional skilled in trauma-informed support for those who disclose experiences of sexual harassment, and follow up based on the wishes of the impacted person.
- ✓ **Ensure any anonymous reporting option (including online) lets people share their experiences in their own words** (that is, that there are no questions requesting specific details and no word limits).
- ✓ **Underpin anonymous reporting with a clearly defined triage system** for appropriate escalation where necessary.
- ✓ **Ensure that service providers can provide skilled trauma-informed support** for those who have experienced workplace harm such as sexual harassment and that they know how to help resolve such issues.
- ✓ **Provide opportunities for employees to access online counselling** and referrals to support services. Consider providing options for a person to request to be called back for a follow-up discussion or other support.
- ✓ **Be transparent about who in the organisation may be informed** about an individual’s anonymous report, and the potential next steps.
- ✓ **Regularly share de-identified data with the organisation from anonymous reporting** and on actions taken, to build understanding of prevalence, potential hotspots and confidence in the system.


A range of resolution options, applied in a consistent and principled way


Formal investigations are appropriate in some circumstances, but some people who experience sexual harassment at work may simply want their organisation to know about the behaviour and for it to stop. In a person-centred, trauma-informed, safe and fair approach to dealing with such reports, it’s important to give the affected person choices as to how the organisation might respond.

The following table provides alternative approaches to resolving issues around workplace sexual harassment, ranging from intervention by a manager or supervisor to facilitated discussions and formal investigations.

Resolution approach  Local resolution		
Key features	When this might be appropriate	Considerations
<ul style="list-style-type: none"> • A local manager or supervisor works with a person/s who has experienced workplace sexual harassment to resolve the issue • An opportunity is provided to the person accused to make behavioural changes that could prevent escalation 	<ul style="list-style-type: none"> • If issues don’t pose a significant or immediate safety risk to individuals or the team • If there is clear evidence of an unsafe behaviour, such as ‘everyday’ sexism or disrespect, which could escalate if left unchecked • If there are high levels of psychological safety within the team to address issues • If the risk of victimisation or backlash is low • Where you are confident you can keep others safe, and there will be no ongoing risks to others • When the person accused understands how their behaviour caused harm and is remorseful, and you are confident that the behaviour will stop 	<ul style="list-style-type: none"> • Requires appropriate capability from line managers (e.g. training on trauma-informed responses), and ongoing support and advice for managers • Requires a process of escalation for serious matters • Needs to be supported by a centralised reporting system to track and monitor incidents and outcomes




Resolution approach  Facilitated discussion		
Key features	When this might be appropriate	Considerations
<ul style="list-style-type: none"> An appropriately skilled person (external or internal) facilitates a discussion between a person/s who has experienced sexual harassment and the person/s accused so that the latter is made aware of the impact of their behaviour Discussion results in a commitment that the unsafe behaviour will stop and protocols relating to safe and respectful behaviour, which are monitored for compliance There is an opportunity for people accused of sexual harassment to understand the harm of sexual harassment, and to commit to and demonstrate changed behaviour 	<ul style="list-style-type: none"> Only appropriate when both parties consent to the process, there are no significant power imbalances, and the risk of victimisation or backlash is low When the person accused understands how their behaviour caused harm and is remorseful, and you are confident that the behaviour will stop Where you are confident you can keep others safe, and there will be no ongoing risks to others May be suited to team contexts when the impacted person and person accused of sexual harassment need to continue working together 	<ul style="list-style-type: none"> Facilitated discussions should be conducted by skilled experts Sustained success relies on line manager capability and/or support to monitor compliance with agreed protocols and foster a safe and respectful team culture

Resolution approach  Investigation		
Key features	When this might be appropriate	Considerations
<ul style="list-style-type: none"> In-house or external investigators determine what happened and decide whether a report is 'substantiated', 'partially substantiated' or 'unsubstantiated' Follows the principles of procedural fairness and natural justice Depending on the finding, proportionate actions or outcomes can be applied 	<ul style="list-style-type: none"> When a matter may result in disciplinary action or termination (i.e. when the matter achieves a threshold for investigation because of the seriousness of the behaviours and/or there are multiple reports or incidents) When the person accused of sexual harassment is senior or in a high-profile or high-value role and may have real or perceived power over the person making a report When the details are not clear, and you need to understand more about what happened If there are numerous anonymous reports about a person When you cannot trust it won't happen again or there is a potential safety risk to others 	<ul style="list-style-type: none"> Investigators should be trained in person-centred, trauma-informed, safe and fair approaches Investigations should be conducted in a timely manner and in a comfortable and safe location for the person impacted The person impacted should be given agency over their story, including being able to tell it themselves or provide consent for it to be recorded People involved should be kept up to date with what is happening, what to expect, and next steps The matter should not be considered closed when the investigation has concluded – the focus should be on recovery no matter what the outcome Requires regular review of investigation outcomes to monitor the effectiveness of the process, including the support available for those conducting the investigations



Leading practice approach

Resolution approach  An integrated approach: 'Safe place' model		
Key features	When this might be appropriate	Considerations
<ul style="list-style-type: none"> Integrates anonymous reporting, formal reporting, support and advice, and investigations into one place provides a 'one stop shop' for all support, advice and reporting needs Provides a case management approach to the impacted people so that they deal with one person and do not need to repeatedly describe the incident/s Provides support and advice to managers and leaders on local resolution Sits within the office of the CEO or equivalent and is deliberately independent of people, safety and legal functions (although some collaborations are necessary for escalation or referral to Safe Place) Supports early disclosure allowing for resolution of the matter without the need for investigation 	<ul style="list-style-type: none"> If people are not comfortable seeking advice from their manager Where there is a lack of trust in the organisation's response including fear of retribution and impact on promotion, that results in a reluctance to engage in restorative processes Where there are historical issues that require a dedicated and specialist team to lead the cultural change When there is a geographically dispersed workforce in small sites/ teams that benefit from centralised expertise and a consistent approach 	<ul style="list-style-type: none"> Requires resourcing and capability to provide person-centred, trauma-informed, safe and fair care and case management Governance is important, including relationships between the case manager and internal human resource and legal teams (typically safe places deliberately separate case managers from these functions) Case managers need to be able to access their own specialist support, including vicarious trauma training to ensure their health and wellbeing are protected To avoid legacy issues and ensure appropriate skills, consider newly recruiting staff with specialist expertise in trauma-informed and person-centred approaches Build understanding across workforce of the role of the Safe Place

Making investigations work better for individuals and organisations

Procedural fairness

The principles of procedural fairness apply no matter how an organisation seeks to resolve a report of sexual harassment in the workplace. But it becomes particularly important during an investigation, when termination of employment is possible.

Essentially, procedural fairness seeks to ensure:

- everyone affected by an incident of workplace sexual harassment understands what has been reported and can share their version of what happened
- there is transparency about what's going to happen and what the potential outcomes could be – so that everyone is kept up to date as the situation evolves (without impinging on any individual's privacy)
- presumptions or predetermination about incidents do not occur
- there is a considered and objective assessment of what happened.

When approached in this way, ensuring procedural fairness needn't be treated as an inherently adversarial process. When applied in the context of a response process that is person-centred and trauma-informed, it can instead be a catalyst for constructive discussions that help resolve incidents of sexual harassment in a way that better meets the needs of those impacted.

Standards of proof and evidence

The standard of evidence for sexual harassment investigations is often misunderstood and a higher standard is applied than required to resolve the issue. Misconceptions and misapplication of the standards of proof and evidence can erode the principles of person-centred and trauma-informed responses and this is compounded when investigation processes are applied in lengthy, invasive and adversarial ways.

The standard of evidence for sexual harassment investigations is typically based on the 'balance of probabilities', that is, the alleged incident or behaviour is more likely to have occurred than not. This standard is used in civil cases and is less stringent than the 'beyond a reasonable doubt' standard used in criminal cases. Where there are serious allegations of sexual harassment, the 'Briginshaw standard of proof' must also be considered – the more serious an allegation (and thus the more serious the implications for the person who is said to have engaged in the conduct), the greater the level of satisfaction required in order to determine that the conduct occurred on the balance of probabilities.

This means that to meet procedural fairness in the context of workplace sexual harassment, organisations do not need to:

- seek multiple sources of proof when one would be sufficient
- find an independent observer of a sexual harassment incident for it to be found to have occurred if the organisation is otherwise satisfied that it occurred.

Investigation outcomes

Investigations can result in one of three outcomes – substantiated, partially substantiated or unsubstantiated. When matters are unsubstantiated it doesn't necessarily mean that it didn't happen, but that the evidence and information did not meet the standards of proof required.

The significant number of unsubstantiated claims in matters of sexual harassment suggest that the standard of proof is being applied to an unnecessarily high degree.

Organisations must consider the actions that can be taken even when a matter is unsubstantiated or partially substantiated. **Regardless of the outcome, a focus on recovery and repair is important to support individuals and restore workplace relationships.** In these cases, restorative engagement and principles can play a role.

Organisations can take the following actions to make investigations work better for individuals and organisations:

- ✓ **Embed key principles of procedural fairness** (for all involved) into processes for resolving sexual harassment, whether local resolution or investigation.
- ✓ **Ensure the people investigating or making findings in sexual harassment matters understand the legal concepts** that underpin standards of proof and evidence and can apply them appropriately and proportionately or seek legal advice to do so.
- ✓ **Include assessments of substantiation as a key metric**, assess what gives rise to low rates of substantiation, monitor and review regularly.
- ✓ **Ensure investigations are conducted with dignity** by investigators who equally prioritise process and respect – such as tone of questioning (inquiring rather than accusatory), language (how allegations are expressed), communication (there is an accessible point of contact), location (comfortable/neutral meeting place).
- ✓ **Regardless of the outcome, ensure a focus on recovery and repair** to support individuals and restore workplace relationships.
- ✓ **Support the well-being of everyone involved including the investigator** – in terms of workload (multiple investigations concurrently) and vicarious trauma.

The role of non-disclosure agreements

In the context of sexual harassment, non-disclosure agreements (NDAs) have long been adopted as a legal and commercial strategy to settle issues with minimum disruption and reputation damage to organisations.

A traditional NDA is a legally enforceable confidentiality agreement or confidentiality clause in an agreement between an organisation and an individual. A financial sum is often provided to the individual by the organisation to release the organisation from any legal liability in the matter in exchange for confidentiality. NDAs in sexual harassment matters go further by imposing conditions on the person who experienced sexual harassment to never discuss the experience, even for the purpose of recovery and support.

The silence imposed by traditional NDAs has severely eroded trust and confidence in reporting and response systems by enabling organisations to 'shut down' an issue once reported, excusing the organisation from having to resolve the issue and absolving the organisation of obligations to offer support and opportunities for recovery. It has also protected offenders and enables sexual harassment to recur.

But when an organisation offers people who experience sexual harassment a genuine choice about whether to use an NDA, rather than forcing them to do so, they can be part of a genuine person-centred, trauma-informed, safe and fair approach.

To ensure reports of workplace sexual harassment are not 'shut down' by organisations, **NDAs can contain 'carve-outs' that retain a person's right to speak and empower individuals to tell their own stories if, how and when they want support recovery.**

Organisations can take the following actions to ensure NDAs don't erode trust and confidence in reporting and response systems.

- ✓ **Take a clear stance that the default position** is that NDAs will not be used in sexual harassment matters unless it is the informed choice of the person impacted and that all NDAs will be signed off by the CEO.
- ✓ **Reflect this position in policy and process.**
- ✓ **Provide plain English and/or translated advice or support documents** to ensure the person requesting the NDA understands the meaning and impact of the settlement agreement, including any confidentiality clause.
- ✓ **Negotiate NDAs in a way that respects the agency** and choice of the person impacted, recognises potential vulnerability and is culturally sensitive.

For more information, see:

Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints at respectatwork.gov.au.

Sexual Harassment and the use of NDAs: Building trust through care, accountability and transparency <https://championsofchangecoalition.org/resource/preventing-and-responding-to-sexual-harassment-resources/>

Restorative approaches to support recovery

Restorative responses to sexual harassment in the workplace have their foundations in criminal restorative justice practices, which aim to acknowledge and repair harm, prioritise healing, ensure accountability and reintegrate people impacted and offenders into the community.

Restorative justice schemes have most often been used in a workplace context where harms, such as sexual abuse or harassment, have been systemically mismanaged by an organisation. It can be particularly useful in historic cases of harm which were not responded to or resolved and can sometimes be accompanied by a redress scheme.

Restorative justice schemes must be entered into with significant investment in organisational capabilities and long-term commitment.

The implementation of a safe, victim/survivor centred restorative justice process requires safeguards and procedures to ensure safety, as well as expert facilitation.

Restorative approaches can improve all responses to sexual harassment by recognising the organisation responsibility and action doesn't stop at the end of an investigation. A restorative mindset and approach can be particularly useful when investigations find that reported workplace sexual harassment is unsubstantiated or partially substantiated. Apologies and recognition of harm can be powerful for healing.

In any restorative approach, the safety and wishes of the person impacted by sexual harassment are paramount for guiding any restorative approach.

Organisations can take the following actions to build restorative approaches into responses to sexual harassment:

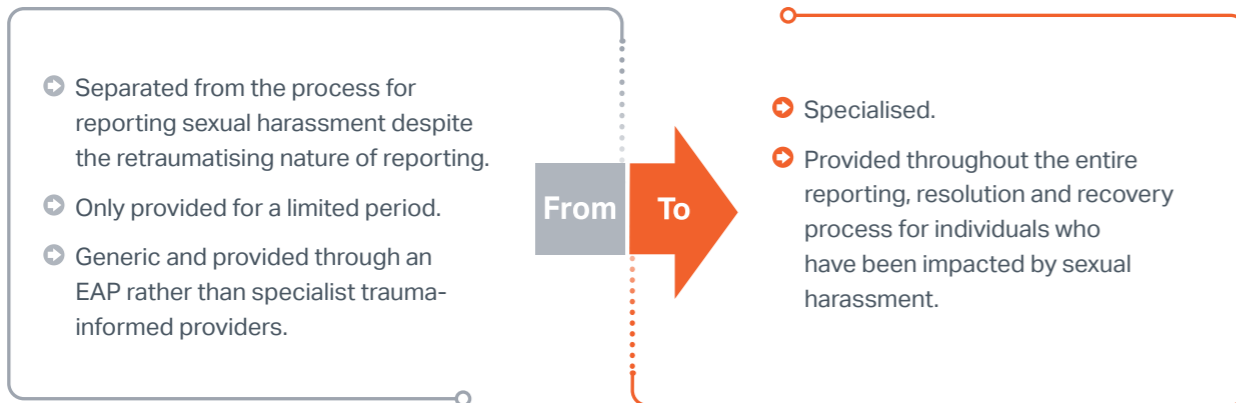
- ✓ **Offer apology letters or facilitated in-person apologies** recognising the harm caused by the experience.
- ✓ **Offer restorative sessions with people and teams involved** to reflect and learn from what has happened.
- ✓ **Provide opportunities for people impacted** by sexual harassment to share their story with a senior leader in the presence of a skilled facilitator.
- ✓ **Work with the individuals involved to plan how to reintegrate into the team** and rebuild impacted relationships.
- ✓ **Outline actions the organisation will take** to prevent such harm occurring in the future.
- ✓ **Provide expert support such as counselling,** behaviour change programs or career coaching to people impacted.
- ✓ **Schedule periodic check-ins with people involved** in sexual harassment issues to monitor long term wellbeing.
- ✓ **Build checks into key human resources processes** (performance reviews, promotions, salary review) to ensure there are no negative consequences for people impacted by sexual harassment.

Restorative approaches recognise the harm caused, seek to learn from the experience and prioritise restoring workplace relationships so that people can continue to thrive and progress.

Practical steps for a person-centred, trauma-informed, safe and fair approach

The following tables describe how organisations can take a person-centred, trauma-informed, safe and fair approach in dealing with reports of workplace sexual harassment – from providing support to those affected, to implementing effective reporting, resolution and recovery processes.

Provide support to everyone at every stage of the process.



Fundamentals for organisations

- Whether or not a formal report is made, provide advice to those who disclose sexual harassment in the workplace via an appropriately skilled support person, internally, or through a trained EAP, or another external provider.
- Ensure the cultural, physical and psychological/emotional safety of all involved.
- Provide long-term support to those who report sexual harassment, including career support and support to restore workplace relationships.
- Provide ongoing support to impacted teams and witnesses so people can recover and move forward in a safe, respectful and supportive environment.
- Provide support for those engaging in sexual harassment who remain with the organisation by providing access to counselling and behavioural change programs.

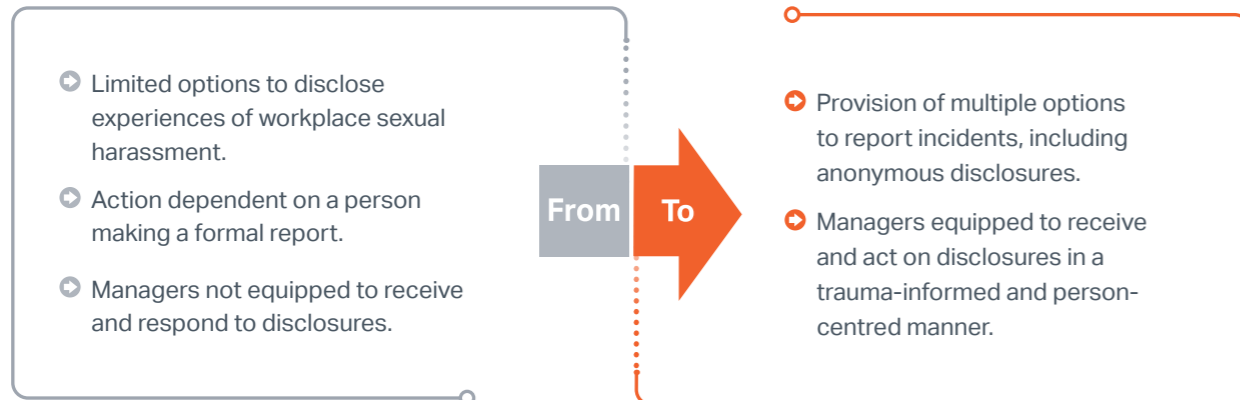
First steps

- Ensure your organisation's sexual harassment policy emphasises that people who:
 - are impacted will be supported
 - experience sexual harassment can choose whether (and how) to take action.
- Communicate this regularly and ensure all people leaders know how to connect employees with appropriate support.
- Make it clear that support is not contingent on making a formal report and that ongoing support will be provided.
- Assess your EAP and/or other third-party providers, such as anonymous reporting services, to determine whether they have capabilities to manage sexual harassment in a trauma-informed way.
- Develop a list of specialised services that you can provide warm referrals to – including supports (external) and key contacts (internal) – to provide appropriate support for people experiencing intersecting inequalities. Ensure key personnel responsible for receiving reports of sexual harassment are aware of them.

What this might look like in practice

- Giving people the option to tick a box when they make an anonymous report to request a call from a support service within 24 hours.
- Communicating across the organisation the specialist internal and external supports that are available for people who have experienced harmful behaviours, including sexual harassment.
- Engaging a specialised support service on retainer to provide support to impacted employees.

Reframe reporting as an opportunity to stop unsafe behaviour and learn



First steps

- Train key personnel and managers to follow a person-centred, trauma-informed, safe and fair approach.
- Commit to a set timeframe within which all reports will receive an initial response.
- Develop a list of actions that can be taken in response to anonymous reports, particularly those that indicate a sexual harassment 'hotspot' may exist. An example is to carry out team health checks (i.e. gather feedback about what's working and what's not in the team).
- Seek feedback from those who report.
- Seek to understand and address barriers to reporting for cohorts at higher risk of experiencing sexual harassment, including young people, people with disability, LGBTQI+ people, casual workers, First Nations people, and those who are culturally and linguistically diverse.
- Include questions in engagement and pulse surveys to assess confidence in reporting sexual harassment.
- Review how you are capturing data from sexual harassment reports and outcomes to ensure it is centralised.

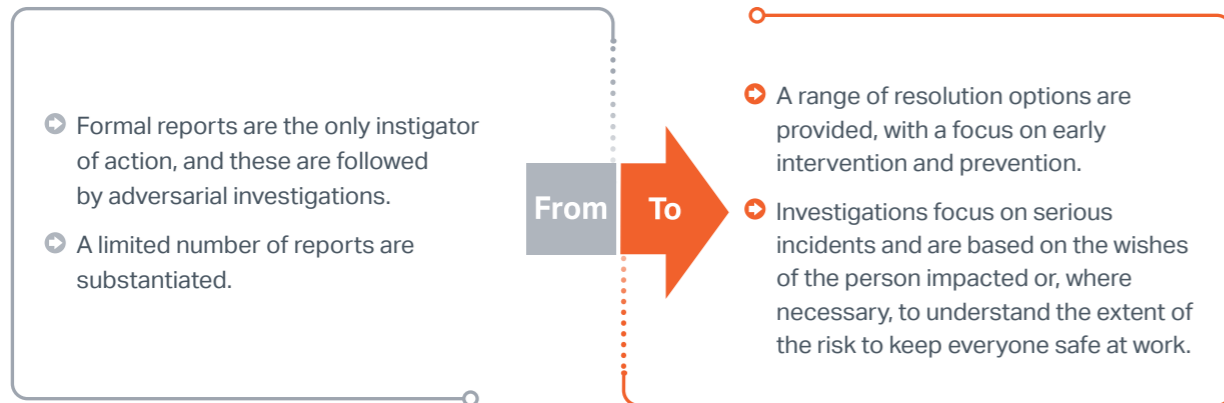
Fundamentals for organisations

- Provide people with multiple pathways and options to report sexual harassment, including:
 - in person, by phone or online
 - anonymously
 - speaking to a qualified person.
- Develop a communications strategy on the different ways people can report and ensure it is fully accessible to all workers, taking into account ability, language, location, literacy and/or other accessibility needs.
- Regularly measure awareness, knowledge of, and trust in, reporting systems.
- Ensure those who witness sexual harassment or want to report on behalf of another individual can do so, and encourage upstander behaviour.
- Ensure people can share their experiences in their own words, free from judgement and bias, and that they do not have to relay their experiences multiple times to different people.
- Ensure your response is culturally safe and inclusive for high-risk groups.
- Be clear about the limits of confidentiality and the circumstances where your organisation may be obliged to act against the reporter's wishes (for example, in relation to serious and criminal conduct or because of ongoing safety risks).
- Ensure transparency, and as much as possible, give individuals control over who their information will be shared with and how it will be used (subject to disclosure to those who have a need to know to keep workers safe).
- Ensure people have a clear understanding of the process, procedural fairness, timeframes, and how regular updates will be provided.
- Recognise the 'workload' that comes with reporting and support employees in managing this.

What this might look like in practice

- Supporting leaders to talk regularly about harmful behaviour as a risk to health and safety, actively encourage people to report harmful behaviour promptly in the same way they would a physical WHS risk, and seek feedback on the extent to which people feel safe to do so.
- Providing a well-publicised phone line equipped with skilled responders who people can call to make a report, or seek advice or support in relation to harmful behaviour, including anonymously.
- Creating a centralised system so managers can log incidents and seek advice and support about how to manage an incident safely.
- Appointing a case manager for those who report harassment to support them through the resolution and recovery processes.

Infuse humanity and dignity into resolution processes and outcomes



First steps

- Shift language used from that of 'grievances' and 'complaints' to that of 'reports'.
- Make it clear that support is not contingent on making a formal report or complaint and that ongoing support will be provided.
- Identify ways to address inappropriate behaviour if the person who has experienced sexual harassment doesn't wish to proceed with a formal report or investigation.
- Ensure people are given choices about how their report is handled and how they will be updated about its progress.
- Review informal and formal resolution processes to identify opportunities to embed a person-centred, trauma-informed, safe and fair approach.
- Ensure people who receive reports and conduct investigations (internal and external) are trained in a person-centred and trauma-informed approach.
- Ensure people who are parties to an investigation receive a letter acknowledging their experience to help them achieve closure.
- Plan for the period after resolution and ensure steps are taken to actively monitor the safety and wellbeing of those impacted on an ongoing basis.

Fundamentals for organisations

- Enable people impacted to make decisions about whether, when, to whom and how to report, and provide the option for a report to be investigated or followed up at a later date, subject to any ongoing health or safety risks.
- Provide early intervention, behaviour change and local resolution options as first options. These include informal conversations, facilitated discussions (when deemed safe), manager and/or leader intervention, purposeful storytelling, tailored respectful behaviour training, behavioural improvement plans, ongoing monitoring and controls.
- Enable people to change their mind and withdraw a report or cease an investigation process at any time (while ensuring they understand that in instances of serious or criminal conduct, including conduct that poses a future risk to the health and safety of employees, the organisation may be obligated to act).
- Communicate the actions that can be taken in response to anonymous reporting, such as 'team health checks' or training.
- Only enter into an NDA if it is requested by the person who has experienced sexual harassment. Ensure it has 'carve-outs' to allow them to retain the right to tell their story at a later stage if they wish and to ensure your organisation can monitor any systemic risks.
- Ask individuals involved how and when they wish to receive information and updates (for example, face to face or via email or text).
- Explain the process clearly to people impacted and alleged perpetrators, including information about how procedural fairness will be provided.

What this might look like in practice

- Providing a range of support options to the person impacted throughout the resolution process.
- Delivering awareness-raising and up-stander training in areas of the business where problematic behaviours have been identified (or through the whole of the business if there is any risk of exposing the person who has reported harassment).
- Engaging a specialist organisation such as Full Stop Australia or Blue Knot to train the people involved in taking reports and conducting investigations.

Rebuild for the long term and including all involved or impacted



Fundamentals for organisations

- Seek feedback from impacted individuals on response and resolution processes to inform continuous improvement.
- Use data from anonymous reports, formal reports and engagement surveys to inform and improve early intervention and prevention efforts, and to address cultural or other factors that are contributing to sexual harassment incidents.
- Embed information about sexual harassment and psychosocial safety into regular safety briefings and meetings.
- Provide regular reports on de-identified incidents to establish lessons learnt and any improvements to prevention, early intervention and response systems, processes and capabilities.

First steps

- Develop and implement a plan for post-resolution care following sexual harassment, including team and leader debriefs, ongoing education and check-ins.
- Develop a set of metrics to track outcomes for people who report sexual harassment, including retention, promotions and exits.

What this might look like in practice

- Inviting people impacted by sexual harassment to be part of an advisory panel aimed at ensuring the organisation consistently reviews and renews its approach.
- Promoting respectful transparency by sharing incidents relating to disrespect, and other harmful behaviours that have occurred, to support open discussions within teams and provide important learnings to prevent future occurrences.
- Activating 'everyday champions of change' to create a network of leaders who champion gender equality through their everyday actions.

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The Champions of Change Coalition

includes CEOs, secretaries of government departments, non-executive directors and community leaders who believe gender equality is a major business, economic, societal and human rights issue. Established in 2010 by Elizabeth Broderick AO, our mission is inclusive gender equality across our workplaces by 2030 and a significant and sustainable increase in the representation of women in leadership.

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