






# Regulation map for NSW Businesses: workplace sexual harassment

More information on what is [workplace sexual harassment](#)\*

This 4-page guide provides a general overview of the different legal obligations that NSW businesses<sup>1</sup> must comply with in relation to workplace sexual harassment. It provides an overview of the agencies that regulate and respond to breaches of these obligations and their enforcement and compliance powers. Each of the legal frameworks outlined below are distinct, and the agencies operate independently. Compliance with one statutory obligation does not necessarily result in compliance with another obligation.






The guide contains general information only and does not set out all the relevant laws or each agency's functions and activities. NSW businesses should seek independent legal advice to understand how the laws apply to their situation. SafeWork NSW has also developed a guide on [Reporting Options for NSW Workers](#) who have experienced workplace sexual harassment and a poster for NSW businesses on the steps they can take to prevent workplace sexual harassment.

					
<b>Who they are</b>	SafeWork NSW (SafeWork) is the work health and safety (WHS) regulator for NSW. Laws administered by SafeWork include the <i>Work Health and Safety Act 2011</i> (NSW) ('WHS Act') and the <i>Work Health and Safety Regulation 2017</i> (NSW).	Anti-Discrimination New South Wales (ADNSW) is the <i>Anti-Discrimination Act 1977</i> (NSW) ('AD Act').	The Australian Human Rights Commission (AHRC) is Australia's National Human Rights Institution and an independent federal statutory agency.	The Fair Work Commission (FWC) is Australia's national workplace relations tribunal established by the <i>Fair Work Act 2009</i> (Cth) ('FW Act').	The Fair Work Ombudsman (FWO) is the national workplace regulator established by the FW Act.
<b>What they do</b>	SafeWork provides advice to workers, businesses, industry, and the general community about workplace health and safety, including workplace sexual harassment.  SafeWork also monitors compliance and takes appropriate enforcement action in relation to breaches of relevant legislation.	ADNSW handles individual complaints of discrimination which includes sexual harassment. ADNSW responds to inquiries, investigates and resolves complaints and raises awareness about discrimination.  This includes managing individual complaints from workers against others, including individuals and/or their employer.	The AHRC inquires into and attempts to conciliate discrimination and human rights complaints, including inquires into and attempts to conciliate complaints of sexual harassment under the <i>Sex Discrimination Act 1984</i> (Cth) ('SD Act').  This includes managing individual complaints from workers against others in their workplace and/or their employer.  The AHRC is also responsible for promoting and enforcing compliance with the positive duty in the SD Act to eliminate workplace sexual harassment as far as possible. This includes educating businesses to support compliance. From December 2023, the AHRC will also have new powers to enforce compliance with the positive duty.	The FWC makes awards, approves enterprise agreements and helps resolve issues at work. This includes dealing with applications for orders to stop workplace sexual harassment and, where the alleged sexual harassment commenced on or after 6 March 2023, otherwise dealing with workplace sexual harassment disputes.	The FWO is responsible for promoting and enforcing compliance with the FW Act – including the prohibition on workplace sexual harassment – by providing businesses and workers with advice, education and assistance on workplace rights and obligations. They monitor compliance with the FW Act, seek penalties for breaches of the FW Act and enforce certain orders made by the FWC.
<b>Do businesses have a positive duty to prevent sexual harassment?</b>	Yes  Businesses must eliminate risks to health and safety, including workplace sexual harassment, so far as is reasonably practicable.	No  But sexual harassment is specifically prohibited under the AD Act and businesses can be held responsible for breaches if they have not taken all reasonable steps to prevent sexual harassment from occurring.	Yes  Businesses must take reasonable and proportionate measures to eliminate workplace sexual harassment, as far as possible.  Sexual harassment in connection with work is also prohibited under the SD Act and businesses can be held responsible for the actions of their employees and agents if they have not taken all reasonable steps to prevent sexual harassment from occurring.	No – but from 6 March 2023 workplace sexual harassment is specifically prohibited and businesses can be held responsible for breaches if they have not taken all reasonable steps to prevent the sexual harassment from occurring.	No – but from 6 March 2023 workplace sexual harassment is specifically prohibited and businesses can be held responsible for breaches if they have not taken all reasonable steps to prevent the sexual harassment from occurring.







<sup>1</sup>For the purpose of this guidance, 'businesses' refers to employers and persons conducting a business or undertaking (PCBUs) as defined under the Work Health Safety Act 2011 (NSW). PCBU is a broad term used throughout work health and safety legislation to describe all forms of modern working arrangements. More information about PCBUs is [available](#) on the [SafeWork NSW website](#)






\* Workplace sexual harassment includes sexual harassment that occurs in connection with work.

<sup>2</sup>Except for NSW mine or petroleum sites, which are regulated by the NSW Resources Regulator.

					
<p><b>Who is protected?</b></p>	<p>All 'workers' (as defined under the WHS Act) who carry out work in any capacity for a business are protected under the law. This includes:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Contractors or subcontractors</li> <li>• Apprentices or trainees</li> <li>• Work experience students</li> <li>• Volunteers or interns.</li> </ul> <p>Businesses also have duties to ensure the health and safety of people (other than workers) is not put at risk from the work carried out as part of their operations.</p>	<p>The following people are protected by the prohibition against sexual harassment:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• A person seeking employment</li> <li>• A commission agent or contractor</li> <li>• A person seeking to become a commission agent or contractor</li> <li>• Workplace participants, including volunteers or trainees</li> <li>• Members of Parliament</li> <li>• Partners in a partnership.</li> </ul> <p>The AD Act also prohibits sexual harassment in other circumstances, such as in the provision of goods, services, accommodation or education.</p>	<p>Businesses owe a positive duty to eliminate workplace sexual harassment as far as possible, including in relation to 'workers'. This includes:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Contractors or subcontractors</li> <li>• Apprentices or trainees</li> <li>• Work experience students</li> <li>• Volunteers or interns.</li> </ul> <p>The positive duty extends to eliminating sexual harassment perpetrated by third parties towards workers.</p> <p>The SD Act also has a prohibition against workplace sexual harassment. Sexual harassment is unlawful if it occurs:</p> <ul style="list-style-type: none"> <li>• Between people who have a specific work relationship (such as employer/employee, worker/fellow worker), or</li> <li>• In connection with a person being a worker (including conduct by third parties such as customers, clients, patients or members of the public towards these people).</li> </ul> <p>The SD Act also prohibits sexual harassment in other circumstances, such as in the provision of goods, services, accommodation or education.</p>	<p>In relation to sexual harassment disputes, the FW Act covers all 'workers' as defined under WHS laws. This includes:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Contractors or subcontractors</li> <li>• Apprentices or trainees</li> <li>• Work experience students</li> <li>• Volunteers or interns.</li> </ul> <p>Person's seeking to become workers and person's conducting a business or undertaking are also protected.</p> <p>There are some exceptions in relation to the Defence Force, Australian security agencies and the Australian Federal Police.</p>	<p>In relation to sexual harassment disputes, the FW Act covers all 'workers' as defined under WHS laws. This includes:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Contractors or subcontractors</li> <li>• Apprentices or trainees</li> <li>• Work experience students</li> <li>• Volunteers or interns.</li> </ul> <p>Person's seeking to become workers and person's conducting a business or undertaking are also protected.</p> <p>There are some exceptions in relation to the Defence Force, Australian security agencies and the Australian Federal Police.</p>
<p><b>Can businesses be held responsible for the conduct of workers?</b></p>	<p>Yes</p> <p>Businesses may be criminally liable for the actions of their workers if they did not take if reasonably practicable steps were not taken to prevent the conduct from occurring..</p> <p>This requires businesses to identify psychosocial risks and hazards such as sexual harassment and implement control measures to eliminate and minimise those risks so far as is reasonably practicable.</p> <p>Appropriate control measures will depend on the individual workplace, but may include:</p> <ul style="list-style-type: none"> <li>• Clear policies to prevent sexual harassment</li> <li>• Regular training and information for staff about preventing sexual harassment</li> <li>• Creating respectful and positive workplace culture that is reinforced through communication from leaders and managers</li> <li>• Changes to the physical design and layout of the workplace (e.g. lighting, secure entry and exits, safe accommodation for remote work sites)</li> <li>• Changes to work systems (e.g. considering the number of workers rostered too late or early shifts or in remote locations).</li> </ul> <p>See SafeWork's resource for further information: <a href="#">A WHS approach to preventing workplace sexual harassment.</a></p>	<p>Yes</p> <p>Businesses may be liable for sexual harassment by their workers if it occurs in connection with a person's employment and they did not take all reasonable steps to prevent it from happening. This is referred to as 'vicarious liability'.</p>	<p>Yes</p> <p>Businesses may be liable for sexual harassment that occurs in connection with a person's employment.</p> <p><b>Positive Duty</b></p> <p>The positive duty places the onus on businesses to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as possible. This means that they are responsible for the safety of their workers, including in relation to harassment from other workers and third parties.</p> <p><b>Vicarious Liability</b></p> <p>Businesses are liable for sexual harassment by their workers and agents if they did not take all reasonable steps to prevent the harassment from occurring. This is referred to as 'vicarious liability'.</p>	<p>Yes</p> <p>Businesses may be vicariously liable for sexual harassment by their workers, agents or third parties (e.g. clients, patients) unless they took all reasonable steps to prevent the conduct.</p> <p>The FWC can also issue businesses with a 'stop sexual harassment order' where it is satisfied that workplace sexual harassment has occurred and there is a risk that the behaviour will continue. The FWC can make any order it considers appropriate (other than an order for payment of money), for example:</p> <ul style="list-style-type: none"> <li>• That the person who has engaged in the harassing conduct apologise</li> <li>• That someone develop or comply with a workplace policy on preventing and responding to sexual harassment</li> <li>• That workers be given information or training in relation to sexual harassment.</li> </ul>	<p>Yes</p> <p>Businesses may be vicariously liable for sexual harassment by their workers, agents or third parties (e.g. clients, patients) unless they took all reasonable steps to prevent the conduct.</p>



	 				
<p><b>What are the agency's enforcement and compliance powers?</b></p>	<p>SafeWork compliance and enforcement powers include:</p> <ul style="list-style-type: none"> <li>• Providing advice on compliance</li> <li>• Inspecting workplaces and conducting investigations</li> <li>• Compelling the production of information, documents, and responses to questions</li> <li>• prohibition notices that require duty holders to remedy contraventions</li> <li>• Revoking, suspending or cancelling authorisations</li> <li>• Accepting alternative enforcement measures (e.g. enforceable undertakings, letters of caution)</li> <li>• Commencing civil penalty or criminal prosecutions.</li> </ul>	<p>ADNSW provides assistance with resolving complaints by:</p> <ul style="list-style-type: none"> <li>• Investigating the complaint</li> <li>• Requiring the people involved in the complaint to provide relevant information and documents</li> <li>• Providing dispute resolution processes such as voluntary conciliation to try to help the people involved reach an agreement on how to resolve the complaint.</li> </ul> <p>ADNSW does not make determinations about whether sexual harassment occurred or not.</p> <p>If the complaint is not resolved, and at the request of the complainant, ADNSW can refer the matter to the NSW Civil and Administrative Tribunal (NCAT) for a decision.</p>	<p>AHRC powers in relation to complaints from individuals alleging sexual harassment include:</p> <ul style="list-style-type: none"> <li>• Investigating complaints and understanding the workplace's response to the allegations</li> <li>• Requesting further information from the parties</li> <li>• Facilitating conciliation to resolve disputes.</li> </ul> <p>If the complaint is not resolved at conciliation the complaint will be terminated.</p> <p>Once your complaint is terminated, you have 60 days in which you can apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia to seek a decision about your complaint.</p> <p>In some situations the complainant will need the Court's permission to take the matter to Court.</p> <p>AHRC enforcement powers in relation to the positive duty under the SD Act include:</p> <ul style="list-style-type: none"> <li>• Making inquiries into compliance with the positive duty if the AHRC reasonably suspects non-compliance</li> <li>• Issuing compliance notices requiring a business to take or refrain from specified action within a reasonable period</li> <li>• Applying to the Court for an order directing a business to comply with a compliance notice, or to enter into, and enforce, undertakings in relation to compliance with the positive duty.</li> </ul>	<p>The FWC's powers include:</p> <ul style="list-style-type: none"> <li>• Making a stop sexual harassment order to prevent further sexual harassment from occurring</li> <li>• Referring disputes to alternative dispute resolution</li> <li>• Dealing with disputes by facilitating mediation, conciliation, making a recommendation or expressing an opinion</li> <li>• Arbitrating the dispute if the parties consent.</li> </ul>	<p>The FWO's functions include:</p> <ul style="list-style-type: none"> <li>• Providing education, assistance, and advice about obligations under the FW Act</li> <li>• Monitoring compliance with the FW Act</li> <li>• Investigating a workplace for non-compliance with the prohibition on sexual harassment in the FW Act</li> <li>• Investigating a workplace for failure to comply with FWC stop sexual harassment orders</li> <li>• Referring matters to relevant bodies where issues are raised that are outside of the FWO's statutory functions.</li> </ul> <p>The powers of FWO Inspectors include the ability to:</p> <ul style="list-style-type: none"> <li>• Enter premises, conduct interviews and inspect documents</li> <li>• Commence court proceedings for breaches of the prohibition on sexual harassment under the FW Act</li> <li>• Enforce certain orders made by the FWC.</li> </ul>
<p><b>What outcomes are possible?</b></p>	<p>SafeWork focus on improving safety within the workplace and strengthening workplace systems to ensure appropriate measures are in place to eliminate or minimise the risk of harm to workers.</p> <p>While SafeWork investigates complaints from workers about possible breaches of WHS legislation, it does not manage workplace disputes or award individual remedies (e.g. does not order mediation, compensation, an apology).</p> <p>As part of their regulating activities, SafeWork can require a business to:</p> <ul style="list-style-type: none"> <li>• Change their policies on preventing sexual harassment</li> <li>• Update their risk registers and implement a plan to control risks</li> <li>• Implement suitable training (for example prevention of sexual harassment training)</li> <li>• Seek changes to the workplace by issuing improvement or prohibition notices.</li> </ul>	<p>A business may agree to provide any of the following outcomes through conciliation with their worker:</p> <ul style="list-style-type: none"> <li>• An apology or statement of regret</li> <li>• A commitment to train relevant staff</li> <li>• A commitment to change workplace policies and procedures to prevent sexual harassment</li> <li>• Payment of financial compensation</li> <li>• Any other measures that the parties agree to.</li> </ul> <p>If the complaint is referred to NCAT, outcomes can include:</p> <ul style="list-style-type: none"> <li>• Orders requiring the business to pay damages to their worker (up to \$100,000)</li> <li>• Orders to stop the business from continuing or repeating any unlawful conduct</li> <li>• Orders requiring the business to publish an apology</li> <li>• Orders requiring the business to rectify any loss or damage that their worker has suffered.</li> </ul>	<p>Outcomes from an AHRC-facilitated conciliation in response to a complaint of sexual harassment can include:</p> <ul style="list-style-type: none"> <li>• An apology or statement of regret</li> <li>• Job reinstatement</li> <li>• Compensation for lost wages</li> <li>• Implementing certain actions such as training or changing/developing clear policies to prevent sexual harassment</li> </ul> <p>Any outcomes must be agreed to by the relevant parties.</p> <p>If the complaint progresses to Court following the termination of the complaint, outcomes can include:</p> <ul style="list-style-type: none"> <li>• Orders requiring the business to pay compensation to a worker</li> <li>• Orders requiring employment or re-employment if a worker was unlawfully terminated</li> <li>• Orders requiring the business to perform reasonable acts to redress loss.</li> </ul>	<p>The FWC can issue a stop sexual harassment order. This could require a business to take steps to prevent sexual harassment from occurring, such as:</p> <ul style="list-style-type: none"> <li>• Making changes to working arrangements</li> <li>• Regularly monitoring the behaviour of a worker.</li> </ul> <p>When matters are resolved through conciliation by voluntary agreement between the parties, outcomes are decided by the parties. These might for example include:</p> <ul style="list-style-type: none"> <li>• An apology or statement of regret</li> <li>• Implementation of staff training</li> <li>• Updates to internal policies and procedures to prevent sexual harassment</li> <li>• A safety risk assessment of the workplace.</li> </ul> <p>For applications that relate to conduct that commenced on or after 6 March 2023, the FWC can deal with the dispute through its broader dispute resolution powers which include dealing with the dispute through consent arbitration.</p>	<p>The FWO can commence proceedings in the in the Federal Circuit and Family Court of Australia or Federal Court of Australia for breaches of the prohibition on sexual harassment in the FW Act. Outcomes of court proceedings can include penalties.</p> <p>If the FWC has made a stop sexual harassment order, the FWO can enforce compliance with the order.</p> <p>See <a href="#">compliance and enforcement</a> for more information about the Fair Work Ombudsman's compliance and enforcement work.</p>

	 SafeWork NSW	 Anti-Discrimination New South Wales	 Australian Human Rights Commission	 Fair Work Commission	 Fair Work OMBUDSMAN
<b>What outcomes are possible?</b>	For serious breaches of WHS duties, SafeWork can progress to criminal prosecution which may result in fines. The court may also issue sentencing orders, including: <ul style="list-style-type: none"> <li>• Adverse publicity orders</li> <li>• Orders for restoration</li> <li>• Training orders.</li> </ul>		If the AHRC investigates a business for non-compliance with the positive duty, outcomes can include: <ul style="list-style-type: none"> <li>• Compliance notices</li> <li>• Enforceable undertakings</li> <li>• Court orders directing compliance with compliance notices.</li> </ul>	Outcomes from consent arbitration can include the FWC: <ul style="list-style-type: none"> <li>• Making orders for the payment of compensation</li> <li>• Making orders to make up for loss or damage suffered by an aggrieved person</li> <li>• Expressing an opinion that there has been a contravention of the prohibition on sexual harassment</li> <li>• Making an order requiring payment of compensation or damages to a worker.</li> </ul>	
<b>Further information and guidance for NSW businesses</b>	To learn more about managing risks of sexual harassment, you can read SafeWork NSW's: <ul style="list-style-type: none"> <li>• <a href="#">Code of Practice: Managing psychosocial hazards at work</a></li> <li>• Further information on <a href="#">eliminating sexual harassment</a></li> <li>• Visit our website for more <a href="#">resources and tools</a>.</li> </ul> <p>Request a free SafeWork NSW Advisory Visit if you have less than 50 staff or Safety Workshop for business groups to get advice and support on how to meet their WHS responsibilities, including in relation to sexual harassment.</p>	ADNSW has prepared guidance for businesses to <a href="#">understand their rights and responsibilities</a> .	To learn more about the positive duty to prevent sexual harassment the AHRC has prepared <a href="#">resources and guidance material</a> .	The FWC's website includes <a href="#">information for businesses and individuals about workplace sexual harassment</a> .	The Fair Work Ombudsman has: <ul style="list-style-type: none"> <li>• Information on <a href="#">sexual harassment in the workplace</a> and employer obligations</li> <li>• <a href="#">Best Practice Guides</a> to assist workplaces achieve happier, fairer and more productive workplaces.</li> </ul>
<b>Contact details</b>	W: <a href="http://safework.nsw.gov.au">safework.nsw.gov.au</a> <a href="http://nsw.gov.au/respect-at-work">nsw.gov.au/respect-at-work</a> T: 13 10 50 E: <a href="mailto:contact@safework.nsw.gov.au">contact@safework.nsw.gov.au</a>	W: <a href="http://antidiscrimination.nsw.gov.au">antidiscrimination.nsw.gov.au</a> T: (02) 9268 5555 or 1800 670 812 E: <a href="mailto:complaintsadb@justice.nsw.gov.au">complaintsadb@justice.nsw.gov.au</a>	W: <a href="http://humanrights.gov.au">humanrights.gov.au</a> Respect@Work Information Service T: 1300 656 419 (option 1) E: <a href="mailto:Respect@humanrights.gov.au">Respect@humanrights.gov.au</a> <p><b>Alternative contact</b>            National Information Service            T: 1300 656 419 (Option 2)            E: <a href="mailto:infoservice@humanrights.gov.au">infoservice@humanrights.gov.au</a></p>	W: <a href="http://fwc.gov.au">fwc.gov.au</a> T: 1300 799 675 E: <a href="mailto:sydney@fwc.gov.au">sydney@fwc.gov.au</a>	W: <a href="http://www.fairwork.gov.au">www.fairwork.gov.au</a> T: 13 13 94

## Notes:

- This guide provides general information only and is not legal advice.
- The information contained in this guide is accurate at the time of publication. However, relevant agencies and legislation may change over time and businesses are responsible for making independent enquires on their responsibilities in relation to sexual harassment. Information on the latest laws can be checked by visiting the NSW legislation website [legislation.nsw.gov.au](http://legislation.nsw.gov.au) or the Federal Register of Legislation website [legislation.gov.au](http://legislation.gov.au). You can also contact the relevant agency for up-to-date information.
- This guide does not provide information on other relevant legal and regulatory frameworks such as workers compensation, industrial relations or possible reporting requirements under the *Workplace Gender Equality Act 2012* (Cth). Please contact the relevant organisations if you require more information.