# Sexual and gender-based harassment

# Draft code of practice

September 2025

|  |
| --- |
| DRAFT FOR PUBLIC CONSULTATION |



**Disclaimer**

The information contained in this publication is provided in good faith and believed to be reliable and accurate at the time of publication. However, the information is provided on the basis that the reader will be solely responsible for assessing the information and its veracity and usefulness.

The State shall in no way be liable, in negligence or howsoever, for any loss sustained or incurred by anyone relying on the information, even if such information is or turns out to be wrong, incomplete, out-of-date or misleading.

In this disclaimer:

**State** means the State of Western Australia and includes every Minister, agent, agency, department, statutory body corporate and instrumentality thereof and each employee or agent of any of them.

**Information** includes information, data, representations, advice, statements and opinions, expressly or implied set out in this publication.

**Loss** includes loss, damage, liability, cost, expense, illness and injury (including death).

**Reference**

Work Health and Safety Commission, Sexual and gender-based harassment: Code of practice. Department of Local Government, Industry Regulation and Safety, Western Australia, XX pp.

ISBN XXX X XXXXXX XX X (paperback)

XXX X XXXXXX XX X (web)

© Government of Western Australia (Department of Local Government, Industry Regulation and Safety) 2025

This publication is available on request in other formats for people with special needs.

Further details of safety publications can be obtained by contacting:

Department of Local Government, Industry Regulation and Safety

WorkSafe Western Australia

303 Sevenoaks Street

CANNINGTON WA 6107

Telephone: 1300 307 877

NRS: 13 36 77

Email: wspublications@lgirs.wa.gov.au

# Foreword

This Code of practice on sexual and gender-based harassment is an approved code of practice under section 274 of the *Work Health and Safety Act 2020* (WHS Act).

An approved code of practice provides practical guidance on how to achieve the standards of work health and safety (WHS) required under the WHS Act and the Work Health and Safety (General) Regulations 2022 and the Work Health and Safety (Mines) Regulations 2022 (WHS Regulations), and effective ways to identify and manage risks.

A code of practice can assist anyone who has a duty of care in the circumstances described in the code of practice. Following an approved code of practice will assist the duty holder to achieve compliance with the health and safety duties in the WHS Act and WHS Regulations, in relation to the subject matter of the code of practice. Like regulations, codes of practice deal with particular issues and may not cover all relevant hazards or risks. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and WHS Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk, risk assessment or risk control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code of practice relates. For further information see *How to determine what is reasonably practicable to meet a health and safety duty: Interpretive Guideline*.

Compliance with the WHS Act and WHS Regulations may be achieved by following another method if it provides an equivalent or higher standard of WHS than the code.

An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice.

Scope and application

This Code is intended to be read by a person conducting a business or undertaking (PCBU). It provides practical guidance to PCBUs on how to manage health and safety risks arising from sexual and gender-based harassment at work.

This Code may be a useful reference for other persons interested in the duties under the WHS Act and WHS Regulations. This Code applies to the performance of work and to all workplaces covered by the WHS Act.

How to use this Code of practice

This Code includes references to the legal requirements under the WHS Act and WHS Regulations. These are included for convenience only and should not be relied on in place of the full text of the WHS Act or WHS Regulations. The words ‘must’, ‘requires’ or ‘mandatory’ indicate a legal requirement exists and must be complied with. The word ‘should’ is used in this Code to indicate a recommended course of action, while ‘may’ is used to indicate an optional course of action.

**Acknowledgement**

Material in this publication has been adapted from the Safe Work Australia’s, *Sexual and gender-based harassment: Code of practice*.

**Contents**

[Foreword 3](#_Toc175670530)

[1. Introduction 6](#_Toc175670531)

[1.1 What is sexual and gender-based harassment? 6](#_Toc175670532)

[1.2 Sexual and gender-based harassment at work 8](#_Toc175670533)

[1.4 Who is affected? 8](#_Toc175670534)

[1.5 Impacts of sexual and gender-based harassment 9](#_Toc175670536)

[1.6 WHS duties 11](#_Toc175670537)

[2. Risk management process 13](#_Toc175670538)

[2.1 Consulting throughout the risk management process 14](#_Toc175670540)

[3. Identifying sexual and gender‑based harassment 16](#_Toc175670541)

[3.1 Methods of identifying sexual and gender‑based harassment 17](#_Toc175670542)

[4. Assessing the risks 22](#_Toc175670543)

[4.1 Intersectional nature of harassment 22](#_Toc175670544)

[4.2 Interaction with other psychosocial hazards 22](#_Toc175670545)

[5. Controlling the risk 23](#_Toc175670546)

[5.1 Duration, frequency and severity 24](#_Toc175670547)

[5.2 Interaction of psychosocial hazards 24](#_Toc175670549)

[5.3 Design of work, including job demands and tasks 25](#_Toc175670551)

[5.4 Systems of work, including how work is managed, organised and supported 26](#_Toc175670552)

[5.5 Workplace design and layout, and environmental conditions 27](#_Toc175670553)

[5.6 Worker accommodation 29](#_Toc175670579)

[5.7 Plant, substances and structures at the workplace 29](#_Toc175670580)

[5.8 Workplace interactions or behaviours 30](#_Toc175670581)

[5.10 Information, training, instruction and supervision provided to workers 32](#_Toc175670582)

[6 Maintain and review 35](#_Toc175670583)

[7 Investigating and responding to reports 36](#_Toc175670584)

[7.1 Nature of investigation 37](#_Toc175670585)

[7.2 Selecting an investigator 37](#_Toc175670586)

[7.3 Person-centred and trauma-informed approaches 37](#_Toc175670587)

[7.4 Confidentiality 38](#_Toc175670588)

[8 Leadership and culture 40](#_Toc175670589)

[8.1 Leadership 40](#_Toc175670590)

[8.3 Culture 41](#_Toc175670591)

[Appendix A – Definitions 43](#_Toc175670592)

[Appendix B – Resources 45](#_Toc175670593)

# Introduction

This Code addresses a range of harassment and behaviours based on gender and sex that create a risk of harm at work, including:

* sexual harassment
* sex- or gender-based harassment and discrimination
* hostile working environments on the grounds of sex
* gendered violence.

This Code applies to workplaces covered by the *Work Health and Safety Act 2020* (WHS Act) and the Work Health and Safety Regulations 2022 (WHS Regulations) in Western Australia. You should use this Code if you have functions or responsibilities to manage, so far as is reasonably practicable, exposure to psychosocial hazards and risks in a workplace.

## 1.1 What is sexual and gender-based harassment?

In this Code:

* **Sexual harassment**, as defined in the Sex Discrimination Act 1984, refers to any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, where a reasonable person would anticipate that reaction in the circumstances. Sexual harassment can be a form of gender-based harassment.
* **Gender-based harassment** refers to any unwelcome conduct based on a person’s gender or sex.

Sexual and gender-based harassment can be a one-off incident or repeated behaviour, and can be obvious or subtle in nature. The most serious acts, such as sexual assault, may constitute criminal offences. Examples of these behaviours include:

* actual or attempted rape or sexual assault
* physical assault, abuse or threats targeted at an individual because of their sex or gender
* inappropriate physical contact including unwelcome touching, hugging, kissing or cornering
* being followed or watched inappropriately, either in person or via technology
* sexual gestures or indecent exposure
* sexually explicit comments made in person or in writing, or indecent messages (SMS, social media), phone calls or emails, including the use of emojis with sexual connotations
* sexualised comments about a person’s appearance or clothing, or derogatory comments because clothing does not conform to narrow gender norms
* derogatory, offensive or demeaning comments about a person because of their sex or gender
* comments, insults or ‘jokes’ of a sexually suggestive or explicit nature, or which are sexist or gendered
* inappropriate staring or leering that makes a person feel uncomfortable
* deliberately misgendering someone, using incorrect pronouns or deadnaming to demean or belittle them
* intrusive questions or comments about a person's private life (e.g. relationship status), physical appearance or bodily functions (e.g. menstruation or anatomy)
* sharing or threatening to share an intimate image or video without consent
* spreading sexual rumours about a person
* sexually explicit images, videos, cartoons, drawings, photographs or ‘jokes’
* repeated or inappropriate invitations to go out on dates, or advances and requests or pressure for sex or other sexual acts, including via technology
* comments about a person’s sexual performance or appearance (e.g. rating people on their sexual desirability)
* excluding a person from training, promotions or opportunities based on their sex or gender
* gendered double-standards or different repercussions for the same actions.

[Appendix A](#_Appendix_A_–) provides definitions and descriptions to assist duty holders to recognise and understand these behaviours. However, Work Health and Safety laws require PCBUs to manage all WHS risks, even where the behaviour is not specifically described in this Code or may not meet definitions or thresholds set by other legal frameworks.

## 1.2 Sexual and gender-based harassment at work

**WHS Act s. 8**

Meaning of workplace

**WHS Act s. 19(4)**

Primary duty of care (accommodation)

**WHS Regulations r. 55A**

Meaning of psychosocial hazard

Under the WHS Act, a ‘workplace’ means a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. This means workplace sexual and gender-based harassment can happen:

* at a worker’s usual workplace
* where a worker is working remotely, including if the person’s workplace is their home
* in a place where the worker is undertaking work at a different location (such as a client’s home)
* where the worker is engaging in work-related activities such as conferences, training, work trips, work-related events or if the PCBU hosts a work-related social activity like a party
* by phone, email or online (such as through social media platforms)
* at workers’ accommodation (such as accommodation provided to fly-in, fly-out workers).

Sexual and gender-based harassment at work is a type of psychosocial hazard, as it:

* arises from workplace interactions or behaviours
* can relate to a workplace’s design or management of work, the work environment and plant at the workplace
* may cause psychological harm (whether or not it may also cause physical harm).

Workers and others may be exposed to sexual and gender-based harassment through verbal communications, including over the phone or video. They may also be exposed to these hazards through written words, pictures or other imagery, in person or through emails, text messages, social media, posters and other publications.

Acts such as sexual assault, physical assault, indecent exposure, stalking, sharing intimate images or videos without consent and obscene or threatening communications (e.g. phone calls, letters, emails, text messages, voice messages and posts on social media) may be offences under criminal law. Even where a matter is being investigated by police, the WHS risks must be addressed.

Overt forms of sexual and gender-based harassment may be easier to identify and address. More subtle forms like sexist remarks, crude language and an overall workplace culture that is degrading or intimidating also create a risk to health and safety. However, these forms of harmful behaviours can be more difficult to identify.

Sexual and gender-based harassment may come from other workers of the business or undertaking including managers, supervisors, colleagues or subordinates. It may come from another PCBU or their workers that share premises or work on the same tasks. It may also come from third-parties such as customers, clients, patients, students, visitors and others.

In some contexts, such as behaviour by patients or minors, sexual harassment may be described as sexually inappropriate behaviours. Even where the ‘harasser’ may not be legally culpable for their actions, the WHS risks from the behaviour must still be managed by the PCBU.

Sexual and gender-based harassment can also be behaviour that while not directed at a particular person, affects someone who is exposed to it or witnesses it (such as overhearing a conversation, rumours, or seeing sexually explicit posters in the workplace).

## 1.3 Who is affected?

While anyone can experience sexual or gender-based harassment, there are certain groups of people who are more likely to experience it, including:

* women
* workers under 30 years of age
* LGBTIQA+ workers
* workers who do not conform to traditional gender stereotypes
* Aboriginal or Torres Strait Islander workers
* workers with a disability
* workers from culturally and linguistically diverse backgrounds
* migrant workers and workers holding temporary visas
* workers in insecure working arrangements (e.g. casual or labour hire)
* workers who are new to the workforce.

Men also experience sexual harassment, however women are significantly more likely to experience it than men, and men are significantly more likely to commit sexual or gender-based harassment than women.

### Intersectional nature of harassment

Gender inequality is a key driver, or underlying cause, of sexual and gender-based harassment at work. Other forms of disadvantage such as power imbalances based on age, sex, gender, sexuality, migration status, race and disability can combine or ‘intersect’, and make exposure to harassment or discrimination more likely.

‘Intersectional harassment’ is what occurs when a person is exposed to harassment or discrimination based on multiple characteristics that are, or are perceived to be, part of their identity. Intersectional harassment can increase both the likelihood of an individual being exposed to sexual or gender-based harassment, and the severity of harm it may cause to them. Further, workers who experience multiple forms of harassment and discrimination may be less likely to report sexual harassment concerns or incidents.

For example, a migrant worker with a disability is more likely to experience harassment, but also may have limited access to support, and face greater barriers to reporting the harassment. As such, they may be exposed for a longer time increasing the severity of harm.

Workers under 18

Workers who are minors, that is under the age of 18, may be at increased risk of exposure particularly vulnerable to sexual and gender-based harassment. Several factors may contribute to this, making these workers more vulnerable:

* Sexual and gender-based harassment is driven by power imbalance. Minors are likely to perceive they have less power than older workers regardless of workplace hierarchy.
* Minors are likely to have less experience recognising harassing behaviour and may have less confidence to call it out.
* Minors learn workplace norms in their first jobs. If they see or experience harassment in their first workplaces, they may come to believe that such behaviours are appropriate or ‘normal’.

Sexual behaviour directed at workers under the age of 18 may constitute child-based sexual offences. Children often see grooming behaviours as friendship and may not identify the risks. If a workplace has workers under the age of 18, the PCBU must ensure they have identified the hazards the workers may be exposed to at work, and implement all reasonably practicable control measures.

Control measures could include providing additional supervision, providing training on acceptable behaviours in the workplace, not assigning them to certain tasks and vetting other workers they will work closely with. If a PCBU suspects sexual behaviour directed at a worker under the age of 18, they should contact child welfare authorities or Police. The PCBU, or their workers, may also have mandatory reporting obligations.

## 1.4 Impacts of sexual and gender-based harassment

**WHS Regulations r. 55B**

Meaning of psychosocial risk

Sexual and gender-based harassment can cause physical and psychological harm to the person it is directed at, and to others who witness the behaviour. This can lead to significant social and economic costs for workers, their families, their workplaces and the wider community. The impacts of exposure may include:

* stress
* physical injuries as a result of assault
* illness such as cardiovascular disease, musculoskeletal disorders, immune deficiency and gastrointestinal disorders (e.g. as a result of stress)
* depression, anxiety, post-traumatic stress disorder, self-harm, suicidal thoughts, or suicide
* negative impacts on a person’s job or career, financial loss, or economic disadvantage
* emotional and cognitive reactions such as loss of confidence and self-esteem, feelings of isolation, irritability, anger, tearfulness and mood swings
* physical reactions such as headaches, indigestion, tiredness and loss of appetite
* behavioural changes such as social withdrawal, and substance abuse.

Both short- and long-term exposure to sexual and gender-based harassment may cause harm to a person. For example, while it is widely recognised that exposure to singular, serious event (e.g. sexual assault) can result in harm to health, it is important to recognise that repeated and prolonged exposure to behaviour that may initially seem less serious (e.g. sexual ‘jokes’ or insults) can also cause psychological harm.

## 1.5 WHS duties

Everyone in the workplace plays a role in managing work health and safety (WHS) risks. Table 1 provides a summary of WHS duties applied to sexual and gender-based harassment in the workplace.

***Table 1 Duties in relation to managing sexual and gender-based harassment***

| **Duty holder** | **Duties** |
| --- | --- |
| PCBU (WHS Act s. 19, WHS Regulations Division 11 and Part 3.1 other than r.  36) | * A PCBU must ensure, so far as is reasonably practicable, workers and other persons are not exposed to risks to their psychological or physical health and safety, including risks from psychosocial hazards such as sexual and gender-based harassment.
* A PCBU must eliminate health and safety risks at work, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.
* A PCBU has a range of other duties that apply to managing the risk of sexual and gender-based harassment, such as duties for consultation.
* If a PCBU has management or control of a workplace, it has additional duties under WHS laws.
 |
| WHS service providers (WHS Act s. 26A) | * Any PCBU that provides a service relating to work health and safety, including those relating to workplace behaviour, must, so far as is reasonably practicable, ensure that the WHS services are provided so that any relevant use of them at, or in relation to, a workplace will not put at risk the health and safety of persons who are at the workplace.
 |
| Officers (WHS Act s. 27) | * Officers, such as company directors, must exercise due diligence to ensure the business or undertaking complies with its WHS duties.
* Officers’ due diligence includes taking reasonable steps to ensure the PCBU has and uses appropriate resources and processes to eliminate or minimise risks of sexual and gender-based harassment. For example, ensuring the PCBU has safe systems of work and safe work environments to eliminate or minimise the risk.
* [Section 8.2](#_8.2_Officer_duties) of this Code provides further information.
 |
| Workers (WHS Act s. 28) | * Workers must take reasonable care for their own psychological and physical health and safety and take reasonable care not to adversely affect the health and safety of other persons.
* Workers must comply with reasonable health and safety instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to workers. For example, not sexually harassing anyone in the workplace.
 |
| Other persons at the workplace (WHS Act s. 29) | * Other persons at the workplace must take reasonable care for their own psychological and physical health and safety and must take reasonable care not to adversely affect other people’s health and safety. For example, a customer in a hospitality venue must not sexually harass staff.
* Other persons at the workplace must comply, so far as they are reasonably able, with reasonable instructions given by the PCBU to allow them to comply with the WHS Act and WHS Regulations.
 |

For further information about WHS duties, refer to the WorkSafe WA interpretive guidelines:

* *The meaning of ‘person conducting a business or undertaking’ (PCBU)*
* *The health and safety duty of an officer*
* *Duty of persons conducting business or undertakings that provide services relating to work health and safety.*

### Other relevant legal frameworks

WHS laws do not operate in isolation and other laws may also apply. For example, workplace relations, criminal, anti-discrimination, privacy and workers’ compensation laws.

**Positive duty in the Sex Discrimination Act (Respect@Work)**

The Commonwealth *Sex Discrimination Act 1984* (SDA) also includes a positive duty to prevent sexual harassment (and other related unlawful conduct) which operates concurrently with WHS duties. PCBUs must take reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct that is unlawful under the SDA, including:

* sex discrimination in a workplace context
* sexual harassment in connection with work
* sex-based harassment in connection with work
* conduct that amounts to subjecting a person to a hostile work environment on the grounds of sex
* certain acts of victimisation.

The PCBU must eliminate, as far as possible, unlawful conduct in the workplace carried out by the PCBU themselves, workers, the PCBU’s agents and, in some circumstances third parties such as customers, clients, patients, services users, patrons, suppliers, students, parents, carers and visitors. See the [Australian Human Rights Commission](https://humanrights.gov.au/our-work/sex-discrimination) for further information and guidance on the duties under the SDA.

Obligations under the SDA are in addition to existing WHS duties for PCBUs. While there are similarities between duties under the SDA and WHS laws, the duties are different. Complying with the SDA requirements alone will not necessarily ensure that the PCBU is meeting their WHS duties.

# Risk management process

**WHS Act s. 17**

Management of risks

**WHS Act s. 18**

What is reasonably practicable in ensuring health and safety

**WHS Regulations Division 11**

Psychosocial risks

**WHS Regulations Part 3.1 (other than r. 36)**

General risk and workplace management

To meet duties to ensure health and safety, a PCBU must eliminate or minimise the risk of sexual and gender-based harassment so far as is reasonably practicable.

The risk management process involves four steps and is illustrated in Figure 1:

1. Identify hazards - find out what could cause harm.
2. Assess [risks](https://www.safeworkaustralia.gov.au/glossary#risks) - understand the nature of the harm the hazard could cause, how serious the harm could be and the likelihood of it happening. This step may not be necessary if the risks and controls are known.
3. Control [risks](https://www.safeworkaustralia.gov.au/glossary#risks)- implement the most effective [control measure](https://www.safeworkaustralia.gov.au/glossary#control-measure)s that are reasonably practicable in the circumstances and ensure they remain effective over time. This means a PCBU must:
* eliminate risks, if reasonably practicable to do so
* if it is not reasonably practicable to eliminate the risks, minimise the risks so far as is reasonably practicable in the circumstances by assessing the risks and implementing appropriate control measures, and
* ensure those control measures remain effective over time.
1. Maintain and review [control](https://www.safeworkaustralia.gov.au/glossary#hazards) measuresto ensure they are effective, used correctly and working as planned, and make changes as required.



Figure 1 Risk management process (adapted from Safe Work Australia).

Risk management is a proactive process that helps the PCBU respond to change and facilitate continuous improvement. It should be planned, systematic and cover all reasonably foreseeable hazards and associated risks. If control measures are not working effectively, the PCBU should repeat the risk management process.

In the event of an injury or incident at work, the risk assessment process is essential in identifying whether different or additional measures need to be taken to prevent a recurrence of the injury or incident.

The risk management process may be implemented in different ways depending on the size and nature of the business or undertaking. Larger businesses and those in sectors where workers are exposed to more or higher [risks](https://www.safeworkaustralia.gov.au/glossary#risks) are likely to need more complex, sophisticated risk management and consultation processes to meet their WHS duties.

The PCBU should record their risk management process and the outcomes, including consultation with workers. This allows the PCBU to demonstrate how they have met their WHS duties, and assists with monitoring and reviewing risks and control measures.

## Consulting throughout the risk management process

**Consulting with workers**

**WHS Act s. 47**

Duty to consult workers

**WHS Act s. 49**

When consultation is required

A PCBU must consult with workers and their health and safety representatives (HSRs), if any, at each step of the risk management process. This includes when identifying and assessing the risk of sexual and gender-based harassment and making decisions about what control measures to implement to prevent it from occurring.

All consultation must include any HSRs representing workers. References to consultation with workers in this Code includes consultation with any HSRs. Workers may be aware of certain tasks or aspects of their work that place them at risk of sexual and gender-based harassment. Seeking this information from workers can be particularly important when identifying risks of sexual and gender-based harassment that are subtle or hidden from view.

Workers and their representatives might also have suggestions for practical and effective control measures. For example, workers may have ideas to improve the design and layout of the workplace to minimise the risk of sexual and gender-based harassment. Workers can also help identify if control measures introduce new hazards or risks.

PCBUs should consider whether existing consultation arrangements are appropriate for identifying, assessing and controlling psychosocial hazards, including sexual and gender-based harassment. A PCBU must consult with workers and their HSRs on any changes to agreed consultation arrangements.

PCBUs should consider whether their consultation mechanisms are accessible to all workers. It is particularly important to consult with workers who may be at greater risk of sexual and gender-based harassment (see [Section 1.3](#_1.3_Who_is)). Additional consultation mechanisms may be needed to ensure that workers have a range of ways they can choose to contribute their views and concerns. For example:

* focus group discussions (e.g. with workers in specific roles or who undertake specific tasks that may place them at greater risk)
* culturally safe consultation mechanisms to suit the workplace
* translated materials to meet the language needs of workers and interpreters to support consultation
* private and confidential individual discussions
* anonymous worker surveys.

Workers may feel more comfortable sharing their views with their HSR, who can then represent the views of workers in their workgroup. Any personal or confidential information provided during consultation should not be disclosed without the consent of the worker.

In addition to consultation arrangements, PCBUs should establish a separate mechanism for workers to report sexual and gender-based harassment if it occurs. Further detail on reporting and investigation can be found in [Chapter 7](#_Investigating_and_responding) of this Code.

**Consulting with other duty holders**

**WHS Act s. 16**

More than 1 person can have a duty

**WHS Act s. 46**

Duty to consult with other duty holders

More than one person can have the same WHS duty at the same time. The WHS Act provides that where more than one person has a duty for the same matter, each person retains responsibility to meet their duty in relation to the matter and must do so to the extent to which they can influence and control the matter.

A PCBU must also consult, cooperate and coordinate activities with all other persons who have a WHS duty in relation to the same matter, so far as is reasonably practicable.

For example, PCBUs might share duties if they:

* are involved in the same activities (e.g. one PCBU’s workers interacting with another PCBU’s workers in the supply chain)
* have a duty of care for the same worker or workers (e.g. labour hire agency, host employer and building owner)
* share the same workplace (e.g. work site with subcontractors; building foyer in a multi‑tenanted building; joint venture mine site).

Consulting, cooperating and coordinating with other duty holders can help a PCBU more easily and effectively control the risk of sexual and gender-based harassment, and assist all parties to comply with their duties. For example, if a PCBU engages workers through a labour-hire company, consulting and cooperating as part of contract negotiations can help ensure workers receive relevant training (i.e. the nature of the hazard and the control measures in place to prevent it), and have clear reporting avenues if they experience sexual and gender-based harassment.

Further detail on the duty to consult with workers and other duty holders can be found in the Code of practice: [*Work health and safety consultation, cooperation and coordination*](https://www.safeworkaustralia.gov.au/doc/model-code-practice-work-health-and-safety-consultation-cooperation-and-coordination)*..*

# Identifying sexual and gender‑based harassment

**WHS Regulations r. 34**

Duty to identify hazards

Sexual and gender-based harassment is a pervasive hazard occurring across all industries and the risk can be present in any workplace.

Identifying hazards is the first step of the risk management process. A PCBU must identify risks of sexual and gender-based harassment to their workers, or to others arising from the work of the business or undertaking.

Identifying the risks of sexual and gender-based harassment involves understanding situations in which it could occur, including:

* when and where (e.g. at the usual workplace, while making deliveries, via email)
* how it could occur (e.g. from contact with customers or the public, or from other workers)
* the potential nature of the harassment (e.g. verbal or physical, overt or subtle)
* who is likely to be affected.

A PCBU must identify where sexual or gender-based harassment is a reasonably foreseeable hazard that could give rise to risks to health and safety. This means identifying where it happens or could happen.

Sexual and gender-based harassment can harm workers both when they are directly exposed to instances of harassment as well as when they are exposed to the *risk* of it occurring. For example, workers who have been exposed to sexual and gender-based harassment are likely to experience stress from the initial incident as well as ongoing stress if they perceive the risk has not been controlled, even if the harassment does not occur again. In this situation, despite the worker not having repeated exposure to the hazard, the stress itself may be prolonged and cause harm.

Overt or severe forms of sexual and gender-based harassment (such as sexual assault) may be easier to identify. However, more subtle forms like crude language or sexist remarks can be more difficult to identify and may not be reported to the PCBU.

Sexual and gender-based harassment can come from a range of sources including:

* Internal, from other workers however they are engaged (e.g. employees, contractors, subcontractors, or volunteers) and at any level (e.g. supervisors or managers, co‑workers at the same level or workers below their level).
* External, from third parties such as from customers, clients, patients, residents, students, parents, carers, service providers, businesses (e.g. between a plumbing and an electrical sub-contractor at the same work site, or a delivery person and a retail worker), members of the public or anyone else workers encounter at work.

It may be easier to identify hazards if:

* managers regularly talk to workers about workplace concerns and sexual and gender‑based harassment is recognised as a WHS issue
* managers and workers attend training on sexual and gender-based harassment and have a good understanding of what it is and the relevant workplace policies in place to address this conduct
* workers feel safe and comfortable to raise concerns about sexual and gender-based harassment or other workplace conduct issues.

## Methods of identifying sexual and gender‑based harassment

**Consult workers**

**WHS Act s. 49(a)**

When consultation is required

A PCBU must consult with their workers and their representatives when identifying the risk of sexual and gender-based harassment at work. This includes consulting on hazards and risks related to the existing work and work environment, as well as risks related to proposed changes to work that affect health and safety.

Consultation should focus broadly on identifying the *risk* of sexual and gender-based harassment. While past instances of sexual and gender-based harassment can help PCBUs identify when, where, and how harassment might occur; consultation to identify this hazard should be broader. Even where sexual and gender-based harassment has not occurred or been formally reported, there may be work-related situations where workers feel that they are at-risk. Workers may be more comfortable engaging in consultation focused on the hazard and risk, rather than past instances. A broader focus on the hazard and risk can also help to manage confidentiality and privacy issues.

Consultation on other psychosocial hazards, particularly other harmful behaviours such as bullying, harassment and discrimination, may also help PCBUs identify risks of sexual and gender-based harassment.

**Collect and review data and information**

A PCBU should review relevant information or records to support the identification of sexual and gender‑based harassment. For example, records of past incidents (including grievance and bullying complaints), exit interviews or surveys.

For organisations that are large enough to assure anonymity (i.e. able to collect data from a larger number of participants), worker surveys can be an effective way of collecting information on sexual and gender‑based harassment where workers do not feel comfortable reporting it or feel the incidents do not warrant reporting (e.g. subtle harassment like sexual ‘jokes’). Smaller organisations, or those with lower participation rates in worker surveys, require careful handling to meet privacy and confidentiality considerations.

Survey design choices can help assure anonymity. For example, using a survey hosting platform or software that does not link participant responses to their device (e.g. IP address) or accounts (e.g. email address). It is ethical to provide workers with information about how their data will be used and what steps will be taken to ensure the confidentiality or anonymity of their responses, including any limitations or exceptions that apply. This allows workers to understand what they are agreeing to and make informed decisions about whether to participate (i.e. informed consent). Transparency regarding the survey process can assist with fostering trust and encouraging participation.

PCBUs should seek information and advice on the circumstances where sexual harassment may occur in their particular industry and work activities from WorkSafe WA, industry associations, unions, technical specialists and similar workplaces. Specific advice is particularly helpful in complex or high-risk situations. For example, where workers are exposed to sexual and gender-based harassment from an individual to whom they owe a duty of care (e.g. nurses or teachers).

**Consider work tasks and the design of work**

A PCBU should consider the way work is designed including the tasks performed, how and when they are carried out. Some tasks may have higher risks of sexual and gender-based harassment, for example tasks:

* associated with sexist jokes and sexual innuendo
* requiring interaction with customers, clients, patients or other persons, either face‑to‑face, on the phone or online
* being performed in remote locations, people’s homes or in other work environments where access to support and supervision is not immediately available
* involving attendance at conferences, excursions and social events as part of work duties, including overnight travel.

Other important considerations include how work is allocated, including the skills and experience of the workers and the number of workers assigned to a task. A PCBU should also consider how gender stereotypes may impact the risks involved with certain tasks.

For some tasks the risk of sexual and gender-based harassment may be higher if they are done by a single worker (e.g. cleaning an occupied hotel room), whereas other tasks may have a higher risk if two workers are assigned (e.g. cleaning a small, isolated storeroom).

**Consider the physical work environment**

A PCBU should walk through the workplace and assess the physical work environment to identify areas where there may be greater risks. For example:

* areas with limited natural surveillance or inadequate lighting (e.g. storerooms, stairwells or facilities for workers such as laundries and gyms)
* areas that restrict movement (e.g. where workers would need to touch each other to move past) or prevent workers maintaining their personal space
* workers working in isolated areas away from other workers or with limited access to help and support (e.g. in patients’ or clients’ homes)
* posters or pictures on display that may make workers uncomfortable, constitute sexual or gender-based harassment, or create a culture that makes harassment more likely (e.g. involving sexism, harmful gender stereotypes, sexual innuendo, objectification, or nudity)
* location of amenities (e.g. bathrooms), and requirements for workers to share amenities with third parties (e.g. clients, customers)
* requirements for workers to change clothing or shower at work, and any risks associated with the facilities provided
* how work is conducted using technology, and the risks of sexual and gender-based harassment occurring through the use of technology such as phone, email and online platforms
* any risks associated with workers’ accommodation (e.g. security, privacy, communal facilities such as showers and laundries).

PCBUs should consider the online workingenvironment if relevant and how work is conducted using technology, and the risks of sexual and gender-based harassment occurring through the use of technology such as phone, email and online platforms.

**Observe and consider work and behaviours**

A PCBU should observe how workers and others at the workplace interact. The presence of other harmful behaviours may indicate a risk of sexual and gender-based harassment. For example:

* observing how leaders, managers, supervisors, workers and others interact (e.g. are there poor relationships or do workers avoid being around certain people?)
* identifying trends or patterns in behaviour that may highlight areas of concern or affected workers (e.g. think about whether a worker is performing differently, suddenly taking more personal leave, withdrawing from colleagues, not attending work functions, or if a work group has had a number of resignations)
* listening to how workers speak, whether they use crude language, innuendo and offensive ‘jokes’
* considering whether there is an acceptance of inappropriate behaviour by workers, managers or third parties (e.g. racially or sexually crude conversations, hazing rituals, innuendo or offensive ‘jokes’ are part of the accepted culture).

**Consider workforce structure, demographics and culture**

A risk of sexual and gender-based harassment can exist even in workplaces which have not had incidents in the past or incidents have not been reported. Factors that increase the likelihood of sexual and gender-based harassment include:

* workplaces that are male-dominated or with gendered segregation along occupational lines
* a workplace culture that that includes or normalises sexism, harmful gender stereotypes, sexual innuendo or nudity
* tolerance for breaking workplace rules and breaching policies more generally (e.g. breaking rules around the safe use of equipment or the personal use of workplace resources)
* power imbalances along gendered lines (e.g. workplaces where one gender holds the majority of management and decision-making positions or where significant power disparities are present)
* a lack of diversity in the workplace, including rigid gender roles
* workplaces with ‘high value’ employees (e.g. where the workplace is hesitant to take disciplinary action against harassers due to the potential losses to the business or undertaking)
* workplaces organised according to a strict hierarchical structure (e.g. where there are limited options to identify, report or manage harmful behaviours outside a strict hierarchical structure; workplaces where managers have significant control over workers’ careers; where workers are expected to follow directions without question)
* use of alcohol at work activities
* poor understanding among workers, including managers and leaders, of the nature, drivers and impacts of sexual and gender-based harassment.

A PCBU should understand the worker demographics of their workplace to identify power disparities in working relationships, for example, those relating to gender, role, reporting lines, seniority, locations, tenure, job security, pay and other personal characteristics.

**Have a reporting mechanism and encourage reporting**

A PCBU should establish a mechanism (or mechanisms) for workers to report sexual and gender-based harassment, including reporting by workers who experience, witness, or hear about sexual and gender-based harassment. This should protect the privacy of workers who make reports and allow for anonymous reporting where possible. Reporting mechanisms should suit the business size and circumstances and be proportionate to the risks in the business.

In encouraging reporting, a PCBU should specifically consider the needs and concerns of workers who are at increased risk, such as workers who are new or inexperienced, migrant workers, workers who may face intersectional harassment and discrimination, and workers who are in less secure forms of employment.

Workers should be encouraged to report sexual and gender-based harassment and behaviour that causes concern. PCBUs can do this by:

* providing workers with a range of accessible and user-friendly ways to report harassment informally, formally, anonymously and confidentially
* providing multiple points of contacts for reporting harassment (e.g. in case workers are facing barriers to utilising certain reporting channels)
* addressing the needs and preferences of affected workers where possible, such as offering alternative options to resolve a request for help or a complaint
* avoiding the use of confidentiality clauses in settlement agreements except where to protect the affected worker. Where used, confidentiality clauses should be as limited as possible in scope and duration
* talking to workers to verify that they understand how to report harassment or behaviours of concern, their right to representation, and the support, protection and advice available to them
* training key workers (e.g. contact persons, peer-support advocates) to receive reports of sexual and gender-based harassment and give support and advice
* helping workers understand the processes of how reports of sexual and gender-based harassment will be dealt with
* providing a clear process for reporting to organisational leaders and board members
* providing the outcome of any investigation to the individual who reported experiencing harassment
* providing supportive, consistent and (where possible) confidential responses to reports
* ensuring reports and incidents are resolved in a timely and transparent manner with a range of potential proportionate outcomes
* implementing systems to prevent retaliation and victimisation of people involved in reports of sexual and gender-based harassment.

**Discriminatory, coercive, or misleading conduct**

The WHS Act prohibits a person from engaging in discriminatory, coercive, or misleading conduct in relation to a WHS matter. This includes where a worker has raised an issue or concern about WHS, such as reporting sexual or gender-based harassment.

**A lack of reports**

A PCBU should not rely only on formal reports. A lack of reports does not necessarily mean that sexual and gender-based harassment is not happening. Only a fraction of workers who experience harassment report the conduct. The absence of reports where sexual and gender-based harassment is likely to be occurring may indicate that existing reporting mechanisms do not meet the needs of workers and need to be changed.

A PCBU should seek to address the reasons workers might not report sexual and gender-based harassment, which may include:

* workers are not aware of, or do not understand, what should be reported and how they can report it
* processes do not meet the needs and preferences of workers
	+ including the processes for making complaints; the handling of complaints and potential outcomes (e.g. a proportionate response; a person-centred approach; an outcome that supports the psychological and physical health and safety of the workers involved)
* workers do not have confidence in how a report would be handled
	+ workers are not aware of or do not understand the processes the PCBU uses to respond to reports
	+ workers have misconceptions about the potential outcomes of reporting (e.g. workers view reporting only as a method to punish the harasser and do not understand its role in preventing future occurrences)
	+ workers are concerned that the PCBU’s processes will not be followed by those handling complaints
	+ workers are concerned that reports will be ignored, or they won’t be believed; other workers will not provide an accurate account; reports won’t be handled respectfully and confidentially; outcomes will not be meaningful or appropriate; nothing will be done and reporting will make the situation worse
	+ concern over how information will be handled
* workers are concerned about possible negative impacts of making a report
	+ a perpetrator may have organisational power over them (e.g. a manager or supervisor) or is in a position of influence (e.g. a client)
	+ they will be blamed or accused of overreacting
	+ additional harm to their health and safety from emotional impacts of making a complaint, discrimination, or retribution by management or other workers
	+ negative impacts on their reputation, job or career prospects
	+ cultural factors and taboos.

It is important that reporting processes meet the needs of all workers. PCBUs should consider what potential barriers to reporting may be present for, or particularly impactful to, workers who are at higher risk of harm from sexual and gender-based harassment. For example, workers from cultural or linguistically diverse backgrounds, workers with insecure working arrangements, or workers who are young or inexperienced.

# Assessing the risks

After identifying where and when the risk of sexual and gender-based harassment may occur, and who might be affected, PCBUs can assess the risks, with consideration for:

* Duration – how long is the worker exposed to the risk?
* Frequency – how often is the worker exposed to the risk?
* Severity – how severe is the harassment?

PCBUs must also consider whether there are other hazards present and how the interaction between hazards may affect the risk.

The risk to workers increases when exposure to hazards is more severe (e.g. exposed to a risk of sexual assault), more frequent (e.g. occurring on every shift), or is longer in duration (e.g. being exposed to the risk for several hours). Frequent or prolonged exposure to forms of sexual harassment that are considered subtle or less serious can have a similar impact on someone’s psychological health as exposure to a single, ‘more severe’ incident.

The risks also increase when workers are exposed to a combination of the above mechanisms. For example, short term but severe exposure to the risk of sexual and gender‑based harassment is more likely to harm workers if they are also exposed to chronic (long duration), but less severe hazards.

In assessing the risk, PCBUs should also consider:

* the effectiveness of existing control measures and whether they control all forms of sexual and gender-based harassment
* how work is actually done, rather than relying on written manuals and procedures
* infrequent or abnormal situations (e.g. workers and others not following policies or processes; working unusual hours; manager absences), as well as how things are normally meant to occur.

## Interaction with other psychosocial hazards

When assessing risks, the PCBU should consider how psychosocial hazards may interact or combine with other psychosocial hazards. Sexual and gender-based harassment rarely occur in isolation from other psychosocial hazards. When these hazards interact or combine, this may change or increase risks. Sexual and gender-based harassment is more likely to cause harm to workers if they are also exposed to other psychosocial hazards.

Psychosocial hazards such as high job demands, violence and aggression, poor organisational justice, low job control, poor support, remote or isolated work, and bullying may increase the risk of workers being exposed to sexual and gender-based harassment.

Failure to manage and appropriately respond to other forms of harassment and discrimination may encourage a culture of disrespect and increase the likelihood of sexual and gender-based harassment occurring. Workers are less likely to report sexual and gender-based harassment if they perceive other harassment and discrimination, such as bullying and racism, are not appropriately addressed. This may lead to more frequent, prolonged and severe exposure to psychosocial risks.

# Controlling the risk

**WHS Regulations Part 3.1 (other than r. 36)**

Managing risks to health and safety

**WHS Regulations r. 55C**

Managing psychosocial risks

**WHS Regulations r. 55D**

Control measures

Once the risk of sexual and gender-based harassment has been identified and assessed, the PCBU is in a position to control the risk in consultation with workers.

A PCBU must eliminate risks to health and safety if it is reasonably practicable to do so. If it is not reasonably practicable to eliminate the risks, the PCBU must minimise risks so far as is reasonably practicable.

Every workplace is different. The best combination of control measures to eliminate or minimise the risk of sexual and gender-based harassment in a workplace will be tailored to the organisation’s size, type, work activities, location and workforce.

Information on the process to identify and select reasonably practicable control measures is provided by WorkSafe WA in the Code of practice: *Psychosocial hazards in the workplace* and the Interpretive Guideline: *How to determine what is reasonably practicable to meet a health and safety duty*.

A PCBU must have regard to all relevant matters when determining control measures, including:

* the duration, frequency and severity of the exposure of workers and other persons to sexual and gender-based harassment
* how sexual and gender-based harassment and other psychosocial hazards may interact or combine
* the design of work, including job demands and tasks
* the systems of work, including how work is managed, organised and supported
* the design and layout, and environmental conditions, of the workplace, including the provision of: safe means of entering and exiting the workplace, and facilities for the welfare of workers
* the design and layout and environmental conditions of workers’ accommodation
* the plant, substances and structures at the workplace
* workplace interactions or behaviours
* the information, training, instruction and supervision provided to workers.

Further information and examples of these are provided in the sections below. Not all examples will be relevant or reasonably practicable in all circumstances.

PCBUs must consult with workers and their representatives, and consider the circumstances of their work and workplace when making decisions about what control measures to implement to prevent sexual and gender-based harassment.

## Duration, frequency and severity

**WHS Regulations r. 55D(2)(a)**

Control measures

A PCBU must consider how long (duration), how often (frequency) and how significantly (severity) workers are exposed to psychosocial hazards. This impacts the level of risk. Where it is not reasonably practicable to eliminate the risk of sexual and gender-based harassment, PCBUs may be able to minimise the risk by reducing the duration, frequency, and severity of exposure to harassment or the risk of harassment.

For example, a PCBU may be able to reduce the severity of exposure by introducing physical barriers to eliminate or minimise the risk of sexual assault, even if they are unable to eliminate the risk of verbal harassment.

Sexual and gender-based harassment is a hazard regardless of whether an incident has occurred. Workers may experience stress, anxiety or fear if they perceive that they may be exposed to harassment at their workplace. Furthermore, the absence of a previous incident should not be taken to mean that the risk has been managed so far as is reasonably practicable.

## Interaction of psychosocial hazards

**WHS Regulations r. 55D(2)(b)**

Control measures

When determining the control measures to implement, the PCBU must consider how sexual and gender-based harassment may interact or combine with other psychosocial hazards to increase the risks.

PCBUs may be able to minimise the risk of sexual and gender-based harassment by controlling other psychosocial hazards such as low support and poor organisational justice. Controlling these hazards can reduce the likelihood of sexual and gender-based harassment occurring. For example, the psychosocial hazard of low job control may prevent workers adapting the way they work to avoid sexual and gender-based harassment, and providing greater job control may reduce the risk of it occurring.

Where a PCBU has minimised the risk of sexual and gender-based harassment *incidents* so far as is reasonably practicable, they may be able to further minimise the risk of *harm* that could result from exposure. This may be done by controlling other psychosocial hazards (i.e. other potential sources of stress) and by providing appropriate support to affected workers following an instance of sexual or gender‑based harassment.

## Design of work, including job demands and tasks

**WHS Regulations r. 55D(2)(c)**

Control measures

When controlling the risk of sexual and gender-based harassment, a PCBU must consider whether risks can be eliminated or minimised by changing how work is designed, in consultation with workers.

Where a risk of sexual and gender-based harassment associated with particular tasks has been identified, the PCBU should consider changing:

* **the task**: for example, provide bar service rather than table service; avoid sales scripts with sexual innuendo and sexualised uniforms where not relevant to the role (e.g. sex work)
* **when the task is done**: for example, empty bins into an outside skip the following morning rather than in darkness or while intoxicated people may be gathered in the area
* **where the task is done**:for example,meet with clients in the office rather than their homes or isolated environments; move tasks to more visible areas of the workplace
* **how the task is done**: for example, deliver services online; do the task with other workers; assign workers to work in pairs or small groups
* **skills and capabilities**: for example, ensure project teams have the right mix of skills and gender ratios; assign experienced workers to supervise junior workers.

**Roles with a sexual component**

Workers in roles with a sexual component must still be protected from sexual harassment. The definition of sexual harassment includes the elements of conduct being unwelcome, in circumstances where a reasonable person would anticipate the possibility that the person harassed would be offended, humiliated or intimidated. Workers in these roles may face increased risks of harassment.

Where a role or task has a sexual component, it is particularly important to consult workers and ensure they are comfortable with, and consent to, the task and how it will be undertaken. For example, using intimacy coordinators in the entertainment industry to ensure actors are safe during intimate scenes; consulting sex workers on the services being offered, and where and how work is done, to manage risks of sexual harassment and sexual assault.

## Systems of work, including how work is managed, organised and supported

**WHS Regulations r. 55D(2)(d)**

Control measures

A PCBU must consider the systems of work when determining control measures. Systems of work are organisational rules, policies, procedures and work practices used to organise, manage and carry out work. Some systems of work may increase the risk of sexual and gender-based harassment. For example:

* working alone without the means to access support from other workers
* personal phone numbers or social media accounts being used for work purposes
* rules which prevent workers leaving a situation before it escalates
* lack of policies to prevent excessive consumption of alcohol at work events
* systems that confer a high level of individual authority and discretion on a supervisor or manager (e.g. allocation of overtime, promotion and training opportunities, or delivery of induction training).

It may not always be possible, or reasonably practicable, to design out risks that arise from such systems of work, but PCBUs must consider systems of work when controlling the risk of sexual and gender-based harassment.

Well-designed systems of work can control the risk of sexual and gender-based harassment. For example:

* maintaining communication with workers working alone (e.g. regularly checking in with workers conducting home visits)
* ensuring transparent and fair systems for allocation of work and the granting of promotion and training opportunities
* ensuring breaks are scheduled to minimise opportunities for people to be left isolated in the workplace for periods of time, and locating break areas in an appropriately visible location
* providing managers and supervisors with the authority and resources to implement and effectively maintain control measures, and allocating clear accountabilities for monitoring, reviewing and maintaining controls
* providing systems for workers to get immediate assistance from supervisors and managers if they experience sexual or gender-based harassment or identify a situation where there is increased risk (e.g. a group of intoxicated and rowdy customers)
* providing appropriate systems to alert workers to information about risks and control measures for patients, students, customers or clients known to present a particular risk of sexual or gender-based harassment
* avoiding workers working alone where possible (e.g. work in pairs; have security personnel present at closing time; provide workers a safe escort to their transport)
* avoiding workers being alone with third parties where there is a risk of harassment (e.g. patients, studies, clients or others)
* allowing workers to have input on who they are paired with if they are required to work in pairs (e.g. allow confidential requests not to work with someone where they have concerns about their behaviour)
* providing multiple avenues for ongoing supervision and support for workers, especially new, young or inexperienced workers
* ensuring identified risks, control measures and processes for reporting and responding to instances of sexual and gender-based harassment are widely communicated and regularly reviewed
* allowing workers to refuse or suspend service (where they are able to safely do so) if people fail to comply with the expected standard of behaviour, and banning them from future service if necessary
* establishing processes to block or otherwise manage online sexual and gender-based harassment.

## Workplace design and layout, and environmental conditions

**WHS Regulations r. 55D(2)(e)**

Control measures

A PCBU must consider the design and layout, and environmental conditions of the workplace when controlling the risk of sexual and gender-based harassment. This includes safe means of entering and exiting the workplace, and facilities for the welfare of workers. Poor workplace design and layout can increase the risk of sexual and gender-based harassment. It can create the conditions where harassment can occur more easily, be more severe and go unnoticed. For example, workplaces with poor:

* visibility (e.g. production lines with long distances between workstations and areas of low visibility)
* security and privacy (e.g. workplaces that require workers to change before and after their shifts but do not provide appropriate and secure facilities)
* layout (e.g. layouts that are adequate for those on day shift but provide less visibility of others during afternoon and night shifts with fewer workers).

Workplace design that accounts for the nature of the work and risks involved, including the risk of sexual and gender-based harassment, can help PCBUs ensure workers’ safety.

Examples of control measures that may be implemented to address risks arising from the design, layout and environmental conditions of workplaces include:

* providing visibility and natural surveillance:
	+ ensuring factories and warehouses provide for good natural surveillance or install cameras in areas such as stairwells or thoroughfares where workers could become isolated
	+ using clear or semi opaque glass or screens to improve natural surveillance in areas such as offices, storerooms and other segregated areas
	+ providing variable lighting inside vehicles operated at night to ensure the driver can monitor passenger behaviour without reducing their visibility of the road, and
	+ ensuring internal and external lighting provides good visibility, including safe entry and exit to the workplace
* improving security and privacy:
	+ preventing public or unnecessary access to areas workers work in alone or at night (e.g. security fences on construction sites, access via a security card or code, asking guests to leave the room while workers clean)
	+ installing electronically controlled doors with viewing panels that allow surveillance of public areas before the doors are opened from the inside
	+ installing video surveillance in areas that can be accessed by the public, both as a deterrent and to identify concerns
	+ separating workers from the public with fixed or removable barriers (e.g. high counters, furniture, screens on counters or screens between drivers and passengers)
	+ ensuring vehicles have central locking
	+ providing an alternate entrance and exit if there is a risk workers could be followed by customers, clients or patients
	+ ensuring worker facilities and amenities provide privacy and security (e.g. separating staff toilets where there is a risk of sexual or gender-based harassment from customers or patients, and securing change rooms and wash facilities for staff who need to change at work)
* consider the workplace layout:
	+ providing space for workers to conduct their tasks and move about freely without physical contact with others
	+ arranging furniture and partitions within the workplace to ensure good visibility of service areas, improving natural surveillance and avoid restrictions on movement
	+ ensuring there are no areas where workers could become trapped, such as rooms with keyed locks
	+ providing workers with a safe place to retreat to avoid harassment
	+ ensuring supervisors have visibility of their staff and space and access to provide support when required
	+ using furniture, barriers, screens or high counters to separate workers from the public
* considering the design and layout, and environmental conditions when work is conducted away from the usual workplace:
	+ selecting conference venues with appropriate facilities
	+ considering the safety of accommodation used for work trips (e.g. select hotels with secure and private rooms and with safe access to transport and other required amenities)
	+ ensuring technology used when away from the usual workplace is safe (e.g. monitor apps used to communicate for inappropriate behaviour, allow parties to be locked out of the platform after hours, or use quarantine or filtering functions pending review)
	+ consulting, cooperating and coordinating with other PCBUs, such as the owners of hotels or meeting venues, to identify and manage risks.

## Worker accommodation

**WHS Regulations r. 55D(2)(f)**

Control measures

When controlling the risk of sexual and gender-based harassment, the PCBU must consider the design and layout and environmental conditions of worker accommodation under their ownership, management or control. For example:

* ensuring worker accommodation is secure, both for the worker while they are occupying it and their possessions while they are temporarily away (e.g. while they are on shift)
* managing the risk of lost or stolen means of access (e.g. lost keys and access cards), and ensuring each key only opens the necessary room and ensure access can be promptly removed if necessary (e.g. electronic key card access which can be reprogrammed or locks which can be rekeyed)
* providing security personnel on site with regular patrols and security cameras
* providing well-lit access to and from accommodation and areas workers may need to access at night, such as eateries, laundries, or other common areas
* considering the layout and allocation of worker accommodation and common areas
* managing risks associated with shared accommodation and limiting who can access accommodation
* implementing strategies to prevent the misuse of alcohol including intoxication in worker accommodation.

## Plant, substances and structures at the workplace

**WHS Regulations r. 55D(2)(g)**

Control measures

A PCBU must consider the plant, substances and structures at the workplace when determining control measures for sexual or gender-based harassment. Plant (e.g. machinery, equipment, appliances and tools), structures and substances used at work can increase or control the risk of psychosocial hazards.

Well-designed and maintained plant and structures can help PCBUs to manage risks of sexual and gender-based harassment. For example:

* installing and maintaining effective communication systems like phones, intercoms and alarm systems
* ensuring effective communication systems for workers working alone or in remote or isolated environments
* equipping vehicles with location detection devices (e.g. GPS tracking systems) to assist with locating drivers in distress
* providing lifting equipment to assist in handling patients to minimise the need for close physical proximity
* designing structures with sufficient space inside to allow workers to pass without physical contact (e.g. walk in freezers)
* providing equipment to enable patients requiring care to carry out intimate tasks themselves where possible.
* selecting equipment which avoids placing workers in vulnerable positions (e.g. provide mops to clean floors instead of handheld sponges)
* installing software that blocks client communications that use sexually explicit or offensive language and prevents access to explicit web content.

## Workplace interactions or behaviours

**WHS Regulations r. 55D(2)(h)**

Control measures

A PCBU must consider workplace interactions and behaviours when determining control measures for sexual or gender-based harassment. The way workers interact with each other and other persons at work, their behaviour and relationships can introduce psychosocial hazards, including the risk of sexual and gender-based harassment. However, supportive leadership, positive relationships and professional and respectful interactions can help to minimise these risks.

Poor organisational culture can hamper efforts to control the risk of sexual and gender‑based harassment by discouraging workers from seeking and providing support, reporting hazards, participating in consultation and hampering effective implementation of internal policies. Leaders demonstrating poor behaviour are likely to contribute to poor organisational culture. PCBUs can minimise the risks of sexual and gender-based harassment by influencing workplace interactions and behaviours.

In managing the behaviours and interactions among workers, PCBUs can:

* set, model and enforce acceptable behaviour standards for all people in the workplace
* address inappropriate or harmful behaviours early, even if workers ‘seem ok with it’ or no one raises a concern
* address bullying, aggression, other harassment, discrimination and incivility or disrespect early and appropriately. This not only prevents behaviours escalating but workers are less likely to report sexual harassment if other harmful behaviours are not addressed
* implement policies and strategies to address gender inequality, lack of diversity and power imbalances at work
* ensure responsible service of alcohol at work-related events
* ensure workers understand what they should do if they experience or see sexual or gender-based harassment in the workplace and are aware of and trained on the organisation's policies

In managing the behaviours of others in the workplace, such as customers, clients, patients, visitors, students, and members of the public; PCBUs can:

* clearly communicate to clients and customers that sexual and gender-based harassment is not tolerated (e.g. in service agreements, contracts or on signage) and have policies and processes for handling inappropriate behaviours from others in the workplace
* actively address stereotypes or sexual content in your communications (e.g. ensure advertising does not appear to condone sexual harassment of workers)
* ban or refuse service to persons with a history of sexual or gender-based harassment (e.g. patrons at pubs or clients at gyms), or (if service is necessary, such as for medical care) put in place additional measures to protect workers and others (e.g. requiring attendance at a clinic rather than providing in-home care)
* encourage workers to keep records and screenshots if harmful behaviour occurs online or through phone communication and report the behaviour to their supervisor
* set, model and enforce acceptable behaviour standards for all people, including the public, in the workplace
* foster a positive and respectful work culture where sexual and gender-based harassment is not tolerated
* implement policies and strategies to address gender inequality, lack of diversity and power imbalances in the business or undertaking
* ensure responsible service of alcohol in the workplace or at work-related events and exclude customers who are intoxicated.

**Workplace policies on harmful behaviours**

A workplace policy addressing harmful behaviours can help set clear expectations about behaviours at the workplace and during work-related activities. It can provide important information for workers, supervisors and managers.

Policies alone are administrative controls which may not be the most effective control measure, particularly when used in isolation. However, a policy can be used to document more effective and reliable control measures and ensure information about controls and processes is transparent and shared with everyone involved.

A PCBU may have a separate policy on sexual and gender-based harassment or one policy which covers several WHS issues (e.g. all harmful behaviours, all psychosocial risks or all WHS risks). A PCBU may have a sexual and gender-based harassment policy that focuses only on behaviours and interactions at the workplace, or incorporate these elements into a broader policy on the business or undertaking’s risk management process to prevent sexual and gender-based harassment, including the control measures that have been put in place.

A workplace policy dealing with sexual and gender-based harassment may include:

* duties of the PCBU, all levels of worker, including managers and supervisors
* the process followed to manage the risk of sexual and gender-based harassment
* definitions of sexual and gender-based harassment, examples of types of behaviours that are not allowed and a clear statement that sexual harassment is unlawful and is unacceptable wherever and whenever it takes place, including from third-parties such as clients, customers, patients, students, services user, visitors and members of the public
* workplace standards about behaviours, attitudes and language that disrespects or excludes people based on sex or gender, or assumptions about gender stereotypes and socially prescribed gender roles
* information about online sexual and gender-based harassment and rules about the appropriate use of social media and technology
* the possible consequences of breaching the policy and how a breach and any sanction will be determined
* what a worker can/should do if they experience or witness sexual or gender-based harassment
* information on the options workers have to report sexual and gender-based harassment
* the process the organisation will undertake when receiving a report or dealing with a concern, including keeping people safe while the matter is dealt with, options for how a complaint can be addressed and when an external or independent third-party may be engaged to investigate
* the support services available and referral information for all people involved.

Everyone can, and should, play a role in preventing sexual and gender-based harassment. Workplace policies should be developed in consultation with workers and their health and safety representatives, and all workers must be made aware of the policies and behaviour standards expected of them.

 Worker duties

Workers must comply with reasonable health and safety instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to workers.

For example, a worker must cooperate with a policy communicated to them stating they must not sexually harass other workers or participate in, encourage, or condone sexual harassment.

## Information, training, instruction and supervision provided to workers

**WHS Regulations r. 39**

Provision of information, training and instruction

**WHS Regulations r. 55D(2)(i)**

Control measures

The PCBU must consider workplace information, training, instruction and supervision provided to workers when determining control measures for sexual or gender-based harassment.

Information, training, instruction and supervision may be necessary so control measures can be implemented effectively (e.g. provide training on processes implemented to control sexual and gender-based harassment). Supervision may also directly control some sexual and gender-based harassment risks, for example, providing supervision for workers interacting with patients.

Information, training and instruction can:

* increase workers’ understanding of, and knowledge and capability to participate in, the risk management process, including implementing and maintaining the control measures the workplace has in place to prevent sexual and gender-based harassment
* influence worker behaviour in terms of not harassing others and responding appropriately if sexual or gender-based harassment does occur.

Information, training and instruction should be provided to workers at all levels of an organisation and be easily accessible. It must be provided in a form that can be understood by all workers, for example workers who are culturally or linguistically diverse. Induction and training processes should ensure new workers receive timely training and it should be provided at appropriate intervals (e.g. refresher training).

A trauma-informed approach should be applied to training and instruction. For example, not using detailed or explicit examples of sexual assault in training or asking participants to disclose personal traumatic experiences, and including content warnings at the beginning of training where exposure to potentially distressing information cannot be eliminated. Information about trauma-informed approaches is included in [section 7.3](#_Trauma_informed) of this Code.

Depending on the size and nature of the business or undertaking, and the risks involved, this may be done by:

* verbally informing and reminding all workers about the workplace policies, procedures and systems of work
* displaying the policy on notice boards
* publishing the policy on the staff intranet or emailing it to workers
* distributing brochures or displaying posters
* providing formal training on preventing sexual harassment, including through induction processes for new workers.

Information, training, instruction and supervision for sexual and gender-based harassment should be appropriate to the different roles, responsibility, skills and capabilities of workers.

Information, training, instruction and supervision to support implementation of control measures may be focused on sexual and gender-based harassment or incorporated into broader induction, policy and procedures training. For example, where the same control measures, such as locking doors, are used to control a range of risks. It is important that information is provided regularly and reinforced in systems of work, similar to education about other WHS risks.

Information, training, instruction and supervision on sexual and gender-based harassment control measures may include:

* information on the risks at the workplace and the control measures implemented to prevent and respond to sexual and gender-based harassment
* how to deal with difficult customers, students, patients or clients (including those displaying inappropriate or unlawful behaviour), when and how to escalate issues to senior workers and procedures to report sexual and gender-based harassment
* additional information, instruction and supervision to workers in relation to clients or patients that pose a particular risk, including information about the risk and how that risk should be controlled.

Information, training and instruction on sexual and gender-based harassment more broadly can help to build a respectful culture and influence individual behaviour. It may include:

* what sexual and gender-based harassment are and that the behaviour is unlawful - it is important that all workers have a strong understanding of the range of behaviours that can constitute sexual and gender-based harassment
* the nature and prevalence of sexual and gender-based harassment
* that certain forms of sexual and gender-based harassment (e.g. assault, indecent exposure, stalking, sexual assault, and obscene or threatening communication) can be criminal offences and may be investigated by the police
* drivers of sexual and gender-based harassment, including gender inequality, and cultural and systemic drivers
* understanding diversity, including the concepts of gender, sexuality, disability and cultural and linguistic diversity
* the impact of sexual and gender-based harassment and victimisation, including physical harm, psychological harm and economic impacts
* workplace policies, including acceptable standards of behaviour, consequences for breaches of the policy and ensuring people involved in complaints will not be victimised
* communication skills and how to respond to sexual and gender-based harassment, including strategies for addressing inappropriate behaviour
* bystander-intervention training so people know what to do if they witness sexual or gender-based harassment
* workers’ right to cease unsafe work (including when and how it can be exercised)
* internal and external reporting mechanisms if sexual or gender-based harassment occur and the support available.

**Manager and supervisor training**

Sexual and gender-based harassment training for managers can:

* provide managers and supervisors with a better understanding of what sexual and gender-based harassment are, their drivers and impacts
* help managers and supervisors contribute to the PCBU’s risks management processes
* help managers and supervisors implement the PCBU’s policies and procedures to prevent sexual and gender-based harassment
* provide managers and supervisors with the skills to step in and take immediate action if they witness sexual or gender-based harassment occurring in the workplace, or lower‑level disrespectful behaviour that creates a risk of harassment
* provide managers and supervisors with the skills to respond and support their staff, including through referral to appropriate services, if sexual or gender-based harassment occur.

**Contact officer training**

Some organisations have one or more contact officers as a first point of contact for someone who may experience or witness sexual and gender-based harassment at work. Contact officers can provide information and support to workers as well as apply the organisation’s policies and procedures when a complaint is raised. PCBUs may wish to engage an external contact officer if appropriate.

A PCBU should provide training for workers who are or may become contact officers for sexual and gender-based harassment concerns or complaints. Training can help provide contact officers with the knowledge and skills to:

* understand the nature and impacts of sexual and gender-based harassment
* apply effective communication and listening skills, including trauma-informed approaches to sexual and gender-based harassment
* explain options to address concerns and resolve complaints
* explain the legal protections and support available to workers
* determine when a concern or complaint should be escalated
* understand the challenges that contact officers might face and how to manage these, including potential impacts on the psychological health of contact officers.

#

# Maintain and review

**WHS Regulations r. 37**Maintenance of control measures

**WHS Regulations r. 38**

Review of control measures

The last step of the risk management process is to maintain control measures and review their effectiveness to ensure they are working as planned. PCBUs must review their controls measures, and modify or replace a control measure if it is not working effectively.

Control measures should be reviewed regularly, and *must* be reviewed:

* when the control measure is not eliminating or minimising the risks so far as is reasonably practicable
* before a change at the workplace that is likely to give rise to a new or different health and safety risk that the control measure may not effectively control
* if a new hazard or risk is identified
* if the results of consultation indicate a review is necessary, or
* if a HSR requests a review because they reasonably believe one of the above has occurred and it has not already been adequately reviewed.

Reports and complaints (including informal complaints) from workers may identify new sexual or gender-based harassment risks or risks that have not been controlled so far as is reasonably practicable. This should trigger a review of whether the existing control measures are effective, if the response procedures worked the way they were supposed to and whether new risks have been identified that also need to be managed.

Common review methods include inspecting the workplace, consultation, and analysing reports. PCBUs can use the same methods as in the initial hazard identification step to check control measures. The PCBU must also consult workers and their HSRs.

The person undertaking reviews of control measures should have the authority and resources to conduct the review thoroughly. They should be empowered to recommend changes where necessary.Questions to consider in the review process may include:

* Are control measures working effectively, without creating new or increased risks?
* Have workers reported feeling uncomfortable with other workers, customers, patients, students or clients?
* Have all sexual and gender-based harassment risks been identified?
* Have risks changed or are they different from what was previously assessed?
* Are workers actively involved in the risk management process?
* Are workers openly raising health and safety concerns and reporting problems promptly?
* Has instruction and training been provided to all relevant workers?
* Are there any upcoming changes that are likely to result in a worker being exposed to risks of sexual or gender-based harassment?
* Are new control measures available that might better control the risks?
* Have risks been eliminated or minimised as far as is reasonably practicable?

If the effectiveness of the control measures is in doubt, PCBUs should go back through the risk management steps, review their information, and make further decisions about control measures.

# Investigating and responding to reports

A PCBU’s internal WHS investigation should focus on protecting workers and others from harm by identifying whether there is a risk of sexual or gender-based harassment that has not been controlled so far as is reasonably practicable, or there are more effective and reliable control measures available.

A WHS investigation does not require lodgement of a formal complaint or substantiation of an allegation.

While a WHS investigation focuses on the risks and control measures, it may need to address the behaviour of individuals, such as whether they have followed health and safety policies that have been communicated to them.

An investigation may itself introduce WHS risks. These risks must be eliminated or minimised so far as is reasonably practicable. This can be done by:

* ensuring the investigation is fair, transparent and timely
* ensuring the investigation is impartial and takes a non-biased approach, especially in environments with a lack of diversity, including in management and leadership
* ensuring decision makers are appropriately trained, unbiased and accountable where they have discretion over reporting and systems
* ensuring due process for both those who raised the issue and any workers who have had allegations made about them
* ensuring workers have access to support
* maintaining appropriate privacy and confidentiality of all workers involved
* ensuring appropriate information about the outcome of any investigation is provided to the individual who reported experiencing the harassment
* taking a trauma-informed approach (see [Section 7.3](#_Trauma_informed)).

A WHS investigation may occur in parallel with other investigations such as an investigation into whether there has been a breach of employment codes of conduct, professional standards or other legal frameworks.

Supporting workers

There are a range of options and assistance available to workers impacted by sexual and gender-based harassment. When dealing with a report of sexual or gender-based harassment and discussing options, it is important to respect the affected worker’s desired outcome and preferred way of managing the incident. This should include consideration of how the disclosure of the complaint may impact the worker.

Workers may also need assistance to access support services. They should be provided with a range of options and allowed to seek the support that best suits their needs. [Appendix B](#_Appendix_B_–_1) provides links to relevant resources.

## 7.1 Nature of investigation

The nature of a WHS investigation should be proportionate to the risks and suit the circumstances. When making decisions about the nature of an investigation, PCBUs should consider the:

* level of risk involved
* complexity of the situation
* number of workers involved or affected.

A formal investigation may not always be the most appropriate option. For example, a first incident of a worker using inappropriate language may be addressed through immediate informal discussions with the workers involved. The earlier problems can be identified and addressed, the less likely a formal and complex investigation will be required. Decisions about whether a formal investigation will be conducted should also be considered carefully in the context of other workplace laws.

Small businesses may require assistance from external parties if a matter is complex or has a high risk. PCBUs can seek advice from WorkSafe WA, industry bodies or WHS experts.

While WHS investigations are not focused on individual actions, but on the risks to health and safety from the actions, they should still take a trauma-informed approach.

## 7.2 Selecting an investigator

Where possible, PCBUs should utilise an investigator who is likely to have the trust of all parties involved. They should be impartial and have the skills and knowledge to identify sexual and gender-based harassment, assess the risks and recommend appropriate controls.

An external investigator may be required if an impartial internal investigator is not available, for example where a matter involves an allegation about the behaviours of a senior manager. When selecting an external investigator, PCBUs should ensure they have the expertise and knowledge to conduct investigations in a trauma-informed way, and that they do not have any conflicts of interest.

## 7.3 Trauma-informed approach

When responding to sexual or gender-based harassment, PCBUs should apply trauma-informed principles. This approach can support workers’ trust and participation in investigation processes, and minimises the risk of causing distress or further harm (e.g. re-traumatisation) to affected workers through the organisational response.

The concept of a trauma-informed approach means workplace systems recognise and acknowledge that worker experiences of trauma may impact how those experiencing trauma from sexual and gender-based harassment or with a history of trauma interact with systems and processes. For example, trauma may impact how a worker responds or recalls events and can describe them to an investigator.

A trauma-informed approach includes principles of:

* **Safety** (both physical and emotional). For example: Does the investigation process consider the emotional safety and wellbeing of affected individuals, or is the process likely to distress someone with a history of trauma? Does the process ensure the affected person is protected against retaliation, re-victimisation and re-traumatisation?
* **Trust**. For example: Is the process sensitive to people’s needs, empowering to affected individuals, offering some flexibility and opportunity for choice where reasonably practicable? Are workers supported to make informed choices, given timely information about the process/their rights? Does the process offer suitable support for the affected person?
* **Equity and respect**.For example: Does the process ensure interpersonal respect, acknowledge diversity in all its forms and is it inclusive? Does the process ensure all parties are kept informed in a timely and consistent manner throughout the process and ensure all parties are listened to with empathy and without judgment?
* **Hope**. For example: Does the process assume optimism and the possibility of recovery and resolution?

## 7.4 Confidentiality

It is important that PCBUs develop supportive environments where workers feel safe to raise sexual and gender-based harassment risks and disclose instances of harassment, including as part of an investigation.

All workers should be made aware of any mandatory reporting or disclosure obligations that apply to the PCBU or employer and may limit confidentiality, either under state and territory laws or as part of the worker’s employment contract. Workers should be made aware of how their personal information will be managed and protected when making a report.

Confidentiality clauses in settlement agreements should not be used in a way that creates a risk to the health and safety of workers, and must not be used in a way that prevents identification of hazards and management of WHS risks.

For guidance on the use of confidentiality clauses in the settlement of workplace sexual and gender-based harassment matters see the WorkSafe WA adaptation of the Australian Human Rights Commission’s [*Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*.](https://www.respectatwork.gov.au/resource-hub/guidelines-use-confidentiality-clauses-resolution-workplace-sexual-harassment-complaints)

## 7.5 Reporting to the regulator

**WHS Act s. 35**

What is a notifiable incident

**WHS Act s. 36**

What is a serious injury or illness

**WHS Act s. 38**

Duty to notify of notifiable incidents

**WHS Act s. 39**

Duty to preserve incident site

PCBUs must report certain injuries and incidents to the regulator immediately after becoming aware of the incident. If a psychosocial hazard has caused injuries of a type specified in the WHS Act, then the incident is notifiable. For example, if the incident:

* requires the person to have immediate treatment as an in-patient in a hospital
* occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment
* in the opinion of a medical practitioner (including a general practitioner), is likely to prevent the person from being able to perform their normal work for 10 days or more. This includes both lost time and restricted work injuries.

Additional notification requirements apply to mine operators under the WHS (Mines) Regulations (i.e. reportable incidents). Further information on this topic is available in the WorkSafe WA information sheet, *Gendered violence: Notification of sexual harassment and/or assault to WorkSafe Mines Safety*.

For more information about reporting incidents to the regulator, refer to the WorkSafe WA Interpretive guideline: *Incident notification*.

# Leadership and culture

## Leadership

Leaders have an important role in creating safe and respectful workplaces that are proactive in managing the risks of sexual and gender-based harassment. Leadership in health and safety is more than talking about it or making statements of commitment. To manage WHS risks from sexual and gender-based harassment leaders should ensure they understand:

* the prevalence, nature, and drivers of sexual and gender-based harassment
* where there are risks of sexual and gender-based harassment in their workplace
* how the risks are being controlled or if they are not, what controls need to be implemented.

Leaders should ensure the organisation has effective communication processes to maintain their awareness and understanding of risks in the workplace. They should take proactive steps to ensure the business or undertaking has effective governance arrangements to allow it to address sexual and gender-based harassment and that the resources required are provided. Their commitment to preventing sexual and gender-based harassment should be demonstrated in the organisational priorities they set and the way they choose to measure the organisation’s success. They should ensure this commitment is effectively communicated across the organisation.

They should ensure that WHS management and human resources policies and strategies are well aligned and appropriately integrated. For example, human resources policies and approaches to recruitment, performance management, misconduct, promotion, accountability and support will impact the effectiveness of WHS risk management.

Leaders set the standard for acceptable behaviour within an organisation. They should model attitudes and behaviours that show respect for all workers and actively call out and address inappropriate behaviour.

## 8.2 Officer duties under WHS laws

Senior leaders who are **officers** under the WHS Act, such as company directors, have a duty to exercise due diligence to ensure the PCBU complies with its duties under the WHS Act and WHS Regulations. For sexual and gender-based harassment, this means the officer must take reasonable steps to:

* have effective consultation, coordination and cooperation processes. For example, periodic visits sites to talk with workers and supervisors about hazards
* acquire and keep up-to-date knowledge of WHS matters, including psychosocial hazards such as sexual and gender-based harassment (e.g. by attending information sessions such as conferences, reading relevant publications and journals, and requesting and reading internal information and reports)
* gain an understanding of the nature of the PCBU’s operations, and the sexual and gender-based harassment risks associated with those operations
* ensure the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise the risk of sexual and gender-based harassment from work carried out by the business or undertaking
* ensure the PCBU has appropriate processes for receiving and considering information regarding incidents and risk of sexual and gender-based harassment and responding in a timely way to that information
* ensure the PCBU has, and implements, processes for complying with any duty or obligation they have under the WHS Act and Regulations (e.g. taking active measures to ensure that the PCBU is complying with its duties, such as requesting information on risk assessments and incident notifications rather than waiting for information to be provided)
* verify the provision and use of the resources and processes mentioned above and that they are performing effectively (e.g. checking the approach to systematic WHS management and key performance indicators are appropriate, seeking out their own information on the organisation’s WHS performance, and insisting that reports are provided to them promptly and their feedback actioned).

For information on officers and their duties see the WorkSafe WA Interpretive Guideline: [*The health and safety duty of an officer*](https://www.safeworkaustralia.gov.au/resources-and-publications/guidance-materials/health-and-safety-duty-officer).

## 8.3 Culture

Organisational culture is made up of the values and behaviours that workers share and show, and the shared attitudes and beliefs in the workplace’s written and unwritten rules.

Good organisational culture recognises that diverse and inclusive workplaces lead to better outcomes in all aspects of an organisation’s work. If workers know their leaders place high importance on appropriate and respectful behaviour and preventing sexual and gender-based harassment, workers are more likely to:

* display appropriate behaviours
* ensure sexual and gender-based harassment is recognised as a health and safety issue
* feel safe and motivated to report sexual and gender-based harassment
* make preventing and addressing sexual and gender-based harassment part of the organisation’s culture.

An organisational culture where workers perceive that sexual and gender-based harassment is tolerated or accepted can contribute to the prevalence of such harassment in the workplace. It is important for a PCBU to understand the culture of their workplace. This can be achieved by assessing the existing culture to understand the values, attitudes, beliefs, and behaviours regarding sexual and gender-based harassment. This can be done by consulting workers and through surveys, focus groups, workplace observations and speaking with workers.

Leadership has an important role in changing an organisation’s culture to be one that prevents sexual and gender-based harassment and there are a range of practical measures that can be taken. For example:

* not displaying and actively removing inappropriate images in the workplace (e.g. inappropriate calendars or advertisements)
* ensuring the organisation’s performance management, recruitment and promotion policies and practices place value on respectful behaviour and diversity
* ensure, in consultation with workers, uniforms and advertisements do not sexualise workers unless an integral part of the role (i.e. sex work)
* take reports of sexual and gender-based harassment seriously and respond in a prompt and supportive way in keeping with organisational policies
* ensure social activities are inclusive and appropriate
* ensure workplace policies reflect the culture the PCBU wishes to establish, and sets a clear standard for appropriate behaviour
* empower workers to refuse, restrict or suspend service if people fail to comply with the expected standard of behaviour
* ensure managers and leaders hold regular informal or formal discussions about the importance of health and safety issues including sexual and gender-based harassment in the workplace
* train workers on the nature, drivers and impacts of sexual and gender-based harassment as part of induction training and regular training.

# Appendix A – Definitions

Definitions of sexual harassment, sex-based harassment and hostile working environments are based on definitions in *the Sex Discrimination Act 1984* (Cth). Legal definitions may vary in each state and territory.

**Sexual harassment**

Sexual harassment is any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person harassed would be offended, humiliated or intimidated.

**Sex- or gender-based harassment**

Sex- or gender-based harassment is any unwelcome conduct of an offensive or demeaning nature by reason of the person's gender or sex, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

**Sexual assault**

Sexual assault is an act of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion, including any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), indecent assault, penetration by objects, forced sexual activity that did not end in penetration and attempts to force a person into sexual activity. Incidents so defined would be an offence under state and territory criminal law. Note: Sexual assault occurs when a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent

**Hostile working environment (on the ground of sex)**

A hostile work environment is an environment that is offensive, intimidating or humiliating to a person because of their sex or characteristics linked to their sex.

**Discrimination**

Discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics. This can include direct or indirect discrimination on the basis of sex, gender, or sexuality.

**Gendered violence**

Gendered violence is a broad term that captures any behaviour directed at any person or that affects a person because of their sex or gender, or because they do not adhere to socially prescribed gender roles.

Socially prescribed gender roles are society’s traditional ideas about how men and women should look or act, what characteristics they should have, or their roles in the workplace, home or public life.

**Misgendering or deadnaming**

Purposely misgendering, focusing on a person’s birth-assigned sex or purposely deadnaming a person (deadnaming means using a person’s former name without their consent) can be a form of discrimination or harassment if it is done in a manner that indicates hostility.

**Intersectional harassment**

Intersectional harassment is when someone experiences harassment or discrimination based on multiple aspects of their identity, such as their race, gender, disability, sexual orientation, or social class.

#

# Appendix B – Resources

There are a range of avenues to address sexual harassment at work and to access support.

Even where sexual harassment is being addressed through another avenue, PCBUs must manage the WHS risks to ensure the health and safety of their workers and others, so far as is reasonably practicable.

**Police**

If you believe workplace sexual harassment involves criminal conduct, including actual or attempted sexual assault, you can report the matter to police.

The Police Assistance Line operates 24 hours a day, 7 days a week and allows the reporting of crime over the phone with the information being made immediately available to your local police.

* Phone: 131 444 (in cases of emergency, please call 000)
* Website: [www.aic.gov.au/contact-us/report-crime](http://www.aic.gov.au/contact-us/report-crime)

**Human rights agencies**

Human rights agencies can investigate reports about human rights breaches and discrimination, including workplace sexual harassment:

[The Australian Human Rights Commission](https://humanrights.gov.au/) (AHRC)

The AHRC considers and accepts complaints of workplace discrimination, harassment and bullying covered under federal law. This may include bullying or harassment complaints based on race, sex, age, sexual orientation, religion or disability.

The AHRC’s Respect@Work Information Service is free and confidential, and can provide information and referrals in relation to workplace sexual harassment.

* Phone: 1300 656 419
* Email: respect@humanrights.gov
* Website: [The Australian Human Rights Commission](https://humanrights.gov.au/)

[WA Equal Opportunity Commission](https://www.wa.gov.au/organisation/equal-opportunity-commission)

The WA Equal Opportunity Commission is the state’s anti-discrimination body, which can consider and investigate breaches of WA’s Equal Opportunity Act (1984) in workplaces. The dispute resolution process often involves conciliation between both parties.

* Phone: 1800 198 149
* Website: [Equal Opportunity Commission WA](https://www.wa.gov.au/organisation/equal-opportunity-commission)

**Fair Work Commission**

If you are a worker and have been treated unfairly or punished by your employer because you reported sexual harassment, you may be able to make a complaint to the Fair Work Commission.

In certain circumstances, they also have the power to issue a ‘stop sexual harassment order' to try to stop the harassment from continuing. For more information or to check your eligibility, contact the Fair Work Commission.

* Phone: 1300 799 675
* Website: [fwc.gov.au](http://www.fwc.gov.au/)

**Fair Work Ombudsman**

The Fair Work Ombudsman is Australia’s national workplace relations regulator. It provides employees and employers with information and advice about workplace entitlements and obligations.

The Fair Work Ombudsman can provide general information about protections from sexual harassment, preventing and managing sexual harassment in the workplace.

* Phone: 13 13 94
* Website: [fairwork.gov.au](http://www.fairwork.gov.au/)

**Workers’ compensation**

If a worker sustains a physical or psychological injury from workplace sexual harassment requiring medical attention or time off work, they may be able to access worker’s compensation.

* Western Australia: [WorkCover WA](http://www.workcover.wa.gov.au/)
* Commonwealth: [Comcare](https://www.comcare.gov.au/claims)

**Support services**

There are a range of mental health bodies that can provide individual support to workers. The National Mental Health Commission provides a list of organisations providing mental health support.

* Website: [www.mentalhealthcommission.gov.au/find-support](http://www.mentalhealthcommission.gov.au/find-support)

**Domestic, family and sexual violence counselling**

1800RESPECT is the national domestic, family and sexual violence counselling, information and support service.

* Phone: 1800 737 732
* Website: [1800RESPECT](https://www.1800respect.org.au/)

**Centre for women’s safety and wellbeing (WA)**

An independent, representative peak body for women's specialist domestic and family violence, community-based women’s health and sexual assault services in Western Australia. The Centre for Women’s Safety and Wellbeing provides a directory of services in WA including sexual assault support services, legal assistance services, women’s community-based health services, and men’s programs and supports.

* Website: <https://cwsw.org.au/>

**QLife**

Provides Australia-wide LGBTI peer support and referral for people wanting to talk about a range of issues.

* Phone: 1800 184 572
* Website: qlife.org.au (webchat service available)

 **Rainbow Sexual, Domestic and Family Violence Helpline**

For anyone from the LGBTIQA+ community whose life has been impacted by sexual domestic and/or family violence. This service is free and confidential. Available 24/7.

* Phone: 1800 497 212

[**Say It Out Loud**](https://sayitoutloud.org.au/)

Say It Out Loud is an online resource for LGBTQA+ people who are experiencing family and intimate partner violence.

* Website: sayitoutloud.org.au

**Men’s Referral Service**

The Men’s Referral Service is the national counselling, information and referral service for men looking to change their behaviour.

* **Phone:** 1300 766 491
* **Website:** www.ntv.org.au

**Full Stop Australia**

A free, confidential trauma specialist counselling and recovery service for people of all ages and genders experiencing sexual, domestic and family violence. Full Stop Australia also offers best-practice training and professional services to support safe and respectful workplaces, educational environments, and communities.

* **Phone:**1800 943 539
* **Website:** fullstop.org.au

**SARC**

The Sexual Assault Resource Centre (SARC) is a free service located in Perth providing crisis services to people who have experienced a recent sexual assault (rape) in the last two weeks; and counselling for sexual assault or sexual abuse experienced recently or in the past.

* **Phone:** **(08) 6458 1828 or 1800 199 888**
* **Website:** https://www.kemh.health.wa.gov.au/Other-Services/SARC

 **13YARN**

National crisis support line for mob who are feeling overwhelmed or having difficulty coping. They offer a confidential one-on-one yarning opportunity with a Lifeline-trained Aboriginal & Torres Strait Islander Crisis Supporter who can provide crisis support 24/7.

* **Phone:**139 276
* **Website:**[13YARN](https://www.13yarn.org.au/)