

Sexual Harassment

Under the Federal definition and all States and Territories (except Western Australia), sexual harassment is any unwelcome conduct of a sexual nature in which a reasonable person anticipates the possibility that someone could be offended, or humiliated or intimidated.

Type of Behaviour

The behaviour covers oral or written statements, actual and cartoon images, human or animal, sexual gestures, sexually explicit material via email, on a person's computer screen, or written as well as sexual jokes, banter, innuendos, sexual propositions and sexual touching. It has been held that it is no excuse to a sexual harassment claim that sexual conversations and banter were part of the work culture.

Sex Based Harassment

A new category of protection was added in 2021 as a result of the Respect at Work Inquiry.

Sex based harassment is when a person engages in unwelcome conduct of a seriously demeaning nature in relation to a person's sex and which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Examples of sexual harassment

- where a person was asked for sexual favours and subjected to physical contact and subsequently sexual assaulted
- during a business trip to Sydney the employer made sexually suggestive remarks, repeatedly suggested seeing a live sex show and entered the applicant's bedroom uninvited and in his underpants and holding a pillow
- an assistant in a butcher's shop was asked "how's your love life?" and negative comments about her boyfriend and his sexual prowess

What to do if someone thinks they have been sexually harassed at work

If a person thinks they are a victim of sexual harassment and/or sex based harassment, then the first thing they can do is find out if their organisation has a [policy](#) about sexual harassment/sex based harassment and see if it contains a definition similar to the one mentioned in this document. If it does, then they can use this policy to have a conversation with their manager/HR or any other person in authority. Tell him/her what has happened to them and why they think this is sexual harassment and/or sex based harassment. It is useful to work out what he/she want the manager/HR to do about the issue and to ask for it to be done.

Possible things someone could ask their manager to do is have a chat to the person doing the behaviour and find out what their view is and then see if there is room for a combined discussion. Sometimes people might not even know they are doing anything unlawful so giving them a chance to understand/explain their point of view is important. Someone could also ask their organisation to provide education to staff in this area, put posters up or send out emails reminding people of what is appropriate/inappropriate behaviour.

If the behaviour is very serious (either because it has been going on for a long time or is being done by someone in authority or the actual incident is serious) then someone might want to ask their organisation to formally investigate it. They should check and see if their organisation has a [grievance management document](#). If it does it should explain when a matter will be formal and what will be done. Normally a formal investigation has to be in writing and should explain what has happened, by who, when and where. It is important to stick to the facts and avoid emotional language when making a formal complaint.

Once the complaint is formal then the organisation should investigate it. This means they will interview the complainant (person making the complaint) and any relevant people to support their story and they will also interview the respondent (person responding to the complaint) and any relevant people he/she has. Once they have collected all of the facts the information is then used to make a decision, usually by the CEO or equivalent.

If someone does not want to make a complaint internally or they have and it has not been handled to their satisfaction then they can contact the Equal Opportunity Commission in their State/Territory. Each Commission offers a free conciliation service for victims of sexual harassment. Most matters are sorted out at this stage. In addition, the Fair Work Commission, offers a stop sexual harassment order if the behaviour is current and the person is still employed with the organisation where they are experiencing the sexual harassment.

On-line Compliance Training Australia do not provide individual legal advice and the information contained here is intended to be of a general nature and not related to anyone's specific circumstance.

We do also provide a comprehensive in-person training service for organisations, to educate their staff about sexual harassment, bullying and discrimination and manager training on how to identify and manage complaints.

If you would like to know more, please call Franca Sala Tenna on 0405 134 187.