



Australian Government  
Comcare

# Referral pathways for sexual harassment in the workplace

## A guide for employers in the Comcare scheme



### STEP 1

#### Ensure the safety of the impacted individual

Have a trauma-informed, confidential conversation with them about the support they need and the outcome they are seeking.

With the impacted individual's consent, report the matter to the police if the complaint involves apparent criminal conduct.



Share information on support services available for workers and others impacted by workplace sexual harassment (see overleaf).



### STEP 2

#### Consider obligations under the WHS laws

If a notifiable incident under the WHS Act has occurred, it must be notified to Comcare. The employer (PCBU) should initiate an investigation, and review and revise risk controls to manage any ongoing risks to health and safety.



### STEP 3

#### If appropriate, work to address the issue through internal processes

The employer and employee may reach a workplace resolution through internal grievance or dispute resolution processes. Note: If police are involved or it is a notifiable incident, Step 3 may not be an option.



### STEP 4

#### Consider referral pathways

Note: Depending on the outcome the individual is seeking, they may only be able to involve one referral pathway at a time.



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#### Comcare

National authority for work health and safety, and workers' compensation

##### Focus on individuals

Workers' compensation claims for injured workers.

##### Focus on employers

Systems-based regulation of work health and safety.



Australian Human Rights Commission

#### Australian Human Rights Commission (AHRC)

An independent agency which inquires into and attempts to conciliate discrimination and human rights complaints

##### Focus on individuals

Inquires into and attempts to conciliate sexual harassment complaints.

##### Focus on cultural change through employers

To support meaningful cultural change towards safer, respectful and more equitable workplaces by ensuring compliance with the **positive duty**.



Fair Work Commission

#### Fair Work Commission

Australia's national workplace relations tribunal

##### Focus on individuals

Helps with issues in the workplace/resolving issues at work. Can make an order to stop sexual harassment or, where the alleged sexual harassment commenced on or after 6 March 2023, otherwise deal with a sexual harassment dispute.

# Referral pathways for sexual harassment in the workplace

## A guide for employers in the Commonwealth jurisdiction



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### Comcare

National work health and safety (WHS) and workers' compensation authority

#### Responsibilities

- Provide information and advice to duty holders and other stakeholders
- Monitor and enforce compliance with the WHS laws
- Investigate WHS incidents and complaints
- On request, assist in resolving health and safety issues
- Manage workers' compensation claims

A workplace sexual harassment incident that meets the criteria of a notifiable incident must be notified to Comcare. More information is available on the [Comcare website](https://www.comcare.gov.au).

#### Actions

- Conduct inspections in workplaces to determine whether risks of workplace sexual harassment are adequately managed
- Issue improvement notices to direct employers to make safety or health improvements and to remedy ongoing contraventions of the WHS Act
- Issue prohibition notices to prohibit certain activities that involve serious risks to health and safety
- Conduct prosecutions (generally for the most serious cases)
- Provide compensation for medical and general support to workers recovering from injury as a result of sexual harassment in the workplace (eg income compensation payments, medical expenses and/or a lump sum amount)

For information on employer obligations see the [Comcare website](https://www.comcare.gov.au).

Website: [comcare.gov.au](https://www.comcare.gov.au)



Australian  
Human Rights  
Commission

### Australian Human Rights Commission (AHRC)

An independent agency which inquires into and attempts to conciliate discrimination and human rights complaints

#### Responsibilities

- Inquire into and attempt to resolve workplace sexual harassment complaints
- Administer conciliation processes for parties to negotiate outcomes to disputes
- Support meaningful cultural change towards safer, respectful and more equitable workplaces by ensuring compliance with the **positive duty** under the *Sex Discrimination Act 1984* (Cth).

The new positive duty requires employers/PCBUs to take 'reasonable and proportionate measures' to eliminate, as far as possible, sexual harassment in connection with work. The AHRC has published comprehensive [Guidelines](#) and an [Information Guide](#).

#### Actions

- Independent conciliation assistance – outcomes may include compensation for lost wages, an apology, job reinstatement and changes to workplace practices e.g. training and policies
- Inquiries to support meaningful cultural change – outcomes may include voluntary engagement and agreements, compliance notices, enforceable undertakings and Federal court orders.

The Commonwealth and each state and territory have an anti-discrimination and/or human rights body responsible for investigating and resolving complaints of discrimination, including complaints about workplace sexual harassment. Not all bodies have the same regulatory powers.

Website: [humanrights.gov.au](https://www.humanrights.gov.au)



Fair Work  
Commission

### Fair Work Commission (FWC)

Australia's national workplace relations tribunal

#### Responsibilities

- Help resolve workplace issues, including:
  - dealing with applications for orders to stop sexual harassment, and
  - dealing with workplace sexual harassment disputes through its dispute resolution powers (where the alleged conduct commenced on or after 6 March 2023)

#### Actions

- Make an order to stop sexual harassment. In doing this, the FWC may make any order it considers appropriate (other than for the payment of money).
- Where the FWC deals with the dispute through its broader dispute resolution powers (in relation to alleged conduct that commenced on or after 6 March 2023), the FWC can:
  - hold a conference to help parties reach agreement
  - make a recommendation or express an opinion
  - issue a certificate, if the FWC is satisfied attempts to resolve the dispute have been, or are likely to be, unsuccessful. Parties can then proceed to consent arbitration at FWC or make an application to Court.
- Where a case proceeds to (formal) consent arbitration, possible actions the FWC can take include deciding to:
  - make orders for the payment of compensation or lost wages
  - make orders to make up for loss or damage suffered by an aggrieved person
  - express an opinion that a respondent sexually harassed an aggrieved person or contravened the prohibition on sexual harassment through vicarious liability
  - express an opinion that it would be inappropriate for any further action to be taken.

Website: [fwc.gov.au](https://www.fwc.gov.au)



### Support services

- Employee Assistance Program (EAP)
- **1800RESPECT 1800 737 732**
- [Sexual assault support services](#)
- Lifeline **13 11 14**
- Beyond Blue Support Service **1300 22 4636**
- Unions or other worker representatives

**Note** This information is relevant to sexual harassment complaints reported in the Commonwealth jurisdiction. States and territories have equivalent bodies.