Information and Privacy Commission NSW

IPC Prevention of Sexual Harassment in the Workplace Policy

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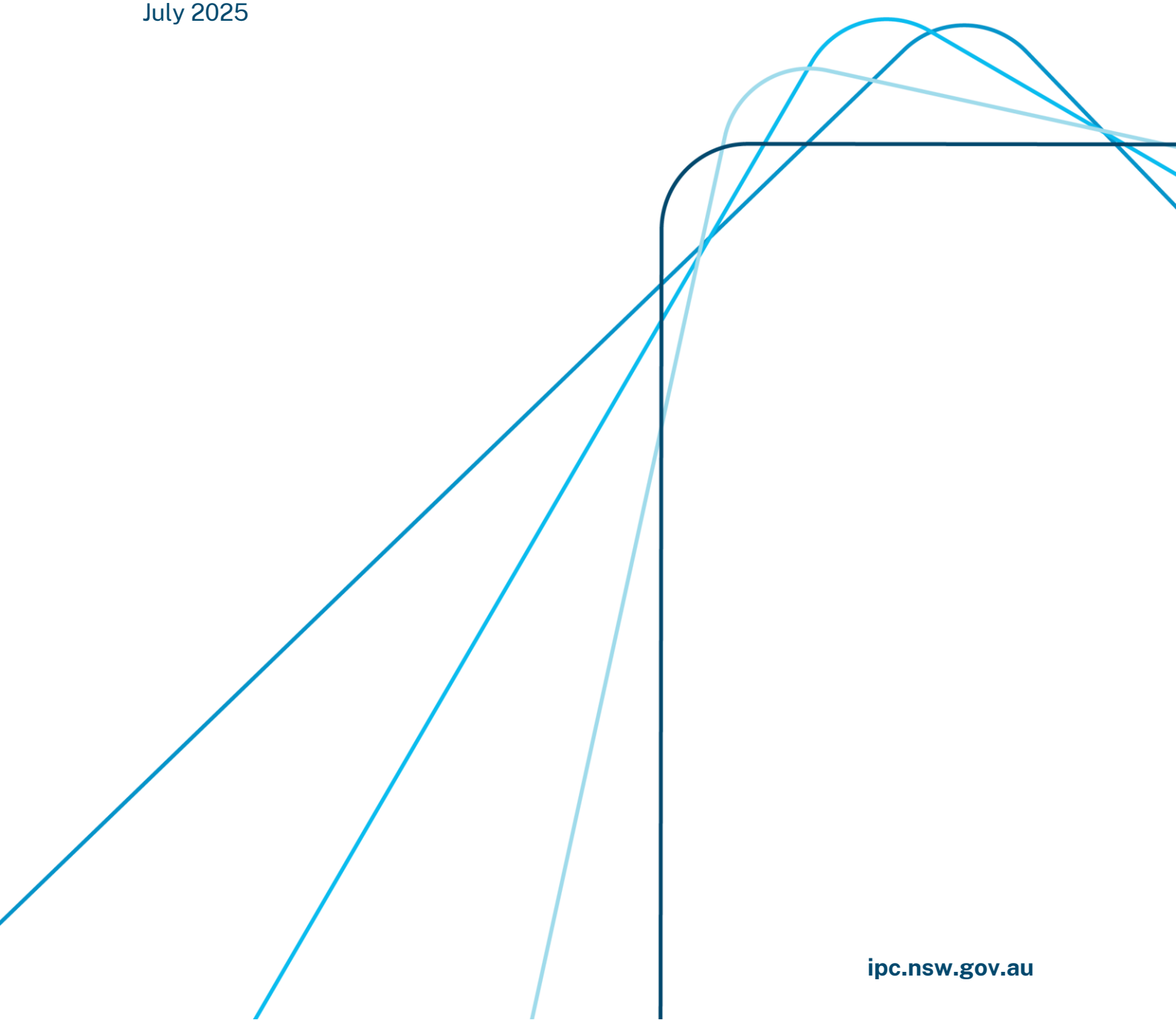

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Why have a sexual harassment prevention policy?

The Information and Privacy Commission (IPC) is committed to safe, respectful and inclusive work environments, free from sexual harassment. Sexual harassment will not be tolerated under any circumstances.

Sexual harassment is unlawful and prohibited by the *Anti-Discrimination Act 1977* (NSW) and the *Sex Discrimination Act 1984* (Cth). There are various Acts, interacting with policies and codes of conduct, which address sexual harassment in the NSW government sector.

The Australian Human Rights Commission's *Respect@Work: Sexual Harassment National Inquiry Report (2020)* found that there is a need for specific workplace policies that address the prevention of sexual harassment.[1]

By having a standalone prevention policy, we call attention to what sexual harassment is, how it manifests in workplaces, and the role we all play in preventing it. Sexual harassment is a work health and safety issue. All NSW government sector agencies have a duty of care to ensure, so far as is reasonably practicable, the health and safety of workers. This includes managing the risk of sexual harassment.

By ensuring safe and respectful work environments, we can attract and retain the best talent, drive better performance across the sector, accelerate our diversity and inclusion efforts, and enhance innovation. This is good for our people and good for our customers and communities.

Purpose

The purpose of this policy is:

- to ensure all workers understand the standards of behaviour expected of them and their legal rights and responsibilities in relation to workplace sexual harassment
- to ensure all workers understand what sexual harassment is, how to prevent it, and how to respond to it in a way that minimises harm and ensures they meet their legal responsibilities.

Principles

Guiding principles for this policy are:

Strong and consistent leadership: Commissioners, Directors, Managers and supervisors continuously reinforce that sexual harassment is unacceptable, model safe and respectful behaviour, and foster a safe reporting culture.

Sexual harassment is a work health and safety issue: all reasonably practicable steps are taken to eliminate or minimise the health and safety risks of sexual harassment in the workplace.

Prevention: sexual harassment is prevented by addressing gender inequality and unequal power relations as the key drivers and identifying and managing key risk factors.

Early intervention: early intervention approaches are used, where possible, to address workplace sexual harassment and prevent escalation

Respecting victim-survivors: the safety and wellbeing of victim-survivors is prioritised by providing a trauma-informed approach which supports, listens to, and validates the experience of victim-survivors.

[1] Respect@Work: Sexual Harassment National Inquiry Report (2020), Australian Human Rights Commission, p.655 -660.

All parties are treated fairly and supported: action to address sexual harassment prioritises the rights, needs and wishes of the reporter and should ensure adequate support is provided to the alleged harasser, including education and behavioural change options, while ensuring procedural fairness to all parties.

Responsive to diverse needs: understanding, respecting and embracing the many aspects of a person's identity in preventing and responding to sexual misconduct.

Scope

This policy applies to all people ('workers') carrying out work in any capacity for the IPC. In this policy:

- 'worker' has the same meaning as in the *Work Health and Safety Act 2011* (NSW) and includes an employee, a contractor or subcontractor, an employee of a contractor or subcontractor or an employee of a labour hire company who has been assigned to work in the person's business or undertaking, an outworker, an apprentice or trainee, a student gaining work experience, a volunteer or a prescribed class of person.
- 'workplace' is a place where work is carried out for a business or undertaking, and includes any place a worker goes, or is likely to be, while at work.

This policy applies to circumstances including the following:

- interactions between workers
- interactions between workers and third parties (including visitors, clients or customers) where that interaction occurs in connection with any work-related activity, e.g. sexual harassment of a visitor, client or customer by a worker
- on-site, off-site, work-related social functions and conferences – wherever workers may be for work-related duties, including working from home
- out of work hours interactions where there is a strong connection to the employment relationship
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport
- in online spaces, including email, Microsoft Teams and social media platforms where the conduct is in connection with the employment (e.g. remote work) or involving online communication between workers or between a worker and a third party.

Legislation

Sexual harassment and harassment on the ground of sex is unlawful and prohibited by the *Anti-Discrimination Act 1977* (NSW) (*Anti-Discrimination Act*) and the *Sex Discrimination Act 1984* (Cth) (*Sex Discrimination Act*). Both Acts apply to NSW government sector employees.

Employers or people conducting a business or undertaking now have a positive duty under the *Sex Discrimination Act* to take reasonable and proportionate measures to eliminate, so far as possible, sexual harassment, as well as certain other conduct contrary to that Act, including harassment on the ground of sex.[2]

[2] *Sex Discrimination Act 1984* (Cth) s 47C.

From 12 December 2023, the Australian Human Rights Commission (AHRC) will have power to conduct inquiries into employers or persons conducting a business or undertaking if the AHRC reasonably suspects that the employer or person is not complying with this positive duty. If non-compliance is found, the AHRC may issue a compliance notice to the employer or person and this notice may be enforced by Court order.

An employer may be 'vicariously liable' (i.e. legally responsible) for sexual harassment committed by employees or agents if the employer fails to take all reasonable steps to prevent the harassment.[3]

Some forms of sexual harassment (e.g. sexual assault, indecent exposure, stalking and obscene communications) may also be criminal offences.

Sexual harassment is also a work health and safety (WHS) risk. Under the *Work Health and Safety Act 2011* NSW (WHS Act), the IPC and its officers have a duty to prevent sexual harassment, as it is a hazard and risk to a worker's physical and psychological health. Workers also have WHS duties to take reasonable care for their own health and safety and not adversely affect the health and safety of others.

Some incidents of sexual harassment may be notifiable incidents under ss.35–38 of the WHS Act. A notifiable incident includes a person's death, or serious injury or illness requiring immediate treatment as an in-patient in a hospital.

Sexual harassment is also contrary to the ethical framework for government sector employees outlined in the *Government Sector Employment Act 2013* (NSW) (*GSE Act)* and contrary to the Code of Ethics and Conduct for government sector employees.[4]

Breach

Sexual harassment and other behaviour that contravenes this policy may amount to misconduct under the *GSE Act* and may otherwise be unlawful. The IPC will deal with misconduct in accordance with the requirements of s. 69 of the *GSE Act*, the *Government Sector Employment Rules 2014* (NSW), applicable laws and any other relevant industrial instruments.

Roles and Responsibilities

Employees

All employees and other workers must:

- comply with this policy
- demonstrate high levels of personal conduct consistent with this policy and their responsibilities under the Code of Ethics and Conduct for NSW government sector employees, IPC's Code of Conduct, and IPC's Respect and Dignity Policy. This means they must treat others with dignity, courtesy and respect and not engage in sexual harassment or condone sexual harassment by others
- seek assistance when unsure about how to implement this policy
- be encouraged to report suspected breaches of the policy in accordance with the reporting mechanisms below.

[3] *Anti-Discrimination Act 1977* (NSW) s 53 and *Sex Discrimination Act 1984* (Cth) s 106.

[4] *Government Sector Employment Act 2013* (NSW) Part 2 and 2A).

Commissioners/Directors/Managers/Supervisors

In addition to their responsibilities as employees, Commissioners/Directors/Managers/Supervisors must also:

- promote a work culture where sexual harassment is unacceptable
- communicate and promote this policy to those they work with
- challenge inappropriate behaviour
- encourage an environment where workers feel safe to report sexual harassment
- prioritise the care and support of those impacted when responding to issues raised with them or observed
- treat all reports of sexual harassment seriously and confidentially and take prompt action to address them (taking into account the wishes of the person subjected to the harassment).

What is Sexual Harassment

Sexual harassment is any conduct:

- that is unwelcome (whether the person impacted has explicitly identified it as unwelcome or raised a concern about the conduct)
- of a sexual nature (a sexual advance, request for sexual favours or other conduct of a sexual nature)
- that a reasonable person (aware of all the circumstances) would anticipate could possibly make the person subjected to the conduct feel offended, humiliated or intimidated.

It can be physical, verbal or written, including through online and phone communication. Examples of behaviour that could be sexual harassment in the workplace include:

- unwelcome or inappropriate touching, hugging, cornering or kissing
- inappropriate staring or leering that makes the other person feel intimidated
- sexually explicit or indecent physical contact
- actual or attempted sexual assault
- being followed or watched or having someone loitering nearby
- sexual gestures, indecent exposure or inappropriate display of the body
- displaying sexually explicit images or objects around the office
- intrusive or sexually suggestive questions, comments or jokes
- comments or questions about a person's sexual activities or body
- unwanted or repeated invitations to go out on dates, start a relationship or propositions for sex
- emailing pornography or rude jokes
- sending sexual text messages, including photos, videos or memes
- communicating content of a sexual nature through social media
- threatening to share or sharing intimate images/video of someone without consent

- ongoing unwelcome contact (e.g. in person, by phone, via social media) following the end of a consensual relationship.

It should not be assumed that a person consents to another person's behaviour simply because they have not complained about it. Power imbalances and concerns about victimisation or reprisal may prevent the person from expressly objecting to the behaviour. Some forms of sexual harassment are also criminal offences. Sexual assault (commonly referred to in the community as rape and attempted rape), sexual touching without consent and other sexual acts without consent are serious criminal offences.

There is no requirement that the unwelcome conduct be repeated; a one-off incident can be sexual harassment. A broader pattern of behaviour can also constitute sexual harassment. Sexual harassment may be perpetrated by various people, including an employer, supervisor, co-worker, client, contractor, volunteer, patient or customer. Some conduct may not meet the definition of sexual harassment but still be unlawful. For example, conduct may not be sexual harassment, but amount to harassment on the ground of sex, sex discrimination and/or the creation of a hostile workplace. A single act of conduct may fall into more than one of these categories, for example both sexual harassment and harassment on the ground of sex.

Relationships in the Workplace

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting adults is not sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated action.

This does not mean that consensual sexual or romantic interactions between workers are always appropriate. Workers may face disciplinary action where their actions adversely affect other workers or their workplace responsibilities.

The Code of Ethics and Conduct for NSW government sector employees requires employees to disclose actual, potential or reasonably perceived conflicts of interest between an employee's personal interests (including personal relationships) and their official duties. This may require disclosure of a current or previous relationship between an employee and another worker in some circumstances.

Reports of sexual harassment during or following the breakdown of a consensual relationship should be handled with care. Just because two individuals are, or used to be, in a consensual sexual relationship does not preclude the possibility of sexual harassment during or following the end of the relationship. Risk factors include where there has been a relationship breakdown or where the relationship involved employees with unequal power dynamics within an organisation.

Consent should not be assumed

A key element of sexual harassment is that it is **unwelcome**. Behaviour may be unwelcome even when it is not explicitly rejected. It should not be assumed that behaviour is consensual simply because the individual has not complained about it or has not verbalised that the behaviour was unwelcome.

Behaviour should be explicitly accepted and reciprocated. An individual should check that their advances are welcome. Checking should be verbal, and by observing non-verbal reactions and paying attention to the tone and content of any written communication such as texts.

Complex workplace dynamics, including power imbalances and concerns about reprisal or adverse treatment, may prevent the individual from expressly objecting to the conduct.

Where and how Sexual Harassment may occur

Sexual harassment is prohibited by law in the IPC's workplace and work-related situations. The workplace is not confined to the actual physical location used by workers. It includes any place where work is carried out and extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets of the premises.

Sexual harassment can occur beyond the usual workplace and outside normal working hours. For example, workplace sexual harassment can occur in settings where there is a connection to employment, including:

- 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 (e.g. at another business premises)
- at social functions sponsored and paid for by the IPC
- at social functions in connection with the team/workplace, but not sponsored or paid for by the IPC
- in vehicles while on the way to/from work functions or meetings
- at after-parties to such events (regardless of their location)
- in accommodation (e.g. hotel rooms) associated with or provided by the IPC
- online via use of technology and social media
- any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

Sexual harassment can occur through electronic means (e.g. emails, text messages, sending links to pornographic websites and through social media), regardless of whether sent during work hours or not. Where there is a link to employment (i.e. involving communications between workers), workers are subject to the same rules about sexual harassment in the virtual world as they are in the real world.

In line with the Department of Customer Service's (DCS) Acceptable Use Policy and IPC's Social Media Policy, workers are required to use technology and social media responsibly in the workplace and must treat others with dignity, courtesy and respect, and not engage in sexual harassment or condone sexual harassment by others.

Alcohol and sexual harassment

Consumption of alcohol at work functions or work-related events can increase the risk of sexual harassment occurring. Sexual harassment is unlawful and unacceptable in any setting, regardless of where it occurs, including when individuals have been consuming alcohol. Individuals should regulate their own behaviour and consumption of alcohol to ensure their behaviour does not adversely impact others.

Workers should be mindful, that in such situations, they continue to be subject to the Code of Ethics and Conduct for NSW government sector employees, the IPC's Code of Conduct, the Ethical Framework for the government sector and government sector behavioural standards. Commissioners, Directors, Managers and Supervisors should be particularly mindful of their conduct in such situations, noting power imbalances may make it harder for employees to call out unwelcome behaviour.

Prevention

The IPC is committed to taking a proactive and holistic approach to prevent sexual harassment in the workplace. This is consistent with work health and safety legislation. Under WHS laws, the IPC has a positive duty to prevent sexual harassment, as it is a hazard and risk to a worker's physical and psychological health.

Risk assessment

The duty requires the IPC to eliminate risks to the health and safety of workers and other people so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks, they must be minimised so far as is reasonably practicable. An employer who fails to maintain a safe workplace may be held liable under common law or under applicable work health and safety legislation. From 1 December 2023, an employer who fails to discharge its positive duty to prevent sexual harassment may be required to comply with an enforcement notice.[5] An employer may also be held liable for sexual harassment by workers under anti-discrimination legislation if they fail to take all reasonable steps to prevent the harassment.

Prevention requires identification of risks. Examples of risk factors include:

- working after hours with minimal supervision
- working in restrictive spaces like cars or small rooms
- isolated work locations.

Prevention also requires assessment of the work environment. Sexual harassment may occur where a work environment or culture is sexually charged or hostile, even if the conduct is not directed at a particular person. Factors that point to a sexually hostile workplace include the display of obscene or pornographic materials, general sexual banter, crude conversation or innuendo, and offensive jokes. It should be noted that even if such conduct does not amount to sexual harassment, it may be unlawful because it subjects another person to a workplace environment that is hostile on the ground of sex and may breach the employer's positive duty to prevent such unlawful conduct[6].

Leadership

It is expected that Commissioners, Directors, Managers and Supervisors will uphold this policy in full and proactively encourage others to do so too. Power imbalance is a significant risk factor for sexual harassment. Therefore, it is critical that Commissioners, Directors, Managers and Supervisors comply with the Code of Ethics and Conduct for NSW government sector employees and all behavioural policies in place at the IPC to better contribute to cultures that prevent workplace sexual harassment.

Transparency

The IPC is committed to transparency on the number of incidences of sexual harassment in the organisation. This builds confidence in our reporting processes. This does not mean full disclosure of all the details or disclosure of any reports which are found to be intentionally falsified or vexatious but rather considered sharing where possible of relevant de-identified information on a regular basis to encourage organisational learning and prevent similar incidents from happening in the future.

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[5] *Australian Human Rights Commission Act 1986* (Cth) s 35J, introduced by the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022*.

[6] *Sex Discrimination Act 1984* (Cth) ss 28M, 47C.

In doing so, the IPC will ensure confidentiality and privacy is maintained, and that no personal information or information which otherwise identifies victims or perpetrators can be ascertained from that data or any shared learning (or other) material.

Diversity and Inclusion

Diverse and inclusive workplaces are essential for building safe and respectful workplace environments that are free from sexual harassment. Addressing gender inequality is fundamental to eliminating workplace sexual harassment.

Knowledge and education

The IPC will ensure that Commissioners, Directors, Managers and Supervisors are trained to appropriately respond to disclosures of sexual harassment, ensure all workers are trained to appropriately identify sexual harassment, call out behaviour as active bystanders, and are aware of the reporting and response procedures.

Reporting Sexual Harassment

The IPC strongly encourages individuals who have been sexually harassed or have witnessed sexual harassment to report the behaviour. The IPC will take all reports of sexual harassment seriously. The response to the report will be guided by the person making the report. Making a report about sexual harassment does not necessarily automatically trigger a formal investigation, although that may be appropriate in some cases.

Support, advice and early intervention may prevent further or more serious instances of sexual harassment from occurring. Workers are encouraged to make timely reports; while being reassured they will not be treated unfairly because of any delay in reporting harassment.

Responding to and reporting sexual harassment as a bystander

The IPC strongly encourages and supports bystanders to call out and report inappropriate behaviour where it is safe for them to do so. Bystanders who witness sexual harassment are encouraged to:

- provide support to the person who is being subjected to sexual harassment
- formally or informally challenge concerning behaviour (if it is safe and they feel confident enough to do so)
- report sexual harassment.

A range of reporting pathways

Options available to report sexual harassment include:

- seeking support, advice and making a disclosure
- reporting internally to a Commissioner, Director, Manager or Supervisor
- reporting to an external authority.

Incidents of sexual harassment can be reported informally, formally, anonymously and confidentially. Reporting pathways are outlined in more detail below.

Seeking support, advice and making a disclosure

People who have experienced or witnessed sexual harassment can:

- speak to a Commissioner, Director, Manager or Supervisor or union representative to raise concerns, receive support and discuss options that could help resolve the issue
- access the Employee Assistance Program EAO) (PeopleSense 1300 307 912) or another EAP provider

- seek advice from an external body, e.g. Australian Human Rights Commission, Anti-Discrimination NSW, Safe Work NSW, NSW Women's Legal Service or Wirringa Baiya Aboriginal Women's Legal Centre.

Individuals may wish to raise the issue directly with the other person(s) involved if they feel safe and comfortable to do so. However, there is no expectation or requirement for this.

Report internally

Where self-management is not appropriate or does not resolve the matter, a report can be made (verbally or in writing) to a Commissioner, Director, Manager or Supervisor. Reports can be made in accordance with IPC's Internal Reporting Policy. The person impacted may choose to report using DCS's mysafety system, as sexual harassment is a workplace hazard.

Where a report of sexual harassment is received, IPC will ensure the person impacted receives appropriate support and is involved in decisions about how to respond. All reports will be responded to promptly, taken seriously, and treated confidentially. Steps will be taken to protect anyone who makes a report from reprisals, adverse treatment or victimisation (see 'Criminal Matters' below).

In cases of sexual assault, employees will be supported to make a report to the police and referred to specialised sexual assault support services.

Report to an external agency

A formal report about sexual harassment can be made to the following agencies:

- Anti-Discrimination NSW
- Australian Human Rights Commission
- Safe Work NSW
- NSW Police Force
- Fair Work Ombudsman
- NSW Independent Commission Against Corruption, if corrupt conduct is suspected or may be involved.

The person impacted can make an external report regardless of whether they have raised a complaint internally.

Responding to reports of sexual harassment

The IPC is committed to taking a trauma-informed and person-centred approach when responding to reports of sexual harassment. This includes:

- ensuring the safety, privacy and wellbeing of the person impacted are prioritised
- listening to the person impacted in a compassionate, nonjudgmental and sensitive manner
- ensuring all processes are designed to minimise harm
- ensuring reports are handled fairly, impartiality and reasonably in accordance with procedural fairness principles
- ensuring all participants in the process have clear information about the process and how procedural fairness will be provided
- ensuring confidentiality is understood and maintained
- ensuring responses are provided in a timely manner.

If an allegation of misconduct has been made, the IPC must deal with the allegation in accordance with any applicable legislation. This includes making an initial assessment of whether the allegation is vexatious or trivial, whether the conduct does not amount to misconduct, or whether there is likely to be difficulty in establishing the facts of the matter.

The IPC will always seek input from the person impacted on how they would like the matter resolved and take this into account in determining how to proceed with the complaint. Where possible, the IPC will explain its reasons if it does not handle or resolve the complaint in the way requested by the person impacted. The NSW Public Service Commission has developed an Implementation Guide which includes strategies for responding to disclosures of sexual harassment.

In some cases, the person impacted may not want any action taken and is reporting the behaviour so that the organisation knows that it has occurred. The IPC has an obligation to deal with any wrongdoing it becomes aware of. In some cases, action may be warranted, even where the person impacted states that they do not want any further action to be taken. This may be the case in situations where the behaviour constitutes a work health and safety risk or a criminal offence or requires disciplinary action to be taken or where there have been repeated complaints regarding an individual's behaviour. IPC's Managing Workplace Issues Procedure also provides guidance on resolution of workplace issues.

The IPC is also obligated to take measures to eliminate acts of victimisation in relation to sexual harassment complaints (see section 'Protection against victimisation' below).

Informal resolution

Informal resolution or management is where the issue is resolved internally, without a formal response or investigation. Rather than deciding as to whether the conduct occurred, the aim is to stop escalation or future incidents by educating the alleged harasser about acceptable standards of behaviour and mitigating the risk of the conduct repeating in the future.

Responding to issues through informal resolution may include:

- a Commissioner, Director, Manager or Supervisor speaking to the alleged harasser about their behaviour
- facilitating/mediating an open and respectful conversation between the parties (mediation will only occur with the full and informed consent of both the person reporting the behaviour and the alleged harasser)
- putting system changes in place to prevent further issues, e.g. moving or changing the shifts of the alleged harasser, directing the alleged harasser to participate in behavioural change counselling
- refresher training for the general work area on the requirements of this policy.

Work health and safety investigation

Where a worker has chosen to report the sexual harassment as a work health and safety hazard, or the incident has been identified as a work health and safety hazard, the IPC will investigate in accordance with IPC's Work Health and Safety Policy.

Formal investigation

Where a formal investigation is appropriate or is the preference of the person impacted, the IPC will appoint an internal or external investigator to investigate the allegation/s and make factual findings, and report to the Chief Executive Officer, who will then decide an outcome in accordance with applicable legislation. Investigations will be conducted in a confidential, impartial, timely and fair manner. Investigations will adopt a trauma informed approach, with awareness of power imbalances that may exist between the parties. The parties involved will be notified of their right to have a support person or union representative to assist them throughout the process.

The IPC will begin the investigation as soon as possible and aim to finalise a formal investigation within 90 business days. The parties will be kept regularly informed during the period of the investigation. Investigations will be undertaken in line with relevant organisational policies, procedures and industrial instruments. Part 8 of the Government Sector Employment (General) Rules 2014 sets out the procedural requirements for dealing with allegations of misconduct by public service employees. Other legislation or industrial instruments may apply for other employees. In some circumstances, an employee who is the subject of a complaint may be suspended from duty whilst an investigation is ongoing and/or a decision is made in relation to the complaint.

Procedural fairness

The IPC acknowledges that for workers who are the subject of allegations of wrongdoing, the experience may be stressful. The IPC will protect their rights by:

- assuring them that any report will be dealt with impartially, fairly and reasonably in accordance with the principles of procedural fairness
- confirming that the report is an allegation only if and until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the Employee Assistance Program for support
- allowing both parties the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

Any reports made that are found to be intentionally falsified or vexatious in nature will be actioned accordingly – noting that this conduct may itself amount to misconduct under the GSE Act.

Confidentiality, privacy and transparency

The IPC will treat reports of sexual harassment confidentially, including:

- the identity of the person impacted, alleged harasser/s, and any other participants involved in the investigation process
- information provided or collected during the investigation of an allegation.

It is expected that all workers involved in an investigation will keep details of the allegation confidential until the investigation has concluded. Failure to do so may result in further consequences or disciplinary action. Ensuring confidentiality should not prevent the people involved from seeking support, e.g. through the Employee Assistance Program, bringing a support person to meetings.

Some information reported may need to be disclosed to involved parties in order to properly investigate the matter. Where there is reason to believe that a person is a risk to themselves or others, and in the case of reportable conduct (e.g. child protection, serious indictable offence), the IPC may need to notify appropriate authorities. Once the matter is finalised, the IPC will not restrict the impacted person's right to speak in their personal capacity.

Possible outcomes

Consequences for the responsible person(s)

Where allegations of sexual harassment are substantiated, action that is consistent and proportionate will be taken to hold the responsible person to account for their behaviour. The possible outcomes will also depend on whether an informal resolution or a formal complaint was preferred by the person impacted. Possible outcomes include:

- disciplinary action, e.g. warning, suspension, demotion or dismissal

- a change to working hours or locations
- an apology
- agreement on protocols to manage the relationship moving forward
- refresher sexual harassment prevention training
- coaching or performance counselling
- behavioural change counselling.

Where a serious allegation of sexual harassment is substantiated, it is likely this will be found to be misconduct and disciplinary action will follow.

Restorative actions for the impacted person(s)

The IPC will work with the impacted person(s) to understand and implement, where possible, any actions that may help them to recover from the incident, rebuild relationships at work and continue a successful career with the IPC.

Criminal matters

Where a report of sexual harassment is made that may involve behaviour constituting a criminal offence (e.g. sexual assault, indecent exposure, stalking, obscene communications), IPC will immediately seek legal advice and if appropriate, seek advice from DCS Human Resources.

In general, the IPC will not report sexual offences to the police without the consent of the person making the report, in line with a person-centred and trauma-informed approach. However, when there is an imminent risk to safety, there will be circumstances when police may need to be called without consent.

Protection against victimisation

Victimising another person for making an allegation or report of sexual harassment is unlawful under the *Anti-Discrimination Act 1977* and the *Sex Discrimination Act 1984*, unless it involves lawful action in relation to an allegation that is proven to be false and not made in good faith. Victimisation occurs when a person is subjected to, or threatened with, detriment for their involvement in the matter. It can include:

- bullying or intimidation by co-workers
- being denied a promotion or being moved to a position with lower responsibility
- dismissal or threatened dismissal from employment
- being refused further contract work.

Victimisation of people who have, or might, complain of sexual harassment, as well as bystanders or people perceived to have helped a person make a report of sexual harassment, is also unlawful. Acting against an employee for making a report can also constitute misconduct under s 69 of the GSE Act.

Recordkeeping

The IPC keeps confidential records of all correspondence with parties in relation to reports of sexual harassment, including how the report is addressed, letters, emails, file notes of phone calls and conversations, investigation reports and all evidence collected.

Records are kept in accordance with applicable legislation, including the *Government Sector Employment (General) Rules 2014*, *Government Information (Public Access) Act 2009*, *Privacy and Personal Information Protection Act 1998*, *State Records Act 1998* and IPC's Privacy Management Plan and Records Management Policy.

Monitoring and Evaluation

The IPC is committed to effective monitoring, evaluation and organisational learning processes that will foster a safe and respectful work environment. This includes:

- regularly collecting and assessing reports and relevant data for trends, patterns and lessons to drive continuous improvement
- regularly consulting with workers and unions to share knowledge and understand issues from a worker perspective
- regularly reviewing and updating sexual harassment prevention plans to drive continuous improvement
- sharing information about trends, patterns and lessons with staff, leadership, unions management boards or committees and relevant stakeholders
- ensuring staff have confidence that sexual harassment is being eliminated in their workplace.

Legislative Context

- *Anti-Discrimination Act 1977* (NSW)
- Sex Discrimination Act *1984* (Cth)
- *Government Sector Employment Act 2013* (NSW)
- *Government Sector Employment (General) Rules 2014* (NSW)
- *Work Health and Safety Act 2011* (NSW)

Related Policies

This Policy is informed by the IPC, state and federal policies and guidelines including:

- NSW Public Service Commission Code of Ethics and Conduct for NSW government sector employees
- IPC Code of Conduct
- IPC Dignity and Respect Policy
- NSW Public Service Commission Implementation Guide for Model Sexual Harassment Prevention Policy
- IPC Managing Workplace Issues Procedure (D19/004063/DJ)
- IPC Public Interest Disclosures Internal Reporting Policy
- IPC Work Health and Safety Policy

Document information

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