



Law Council
OF AUSTRALIA

Guidance Note 2

Information for persons wanting to make a complaint about sexual harassment

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

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Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

1. Background

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.

Sexual harassment is unacceptable, in any context. Sexual harassment impairs the dignity and respect of those who experience it. The harm can be long lasting and, for organisations, it may have adverse legal, financial and reputational outcomes. Eliminating sexual harassment in the legal profession has been part of a long-running commitment from the Law Council and its Constituent Bodies.

One of the policy responses developed by the Law Council to help reduce sexual harassment is the *Best Practice Recommendations for Complaints Procedures (Recommendations)*¹ in Law Council's *National Model Framework Addressing Sexual Harassment for the Australian Legal Profession (Model Framework)*.

This Guidance Note 2 has been developed alongside the Recommendations to assist those who are considering making a complaint about sexual harassment.

2. Where can I get help?

2A. Support

Helpful support services may include:

- 1800 RESPECT;
- Resources on the Australian Human Rights Commission's [website](#);
- Resources from the [Australian Government](#);
- Lifeline;
- [Beyond Blue](#); and
- [Better Help](#).

2B. Police intervention

Depending on your circumstances, you may want to reach out to the Police for help. Each state and territory have dedicated services who offer support for people who are victims of crime. If you are considering making a Police report, the following services may be able to help you with this process (please see the links below):

- [Australian Capital Territory](#);²
- [New South Wales](#);³
- [Victoria](#);⁴
- [South Australia](#);⁵
- [Western Australia](#);
- [Tasmania](#);
- [Queensland](#); and
- [Northern Territory](#).

There are also Victim Advocate Services that may be able to help you. For example, see [Victim Support Services](#). The Law Council's [Time for Change: Addressing Sexual Harassment](#) portal also has helpful further information about support services.

2C. Finding legal assistance

If you want to speak with a lawyer about your experience and options, you can contact your local [law society](#) or professional association for help seeking legal assistance.⁶ The Law Council's [Time for Change: Addressing Sexual Harassment](#) portal also has further helpful information.

2D. Employers and workplaces

Should you feel comfortable doing so, you might consider contacting your human resources (or other appropriately trained) person at your workplace, to see what support frameworks are available at your workplace for people who have experienced sexual harassment.

3. Where can I report sexual harassment?

3A. Reporting to the workplace, club or organisation

An option available is to reach out to the person responsible for handling sexual harassment complaints at your workplace, club or organisation. This may be a human resources person or other person who has been appropriately trained, as is recommended under the Model Framework.⁷

Complaints handlers should treat you fairly and with respect, offer you support services, and clearly explain the available avenues for redress including what information may be requested, and how your information will be treated. You can ask for your conversations to be confidential, although your sexual harassment complaints handler may be obligated under law to report certain incidents, for example where they involve criminal conduct or pose particular risks to workplace health and safety.

Speaking about your harassment does not mean that you have to make a formal complaint - either right away, or at all. Depending on the resources and circumstances of your workplace, club or organisation, it may be possible to make an anonymous complaint. If you are not comfortable making a formal complaint, there are still options available to address the harassment. This may include, for example:

- training for the office or organisation on sexual harassment;
- changes to your working arrangements or reporting lines;
- a change in workplace location;
- the utilisation of remote working arrangements; and/or
- the implementation of updated policies or directions to address the relevant risk factors, for example in respect of conduct at social events.

Should you not want to pursue a formal complaints process⁸ you can request a more informal method of dispute resolution which may, for example, include a conciliation or mediation with the person you have made a complaint against (**the Respondent**) about their behaviour.⁹

Should you wish to proceed to a formal complaint, the Respondent will need to be notified. This is so the Respondent has an opportunity to respond to the complaint made against them.¹⁰ This will necessarily require that sufficient information be provided to them, such as your identity and the circumstances in which the sexual harassment was complained of.¹¹ Under the Recommendations, the complaints handler or investigator should:

- outline the next steps and dates for the formal investigation process.
- communicate with you both before and after the Respondent is notified; and
- outline the information provided to the Respondent.

Should a formal investigation be pursued, the complaints investigator must:¹²

- conduct the investigation fairly, applying the principles of procedural fairness and natural justice;
- ensure that any adverse or retaliatory action against the complainant is not tolerated;
- consider and analyse the strength of the information and evidence provided by the parties to the complaint, including any statements or other supporting documentation;
- consider and apply the applicable thresholds, as addressed in the Model Framework; and
- determine whether sexual harassment occurred on the balance of probabilities.¹³

Once a determination has been made in respect of the complaint, the outcome should be communicated to all parties as soon as practicable. Subject to the facts of the individual case, this might include:

- an apology;
- a requirement to undertake sexual harassment prevention training;
- counselling;
- an agreement on protocols regarding arrangements and interactions between the parties going forward;
- structural changes, including changes in reporting lines;
- demotion or termination of employment or engagement;
- clear expectations, codes of conduct and/or protocols established with contractors, clients, members and other applicable third-parties;
- for associations - cancellation, or limitations to, membership or licence;
- reporting of conduct to the relevant regulator (e.g. law society, bar association, legal services commissioner); and/or
- referral for civil or criminal legal action.

3B. Reporting to an external complaints handling body

You may prefer to report your complaint to an external complaints handling or disciplinary body. These may include:

- your local [law society](#), professional association and/or legal profession regulator¹⁴;
- the [Australian Human Rights Commission](#);
- your state or territory human rights or equal opportunity commission; and/or

- the Fair Work Commission for [a stop sexual harassment order](#);
- Your state or territory Workplace Health and Safety regulator;¹
- those listed on this website from the [Australian Government](#).

If you would like more information about whether any of the above options would suit your individual experience, you can contact the above organisations about your options. If you would like legal advice about which of the above or other options is most suitable for you, your local [law society](#) or professional association can help you find legal assistance.

Complaints handlers should treat you fairly and with respect, offer you support services, clearly explain the available avenues for redress including what information may be requested, and how your information will be treated.

Making inquiries with an external complaints handling or disciplinary body does not mean that you have to make a formal complaint - either right away, or at all. Pursuant to the Recommendations, you may be able to make an anonymous complaint about a person or organisation.¹⁵ There may be circumstances where the external complaints handling or disciplinary body recommends that your complaint be referred to another body. This is to ensure that the right organisation is handling your complaint- for example, when your preferred avenues for resolution are available through another complaints handling body.

Should you wish to proceed to a formal complaint, the Respondent will need to be notified. This is so the Respondent has an opportunity to respond to the complaint made against them.¹⁶ This will necessarily require that sufficient information be provided to them, such as your identity and the circumstances in which the sexual harassment was complained of. This may include dates, locations and other relevant information.¹⁷

Under the Recommendations, the complaints handler or investigator should:

- communicate with you both before and after the Respondent is notified;
- outline the information provided to the Respondent; and
- outline the next steps and dates for the formal investigation process.

Subject to the applicable regulatory frameworks, some external complaint handling bodies may be able to attempt to resolve complaints informally, such as through a mediator or negotiator. Whether or not informal reporting is an option available will depend on the regulatory circumstances of the particular organisation.¹⁸

Should a formal investigation be pursued, the complaints investigator must:¹⁹

- conduct the investigation fairly, applying the principles of procedural fairness and natural justice;
- consider and analyse the strength of the information and evidence provided by the parties to the complaint, including any statements or other supporting documentation;
- consider and apply the applicable thresholds, as addressed in the Model Framework; and

¹ See, for example, this helpful list prepared by Safe Work Australia: <https://www.safeworkaustralia.gov.au/law-and-regulation/whs-regulators-and-workers-compensation-authorities-contact-information> .

- determine whether sexual harassment occurred on the balance of probabilities.²⁰

Subject to the facts of the individual case, remedies against the respondent might include (as relevant):

- a finding of unsatisfactory professional conduct or professional misconduct for legal practitioners;²¹
- fines;
- a stop sexual harassment order from the Fair Work Commission;
- restrictions or cancellation of a practising certificate or membership;
- removal from the Roll of practitioners;
- a finding that the Respondent breached workplace or discrimination legislation; and/or
- a referral to another external body as appropriate.²²

4. 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.

Endnotes

¹ The Recommendations can be found at:

- Appendix A** to the Model Framework- for complaints to organisations who take external complaints about sexual harassment - for example, disciplinary bodies; and
- Appendix B** to the Model Framework – for complaints within organisations, such as workplaces.

² Also see the [Victims of Crime Commissioner ACT](#).

³ Also see the [Victims Services Support Scheme, NSW](#).

⁴ Also see the [Victims of Crime Victorian Government Support Service](#).

⁵ Also see the [Victims Support Service](#).

⁶ The complaints-taking regulatory bodies vary from state to state- in some states/territories this function is handled by the law society or professional association, and in others it is performed by a separate regulatory body. If you are unsure, please check with your local law society or professional association who can clarify the correct body for taking complaints.

⁷ Ideally your organisation should have communicated who the contact person(s) is, but if you are not sure, and you feel comfortable doing so, you can contact your human resources person (or equivalent) for this information.

⁸ It should be noted that references to the processes in this document reflect those in the Model Framework, which is intended to cover the full range of possible complaints. The Law Council acknowledges that there is a spectrum of issues and encourages that all issues be ventilated. The Model Framework accordingly provides for anonymous and informal reporting to accommodate alternative avenues for resolution that you may feel is better for you than a 'formal' route. A formal investigation as referred to in this Guidance Note has the same meaning as outlined in the Model Framework.

⁹ Should any settlement terms be proposed, particularly those involving settlement deeds, confidentiality clauses or non-disclosure agreements, it is recommended that legal advice be sought to ensure the terms align with your best interests in the circumstances.

¹⁰ As noted by the Law Society of New South Wales in their Workplace Guide: "If the complaint is later taken to an external tribunal or court, it will be important to demonstrate that the internal investigation was thorough and afforded natural justice. If this is demonstrated, the external tribunal or court is more likely to uphold the internal investigator's findings of fact." See: New Society of New South Wales, *Workplace Guide and Model*

Discrimination and Harassment Policies, May 2021, 24, available online: <https://www.lawsociety.com.au/sites/default/files/2021-05/LS3498_PAP_Workplace-guide_2021-05-13.pdf >

¹¹ The Recommended steps for formal investigation are outlined in detail in **section 4C** of the **Recommendations**- see **Appendix B** of the Model Framework.

¹² The applicable thresholds that complaints investigators must consider are set out in **section 3** of the **Model Framework**.

¹³ It is important to note that complaints of sexual harassment often lack corroborating evidence, and this alone will not prevent a determination. The Recommendations provide for appropriately trained complaints investigator to carefully assess the circumstances of the complaint in reaching a determination.

¹⁴ For more information, please see the Law Council's [Time for Change: Addressing Sexual Harassment](#) portal.

¹⁵ For more information, see **section 3B** of **Appendix A** to the Model Framework. In the legal profession context, regulators cannot investigate or discipline an individual on the basis of an anonymous complaint. However, an anonymous complaint can in some jurisdictions be used by regulators to trigger a compliance audit of an organisation, to ensure that the organisation is complying with its professional and ethical obligations (For example see [Section 256](#) of Legal Profession Uniform Law (**Uniform Law**)). Anonymous complaints can also be used for information gathering purposes, noting that they can provide valuable information about trends and areas of concern that may be addressed through other avenues. Making an informal complaint also does not prevent you from pursuing a formal complaint later, if you wish to do so.

¹⁶ As noted by the Law Society of New South Wales in their Workplace Guide: "If the complaint is later taken to an external tribunal or court, it will be important to demonstrate that the internal investigation was thorough and afforded natural justice. If this is demonstrated, the external tribunal or court is more likely to uphold the internal investigator's findings of fact." See: New Society of New South Wales, *Workplace Guide and Model Discrimination and Harassment Policies*, May 2021, 24, available online: <https://www.lawsociety.com.au/sites/default/files/2021-05/LS3498_PAP_Workplace-guide_2021-05-13.pdf >

¹⁷ The Recommended steps for formal investigation are outlined in detail in **section 4C** of the **Appendix A** of the Model Framework.

¹⁸ As per the Recommendations, those external complaints handlers should provide you with clear and detailed information about the dispute resolution avenues available to you through that organisation See, for example, **section 3A** of **Appendix A**.

¹⁹ The applicable thresholds that complaints investigators should consider are set out in **section 3** of the **Model Framework**.

²⁰ It is important to note that complaints of sexual harassment often lack corroborating evidence, and this alone will not prevent a determination. The Recommendations provide for appropriately trained complaints investigator to carefully assess the circumstances of the complaint in reaching a determination.

²¹ Noting, for example, Rule 42 of the Australian Solicitors' Conduct Rules and Rule 123 of the Australian Bar Association's Rules.

²² There will be circumstances where the complaints investigator determines that it would be appropriate for the matter to be referred to an external body, regulator, agency and/or tribunal, such as the Police and the applicable state or territory Workplace Health and Safety regulator. All parties should be advised as soon as reasonably practicable of this course, if it is appropriate in the circumstances to do so. This must include information about next steps and the applicable timeframes for those steps. For more information about external referrals, please refer to **section 4C** of **Appendix A** to the Model Framework.