



APPROPRIATE WORKPLACE BEHAVIOURS *FOUNDATIONS*

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About This Guide Series

Inappropriate workplace behaviours including sexual harassment, bullying and harassment constitute major occupational safety and health hazards that can endanger a worker's physical and psychological safety and health. Inappropriate workplace behaviours, especially if prolonged and unresolved, can have a negative impact on worker health and must be addressed in a manner that provides appropriate support to all parties involved.

Managing the risks of inappropriate workplace behaviours should be part of an employer's overall workplace health and safety strategy and people and culture practices.

Inappropriate workplace behaviours might raise the likelihood of psychological impacts or associated health conditions. Aside from negative health effects for workers, exposure to psychological hazards and risk factors in the workplace can also have an impact on performance, behaviour choices and engagement with colleagues and the workplace.

Psychosocial risks may be harmful to a person in both the short and long term. Furthermore, it is critical to recognise that a cumulative impact of low-level exposure to psychosocial risks can result in psychological or physical harm. As a result of their exposure, people may experience a variety of psychological and physical signs of injury.

This guide series aims to provide a practical overview including key standards, information, reference material and draw together some of the best resources on the topic from within and outside the resources and energy industry, including the following:

- Legislative background
- Definitions and examples
- Respect@Work Framework
- Integrated Approach to Inappropriate Workplace Behaviours
- Leadership and commitment
- Risk management
- Workplace consultation
- Recruiting
- Situational challenges at remote sites
- Monitoring and review
- Practical response examples
- Responding to complaints and reports
- Outcomes of the Complaint Process
- Workplace Investigations
- Mandatory reporting and notification
- Record keeping
- Post-incident follow-up and support.



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This document is a general guide and does not constitute advice. Members should obtain tailored advice to manage their legislative obligations.

References

Information in boxes is cited from external sources. For brevity, these citations do not always contain all consecutive paragraphs from the source, but rather some paragraphs may be omitted.

Acts, Regulations and Codes are only referenced in-text. All other references are detailed in the reference section at the end of the document.

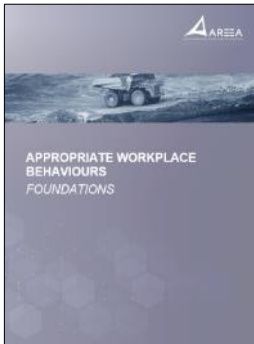
Gender Terminology

Where original sources and/or research specifically refer to binary genders, this terminology is retained in keeping with the source. However, it is acknowledged that gender-based inappropriate workplace behaviours are not restricted solely to scenarios where male perpetrators target female employees. Incidences of gender-based inappropriate workplace behaviours targeted towards male or non-cis-gender employees also exist, especially affecting diversity groups relating for instance to disability, sexual orientation, gender identity and intersex status. Ultimately, the goal is to eradicate all inappropriate workplace behaviours and to ensure full inclusion of all diversity groups in the workplace.



Structure

This Guide is part of a Series, which is structured as illustrated below.



Foundation

The first part, *Appropriate Workplace Behaviours – Foundations*, contains the following topics:

- Legislative background
- Duty of Care and penalties
- Definitions and examples
- Respect@Work framework
- Integrated approach to inappropriate workplace behaviours.



Prevention

The second part, *Appropriate Workplace Behaviours – Prevention*, contains the following topics:

- Leadership and commitment
- Risk management and workplace consultation
- Work design
- Recruiting and situational challenges at remote sites
- Monitoring and review.



Response

The third part, *Appropriate Workplace Behaviours – Response*, contains the following topics:

- Responding to complaints and reports (including practical examples)
- Outcomes of the complaint process
- Workplace investigations
- Mandatory reporting and notification, record keeping
- Post-incident follow-up and support.



Factsheet

The final part, *Appropriate Workplace Behaviours – Factsheet*, contains the following:

- Brief overview of IR issues related to inappropriate behaviour.



Background

Dealing with inappropriate behaviours including sexual harassment and assaults in the workforce and workplaces is a top priority for the resources and energy industry.

To support the industry's efforts to eliminate workplace sexual harassment and other inappropriate behaviours across the country, AREEA hosted the Resources and Energy National Industry Forum on Workplace Sexual Harassment throughout November 2021.

The aim of the Resources and Energy National Industry Forum on Workplace Sexual Harassment was to stimulate and promote the exchange of information and ideas, as well as collaboration on initiatives. The forum resulted in the development of an industry taskforce to see those concepts developed and implemented in our businesses.

The Western Australian Parliament's Inquiry into sexual harassment against women in the FIFO mining industry and attendant media interest have increased the focus on misconduct in the resources and energy industry. The final report of the inquiry (the Inquiry Report) concluded that "sexual harassment has long been and continues to be prevalent across the industry" and "mining was one of the worst five performing industries" (*Inquiry Report*¹). The Inquiry Report found that "Women in the mining industry frequently have to deal with sexual harassment and sexual assault"² and that "women often felt intimidated and fearful, and this would be constant throughout their workplace stay."

The Inquiry Report stated that the Australian Human Rights Commission found that "31 per cent of women had been sexually harassed in the workplace in the last five years"³ and "Forty per cent of workers, and 74 per cent of women workers in the industry reported being sexually harassed in the last five years."⁴

The Inquiry Report further noted a survey of Western Mine Workers' Alliance members which found that "32 per cent of women had received requests for sexual favours, and that 22 per cent of women had such requests linked to their working conditions or career advancement"⁵.

Overall, there was agreement by all that spoke before the Committee "that sexual harassment was unacceptably prevalent in the industry"⁶. The Inquiry Report identified as some of the main risks⁷ a "poor culture", that is, "a sense of accepting 'the way we do things here' that permit behaviour that would not be tolerated elsewhere."

Media attention on sexual harassment in the mining industry and the prevailing stereotypes of the "blokey" culture of the resources and energy industry has been strong, potentially making it harder to attract women to the industry⁸. In addition, the industry has earned a reputation for having a "toxic work environment"⁹.

Australia's resources and energy employers are committed to taking action on workplace sexual harassment. As the national employer association for the industry, AREEA has diligently led unique work in this space and provided a central point of coordination and communication across industry, government and community stakeholders.

AREEA and the Resources and Energy Workplace Sexual Harassment Taskforce delivered the first National Workplace Sexual Harassment Campaign – "That's why I speak up"¹⁰ in 2022 available for use by all industry employers. The purpose of the campaign is to reinforce a common and clear understanding of behavioural standards and leverage the importance of 'upstanders' in the workplace as a powerful tool for eliminating sexual harassment.



Legislative Background

There has been a number of recent updates to legislation in various Australian jurisdictions which put the onus on employers to proactively manage psychosocial risks in the workplace.

Model WHS Laws

Safe Work Australia has published amendments made to the Model WHS Laws along with an explanatory memorandum. The amendments implement several recommendations from the 2018 Review of the model WHS laws. Recommendation 2 has resulted in the model WSH laws now including new provisions defining psychosocial hazards¹¹.

The *Model Code of Practice: Managing psychosocial hazards at work* (the Psychosocial Model Code) that Safe Work Australia published in August 2022 provides guidance on the psychosocial risk management process, which includes the management of risks such as sexual harassment.

The risk management process includes how to identify hazards, assess risks, control risks, review control measures and make changes as required as well as extensive guidance on reporting mechanisms and how to encourage reporting.

The Psychosocial Model Code notes common psychosocial hazards, many of which are job characteristics that can be targeted by ensuring good work design. According to the Model Code, job-related psychological injuries have longer healing periods, greater expenditures, and need more time away from work on average. In addition, following the Psychosocial Model Code not only protects workers, but it also reduces the disruption caused by staff turnover and absenteeism, and it may boost performance and productivity.

The amendments do not automatically apply in a jurisdiction. For the model WHS Act, model WHS Regulations and Model Codes to have effect in a jurisdiction they must be enacted in that jurisdiction. If adopted by a state or territory, the Model Code will serve as a practical guide for compliance. It will also be evidence that a court may consider when evaluating whether the employer took all reasonably feasible precautions to address psychosocial dangers in the conditions indicated in the Model Code. In the table below an overview of the adoption status is given. This table is for illustration only. Members should obtain tailored advice to manage their legislative obligations.

Table 1: Implementation of Model WHS Regulations and Codes. For illustration only – always check legislation for currency and/or obtain tailored advice.

| Jurisdiction | Regulation | Code of Practice |
|------------------------------|--|----------------------------------|
| Commonwealth | Model Regulations commenced 1 Apr 2023 | Model Code commenced Jul 2023 |
| Australian Capital Territory | Model Regulations commenced 29 Aug 2023 | Model Code commenced 27 Nov 2023 |
| New South Wales | Model Regulations commenced 16 Sep 2022 | Own Code commenced 28 May 2021 |
| Northern Territory | Model Regulations commenced 1 Jul 2023 | Model Code commenced 1 Jul 2023 |
| Queensland | Model Regulations commenced 1 Apr 2023 | Model Code commenced 1 Apr 2023 |
| South Australia | Model Regulations commencing Dec 2023 | Model Code commenced 4 Jun 2023 |
| Tasmania | Model Regulations commenced 22 Dec 2023 | Model Code commenced 4 Jan 2023 |
| Victoria | Own Regulations, under review, ETA unknown | Adopting own Code, ETA unknown |
| Western Australia | Model Regulations commenced 24 Dec 2022 | Own Code x 3 commenced 2022 |

Note: In some jurisdictions the Model Regulations and/or the Model Codes are implemented directly, in other instances with additional provisions regarding the Hierarchy of Control.



An important resource is the [Model Code of Practice: Sexual and gender-based harassment 2023](#)¹², released in December 2023 by Safe Work Australia, which contains best practice information on the following:

- Definitions, examples, occurrence and impact
- WHS duties
- Risk management and consulting
- Identifying and assessing
- Intersectionality and interaction with other psychosocial hazards
- Risk control (incl. duration, frequency, severity, interactions)
- Design of work (incl. job demands and tasks)
- Systems of work (incl. work management, organisation and support)
- Design, layout, environmental conditions, structures, worker accommodation
- Workplace interactions and behaviours
- Information, training, instruction and supervision
- Monitoring, maintenance and review
- Investigations and response to reports
- Trauma informed approach
- Confidentiality
- Leadership and culture
- Further resources

Duty of Care Obligations

WHS Legislation

WHS Acts (or equivalent) in all states now define health to include psychological health and/or health risks to include psychological and/or psychosocial risks, thereby conferring an implicit duty to manage psychosocial risks. See the box below for an example from Western Australia.

Under the *Work Health and Safety Act 2020* (WHS Act), Persons Conducting a Business or Undertaking (PCBUs) must ensure, so far as is reasonably practicable, the health and safety of workers they engage or cause to be engaged. These obligations include controlling workplace risk factors that increase the risk of workers' exposure to psychosocial hazards, such as gendered violence.

*Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Information sheet – Gendered violence: Sexual harassment*¹³.

Most current or soon to be enacted WHS Regulations contain an explicit positive duty to eliminate psychological/psychosocial risks as far as reasonably practicable, or if it is not reasonably practicable to eliminate these risks then to minimise. The WHS Regulations also note that proper risk management needs to be applied, which is further detailed in most WHS Regulations.

In addition, the *Work Health and Safety (How to Manage Work Health and Safety Risks) Code of Practice 2015 (Cth)* notes that examples of common hazards include psychosocial hazards with potential harm being effects of work-related stress, bullying, violence and work-related fatigue and further refers to psychological hazards due to the pace of work. There are similar Codes of Practice for managing health and safety risks in most States.

Several Australian jurisdictions have or will soon provide Codes of Practice or other guidance material for addressing inappropriate workplace behaviour and/or managing psychosocial risk more broadly.

Examples are the following Codes published by the Government of Western Australia, Department of Mines, Industry Regulation and Safety:



- *Workplace behaviour: Code of Practice 2022 (WA)*¹⁴
- *Psychosocial hazards in the workplace: Code of Practice 2022 (WA)*¹⁵
- *Violence and aggression at work: Code of Practice 2022 (WA)*¹⁶

and the following Code published by the Queensland Government:

- *Managing the risk of psychosocial hazards at work: Code of Practice 2022 (QLD)*¹⁷.

In addition, Safe Work Australia provides guidance material that includes information on the definitions, laws, duties, risk management (including hazard identification, hazard assessment and risk control), referrals to other agencies, confidentiality, further resources and support services:

- *Preventing workplace sexual harassment: National guidance material 2021*¹⁸.

Anti-Discrimination Legislation

The Australian Human Rights Commission (AHRC) has released guidelines to assist employers' compliance with their new 'positive duty' to eliminate sexual harassment and unlawful discrimination from their workplaces. The positive duty took effect on 12 December 2022 following amendments to the *Sex Discrimination Act 1984* (Cth) passed by Federal Parliament last year.

The new statutory obligation requires employers and businesses to take 'reasonable and proportionate measures' to eliminate, as far as possible:

- discrimination on the grounds of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct that creates a workplace environment that is hostile on the ground of sex and
- related acts of victimisation.

Changes to the law also give the AHRC new inquiry and enforcement powers to ensure that employers and businesses are complying with their positive duty.

More about these changes and the obligation can be found on the website of the Australian Human Rights Commission¹⁹.

In addition, the Guidelines for complying with the positive duty were released by the AHRC in August 2023²⁰. They provide a comprehensive legal resource on the positive duty, covering information on the positive duty, what it means to take 'reasonable and proportionate measures', how it will be enforced and related legal obligations.

In brief, the AHRC expects all relevant employers and businesses to have measures in place to address each of the seven standards outlined below²⁰:

1. **Leadership** – Senior leaders understand their obligations under the Sex Discrimination Act and have up-to-date knowledge about relevant unlawful conduct. Senior leaders are responsible for ensuring that appropriate measures for preventing and responding to relevant unlawful conduct are developed, recorded in writing, communicated to workers, and implemented. Senior leaders regularly review the effectiveness of these measures and update workers. Senior leaders are visible in their commitment to safe, respectful, and inclusive workplaces that value diversity and gender equality. They set clear expectations and role model respectful behaviour.
2. **Culture** – Employers and businesses foster a culture that is safe, respectful, and inclusive and that values diversity and gender equality. This culture empowers workers (including leaders and managers) to report relevant unlawful conduct, minimises harm and holds people accountable for their actions.



3. **Knowledge** – Employers and businesses develop, communicate, and implement a policy regarding respectful behaviour and unlawful conduct. Employers and businesses support workers (including leaders and managers) to engage in safe, respectful, and inclusive behaviour through education.
4. **Risk Management** – Employers and businesses recognise that relevant unlawful conduct is an equality risk and a health and safety risk. They take a risk-based approach to prevention and response.
5. **Support** – Employers and businesses ensure that appropriate support is available to workers (including leaders and managers) who experience or witness relevant unlawful conduct. Workers are informed about the available support, and can access the support, regardless of whether they report the conduct.
6. **Reporting and Response** – Employers and businesses ensure that appropriate options for reporting and responding to relevant unlawful conduct are provided and regularly communicated to workers and other impacted people. Responses to reports of relevant unlawful conduct are consistent and timely. They minimise harm to, and victimisation of, people involved. Consequences are consistent and proportionate.
7. **Monitoring, Evaluation and Transparency** – Employers and businesses collect appropriate data to understand the nature and extent of relevant unlawful conduct concerning their workforce. Employers and businesses use the data they collect to regularly assess and improve the work culture, as well as to develop measures for preventing and responding to relevant unlawful conduct. Employers and businesses are transparent about the nature and extent of reported behaviours that could constitute relevant unlawful conduct concerning their workers and actions taken to address it.

Penalties

Penalties for contravention of the Duty of Care are significant.

In 2023 Safe Work Australia published the Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023, which amends the model WHS Act to include model penalties for the offence of industrial manslaughter, with a maximum of 20 years in jail for an individual and \$18 million monetary penalty for a body corporate.

The Amendment also increases monetary penalty amounts for various offences, with several categories attracting multimillion dollar fines. The Amendment further provides for the indexation of penalty amounts.

As mentioned above, for the Model WHS Act, Model WHS Regulations, and Model Code to have effect in a jurisdiction they must be enacted in that jurisdiction. Some jurisdictions already have significant penalties in place, and it is anticipated the various jurisdictions will eventually lift their penalties to harmonise with the penalties as per the Model WHS Laws.



Examples of WHS Legislation Related to Psychosocial Risk Management and Potentially Applicable to Inappropriate Workplace Behaviours

The table below provides links to example legislation with regards to psychosocial risk management, which may be applicable to workplace sexual harassment. This table is for illustration only and may not be complete or may be already superseded. Members should obtain tailored advice to manage their legislative obligations.

For a detailed comparison of WHS legislations for each jurisdiction against the Model WHS laws as of March 2023, see Safe Work Australia's [cross comparison table](#).

Table 2: Examples of WHS legislation in various jurisdictions that are directly or indirectly related to psychosocial risk management and potentially applicable to inappropriate workplace behaviours and gendered violence. For illustration only, may not be complete or already superseded – always check legislation for currency and/or obtain tailored advice.

| Jurisdiction | Acts | Regulations | Codes of Practice |
|-------------------------------------|--|---|---|
| Model WHS Laws | Model WHS Act 2022 | Model WHS Regulations 2022 | Model Code of Practice: Managing psychosocial hazards at work 2022 Model Code of Practice: Sexual and gender-based harassment 2023 List of other WHS Model Codes of Practice |
| Commonwealth | Work Health and Safety Act 2011 (Cth) | Work Health and Safety Regulations 2011 (Cth) | Work Health and Safety (How to Manage Work Health and Safety Risks) Code of Practice 2015 (Cth) List of other Commonwealth WHS Codes of Practice |
| Australian Capital Territory | Work Health and Safety Act 2011 (ACT) | Work Health and Safety Regulation 2011 (ACT) | Work Health and Safety (Managing Psychosocial Hazards at Work Code of Practice) Approval 2023 Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012 (No 1) (ACT) List of other ACT WHS Codes of Practice |
| New South Wales | Work Health and Safety Act 2011 No 10 (NSW) Work Health and Safety (Mines and Petroleum Sites) Act 2013 (NSW) | Work Health and Safety Regulation 2017 (NSW) Health and Safety (Mines and Petroleum Sites) Regulation 2022 (NSW) | Code of Practice: Managing psychosocial hazards at work 2021 (NSW) List of other NSW WHS Codes of Practice |
| Northern Territory | Work Health and Safety (National Uniform Legislation) Act 2011 (NT) | Work Health and Safety (National Uniform Legislation) Regulations 2011 (NT) | Code of Practice: Managing psychosocial hazards at work 2023 (NT) List of other NT WHS Codes of Practice |



| Jurisdiction | Acts | Regulations | Codes of Practice |
|--------------------------|--|---|--|
| Queensland | Work Health and Safety Act 2011 (QLD) Mining and Quarrying Safety and Health Act 1999 (QLD) Coal Mining Safety and Health Act 1999 (QLD) Petroleum and Gas (Production and Safety) Act 2004 (QLD) | Work Health and Safety Regulation 2011 (QLD) Mining and Quarrying Safety and Health Regulation 2017 (QLD) Coal Mining Safety and Health Regulation 2017 (QLD) Petroleum and Gas (Safety) Regulation 2018 | Managing the risk of psychosocial hazards at work Code of Practice 2022 (QLD) List of other QLD WHS Codes of Practice |
| South Australia | Work Health and Safety Act 2012 (SA) | Work Health and Safety Regulations 2012 (SA) | How to manage work health and safety risks Code of Practice 2020 (SA) List of other SA WHS Codes of Practice |
| Tasmania | Work Health and Safety Act 2012 (TAS) Mines Work Health and Safety (Supplementary Requirements) Act 2012 (TAS) | Work Health and Safety Regulations 2022 (TAS) Mines Work Health and Safety (Supplementary Requirements) Regulations 2022 (TAS) | Managing psychosocial hazards at work Code of Practice 2022 (TAS) List of other TAS WHS Codes of Practice |
| Victoria | Occupational Health and Safety Act 2004 (VIC) | Occupational Health and Safety Regulations 2017 (VIC) Occupational Health and Safety Amendment (Psychological Health) Regulations (VIC) is under development | Code under development/review List of other VIC WHS Codes of Practice |
| Western Australia | Work Health and Safety Act 2020 (WA) | Work Health and Safety (General) Regulations 2022 Work Health and Safety (Mines) Regulations 2022 (WA) Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022 (WA) | Code of Practice Psychosocial hazards in the workplace 2022 (WA) Code of Practice Violence and aggression at work 2022 (WA) Code of Practice Workplace behaviour 2022 (WA) Code of Practice Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors (2019) (WA) List of other WA WHS Codes of Practice |

Note: As part of harmonisation efforts, several jurisdictions are considering adopting the Model Regulations and/or Model Code. In some jurisdictions the Model Regulations and/or the Model Codes are implemented verbatim, in other instances with additional provisions regarding the Hierarchy of Control. In the absence of specific Codes of Practice for managing psychosocial risk or equivalent, usually the generic Code of Practice for managing risks would apply, which in many instances references psychosocial risk. Where Acts and Regulations do not explicitly refer to psychological health and safety or psychosocial hazards, it needs to be remembered that health and safety by its general definitions includes psychological health and safety.



Definitions

The below definitions follow a number of excerpts from Australian Federal and State Government resources explaining how inappropriate workplace behaviours are defined, and what constitutes and does not constitute bullying, harassment, sexual harassment etc. Note the definitions are expansive and may vary depending on the circumstances of each case.

Definition of bullying

What is bullying?

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Source: Safe Work Australia. (2016). Guide for preventing and responding to workplace bullying²¹.

Note that the definitions and examples from Safe Work Australia are of a general nature.

What is not workplace bullying?

A single incident of unreasonable behaviour is not workplace bullying; however it may be repeated or escalate and so should not be ignored.

It is reasonable for managers and supervisors to allocate work and give feedback on a worker's performance. These actions are not workplace bullying if they are carried out in a lawful and reasonable way, taking the particular circumstances into account.

A manager exercising their legitimate authority at work may result in some discomfort for a worker. The question of whether management action is reasonable is determined by considering the actual management action rather than a worker's perception of it, and where management action involves a significant departure from established policies or procedures, whether the departure was reasonable in the circumstances.

What is reasonable would be determined by an objective test through a court of law. However, a court could consider the following examples as reasonable management action:

- setting realistic and achievable performance goals, standards and deadlines
- fair and appropriate rostering and allocation of working hours
- transferring a worker to another area or role for operational reasons
- deciding not to select a worker for a promotion where a fair and transparent process is followed
- informing a worker about unsatisfactory work performance in an honest, fair and constructive way
- informing a worker about unreasonable behaviour in an objective and confidential way
- implementing organisational changes or restructuring, and
- taking disciplinary action, including suspension or terminating employment where appropriate or justified in the circumstances.

Source: Safe Work Australia. (2016). Guide for preventing and responding to workplace bullying²¹.

Definition of harassment

Harassment is defined as any form of behaviour that is:

- unwelcome;
- offends, humiliates, or intimidates; or
- creates a hostile environment.

What is harassment?

Under discrimination law, it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person's sex, race, disability or age. Treating a person less favourably can include harassing or bullying a person. The law also has specific provisions relating to sexual harassment, racial hatred and disability harassment.

Source: Australian Human Rights Commission. (2014). Workplace discrimination, harassment and bullying fact sheet²².

It is important to understand that a one-off incident can constitute harassment.

Source: Australian Human Rights Commission. (2014). Workplace discrimination, harassment and bullying fact sheet²².

Harassment can involve physical, verbal and visual conduct, which can be written or drawn, in the form of posters, email or SMS messages, including:

- material that is displayed in the workplace, for example, on a noticeboard
- material put on a computer, sent by email, SMS or put on a website, blog or on social networking
- verbal abuse or derogatory comments
- intrusive personal questions
- offensive jokes or comments
- offensive gestures
- initiation ceremonies that involve unwelcome and unsafe behaviour.

Harassment can be a one-off incident or repeated and continuous occurrences. Harassment may be perpetrated by a person in a position of power over another; for example, by a supervisor at work; or it may occur where there is no power relationship, for example among work colleagues. Anyone can be harassed, including any gender, and people of any age or background.

Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Code of Practice: Workplace behaviour¹⁴.



Definition of gendered violence at work

Gendered violence at work is any behaviour, directed at a person or that affects a person, because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety. Sexual harassment can be by a co-worker or manager, or by a third party such as a client, patient or the public. Types of work-related gendered violence can range in severity from sexual harassment, through to sexual assault.

Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Information sheet – Gendered violence: Sexual harassment¹³.

The definition of gendered violence above includes the subordinate definitions for sexual harassment and sexual assault, which are explored in more detail below.

Definition of sexual harassment

What is sexual harassment?

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

Sexual harassment can occur:

- 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 a work-related activity such as conferences, training, work trips, work-related corporate events or if you host a work-related social activity like a Christmas party, or
- by phone, email or online (such as through social media platforms, collaboration tools or e-meeting software).

Sexual harassment is not always obvious, repeated or continuous. Unlike bullying, which is characterised by repeated behaviour, sexual harassment can be a one-off incident.

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

Source: Safe Work Australia. (2021). Preventing workplace sexual harassment guide²³.



Definition of sexual assault

Sexual assault is defined as any sexual behaviour which is threatening, violent, forced, coercive or exploitative and in which the victim has not given or was unable to give consent. Consent is when the person freely and voluntarily agrees to sexual activity and they have the freedom and capacity to make that choice. In Western Australia, legislation requires that consent must be freely and voluntarily given without force, threat, or coercion (see Appendix 1 for the Criminal Code definition of consent, along with other legal definitions and offences in relation to sexual crimes). A person may be unable to consent to sexual activity if that person is heavily intoxicated.

Sexual assault describes a broad range of sexual crimes committed against a person, including sexual penetration without consent and indecent assault.

Exposure to sexual assault at work can potentially lead to a number of significant physical and psychological outcomes for exposed persons who have been affected and that may have short or longer-term implications. These include:

- physical injuries resulting from sexual assault
- psychological injuries including depression, anxiety and post-traumatic stress disorder (PTSD)
- suicidal thoughts
- sexually transmitted infections (STIs)
- unwanted pregnancy.

Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Information sheet – Gendered violence: Sexual harassment¹³.

The information sheet on sexual harassment¹³ quoted in the box above further includes:

- Definition of hazard
- Contributing factors
- Risk management
- Identifying hazards and assessing risks
- Eliminating or controlling the risks
- Incident response
- Workplace investigations
- Notification to WorkSafe.

The following organisations provide further definitions and information regarding sexual assault:

- Healthdirect Australia²⁴
- Australian Institute of Health and Welfare²⁵
- Australian Institute of Family Studies²⁶.

Please note that while many parts of this guide may be applicable to cases of alleged sexual assault and/or rape, this is a matter that will likely require police involvement and falls within a criminal jurisdiction. AREEA's expertise is in employment law and therefore this guide is primarily intended to assist employers with management procedures relating to preventing and responding to inappropriate workplace behaviours including workplace sexual harassment, not sexual assaults or rape.



Behaviour not intent

When considering what is and is not inappropriate workplace behaviour, it is important to remember the following:

Unreasonable behaviour is defined by the effect of the behaviour, not the intent of the behaviour, as there may not be any specific intent to cause harm to someone's health. Whether the unreasonable behaviour was intended or not, or whether the person recognises that their actions could cause harm, does not reduce the risk of harm from the behaviour.

Source: Government of Western Australia, Department of Mines, Industry Regulation and Safety. (2022). Workplace behaviour: Code of Practice¹⁴.

Examples

Below are examples sourced from Australian Federal and State Government resources explaining what constitutes and does not constitute bullying, harassment, sexual harassment etc.

Bullying examples

Examples of behaviour, whether intentional or unintentional, that may be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include but are not limited to:

- abusive, insulting or offensive language or comments
- aggressive and intimidating conduct
- belittling or humiliating comments
- victimisation

Source: Safe Work Australia. (2016). Guide for Preventing and Responding to Workplace Bullying²¹.

Harassment examples

Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- making derogatory comments or taunts about a person's disability, or
- asking intrusive questions about someone's personal life, including his or her sex life.

Source: Australian Human Rights Commission. (2014). Workplace discrimination, harassment and bullying fact sheet²².



Sexual harassment examples

Sexual harassment can be overt, covert or subtle and include:

- unwelcome touching, hugging, cornering or kissing
- inappropriate staring or leering
- suggestive comments or jokes
- using suggestive or sexualised nicknames for co-workers
- sexually explicit pictures, posters or gifts
- circulating sexually explicit material
- persistent unwanted invitations to go out on dates
- requests or pressure for sex
- intrusive questions or comments about a person's private life or body
- unnecessary familiarity, such as deliberately brushing up against a person
- insults or taunts based on sex
- sexual gestures or indecent exposure
- following, watching or loitering nearby another person
- sexually explicit or indecent physical contact
- sexually explicit or indecent emails, phone calls, text messages or online interactions
- repeated or inappropriate advances online
- threatening to share intimate images or film without consent, and
- actual or attempted rape or sexual assault.

Acts such as indecent exposure, stalking, sexual assault and obscene or threatening communications (e.g., phone calls, letters, emails, text messages and posts on social media) may be offences under criminal law and should be referred to Police as well as managed under WHS laws.

Source: Safe Work Australia. (2021). Preventing workplace sexual harassment guide²³.

Respect@Work Framework

The Australian Human Rights Commission developed a framework to prevent, and respond to, workplace sexual harassment as a result of the Respect@Work: Sexual Harassment National Inquiry Report (2020)²⁷. The framework is shown overleaf in Figure 1.

Refer to the Respect@Work Hub²⁸ and the more detailed good practice indicators framework²⁹.



Figure 1: Respect@Work Framework²⁷



Source: Australian Human Rights Commission. (2023). *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984*²⁰.

◆ Integrated Approach to Inappropriate Workplace Behaviours

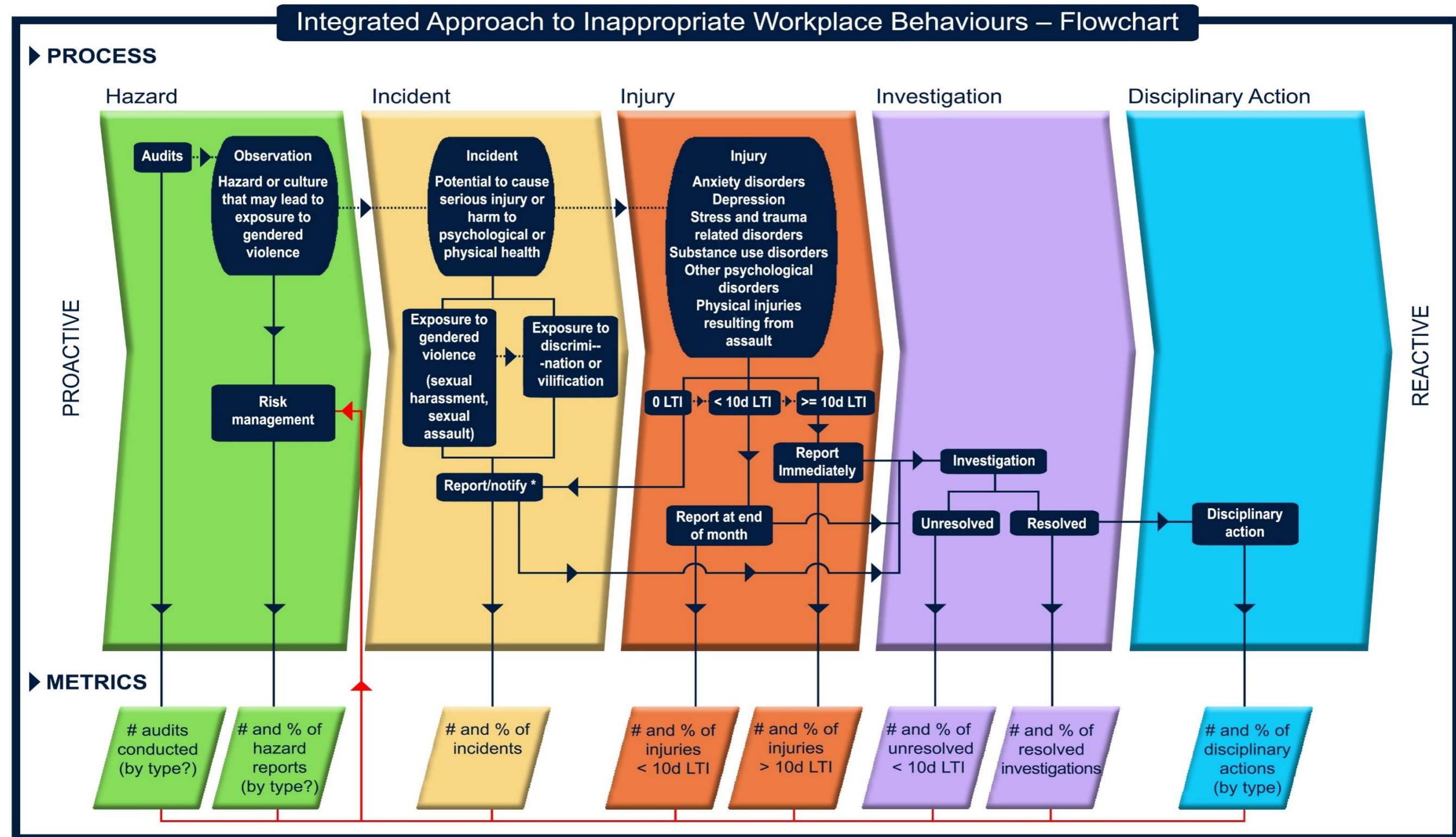
The next two pages show an overview of how different methodologies might be integrated to move from a reactive to proactive approach to inappropriate workplace behaviours. A proactive Work Health and Safety (WHS) systems approach might be used to identify hazards before they cause incidents.

Reporting might be integrated into the WHS system. Root causes and hazards identified during investigations could be fed back into the WHS system for mitigation.



Integrated Approach to Inappropriate Workplace Behaviours – Flowchart

Figure 2: Illustration of how different methodologies could be integrated to move from a reactive to proactive approach to inappropriate workplace behaviour.



Note: In this example a proactive Work Health and Safety (WHS) systems approach could be used to identify hazards before they cause incidents; this includes conducting audits, collecting metrics, identifying trends and acting on findings. Reporting of observations, incidents and injuries could be integrated into the WHS system. Investigations could be conducted using the WHS root cause analysis methodology (to prioritise improvement) or using a Human Resources (HR) approach (as HR personnel may be better trained in ensuring a trauma-informed approach and procedural fairness). Root causes and hazards could then be fed back into the WHS system for mitigation.

Integrated Approach to Inappropriate Workplace Behaviours – Practical Examples

Table 3: Practical examples illustrating an integrated approach to inappropriate workplace behaviours.

| Stage | Audits / Hazards | Incident | Injury | Investigation | | Disciplinary Action |
|-----------------------|---|---|--|--|--|--|
| | | | | Resolved | Unresolved | |
| Issue/ Outcome | <ul style="list-style-type: none"> Hazard with the potential to cause serious injury or harm to psychological or physical health | <ul style="list-style-type: none"> Incident with potential for major injury or occurring minor injury or harm to psychological or physical health (including events analogous to H&S “near misses”) Not resulting in the worker being unable to perform normal duties | <ul style="list-style-type: none"> Serious injury or harm to psychological or physical health Resulting in the worker being unable to perform normal duties | <ul style="list-style-type: none"> The hazard and / or occurrence were investigated and the sequence of events that led to injury and perpetrators were established | <ul style="list-style-type: none"> The hazard and / or occurrence were investigated and the sequence of events that led to injury and / or perpetrators could not be established | <ul style="list-style-type: none"> Disciplinary action of culpable person, if appropriate |
| Measure | <ul style="list-style-type: none"> Number of audits conducted Number and percentage of hazards by type (incl whether from audit or other source), severity and employee / contractor split, anonymous/non-anonymous split | <ul style="list-style-type: none"> Number and percentage of internally reported incidents by type, severity and employee / contractor split Number and percentage of externally reported incident reports and notifications by type, agency and employee / contractor split Number and percentage of incident-to-injury update by type, severity change, and employee / contractor split | <ul style="list-style-type: none"> Number and percentage of injuries by type, severity and employee / contractor split Number and percentage of external injury reports and notifications by type, agency and employee / contractor split Number and percentage of injury severity update by type, severity change, and employee / contractor split | <ul style="list-style-type: none"> Number and percentage of resolved internal investigations by type and employee / contractor split Number and percentage of resolved external investigations by type, agency and employee / contractor split | <ul style="list-style-type: none"> Number and percentage of unresolved internal investigations by type and employee / contractor split Number and percentage of unresolved external investigations by type, agency and employee / contractor split | <ul style="list-style-type: none"> Number and percentage of internal disciplinary action by type (including clear indication of severity) and employee / contractor split Number and percentage of reportable disciplinary action by type, agency and employee / contractor split Types of education as disciplinary action |
| Reporting | <ul style="list-style-type: none"> Internally reported and managed (executive team? HR?) | <ul style="list-style-type: none"> No LTI from the incident. Report to external agencies as soon as possible (depending on applicable legislation, e.g., WA WHS Mines Regulations 2022: most harassment/assault incidents are reportable as per reg 5(r).) | Depending on applicable legislation; example for WA: <ul style="list-style-type: none"> If >= 10days LTI from the incident: report to regulator immediately If < 10 days LTI from the incident: report to regulator at end of month. If no LTI from the injury: report to regulator as soon as possible | <ul style="list-style-type: none"> Report of stage/severity of incident changes during investigation Report if number of LTIs changes and hence category changes Report if criminal conduct is involved | | <ul style="list-style-type: none"> Disciplinary actions are reportable under certain circumstances and legislation |
| Examples* | <ul style="list-style-type: none"> Inappropriate posters or screen savers Inappropriate jokes Inappropriate gestures Gender-based ostracism | <ul style="list-style-type: none"> Psychosocial incidents where a person was not injured but could be (e.g., delayed onset PTSD) or could have been (sexual harassment / assault) Discrimination, vilification Occurrences that could escalate or be repeated and then lead to injury | <ul style="list-style-type: none"> Anxiety disorders Depression Stress and trauma related disorders Substance use disorders. Other psychological disorders Physical injuries resulting from assault | <ul style="list-style-type: none"> Culpability established. | <ul style="list-style-type: none"> Turn of events and/or culpability could not be ascertained | <ul style="list-style-type: none"> Verbal or written warning. Training, apology, demotion Dismissal |

Note: *Examples provided are for illustrative purposes only and classifications may vary depending on the circumstances of each case.

AREEA Support

Should you wish advice specific to your workplace regarding inappropriate workplace behaviours and trauma-informed handling thereof, please do not hesitate to contact AREEA's Workplace Relations Advisory Team. Your AREEA team is available to provide advice and undertake training.

For any practical support relating to workplace and employment issues get in touch via membership@areea.com.au or phone your local [AREEA office](#). For information on government policy and AREEA's advocacy, contact policy@areea.com.au.



References

Introduction

- ¹ [Community Development and Justice Standing Committee of the Legislative Assembly of Western Australia. \(2022\). 'ENOUGH IS ENOUGH' Sexual harassment against women in the FIFO mining industry \(328.365\). Executive Summary, page xiii.](#)
- ² [As above, Finding 1, page 9.](#)
- ³ [As above, Finding 6, page 17.](#)
- ⁴ [As above, Finding 7, page 20.](#)
- ⁵ [As above, Finding 10 Page 25.](#)
- ⁶ [As above, Finding 20 Page 44.](#)
- ⁷ [As above, Executive Summary, pages xiii-xiv.](#)
- ⁸ [Shepherd, B. & Borrell, E. \(2021\). Mining industry fears attracting women may be harder than ever, FIFO sexual harassment inquiry told. ABC News.](#)
- ⁹ [The West Australian \(2021\). Editorial: Evidence of toxic culture in mining sector should anger us all. The West Australian.](#)
- ¹⁰ [AREEA. \(2022\). National Workplace Sexual Harassment Campaign.](#)

Legislative background

Note: Acts, Regulations and Codes of Practice are referenced in text only. For an exemplary overview of Acts, Regulations and Codes of Practice related to psychosocial risks and/or potentially applicable to inappropriate workplace behaviours and gendered violence, see page 11.

- ¹¹ [Safe Work Australia. \(2021\). Implementation of WHS ministers' agreed response to the Review of the model WHS laws.](#)
- ¹² [Safe Work Australia. \(2023\). Model Code of Practice: Sexual and gender-based harassment 2023.](#)
- ¹³ [Government of Western Australia, Department of Mines, Industry Regulation and Safety. \(2022\). Information sheet – Gendered violence: Sexual assault.](#)
- ¹⁴ [Government of Western Australia, Department of Mines, Industry Regulation and Safety. \(2022\). Workplace behaviour: Code of Practice.](#)
- ¹⁵ [Government of Western Australia, Department of Mines, Industry Regulation and Safety. \(2022\). Psychosocial hazards in the workplace: Code of Practice.](#)
- ¹⁶ [Government of Western Australia, Department of Mines, Industry Regulation and Safety. \(2022\). Violence and aggression at work: Code of Practice.](#)
- ¹⁷ [Queensland Government | WorkSafe QLD. \(2022\). Managing the risk of psychosocial hazards at work: Code of Practice.](#)
- ¹⁸ [Safe Work Australia. \(2021\). Preventing workplace sexual harassment: National guidance material.](#)
- ¹⁹ [Australian Human Rights Commission. \(2023\). The Positive Duty under the Sex Discrimination Act.](#)
- ²⁰ [Australian Human Rights Commission. \(2023\). Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\).](#)
- ²¹ [Safe Work Australia. \(2016\). Guide for preventing and responding to workplace bullying.](#)
- ²² [Australian Human Rights Commission. \(2014\). Workplace discrimination, harassment and bullying fact sheet.](#)
- ²³ [Safe Work Australia. \(2021\). Preventing workplace sexual harassment guide.](#)
- ²⁴ [Healthdirect Australia. \(2021\). Sexual assault and rape.](#)
- ²⁵ [Australian Institute of Health and Welfare. \(2020\). Sexual assault in Australia.](#)
- ²⁶ [Australian Institute of Family Studies. \(2011\). Sexual assault laws in Australia.](#)
- ²⁷ [Respect@Work. \(2020\). Respect at Work for organisations.](#)
- ²⁸ [Respect@Work. \(2023\). Respect@Work Hub.](#)
- ²⁹ [Respect@Work. \(2022\). Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment.](#)

