

ASU WORKPLACE GUIDE

TO PREVENT AND RESPOND TO SEX DISCRIMINATION AND SEXUAL HARASSMENT



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INTRODUCTION

Unions have won new protections to prevent and respond to sexual harassment and discrimination at work. The imperative for comprehensive action to end sex discrimination¹ and sexual harassment has never been clearer. The benefits of safe, respectful, and inclusive workplaces that promote gender equality and diversity are manifold.

Eliminating sex discrimination benefits businesses, workers and the Australian community. When individuals feel secure, respected, and are provided with equal opportunities in the workplace, they thrive, leading to the success of organisations and businesses.

In 2022, the Australian Government introduced two pivotal reforms:

1. Amendments to the Sex Discrimination Act (SDA), which introduce a **positive duty on employers**, requiring them to **prevent sex discrimination and sexual harassment proactively**. These changes align with other reforms under the Respect@Work Act.
2. Establishment of a new **Fair Work Commission (FWC) Jurisdiction to stop sexual harassment** in Australian workplaces.

It's crucial that we transition from merely reactive approach to workplace sexual harassment and discrimination incidents towards active prevention. Recognising that the problem extends beyond individual grievances is essential. Collectively, it's our duty to ensure the safety of everyone in our workplaces.

Recognising the strength of our diverse community is vital. It's important to understand the unique needs of various groups, including First Nations People, Culturally and Linguistically Diverse Individuals, People with Disabilities and the LGBTQIA+ community. To successfully implement these reforms, extensive consultations with representatives from diverse backgrounds are imperative, crafting tailored solutions that acknowledge the complexities of intersectionality.

We recognise the women who have been pivotal in driving these reforms, such as those at the forefront of the #MeToo movement. This worldwide transformation was triggered by prominent cases, including that of multiple Australian women. #MeToo and Respect@Work underscore the importance of unity and collaboration in addressing collective issues. Employers are expected to enforce compliance and actively engage in staff consultations, fostering teamwork to create safer, more equitable workplaces.

Our ASU workplace guide is designed to help you use new legislation to tackle discrimination and sexual harassment at your workplace. Unions, employers, and the government are all actively collaborating to ensure the effective implementation of these new laws, a testament to the power of collective action.

This guide focuses on the new rights and obligations within the federal Fair Work Act and Sex Discrimination Act exclusively. Additional rights and responsibilities are provided by state-based laws, particularly Equal Opportunity and OHS Acts.

¹ This Best Practice Guide adopts the language of the Sex Discrimination Act 1984 (Cth). The SDA does not define the terms 'man', 'woman' or 'sex'. 'Sex' is not limited to sex assigned at birth or to a strictly biological understanding of sex characteristics.



RESPECT@WORK REFORMS: CHANGES IN FEDERAL LAWS TO PROMOTE SAFER WORKPLACES

The Australian Human Rights Commission was tasked with an inquiry aimed at addressing sexual harassment and promoting gender equality. The AHRC considered the impact of sexual harassment in Australian society, including:

- its prevalence, nature and reporting in Australian workplaces,
- the role of technology,
- its drivers, including risk factors for particular population groups or in different workplace settings,
- the current legal framework,
- existing measures to address it and examples of good practice; and
- its impacts on individuals and businesses, including its economic impact.

Following the Inquiry, the AHRC produced the Respect@Work: Sexual Harassment National Inquiry Report.

The Respect@Work Act, based on key recommendations from the Respect@Work Report, has ushered in significant amendments to various federal laws to create safer and more equitable workplaces. Here are the important changes:

- 1. Prohibition of Hostile Work Environments:** New provisions in the Sex Discrimination Act prohibit conduct that creates a hostile workplace environment based on sex.
- 2. Positive Duty for Employers and Person Conducting a Business or Undertaking (PCBU):** The Sex Discrimination Act introduces a positive duty requiring all employers and Persons Conducting a Business or Undertaking (PCBUs) to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment, sex-based harassment, hostile environments, and victimisation at work.
- 3. Monitoring and Compliance Assessment:** Amendments to the Australian Human Rights Commission Act (AHRC Act) enable the Australian Human Rights Commission to monitor and assess compliance with the positive duty introduced in the Sex Discrimination Act.
- 4. Broad Inquiry Function:** The AHRC Act now grants the Australian Human Rights Commission a broad inquiry function to investigate systemic or suspected systemic unlawful discrimination.
- 5. Representation by Unions:** Amendments to the AHRC Act allow representative bodies like unions to make applications on behalf of individuals who have experienced unlawful discrimination in federal courts.
- 6. Public Sector Reporting:** Changes to the Workplace Gender Equality Act 2012 now require the Commonwealth public sector to report to the Workplace Gender Equality Agency (WGEA).



7. Objective of Substantive Equality: The objects clause of the Sex Discrimination Act is amended to include an objective of achieving substantive equality between men and women.

8. Prohibition of Harassment: Amendments to the Sex Discrimination Act remove the requirement that harassment must be of a 'seriously' demeaning nature.

9. Consistency Across Anti-Discrimination Laws: The legislation ensures that changes made to the Sex Discrimination Act in 2021 are applicable across all federal anti-discrimination legislation. This includes clarifying that victimisation can be the basis for civil action for unlawful discrimination and extending the period for making complaints from 6 months to 2 years.

This Best Practice Guide will cover practical changes in the workplaces, including:

1. The prohibition of sexual harassment;
2. The positive duty to prevent sex discrimination; and
3. The role of Unions and representation.



NEW LEGAL SAFEGUARDS AGAINST WORKPLACE SEXUAL HARASSMENT

Sexual harassment refers to any unwanted or unwelcome sexual behaviour, which would lead a reasonable person to anticipate that the person being harassed might feel offended, humiliated, or intimidated. It is distinct from mutual attraction or consensual behaviour.

The Fair Work Act now prohibits any individual (referred to as the 'first person') from engaging in sexual harassment towards another individual (referred to as the 'second person') who currently works in a business or is actively seeking employment.

The Sex Discrimination Act not only prohibits sexual harassment but also makes it unlawful to discriminate against an individual due to their sex, gender identity, intersex status, sexual orientation, marital or relationship status, and family responsibilities. This includes discrimination because of pregnancy, potential pregnancy, or breastfeeding.

Remedies

The Fair Work Commission (FWC) has taken on a new responsibility for handling sexual harassment disputes, focusing on improving workplace conditions and providing remedies for victims. Here are the key points:

1. FWC's Dispute Resolution Function:

The FWC has introduced a **dedicated dispute resolution function for sexual harassment cases**, mirroring its existing mechanisms for general protection dismissal disputes. If an individual alleges that they have experienced sexual harassment by one or more persons, they can now approach the FWC directly or have a union representing their industrial interests apply.

2. Stop Sexual Harassment Orders:

Workers who have experienced sexual harassment can seek **'stop sexual harassment orders.'** These orders are designed to prevent further harassment. In addition to stop orders, workers can pursue remedies for past harm, such as compensation, through the FWC or other relevant anti-discrimination laws.



These changes mark a significant step forward in addressing sexual harassment in the workplace and providing better access to justice for victims. However, the success of these measures will depend on how they are tested and interpreted by Commissions and the courts.

Unions actively participate in cases brought before the Fair Work Commission and report cases to the AHRC. Together, as members, we can ensure that workers' voices are heard and their rights are upheld.



Who is protected by the Fair Work Act Sexual Harassment jurisdiction?

Employers must ensure that no one, regardless of their role or workplace, must endure sexual harassment while pursuing their professional endeavours while at work..

The protections of the Fair Work Act cover every 'worker' connected to an employer's business or operations. The term 'worker' has an expansive definition taken from work health safety legislation.² It encompasses all individuals contributing to work-related activities. This includes employees, contractors, subcontractors, outworkers, apprentices, trainees, students undergoing work experience, or volunteers. Everyone is protected from sexual harassment at work.

Workers are protected against sexual harassment by everyone they interact with at work. This includes sexual harassment perpetrated by third parties within the workplace. Customers, patrons, clients, service users, patients, residents, visitors, suppliers, contractors, volunteers, students, and parents can all be classified as a 'person' under these regulations.

Vicarious Liability

Employers and principals can be liable for sexual harassment their workers or agents commit. Vicarious Liability means that employers and principals can be held responsible for the actions of their workers or agents in connection with their job duties. If a worker or agent engages in conduct that violates the prohibition of sexual harassment, the employer or principal is liable unless they can demonstrate that they took all necessary measures to prevent such conduct.

It's important to note that under the Fair Work Act, employers are not liable for the actions of third parties or other workplace participants, like independent contractors, apprentices, trainees, students, and volunteers. This means that cases against third parties (such as customers, clients, patients and members of the public) would need to be pursued against harassers individually. This may make obtaining compensation for third-party sexual harassment challenging under the Fair Work Act. However, the newly amended Sex Discrimination Act introduces a positive duty on employers to eliminate sexual harassment, which can apply to third parties in specific situations.

Workers still have the option to seek stop orders regarding the conduct of third parties. The FWC will play a crucial role in resolving disputes related to these matters.

² See for example, Section 7 Work Health and Safety Act 2011 (Cth).

EMPOWERING CHANGE: THE POSITIVE DUTY IN THE SEX DISCRIMINATION ACT

Under the Sex Discrimination Act, organisations and businesses are legally responsible for implementing 'reasonable and proportionate measures' aimed at minimising relevant unlawful conduct, including:

1. Sex Discrimination in a work context.
2. Sexual harassment in connection with work.
3. Sex-based harassment in connection with work.
4. Conduct creating a hostile work environment on the grounds of sex.
5. Related acts of victimisation.

The positive duty in the Sex Discrimination Act requires employers to prevent unlawful conduct rather than simply reacting to incidents after they've transpired. The intent is to prevent harm instead of responding after harm has occurred. It emphasises taking preventative actions that address underlying causes of unlawful conduct to establish safe, respectful, and inclusive workplaces.

Unions stand as unwavering advocates for workers' rights, playing an essential role in ensuring the effective implementation of the newly amended laws. **Our commitment extends to a range of critical activities:**

- 1. Industrial Consultation:** We engage in comprehensive discussions with workers and employers, fostering dialogue and collaboration to address workplace issues.
- 2. Development of Industrial Instruments:** Unions actively contribute to creating essential tools and mechanisms that safeguard workers' rights and well-being.
- 3. Prevention Plans and Risk Frameworks:** We work diligently to formulate robust strategies that proactively prevent sexual harassment and protect the interests of workers.
- 4. Education and Training Initiatives:** Union-led programs aim to educate workers and employers about their rights and responsibilities, fostering a culture of respect and equality in the workplace.



The positive duty obliges organisations and businesses to proactively adopt appropriate measures to eliminate relevant unlawful conduct to the greatest extent possible. It goes beyond simply responding to individual reports when they surface. It is noteworthy that organisations and businesses can now be held accountable for their compliance with this duty, even without individual complaints being lodged under the Sex Discrimination Act.



What is Sex Discrimination?

Sex discrimination is a form of unfair treatment or unreasonable disadvantage based on a person's sex or characteristics commonly associated with their sex. In a work context, certain attitudes can lead to sex discrimination:

- Making assumptions about an individual's work capabilities or limitations based on their sex.
- Believing that certain jobs are better suited for individuals of a particular sex.
- Holding personal preferences for working with individuals of one sex.
- Assuming that treating everyone the same ensures fairness between different sexes.

It's important to note that sex discrimination can take two forms, both of which are prohibited under the Sex Discrimination Act:

- 1. Direct Sex Discrimination:** occurs when a person is treated less favourably than someone of a different sex would be treated in similar circumstances. Treating someone 'less favourably' means subjecting them to worse treatment or detriment. To be considered unlawful, this treatment must be due to the person's sex or characteristics associated with that sex. For example, refusing to hire a qualified woman as a mechanic solely because she is a woman and presuming she won't fit into a predominantly male workplace constitutes direct sex discrimination.
- 2. Indirect Sex Discrimination:** This form may be less obvious. It arises when an existing or proposed condition, requirement, or practice, such as a policy or rule, appears to treat everyone equally but disproportionately disadvantages individuals of a specific sex. However, if the condition, requirement, or practice is deemed reasonable in the given circumstances, it will not be considered unlawful discrimination. For instance, requiring all employees to work from 9 am to 5 pm might be indirect sex discrimination if it is unreasonable, as it could disproportionately affect women who need more flexible hours due to childcare responsibilities.

Understanding these distinctions is crucial to recognising and addressing sex discrimination in the workplace, promoting fairness, and ensuring equal opportunities for all employees.

Sexual harassment in connection with work

Sexual harassment is a serious issue that affects many individuals in Australia. It is defined as any unwelcome conduct of a sexual nature that takes place in circumstances where a reasonable person would anticipate that the person being harassed might feel offended, humiliated, or intimidated.

Sexual harassment can take various forms, from overt and explicit behaviour to covert and subtle actions. It can occur in person, over the phone, and online, including through social media platforms. Examples include unwelcome physical contact, repeated inappropriate invitations, sexualised gifts, explicit images or videos, and inappropriate staring or leering.

It's essential to understand that sexual harassment is not always apparent or continuous and does not require the harasser to intend their behaviour to be considered harassment. The conduct in question does not need to be explicitly sexual to be covered; it can involve innuendo, insinuation, undertones, or jokes. Such harassment might occur as isolated incidents or as a pattern of behavior, contributing to a sexually hostile environment that is uncomfortable or threatening in the workplace.

Importantly, conduct can be unwelcome even when a person does not explicitly reject it. Factors such as power imbalances in the workplace or fear of retaliation may prevent individuals from speaking up. Additionally, behaviour that was once deemed acceptable may become unwelcome to the recipient.

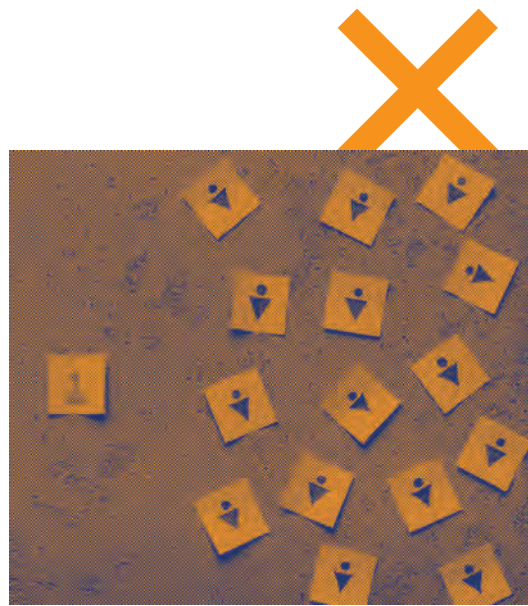
Determining whether behaviour constitutes unlawful sexual harassment under the Sex Discrimination Act depends on how a reasonable person would interpret it in the given circumstances. This assessment considers various factors, including the age, sex, sexual orientation, gender identity, religious beliefs, ethnicity, disabilities, and the relationship between the parties involved.

Sex-based harassment in connection with work

Sex-based harassment, also known as harassment on the grounds of sex, involves unwelcome behaviour that is sexist and demeaning but not necessarily of a sexual nature. This type of harassment is characterised by actions that degrade or debase another person because of their sex or characteristics generally associated with people of that sex. Like sexual harassment, sex-based harassment is unlawful when a reasonable person, aware of those circumstances, would anticipate that the harassed might feel offended, humiliated, or intimidated.

Examples of sex-based harassment include asking intrusive personal questions based on a person's sex (e.g., inappropriate questions about menopause, menstruation, or genitalia), making inappropriate comments and jokes based on a person's sex, displaying images, or making comments that are sexist or strongly biased against a particular sex, or requesting a person to engage in degrading conduct based on their sex.

It's essential to recognise that fostering workplace cultures that tolerate sex-based harassment and everyday sexism creates environments where sexual harassment can thrive. Therefore, addressing and preventing both forms of harassment is crucial to promoting respectful and inclusive workplaces where all individuals can thrive without fear of humiliation, intimidation, or discrimination based on their sex or gender.



Conduct creates a hostile work environment on the grounds of sex

A workplace can become sexually charged or hostile, making individuals feel unwelcome or marginalised, even if the conduct is not directed towards a specific individual. Such an environment can heighten the risk of other forms of unlawful discrimination, including sexual harassment. Before the changes, no explicit protections existed for employees facing hostile workplace environments. The new provisions aim to rectify this issue.

Victimisation

Victimisation involves treating or threatening to treat someone unfairly due to their reporting of unlawful behaviours, such as sexual harassment or sex discrimination, or asserting their rights under the law. This includes subjecting or threatening the individual to any form of detriment, such as termination, denying a promotion, demotion, etc., and if a substantial reason for such treatment is linked to the person making a complaint.

It is crucial to understand that it is unlawful for anyone to unfairly treat workers on the grounds of having filed or intending to file, a sexual harassment or sex discrimination complaint. Unions play a crucial role in representing workers in these situations, ensuring their rights are protected and advocating for fair treatment in the workplace when addressing sexual harassment claims.



RISK MANAGEMENT: PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE

This risk management plan outlines the steps to address the issue of sexual harassment in the workplace. It emphasises a collective approach involving consultation with Health and Safety Representatives, union delegates, and union officials to identify hazards and controls. Compliance with Sex Discrimination and Health and Safety Laws is essential in addressing this critical issue.

Step 1: Identifying hazards and assessing risks factors contributing to the likelihood and risks of sexual harassment. The following are some examples of hazards and risk factors that may contribute to the prevalence of sexual harassment in the workplace:

- **Low Worker Diversity:** Dominance of one gender, age group, race, or culture in the workforce.
- **Power Imbalances:** Concentration of management and decision-making positions in one gender.
- **Hierarchical Structures:** Found in organisations such as police, enforcement agencies, and medical and legal professions.
- **Tolerant Workplace Culture:** Acceptance of lower-level forms of harassment, disrespect, and inequality.
- **Work-Related Events:** Alcohol consumption during work-related conferences and social events, including overnight travel.
- **Isolated Workers:** Those in restrictive spaces, employer-provided accommodation, remote locations, or with limited support.
- **Remote Work:** Potential for covert online harassment.
- **Interactions with Clients or the Public:** Risk of third-party harassment.
- **Poor Leadership Understanding:** Lack of awareness among workplace leaders regarding the nature and impacts of sexual harassment.



It's crucial to consider the intersectionality of factors such as sex, gender, sexuality, age, migration status, disability, and literacy, which can increase the risk for some individuals.

Step 2: Consultation

Consultation is vital to ensure that all stakeholders are involved in addressing sexual harassment risks. Take these steps to engage in meaningful consultation:

- Engage with employees, Health and Safety Representatives, Union delegates, and union officials.
- Gather insights through staff satisfaction surveys, exit interviews, hazard and incident reports, and absenteeism patterns.
- Encourage open communication and feedback channels to address concerns.
- Recognise that underreporting may be an issue and actively work to create a culture where employees feel safe and supported to report incidents.

Step 3: Implementing Controls

Below are examples of how to eliminate or minimise the risks of sexual harassment:

- **Safe Work Environment:** Ensure the physical and online environment is secure.
- **Safe Work Systems:** Implement procedures that protect workers.
- **Promote Inclusive Culture:** Foster respect and inclusivity at all levels.
- **Third-party Prevention:** Establish measures to prevent third-party harassment.
- **Early Intervention:** Address unwanted or offensive behaviour promptly.
- **Encourage Reporting:** Provide safe, confidential reporting avenues, including anonymous options.
- **Supportive Responses:** Respond to reports sensitively, prioritising worker support.
- **Accountability:** Apply appropriate consequences for misconduct, including managerial accountability.
- **Education and Training:** Provide information, instruction, and training to support prevention.
- **Diverse Workforce:** Promote diversity in recruitment and promotion strategies.
- **Continuous Monitoring:** Regularly review the effectiveness of control measures.

By following these steps, you can collectively address the issue of sexual harassment, create a safe workplace, and comply with legal obligations.

Step 4: Review Risk Control Measures

Work with your Health and Safety Representatives to assess whether all hazards have been identified and the controls in place are working effectively.



MODEL SEX DISCRIMINATION AND SEXUAL HARASSMENT POLICY

This Model Policy is designed to identify key components of Sex Discrimination and Sexual Harassment Policies. Employers should engage with workers and unions in developing the workplace's policy.

Statement of Commitment

1. The Employer recognises that all workers have the right to a work environment free from violence and harassment, including sexual harassment and all other forms of gender-based violence and harassment. The Employer has a positive duty to prevent workplace sexual harassment, sex discrimination and victimisation. A range of resources are available on the Respect@Work website to promote a better understanding of sexual harassment in the workplace.
2. The Employer acknowledges that violence and harassment, including sexual harassment and other forms of gender-based violence, are unlawful and serious work health and safety hazards.
3. The Employer understands that it has an obligation to provide and maintain systems of work that are safe and without risks to psychological or physical health. The Employer acknowledges that this includes a requirement to take all reasonably practicable steps to eliminate violence and harassment, including sexual harassment and other forms of gender-based violence, from the work environment of all its employees.
4. The Employer strongly encourages reporting gender-based violence and harassment and will ensure that all complaints are treated in a sensitive, fair, timely and confidential manner by the principles of natural justice.
5. Workers who report experiencing or witnessing gender-based violence or harassment will receive appropriate support, and no adverse action will be taken against them under any circumstances.
6. This policy should be read with other Employer policies, such as the Code of Conduct.
7. By adhering to this Policy, officers and employees will generally ensure they are complying with the requirements of Part 3-5A of the Fair Work Act, which prohibits sexual harassment in connection with work and the expansion of the Fair Work Commission's sexual harassment jurisdiction arising from the Secure Jobs and Better Pay Act in addition to State Sex and Anti- Discrimination legislation.

Adopt a trauma-informed response when addressing sex discrimination and sexual harassment:

1. Prioritise worker well-being, safety, and emotional needs;
2. Acknowledge the impact of trauma on mental and emotional health; and
3. Provide a supportive and non-triggering environment where individuals can feel heard and understood.

REMINDER

Even when acting as a support person/ representative, Employer policies, such as the Code of Conduct, continue to apply to you.

Definitions

8. The term **violence and harassment** refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aims at, results in, or is likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.
9. The term **gender-based violence and harassment** means violence and harassment directed at or disproportionately affecting employees and prospective employees because of their sex, gender, sexual orientation or gender identity, and includes **sexual harassment**. Examples of gender-based violence and harassment include (but are not limited to) behaviours and actions such as:
 - i. stalking;
 - ii. intimidation or threats;
 - iii. verbal abuse;
 - iv. ostracism or exclusion;
 - v. rude gestures;
 - vi. offensive language and imagery;
 - vii. put downs, innuendo/insinuations;
 - viii. being undermined in a role or position;
 - ix. sexual harassment; or
 - x. sexual assault and rape.
10. The term **sexual harassment** means unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated and can be physical, verbal and written. Intent is irrelevant and doesn't have to be repeated or ongoing. Examples of sexual harassment include (but are not limited to):
 - i. unwelcome touching;
 - ii. hugging or kissing;
 - iii. suggestive comments or jokes;
 - iv. unwanted invitations to go out on dates or requests for sex; or
 - v. insults based on sex or sexually explicit emails or SMS messages.
11. **Employee** includes all full-time, part-time and casual workers, regardless of contractual status.



Scope

12. This policy applies to:
 - i. All employees and prospective employees, including all full-time, part-time or casual, temporary or permanent Employees; job candidates; student placements, contractors, sub-contractors, trainees and volunteers;
 - ii. All aspects of employment, recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport;
 - iii. On-site, off-site or after-hours work; work-related meetings, functions, social functions or training; conferences and wherever and whenever employees may be as a result of their duties; and
 - iv. Employee treatment of other employees and other members of the public encountered during their duties.

Measures to eliminate sexual harassment and other forms of gender-based violence and harassment

13. The Employer will take all reasonably practicable steps to prevent gender-based violence and harassment, including the following:
- i. adopting and implementing, in consultation with employees and their representatives, a workplace strategy to prevent gender-based violence and harassment;
 - ii. explicitly including gender-based violence and harassment and associated psychosocial risks in the management of work health and safety on an ongoing basis;
 - iii. conducting risk assessments as required to identify hazards and assess the risks of gender-based violence and harassment, with the participation of employees and their union representatives, take measures to prevent and control them;
 - iv. providing all employees, including new employees, with up-to-date information and training on the identified hazards and risks of gender-based violence and harassment and the associated prevention and control measures; and
 - v. appointing appropriate gender-based violence and harassment contact persons throughout the organisation in consultation with employees and their union representatives. These persons may include managers, team leaders, union delegates or health and safety representatives. All contact persons will receive appropriate training on responding to complaints of gender-based violence and harassment and on the operation of this policy.
14. Risk assessments under this policy must take into account the factors that increase the likelihood of gender-based violence and harassment, including hazards and risks that arise from:
- i. working conditions and arrangements, job design, systems of work, work organisation and management;
 - ii. contact with third parties such as customers, service providers, and members of the public;
 - iii. discrimination, gender unequal power relations, and cultural and social norms that support gender-based violence and harassment; or
 - iv. casual, contract, visa or other insecure work arrangements.
15. The Employer will ensure that control and prevention measures are regularly reviewed and, if necessary, revised to ensure that they continue to be effective, suitable and fit for purpose.

TIP

Consider organising a staff meeting to discuss these issues.

HINT

Safe Work Australia or your local safety regulator has information on conducting risk assessments.

TIP

Health and Safety Reps are empowered under the law to be involved in safety matters.

Complaints

16. Within one month of this policy coming into effect, the Employer will develop and implement a complaints procedure that complies with the principles in this policy, in consultation with employees and their representatives.
17. When an employee wishes to make a formal complaint that they have witnessed and/or experienced gender-based violence or harassment, the complaints procedure developed under this policy will be applied.
18. The Employer will designate an appropriately trained senior person responsible for receiving and considering complaints under the complaint procedure developed under this policy and will inform employees of the contact details for this person (the designated person). An alternative person should be nominated in the event that referral to the first person is not considered appropriate by the complainant for any reason.
19. A complaint may be made verbally or in writing.
20. Within 24 hours of receiving a complaint, the designated person will, in writing:
 - i. acknowledge receipt of the complaint;
 - ii. Remove immediate risk;
 - iii. advise the complainant of the procedures to be followed;
 - iv. offer access to support; and
 - v. provide a copy of this policy and the complaints process.
21. The designated person will conduct the investigation themselves or appoint an appropriately qualified independent and impartial investigator.
22. The investigation will be completed as promptly as possible within a reasonable period and without any unnecessary delays.
23. The person carrying out the investigation will:
 - i. notify all parties of their right to have a union representative, health and safety representative, or other nominated person represent them in all interviews or meetings during the complaints process;
 - ii. investigate the allegations confidentially and impartially;
 - iii. keep appropriate investigation records and ensure they are kept strictly confidential;
 - iv. apply the principles of procedural fairness;
 - v. make a finding on the balance of probabilities as to whether the alleged incident or incidents occurred; and
 - vi. submit a report with a recommended course of action to the appropriate decision-maker.
24. The Employer will review and consider the report and decide on the action to implement.



25. Any sexual harassment dispute will be referred to the Fair Work Commission dispute resolution framework, commencing with conciliation and, if not resolved, to proceed to consent arbitration or an application to Court. The Commission has the power to make orders to stop sexual harassment or for payment of compensation such as for remuneration lost or redress for loss or damage to an aggrieved person and express an opinion on any contravention of the Act. There are three types of FWC applications as follows:
- i. For an order to stop sexual harassment – to stop further sexual harassment;
 - ii. To deal with a dispute involving sexual harassment – including to remedy past harm; and
 - iii. For both orders to stop sexual harassment and deal with a dispute in relation to sexual harassment.

Information and support

26. Immediately upon becoming aware of a complaint under this policy, the ASU will:
- i. Provide information regarding and access to appropriately qualified counselling and other support services to the complainant.
 - ii. In consultation with the complainant, take steps to protect the privacy and confidentiality of the complainant while ensuring that requirements for privacy and confidentiality are not misused to silence the complainant or protect the respondent.
 - iii. Provide the complainant with access to special paid leave where necessary to deal with the impact of gender-based violence and/or harassment.
 - iv. Provide information regarding and access to appropriately qualified counselling and other support services to respondents found to have engaged in gender-based violence and/or harassment in order to assist them in changing their behaviour.
 - v. Notify all parties of their right to have a union representative, health and safety representative, or other nominated person represent them in all interviews or meetings during the complaints process.

TIPS FOR SUPPORT PERSONS / REPRESENTATIVES

1. Be person-focused and do not question their experience.
2. Maintain confidentiality.
3. Keep notes.
4. Seek advice from the union office.



Notification and referral

27. The Employer must ensure that the appropriate work health and safety regulator is notified in writing immediately upon becoming aware that a serious allegation of gender-based violence and harassment has been made.
28. The Employer must keep a record of the notification for at least five years and preserve any incident site by obligations under work health and safety laws.
29. A serious allegation of gender-based violence and harassment under this policy includes an allegation of sexual assault, sexual violence or stalking. Such matters may also be offences under criminal laws and may need to be referred to the police, as well as managed under work health and safety obligations and the requirements of this policy. For the avoidance of doubt, the involvement of the police does not remove the Employer's obligations to continue to manage the incident in accordance with work health and safety laws and the requirements of this policy.
30. The Employers' obligations are to continue to manage the incident by work health and safety laws and the requirements of this policy.
31. In cases involving allegations of criminal conduct, complainants should be supported to report to the police if they choose to do so and to keep written records of any incidents that occur. It is up to the complainant as to whether or not they want to report a matter. However, where there is an imminent, immediate or specific risk or threat of physical or sexual harm to any person, the matter should be referred to the police.

Policy review

32. The Employer will review this policy and the development of procedures for assessing and acting on reports about sexual harassment and gender-based violence, including those created by the Fair Work Commission jurisdiction.

RESOURCES

Call 000

If you, a child, or another person is in immediate danger.

1800RESPECT 1800 737 732

Call 1800 737 732 if you or someone you know is impacted by sexual assault, domestic or family violence.

No to Violence Men's Referral Service 1300 766 491

Call 1300 766 491 for anonymous and confidential telephone counselling, information, and referrals for men.

Kids Helpline 1800 55 1800

Call 1800 55 1800 for 24/7 counselling for Australian children and young people.

Q Life 1800 184 527

Call 1800 184 527 for anonymous and free LGBTQIA+ peer support and referral.

The National Disability Abuse and Neglect Hotline 1800 880 052

The National Disability Abuse and Neglect Hotline (The Hotline) is a free, independent and confidential service for reporting abuse and neglect of people with disabilities.

13 YARN 13 92 67

13YARN is the first national crisis support line for mob feeling overwhelmed or having difficulty coping. They offer a confidential one-on-one yarning opportunity with a Lifeline-trained Aboriginal & Torres Strait Islander Crisis Supporter.

Financial Counselling Australia 1800 007 007

Access free resources and advice from a private financial counsellor. Call 1800 007 007 to speak to someone in your state.

inTouch 1800 755 988

inTouch provides services, programs and responses to family violence in migrant and refugee communities. Call 1800 755 988 to speak to support staff.

Translating and Interpreting Service 131 450

The Translating and Interpreting Service (TIS National) is an interpreting service for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients.

CONTACT YOUR ASU BRANCH

New South Wales & ACT (Services) Branch

Phone: 1300 784 278

E-mail: membership@asu.org.au

New South Wales United Services Branch

Phone: 1300 136 604

E-mail: launchpad@usu.org.au

Queensland (Services and Northern Administrative) Branch

Phone: (07) 3844 5300

Email: general@theservicesunion.com.au

Queensland Together Branch

Phone: 1800 177 244

Email: your.union@together.org.au

Victorian & Tasmanian Authorities and Services Branch

Phone: (03) 9342 3400

Email: info@asuvictas.com.au

Victorian Private Sector Branch

Phone: (03) 9342 3300

Email: info@asupsvic.org

South Australian & Northern Territory Branch

Phone: (08) 8363 1322

Email: union@asu-sant.asn.au

Western Australian Branch

Phone: (08) 9427 7777

Country callers: 1800 064 657

Email: member.service@asuwa.org

Taxation Officers' Branch

Phone: (03) 9347 6080

Email: asutax@asutax.asn.au



By your side



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