

# Workplace Harassment – Information for Workers

## A Person Conducting a Business or Undertaking’s Primary Duty of Care

Section 19 of the [Work Health and Safety \(National Uniform Legislation\) Act](#) (WHS Act) imposes a primary duty on a person conducting a business or undertaking to ensure, so far as reasonably practicable, that workers and other persons at the workplace are not exposed to health and safety risks arising from the business or undertaking.

The WHS Act defines health as both physical and psychological health. This means the duty to ensure, as far as reasonably practicable, health and safety extends to ensuring the emotional and mental health of workers.

## Psychological Hazard of Workplace Harassment

While the WHS Act does not provide a definition of workplace harassment, it is generally accepted that in terms of work health and safety, workplace harassment means:

*“The generally repeated treatment of a person(s) that involves inappropriate or unreasonable behaviour and creates a risk to safety and health.”*

**Repeated Behaviour** refers to the persistent nature of the behavior and can refer to a range of behaviours over time.

**Unreasonable Behaviour** means behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening.

This definition is intended to cover a wide range of behaviours that can have an adverse impact on the workplace health and safety of workers and other persons. Harassing behaviours can range from subtle intimidation to more obvious aggressive tactics. Some of the more common types of harassing behaviours include:

- Abusing a person loudly, usually when others are present;
- Repeated threats of dismissal or other severe punishment for no reason;
- Constant ridicule and being put down;
- Leaving offensive messages on email or the telephone;
- Sabotaging a person’s work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways;
- Humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers;
- Spreading gossip or false malicious rumors about a person with an intent to cause the person harm;
- Unnecessary withdrawal of duties;
- Repeated and unnecessary phone calls or other forms of communications;
- Isolation from colleagues.

## What is not Workplace Harassment?

According to the definition in the advisory standard, the following situations are not considered to be workplace harassment.

**Single Incidents** – a single incident of harassing type behaviour is not considered to be workplace harassment.

**Managerial Actions** – Reasonable management actions, for example performance management processes, disciplinary actions or a decision not to provide a promotion in connection with a worker's employment are not workplace harassment provided these actions are taken in a reasonable way.

**Discrimination and Sexual Harassment** – acts of unlawful discrimination, or sexual harassment are not covered by the advisory standard. Workplace harassment does not include acts of *unlawful discrimination*, or *sexual harassment*. (See notes below). These complaints should be addressed to the [Anti Discrimination Commission NT](#) (ADCNT).

### NOTES:

#### 19 Prohibition of discrimination

- (1) Subject to subsection (2), a person shall not discriminate against another person on the ground of any of the following attributes:
  - (a) race; (b) sex; (c) sexuality; (d) age; (e) marital status; (f) pregnancy; (g) parenthood; (h) breastfeeding; (j) impairment; (k) trade union or employer association activity; (m) religious belief or activity; (n) political opinion, affiliation or activity; (p) irrelevant medical record; (q) irrelevant criminal record; (r) association with a person who has, or is believed to have, an attribute referred to in this section.
- (2) It is not unlawful for a person to discriminate against another person on any of the attributes referred to in subsection (1) if an exemption under Part 4 or 5 applies.

**Sexual harassment is any form of unwelcome attention of a sexual nature that is humiliating, intimidating or offensive.**

## Resolving Workplace Harassment complaints

In the first instance, complainants should seek to resolve their workplace harassment complaints internally within the workplace, using an informal or formal process.

It is important for a worker to be able demonstrate the behaviour they are complaining of constitutes workplace harassment. Keeping diary entries of events that detail the type of behaviours occurring, dates, times and witnesses will assist a worker in this regard. Retaining any other evidence of the behaviour such as emails is also useful.

Where internal processes are not effective, complainants may resolve the complaint outside of the workplace through external agencies.

### Internal Resolution

It is recommended that the opinion of an independent third party (for example, human resource manager, supervisor, or workplace health and safety representative) be obtained to help validate experiences and make a well informed decision regarding the most appropriate resolution option.

Before deciding on whether to resolve the complaint informally or formally workers should:

- Clearly define their concerns and desired outcome;
- Assess the advantages and disadvantages of the informal versus formal process;
- Consider the complexity of the situation (a formal option may need careful consideration if the situation is very complex);
- Be aware of support mechanisms available, for example counseling;
- Acknowledge the consequences of making malicious, frivolous or vexatious complaints.

### ***Informal Resolution***

An informal approach can often resolve matters while in no way trivialising the issue or the effect it has on an individual. The objective of an informal approach is to resolve the matter with a minimum of conflict or distress for individuals.

Any worker who believes they are being harassed may choose to speak directly with the person/s demonstrating the harassing behaviours. Directly dealing with the person/s responsible sometimes results in the behaviour ceasing.

For this approach to be successful the information must be delivered to the respondent in a confidential, non-confrontational way with a view to resolving the issue in an informal low-key manner. A good technique to use is to focus on the behaviours being exhibited by the other party. The aim is to communicate exactly what behaviours are harassing and distressing. This lessens the likelihood that the other party will take the comments as a personal attack.

Other forms of informal resolution approaches that may be used by a worker include:

- Seeking the assistance of a third party to intervene;
- Seeking a conciliator or mediator to facilitate discussion, noting that for this option to be effective both parties to the complaint will need to consent to the approach being taken;
- Taking to a supervisor or workplace grievance officer.

### **Benefits of resolving Workplace Harassment informally**

- The process is generally quick and less adversarial and cumbersome.
- Informal resolution does not require extensive 'proof' of workplace harassment to be demonstrated.
- Person exhibiting harassing behaviours may wish to resolve the issue to avoid a formal process.
- The process may result in improved communication between parties.
- It is easier to maintain confidentiality and ongoing working relationships.

If the informal approach is unsuccessful and the harassing behaviours continue at the workplace, a formal approach should be considered.

### ***Formal Resolution***

Workers should follow the steps outlined in their workplace's internal complaint handling or grievance procedures.

Guidance can generally be found in industrial instruments such as awards or Certified Agreements. Formal complaint resolution will generally involve an internal investigation of the incidents. The investigation will aim to establish the facts and circumstances of the situation and usually lead to a formal report being prepared.

The person responsible for human resources or industrial relations matters at your workplace should be able to offer further advice concerning the applicable formal procedure.

### **External Resolution**

Most external agencies will not accept a complaint unless complainants have attempted to resolve the workplace harassment internally through an informal or formal process (where available).

Complainants may contact the following agencies where internal processes have been ineffective (or not available). The most appropriate agency will depend on the type of complaint and the complainant's desired outcome.

### ***NT Work Safe***

Where complaints of workplace harassment are received, NT WorkSafe Inspectors, on assessing the details, may contact the workplace. An Inspector collects information to assess whether the workplace has systems in place to manage risks to health and safety in relation to workplace harassment.

The role of Inspectors is not to confirm whether workplace harassment has occurred or to validate experiences. NT WorkSafe Inspectors will not adjudicate or mediate between parties at the workplace. If contraventions of the Workplace are found Inspectors may serve an improvement notice.

Contact NT WorkSafe on 1800 019 115 or visit [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)

### ***Fair Work Australia***

Fair Work Australia (FWA) is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions including:

- providing a safety net of minimum conditions, including minimum wages, in awards
- facilitating good faith bargaining and the making of enterprise agreements
- granting remedies for unfair dismissal
- regulating the taking of industrial action
- resolving a range of collective and individual workplace disputes through conciliation, mediation and in some cases arbitration
- functions in connection with workplace determinations, equal remuneration, transfer of business, general workplace protections, right of entry and stand down.

The work of Fair Work Australia is carried out by FWA members with the support of administrative staff.

Contact Fair Work Australia on 1300 799 675 or visit [www.fwa.gov.au](http://www.fwa.gov.au)

### ***Fair Work Ombudsman***

Fair Work Ombudsman provides a comprehensive information service to employees on industrial relations matters such as Fair Work Act, Awards and Certified Agreements. In relation to workplace harassment complaints, Fair work Ombudsman staff can provide specific advice on grievance procedures in awards and agreements.

Contact the Fair Work Ombudsman on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au)

### ***NT Anti-Discrimination Commission***

The *NT Anti-Discrimination Act 1991* promotes fair treatment and equal opportunity by making discrimination and (e.g. on the basis of race, religion, sexuality or gender identity) and all sexual harassment against the law.

The Anti-Discrimination Commission NT (ADCNT) accepts and conciliates complaints of discrimination, and sexual harassment under the Act. Its staff can provide information on how to make a complaint.

A complainant does not need to have first tried to resolve their complaint informally before contacting the ADCNT.

If a complaint cannot be resolved through conciliation between the parties, the complaint is further investigated and ultimately may proceed to a hearing. A hearing is conducted by the Anti-Discrimination Commissioner and is similar to a court hearing, but seeks to operate in a more informal and less intimidating way.

Contact: the Anti-Discrimination Commission on 1800 813 846 or visit [www.adc.nt.gov.au](http://www.adc.nt.gov.au)

### ***Australian Apprenticeships NT***

Australian Apprenticeships NT manages and processes Training Contracts, Government incentives and Apprentice and employer information relating to apprenticeships and traineeships in the Northern Territory.

In relation to complaints of workplace harassment from apprentices and trainees, Australian Apprenticeships staff may use a range of strategies to address the issue.

Contact: Australian Apprenticeships NT on 1300 137 130 or visit [www.australianapprenticeshipsnt.com.au](http://www.australianapprenticeshipsnt.com.au)

### ***Unions NT***

Trade Unions provide information, advice and advocacy to members on all industrial matters. Union members can contact their respective union for information.

Contact: Unions NT on (08) 8941 0001 or visit [www.unionsnt.com.au](http://www.unionsnt.com.au)

### ***NT Working Women's Centre***

The NT Working Women's Centre (NTWWC) provides a comprehensive free and confidential telephone advisory service to women on all work related matters. NTWWC has information about workplace harassment and is able to offer advice on the possible courses of action. Information on advocacy and representation can also be obtained through the service. NTWWS offers workplace training programs and information sessions on workplace harassment.

Contact: NT Working Women's Service on 1800 817 055 or visit [www.ntwwc.com.au](http://www.ntwwc.com.au)

## **The Role of NT WorkSafe in Harassment Complaints**

Firstly, the complaint is screened and the complainant is given information by a NT WorkSafe Permissioning and Advisory Services (PAS) senior staff members to ensure sufficient information is received from the complainant. PAS do not amount to providing legal advice. A legal practitioner should be consulted for legal advice.

NT WorkSafe responds to workplace harassment complaints only in certain situations that fall within the scope of the WHS Act:

- The complaint must (on the face of it) fall within the definition of workplace harassment.
- The complaint must be in writing. The complainant will be sent an information package, including a checklist which must be attached to the complaint.
- The complaint should have been raised at the workplace and an attempt made to resolve the complaint internally. Information regarding the outcome of this step should be included in the written complaint.

NT WorkSafe will not provide mediation, counseling or victim support.

### **What Happens Next**

The complaint is assessed and an Inspector may be assigned. The Inspector will contact the workplace to advise that a complaint has been received and request evidence that the risk of injury or illness from workplace harassment is being managed. The Inspector may request the evidence be forwarded to a district office and/or the inspector may visit the workplace.

The type of information the Inspector requests could include:

- Workplace harassment policy,
- Information about the workplace complaint handling system,
- Staff training records,

- Workplace records to show that the allegation of workplace harassment has been investigated appropriately,
- Should the risk of workplace harassment be identified in the investigation, the steps that were taken to remedy the situation,
- Grievance procedures,
- Incident records,
- Any other information required by the Inspector.

### **When an Inspector Visits**

During a workplace visit the Inspector will review documentation and may survey or interview staff members as part of the investigation. The Inspector will identify if there is a risk of injury from workplace harassment and review controls implemented at the workplace.

Preventative measures should be aimed at the source of the risk, and may include a broad organisational responses, as well as more targeted initiatives that address the symptoms in a specific area.

A strategy aimed at preventing or controlling exposure to the risk of workplace harassment should include:

1. A workplace harassment prevention policy (including ensuring the policy is followed and consistently and fairly applied);
2. A complaint handling system;
3. A review of the human resource systems;
4. Training and education.

No single control measure will effectively prevent or control workplace harassment from occurring. It is important these control measures are used together, as part of a broader strategy to prevent or control exposure to the risk of workplace harassment.

When people fail to meet their obligations under the WHS Act, Inspectors may use a range of compliance and enforcement options including but not limited to, advice, verbal directions, improvement and infringement notices. Inspectors are skilled in determining the best enforcement options to use in a given situation in order to offer the most advantageous work health and safety outcome.

**For further information please contact NT WorkSafe on 1800 019 115 or go to [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)**