



**Law Council**  
OF AUSTRALIA

# **Guidance Note 1**

## **Information for organisations implementing the Model Framework**

**National Model Framework Addressing Sexual Harassment for the  
Australian Legal Profession**

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# 1. Overview

**These guidelines are designed to be read together with the National Model Framework, in which all relevant terms are defined.**

**This document has been developed as a guidance material only and is not legal advice.**

The Law Council of Australia has carefully developed the National Model Framework Addressing Sexual Harassment for the Australian Legal Profession (**Model Framework**) as a guidance resource to help organisations (referred to as **Model Framework Adopters** or **MFA**s in the Model Framework) mitigate the risk of, and respond to, claims of sexual harassment.

As the peak national body for the Australian legal profession, the Law Council has developed the Model Framework in consultation with the Law Council's Constituent Bodies, regulators and other key stakeholders, as a statement of best practice in the management of sexual harassment. Organisations are not being asked to sign on or commit to using this Model Framework - the Law Council offers this resource to the profession to help the profession to be a better and safer place for all members.

The Law Council recognises that legal workplaces come in many forms, and a 'one-size-fits-all' approach is inappropriate. A degree of prescription can be helpful in stressful situations where guidance is desired, but can also unwittingly exclude organisations of differing sizes and resource levels. The Law Council understands that in order to be most helpful, best practice recommendations and guidance resources need to be adaptable and accessible to a range of different contexts.

Organisations may choose to adopt the Model Framework and its appendices in its entirety as their sexual harassment policy. However, the Law Council recognises that many organisations have dedicated many hours and resources to developing their current policies, that have been carefully designed to reflect the individual circumstances of that organisation. The Law Council commends and does not wish to undermine such efforts. The Law Council also recognises that there are many excellent model policies available addressing this issue, some of which have been developed by the Law Council's own Constituent Bodies. The Law Council supports the profession engaging with those very helpful and effective resources.

The Law Council also recognises that organisations will have different resourcing levels at their disposal. Some organisations will already have highly sophisticated and well-resourced policies and management systems in place that are more effective and appropriate for that organisation. There are, equally, some organisations that could not practically implement all the recommendations in the Model Framework. There are, accordingly, many circumstances in which the adoption of the full Model Framework is not appropriate nor helpful to that organization or the profession. In those cases, the Model Framework can be used to augment and/or refine existing policies.

This *Guidance Note 1* has been developed to assist organisations in implementing the Model Framework in a way that suits their unique circumstances.

## 2. Purpose

Policies are important because they set expectations. By outlining the expected standards of behaviour, a clear message is sent to an organisation's staff and associates about what is, and, pertinently, what is not acceptable.

Policies also mitigate conflict by clearly outlining how poor conduct will be addressed in advance. It provides guidance to all parties to the complaint, and can be relied upon by the organisation should a party query the process. While this structure and clarity can help in a stressful situation for all parties involved, this approach is destined to fail if the key issues are not addressed in the policy or in the necessary detail, or in a manner that is not appropriate for the organisation.

The Model Framework provides a comprehensive response to sexual harassment that can be adapted to an organisation's particular circumstances.

## 3. How to use the Model Framework

When considering whether your existing policy is effectively addressing sexual harassment, the first step is for your organisation to undertake an assessment of the current policy arrangements.

To assist in this process, the Law Council has developed the auditing tool/checklist at **Appendix C** to the Model Framework. By working through the checklist and comparing it to your existing policy, your organisation can assess whether your existing policy addresses all the necessary issues and topics so to effectively address sexual harassment.

To the extent that the auditing checklist reveals any gaps in an organisation's existing policy, you can decide to:

- replace your existing policy with the Model Framework, in its entirety, as your new policy;
- replace your existing policy with an amended Model Framework that has been adapted to reflect your organisation's particular circumstances and resources; or
- use any paragraphs of the Model Framework to address any gaps revealed in the auditing process to augment and improve your existing policy.

The Law Council notes that any future amendments to the Model Framework may mean that the final policy adopted no longer reflects best practice. It is accordingly recommended that you use the auditing tool again at the end of the development of a customised policy, to ensure that the amended document covers the necessary issues and detail.

It is important to note that the Model Framework, in its focus on sexual harassment, is but one piece of a broader management system that organisations should consider. There are many factors that contribute to an organisational culture facilitating sexual harassment<sup>1</sup> and some groups are particularly vulnerable to sexual harassment.<sup>2</sup> It is accordingly

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<sup>1</sup> See, for example, the factors outlined in paragraph 3.8 of the Model Framework.

<sup>2</sup> See, for example, those identified in paragraph 3.9 of the Model Framework.

important to consider implementing or strengthening policies and systems in place addressing those other issues, including but not limited to:

- gender equality and equitable practices;
- promotions and pay equality;
- inclusion and diversity; and
- flexible work arrangements.

These policies should also be supported with training, such as courses available through the Law Council's Constituent Bodies,<sup>3</sup> the Australian Human Rights Commission,<sup>4</sup> your state or territory human rights or equal opportunity commission,<sup>5</sup> or the Diversity Council Australia.

## 4. Best practice recommendations for complaints procedures

Included in the appendices to the Model Framework are best practice recommendations for complaints procedures (**Complaints Procedures**), directed toward:

- organisations taking external complaints about sexual harassment - for example, disciplinary bodies (**Appendix A** to the Model Framework); and
- organisations dealing with internal complaints - such as workplaces (**Appendix B** to the Model Framework).

The Complaints Procedures, like the Model Framework, are designed to draw and build upon existing best practice and provide guidance to organisations about the issues that should be considered in the management of sexual harassment complaints. These appendices have accordingly been drafted to complement existing best practice as far as possible, to promote national consistency of approach.

Much like the balance of the Model Framework, Appendices A and B have been developed with a degree of prescription to assist organisations wanting detailed guidance for their complaints handling procedures. However, some organisations will not have the resources, including personnel, to support some or all the recommendations in these Complaints Procedures. Organisations can use the auditing tool/checklist to assess and adapt the Model Framework to suit their needs, using the paragraphs of the Model Framework to the extent that they assist the organisation in addressing any gaps.

For example, some organisations may not have the staffing resources to support a dedicated human resources person, complaints handler and/or investigator, as they are expressed in the Model Framework, or may already have adopted complaints procedures appropriate for their circumstances. In these circumstances, the Model Framework including the Complaints Procedures may need to be adapted to reflect this – for example, would it be more appropriate for a complaints process to be managed by an external

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<sup>3</sup> For more information, please see the Law Council's [Time for Change: Addressing Sexual Harassment](#) portal.

<sup>4</sup> See: Australian Human Rights Commission, *Sexual harassment prevention training*, available online: <https://humanrights.gov.au/education/training/sexual-harassment-prevention-training> .

<sup>5</sup> See, for example, this helpful list from prepared by the Australian Human Rights Commission: <https://humanrights.gov.au/about/links-human-rights-organisations-and-resources> .

provider? Or perhaps there are existing staff members who could be appropriately trained and have complaints handling as part of their duties at the organisation?

External complaints handling services might include:

- a human resources consultant;
- a mediator;
- a consulting firm; and/or
- an alternative dispute resolution service.

There are also a range of affordable training courses that can be accessed from organisations such as through organisations such as:

- your local law society or professional association;<sup>6</sup>
- [the Australian Human Rights Commission](#);
- your state or territory human rights or equal opportunity commission,<sup>7</sup> and/or
- Diversity Council Australia.

## 5. How to manage associates of the organisation

The Law Council acknowledges that the risk of sexual harassment is not confined to the employees, partners and/or directors of an organisation. Mitigating this risk requires a broader approach, and the Model Framework accordingly addresses clients, visitors and other associates of the organisation (referred to in the Model Framework as **MFA associates**).

This is a more difficult proposition in practice than managing the conduct of employees, partners and/or directors. The Model Framework accordingly requires organisations to ensure *as far as is reasonably practicable* that associates of the organisation are advised of and acknowledge:<sup>8</sup>

- the existence of, and obligations under, the Model Framework; and
- the expected standards for acceptable and appropriate behaviour set by this Model Framework, in all circumstances connected with the activities of the organisation.

The Model Framework also requires organisations to ensure *as far as is reasonably practicable* that:

- senior staff within the organisation clearly communicate, promote and maintain the expected standards for acceptable and appropriate behaviour to which all MFA associates are expected to comply, in all circumstances connected with the activities of the organisation;<sup>9</sup> and
- that input from MFA associates is sought in relation to risk assessments and plans.

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<sup>6</sup> For more information about sexual harassment or the Model Framework, please see the Law Council's [Time for Change: Addressing Sexual Harassment](#) portal.

<sup>7</sup> See, for example, this helpful list from prepared by the Australian Human Rights Commission: <https://humanrights.gov.au/about/links-human-rights-organisations-and-resources>.

<sup>8</sup> See section 6.2 of the Model Framework.

<sup>9</sup> See section 6.9 of the Model Framework.

How these are to be implemented in practice very much depends on the type and nature of relationship with the MFA associate, but might be addressed through:

- terms in contracts of engagement;
- codes of conduct;
- discussions between senior personnel;
- the modelling of expectations from senior personnel; and/or
- senior personnel of the MFA addressing complaints with senior personnel of the MFA associate, as appropriate in the circumstances.<sup>10</sup>

For example, retainers for barristers could include a stipulation that they agree with the terms of the Model Framework including its appendices, with a link to, or copy of, the Model Framework annexed to the relevant document. Collectively, organisations can send a strong message through the profession if certain standards of behaviour are clearly communicated and, pertinently, enforced.

## 6. When to refer a complaint to an external body

There will be circumstances where it is appropriate to refer the complaint to an external body. This may include:

- matters that warrant police investigation or intervention for example those involving stalking, assault or other criminal acts;
- matters concerning a risk to workplace health and safety, such that the matter is more appropriately addressed by WorkSafe or a commercial regulator;
- where the Respondent is someone who would ordinarily investigate the complaints; and/or
- where there is some other conflict of interest or apprehended bias.

## 7. More information

For more information about sexual harassment or the Model Framework, please see the Law Council's [Time for Change: Addressing Sexual Harassment](#) portal.

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<sup>10</sup> Having careful regard to the circumstances such as nature of the information shared, the basis upon which the complaint was made (for example, on an anonymous basis) and/or whether the complainant or targeted person can be identified from the information.