



Blackall-Tambo Regional Council

Preventing and Responding to Workplace Sexual Harassment Policy and Plan

1. LEADERSHIP STATEMENT

This policy is delivered as Blackall-Tambo Regional Council's plan to proactively manage the risk of sexual harassment or sex gender-based harassment in the workplace. Everyone has the right to feel safe at work.

Blackall-Tambo Regional Council (the Council) has a duty to provide a safe, respectful and inclusive workplace free of sexual harassment and discrimination. This policy communicates Council's responsibility and commitment to ensure the prevention, response and management of sexual harassment in the workplace.

Sexual harassment means behaviour that contravenes section 119 of the *Anti-Discrimination Act 1991* (AD Act). Sexual harassment is unethical, unlawful and may be a criminal offence. Sexual harassment is unacceptable in any Queensland public sector workplace.

It is the responsibility of all employees to behave in a way that is respectful and inclusive and ensures the safety and well-being of others.

These expectations are outlined in:

- the Code of Conduct for the Queensland public service ([Code](#))
- [Chapter 2](#) (Equity, diversity, respect and inclusion) of the *Public Sector Act 2022* ([the Act](#))
- managing the risk of psychosocial hazards at work: Code of Practice 2022 ([Code of Practice](#))
- [Preventing and responding to sexual harassment in the workplace \(Directive 12/23\)](#) (directive).

Under the Code, employees are required to report behaviour that could amount to wrongdoing, including conduct that is not consistent with the Code, where it is safe to do so.

Council:

- has an obligation to educate and support all employees to prevent, intervene early and respond to offensive behaviour
- acknowledges the significant impact of sexual harassment on employees who experience or witness it
- is committed to a person-centred approach when addressing allegations of sexual harassment
- is committed to ensuring leaders and managers will listen to, respect, empower and support employees who report allegations of sexual harassment and act to resolve concerns.



Under the *Human Rights Act 2019* (HR Act) Council has an obligation to act and make decisions that consider and are compatible with human rights. When making decisions or acting under this policy, managers and decision-makers must comply with human rights obligations.

2. APPLICATION

This policy applies to all Council employees, including:

- permanent, fixed term temporary, full-time, part-time or casual employees
- anyone who works in any other capacity for the Council including volunteer workers and contractors; and
- Councillors.

It applies to employees in all their work-related dealings with each other and with customers, contacts or clients.

It applies to employees while:

- in the workplace or when working off site
- at work-related functions (including social functions and celebrations)
- on work-related travel or
- attending conferences.

3. AUTHORITY

This policy has been approved by the Chief Executive Office of Blackall-Tambo Regional Council and is consistent with the following legislation and codes:

- *Preventing and responding to workplace sexual harassment (Directive 12/23)*
- *Public Sector Act 2022*
- *Work Health and Safety Act 2011*
- *Managing the risk of psychosocial hazards at work: Code of Practice 2022*
- *Anti-Discrimination Act 1991*
- *Industrial Relations Act 2016*
- *Human Rights Act 2019*
- *Crime and Corruption Act 2001*
- *Public Interest Disclosure Act 2010*
- *Criminal Code Act 1899*
- Blackall-Tambo Regional Council Code of Conduct for Employees
- Blackall-Tambo Regional Council Councillor Code of Conduct
- Blackall-Tambo Regional Council Anti-Discrimination and Sexual Harassment Policy

4. RESPONSIBILITIES

All employees have a responsibility to treat each other with respect and dignity and have the right to work without being subjected to sexual harassment.

Employees must:

- model the Code of Conduct and Council’s values, including behaving in a way that promotes a safe, respectful and inclusive workplaces free from sexual harassment and discrimination
- comply with this policy and follow reasonable instructions and procedures to prevent and respond to allegations of sexual harassment
- familiarise themselves with available workplace support options and specialist referral services



- offer support to sensitively communicate with colleagues who have experienced sexual harassment, maintain their confidentiality and encourage them to seek assistance
- report sexual harassment through the channels outlined within this policy
- support those who have experienced sexual harassment to report it through the channels outlined within this policy
- comply with the responsibilities outlined above, as well as confidentiality requirements and follow all reasonable instructions if a participant in a grievance relating to alleged workplace sexual harassment.

Managers and supervisors will:

- model the Code of Conduct and Council's values and behave in a way that promotes a safe, respectful and inclusive workplace free from sexual harassment and discrimination
- inform employees about unacceptable behaviours that enable or condone sexual harassment
- identify and address inappropriate behaviours and advocate for zero tolerance of sexism
- monitor the workplace to ensure acceptable standards of conduct
- treat alleged sexual harassment seriously and take immediate, appropriate and proportionate action when responding by considering:
 - the severity of the reported behaviour
 - the wishes of the person who reported the alleged behaviour
 - how to demonstrate respect and support for employees who report alleged sexual harassment
- ensure employees who report alleged sexual harassment, lodge grievances or witness sexual harassment are not victimised or discriminated against
- ensure employees who report alleged workplace sexual harassment are advised of their rights and obligations under the *Public Interest Disclosure Act* and *Crime and Corruption Act 2001* (CC Act)
- seek advice and support for the management of complex or serious matters from areas such as Human Resources, Ethical Standards, Professional standards or legal advisers.
- promote and implement this policy in their work area and within their team.

The Executive Leadership Team will:

- model the Code of Conduct and Council's values and behave in a way that promotes a safe, respectful and inclusive workplace free from sexual harassment
- provide and maintain safe and inclusive workplaces that protect the health and safety of employees
- support leaders and managers to take appropriate and proportionate action when responding to reports of alleged sexual harassment
- take all reasonable action to identify the risk of sexual harassment associated with Council's operations and workforce context
- consult with employees and their representatives about sexual harassment related health and safety issues such as through the agency work health and safety committee or agency consultative committee
- use appropriate resources, control measures (e.g. training) and processes to address sexual harassment risks
- ensure employees who report alleged workplace sexual harassment are advised of their rights and obligations under the PID Act and CC Act
- use person-centred practices and prioritise the care and support of impacted employees in Council's approach to resolving sexual harassment issues.



Human resources must:

- support impacted employees and ensure they have had input into their preferred way for issues to be managed
- promote this policy and resources to support:
 - employees who report alleged sexual harassment (the complainant)
 - managers or supervisors managing sexual harassment matters
 - employees who have been named in an allegation of sexual harassment (the respondent)
- provide guidance and support to managers or supervisors managing sexual harassment matters on options to resolve issues
- ensure appropriate internal and external support avenues are available to employees:
 - who report alleged sexual harassment
 - identified as respondents to alleged sexual harassment
- ensure that any response to sexual harassment is managed in line with agency policies and employment directives.

5. POLICY

5.1. Recognising sexual harassment

As defined by s119 of the AD Act sexual harassment happens if a person:

- a. subjects another person to an unsolicited act of physical intimacy. For example: physical contact such as patting, pinching or touching in a sexual way, or unnecessary familiarity such as deliberately brushing against a person
- b. makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person. For example: sexual propositions
- c. makes a remark with sexual connotations relating to the other person. For example: unwelcome and uncalled for remarks or insinuations about a person’s sex or private life, or suggestive comments about a person’s appearance or body
- d. engages in any other unwelcome conduct of a sexual nature in relation to the other person.
- e. and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so:
 - i. with the intention of offending, humiliating, or intimidating the other person; or
 - ii. in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated, or intimidated by the conduct.

Council’s workplace extends beyond physical workspaces or worksites. Sexual harassment may occur in the workplace or in work-related locations, including client sites or public spaces where Council’s work is conducted.

It may also occur outside of normal working hours at work-related events such as at conferences, social events and business trips. It may also occur through different mediums such as text messaging, face to face, email or social media.

5.2. Preventing sexual harassment

Preventing sexual harassment is everyone’s responsibility. Council is committed to building and maintaining a positive workplace culture, free of sexual harassment and discrimination and promoting gender equality, which is part of our positive duty under the WHS Act and the Act.



Current prevention activities within Council include:

- Toolbox talks
- Prestart discussions
- Adherence to the Code of Conduct
- Visibility of information posters
- Establishment of an Inclusion Network Team which will:
 - Meet regularly
 - Promote and develop an inclusive, diverse and equitable workplace.
- As part of the commencement of the sexual harassment directive and this policy Council will continuously provide development for all employees in preventing sexual harassment and respectful workplaces.
- For more information please visit Safe Work Australia. <https://www.safeworkaustralia.gov.au/safety-topic/hazards/sexual-and-gender-based-harassment/resources>

5.3. Support options

As an organisation we are committed to supporting employees who have reported alleged sexual harassment. This includes informing complainants of their rights and options to report concerns formally or informally with the agency, or through external pathways as outlined later in this document.

Support and regular communication will be provided through any resolution or investigation process.

Current support activities within Blackall-Tambo Regional Council include:

- The provision of an employee assistant program
- Promotion of safe workplaces
- Human Resources and Workplace Health and Safety team
- Development of an Inclusion Network Team.

5.4. Council contacts

Group Manager, People, Culture and Safety – Jodie Richardson (07) 4621 6600
 Director of Organisational Performance – Alison Lamb 0488 574 252
 Employee Assistant Program - Outback Futures 0417 703 729

5.5. Counselling support services

Outback Futures offers an employee assistant program (EAP) to all employees and their immediate family members. The EAP offers free and confidential support services through face-to-face, telephone and online counselling.

EAP can also provide specific advice to managers about how best to support employees who have experienced sexual harassment, through the manager assist service.

5.6. Reporting incidents of sexual harassment

As outlined in the directive, there are internal and external avenues open to employees to take action about workplace sexual harassment.

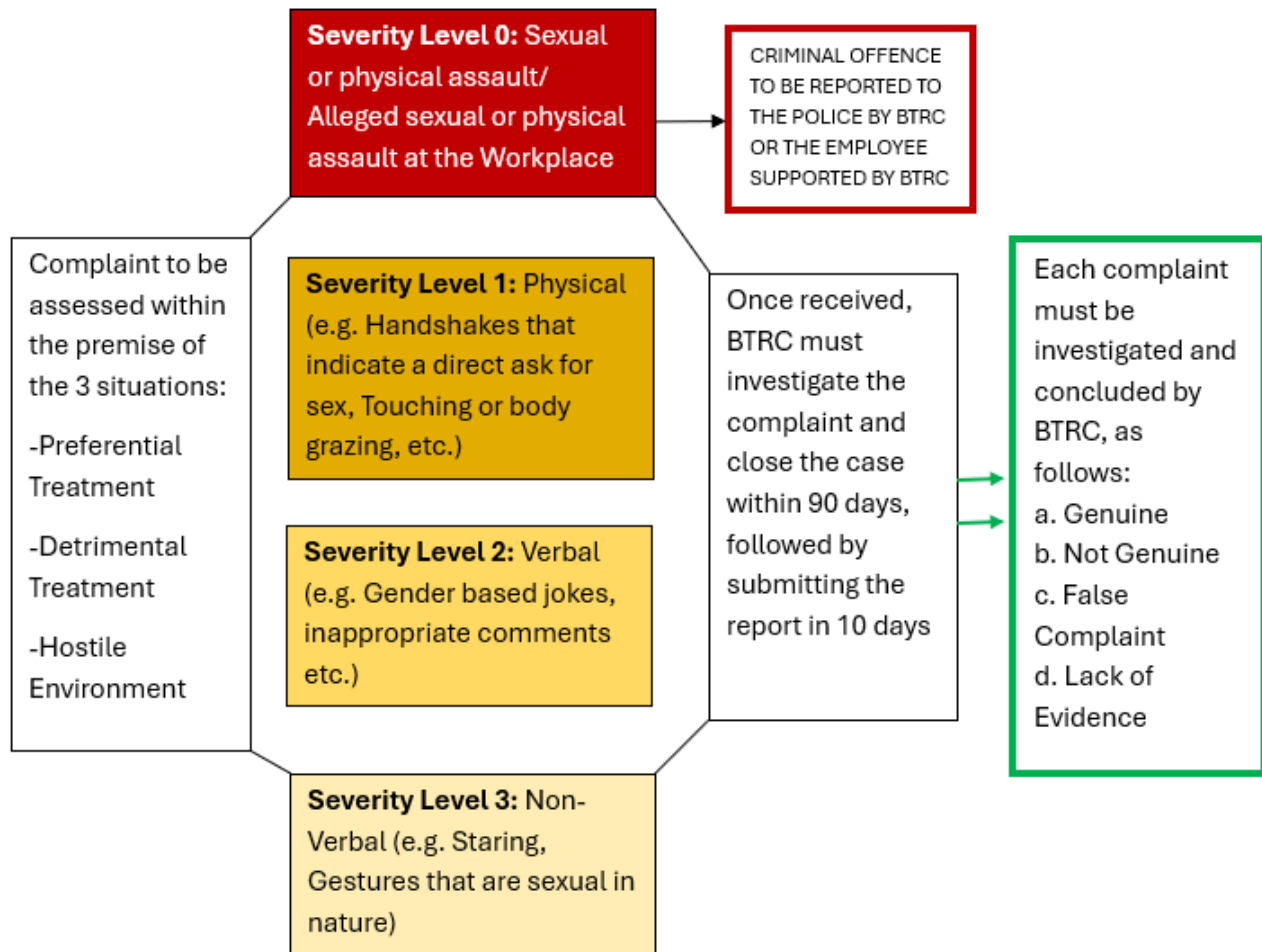
A complainant may choose to follow any of the options listed below and is not limited to one option.

The complainant’s preference about the most appropriate option or action to address the behaviour will depend on their individual circumstances. Within Council the options available to take action on sexual harassment include:



- addressing the behaviour through self-management or local action
- making an individual employee grievance
- external pathways.

5.7. Severity Matrix of Sexual Harassment



5.8. Addressing the behaviour through self-management or local action

Self-management

If a complainant believes they are experiencing sexual harassment or have witnessed sexual harassment, and feels comfortable to do so, they may take steps to deal with the behaviour themselves. This may include talking directly to the other person, drawing attention to the specific behaviour, and asking the person to stop.

Where a complainant chooses to deal with the behaviour directly, the complainant should keep a record of what happened, when and where it happened, who was involved and anything else that believe may be important. This record will be relevant should the behaviour continue, and the employee proceeds with any of the options outlined below.



Local action

A complainant may seek the support of their manager or any other appropriate person within Council in dealing with the behaviour. This may include asking a person to be present during a conversation with the respondent, to facilitate the conversation, or asking them to speak with the other person on their behalf. A complainant may seek support from a senior manager rather than their direct manager if this is a more appropriate support option.

While the complainant may ask the manager to only deal with the behaviour through local action, managers have an obligation to deal with any wrongdoing they are made aware of. In some cases, further action may be required, even where the complainant has stated they do not want any further action to be taken. This may be the case in situations where the behaviour can be classified as a work health and safety risk or requires disciplinary action to be taken. The manager will work with the complainant to take their views into account and keep communicating with them if further action needs to be taken.

5.9. Making an individual employee grievance

Where a complainant isn't comfortable dealing with the behaviour directly or with the assistance of another person, they may choose to make an individual employee grievance.

A complainant who makes a grievance, will be given the opportunity to identify the resolution they consider appropriate. Council will consider this in deciding how to best manage and resolve the concerns. This may involve less formal outcomes, such as the other person being spoken to about stopping the behaviour or other appropriate management action. Where possible, Council will explain its reasons if it does not handle or resolve the matter in the way the complainant requested.

As outlined in [clause 10.3 of the directive](#), a complainant who lodges an individual employee grievance for sexual harassment matters, writes directly to the chief executive officer or the relevant delegate of the department. The complainant is not required to have attempted to resolve the matter in any way in the first instance.

Council will consult with the complainant on how they wish the matter to be resolved, including whether their complaint could constitute a public interest disclosure under the PID Act or corrupt conduct under the CC Act and provide a decision about the grievance within 14 days of receiving it.

5.10. Making a grievance

Council employees are encouraged to report any incidents of workplace sexual harassment, both perceived and actual. All complaints are to be accepted by any means, whether by phone, in writing or anonymously.

Grievances will be reported to the Chief Executive Officer and Executive Leadership Team on a monthly basis.

5.11. External pathways

As outlined by the directive, a complainant may also choose to lodge concerns about sexual harassment to external organisations.

External organisations that are responsible for sexual harassment complaints are:

- The Queensland Industrial Relations Commission (QIRC)
- The Queensland Human Rights Commission (QHRC)



- Crime and Corruption Commission (CCC)
- Optional, Queensland Police Service (where the conduct, such as sexual assault could or does constitute a criminal offence).

Complainants may:

- lodge an [industrial dispute](#) with the QIRC <https://www.qirc.qld.gov.au/anti-discrimination-and-bullying>
- make a complaint to the QHRC about [sexual harassment](#) (within 12 months of the alleged conduct occurring)
- also if required, apply to the QIRC for an order to protect an employee’s [interests](#)
- ask the [QIRC](#) for help if the QHRC can’t resolve your complaint or the QHRC hasn’t actioned your complaint after 6 months.

5.12. Responding to incidents of sexual harassment

When an employee reports alleged sexual harassment, Council will ensure the employee is supported and their wishes are considered when deciding about how to manage the issue. Council will respect the employee’s wishes and best interests as far as possible, however it may not solely determine the organisation’s response or the outcome.

Reported allegations of sexual harassment will be taken seriously, with a focus on supporting the complainant. Council may take interim action to ensure the ongoing health and safety of all employees. Any actions taken will be supportive and sensitive. Council will make every effort to ensure the safety of the complainant in the workplace. Where possible, Council will relocate the alleged respondent before relocating the complainant, unless the complainant requests different safety measures.

Throughout the course of resolving the issues, Council will communicate regularly with the complainant and their union, if they advise they are represented by a union.

5.13. Possible outcomes

Where issues can’t be dealt with informally an investigation or possible discipline action will be considered.

5.14. Consequences for responsible employees

As outlined in section 10 of the directive where allegations of sexual harassment are substantiated, the chief executive officer will take action that is consistent and proportionate for the allegations that are substantiated. The possible outcomes will also depend on whether an informal resolution or a formal grievance was preferred by the complainant. The directive lists possible outcomes for the responsible employees, including action that may result if serious allegations of sexual harassment are substantiated.

6. CONFIDENTIALITY AND DISCLOSURE

The details surrounding sexual harassment issues will be kept confidential. Only those who are involved in resolving or preventing further incidents should be made aware of the complaint and response.

On occasion, a complainant may ask to limit who is aware of the information about alleged sexual harassment. This may not always be possible, particularly when:

- the issues are serious
- involve a senior leader in the organisation
- there are safety risks to others
- Council has a legislated obligation to report the alleged sexual harassment to another entity.



6.1. Outcome advice

Council recognises the positive impact on complainants when the outcome of grievance processes is known.

The directive requires organisations to advise a complainant of the outcome of a grievance process. Complainants can request advice on the outcome of management action taken and the outcome of any discipline process arising from the grievance. Council will provide this information and the complainant must keep it confidential. However, the complainant may disclose it:

- if required by law
- to an immediate family member, support person, union representative or confidential counsellor, provided that any such person agrees to keep the information confidential.

7. DEFINITIONS

Unless otherwise defined, the terms in this policy have the meaning set out in the *Public Sector Act 2022*.

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| <p>Corrupt conduct</p> | <p><i>In the context of sexual harassment, section 15 of the Crime and Corruption Act 2001 defines corrupt conduct as conduct by anyone that adversely affects the performance of functions or exercise of powers of an individual or department and results in the performance of functions or the exercise of power that:</i></p> <ul style="list-style-type: none"> • <i>is not honest or impartial</i> • <i>knowingly or recklessly breaches trust placed in a person holding an appointment</i> • <i>involves a misuse of information or material acquired in connection with work.</i> • <i>If proved, it would be a criminal offence, or a result in a disciplinary breach providing reasonable grounds for terminating a person’s services.</i> <p><i>Corrupt conduct also involves specific types of conduct that impairs, or could impair, public confidence in public administration.</i></p> <p><i>For example, sexual harassment committed by a senior departmental official may be corrupt conduct if it adversely affects the exercise of powers of the individual, knowingly breaches trust placed in a person holding an appointment and is a criminal offence.</i></p> |
| <p>Person-centred</p> | <p><i>A person-centred approach to responding to sexual harassment involves the individual being at the centre of decision-making and having control, as much as possible, over the actions/services they receive.</i></p> <p><i>See: (Person centred approaches to workplace sexual harassment Respect@Work (respectatwork.gov.au)).</i></p> |



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| <p>Public Interest Disclosure</p> | <p><i>Chapter 2 of the Public Interest Disclosure Act 2010 (PID Act) defines a public interest disclosure as the disclosure, in the public interest, of information about wrongdoing in the public sector.</i></p> <p><i>This can include information about:</i></p> <ul style="list-style-type: none"> • <i>a substantial and specific danger to the health and safety of a person with a disability</i> • <i>an offence or contravention of legislation that would cause a substantial and specific danger to the environment</i> • <i>reprisal because of a belief that a person has made or intends to make a public interest disclosure</i> • <i>corrupt conduct</i> • <i>maladministration that adversely affects a person’s interest in a substantial and specific way</i> • <i>a substantial and specific danger to public health or safety</i> • <i>a substantial and specific danger to the environment.</i> |
| <p>Trauma Informed Support</p> | <p><i>Trauma informed support recognises and acknowledges the impact of distress experienced by an employee and focuses on an understanding of the elements necessary to support the employee’s recovery.</i></p> <p><i>Some key principles to consider in providing trauma informed support include, but are not limited to:</i></p> <p>Safety – <i>employees should be made to feel physically and psychologically safe. Personal interactions should be conducted in a way that promotes a sense of safety and do not trigger further trauma.</i></p> <p>Trust and transparency – <i>decisions should be made openly and transparently and with the goal of building trust. Clear expectations of what support is available to employees should be communicated.</i></p> <p>Collaboration – <i>power differences between employees and managers should be levelled to support shared decision making and healing.</i></p> <p>Empowerment – <i>employee’s strengths should be built upon and validated, including a belief in resilience and the ability to heal from trauma.</i></p> <p>Choice – <i>every employee’s experiences are unique and managing them requires an individual approach.</i></p> <p>See: Trauma informed practice Mental Health Australia (mhaustralia.org)</p> |



8. RESOURCES

Resources can be found at <https://www.safeworkaustralia.gov.au/safety-topic/hazards/sexual-and-gender-based-harassment/resources>




What is workplace sexual harassment?


Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, where that reaction is reasonable in the circumstances.


Sexual harassment can happen at a worker's usual workplace or in other places where they work, such as a client's home. It can also happen during a work-related activity such as a work trip, conference or an event.



Sexual harassment can take many forms and be overt, covert or subtle. It may include:

 **unwelcome touching or physical contact**

 **unwanted invitations to go on dates or requests for sex**

 **suggestive comments or jokes**

 **sexually explicit emails, text messages or online interactions, such as social media posts**

 **sexually offensive pictures**

There are positive duties in work health and safety laws to prevent sexual harassment. Sexual harassment is unlawful. Everyone in your workplace needs to understand and meet your workplace policies and the behaviours expected of them.

Everyone should have information and training on what sexual harassment is, what to do if they are sexually harassed or if they witness someone else being harassed, and how to report it.

Further advice and support services

Detailed guidance on how you prevent and respond to sexual harassment can be found at www.swa.gov.au.

If you need help, please contact your [work health and safety regulator](#).

Further information and advice can be obtained from:

- 1800Respect
1800 737 732
- [Sexual assault support services](#)



Sexual harassment – Your work health & safety duties

Positive duties under work health and safety laws require persons conducting a business or undertaking to do all they reasonably can to prevent sexual harassment.

Sexual harassment is a known cause of physical and psychological harm. Penalties for failing to meet WHS duties include fines and jail terms for the most serious breaches.

Persons conducting a business or undertaking, such as employers, have a WHS duty to eliminate or minimise the risk of sexual harassment at the workplace, so far as is reasonably practicable.



You have a duty to manage the risk of sexual harassment just as you do for any other WHS risk.

This means:



identifying how, where and when sexual harassment might happen



working out how you will address sexual harassment if it does happen



assessing the likelihood that a worker may experience sexual harassment and how it may affect them



checking that your control measures are working and whether there is anything more you can do

(e.g. their physical or mental health)



implementing the most effective control measures to prevent sexual harassment from happening

You must do all of these things in consultation with your workers and health and safety representatives if you have them.

See the infographic [Steps to prevent workplace sexual harassment](#) for some ideas about how you can manage work health and safety risks.

Further advice and support services

Detailed guidance on how you prevent and respond to sexual harassment can be found at www.swa.gov.au.

If you need help, please contact your [work health and safety regulator](#).

Further information and advice can be obtained from:

- 1800Respect
1800 737 732
- [Sexual assault support services](#)



Steps to prevent workplace sexual harassment

Positive duties under work health and safety laws require persons conducting a business or undertaking, such as employers, to eliminate or minimise the risk of sexual harassment at the workplace, so far as is reasonably practicable.

There are a number of steps you can take to manage the risk of sexual harassment and meet your WHS duties.

Here are some ideas to help you start doing what you reasonably can to prevent sexual harassment at your workplace.



Steps to take:



Create a safe physical and online work environment



Implement workplace policies



Create a positive and respectful workplace culture



Address unwanted or offensive behaviour early



Provide information and training on preventing sexual harassment



Quickly respond to reports of sexual harassment



Talk to your workers



Encourage workers to report any sexual harassment



Implement safe work systems and procedures

You should provide support, informal, formal, anonymous and/or confidential reporting

You must talk to your workers throughout each step of the risk management process.

See the [Guide: Preventing workplace sexual harassment](#) for further information.

Further advice and support services

Detailed guidance on how you prevent and respond to sexual harassment can be found at www.swa.gov.au.

If you need help, please contact your [work health and safety regulator](#).

Further information and advice can be obtained from:

- 1800Respect
1800 737 732
- [Sexual assault support services](#)



What to do if you are sexually harassed at work

Sexual harassment is any unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, where that reaction is reasonable in the circumstances.

If you experience workplace sexual harassment there are options available to you.

It is **your choice** which option will work for you and your circumstances.

You may wish to seek advice from 1800Respect, legal aid services or your union.



Options in your workplace

If you feel comfortable and safe you could ask the person to stop the behaviour.

You could talk to your supervisor about ways to address the behaviour.

You can make a formal report to your employer. Check if your employer has policies on how to report sexual harassment and how complaints will be handled.

Help outside the workplace

You may wish to seek help from organisations outside of your workplace. The following organisations operate under various legal frameworks:

Anti-discrimination laws

[The Australian Human Rights Commission \(AHRC\)](#) accepts written complaints about sexual harassment. It can investigate the allegations and may resolve them through conciliation - this is an informal process where you talk about the issues and try to find a resolution.

[State and territory anti-discrimination agencies](#) accept formal complaints. They will seek information about what happened and contact the respondent (person the complaint is about) and attempt a conciliation process. If this is not successful, they may refer you to the relevant state or territory tribunal.

Work health and safety laws

[State and territory Work Health and Safety regulators](#) can investigate if your employer complied with work health and safety (WHS) laws and review how your employer prevents sexual harassment at work. Penalties may be imposed if the person conducting the business or undertaking (PCBU) is not meeting their WHS duties. **WHS regulators usually can't resolve individual complaints.**

Call 000 if you are in danger

Employment laws

The [Fair Work Commission](#) accept online applications. It can assist you by issuing a **stop sexual harassment order** if you are still employed at that workplace. It can also examine unfair dismissal or breach of employment rights. Where this is proven, the Commission may order reinstatement or compensation.

Police

You may wish to contact the Police in your state or territory. They can investigate if the sexual harassment is a criminal offence.

Workers' compensation

[Workers' compensation](#) may be available in some instances if you have an injury or illness as a result of workplace sexual harassment.

Legal advice

You may wish to seek independent legal advice about the options available to you.

What to do if you are a PCBU

PCBUs, such as employers and small business owners, have a positive duty to do everything they reasonably can to prevent sexual harassment from occurring in the workplace.

Please see our [Preventing workplace sexual harassment guide](#) and our [workplace sexual harassment resources](#) to find out what you can do at your workplace.



9. Annexure



Public Sector Commission

Preventing and responding to workplace sexual harassment

Directive 12/23 | Effective date: 28/07/2023

1. Purpose

- 1.1 Sexual harassment is unacceptable in Queensland public sector workplaces.
- 1.2 The Queensland Government has a positive duty to prevent and address sexual harassment in the Queensland public sector as part of providing healthy and safe workplaces for all employees, visitors, and contractors. Sexual harassment in any form is unacceptable in Queensland Government workplaces.
- 1.3 This directive outlines Queensland public sector entities' obligations to prevent and respond to sexual harassment in the workplace and supplements the *Work Health and Safety Act 2011* (WHS Act) and the *Managing the risk of psychosocial hazards at work: Code of Practice 2022* (the Code of practice).

2. Commencement

- 2.1 The directive commences on 28 July 2023.

3. Authorising provisions

- 3.1 [Section 222](#) of the [Public Sector Act 2022](#) (Act).

4. Application

- 4.1 This directive applies to:
 - (a) public sector employees described in [section 12](#) of the Act
 - (b) public sector entities described in [section 8](#) of the Act
 - (c) chief executives of public sector entities described in [section 16](#) and [17](#) of the Act.
- 4.2 [Section 229](#) of the Act outlines the relationship between a directive and an industrial instrument including how to deal with inconsistencies.

5. Principles

- 5.1 All employees have a right to work without being subjected to sexual harassment.
- 5.2 All employees must treat each other with respect and dignity.
- 5.3 Sexual harassment is unlawful, is prohibited by the *Anti-Discrimination Act 1991* (AD Act) and may be a criminal offence.



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- 5.4 Section 121 of the *Industrial Relations Act 2016* (IR Act) sets out what an employer must do to dismiss an employee and characterises sexual harassment as misconduct.
- 5.5 Under [section 33](#) of the Act chief executives must promote and support a positive culture of respect and inclusion in the workplace. This is critical to preventing sexual harassment.
- 5.6 Under section 19 of the WHS Act chief executives must provide safe workplaces. They must proactively prevent sexual harassment and protect all employees from risks to their health and safety. Chief executives have a duty to ensure that an employee who reports sexual harassment is safe.
- 5.7 Chief executives are responsible for ensuring risks to both physical and psychological health are identified and managed. Chief executives must ensure risks, including those relating to sexual harassment matters are promptly recorded, effectively managed and reported as required under the WHS Act and the Code.
- 5.8 Chief executives must proactively manage reports of sexual harassment by ensuring a person-centred, timely and proportionate employer response. The employer response should consider where possible, the views of the employee who has reported an experience or incident of alleged sexual harassment.
- 5.9 Under the *Human Rights Act 2019* (HR Act) decision makers must:
 - (a) act and make decisions in a way that is compatible with human rights
 - (b) consider human rights when making a decision under the Act and Public Sector Commissioner (Commissioner) directives.
- 5.10 Under [chapter 1, part 3 \(Reframing of State's relationship with Aboriginal peoples and Torres Strait Islander peoples\)](#) of the Act public sector entities have a unique role in supporting the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples. A chief executive of a reframing entity is responsible for ensuring the entity fulfils its role when applying and making decisions under the Act and Commissioner directives.
- 5.11 Under [chapter 2 \(Equity, diversity, respect and inclusion\)](#) and [chapter 3 \(Public sector arrangements\)](#) of the Act, chief executives of public sector entities have a duty to promote equity and diversity in relation to employment matters, which includes in the application of and making decisions under the Act and Commissioner directives.
- 5.12 In addition to any specific requirements in this directive, chief executives of public sector entities are required to consider ways to support accessibility and inclusion for employees when undertaking processes or applying provisions under this directive.

Directions

6. Interpretation of directions

- 6.1 The requirements set out in these directions are binding and must be followed.
- 6.2 This directive does not replace, modify, or revoke any legislative requirements that apply to the management of particular complaints. For example, corrupt conduct under the *Crime and Corruption Act 2001* (CC Act), public interest disclosures under the *Public Interest Disclosure Act 2010* (PID Act), or complaints under the HR Act.
- 6.3 This directive does not replace, modify, or revoke the obligations public sector entities have to provide a safe workplace for visitors and contractors under the WHS Act.



7. Reframing the relationship with Aboriginal peoples and Torres Strait Islander peoples

- 7.1 Chief executives must consider the responsibilities under [section 21](#) of the Act relating to supporting a reframed relationship with Aboriginal peoples and Torres Strait Islander peoples when taking action to prevent and respond to workplace sexual harassment in accordance with this directive. This includes but is not limited to:
- (a) promoting cultural safety and cultural capability at all levels of the public sector
 - (b) working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, when making decisions directly affecting them
 - (c) promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples
 - (d) supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.
- 7.2 To promote cultural safety when preventing or responding to sexual harassment, relevant considerations for a chief executive include:
- (a) recognising culturally significant connections for Aboriginal people and Torres Strait Islander people involved with a concern, complaint or grievance about sexual harassment
 - (b) ensuring that a person (including any support person) involved in the response to, or management of a concern, complaint or grievance about sexual harassment, that involves Aboriginal peoples and Torres Strait Islander peoples, is culturally capable
 - (c) ensuring support and communication is culturally appropriate during complaint processes
 - (d) considering any elements of conscious or unconscious bias that may impact raising concerns about sexual harassment and complaint processes, including the use of mitigation strategies
 - (e) consideration of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples under section 28 of the HR Act.

8. Requirements for chief executives

- 8.1 Chief executives must:
- (a) have a standalone workforce policy to prevent and respond to workplace sexual harassment
 - (b) promote their workforce policy and ensure their workforce:
 - (i) is educated and trained to appropriately identify sexual harassment in the workplace
 - (ii) is aware of their obligations and rights in relation to sexual harassment in the workplace
 - (iii) is aware of reporting and response processes.
 - (c) provide leadership training regarding the expected standards of behaviour and how to appropriately respond to reports of workplace sexual harassment



- (d) respond to instances of sexual harassment in the workplace promptly, with confidentiality and sensitivity, using person-centred approaches and affording procedural fairness to all parties
- (e) assess the risks of workplace sexual harassment and implement appropriate control measures to eliminate or control risks, as required by the WHS Act
- (f) ensure the process undertaken to investigate and respond to a report of alleged sexual harassment is fair, objective, conducted in a timely and impartial manner, applied consistently to all employees, and ensures procedural fairness for all parties involved as detailed in the Code
- (g) ensure employees who report alleged sexual harassment are offered support options and access to support appropriate to the circumstances of their reported concerns, including but not limited to, person-centred support and advice (or other approved model as approved by the Commissioner). These support options are to be guided by the principles of:
 - (i) trauma-informed
 - (ii) gender-informed
 - (iii) consistent with a broader focus on respectful and inclusive workplaces
 - (iv) operationally sustainable
 - (v) fit for purpose, based on the size and decentralisation of the agency, and the nature of the organisation’s work (e.g. policy, regulatory, service delivery to the community).
- (h) ensure employees who report alleged workplace sexual harassment are advised of their rights and obligations under the PID Act and CC Act where relevant.

9. Requirement to have a sexual harassment prevention and response policy

- 9.1 Chief executives must ensure their entity’s stand-alone workplace sexual harassment prevention and response policy (see 8.1 (a)) at a minimum incorporates inclusions in the [model prevention and response to workplace sexual harassment policy template](#) by:
 - (a) clearly stating that sexual harassment is not tolerated and is unlawful
 - (b) outlining the entity’s positive duty to prevent sexual harassment from occurring
 - (c) consistently reflecting the principles set out in this directive
 - (d) outlining the entity’s commitment and approach to supporting employees affected by workplace sexual harassment
 - (e) identifying how an employee may access support and advice about their options, internally and externally to the entity, and setting out all internal and external pathways available for an employee to report concerns about workplace sexual harassment
 - (f) setting out how the entity will respond to and manage matters in a way that considers the preferences of the employee reporting alleged sexual harassment in a manner consistent with the requirements in this directive.
- 9.2 Chief executives must ensure their entity actively promotes employee awareness of the policy and related support options, including how to access support and advice.

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10. Responding to reported alleged sexual harassment

- 10.1 Where an employee reports they have witnessed or experienced alleged sexual harassment, the employee has the right to:
- (a) continue to be treated with respect by all people in the workplace, be supported in the workplace and not be victimised or treated differently because of experiencing or raising sexual harassment concerns
 - (b) access person-centred confidential advice on their rights and options to report the matter from a contact officer, entity HR team, or external advisory service such as the entity's employee assistance service, 1800Respect or union representative
 - (c) provide input into how they would like the matter resolved. These preferences are to be considered when determining how to proceed with the grievance. Where the views of employee are unable to be met, the entity will explain its reasons to the employee
 - (d) be advised of their right to make a criminal complaint to the Queensland Police Service if there is any concern that the harassment could be a criminal act, such as indecent exposure, stalking, sexual assault or obscene or threatening communications
 - (e) be appropriately consulted about their workplace options and not be relocated from their usual workplace, unless the employee requests to be relocated, or, after all other options have been explored, relocation is the only acceptable means of ensuring the safety of the employee.
- 10.2 An employee may choose to:
- (a) lodge a grievance under the Individual employee grievance (IEG) directive
 - (b) lodge a grievance under a modern award
 - (c) lodge an industrial dispute with the Queensland Industrial Relations Commission (QIRC)
 - (d) lodge a complaint to the Queensland Human Rights Commission (QHRC) in relation to alleged sexual harassment (within 12 months of the alleged conduct occurring) under chapter 7, part 1 of the AD Act, and also, apply to the QIRC for an order, if required, to protect an employee's interests by prohibiting a person from actions that might prejudice:
 - (i) the investigation or conciliation of a complaint
 - (ii) an order that the tribunal might make after a hearing.
 - (e) refer a complaint from the QHRC to the QIRC if it is unresolved by the QHRC, or unresolved after 6 months of lodging it with the QHRC.
- 10.3 Where an employee chooses to make a formal grievance regarding an allegation of sexual harassment under the IEG directive, the IEG process is modified as follows:
- (a) an individual employee grievance about sexual harassment is to be made to the chief executive or their delegate
 - (b) the individual employee grievance is to be considered by the chief executive, or their delegate
 - (c) to be a formal grievance, the individual employee grievances must be in writing and must include sufficient information to enable the chief executive, or their delegate, to take appropriate action, including outlining the action the complainant considers would resolve the grievance



- (d) alternate dispute resolution strategies, including facilitated discussion, mediation, conciliation or negotiation, may be offered but should only occur if agreed to by the complainant
 - (e) a decision about an individual employee grievance should be made as soon as possible but must be made within 14 calendar days of receipt of the individual employee grievance unless the timeframe has been extended by mutual agreement between the parties. A party to the individual employee grievance is not to unreasonably withhold their agreement
 - (f) after a decision has been made about an individual employee grievance, including a decision to take no action, the entity must provide a written decision to the complainant who submitted the grievance. The decision must:
 - (i) outline the action taken to manage the individual employee grievance and the outcome of the action
 - (ii) provide the reasons for the decision, or the decision to take no action
 - (iii) outline any action that the agency proposes to take, or will take, as a result of the decision.
 - (g) if the complainant is dissatisfied with the decision made about their grievance, the employee may seek an external review under stage 3 of the IEG directive.
- 10.4 Communication obligations:
- (a) where a complainant advises they are represented by a union, the union must be included in correspondence in relation to the management of the matter
 - (b) the entity must also provide the complainant, if requested, with advice on the outcome of management action taken and the outcome of any discipline process arising from the grievance. This is an authority to disclose information to a complainant/s under Information Privacy Principle (IPP) 11 subsection (1)(d) and National Privacy Principle (NPP) 2 subsection (1)(f) of the *Information Privacy Act 2009* and any successor/s to any privacy principles resulting from legislative review.
 - (c) the complainant must keep confidential any information provided relating to management action or discipline outcomes relating to another employee. However, the complainant may disclose the information as required by law. The complainant may also disclose the information to an immediate family member, support person, union representative or confidential counsellor, provided that any such person agrees to keep the information confidential.
- 10.5 Where an employee is the subject of a sexual harassment allegation the employee is entitled to:
- (a) continue to be treated with respect by all people in the workplace, be supported in the workplace and not be victimised or treated differently because of being subject to an allegation of sexual harassment
 - (b) access advice on their rights and support options including access to the entity's employee assistance service, or union representation
 - (c) be provided with procedural fairness throughout any investigation of the reported allegation/s.



11. Possible outcomes

- 11.1 Where allegations of sexual harassment are substantiated, the chief executive will take action that is consistent and proportionate for the allegations that are substantiated. The possible outcomes will also depend on whether an informal resolution or a formal grievance was preferred by the complainant. Possible outcomes include, but are not limited to:
- (a) disciplinary action, e.g. reprimand, demotion or dismissal
 - (b) a change to working hours or locations
 - (c) an apology
 - (d) agreement on protocols to manage the relationship in the future
 - (e) refresher sexual harassment awareness and prevention training
 - (f) coaching or performance counselling.

Governance and transitional provisions

12. Reporting and data collection

- 12.1 Each public sector entity is required to report on the implementation of this directive and other data as determined by the Commissioner.

13. Transitional provisions

- 13.1 The following transitional arrangements will apply for allegations of sexual harassment:
- (a) Where a grievance has been lodged under the individual employee grievance directive prior to commencement of this directive, clause 10.3 (which modifies the process for a grievance involving sexual harassment) does not apply to the grievance, and the remainder of the directive applies to any step and decision made after commencement and does not apply to any step taken or decision made prior to commencement
 - (b) Where the complaint or dispute (other than a grievance under the individual employee grievance directive) was made prior to this directive commencing, this directive will apply to any steps and decision made after commencement and does not apply to any step taken or decision made prior to commencement
 - (c) Where alleged sexual harassment occurred prior to this directive commencing, and the complaint, grievance or dispute was made after commencement, this directive will apply.
- 13.2 To allow time for staff consultation and implementation, an entity workplace sexual harassment prevention and response policy under clause 8.1 and clause 9 is to be in place by 1 February 2024. In exceptional circumstances, the Public Sector Commissioner may grant an entity additional time for this to occur.
- 13.3 Implementation of person-centred support under clause 8.1(g) is to be in place by 1 July 2024.
- 13.4 Training requirements set out in clause 8.1(b) and (c) are to be in place from 1 July 2024.

Definitions

Unless otherwise provided, the terms in this directive have the meaning prescribed in the Act.

Cultural capability has the meaning provided for under [chapter 1, part 3, section 20](#) of the Act.



Reframing entity/entities has the meaning provided for under [chapter 1, part 3, section 20](#) of the Act.

Sexual harassment has the same meaning as section 119 of the Anti-Discrimination Act 1991.

Sexual harassment happens if a person:

- (a) subjects another person to an unsolicited act of physical intimacy. For example: physical contact such as patting, pinching or touching in a sexual way, or unnecessary familiarity such as deliberately brushing against a person
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person. For example: sexual propositions
- (c) makes a remark with sexual connotations relating to the other person. For example: unwelcome and uncalled for remarks or insinuations about a person's sex or private life, or suggestive comments about a person's appearance or body
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person. For example: offensive telephone calls, or indecent exposure
- (e) and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so:
 - (i) with the intention of offending, humiliating, or intimidating the other person, or
 - (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated, or intimidated by the conduct.

Person-centred involves the individual being at the centre of decision-making and having control, as much as is possible, over the actions/services they receive.