

Worker's Guide to Workplace Sexual Harassment

Document title	Worker's Guide to Workplace Sexual Harassment
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Approved by	Peggy Cheong, Executive Director NT WorkSafe
Date approved	4 November 2024
Document review	12 months
TRM number	NTWS2024/0229

Version	Date	Author	Changes made
1.0	November 2024	Rachel Robinson	Final draft

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Introduction

Sexual harassment is a psychosocial hazard which is known to cause physical and psychological harm. While legal definitions vary in each state and territory, sexual harassment can be broadly defined as any unwelcome conduct of a sexual nature which makes a person feel offended, humiliated, or intimidated and where that reaction is reasonable in the circumstances.

Sexual harassment includes behaviour that is not specifically directed at a particular person, but makes the workplace uncomfortable or threatening in a sexually inappropriate or hostile way. This might include sexually offensive pictures, outdated and sexist attitudes, or a workplace culture of sexually suggestive or inappropriate comments, jokes or gestures.

Workplace sexual harassment is unlawful under the Commonwealth Sex Discrimination Act 1984, and is unlawful under state and territory laws. In the Northern Territory workplace sexual harassment is unlawful under the NT Anti-Discrimination Act 1992 and the NT Work Health and Safety (National Uniform Legislation) Act 2011 and regulations (Division 11).

As an employee you have a right to be safe at work and your employer is obligated to provide and maintain a workplace that is safe and free of psychosocial hazards. Everyone at the workplace has a work health and safety duty and can help ensure workplace sexual harassment does not occur.

Under Work, Health and Safety (WHS) laws workers are required to take reasonable care for their own health and safety and must take reasonable care that their behaviour does not adversely affect the health and safety of other people. Workers must also comply, so far as is reasonably practicable, with any reasonable instruction given by the person conducting the business or undertaking (PCBU) and co-operate with any reasonable policies and procedures, such as a prevention of sexual harassment in the workplace policy.

What is workplace sexual harassment?

Workplace sexual harassment is a common and widespread problem in Australia with recent reports showing one in every three workers have experienced some form of workplace sexual harassment in the past five years. The legal definition of sexual harassment contains a number of elements including:

- conduct of a sexual nature
- unwelcome conduct, and
- conduct which offends, humiliates or intimidates.

Australian law provides the following definition;

Sexual harassment occurs when:

- a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or engages in other unwelcome conduct of a sexual nature in relation to the person harassed;
- in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

When determining if an advance, request or other conduct may be sexual in nature, it is important to recognise that the intention of the alleged harasser is not relevant, and does not matter. An advance, request or instance of conduct may be determined to be sexual in nature even if the person engaging in the conduct does not have a sexual interest in that person, or is of a different sexual orientation to the person reporting harassment.

Conduct of a sexual nature

Examples of conduct of a sexual nature include, but are not limited to:

- inappropriate physical contact;
- unwelcome touching, hugging, cornering or kissing;
- inappropriate comments or language;
- sexually suggestive comments or jokes that offend or intimidate;
- intrusive questions about a person's private life or physical appearance;
- repeated or inappropriate invitations for dates;
- requests or pressure for sex or other sexual acts;
- sexually explicit pictures, posters or gifts;
- sharing or threatening to share intimate images or film without consent;
- being followed, watched, or someone loitering;
- sexually explicit comments made about someone in writing, or indecent messages (SMS, social media) phone calls or emails, including the use of emoji's with sexual connotations;
- sexual gestures, indecent exposure or inappropriate display of the body;
- actual or attempted rape or sexual assault;
- unwelcome conduct of a sexual nature that occurs online or via some form of technology, including during online virtual meetings;
- inappropriate staring or leering; and
- repeated or inappropriate advances on email or other online social technologies.

Unwelcome conduct

Unwelcome conduct is behaviour which has not been invited, consented or agreed to, or solicited by a person, and which the recipient regards as unwanted, undesirable, disagreeable, offensive or intimidating. The behaviour may still be regarded as unwelcome even where it:

- may have been welcome in the past;
- may have been an accepted behaviour in the workplace or work environment in the past;
- may not have been regarded unwelcome by others;
- was not intended to be sexual; or
- was not intended to offend, humiliate or intimidate.

Conduct can become unwelcome at any time, even where it was previously welcome. It is not necessary for the person harassed to have explicitly informed their alleged harasser that the behaviour is unwelcome, or for the person harassed to have explicitly addressed the behaviour as unwelcome.

A subjective test: whether the behaviour is unwelcome is a subjective question from the perspective of the person alleging sexual harassment (subjective versus objective = subjective information is based on opinions, emotions or feelings whereas **objective** information is based on facts and/or evidence and is verifiable).

Conduct which offends, humiliates, or intimidates

This element of the legal definition of sexual harassment considers whether the behaviour occurred in circumstances in which a reasonable person would anticipate the possibility that such conduct would offend, humiliate or intimidate the person harassed. Circumstances that may be considered in a court setting to determine if conduct has offended, humiliated or intimidated might include, but is not limited to;

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, national or ethnic origin;
- the relationship between the parties involved; and
- any disability of the person harassed.

An objective test: would a reasonable person, having regard to all the circumstances, have anticipated the possibility that the harassed person would be offended, humiliated or intimidated by the behaviour?

When and where can sexual harassment occur?

If sexual harassment occurs at work, or in connection with work it is known as 'workplace sexual harassment' and is against the law. This includes sexual harassment that occurs:

- between individuals who have a particular workplace relationship; or
- during work, or in connection with work.

Regardless of whether it happens in the actual workplace, or elsewhere, it is against the law for an employer or PCBU to sexually harass a worker (or anyone seeking to become a worker), and it is against the law for a worker to sexually harass another worker (at any level of employment), or anyone seeking to become a worker. It is also against the law for third parties such as agents, customers or clients, patients or members of the public to sexually harass a person who is a worker, or for a worker to sexually harass customers, clients, patients etc.

Sexual harassment is unlawful during normal work hours, and outside of normal work hours. This includes travel to and from work and during work-related activities that are supported by or paid for by the employer such as functions, conferences, accommodations, site visits, training or workshops, team social gatherings, excursions or in client or customer workplaces or homes.

Workplace sexual harassment is also unlawful when enacted in online spaces such as online meetings or email and through technologies and social media platforms where the conduct is in connection with employment.

Who is most at risk of workplace sexual harassment?

Anyone can experience workplace sexual harassment however reports and statistics show:

- Women experience higher rates of sexual harassment.
- Younger workers (aged under 30).
- Workers with a disability.
- Aboriginal or Torres Strait Islander (ATSI) workers.
- Workers from culturally and linguistically diverse backgrounds (CALD).
- Lesbian, Gay, Bisexual, Transgender, Intersex, Queer plus workers (LGBTIQ+).
- Migrant workers.
- Workers in insecure or precarious work arrangements.

Who are the perpetrators?

The persons most often responsible for workplace sexual harassment include:

- Other workers, often a co-worker at the same level of employment.
- Supervisors, managers or senior officers.
- Third parties, for example your customers, clients, suppliers, or patients.
- Data shows men are more frequently the perpetrators of workplace sexual harassment.

Work, health and safety duties:

Employers

- Information about hazards in the workplace, including sexual harassment, must be gathered and assessed for risk.
- Risks to health and safety are eliminated or minimised, so far as is reasonably practicable.
- Managers must model and enforce acceptable behaviour standards.
- Workers are provided with policies and procedures regarding prevention of workplace sexual harassment and responses if it does occur.
- Appropriate action is taken following reports.
- Regular consultation with workers regarding what they need for a safe, inclusive and respectful workplace.

Officers

- Officers must exercise 'due diligence' and ensure that employers comply with their duties including having systems and procedures in place to meet work health and safety (WHS) obligations.

Workers

- All workers, at every level should foster a respectful work culture where sexual harassment is not tolerated and must ensure they do not act in a manner that could constitute sexual harassment.
- Workers must comply, as far as they are reasonably able, with any reasonable instruction given by the employer regarding workplace sexual harassment.
- Workers must cooperate with any reasonable policy or procedure relating to workplace sexual harassment that has been provided/notified to them.

If you are accused of workplace sexual harassment

Everyone at work is entitled to a safe and healthy workplace, this includes people who experience or witness workplace sexual harassment and people who are accused of harassing others. Any accusations of workplace sexual harassment should be treated with confidentiality and investigated according to workplace policy.

If you have been accused of workplace sexual harassment you may wish to seek additional advice and support from a trusted colleague or friend. You may also contact your workplace HR department, Employee Assistance Provider (EAP) or work health and safety representative for information or engage with external supports such as a legal service, a trade union or a counsellor.

Receiving feedback from colleagues, supervisors and management is an important aspect of employment, therefore you should consider any feedback and be prepared to change your behaviour if necessary. Carefully review which behaviours you have been accused of doing and stop doing anything that causes offence to others in the workplace, or connected with work.

If you do not understand the complaint, discuss the matter with someone you trust. This might be a friend, colleague, manager, HR representative, union representative or a mental health professional such as a counsellor engaged through your workplace employer assistance program (EAP).

If you believe you are being unjustly accused, or the complaint is malicious, you should discuss this with your manager or HR officer. Your employer must have policies, procedures and WHS measures in place that maintain confidentiality of both parties and protect both parties from forms of victimisation including bullying, intimidation or retaliation.

Why is workplace sexual harassment underreported?

- Difficulty recognising workplace sexual harassment.
- A lack of education and training provided to all employees at every level.
- Policies are not enforced and poor behaviour in the workplace is tolerated or permitted.
- Reporting is not encouraged or promoted.
- Reporting methods are complex or intimidating.
- A range of reporting methods are not offered to employees, including Informal, formal or anonymous methods of reporting.
- Employee perceptions that complaints will not be taken seriously.
- Targets of harassment thinking their experience is not serious or 'severe' enough.
- Fears of victimisation or retaliation.
- Fearing negative impacts on work and career progression.
- A perception that managers and senior employees have organisational power over workers.

Prevention

There are many ways employers can prevent and minimise the risk of workplace sexual harassment occurring, suggestions include:

- Fostering a positive workplace culture based on safety, inclusivity, gender equality and respect for all workers.
- Maintaining a positive workplace culture through sound and effective policies, procedures and practices.
- Strong leadership and exemplary role modelling reinforcing the message that workplace sexual harassment is unacceptable and will not be tolerated.
- Conducting regular and detailed risk assessments to identify hazards and associated areas of risk.
- Being aware of workers who are at a heightened level of risk, and consulting regularly with all workers.
- Implementing guidance issued by the NT Anti-Discrimination commission and NT WorkSafe to prevent, eliminate and minimise the risk of sexual harassment occurring in the workplace.
- Referring to resources such as the 'good practice Indicators' guide on the Respect@Work website for guidance or participating in networking opportunities such as community of practice meetings.

What can you do if you are experiencing workplace sexual harassment

If you are experiencing workplace sexual harassment you should in the first instance consider your personal safety. **If you are currently experiencing workplace sexual harassment you can:**

- Remove yourself from the situation immediately.
- Call Police on 000 if you feel unsafe.
- If there is no immediate danger but you need Police assistance phone 131 444.

Remember:

- If you are sexually harassed at work it is not your fault.
- There is no right or wrong way to personally respond to sexual harassment as all individuals react to trauma differently, however there may be workplace advice and guidance available to inform and guide your professional response.
- There is support available 24 hours, seven days per week. Please refer to the supports listed on page 14 of this guide.

Quick reference list

If you are sexually harassed at work there are a number of things you can do, either on your own or with help from others, these include (but are not limited to):

- If you are currently experiencing harassment remove yourself from the situation immediately. Log-off your device, hanging up the phone, or walk away.
- Call the police on 000 if you feel unsafe. You can also call the 24/7 Police Assistance Line on 131 444 to report a crime.
- Your employer should provide you with information on how to respond to workplace sexual harassment, including a variety of reporting options available to you.
- Your employer should also provide you with options for additional support.
- If you feel safe and comfortable to do so, you might choose to tell the other person that the behaviour is inappropriate and request that it stop.
- Keep a record of what happened, when and where it happened, who was involved and anything else you think may be important, in case you wish to make a complaint or report (now or at a later date). If the harassment occurred via text message or social media, consider taking screenshots as evidence of the harassment.
- Ask for advice about your workplace rights: There are government and non-government organisations that can provide you with free advice about workplace sexual harassment, including your options for making a complaint.
- Make an internal complaint or report to management or human resources (as outlined in your workplace's relevant policy or procedure).
- Make a complaint or report to a government agency: There are independent organisations that can accept complaints of workplace sexual harassment, such as the Australian Human Rights Commission or your state or territory's human rights/anti-discrimination agency.
- Apply for a 'stop sexual harassment' order from the Fair Work Commission if you think the workplace harassment is likely to continue and you are still in the same workplace. The

Commission can order that the sexual harassment at work stop, an apology be made or that support or training in the workplace is provided.

- Ask for help and support from your co-workers, manager, friends, or family members.
- Seek professional help and/or additional support and information from a counselling service or helpline.

If you witness sexual harassment

- If you feel safe and comfortable, tell the harasser that you object to their behaviour and ask that it stop.
- Talk to the person experiencing the harassment, ask what support they need and what you can do.
- Assist the person in taking the next steps, or deciding a course of action, this might include assisting them in connecting to additional support (i.e. a counsellor or HR person).
- If the person experiencing the harassment is consenting, you should report the harassment to your employer.
- Maintain confidentiality regarding anyone involved (including the alleged perpetrator).
- Talk to your employer and colleagues about prevention activities in your workplace including training and education opportunities.

Next steps: if you are experiencing workplace sexual harassment

If you are not in any immediate danger, the next appropriate course of action is to determine which behaviour/behaviours you are experiencing constitute workplace sexual harassment. Read through the following legal definitions and descriptions contained in this guide, and consider if these apply to your experiences at work.

Comprehensive guidance regarding workplace sexual harassment is contained in the following Codes of Practice available on the NT WorkSafe website (worksafe.nt.gov.au):

- Code of Practice: Sexual and gender-based harassment.
- Code of Practice: Managing psychosocial hazards in the workplace.

Ensure you access and review your workplace policies and procedures and Codes of conduct regarding psychosocial hazards and workplace sexual harassment. These should outline how your employer will prevent and respond to workplace sexual harassment.

It can be difficult in times of stress to be objective about what is happening (objective means information is based on verifiable facts and evidence), therefore it may also be helpful to seek the perspective of another person who is not involved, such as a Human Resources (HR) representative, a union representative, a support person or counsellor, or a Work Health and Safety representative, regarding your experiences at work.

Information you should consider and record includes (but is not limited to):

- what specific unwelcome conduct/behaviour you are experiencing in the workplace that constitutes sexual harassment (there may be more than one) and how it is impacting you;
- who is harassing you (there may be more than one person involved);
- where and when the unwanted behaviour occurred/occurs;
- witnesses to the behaviour;

- would a reasonable person, having considered the circumstances, regard the behaviour as unwelcome, humiliating, offensive, or intimidating?
- is the behaviour creating a risk to your (or anyone else's) health and safety?
- if the behaviour includes violence, for example physical assault or the threat of physical assault, alert a co-worker or manager immediately and/or call police for assistance; and
- some forms of workplace sexual harassment amount to criminal conduct, including assault and sexual assault. You may wish to consider making a report to the police.

If you believe workplace sexual harassment is occurring you can:

- Speak to the other person if you feel safe and comfortable to do so. Let the person know you object to their behaviour and ask that it stop.
- If you choose to deal with the situation personally you should consider acting as soon as possible. You can also ask another person such as a supervisor for assistance or to accompany you when you approach the person.
- Raising an issue such as workplace sexual harassment can be challenging. A guide is available for download from the Fair Work Ombudsman website: [An employee's guide to difficult conversations in the workplace PDF](#).
- You can choose to report the behaviour (see below).

Reporting workplace sexual harassment

- Check your workplace policies and procedures to find out how to make a report.
- You may be able to talk to:
 - A supervisor or manager
 - A health and safety representative or HR department
 - A union
 - A lawyer
 - A counsellor.
- Your workplace should provide a number of avenues to make a complaint including anonymous reporting, informal reporting and formal reporting.
- Your workplace must take your complaint seriously and should react to your complaint immediately. Support should be including EAP.
- Your workplace should advise the timeframe the investigation may need to be completed. You should also be notified of the outcome.
- Your employer should offer reasonable accommodations to you while the report is investigated. These might include, working from home, taking leave if you voluntarily agree to do so, or making adjustments to the workplace environment to reduce contact between parties.
- The investigation should be carried out by an appropriate and suitably qualified person.

Where you can go for help

NT WorkSafe

NT WorkSafe does not investigate individual complaints of workplace sexual harassment to establish if harassment has occurred, or has not occurred. The role of NT WorkSafe is to confirm if a workplace has appropriate policies, procedures and control measures in place to effectively prevent and/or minimise any risks to physical or psychological health of workers (and others).

NT WorkSafe may respond to safety concerns in relation to workplace sexual harassment by:

- Providing information and guidance.
- Directing workers around making a complaint to the NT Anti-Discrimination Commission, the Fair Work Commission or other services.
- Making enquiries to determine if the employer has met its obligations under WHS laws.
- Inspecting workplaces and enforcing WHS laws.

If a workplace is not meeting its obligations to protect workers (and others) from harm, including sexual harassment NT WorkSafe may:

- Issue an improvement notice;
- Issue a prohibition notice; or
- If a serious breach has occurred NT WorkSafe may investigate and prosecute.

NT Anti-Discrimination Commission

The NT Anti-Discrimination Act 1991 promotes fair treatment and equal opportunity by making discrimination, including workplace sexual harassment against the law. The NT Anti-Discrimination Commission accepts and conciliates complaints of discrimination and sexual harassment under the Act and can provide information on how to make a complaint.

- A complainant does not need to have first made attempts to resolve their complaint informally before contacting the Commission
- If a complaint cannot be resolved through conciliation between the parties, the complaint is further investigated and ultimately may proceed to a hearing

Contact the NT Anti-Discrimination Commission on 1800 813 846 or visit the website www.adc.nt.gov.au

The Fair Work Commission

The NT Fair Work Commission helpline staff can give you information about:

- who can apply to Fair Work to deal with a sexual harassment dispute
- how to make or respond to a sexual harassment application
- where to find helpful information

Fair work cannot give you legal advice or tell you how to run your case.

If you are eligible to apply for the Fair Work Commission to deal with a sexual harassment dispute and get orders to stop the sexual harassment the commission can deal with applications:

- for orders to stop sexual harassment in connection with work;
- to deal with the application another way (for example via a conference; or
- both of the above.

Contact the NT Fair Work Commission on 1300 799 675 or visit the website www.fwc.gov.au

The Fair Work Ombudsman

The NT Fair Work Ombudsman can provide information to employees and employers regarding protections from workplace sexual harassment, management and prevention of sexual harassment.

Contact the NT Fair Work Ombudsman on 13 13 94 or visit the website www.fairwork.gov.au

NT Working Women's Centre

The NT Working Women's Centre provides free and confidential advice to women about work-related matters and possible courses of action. The centre advocates for all women including gender diverse people, women with a disability, Aboriginal and Torres Strait Islander women and women from culturally and linguistically diverse backgrounds.

Contact the NT Working Women's Centre on 1800 817 055 or 08 8981 0655 or visit the website www.ntwwc.com.au

Unions NT

Trade Unions provide information, advice and advocacy to members on all industrial matters. Union members can contact their respective union for information.

Contact: Unions NT on 08 8941 0001 or visit the website www.unionsnt.com.au

Resources for workers

NT WorkSafe

NT WorkSafe Code of Practice: [Sexual and gender based harassment](#)

NT WorkSafe Code of Practice: [Managing psychosocial hazards at work](#)

NT Government- NTPS: [Policy for the prevention of sexual harassment in the workplace](#)

Respect@work

Factsheet: [Factsheet – What is sexual harassment](#)

Guide: [Guide to external pathways in the Northern Territory to address workplace sexual harassment.](#)

Safe Work Australia

Sexual and gender-based harassment – [Resources](#)

Workplace sexual harassment – [advice for workers](#)

Sexual Harassment – [Your work, health and safety duties](#)

Comcare

Workplace sexual harassment- [Resources](#)

Workplace sexual harassment- [Practical guidance for workers](#)

Fair Work Ombudsman

Guide: [An employee's guide to difficult conversations in the workplace PDF](#)

Support Services

Lifeline: 24 hour crisis support (24/7)

- Call or text 13 11 14
- [Online chat](#)

1800 Respect: Domestic, family and sexual violence counselling, information and support service (24/7):

- Call or text 1800 737 732

MensLine Australia: Support service for men providing free telephone and online support (24/7):

- •1300 789978

Headspace: mental health and wellbeing support for people young people aged 12 -25 years

- Call 08 8931 5999
- Email: headspacedarwin@anglicare-nt.org.au

13 Yarn: National crisis support for Aboriginal or Torres Strait Islander people (24/7):

- •Call 13 92 76

NTCOSS – ‘Northern Territory Council of Social Services’

- [Online directory](#)

The National Disability Abuse and Neglect Hotline: free service

- Call 1800 880 052
- Email: hotline@workfocus.com

Translating and Interpreting Service (TIS)

- Call 131450