



APS Model Policy for the Prevention of Workplace Sexual Harassment and related unlawful conduct

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About this Model Policy

This Model Policy for the prevention of workplace sexual harassment and related unlawful conduct has been developed for use by HR, D&I and WHS practitioners across Australian Public Service (APS) agencies.

APS agencies may use this Model Policy as an example that can be tailored to specific workforce requirements, work environments and workforce profile and composition.

Personal safety:

If anyone in the workplace is in immediate danger, call 000 and report the matter to the Police. If employees are not in immediate danger and would like to make an enquiry or report, call the Police on 131 444.

1. Policy Statement

1.1 Purpose

The [insert name of APS agency] is committed to providing safe, inclusive and respectful work environments. This includes work environments that are free from sexual harassment and related unlawful behaviours. The APS and the [insert name of APS agency] has a zero tolerance approach to sexual harassment in the workplace.

Sexual harassment and related conduct is unlawful and is prohibited in Australia, and contravenes Commonwealth legislation. Please refer to section 2.1 Relevant Legislation for further information.

Workplace sexual harassment and related unlawful conduct is a work health and safety issue. All APS agencies have a duty of care to ensure, so far as is reasonably practicable, the health and safety of employees. This includes managing the risk of sexual harassment.

In addition to complying with relevant laws and legislation, APS agency heads and employees are required to comply with the [APS Code of Conduct](#) and uphold the **APS Values** and **APS Employment Principles**.

The APS Code of Conduct, APS Values, and Employment Principles require all APS employees to treat everyone with respect and courtesy, without harassment, and provide workplaces that are free from discrimination and are respectful of all people. The integrity and conduct of APS employees is critical in maintaining public trust in the APS as an institution.

This policy aims to ensure all [insert agency name] employees understand the standards of behaviour expected of them [insert reference to agency's 'inappropriate behaviours policy', where applicable] and their legal rights and obligations in relation to workplace sexual harassment.

This policy outlines what constitutes sexual harassment, proactive actions to prevent workplace sexual harassment, and how to respond to reports of sexual harassment in a way that ensures the safety of the employee who is reporting the inappropriate and/or unlawful behaviour/s.

Drafter's note:

APS agencies will need to incorporate requirements concerning third party conduct into their policies, contractual terms and conditions or rules for engaging with the agency and entry onto premises.

1.2 Scope

The scope of this policy regards to prevention of sexual harassment and related unlawful conduct.

This policy applies to all employees carrying out work in any capacity for the [insert name of APS agency].

This policy applies to circumstances including, but not limited to:

- interactions between workers
- interactions between workers and third parties (including visitors, clients and/or customers) where that interaction occurs in connection with any work-related activity, e.g. sexual harassment of a visitor, client or customer by a worker
- on-site, off-site, work-related social functions and conferences – wherever workers are located for work-related duties, including working from home
- out of work hours interactions where there is a strong connection to the employment relationship
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport
- in online spaces, including email, messages including sms and WhatsApp, via apps including Snapchat, video call and conferencing services (e.g. Microsoft Teams), and social media platforms where the conduct is in connection with the employment (e.g. remote work and virtual meetings) or involving online communication between workers or between a worker and a third party.

When managing reports of sexual harassment, the [*insert name of APS agency*] will also refer to relevant industrial instruments, agency policies and guidelines, and Commonwealth legislation.

Drafter's note:

Terminology - this Model Policy uses 'employee' because we have chosen to develop this document using a Diversity and Inclusion perspective. When adopting this model policy, APS agencies will need to consider what terminology is most appropriate, noting for example that WHS definitions would use the term 'worker'.

1.3 Principles

The principles of this policy are:

- sexual harassment and other related unlawful behaviours will not be tolerated in the workplace (across virtual and physical work environments)
- the safety and on-going wellbeing of victim-survivors is prioritised by providing a culturally respectful, and trauma-informed and person-centred approach which supports, listens to, and validates the experience of those reporting, including reporting and support options for Aboriginal and Torres Strait Islander and CALD employees
- in-line with the new positive duty under the *Sex Discrimination Act 1984 (Cth)*, proactive and appropriate measures are implemented to eliminate relevant unlawful conduct, including sexual harassment, as far as possible
- sexual harassment is a work health and safety (WHS) issue – all reasonably practicable steps are taken to eliminate or minimise the health and safety risks of sexual harassment in the workplace

- Strong and consistent leadership: leaders continuously reinforce that sexual harassment is unacceptable and model safe and respectful behaviour, and foster a safe reporting culture including for Aboriginal and Torres Strait Islander and CALD employees
- Prevention: sexual harassment is prevented by addressing gender inequality and power imbalances as the key drivers, and identifying and managing key risk factors
- The safety and wellbeing of employees reporting inappropriate and/or unlawful conduct is prioritised by providing a trauma-informed approach which supports, listens to, and validates the experience of the reporter
- Ongoing safety for victim-survivors: ensuring employees who report sexual harassment and relevant unlawful conduct can seek ongoing advice and support from a trusted person, a health and safety representative or an employee assistance program (EAP)
- Active and regular monitoring and evaluation of reporting processes and outcomes, including consideration of any changes that are needed to the *[insert agency name]* policy's and processes, following final outcomes of reported workplace sexual harassment and/or related unlawful conduct
- Action to address workplace sexual harassment and related unlawful conduct must prioritise the rights, needs and wishes of the reporter, and should ensure adequate support is provided to the alleged harasser, including education and behavioural change options, while ensuring procedural fairness to all parties
- Diversity & Inclusion: understanding, respecting and embracing the many aspects of a person's identity in preventing and responding to workplace sexual harassment and related unlawful behaviours.

2. Legislation

2.1 Relevant legislation (Commonwealth jurisdiction)

Discrimination and sex discrimination, harassment and sexual harassment, victimisation and related behaviours are unlawful in Australia.

Relevant legislation may include but is not limited to:

- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Anti-Discrimination and Human Rights Legislation Amendment \(Respect at Work\) Act 2022](#)
- [Work Health and Safety Act 2011](#)
- [Public Service Act 1999](#)
- [Australian Human Rights Commission Act 1986](#)
- [Workplace Gender Equality Act 2012](#)
- [Fair Work Act 2009](#)

- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Maternity Leave \(Commonwealth Employees\) Act 1973](#)
- [Public Interest Disclosure Act 2013](#)
- [Racial Discrimination Act 1975](#).

Note: please ensure, where necessary, you also make yourself aware of and refer to WHS laws that are relevant to your specific jurisdiction (ie state or territory specific).

2.2 Obligations and positive duties

The [insert name of APS agency] is obligated to ensure the health and safety of employees by:

- eliminating risks to health and safety so far as is reasonably practicable, or
- if it is not reasonably practicable to eliminate risks to health and safety, to reduce risks so far as is reasonably practicable.

Employers or people conducting a business or undertaking, including [Insert name of APS agency], have a new positive duty under the the *Sex Discrimination Act 1984 (Cth)* (SDA). Introduced in 2022, the new positive duty under the SDA imposes a legal obligation on organisations and businesses, including APS agencies, to take reasonable and proportionate measures to eliminate, so far as possible, sexual harassment, as well as certain other conduct contrary to the SDA, including harassment on the ground of sex.¹

From 12 December 2023, the Australian Human Rights Commission (AHRC) has had new powers to conduct inquiries into employers or persons conducting a business or undertaking if the AHRC reasonably suspects that the employer or person is not complying with the positive duty in the SDA. The AHRC also has new powers to:

- issue a compliance notice specifying action that an organisation or business must take, or refrain from taking, to address any non-compliance
- apply to the federal courts for an order to direct compliance with a compliance notice
- enter into enforceable undertakings with an organisation or business under which the organisation or business agrees to do, or refrain from doing, certain things.

The AHRC can commence an inquiry without the consent of an organisation or business, including APS agencies.²

The positive duty under the SDA, and the AHRC's compliance powers, do not change existing duties or regulatory functions in the Commonwealth work health and safety (WHS) jurisdiction.³

¹ *Sex Discrimination Act 1984 (Cth)* s 47C.

² Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, pg. 19.

³ Comcare, [Harassment including Sexual Harassment](#).

Workplace sexual harassment is a known health and safety hazard that can cause psychological and physical harm. Under the *Work Health and Safety Act 2011*, employers or people conducting a business or undertaking have a duty to eliminate or minimise the risks of workplace sexual harassment so far as is reasonably practicable. Comcare will continue to monitor and enforce compliance with the WHS laws in the Commonwealth jurisdiction parallel to the AHRC's regulatory function under the SDA.⁴

Sexual harassment is a known workplace hazard that can cause psychological and physical harm. It is unlawful under the SDA and is also prohibited by state and territory anti-discrimination laws.

Some forms of sexual harassment such as sexual assault, indecent exposure, stalking and obscene communications may also be criminal offences.

3. APS Code of Conduct, APS Values and APS Employment Principles

Sexual harassment and related unlawful conduct is inconsistent with APS employee and Agency Head obligations under the APS [Values](#), [Employment Principles](#) and [Code of Conduct](#) set out respectively in sections 10, 10A, and 13 of the *Public Service Act 1999*.

APS employees occupy a position of trust. They are entrusted by the Government and the community to undertake important work on their behalf. With this trust comes a high level of responsibility which should be matched by the highest standards of ethical behaviour from each APS employee.

Together the APS Values, the APS Employment Principles and the APS Code of Conduct set out the standard of behaviour expected of Agency Heads and APS employees. They provide the public with confidence in the way public servants behave, including in their exercise of authority when meeting government objectives.

The PS Act requires APS employees and agency heads to behave at all times in a way that upholds the APS Values. Agency Heads and Senior Executive Service employees must also uphold and promote the Values. All employees must inform themselves of their obligations under the PS Act.

4. Sexual Harassment in the Workplace

Gender inequality, power imbalances, entitlement and exclusion, as well as a lack of accountability, provide the underlying conditions for sexual harassment, sex-based harassment and other forms of sex discrimination to thrive.⁵

Sexual harassment disproportionately affects some groups of workers and is often experienced with other forms of discrimination on the basis of disability, race, gender identity, sexual orientation, marital status and age. Sexual harassment and discrimination against people in these groups is driven by harmful attitudes and stereotypes, as well as structures or systems that maintain existing power disparities.

⁴ Comcare, [Harassment including Sexual Harassment](#).

⁵ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, August 2023, pg. 8.

Sexual harassment in the workplace may take various forms and can be directed at, and perpetrated by, all persons including men, women, transgender people, and those who identify as non-binary. It may be physical, spoken, or written and may include, but is not limited to:

- unwelcome physical contact of a sexual nature
- comments or questions of a sexual nature about a person's private life or their appearance
- sexually suggestive behaviour, such as leering or staring or offensive gestures
- brushing up against someone, touching, fondling or hugging
- sexually suggestive comments or jokes
- displaying offensive screen savers, photos, calendars or objects
- repeated requests to go out
- unwanted displays or declarations of affection
- requests for sex
- sexually explicit emails, text messages or posts on social networking sites
- sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences)
- actions or comments of a sexual nature in a person's presence (even if not directed at that person).

4.1 Intersectionality

The [*insert name of agency*] acknowledges intersectionality, recognising that the risks and impacts of relevant unlawful conduct are shaped and compounded by systemic issues and factors.⁶

Intersectionality recognises that people's lives are shaped by their identities, relationships and social factors. These combine to create intersecting forms of privilege and oppression depending on a person's context and existing power structures such as patriarchy, ableism, colonialism, imperialism, homophobia and racism.⁷

Understanding intersectionality is important in understanding sex discrimination and sexual harassment because it highlights how a person's experience can be compounded by the other forms of inequality.

AHRC's Respect@Work Report highlights that Workplace sexual harassment can take many forms. It can be verbal, physical and involve the use of technology, and is often repeated and ongoing. Power disparities in society and in the workplace enable sexual harassment. Gender inequality is the key power disparity that drives sexual harassment, both in the workplace and more broadly in society. Other inequalities also play a pivotal role in driving sexual harassment, with some people experiencing 'intersecting' forms of discrimination that can increase their risk of experiencing sexual harassment and make it harder for them to report it (for example, Aboriginal and Torres Strait Islander peoples, people with disability, LGBTQI people and people of CALD backgrounds).⁸

⁶ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, August 2023, pg. 10.

⁷ UN Women Australia, [Intersectionality Explained](#).

⁸ Australian Human Rights Commission, [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#), p. 92.

In the 2022 *Time for respect: Fifth national survey on sexual harassment in Australian workplaces*, the AHRC noted that “findings continue to highlight what we already know: power imbalances and the misuse of power related to gender inequality and other forms of discrimination and disadvantage, combined with specific workplace risk factors, continue to drive sexual harassment against some people more than others. Women, people with disability, young people, Aboriginal and Torres Strait Islander people, people with an intersex variation, and people with minority sexual orientations are significantly more likely than others to experience workplace sexual harassment”.⁹

An intersectional approach recognises that unsafe and disrespectful workplace behaviour may have heightened impact on different people. It involves understanding that experiences of discrimination, harassment and victimisation are shaped and increased by overlapping structural inequalities.¹⁰

Systemic discrimination and bias – both conscious and unconscious – can create inequalities at every stage of the employment cycle.¹¹

Culturally and linguistically diverse employees (CALD)

The term ‘culturally and linguistically diverse’ (CALD) refers to people from a range of countries and ethnic and cultural groups. It includes people of non-English speaking backgrounds, as well as people born outside Australia but whose first language is English. The term includes a wide range of experiences and needs.¹²

Not all cultures share the same views about gender roles or gender equality, and as a result, sexual harassment may be perceived by CALD women in different ways. “Cultural and social attitudes can affect how CALD workers experience and respond to sexual harassment. Cultural norms may: reinforce gender inequalities, gendered roles and identities; affect attitudes to authorities or government agencies and inhibit ‘speaking out’ and guide how people prioritise rights, wellbeing and access to support. These cultural factors can also influence understanding and recognition of sexual harassment”.¹³

Aboriginal and Torres Strait Islander employees

There is significant diversity among Aboriginal and Torres Strait Islander peoples and communities based on geographic location, language and cultural identification, social and economic conditions, and historical experiences.¹⁴

⁹ Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#), p. 8.

¹⁰ Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#), pg. 22.

¹¹ Workplace Gender Equality Agency, [Gender equality and intersecting forms of diversity](#), [Gender equality and intersecting forms of diversity | WGEA](#).

¹² Respect@Work, [Diversity & Inclusion: Culturally and linguistically diverse](#).

¹³ Respect@Work, [Diversity & Inclusion: Culturally and linguistically diverse](#).

¹⁴ Respect@Work, [Diversity & Inclusion: Aboriginal and Torres Strait Islander people](#).

The AHRC's 2020 Respect@Work Report noted that Aboriginal and Torres Strait Islander people were more likely to have experienced workplace sexual harassment than people who are non-Indigenous (53% and 32% respectively).¹⁵

The 2022 key findings of the AHRC's *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* show that in the last 5 years, some Australians experienced workplace sexual harassment at rates disproportionate to the total population (33%). Aboriginal and Torres Strait Islander people were recorded at 56%.¹⁶ These findings also indicated that Aboriginal and Torres Strait Islander people are more likely than non-Indigenous people to be sexually harassed. Almost 9 in 10 Aboriginal and Torres Strait Islander people (86%) have experienced sexual harassment in their lifetime. Aboriginal and Torres Strait Islander people were more likely to have experienced some types of sexually harassing behaviours than those who do not identify as Aboriginal or Torres Strait Islander. They were more than twice as likely to have experienced repeated inappropriate sexual advances on email, social networking websites, internet chat rooms or other online platforms (41%, compared to 17% of other Australians).¹⁷

LGBTIQ+ employees

LGBTQ (or variations) is an acronym for lesbian, gay, bisexual, transgender, and queer. It is used to refer collectively to these communities, and all people with a diverse sexuality or diverse gender. The 'LGB' refers to sexuality/sexual identity; the 'T' refers to gender identity; the 'Q' can refer to gender or sexuality. Similar terms to refer to the overall population are:

- sexuality and gender diverse
- person of diverse sexuality and/or gender
- people of diverse sexualities and genders
- diverse sexuality and gender (DSG)
- diverse genders, sexes, and sexualities (DGSS).¹⁸

The 2022 key findings of the AHRC's *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* indicated that "people who identify as gay, lesbian, bisexual, pansexual, queer, asexual, aromantic, undecided, not sure, questioning, or other are more likely than people who identify as straight or heterosexual to be sexually harassed. The prevalence of sexual harassment was higher among people who identified as gay, lesbian, bisexual, pansexual, queer, asexual, aromantic, undecided, not sure, questioning, or other, than among those who identified as straight or heterosexual (85%, compared to 75% of those who identified as straight or

¹⁵ Australian Human Rights Commission, [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#), p. 10.

¹⁶ Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#), p. 12.

¹⁷ Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#), p. 41.

¹⁸ Pride in Diversity, [Glossary - LGBTQ Terminology](#).

heterosexual)".¹⁹ The findings of the survey also revealed that almost all people with an intersex variation (92%) have been sexually harassed in their lifetime, compared to 77% of those without such a variation.²⁰

Employees with Disability

The language used to discuss disability has shifted over time, and is often reflective of an underlying perspective of disability. Agencies should adopt contemporary language that supports a social model of disability which considers barriers that people with disability face. It is based on the premise that environments and cultures can be altered and/or adapted to include, and accommodate for, the full range of human diversity.

According to [Everyone's Business: National Survey on Sexual Harassment in Australian Workplaces](#) (2018), in the previous five years, 52% of women and 35% of men with disability said they experienced workplace sexual harassment, compared to 39% of all women and 26% of all men.

The [Respect@Work Report](#) highlighted the clear connection between disability discrimination in the workforce and sexual harassment and highlighted a number of important issues:

- sexual harassment against people with disabilities was often connected to persistent discriminatory attitudes, stereotypes and marginalisation in work settings
- attitudes of paternalism made workers with disability feel 'less equal at work' and could result in inappropriate behaviour
- low employment rates of people with disability can be a factor in workplace marginalisation
- women and girls with disability could be subject to people ignoring or stereotyping their sexuality
- there's a cultural assumption that women with disabilities are not sexual or they're asexual
- workplace power dynamics, hierarchies and unequal power relation in workplaces could increase the risk of sexual harassment and create barriers to reporting for people with disability
- workers with disabilities were reluctant to report sexual harassment because they thought they would not be taken seriously or there were assumptions made about their capacity. There was also a lack of access to information and advice that was appropriate for people with disabilities.²¹

¹⁹ Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#), p. 39.

²⁰ Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#), p. 41.

²¹ Australian Human Rights Commission, [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#).

5. Preventing Workplace Sexual Harassment

5.1 Preventing and reducing risk – Risk Assessments

The *[insert agency name]* is obligated to eliminate risks to the health and safety of workers and other people so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks, they must be minimised so far as is reasonably practicable.

Prevention requires identification of risks. The *[insert agency name]* HR team *[insert appropriate team name]* will regularly lead risk assessment processes to identify and assess hazards and risk factors for workplace sexual harassment, including by consulting with all employees. Employees will also consider work systems and practices to identify potential hazards and risks as part of business as usual processes.

The *[insert agency name]* *[will/has]* *[conduct/conducted]* a risk assessment for preventing workplace sexual harassment as part of ensuring positive duties under the SDA and WHS laws are met. *[Include the following if applicable]* This risk assessment is located on the *[insert agency name]*'s intranet at *[insert relevant link]*.

The *[insert agency name]* will *[tailor/update]* a preventing workplace sexual harassment risk assessment process and risk register to suit our organisational profile and composition, culture and operations.

The *[insert agency name]* preventing workplace sexual harassment risk register and related policies will include a strong focus on preventative activities, as well as clear support services and referral channels for individuals experiencing workplace sexual harassment, sex discrimination, victimisation and related unlawful behaviours.

Drafter's note:

For guidance and tools about how to respond to psychosocial hazards and risks, including workplace sexual harassment and related unlawful conduct, agencies may wish to refer to Comcare's [Psychosocial risk assessment tools](#) webpage. This online resource includes a comparison of three different risk assessment tools, including the APSC's **ADDRESS model**, which is a model for responding to psychosocial hazards in the workplace and has been designed for use in the Australian Public Service.

Agencies may also wish to refer to [People at Work](#) (a free and validated psychosocial risk assessment survey).

When conducting a risk assessment process to prevent and respond to workplace sexual harassment, the *[insert agency name]* will need to consider their obligations and duties under the [Sex Discrimination Act 1984 \(Cth\)](#), the [Work Health and Safety Act 2011](#), the [Work Health and Safety Regulations 2011](#), as well as other relevant legislation and model codes of practice. The *[or insert agency name]* must consult with employees and any health and safety representatives during a risk assessment process.

Risk management is a requirement under WHS laws and should form part of the 'prevention and response plan' that an agency develops for satisfying the positive duty in the SDA. Risk management is Standard 4 of the

[Australian Human Rights Commission's Seven Standards](#) outlining Agency expectations to satisfy the positive duty under the SDA. Standard 4 requires agencies to take a risk-based approach to preventing and responding to workplace sexual harassment and related unlawful conduct. The AHRC's Seven Standards were informed by research about the causes of relevant unlawful conduct and what is required to prevent it from happening.

The minimum standards for a WHS risk assessment process are set out in the [Model Code of Practice – How to Manage Work Health and Safety Risks](#). For psychosocial risks, this Model Code of Practice must be read in conjunction with the [Model Code of Practice – Managing Psychosocial Hazards at Work](#).

Comcare have developed information about Safe Work Australia's *Model Code of Practice – Managing Psychosocial Hazards at Work*, which explores the [14 psychosocial hazards](#) identified in the Model Code.

To comply with duties under the WHS Act, the [insert agency name] must implement continual, active and participatory hazard identification and risk management processes.

The [insert agency name] will also refer to the [Work Health and Safety \(How to Manage Work Health and Safety Risks\) Code of Practice 2015](#) when undertaking a risk assessment process and ensure that risks have been considered using the 'hierarchy of risk control ranking' at Chapter 4. The [Model WHS Regulations](#) (cl.36) require duty holders to work through the hierarchy of risk control when managing risk. This involves assessing whether the risk can be eliminated, substituted or the exposure reduced. As part of documenting the outcomes of a risk assessment process, agencies may wish to classify the controls listed under the heading 'Existing Controls', against the hierarchy of control. Doing this may assist agencies to clearly demonstrate compliance with the 'Work Health and Safety (How to Manage Work Health and Safety Risks) Code of Practice 2015' and the 'Model WHS Regulations'.

The Model Risk Register at Appendix C of the [Model Code of Practice: Managing psychosocial hazards at work](#) includes prompts for someone performing a risk assessment to consider some of the relevant matters outlined at cl 55D of the [Model WHS Regulations](#).

Appendix 3 of the AHRC's [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) provides further examples of specific control measures to address the risk of relevant unlawful conduct within an organisation.

Drafter's note:

APS HR, WHS and D&I practitioners may refer to the *APS Example Risk Register: Preventing and responding to workplace sexual harassment, sex discrimination, victimisation and related unlawful behaviours*, which is available on the Australian Public Service Commission's (APSC) *Diversity & Inclusion Discussion Forum* on GovTEAMS. Access to this Forum can be requested by APS HR, WHS and D&I practitioners via email to the APSC's Inclusion Policy team at diversity@apsc.gov.au.

6. Reporting Sexual Harassment

Employees of the [insert agency name] may wish to contact [insert relevant HR/WHS/People team area and contact details] for guidance and support when reporting workplace sexual harassment and related unlawful behaviours.

[Insert agency specific guidance, including but not limited to:

- **access to employee assistance programs**
- **Inappropriate behaviours policy procedures**
- **who employees can speak to in the first instance – official HR contacts and note that employees can talk to a self-nominated support person**
- **employees can also/instead seek advice from an external body]**

The [insert agency name] has zero tolerance for sexual harassment and related unlawful behaviours in our virtual and physical workplaces.

APS employees have a shared obligation to create respectful, safe work places and call out negative behaviour and every day sexism in the workplace.

Under the new *Respect at Work Act*, APS agencies need to proactively take reasonable and proportionate measures to eliminate sexual harassment.

APS agencies, including [insert agency name] must report all sexual harassment complaints and high level outcomes to the APS Commission through the APS Agency Survey.

The [APSC Commissioner's Directions](#) include a provision requiring agencies to consult with the Commissioner before disputes relating to sexual harassment are settled using agreements that include non-disclosure or confidentiality terms.

The *Public Service Act 1999* requires all APS agencies and employees to foster safe and respectful workplaces. Sexual harassment is inconsistent with obligations to promote and uphold the APS Values, Employment Principles, and Code of Conduct.

The reporting of sexual harassment should be handled in a manner that is culturally appropriate and is **person-centred and trauma-informed**. For further information, refer to the Australian Human Rights Commission's factsheet, [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#).

Where a report of sexual harassment is received, the [insert agency name] will ensure the person impacted receives appropriate support and is involved in decisions about how to respond. All reports will be responded to promptly, taken seriously, and treated confidentially. Steps will be taken to protect anyone who makes a report from reprisals, adverse treatment or victimisation (see Section 7.6 below).

6.1 A range of reporting avenues

The [insert agency name] will follow Respect@Work advice which outlines that best practice includes providing a range of reporting options with multiple entry points to allow employees to choose how, when and to whom they wish to report, according to their own needs and expectations. This means, reporting avenues should be:

- flexible and include multiple internal options, both formal and informal, as well as identification of available external reporting options
- clear, transparent, widely understood and easily accessible to all workers at all levels
- supportive, culturally appropriate and do not further marginalise or exclude vulnerable groups, and
- supported by a diverse group of people, of different genders and at different levels within your organisation, who are sufficiently skilled to receive complaints²²

Options of reporting avenues within the [insert agency name] include:

- seeking support, advice and making a disclosure (*agency to include details, for example: Human Resources, Work Health & Safety Representatives, Contact Officers, Mental Health and First Aid Officers; or immediate leaders or senior leaders*)
- anonymous reporting [*agency to insert details about this reporting method*]
- reporting internally to [*insert agency name/area within agency*]
- reporting to an external authority (see sections 6.2 External pathways and 7.2 External support below).

Incidents of sexual harassment can be reported by [insert agency name] employees informally, formally, anonymously and confidentially.

6.2 External pathways

Comcare has developed the [Referral pathways for sexual harassment in the workplace: A guide for employers in the Commonwealth jurisdiction](#), which explains the roles of Comcare, the Australian Human Rights Commission and the Fair Work Commission. This referral pathways advice is relevant to the reporting of sexual harassment and related unlawful conduct in the Commonwealth jurisdiction. States and Territories have equivalent bodies.

7. Responding to Sexual Harassment

The [insert agency name] will respond to workplace sexual harassment and related unlawful behaviours in ways that are culturally appropriate, and person-centred and trauma-informed.

The [insert agency name] acknowledges that person-centred and trauma-informed approaches are complementary ways to address relevant unlawful conduct and to meet people's needs in the workplace. They

²² Respect@Work, [Good practice reporting framework – Reporting Avenues](#).

ensure that workplace systems, policies and practices affirm the safety and dignity of the people who encounter them and support healing²³.

7.1 Standard response process

The [*Insert name of APS agency*] is committed to taking a culturally safe, trauma-informed and person-centred approach when responding to reports of workplace sexual harassment and related unlawful behaviours. This includes ensuring:

- the safety, privacy and wellbeing of the person impacted are prioritised
- the employee impacted is heard and listened to in a compassionate, non-judgmental and sensitive manner
- all processes are designed to minimise harm
- reports are handled fairly, impartiality and reasonably in accordance with procedural fairness principles
- all participants in the process have clear information about the process and how procedural fairness will be provided
- confidentiality is understood and maintained
- responses are provided in a timely manner
- the safety of victim-survivors by making sure employees who report can, and know how to seek ongoing advice and support from a trusted person, a health and safety representative and/or via our employee assistance program (EAP)
- that an intersectional and culturally safe lens is used by agency employees throughout disclosure and support processes
- that the effectiveness of our reporting processes and available support to victim-survivors is regularly monitored and evaluated.

If an allegation of misconduct has been made, the [*Insert name of APS agency*] must deal with the allegation in accordance with any applicable legislation.

The [*Insert name of APS agency*] will always seek input from the person impacted on how they would like the matter resolved and take this into account in determining how to proceed with the complaint. Where possible, the [*Insert name of APS agency*] will explain its reasons if it does not handle or resolve the complaint in the way requested by the person impacted.

In some cases, the person impacted may not want any action taken and is reporting the behaviour so that the organisation knows that it has occurred. The [*Insert name of APS agency*] has an obligation to deal with any wrongdoing it becomes aware of. In some cases, action may be warranted, even where the person impacted states that they do not want any further action to be taken. This may be the case in situations where the

²³ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth) 2023*, pg. 22.

behaviour constitutes a work health and safety risk or a criminal offence or requires disciplinary action to be taken or where there have been repeated complaints regarding an individual's behaviour.

The *[insert agency name]* strongly encourages **bystanders to call out and report inappropriate and unlawful behaviours where it is safe for bystander employees to do so**. Bystanders who witness workplace sexual harassment and/or related unlawful conduct are encouraged to:

- provide support to the person who is being subjected to the inappropriate/unlawful behaviour
- formally or informally challenge the concerning behaviour (if it is safe and they feel confident about doing this)
- report workplace sexual harassment and related unlawful behaviours.

The *[Insert name of APS agency]* is also obligated to take measures to eliminate acts of victimisation in relation to sexual harassment complaints (see 7.6 below).

Drafter's note:

Each APS agency will need to add agency-specific information about reporting avenues in this section, including the details of available reporting options and comparing what the process for a work health and safety investigation versus a formal investigation may look like. This should also include information about the possible outcomes for victim-survivors of all reporting avenues that are available within your agency.

7.2 Procedural fairness

The *[Insert name of APS agency]* acknowledges that for employees who are the subject of allegations of wrongdoing, the experience may be stressful. The *[Insert name of APS agency]* will protect their rights by:

- providing assurances that any report will be dealt with impartially, fairly and reasonably in accordance with the principles of procedural fairness
- confirming that the report is an allegation only if and until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the *[Insert name of APS agency]*'s employee assistance program (EAP) for support and to support services in addition to the EAP such as 13Yarn, WellMob, Lifeline and Beyond Blue
- allowing both parties the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

7.3 Confidentiality, privacy and transparency

The *[Insert name of APS agency]* will treat reports of sexual harassment confidentially, including:

- the identity of the person impacted, alleged harasser/s, and any other participants involved in the investigation process
- information provided or collected during the investigation of an allegation.

Ensuring confidentiality should not prevent the people involved from seeking support, e.g. through an employee assistance program, bringing a support person to meetings.

Some information reported may need to be disclosed to involved parties in order to properly investigate the matter.

Where there is reason to believe that a person is a risk to themselves or others, and in the case of reportable conduct (e.g. child protection, serious indictable offence), the [Insert name of APS agency] may need to notify appropriate authorities.

Once the matter is finalised, the [Insert name of APS agency] will not restrict the impacted person's right to speak in their personal capacity.

7.4 Possible outcomes

Consequences for the responsible person(s)

Where allegations of sexual harassment are substantiated, the [insert agency name] will take action that is consistent and proportionate, and will hold the responsible person to account for their behaviour. The possible outcomes will also depend on whether an informal resolution or a formal complaint was preferred by the victim-survivor. Possible outcomes may include (but are not limited to):

- disciplinary action, e.g. warning, suspension, demotion or dismissal
- a change to working hours or locations
- an apology
- agreement on protocols to manage the relationship moving forward
- refresher sexual harassment prevention training
- coaching or performance counselling
- behavioural change counselling.

Where a serious allegation of sexual harassment is substantiated, it is likely this will be found to be misconduct and disciplinary action will follow.

7.5 Criminal matters

Some forms of sexual harassment may be criminal acts, including but not limited to: indecent exposure, stalking, sexual assault and obscene or threatening communications (e.g. phone calls, emails and posts on social media). These matters should be referred to the Police.

If anyone in the workplace is in immediate danger, call 000 and report the matter to the Police. If employees are not in immediate danger and would like to make an enquiry or report, call the Police on 131 444.

Where a report of sexual harassment is made that may involve behaviour constituting a criminal offence (such as sexual assault, indecent exposure, stalking, obscene communications, [*Human Resource team and Legal team – agency to insert*]) should immediately be contacted for advice.

7.6 Protecting against victimisation

The [*Insert name of APS agency*] has a zero-tolerance approach to victimisation or detrimental treatment of any person who has made a report or is a witness of reported behaviour.

The new positive duty under the Sex Discrimination Act requires all employers to take reasonable and proportionate measures to eliminate:

- discrimination on the ground of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the ground of sex
- related acts of victimisation.

Victimising another person for making an allegation or report of sexual harassment is unlawful under the *Anti-Discrimination Act* and the *Sex Discrimination Act 1984 (Cth)*. Lawful action in relation to an allegation that is proven to be false is a separate matter.

Victimisation includes treating or threatening to treat someone badly or unfairly because they report unlawful behaviours, assert their rights under the law or help someone else to do so.²⁴ See the Australian Human Rights Commission's [Information Guide on the Positive Duty under the Sex Discrimination Act 1984 \(Cth\): Relevant unlawful conduct, drivers, risk factors and impacts](#), section 7, for full legal definition and examples.

Please contact [*Human Resources – agency to insert appropriate area team name and contact details*] immediately if you have experienced any unfair treatment or detriment as a result of making a report of sexual harassment or helping another person to make a report.

7.7 Behaviour not considered to be Sexual Harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting employees, is not a form of sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

This does not mean that sexual or romantic interactions in the workplace are always appropriate. [*Insert agency name*] employees should familiarise themselves with relevant policies dealing with consensual personal

²⁴ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth) 2023*, pg. 94.

relationships in the workplace. For further information, *[insert agency name]* employees may refer to the *[Include reference to and link to agency Conflict of Interest Policy/relevant policy]*.

8. Support Options

A range of options are available to provide support in regard to sexual harassment. The *[Insert name of agency]* primary contacts include *[Agency to list. For example: HR support, Workplace Conciliator, Harassment Contact Officer]*.

8.1 Employee Assistance Program

The *[Insert name of APS agency]* provides an Employee Assistance Program (EAP), which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues.

The EAP is staffed by independent qualified practitioners.

All employees (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee and can be provided over the phone or face-to-face.

Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.

The *[Insert name of agency]* EAP provider is *[insert details]*.

8.2 External support

Employees of the *[insert agency name]* may also wish to access external support services, such as:

- **1800RESPECT** - 1800RESPECT provides information, referral and counselling services to people experiencing or at risk of experiencing sexual assault, domestic or family violence. It is also available to friends, family and professionals. 1800RESPECT provides a confidential service 24 hours a day, seven days a week. You can contact 1800RESPECT by visiting www.1800respect.org.au or calling 1800 737 732.
- **Men's Referral Service** – Men's Referral Service is a free and confidential 24/7 counselling, information, and referral service for men using violence and abuse in their relationships and are looking for ways to change their behaviour. Call 1300 766 491.
- **MensLine Australia** - Offers free confidential counselling and support for men. Call 1300 78 99 78. Website: www.mensline.org.au.
- **13YARN** – Call 13 92 76. 13YARN is an Aboriginal and Torres Strait Islander crisis support line funded by the Australian Government with the support of Lifeline, and developed in collaboration with Gayaa Dhuwi (Proud Spirit) Australia. It is run by Aboriginal and Torres Strait Islander people.
- **Lifeline** – National 24/7 free telephone crisis support service. Volunteer crisis supporters provide suicide prevention services, mental health support and emotional assistance. Call 13 11 14.

- **Beyond Blue Support Service** – The Beyond Blue Support Service is available 24/7 for free, confidential counselling. Most calls last around 20 minutes. Call 1300 22 4636.
- **Rainbow Sexual, Domestic and Family Violence Helpline** (via Full Stop Australia) – Provides trauma counselling, 24/7 telephone support, information and referral to other services, vicarious trauma support and debrief for professionals. Call 1800 497 212.
- **Comcare** – National work health and safety and workers’ compensation authority. Comcare monitor and enforce compliance with the WHS laws, investigate WHS incidents and complaints, assist in resolving health and safety issues, and manage workers’ compensation claims. Website: www.comcare.gov.au.
- **Australian Human Rights Commission (AHRC)** – An independent agency which inquiries into and attempts to conciliate discrimination and human rights complaints, including workplace sexual harassment complaints. Website: www.humanrights.gov.au.
- **Fair Work Commission (FWC)** – Australian national workplace relations tribunal. The FWC help resolve workplace issues including dealing with applications for orders to stop sexual harassment, and dealing with workplace sexual harassment disputes through its dispute resolution powers (where the alleged conduct commenced on or after 6 March 2023). Website: www.fwc.gov.au.

Please see the Australian Human Rights Commission’s [List of Support Services](#) webpage for further information.

[Agency to include details of other relevant support services, including state/territory specific services]

9. Monitoring and Evaluation

After an incident, the [insert agency name] will review risk management systems to evaluate what worked successfully and to look for opportunities to develop and improve systems and procedures.²⁵

The [Insert name of APS agency] is committed to effective monitoring, evaluation and organisational learning processes that will foster a safe and respectful work environment. This includes:

- regularly collecting and assessing reports and relevant data for trends, patterns and lessons to drive continuous improvement
- regularly reminding employees about relevant agency policies about preventing workplace sexual harassment and related unlawful behaviours
- regularly consulting with employees to share knowledge and understand issues from an employee perspective
- regularly reviewing and updating sexual harassment prevention plans to drive continuous improvement
- sharing information about trends, patterns and lessons with staff, leadership, unions management boards or committees and relevant stakeholders

²⁵ Comcare, *Harassment including sexual harassment*, [Harassment including sexual harassment | Comcare](#).

- ensuring staff have confidence that sexual harassment is being eliminated in their workplace.

10. Related Policies

[Agency to insert relevant details and links to policies so that employees can easily access them. For example, related policies may include: gender equality action plan, the Australian Public Service Gender Equality Strategy 2021-26, Working for Women: A strategy for gender equality, agency specific 'Inappropriate behaviours guidelines', Preventing Sexual Harassment action plans etc.].

Resources and references consulted

Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#).

Australian Human Rights Commission, [Information Guide on the Positive Duty under the Sex Discrimination Act 1984 \(Cth\): Relevant unlawful conduct, drivers, risk factors and impacts](#). The *Information Guide* is a companion to the *Guidelines for Complying with the Positive Duty*.

Australian Human Rights Commission, [Time for respect: Fifth national survey on sexual harassment in Australian workplaces](#).

Australian Human Rights Commission, [Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces](#).

Australian Public Service Commission, [Preventing and responding to sexual harassment in the APS](#).

Champions of Change Coalition, [Disrupting the System: Preventing and responding to sexual harassment in the workplace](#).

Comcare, [Referral pathways for sexual harassment in the workplace: A guide for employers in the Commonwealth jurisdiction](#).

Comcare, [Harassment including sexual harassment](#).

NSW Public Service Commission, [Model Policy for the prevention of sexual harassment in the workplace](#).

Respect@Work, [Good practice reporting framework](#).

Safe Work Australia – multiple online resources regarding sexual and gender-based harassment, www.safeworkaustralia.gov.au.

Safe Work Australia, [Model Code of Practice: Sexual and gender-based harassment](#).

Safe Work Australia, [Workplace sexual harassment – Your WHS duties – Infographic](#).

Victorian Public Sector Commission, [Model Policy for the prevention of sexual harassment in the workplace](#).

Workplace Gender Equality Agency, [Gender equality and intersecting forms of diversity](#).