



APPROPRIATE WORKPLACE BEHAVIOURS *RESPONSE*

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About This Guide Series

Inappropriate workplace behaviours including sexual harassment, bullying and harassment constitute major occupational safety and health hazards that can endanger a worker's physical and psychological safety and health. Inappropriate workplace behaviours, especially if prolonged and unresolved, can have a negative impact on worker health and must be addressed in a manner that provides appropriate support to all parties involved.

Managing the risks of inappropriate workplace behaviours should be part of an organisation's overall workplace health and safety strategy and people and culture practices.

Inappropriate workplace behaviours might raise the likelihood of psychological impacts or associated health conditions. Aside from negative health effects for workers, exposure to psychological hazards and risk factors in the workplace can also have an impact on performance, behaviour choices and engagement with colleagues and the workplace.

Psychosocial risks may be harmful to a person in both the short and long term. Furthermore, it is critical to recognise that a cumulative impact of low-level exposure to psychosocial risks can result in psychological or physical harm. As a result of their exposure, people may experience a variety of psychological and physical signs of injury.

This guide series aims to provide a practical overview including key standards, information, reference material and draw together some of the best resources on the topic from within and outside the resources and energy industry, including the following:

- Legislative background
- Definitions and examples
- Respect@Work Framework
- Integrated Approach to Inappropriate Workplace Behaviours
- Leadership and commitment
- Risk management
- Workplace consultation
- Recruiting
- Situational challenges at remote sites
- Monitoring and review
- Practical response examples
- Responding to complaints and reports
- Outcomes of the Complaint Process
- Workplace Investigations
- Mandatory reporting and notification
- Record keeping
- Post-incident follow-up and support.



Disclaimer

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This document is a general guide and does not constitute advice. Members should obtain tailored advice to manage their legislative obligations.

References

Information in boxes is cited from external sources. For brevity, these citations do not always contain all consecutive paragraphs from the source, but rather some paragraphs may be omitted.

Acts, Regulations and Codes are only referenced in-text. All other references are detailed in the reference section at the end of the document.

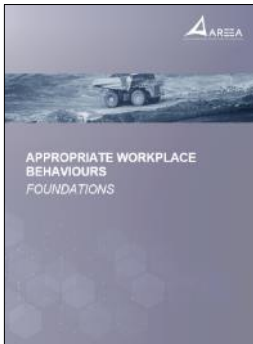
Gender Terminology

Where original sources and/or research specifically refer to binary genders, this terminology is retained in keeping with the source. However, it is acknowledged that gender-based inappropriate workplace behaviours are not restricted solely to scenarios where male perpetrators target female employees. Incidences of gender-based inappropriate workplace behaviours targeted towards male or non-cis-gender employees also exist, especially affecting diversity groups relating for instance to disability, sexual orientation, gender identity and intersex status. Ultimately, the goal is to eradicate all inappropriate workplace behaviours and to ensure full inclusion of all diversity groups in the workplace.



Structure

This Guide is part of a Series, which is structured as illustrated below.



Foundation

The first part, *Appropriate Workplace Behaviours – Foundations*, contains the following topics:

- Legislative background
- Duty of Care and penalties
- Definitions and examples
- Respect@Work framework
- Integrated approach to inappropriate workplace behaviours.



Prevention

The second part, *Appropriate Workplace Behaviours – Prevention*, contains the following topics:

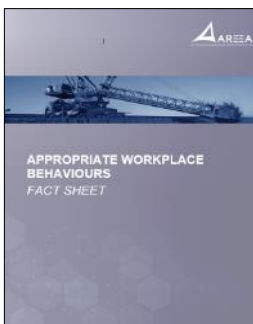
- Leadership and commitment
- Risk management and workplace consultation
- Work design
- Recruiting and situational challenges at remote sites
- Monitoring and review.



Response

The third part, *Appropriate Workplace Behaviours – Response*, contains the following topics:

- Responding to complaints and reports (incl practical examples)
- Outcomes of the complaint process
- Workplace investigations
- Mandatory reporting and notification, record keeping
- Post-incident follow-up and support.



Factsheet

The final part, *Appropriate Workplace Behaviours – Factsheet*, contains the following:

- Brief overview of IR issues related to inappropriate behaviour.



Results of inappropriate workplace behaviour

Inappropriate workplace behaviours result in a continuum as follows:



Some of the most frequent impacts include the following:

- absenteeism (this can manifest as leave after returning to work)
- resignation
- depression and/or anxiety
- shame and/or anger
- fatigue (e.g., due to rumination)
- suicide.

Options for resolution

An employer may seek to address allegations of inappropriate behaviour via an informal or a formal resolution.

Examples of informal resolution, where an incident was resolved internally without a formal investigation by the manager receiving the complaint and in agreement with the complainant include:

- The leader speaks to the alleged perpetrator to raise concerns about their behaviour.
- The leader facilitates a discussion or mediation.
- The leader observes matters with a view to stepping in if the behaviour happens again.
- If required, the leader may also reconfigure the workspace or organise training for the parties.³

Examples of formal internal resolution, where a matter is dealt with using formal internal processes, may include:

- From verbal or written warnings up to and including termination.
- Once a formal finding is made, action is taken when allegations are substantiated.³

An example of formal external resolution includes:

- The complainant makes a complaint to the Australian Human Rights Commission or the Fair Work Commission, and the parties agree to participate in a confidential dispute resolution process.³

Other options include transfer off site, especially if there is not enough evidence for a dismissal. Alternatives that can be used in addition or separately, involve coaching plans, counselling by organisational psychologists, operational adjustments, individual development programs (e.g., culture change and team programs).

Safe Work Australia provides guidance material that includes information on the response to workplace sexual harassment, including referrals to other agencies, confidentiality, further resources and support services: *Preventing workplace sexual harassment: National guidance material 2021*¹.

Another important resource in this context is the [Model Code of Practice: Sexual and gender-based harassment 2023](#)², released in December 2023 by Safe Work Australia and containing best practice information on responding to and resolving allegations of inappropriate behaviour in the workplace.



Practical Response Examples

The following pages provide a range of practical examples from the combined experience of members of AREEA's National Resources and Energy Industry Taskforce, supplemented with examples adapted from Australian Government resources^{3,4}.

Please note this is not a consequence matrix. The examples are for illustrative purposes only and not intended to be used as definitive outcome. Members should obtain tailored advice to manage their legislative obligations.

Conduct promoting sexual harassment and assault

Stage	Hazard	Incident	Potential Outcome
<i>Inappropriate jokes</i>	Sexual jokes being normalised; lack of diversity in the department	It has become common knowledge that a supervisor frequently makes sexual jokes during a team meeting; however, there are no formal reports or team members prepared to be witnesses.	Informal resolution.
<i>Facilitating sexual conduct</i>	Residential environment where gossip transfers from worksite to community.	A senior site leader sets up a dating app for the site. Gossip and harassment ensued. A number of participants were affected to the point of quitting	Formal resolution with medium severity outcome.



Inappropriate comments, gossip, and sharing of private information

Stage	Hazard	Incident	Potential Outcome
<i>Inappropriate sexual comments and behaviours - Indirect</i>		A worker frequently overhears his co-workers talking about one of their few female co-workers in derogatory terms, joking about what sexual acts they would like to do to her. Listening to this the worker feel embarrassed and sick. Worker starts calling in sick, just to get a break from the 'banter'.	Formal resolution with medium to severe outcome.
<i>Inappropriate sexual comments</i>		A worker regularly leers at a co-worker and makes inappropriate sexualised comments. The worker felt humiliated, anxious and vilified.	Formal resolution with severe outcome.
<i>Gossip</i>	No prior indication, victim and perpetrator used to be good friends.	A worker in a same sex relationship, was repeatedly propositioned by a co-worker, who made derogatory comments about the colleague's same sex relationship.	Formal resolution with severe outcome.
<i>Sharing private information and making sexual comments</i>		A worker, who has a second job as a bikini model, showed her YouTube channel to a trusted colleague, who shared the account with other colleagues. Colleagues commenced regularly commenting on it, including sexual comments about the worker's physical appearance. The worker feels humiliated and becomes anxious about interacting with colleagues at work. They start taking increasing amounts of sick days, eventually resigning.	Formal resolution with medium to severe outcome.



Sexual harassment/assault framed as an expectation of the job

Stage	Hazard	Incident	Potential Outcome
<i>Sexual Harassment/ Assault Framed as an Expectation of the Job</i>		A manager interviewing for an internal promotion promises a job applicant that they will get the role if they provide sexual favours.	Formal resolution with severe outcome.
<i>Sexual Harassment/ Assault Framed as an Expectation of the Job</i>		A worker told to dress specifically for client meetings and to flirt with clients. On one occasion they were told to sit on the knee of a client. When the worker protested, they were told to do it or forget about promotion opportunities.	Formal resolution with severe outcome.
<i>Sexual Harassment/ Assault Framed as an Expectation of the Job</i>		A site catering manager demands that female catering staff should wear revealing clothes to entice customers.	Formal resolution with medium outcome.



Misuse of pronouns and preferred names, comments on sexuality and race

Stage	Hazard	Incident	Potential Outcome
<i>Misuse of pronouns and preferred names</i>		A transgender worker is called by colleagues by previous name and referred to as previous gender, including in the presence of clients. The transgender worker feels less and less safe at work and worries about abuse or attacks from clients because of transgender status.	Formal resolution with medium outcome.
<i>Comments on sexuality and race</i>		A worker is open about identifying as a lesbian at work and occasionally mentions her partner. The work supervisor is repeatedly making comments about the workers sexuality and ethnicity. The worker feels uncomfortable.	Formal resolution with medium outcome.



Unwanted advances, texting and cyber-misconduct

Stage	Hazard	Incident	Potential Outcome
<i>Unwanted advances, inappropriate employer response</i>		A worker regularly needs to accompany a senior manager on overnight work trips. The manager repeatedly makes unwelcome sexual advances. After explaining that that the sexual advances were unwelcome and made the worker feel uncomfortable, the worker was transferred to a different role. The worker became anxious and depressed and concluded the only choice was to look for a new job, but was concerned about getting bad references.	Formal resolution with severe outcome.
<i>Texting</i>		A worker frequently sending a co-worker text about being attracted to them and wanting to go out with them.	Formal resolution with medium outcome.
<i>Cyber-Misconduct</i>		A worker posts insulting comments about a colleague on social media.	Formal resolution with low to severe outcome.



Sexual harassment/assault

Stage	Hazard	Incident	Potential Outcome
<i>Sexual Harassment / Assault</i>	Investigation showed previous incidents (i.e., audits might have reported this).	During an informal event at an organisation's residential site a worker was slapped on the bottom, and inappropriate comments were made. The worker felt they were the victim of sexual harassment and vilification.	Formal resolution with severe outcome.
<i>Sexual Harassment / Assault</i>	An audit brought forward a number of historic sexual harassment and assault allegations.	Interviewed staff related feeling severely anxious and depressed for years after workplace harassment and assault.	Formal restorative engagement process.
<i>Inappropriate touching</i>		A worker gropes one of the catering staff at the communal camp dining hall onsite.	Formal resolution with severe outcome.
<i>Inappropriate touching</i>		A site supervisor demanding to hug the female team members at shift change.	Formal resolution with severe outcome.
<i>Inappropriate touching</i>		A worker frequently attempts to kiss and grope a co-worker at the camp mess hall after shift.	Formal resolution with severe outcome.



Sexual assault

Stage	Hazard	Incident	Potential Outcome
Sexual Assault		A vacation student was trapped in the print room and sexually assaulted by a senior leader in the organisation.	Formal resolution with severe outcome.
Sexual Assault	Investigation showed there was a history of previous comments about dress and social media content.	A large older worker cornered a younger smaller colleague working alone in the camp kitchen and placed their hand on their shoulder. The incident was reported and corroborated by cameras. After reporting, the colleague was ostracised and exposed to many snide comments. The colleague no longer wants to work in the environment.	Formal resolution with medium outcome.
Sexual Assault		Sexual assault with inappropriate touching of a colleague walking back to camp room after work.	Formal resolution with severe outcome.



Other

Stage	Hazard	Incident	Potential Outcome
<i>Bullying</i>		An interpersonal conflict between colleagues who have difficulty working together, escalating to hurtful comments, yelling and withholding information from each other.	Formal resolution with medium to severe outcome.
<i>Harassment</i>		Staff who go out drinking with the supervisor get preferential scheduling allocations. This makes the job stressful for an employee who does not drink alcohol and makes them feel that they do not belong and are not appreciated.	Formal resolution with medium to severe outcome.
<i>Pregnancy discrimination, inappropriate employer response</i>		A manager started treating subordinate differently after she got pregnant, frequently making sexualised comments about the physical changes to her body. She told him repeatedly that his comments were making her uncomfortable, and eventually complained to HR. The manager was later chosen to preside over the female employee's promotion interview, which made her very anxious and perform below her usual standard during the interview, losing her the promotion opportunity. The female employee suffered severe anxiety which impacted her health during her pregnancy.	Formal resolution with severe outcome. Review of internal processes regarding selection of promotion panellists.



Responding to Complaints and Reports

Responding to a report of bullying or harassment

Workplace bullying is best managed by responding as soon as possible after suspecting or becoming aware there is a problem. Responses to reports of workplace bullying will vary depending on the situation, the number of parties involved and the size and structure of the workplace.

In the first instance, attempts should be made to resolve the situation within the workplace, regardless of whether or not workplace bullying has occurred. Where internal processes are not effective, complainants may refer the complaint to external agencies.

Consider the following when responding to workplace bullying:

- Is the behaviour bullying or not?

The type of behaviour occurring may need to be determined to develop an appropriate response. For example, if the behaviour involves physical violence or what appears to be unlawful discrimination or sexual harassment, whether it is repeated or not, it will require a different response to workplace bullying.

- Does the situation warrant measures to minimise the risk of ongoing harm?

If necessary interim measures should be taken to minimise the risk to health or safety. This may involve temporarily reassigning tasks, separating the parties involved or granting leave.

- Is there a clear understanding of the issues?

Seek additional information to ensure a clear understanding of the parties involved and the specific behaviour or behaviours thought to be unreasonable. This may be achieved by speaking to others who may have observed or participated in the behaviour.

- Is additional information or assistance required?
- Can the matter be safely resolved between the parties or at a team level?

In some situations it may be possible to use a no-blame conciliatory approach to help individuals reach an outcome that will ensure the unreasonable behaviour ceases. A proposed resolution should be discussed with the person who reported the behaviour to check they are comfortable with it.

- Should the matter be progressed to an investigation?

Depending on the severity or complexity, some matters may need to be investigated. A person may choose to resolve issues by self-managing the situation. This usually involves telling the other person the unreasonable behaviour is not welcome and asking for it to stop. If an individual does not feel safe or confident with approaching the other person they can seek the assistance of a supervisor or manager, human resources officer, or a health and safety representative.

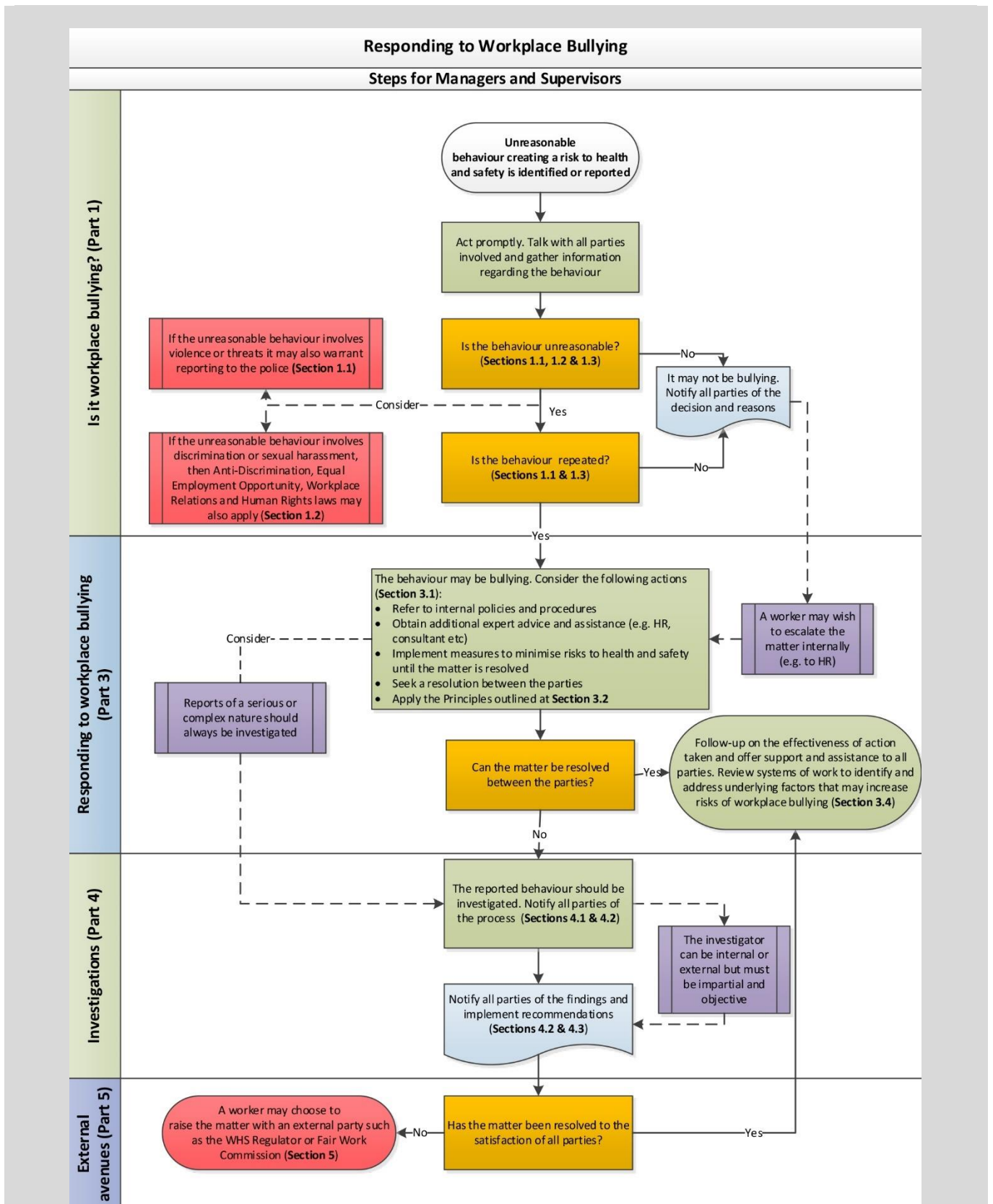
In most circumstances, the person who is alleged to have perpetrated the bullying behaviour must be notified as soon as possible of the report and be given a chance to explain his or her version of events. They should be treated as innocent until the reports are proven to be true.

Providing training to workers about appropriate standards, expected behaviours and workplace bullying may help workers understand how to deal with issues such as conflict, confidentiality and related issues.

Source: Safe Work Australia. (2016). Guide for Preventing and Responding to Workplace Bullying⁵.



Responding to workplace bullying flowchart



Source: Safe Work Australia. (2016). *Guide for Preventing and Responding to Workplace Bullying*⁵.



Responding to a report of workplace sexual harassment

Sexual harassment is best managed by responding as soon as possible after suspecting or becoming aware there is a problem.

When dealing with reports of sexual harassment, you should:

- act promptly and ensure the safety of the workers involved
- consult with the complainant to determine whether they wish to pursue their complaint formally, informally or in some other way, and what support they require
- clearly communicate the process to everyone involved (including both sides of the complaint and witnesses if appropriate)
- protect all people involved from victimisation e.g., being bullied or intimidated
- tell all people involved what support and representation is available
- maintain confidentiality
- treat everyone involved fairly, and
- ensure all actions and decisions are documented and information is stored securely

Source: Safe Work Australia. (2021). Preventing workplace sexual harassment guide⁶.

As noted in the preceding box, where an action may be an offence under criminal law, it is suggested to inform the complainant of options to report to police and inform of the organisation's intent to refer the matter to the police.

It is also important to account for delayed consequences from sexual harassment.

Individual reactions to gendered violence such as workplace sexual harassment can be delayed and continue for a long time after the incident. If the incident and workers' reactions are not actively managed, the impact of the incident on individuals and the organisation can be significant. Some organisations offer one or more contact officers as a first point of contact for workers [...] experiencing or witnessing sexual harassment; alternatively, early access to psychological support services should be prioritised as this can assist with harm mitigation.

PCBUs should create and maintain a supportive work environment in which workers feel safe to discuss their concerns about any inappropriate workplace behaviour which could cause harm to health.

Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Information sheet – Gendered violence: Sexual harassment⁷.

Note: PCBU refers to Person conducting a business or undertaking.



Sexual harassment complaint procedures

Company complaint procedure

As part of the legal responsibility to deal with sexual harassment, all employers must implement effective, accessible complaint procedures for employees and other workplace participants.

A good complaint procedure:

- conveys the message that the organisation takes sexual harassment seriously
- can prevent escalation of a case and maintain positive workplace relationships
- ensures that complaints are dealt with consistently and in a timely manner
- reduces the likelihood of external agency involvement which can be time consuming, costly and damaging to public image
- alerts an organisation to patterns of unacceptable conduct and highlights the need for prevention strategies in particular areas
- reduces the risk of an employer being held liable under the Sex Discrimination Act and other anti-discrimination laws
- can help to minimise the harm suffered by the person harassed
- reduces the risk of the employer being held to have treated the alleged harasser unfairly, such as in an unfair dismissal claim.

The Sex Discrimination Act does not prescribe any particular type of procedure, so employers have the flexibility to design a system that suits the organisation's size, structure and resources. Employers can establish a specific procedure for sexual harassment complaints or, alternatively, use the procedure that is in place for other types of employee complaints. Because of the variables that can arise in sexual harassment cases, it is advisable to offer both informal and formal mechanisms for dealing with complaints.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Internal and external complaint procedures

Internal complaint procedures:

- are clearly documented
- are explained to all employees
- offer both informal and formal options
- address complaints in a manner which is fair, timely and confidential
- are based on the principles of procedural fairness
- are administered by trained personnel
- provide clear guidance on internal investigation procedures and record keeping
- advise a complainant that they can pursue the matter externally with the Commission, a state or territory anti-discrimination body and, if it appears to be a criminal matter, the police
- give a clear undertaking that no employee will be victimised or disadvantaged for making a complaint
- are regularly audited and reviewed for effectiveness.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.



External complaints procedures:

An employee who has been subjected to sexual harassment can make a written complaint to the Australian Human Rights Commission, Fair Work Australia or the relevant state or territory anti-discrimination agency.

Each external body has prescribed processes and procedures to manage complaints of this nature. The complainant will need to participate in the process to achieve an outcome and may elect to progress the matter further if unsuccessful or if they believe the outcome is unacceptable.

A person is not required to attempt to resolve a complaint within the workplace before approaching the Commission or the relevant state or territory anti-discrimination agency. Criminal acts such as assault may also be reported directly to the police.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Informal complaint procedures

When to use informal complaint procedures

Informal procedures focus on achieving a resolution of a complaint rather than the substantiation of it.

Informal action is usually appropriate where:

- the allegations are of a less serious nature but the individual alleging the behaviour wants it to cease nonetheless
- the individual alleging the behaviour wishes to pursue an informal resolution
- the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

An employee should not be required to exhaust informal attempts at resolution before formal action commences. Employees have the right to formalise their complaint or approach an external agency at any stage.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Note that if the conduct is of a serious nature the employer may have an obligation to report and investigate under relevant legislation.

Employers can also engage a third party to conduct an investigation.

AREEA advisors are available to support members with establishing relevant policies and procedures.



Examples of informal complaint procedure

Informal ways of dealing with sexual harassment can include the following actions.

- The individual who has been harassed wants to deal with the situation themselves but may seek advice on possible strategies from their supervisor or another officer such as the sexual harassment contact officer, EEO officer, industrial relations manager or human resource or safety personnel.
- The individual who has been harassed asks their supervisor to speak to the alleged harasser on their behalf. The supervisor privately conveys the individual's concerns and reiterates the organisation's sexual harassment policy to the alleged harasser without assessing the merits of the case.
- A complaint is made, the harasser admits the behaviour, investigation is not required and the complaint is resolved through appropriate actions such as conciliation, counselling, discipline or potential termination of the harasser.
- A supervisor or manager observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Formal complaint procedures

When to use formal complaint procedures

Formal procedures focus on factual proof and substantiation of a complaint.

Formal procedures are usually appropriate where:

- informal attempts at resolution have failed
- the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties
- the complaint is against a more senior member of staff
- the person alleging sexual harassment also alleges victimisation
- the allegations are denied, the person who claims to have been harassed wishes to proceed and investigation is required to substantiate the complaint
- the person alleging sexual harassment wishes to make a formal complaint

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Examples of formal complaint procedures

Formal procedures usually involve:

- investigation of the allegations
- making a finding as to the parties involved and whether the harassment occurred and by whom
- submitting a report with findings to the appropriate decision-maker (senior management) to consider and implement an appropriate disciplinary outcome (the investigator may be required to make recommendations or observations).



In conducting an investigation, it is paramount to ensure application of the principles of procedural fairness.

Steps involved in a formal complaint procedure

To ensure consistency and fairness, employers should document the steps involved in a formal complaint and clearly inform the parties about the processes involved in considering a complaint in advance. The usual sequence of events:

- the complainant is interviewed and the allegations are particularised in writing
- the allegations are conveyed to the alleged harasser in full
- the alleged harasser is given the opportunity to respond and defend themselves against the allegations
- if there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered
- relevant allegations made during the investigation are made known to both the complainant and alleged harasser, with an opportunity to respond
- a finding is made as to whether the complaint has substance
- a written report documenting the investigation process, the evidence, the finding and a recommended outcome/s is submitted to the decision-maker
- the decision-maker implements the recommended outcome/s or decides on an alternative course of action.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

The parties are legally entitled to have a support person, advocate, union official, or other representative accompany them to any interviews or meetings.

The request to have a support person at the interview cannot be refused. Although the employer is not obligated to offer, it is best practice to always offer.

Unsubstantiated complaints

A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the conduct, there are often no direct witnesses to acts of sexual harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence, and make their finding on the balance of probabilities, that is, that it is more probable than not that the harassment did or did not occur. It is important to note that even if there is not enough evidence for a complaint to be substantiated, it does not mean that the discrimination did not occur or that the complainant is a liar. Findings may be that harassment did or did not occur, or that it was not possible to make a conclusive finding.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.



Evidence that may be relevant includes:

- evidence that the person alleging harassment discussed his or her concerns with a family member, friend, co-worker, medical practitioner or counsellor
- supervisor's reports and personnel records (for example, unexplained requests for transfer or shift changes, sudden increase in sick leave)
- complaints or information provided by other employees about the behaviour of the alleged harasser
- records kept by the person claiming to have been harassed
- whether the evidence was presented by the parties in a credible and consistent manner
- the absence of evidence where it should logically exist.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

When complainant does not want to make a formal complaint

If a complainant does not want to proceed with a formal or informal complaint, this does not mean that management should take no action. As with unsubstantiated complaints, it is a good time to consider the internal processes for preventing and responding to sexual harassment, provide training and remind employees of their general obligations not to sexually harass others. In addition, management should follow up with the person who reported their concerns a few months later, to check whether their concerns remain, and to monitor the relationships involved.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Complaint mechanisms

Sexual harassment complaint procedures

Employers may develop complaints procedures to suit their particular workplace. In the Australian Human Rights Commission's experience, the most effective complaint procedures for large organisations offer a range of options for dealing with sexual harassment. For example, a person can complain to their own supervisor, another manager or a designated complaints officer. The individual is then able to select the option which best suits the particular circumstances of their case.

(a) Reporting to management

Most organisations encourage a person with a complaint to raise it with their immediate supervisor (or another manager if the supervisor is the alleged harasser). In a small business there may only be one manager, but in a larger organisation the complainant can report the situation to another manager, an EEO officer, human resources or industrial relations manager.



Sexual harassment complaints frequently involve sensitive or embarrassing information and in some cases an individual may be reluctant to discuss the details with the management hierarchy. Given this sensitivity and the prevalence of sexual harassment against women, this model is unlikely to be suitable if the management hierarchy is predominantly male. It may also be difficult for a person to make a complaint to management if the alleged harasser is part of the chain of responsibility. The approach also depends on supervisors and managers at all levels possessing the necessary complaints handling skills and knowledge about sexual harassment.

(b) Complaints officers

Larger organisations may overcome some of these difficulties by designating particular employees as sexual harassment complaints officers. This could be an EEO officer, human resources manager or other nominated management representatives. Complaints officers are selected on the basis of their skills, experience and sensitivity. They take an active role in the resolution of complaints and should have relatively senior status in the organisation to ensure that their role is respected and they can operate with the necessary level of authority.

Some large organisations contract out formal complaints procedures to professional consultants. This may be an effective way of dealing with complaints as it promotes the objectivity of the procedures.

(c) Sexual harassment contact officers

Many large organisations have also appointed sexual harassment contact officers. Sexual harassment contact officers provide the first point of contact for a person who complains of sexual harassment. If that person then decides to proceed with a formal complaint, the case is referred to a nominated complaints officer or management representative.

Contact officers are selected from various areas and levels of the organisation to provide information and support to a person who makes a complaint of sexual harassment. Contact officers are not involved in the formal investigation or resolution of a complaint. The role of the contact officer is to listen to the complaint; provide information on sexual harassment and the internal options that are available to deal with sexual harassment complaints; inform the individual of their rights; discuss possible strategies the individual can use to deal directly with the harasser, if this is the individual's preferred course of action and provide general information on sexual harassment and the organisation's policy and procedures to any interested member of staff.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.



◆ Outcomes of the Complaint Process

Outcomes can include any combination of the following:

- counselling
- disciplinary action against the harasser (such as demotion, transfer, suspension, probation or dismissal)
- official warnings that are noted on the harasser's personnel file
- disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious
- formal apologies
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- reimbursing any costs associated with the harassment
- re-crediting any leave taken as a result of the harassment.

Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.

Disciplinary action against the harasser can include various actions up to and including termination of employment. The actions demotion, transfer, suspension and probation listed in the above quote from the Australian Human Rights Commission are, however, not typically applied in the resources and energy industry; but they are listed here for completeness. Note, official warnings can be both verbal or written.

Outcomes will depend on factors such as:

- the severity or frequency of the harassment
- the wishes of the person who was harassed
- whether the harasser could have been expected to know that such behaviour was a breach of policy
- the level of contrition
- whether there have been any prior incidents or warnings.

If there is insufficient proof to decide whether or not the harassment occurred employers should nevertheless:

- remind those involved of expected standards of conduct
- conduct further training and awareness raising sessions for staff
- monitor the situation carefully.

Employers must ensure that the outcome of a complaint, substantiated or not, does not disadvantage the person who made the complaint in any way, in the absence of strong evidence that the complaint was vexatious or malicious.

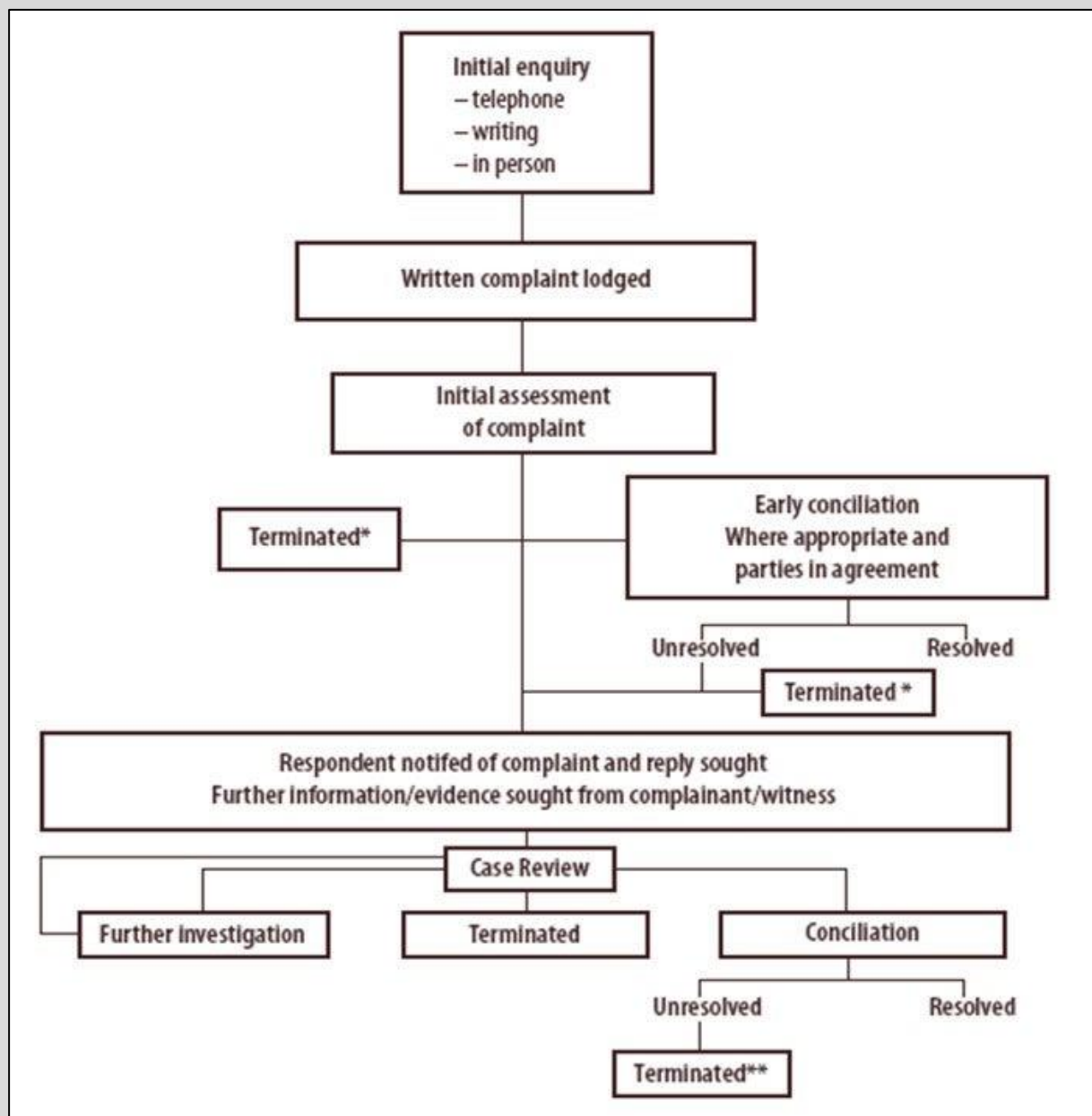
Source: Australian Human Rights Commission. (2008). Effectively preventing and responding to sexual harassment: A Code of Practice for Employers⁸.



Example process flowchart for organisational sexual harassment complaint procedures

The following is an example flowchart for organisational sexual harassment complaint procedures from the Australian Human Rights Commission.

Please note, the examples are for illustrative purposes only would need to be adapted to the organisation.



Source: Australian Human Rights Commission. (2008). *Effectively preventing and responding to sexual harassment: A Code of Practice for Employers, Appendix A*⁸.



Workplace Investigations

Responding to instances and allegations of bullying and harassment will often require a formal workplace investigation to be undertaken. A workplace investigation is a process of fact finding and should commence as soon as an organisation becomes aware of a serious conflict or allegation of serious misconduct.

The following steps are provided by AREEA as an overview to how members should be managing investigations in the workplace. They are applicable to bullying and harassment, as well as a wide range of other behavioural and disciplinary matters.

Investigation principles

Underlying Investigation Principles:

- An investigator must remain impartial and act on merit and/or evidence.
- The key aim is to get to the truth of the matter.
- The truth is not always evident at the beginning of an investigation.
- The truth has a unique quality – it is always consistent from whichever angle it is looked at, and over time becomes more consistent. The truth remains constant whereas lies unravel.
- Evidence-based facts need to be established that will withstand external third-party scrutiny.
- It is a discipline to **not** jump to conclusions - an investigator needs to be flexible and wait before forming opinions.
- The standard of proof is the civil standard of proof not the criminal one – i.e., “on the balance of probabilities” not “beyond reasonable doubt”.
- An investigator should be mindful that employees who are interviewed during an investigation frequently feel some stress and fear and be sensitive.
 - Sensitivity to the interviewee’s feelings by taking the time to provide some information and assurance can help put the person at ease and therefore encourage them to be more open and candid.

When to conduct an investigation

Employers should consider the following when conducting an investigation:

- When a person breaches an organisation’s policy
- When a person breaches a code of conduct
- When considering whether to terminate a person’s employment
- When an issue of serious misconduct occurs
- When a safety incident or accident occurs
- When a complaint is received either informally or formally
- When a discrimination or harassment complaint is received.

It is important to remember:

- An informal complaint can still trigger a formal investigation if deemed serious enough by the organisation’s Human Resources team.
- If serious enough, the investigation should continue even if the complainant is uncooperative.

Principles underlying investigations

When conducting investigations, it is important to adhere to the following:

- Natural justice and procedural fairness
- Respecting people's rights
- Ensure consistency with established policy



- Maintain confidentiality
- Maintain records.

Role of the investigator

The role of the investigator is to determine all the relevant facts on:

- What occurred
- How it occurred
- Why it occurred
- Where it occurred
- When it occurred
- Who or what was responsible?

Investigation steps

Steps for an effective investigation:

- **Step 1:** Preparing for the investigation
- **Step 2:** Gathering Information
- **Step 3:** Analysing/reporting on information
- **Step 4:** Deciding on action to take

Closeout of Investigations

At the closeout of an investigation, it needs to be carefully considered what can be shared and what should be shared.

Options beyond disciplinary action should also be considered. This includes training and education that intent doesn't matter and that the victim's perception is what counts. Options for training include AREEA's Appropriate Workplace Behaviour Training and Workplace Investigations Training.

Under certain circumstances mediation might be an option, although this may be more so for cases involving non-sexual bullying. For cases of sexual harassment and assault, the appropriateness needs to be carefully considered, as victims of sexual harassment usually prefer for the perpetrator to be removed, and there is the risk of victims becoming seriously retraumatised if put into proximity with the perpetrator.

Trauma-informed investigations

Note that workplace investigations have the potential to (re-)traumatise victims and witnesses and cause psychological harm.

To minimise the negative impact, workplace investigations should be conducted in a trauma-informed manner. This includes:

- understanding the prevalence of trauma
- recognising how trauma affects all individuals in communities and workforces
- adapting policies and procedures in light of the above.

An important resource in this context is the [Model Code of Practice: Sexual and gender-based harassment 2023²](#), released in December 2023 by Safe Work Australia and containing best practice information on investigations, the trauma informed approach and confidentiality.



Further support on investigations

Should you wish further advice specific to your workplace regarding investigations please do not hesitate to contact AREEA's Workplace Relations Advisory Team. Your AREEA team is available to conduct investigations and undertake training about managing workplace investigations for members in a trauma-informed manner.

Mandatory Reporting and Notification

Inappropriate workplace behaviour with a potential to cause physical and psychological harm, such as workplace sexual harassment and assault may be notifiable and/or reportable under various legislation, including Anti-discrimination, Equal Employment Opportunity, Workplace Relations, Human Rights and Health and Safety laws.

For instance, as WHS risk is defined to include psychosocial risk, incidents of a psychosocial nature automatically fall under WHS reporting requirements. This may include psychosocial incidents where a person was not injured but could have been (e.g., sexual harassment/assault) or could still become injured (e.g., delayed onset post-traumatic stress disorder).

Each State/Territory deals with psychosocial health risks and related reporting obligations differently. AREEA members should closely review the legislation and regulations in-effect in each jurisdiction where they have operations. Below are some starting points for investigating State/Territory reporting and notification requirements.

Table 1: Links that provide starting points for investigating state/territory reporting and notification requirements. For illustration only, may be incomplete or already superseded – always check legislation for currency and/or obtain tailored advice.

Jurisdiction	Code of Practice	Web Resources for Managing Hazards, Reporting/Notification
Model WHS Laws	<i>Model Code of Practice: Sexual and gender-based harassment 2023</i> <i>Model Code of Practice: Managing psychosocial hazards at work 2022</i>	Resources on violence and aggression Mental health resources
Commonwealth	<i>Work Health and Safety (How to Manage Work Health and Safety Risks) Code of Practice 2015 (Cth)</i> <i>Australian Human Rights Commission. Effectively preventing and responding to sexual harassment: A Code of Practice for Employers, May 2008.</i>	Comcare. Psychosocial hazards Incident reporting Work to improve the WHS incident notification process commenced in 2023 with a view to expand the framework to capture a wider range of harm and hazards.
Australian Capital Territory	<i>Work Health and Safety (Managing Psychosocial Hazards at Work Code of Practice) Approval 2023</i> <i>Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012 (No 1) (ACT).</i>	Managing work-related psychosocial hazards Psychosocial Complaint Form
New South Wales	<i>Code of Practice for Managing psychosocial hazards at work (2021) (NSW)</i>	Managing psychosocial hazards at work Psychosocial Hazard Service Request Form



Jurisdiction	Code of Practice	Web Resources for Managing Hazards, Reporting/Notification
Northern Territory	<i>Code of Practice: Managing psychosocial hazards at work (2023) (NT)</i>	Work health and safety includes mental health Notifications to WorkSafe page
Queensland	<i>Managing the risk of psychosocial hazards at work Code of Practice 2022 (QLD)</i>	Managing the risks of psychosocial hazards at work Incidents and notifications
South Australia	<i>How to manage work health and safety risks Code of Practice June 2020 (SA)</i>	Managing psychosocial hazards & work-related stress Psychosocial Hazard/Risk Reporting Portal
Tasmania	<i>Managing psychosocial hazards at work Code of Practice (2022) (TAS)</i>	Managing psychosocial hazards & work-related stress Incident Notification Form
Victoria	Code of Practice under development	Psychosocial hazard reporting Victorian Government response to the Ministerial Taskforce on Workplace Sexual Harassment (VIC)
Western Australia	<i>Mentally healthy workplaces Codes of Practice (WA)</i>	Interpretive Guideline for Incident Notification MineSafe Sexual Harassment Report Page Sexual Harassment Evaluation Tool for Mining Operation Workers

Notes: Part of harmonisation efforts, several jurisdictions are considering adopting the Model Regulations and/or Model Code of Practice.
In some jurisdictions the Model Regulations and/or the Model Codes are implemented directly, in other instances with additional provisions regarding the Hierarchy of Control.
In the absence of specific Codes of Practice for managing psychosocial risk or equivalent, usually the generic Code of Practice for managing risks would apply, which in many instances references psychosocial risk.

Further support on notification and reporting

Should you require advice specific to your workplace regarding notification and reporting requirements please do not hesitate to contact AREEA's Workplace Relations Advisory Team. Your AREEA team is available to provide advice and undertake training.

Record Keeping

An additional important consideration is record keeping. With increased legislative powers, employers may be asked to produce documents on relatively short notice. To be able to comply with such requests it is important to be organised and prepared ahead of time.

It is crucial to ensure sufficient records are kept enabling employers to demonstrate compliance with the positive duty to eliminate sexual discrimination.



Post-Incident Follow-up

Apart from investigations and disciplinary measures, reporting and notification of inappropriate workplace behaviour, organisations should also follow up on incidents and check on the physical and psychological health and safety of all involved parties and offer support.

Options for support may include offers for professional counselling – for instance, via the organisation’s Employee Assistance Program (EAP) or via Industry Counselling – as well as mentoring and support from management, and training and development.

In addition, the organisation should also ensure actions have been undertaken to stop the inappropriate behaviour and prevent its reoccurrence. This may include redressing resulting inequalities, monitoring the behaviours of the affected parties and work group, and providing relocation to another area of the organisation, where appropriate.

As mentioned previously, inappropriate workplace behaviours and their aftermath can potentially cause serious trauma to victims and witnesses and cause serious psychological harm. The handling of such incidences and any follow-up and support need to be undertaken in a trauma-informed manner.

Support

Supporting victims of inappropriate workplace behaviours and all participants of investigations (including alleged perpetrators and witnesses) is important regardless of the outcome of an investigation. In cases where there is no conclusion of the investigation this becomes especially crucial.

It is especially difficult for victims if their alleged harasser or attacker remains at the workplace. This may lead to continuous retraumatising and mental health impacts. It is suggested to explore intensive wrap-around support options, including counselling.

AREEA Support

Should you wish advice specific to your workplace regarding inappropriate workplace behaviours and trauma-informed handling thereof, please do not hesitate to contact AREEA’s Workplace Relations Advisory Team. Your AREEA team is available to provide advice and undertake training.

For any practical support relating to workplace and employment issues get in touch via membership@areea.com.au or phone your local [AREEA office](#). For information on government policy and AREEA’s advocacy, contact policy@areea.com.au.



References

- ¹ [Safe Work Australia. \(2021\). *Preventing workplace sexual harassment: National guidance material.*](#)
- ² [Safe Work Australia \(2023\). *Model Code of Practice: Sexual and gender-based harassment 2023*](#)
- ³ [Victoria WorkSafe \(2022\). *What might work-related gendered violence look like?* Victorian Government.](#)
- ⁴ [Victorian Equal Opportunity & Human Rights Commission. \(2020\). *GUIDELINE. Preventing and responding to workplace sexual harassment. Complying with the Equal Opportunity Act 2010.* Victorian Government.](#)
- ⁵ [Safe Work Australia. \(2016\). *Guide for preventing and responding to workplace bullying.*](#)
- ⁶ [Safe Work Australia. \(2021\). *Preventing workplace sexual harassment guide.*](#)
- ⁷ [Government of Western Australia, Department of Mines, Industry Regulation and Safety. \(2022\). *Information sheet – Gendered violence: Sexual assault.*](#)
- ⁸ [Australian Human Rights Commission. \(2008\). *Effectively preventing and responding to sexual harassment: A Code of Practice for Employers 2008.*](#)

