

Calling Out Sexual Harassment

A guide to dealing with sexual harassment
and creating safe, respectful workplaces

Creating a healthy workplace



Of course we all want – and are entitled to – a safe, healthy workplace that is free of all forms of harassment and bullying. But, what does a healthy workplace look like and what policies and systems need to be in place to support that?

The State Services Commission created a working group, which included PSA representatives, to address the issue of sexual harassment in the workplace. The working group identified a number of things organisations can do to promote healthy workplaces. While these were developed for the state services, they reflect good practice for all work environments.

Core to creating a positive workplace is building a culture where gender equality and diversity are appreciated, and all people are respected and valued.

Get it in writing: It's not enough to have a general policy about harassment and bullying, there needs to be an explicit sexual harassment policy in place within an organisation. Research shows that sexual harassment is much less likely to occur in organisations with a written sexual harassment policy.

Healthy workplaces require leaders and managers to operate and role-model appropriate behaviour. Managers should enforce policies aimed at stopping harassment and bullying, including promoting a zero tolerance for, and prompt handling of, sexual harassment incidents.

Managers and leaders need to also encourage the reporting of harassment and bullying.

Healthy workplaces regularly provide communications, training and awareness-raising activities to ensure employees, managers and leaders know their rights and responsibilities – as well as how to report or address inappropriate behaviour.

While preventing sexual harassment is the best policy, if it occurs it's critical that organisations have robust systems and procedures in place to address the issue. If sexual harassment or bullying is reported, the organisation needs to ensure the well-being of the complainant and the respondent, and respect their legal rights. (Source: SSC)

What is sexual harassment?

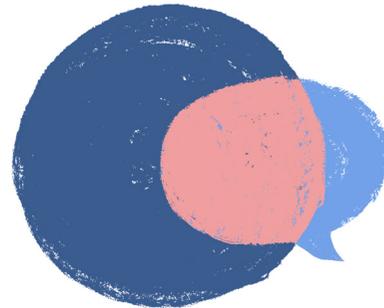
Sexual harassment includes unwelcome sexual advances, requests for sexual favours, or unwanted verbal or physical behaviour of a sexual nature that causes emotional distress for the person it is directed at.

Sexual harassment can be:

- physical, such as unwanted hugs or lack of respect for personal space
- verbal or written, such as inappropriate statements or questions about physical appearance or a person's private life
- emotional, where the person being harassed feels intimidated or uncomfortable.

At its core, sexual harassment is about power and often makes the person who is being harassed feel that if they don't accept it, there will be negative consequences, such as they will:

- receive a poor review
- be offered fewer professional opportunities
- be fired
- be excluded from work activities
- be isolated from their colleagues.



Is sexual harassment a problem in the workplace?

The most recent Survey of Integrity and Conduct in the State Services (2013) found that 25% of respondents reported being bullied or harassed within the prior 12 months. One percent of respondents reported being subjected to sexual harassment in the workplace. This is down from previous surveys (5% in 2010 and 7% in 2007).

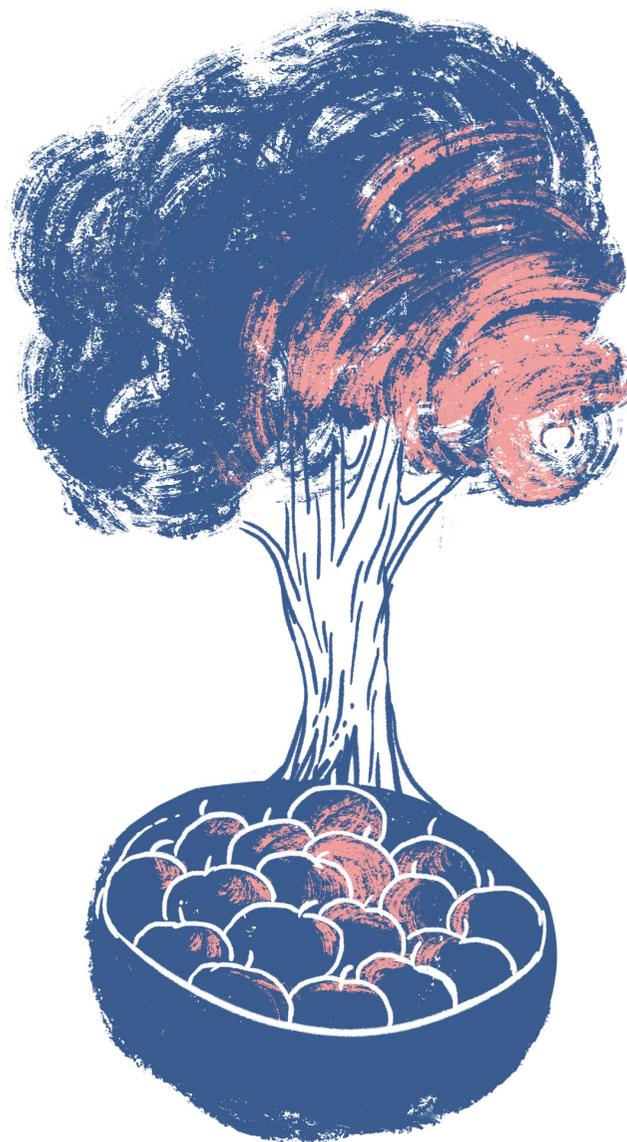
As the State Service Commission's chief legal advisor Gordon Davis said when announcing the results of the survey, "It is important that all staff work in a safe and professional environment where they can make a positive difference. Anything less is unacceptable."

As the old saying goes, "one bad apple really can spoil the whole bunch". Sexual harassment at work hurts the person being harassed, as well as the overall work environment.

The effects of sexual harassment can be felt across an organisation and may include:

- increased absenteeism and errors at work due to anxiety, fear, depression, stress and ill-health
- reduced performance and productivity caused by isolation, breakdown in work relationships, distraction and low morale
- unhappy, unmotivated staff
- increased staff turnover
- unhealthy workplace culture and ongoing conflicts.

(Source EEO Trust)





The State Services Commission created a working group (which included representation from the PSA) to develop guidelines on sexual harassment policy for the workplace. The group identified the following on sexual harassment:

What is sexual harassment?

- touching, hugging, encroaching on someone's personal space or kissing
- staring or leering
- insults or taunts of a sexual nature
- unwanted invitations to go out on dates
- requests for sexual favours, or pressure for sex or other sexual acts
- repeated or inappropriate advances on email or social networking websites
- intrusive questions or comments about a person's private life, clothing or physical appearance
- sexually explicit pictures, posters, gifts, emails or text messages
- sexual gestures, indecent exposure, or inappropriate display of the body
- sexually suggestive comments or jokes, or other forms of inappropriate language
- stalking or sexual assault.

What is not sexual harassment?

- friendly banter
- mutually acceptable jokes
- occasional appropriate compliments
- behaviour based on friendship
- behaviour based on mutual attraction.

The key words in these examples are **acceptable, appropriate and mutual** – where there is no explicit or implicit sense that a person must respond or accept behaviours that they do not want to.

How is sexual harassment different from other types of bullying?

Sexual harassment is about sexual interest or intent. It is usually against women, but can happen to anyone.

In Australia, researchers analysed sexual harassment complaints lodged in all of the Australian federal, state and territory equal opportunity commissions over a prolonged period, and found that over three-quarters (78.4 percent) were female complaints against males.

(ScienceDaily 1 July 2015)

Sexual harassment complaints lodged in Australia

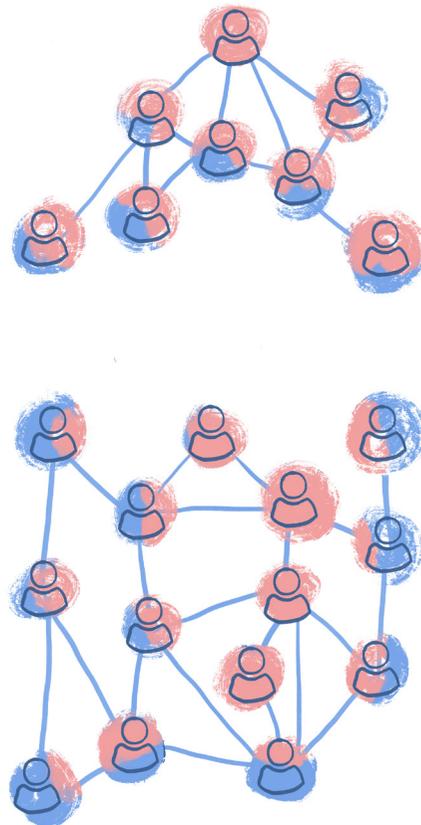


Bullying and harassment

Bullying and harassment are when a person uses strength or their power to control others either through fear or intimidation. Power might be based on organisational hierarchy, for example, a manager bullying someone who works for them, but it might also be a co-worker or someone who exerts influence (such as a client or a manager in another part of the organisation). There are many forms of harassment, including racial and gender-based harassment.

Racial harassment includes actions or behaviour that express hostility or contemptuousness of someone's race. Human Rights Act Section 63 states that it is unlawful for anyone to use any behaviour that expresses hostility against or brings into contempt or ridicules someone on the basis of their: Race, colour, national or ethnic origins.

Gender-based harassment is not based on sexual intent. It is often based on what are considered "traditional" gender-identity roles. Workplaces where either gender-based or sexual harassment are occurring often have systemic issues that can cultivate other types of bullying.



Sexual harassment and the law

Your employer has an obligation to be a good employer and all employees have a legal right to be free from sexual harassment at work.

Under the Human Rights Act 1993, it is unlawful for “any person to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment”.

It is also unlawful for a person to subject any other person to behaviour that “is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and is either repeated, or of such a significant nature, that it has a detrimental effect on that person”.

Sexual harassment is covered under the following legislation: Human Rights Act 1993, Employment Relations Act 2000, State Sector Act 1988, Harassment Act 1997, and the Protected Disclosures Act 2000. A specific group of behaviours may amount to crimes or offences under criminal legislation.

(Source: SSC)

Defining sexual harassment?

We live in a world where some still see sexual harassment as “just a bit of fun” or merely bothersome. On top of that, inappropriate behaviours can be subtle, context dependent and may include different cultural understandings of what is considered appropriate behaviour. For the person being harassed this can make reporting sexual harassment more difficult.



What if you're a bystander of sexual harassment?

It's important to not contribute to a culture that promotes or even tolerates sexual harassment. When “off-hand” comments or gestures are made it's important to call them out immediately. It's important to notice what is happening around you and if you witness or experience sexual harassment speak-up. Don't let your workplace and your colleagues suffer from inappropriate behaviour.

Educate yourself about your workplace's sexual harassment policy. If your workplace doesn't have a specific one in place, talk with your manager and your delegate about the need for one.

Prevent sexual harassment from happening by promoting positive workplace behaviours. Doing this you will help your workplace be a constructive, engaging and supportive environment.

(Based on the findings of the SSC working group)

PSA – our role and responsibilities

As a collective organisation, issues are raised, advanced and resolved by members and delegates working together with support from organisers and other paid staff. The PSA is working with our members and employers to address sexual harassment in the workplace. Some of our work is at the bargaining table – working with employers to ensure they have good policies and practices in place to address sexual harassment.

But the PSA also provides support for members who have faced sexual harassment. In an individual case, a member will first contact their delegate. The delegate will work with the member to approach the immediate manager. If the manager is unable or unwilling to resolve the issue, then the issue may need to be escalated. Delegates may need support from their organiser to do this.

You may need to go beyond your immediate manager to get the person in authority. Ultimately, in our organisations the chief executive has authority as the employer. If a sexual harassment issue escalates to the need for mediation only an organiser can initiate mediation or lodge a personal grievance on behalf of the PSA.

Delegates

Make sure your organisation calls sexual harassment out

Your employer should have a policy in place to prevent and address sexual harassment. That policy should be readily available to everyone in the organisation, and should be frequently communicated through a variety of channels.

As an employee you can ask your human resources team to discuss how they handle sexual harassment in the workplace, and their strategy for encouraging a safe, respectful workplace. You can also discuss how sexual harassment is reported and how the victim will be supported and protected.

With half of employees not reporting bullying because they don't think constructive action will be taken (Survey of Integrity and Conduct in the State Services (2013)), just reinforcing the idea that sexual harassment is not acceptable within your organisation is an important first step in supporting an individual. Your management and human resources team need to be driving this. If they're not, talk with your organiser about ways to raise the profile of this issue within your organisation and how it might be included in future collective agreement negotiations.

The PSA is committed to working with organisations to help create a positive working environment, and to ensure policies and processes are in place to address sexual harassment. As a delegate, if you see ways to strengthen your organisation's policies and processes, discuss your ideas with other delegates and your organiser. There may be things you can immediately address with your organisation or during collective agreement negotiations.



Helping an individual to understand their options

Below are the different approaches an individual who has been sexually harassed can take to address the issue.

1. Confront the person. In some cases this option may not be appropriate, but it may be possible to talk to the person about their inappropriate behaviour and clearly state what needs to change.

It may be that the person harassed wishes to have a witness there (either their delegate or their manager, for example). Another option is to write a letter marked “Private and Confidential” and have it witnessed by another person.

Advise the person accused of harassing that a complaint will be made if the behaviour continues. Confronting people can be both uncomfortable and has some risk involved.

Before confronting an individual, or serving as a witness, consider how the other person may react, and what steps will be taken if the person responds threateningly or doesn’t change their behaviour.

Never put yourself in an unsafe position and ensure you have people available to support you.

2. Complaint through your union. A worker who is being sexually harassed may feel more comfortable addressing this issue with the union delegate or union organiser (see more information below).

3. Complaint to employer. Any worker who is being harassed has the right to make a formal complaint to the employer, contact person or coordinator.

The employer or investigator nominated by the employer will obtain from the worker a detailed account of the allegations. The worker has a right to a support person, such as a delegate, when being interviewed.

4. Mediation. It may be possible to arrange for a complainant and respondent to discuss the complaint with a skilled mediator. Both parties need to agree to mediation. As the State Services Commission notes, however, mediation is not always appropriate to resolve behaviour issues, particularly if there is a power imbalance.



Mediation may be suitable where there is basic agreement on the facts, both parties agree to try to resolve the situation through this method, the harassment is of a low level and serious disciplinary consequences do not appear warranted.

If a complainant and the respondent cannot resolve the complaint through mediation, then formal options are available. A mediator may be someone mutually agreed between the parties or from the Ministry of Business, Innovation and Employment's mediation service. (Source: SSC)

5. Complaint using personal grievance. A worker who is being sexually harassed at work has the right to take a personal grievance against the employer under the Employment Relations Act. A personal grievance should be made within 90 days of the alleged harassment.

The employer is liable for the duty to prevent inappropriate behaviour or sexual harassment in the workplace. The employer also may be liable for the behaviour of a representative of the employer or a co-worker, client or customer of the employer.

6. Complaint with the Human Rights Commission. If a worker is not satisfied with the outcome of making an internal complaint or does not wish to use the internal procedures, that worker may make a complaint within one year to the Human Rights Commission under Parts 2 and 3 of the Human Rights Act.

Note – a worker must choose whether to complain through the Employment Relations Act or Human Rights Commission process. A worker cannot use both.

7. Complaint to the Police. Serious sexual harassment involving sexual or physical assault may come under the provisions of the Crimes Act. In such a case, a worker may lodge a complaint with the Police.

Because the process is punitive and not remedial, a worker may take a personal grievance or a complaint to the Human Rights Commission, and/or a formal complaint to management as well as pursuing criminal action with the Police.

(Source: Based on *Harassment and Discrimination a guide to your rights*, Working Women's Resource Centre.)

Supporting members

As a delegate, you may be asked by a member to support them in a meeting with management. You may be asked to support a member who has been harassed, who has been accused of harassing, or one who has been accused of standing by and not taking action in stopping sexual harassment. Remember, you are there to ensure the correct process is followed and to support the member(s).

If you are asked to support more than one member on this issue, work with the other delegates and your organiser to determine who will represent each interest – this might mean one person is supporting the person making the complaint and the accused. To avoid conflict of interest, you should only represent one person or a group of people who have the same viewpoint (there may be cases where you are representing a group of people who have the same harassment complaint against an individual, for example). Consult with your organiser about the best course of action.

To ensure the best outcome possible is achieved, it is essential good processes are followed. Below is a step-by-step process for working with members through sexual harassment issues.

1. What's happening?

Listen to the story, ask open questions, record the facts, and talk to other appropriate people, such as other delegates, while maintaining confidentiality.

2. What information is available to help you assess this issue?

Review the collective agreement along with any relevant policies and legislation. The PSA Organising Centre can help with advice on legislation. Confirm the information you have by checking it with other delegates, and possibly your organiser.

3. What is the issue?

Review all the information and determine exactly what the issue is. Check your understanding with the member you are working with. You may need to contact the PSA Organising Centre or your organiser to discuss and request assistance.

4. What is the desired outcome?

Determine what's wanted and what's needed to resolve the issue.

5. What are possible options in achieving this outcome?

Assess which options might best meet the needs of the member and the manager, and discuss the options with them. At this point you will also need to check with any other people affected.

6. What's the plan of action?

It's crucial that at this point you make sure to write up the options identified and determine how to proceed. As part of the plan, you'll need to decide who needs to be involved, a timeframe, and decide what you can do if you can't get the result you're looking for.

Below are a few tips for working through this process:

- Don't rush into solutions.
- Ask for help from others.
- Always check the collective agreement.
- Remember the problem belongs to the member.
- Keep the member informed and involved.
- The matter is confidential unless the member agrees otherwise.

Note: If you are asked to support a member in a disciplinary investigation or meeting, there are legal implications and certain procedures must be followed. Contact your organiser or the PSA Organising Centre for guidance.



Know when to get help

PSA delegates don't have all of the answers all of the time. When you don't know the answer or when the issue seems beyond your experience or expertise, the best policy is to say you don't know and promise to get back to those concerned. You can ask other delegates, PSA organisers or the PSA Organising Centre for more information.

Refer members to other forms of support

You may be able to refer members to other forms of support. Find out what support your organisation provides so that you can refer members to these services.

Operate in good faith

As a representative, a delegate has a duty of care and a duty of confidentiality. Delegates are there to ensure that there is a fair process. Unless the member gives the delegate authorisation to talk to someone else, all details must be kept confidential.

Delegates also need to be seen to be impartial and independent. Delegates should operate in good faith, and should not act (or continue to act) for any person where there could be a conflict of interest or a perception that there is a conflict of interest. This might arise if, for instance, there is more than one member involved in the issue.

If you have any concerns about any potential for a conflict of interest, you can refer the member to another delegate or contact your organiser on PSA freephone **0508 367 772**.

Everyone wins

Healthy workplaces that are free of sexual harassment and other types of harassment and bullying can improve morale and productivity.

Harassment and bullying can cause increased absenteeism, reduced performance and higher staff turnover rates.

By working toward a culture where negative and inappropriate words and actions are not tolerated you are ensuring that your place of employment is safer, more productive and a lot more enjoyable – for everyone.



Resources

Below is a list of some of the resources available to help you better understand and address sexual harassment in the workplace.

Prevention and Response to Sexual Harassment Policy Guideline. State Services Commission. Last updated July 2015.

Harassment and Discrimination a guide to your rights: Advice about dealing with Sexual Harassment, Racial Harassment, and Bullying. Working Women's Resource Centre.

Good Employer Advice. Human Rights Commission.



For a better working life

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