

# A step-by-step guide to responding to complaints

## 1 Listen to the complainant's story

- Show empathy, respect and concern while remaining impartial. Avoid judging or blaming the complainant for the behaviour and emphasise that sexual harassment is never the fault of the person who experiences it.
- Respond promptly and commit to taking the next step within a reasonable period of time, at least within two weeks.
- Keep a confidential record of their report.

## 2 Assess the situation to determine if immediate action is necessary

- Consider whether urgent or precautionary workplace action (pending investigation) is necessary to avoid further harm.
- In all cases, the proposed urgent or precautionary action should be discussed and agreed with both parties, with regard to principles of procedural fairness and natural justice.
- No adverse conclusions should be presumed due to the action taken or agreed.
- Urgent action might include relocating the respondent or changing working hours or shifts, or talking with the complainant about what measures they would like to ensure their physical and psychological safety. In the case of serious allegations, urgent action can include temporarily suspending the respondent.

## 3 Provide information, referrals and options to the complainant

- Explain the complaint process, confidentiality, relevant timelines and options to the complainant.
- Explain any limits to confidentiality, or obligations supervisors or managers are required to take (such as recording the incident or escalating the complaint).
- Explain the criteria for whether or not an investigation will be undertaken and how it applies to the complaint.
- Inform the complainant that they are entitled to have a support person with them throughout the process.

- Support the complainant to lead the process and decide on the next steps that are right for them.
- Ask the complainant what outcome they are seeking. If that outcome is not available, explain this and discuss what a successful resolution might otherwise look like from the complainant's or organisation's perspective.
- Provide referrals to relevant support services (for further information, see the referral guide to support workers, located in the appendices of our *Guideline: Preventing and responding to workplace sexual harassment*).
- Remind all parties and bystanders that victimisation is against the law and will not be tolerated. Discuss any urgent action that might be required to protect against it, or to otherwise protect the complainant's safety, privacy and ability to do their job, while the complaint process ensues.

## 4 Decide whether to informally resolve the matter or to investigate

- The decision of whether to investigate should be made with consideration of:
  - the seriousness of the allegation
  - the wishes of the complainant
  - the health, safety and wellbeing of the complainant and other workers
  - the outcomes sought and any legal obligations.
- The decision and reasons should be recorded and communicated to the parties.
- The absence of any corroborating evidence or independent witnesses is not a valid reason not to investigate, nor is the timeliness of the complaint.
- If informally resolving the complaint, record the outcome and follow up with the complainant (go to step six).

## 5 Formally investigate (with the complainant's consent as appropriate)

- Advise the parties of the investigation process and the potential outcomes, including any outcomes that will be out of scope (for instance, that the investigation will not conclude with a finding of civil or criminal wrongdoing). Advise the respondent that relevant details of any outcome will be disclosed to the complainant.
- Choose the investigator, including whether they will be an in-house or externally engaged person. The investigator should be impartial, objective and have the necessary skills to conduct the investigation.
- Provide procedural fairness to both the parties, including sufficient information about the allegations and any potential workplace or disciplinary action that may be taken if the complaint is substantiated.

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- Be impartial when speaking with both parties and keep them informed while the complaint is being resolved.
- Take notes and keep appropriate (confidential) records.
- Engage with the complainant in a sensitive and respectful manner, giving them as much choice and control over the process as practicable.
- Consider all information and evidence including direct evidence of the allegations (such as documentation of the conduct or witness accounts) and surrounding evidence (such as evidence that the complainant discussed their concerns to a co-worker or doctor). Parties cannot be compelled to give evidence.
- The absence of independent witnesses or directly corroborating evidence should not be solely relied on to find a complaint is unsubstantiated. Investigators should be prepared to interview the parties and make a credibility assessment where evidence is in conflict or not available.

**Remember: Apply a civil standard of proof.** Investigators must determine overall whether it is more likely than not that the conduct occurred ('the balance of probabilities'). In the case of *Briginshaw v Briginshaw* [1938] HCA 34, the court said that more serious allegations will require stronger evidence to meet this standard. This means the seriousness of the allegation must be considered. However, employers must not apply a higher standard of proof (such as a criminal standard – 'beyond a reasonable doubt') to serious allegations.

## 6 Take action to resolve the complaint

- If satisfied that it is more likely than not that the conduct occurred, take action that holds the respondent to account for their behaviour and minimises adverse impacts on the complainant, bystanders and other workers. Actions could include, for example:
  - a change to working hours or locations
  - an apology by the respondent
  - an agreement on protocols to manage the relationship moving forward
  - refresher sexual harassment prevention training
  - coaching or performance counselling of the respondent
  - disciplinary action such as a formal warning, suspension, demotion or dismissal.
- Regardless of whether the complaint is substantiated, communicate relevant details of the outcome to the complainant and the respondent.

- If the complaint is not substantiated, consider what action could still be taken to prevent sexual harassment from occurring in the future, including monitoring the situation, reminding the parties of expected behaviour, conducting further training and awareness raising for workers.
- Where a complaint is not substantiated this does not mean that the conduct did not occur. Accordingly, the complainant should be treated sensitively, including being reassured that they will not face victimisation because of the outcome, and being offered referrals to relevant support services.
- Document any decisions or outcomes. Ensure any decision-making framework for disciplinary action is consistently followed.
- Advise the parties of any relevant options for internal review or appeal of the decision; for example, review by a more senior staff member or an external investigator.
- Schedule a time to follow up with all parties to ensure that relevant actions are being completed, the complainant has the support they need, and issues have not resurfaced.

## 7 Record data

- Enter the incident into an appropriate, secure, confidential data-collection or reporting tool and safely store relevant records.

## 8 Debrief and reflect on lessons learned to prevent sexual harassment in the future

- Consider whether the complaint points to a broader problem in the workplace. While maintaining confidentiality, consider what wider workplace changes could be made as a result of this complaint and what further investigation and consultation might be needed to uncover and address what is happening in the workplace. This step may be necessary even where the complaint has been found to be unsubstantiated.
- Reflect on the strengths and weaknesses of how the complaint was handled. If safe and appropriate, this could include seeking feedback from workers who engaged with the process about what they felt worked well and what could be improved.