



Preventing workplace sexual harassment position statement

1. Purpose

This position statement sets out the responsibilities the Australian Nursing and Midwifery Federation (ANMF) considers employers should meet to fulfil their legal positive duty to prevent and eliminate workplace sexual harassment. It should be read with the ANMF position statements: *Workplace health and safety (WHS)* and *Preventing workplace violence and aggression*.

2. Definitions

Positive duty See under 3. Context.

Sexual harassment is any unwanted or unwelcome sexual behaviour that a reasonable person would consider would make the harassed person feel offended, humiliated or intimidated. It can be physical, verbal or written. It can occur between a worker and anyone they meet through work.

Sex-based harassment or **harassment on the ground of sex** refers to unwelcome behaviour that is sexist and demeaning but is not necessarily sexual. Examples include asking intrusive personal questions based on a person's sex (e.g. questions about menopause, menstruation or genitalia); or displaying images or making comments that are sexist or strongly prejudiced against a particular sex.¹

The *Sex Discrimination Act 1984* (Cth) and state and territory anti-discrimination laws make this conduct unlawful in employment and other areas of public life.² Certain types of sexual harassment are also criminal offences.

3. Context

Sexual harassment at work has long been unlawful but remains widespread.^{3,4} In 2022, the Sex Discrimination Act was strengthened to give organisations and businesses a **positive duty** to eliminate, as far as possible, the following unlawful sexual conduct at work:^{5,6}

- discrimination on the ground of sex
- sexual harassment and sex-based harassment
- conduct creating a workplace environment that is hostile on the ground of sex
- victimisation associated with unlawful sexual conduct or the reporting of it.

This positive duty means organisations and businesses can't just respond to complaints. They must take proactive and meaningful action to prevent this unlawful conduct from happening.

¹ See the Australian Human Rights Commission's (AHRC) *Quick guide for complying with the positive duty under the Sex Discrimination Act 1984 (Cth)* available at: https://humanrights.gov.au/sites/default/files/2023-08/quick_guide_for_complying_with_the_positive_duty_2023.pdf.p.8.

² *Sex Discrimination Act 1984*. Available at: <https://www.legislation.gov.au/Details/C2018C00499>

³ Australian Human Rights Commission. 2018. *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces*. Sydney. Available at <https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>

⁴ Australian Human Rights Commission. 2020. *Respect@Work: National inquiry into sexual harassment in Australian workplaces*. Sydney. Available at <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

⁵ For more information about these behaviours see the Australian Human Rights Commission's *Quick guide for complying with the positive duty under the Sex Discrimination Act 1984 (Cth)* available at: https://humanrights.gov.au/sites/default/files/2023-08/quick_guide_for_complying_with_the_positive_duty_2023.pdf.

⁶ From here on in this document, the term 'unlawful conduct' refers to the conduct listed here.



4. Position

It is the position of the ANMF that:

1. All members of the nursing and midwifery workforce have the right to a healthy and safe work environment:
 - that is free from unlawful sexual conduct
 - where they are treated with respect and dignity and as equals.
2. To give effect to their positive duty to eliminate unlawful sexual conduct, employers must collaborate with WHS committees, health and safety representatives (HSRs), staff, unions, and experts to develop and implement an organisation-wide prevention and response strategy that encompasses all aspects of organisational development including the following.⁷

Leadership and culture

3. Employers must ensure their senior leaders:
 - understand their obligations under the Sex Discrimination Act and relevant state and territory legislation and regulations
 - understand and recognise unlawful sexual conduct
 - are visible in their commitment to a safe, respectful and inclusive workplace and role model respectful and inclusive behaviour
 - set clear expectations about respectful and inclusive behaviour and unlawful sexual conduct
 - develop, record, implement and communicate to all staff appropriate measures for preventing and responding to unlawful sexual conduct
 - regularly review the effectiveness of these measures and update workers
 - empower all workers to report unlawful sexual conduct, take action to minimise harm and hold people accountable for their actions.

Organisational knowledge

4. Employers must support workers to engage in safe, respectful and inclusive behaviour through education on:
 - expected standards of behaviour, including actions and attitudes to foster equality and respect
 - how to identify unlawful sexual conduct and the consequences of engaging in it
 - their rights and responsibilities, including their role in preventing and responding to unlawful sexual conduct.

Risk management

5. Employers must treat unlawful sexual conduct as equality and health and safety risks and:

⁷ The AHRC sets standards for each of these areas and these standards are summarised here. For full guidance, see the AHRC *Quick guide for complying with the positive duty under the Sex Discrimination Act 1984 (Cth)* available at: https://humanrights.gov.au/sites/default/files/2023-08/quick_guide_for_complying_with_the_positive_duty_2023.pdf.



- work with employees and their representatives to develop and implement preventative measures
- use reporting data and experience to improve their workplace.

Support for staff

6. Employers must:

- provide appropriate support to all workers who experience or witness unlawful sexual conduct
- ensure workers know about and can access this support, whether or not they make a report.

Reporting and responding

7. Employers must provide appropriate options for reporting and responding to unlawful sexual conduct. This includes:

- offering options to report to a range of people in different roles (e.g. any supervisor or manager, human resource personnel, a contact officer, an HSR, a union representative or the board)
- not placing a time limit on when a complaint or report can be made⁸
- allowing reports to be made by those experiencing the unlawful sexual conduct or by their chosen representative, including a union representative
- allowing reports to be made by bystanders who observe unlawful sexual conduct.

8. Employers must ensure their responses to all reports are:

- consistent and timely
- minimise harm to, and prevent victimisation of, the people involved
- provide consistent and proportionate penalties.

Monitoring and evaluation

9. Employers must:

- collect appropriate data to understand the nature and extent of unlawful sexual conduct in their workplace
- use the data to regularly assess and improve the work culture and implement new measures for preventing and responding to unlawful sexual conduct
- be transparent about the nature and extent of reported behaviours and the actions taken to address it.

5. Position statement management

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⁸ Workers should be encouraged to make timely reports and assured they will not be criticised or treated differently for doing so.