

ADVICE NOTE: Sexual Harassment in the Workplace

This advice note is intended to give a broad overview of sexual harassment in the workplace. It provides a definition of sexual harassment, along with information about an organisation's obligations to prevent sexual harassment and tips on how to do so. It is not intended to replace any legal advice.

Key points:

- Employers have an obligation to prevent sexual harassment in the workplace
- Defined entities under the *Victorian Gender Equality Act* have an obligation to report on rates of sexual harassment in their workplace gender audits
- Staff should be supported to make a report when they see or experience sexual harassment
- Women's Health Grampians can offer training and support in creating safe and respectful workplaces.

What is sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances¹.

It is important to note that the intentions of the person doing the behaviour are not relevant; what matters is how it is received by the target.

What are an organisation's obligations?

Under the *Equal Opportunity Act 2010*, employers have a positive duty to eliminate discrimination, sexual harassment and victimisation as far as possible. This means that positive action should be taken to prevent these behaviours – regardless of whether someone has made a complaint². The Act calls for “reasonable and proportionate measures to eliminate ... discrimination, sexual harassment or victimisation as far as possible.”³

Both individuals and their workplaces can be held responsible for unlawful behaviour.

¹ Australian Human Rights Commission 2021, *The Legal Definition of Sexual Harassment*, viewed 27 May 2021, <<https://humanrights.gov.au/our-work/sexual-harassment-workplace-legal-definition-sexual-harassment>>.

² Victorian Equal Opportunity and Human Rights Commission 2021, *Positive Duty*, viewed 27 May 2021, <<https://www.humanrights.vic.gov.au/for-organisations/positive-duty/>>.

³ Parliament of Victoria 2010, *Equal Opportunity Act 2010*, viewed 27 May 2021, <https://content.legislation.vic.gov.au/sites/default/files/29c43705-c5ac-3ef7-9ca2-366392ee6f7e_10-16aa020%20authorised.pdf>.

The 'workplace' includes: physical work premises; at work-related events outside the physical work premises (for example, at a staff party or conference); in online spaces and social media platforms in connection with employment; and between people sharing a workplace (such as co-working space).

Workplace sexual harassment is a workplace gender equality indicator in the *Gender Equality Act*. Organisations which are defined entities are required to report on rates of sexual harassment in their workplace gender audits⁴.

Organisations also have a duty to provide and maintain a working environment which is safe and free of risks to health, so far as is reasonably practicable under the *Occupational Health and Safety Act 2004*⁵.

Besides the legal obligations, it is simply good practice to provide a safe and healthy working environment, where staff feel happy and supported.

How can organisations work to prevent sexual harassment?

There are many things organisations can do to prevent sexual harassment. The Victorian Equal Opportunity and Human Rights Commission's [Framework to Prevent and Respond to Sexual Harassment](#) outlines the six minimum standards for employers.

It is important to ensure that options to report sexual harassment are clear and communicated to all staff. Staff members who do report or witness sexual harassment should be supported and should not be penalised in any way.

Women's Health Grampians offers CoRE members a range of training options which can assist organisations in creating safe and respectful workplaces, free of sexual harassment. Contact your Regional Consultant for more details.

What resources are available?

- **Guideline: Preventing and responding to sexual harassment (VEOHRC)**
<https://www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/>
- **Sexual harassment support and response tool (VEOHRC)**
<https://www.humanrights.vic.gov.au/resources/respond-to-sexual-harassment/>
- **Framework to prevent and respond to sexual harassment (VEOHRC)**
[https://www.humanrights.vic.gov.au/static/3517b901ccb860f43e1c586e07c23b1c/Resource-Framework to prevent respond sexual harassment-Aug20.pdf](https://www.humanrights.vic.gov.au/static/3517b901ccb860f43e1c586e07c23b1c/Resource-Framework%20to%20prevent%20respond%20sexual%20harassment-Aug20.pdf)
- **Occupational health and safety – your legal duties (Work Safe)**
<https://www.worksafe.vic.gov.au/occupational-health-and-safety-your-legal-duties>

⁴ Victorian Government 2021, 'Workplace Gender Auditing', *Commission for Gender Equality in the Public Sector*, viewed 27 May 2021, < <https://www.genderequalitycommission.vic.gov.au/workplace-gender-auditing>>.

⁵ Work Safe Victoria 2021, *Occupational Health and Safety – Your legal duties*, viewed 27 May 2021, < <https://www.worksafe.vic.gov.au/occupational-health-and-safety-your-legal-duties>>.