

# Workplace Sexual Harassment: A Comprehensive Guide for Employers

2023

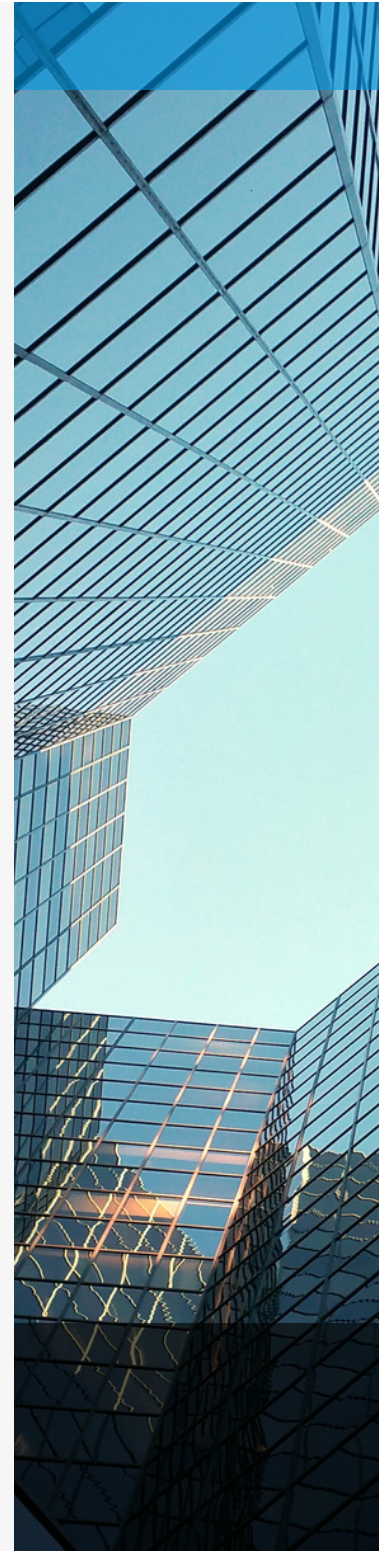




In response to the continual rise of sexual harassment as a 'hot topic' issue in Australian workplaces, and as part of the ongoing response to the Sex Discrimination Commissioners **Respect@Work** Report, the Federal Government changed the Sex Discrimination Act in late 2022.

The laws have imposed a new '**positive duty**' on all employers. This requires all employers to take reasonable steps to eliminate sexual harassment from occurring in the workplace.

*Responding to complaints when they arise is no longer enough.*



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# Workplace Sexual Harassment Obligations and Prevention



If you're a person conducting a business or undertaking (**PCBU**) you have a legal duty to take reasonable steps to eliminate sexual harassment, sex-based harassment and a hostile environment on the basis of sex in the workplace.

Under WHS laws, a 'workplace' means a place where work is carried out for a business or undertaking and includes any place where an employee goes, or is likely to be, while at work.

This means sexual harassment can happen:
At an employee's usual workplace
Where an employee is working remotely, including if the person's workplace is their home
In a place where the employee is undertaking work at a different location (such as a client's home)
Where the employee is engaging in a work-related activity such as conferences, training, work trips, work-related corporate events or if you host a work-related social activity like a Christmas party
By phone, email or online (such as through social media platforms)
Sexual harassment may be perpetrated by various people including an employer, supervisor, co-worker or a third party such as a contractor, client, customer, supplier, member of the public, volunteers.



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# Definitions



**Sexual harassment** – is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would interpret the behaviour in that situation.

**Hostile work environment** – is a workplace where a person is subject to conduct which can reasonably be considered to be offensive, intimidating or humiliating to a person on the basis of sex.

**Victimisation** – is where one treats another person adversely or disadvantages them, either because they have made a complaint or have been involved in a complaint.

**Sex-based harassment** – is any unwelcome conduct of a seriously demeaning nature by reason of the person's sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

## What is a 'Positive Duty'

Employers must take 'reasonable steps' to eliminate sexual harassment, sex-based harassment, hostile workplace environments and victimisation, as far as possible.

To avoid liability, all employers need to demonstrate they have:

- Taken all reasonable steps to eliminate sexual harassment from occurring in the workplace

AND

- Responded appropriately to resolve incidents of sexual harassment if they arise.

The meaning of 'reasonable steps' will vary depending on the particular circumstances:

- The size, nature and circumstances of the business or undertaking
- The duty holder's resources, whether financial or otherwise
- The practicability and costs associated with the steps.





# Managing Complaints by Employees



**Employees can make a complaint about workplace sexual harassment to:**

1. The employer, generally using the complaint handling process
2. The Fair Work Commission
  - a. 'stop sexual harassment' order
  - b. Deal with a sexual harassment dispute
3. The Fair Work Ombudsman
4. The Australian Human Rights Commission
5. Their union
6. The relevant state or territory anti discrimination body
7. A state or territory's workplace health and safety regulator

Some forms of sexual harassment could constitute criminal offences and should be reported to the police.

It is important for employers to note: Sexual harassment in the course of employment is considered serious misconduct and can be a valid reason for dismissal.

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# Establishing a Prevention Plan



Sexual harassment may be prevented through the development and implementation of an effective sexual harassment prevention plan. Employers are recommended to include the following steps in the prevention plan:

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## Policies

1. Update or implement sexual harassment and victimisation policies.
  - Employers should implement sexual harassment policies that outline unacceptable behavior, provide clear reporting guidelines, and explain potential consequences for those who violate the policy.
  - The regulators have indicated they expect sexual harassment to be a stand-alone policy due to the broad coverage and complexity of the legislation.
2. Develop robust complaint resolution (grievance) policies and procedures.
  - Employers should implement a grievance policy that clearly details how complaints will be managed.
  - Many organisations have grievance policies in place, however, when dealing with reports of sexual harassment investigators should adopt a trauma-informed approach when handling cases of workplace sexual harassment. Grievance policies should be updated to adopt this for sexual harassment investigations.
  - Communication of these policies to employees should be done through various channels such as emails, posters, toolbox talks, staff meetings and other forms of communication typical within the workplace.

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## WHS Risk Management Strategy

You should follow the **WHS** risk management process to manage the risk of sexual harassment and sex based harassment, just as you do for any other WHS risks.

The WHS risk management process involves:

- identifying the **hazards**
- assessing the associated risks
- implementing control measures to eliminate or minimise risks, and
- regularly reviewing control measures to ensure they remain effective.

**You must do these things in consultation with your workers and any health and safety representatives (HSRs) if you have them.**



## Identifying Hazards

To identify the risk of sexual harassment, you need to gather information about the hazards in your workplace and assess the associated risk. You must consider how often workers are exposed to the risk of sexual harassment and how severe those risks might be.

To find out if it could happen at your workplace, you should:

- talk to your workers (and any HSRs) about their concerns
- consider anonymously surveying your workers
- walk around and look at your workplace, particularly for areas where someone could hide, restrict movement or if there is anything offensive on walls or workstations
- look at the online environment, like the security settings, social media use and how workers interact online
- think about work systems and practices
- monitor interactions with customers and clients
- watch your workplace culture, worker behaviour and how leaders interact with workers
- review past formal or informal complaints, and other sources of data like absenteeism and staff turnover.

**Appendix 1 contains a list of risks to consider.**

## Assessing the Risks

Assessing the risk of sexual harassment will help you work out what is reasonably practicable to control it. To assess the risk of harm, you need to consider the workers affected and the duration, frequency and severity of their exposure to sexual harassment.

- **Duration** – how long is the worker exposed to the risk of sexual harassment?
- **Frequency** – how often is the worker exposed to the risk of sexual harassment?  
How often does sexual harassment occur?
- **Severity** – how severe is the sexual harassment and the workers' exposures?

The risk of sexual harassment happening at your workplace could be higher if you have:

- low worker diversity
- power imbalances
- a workplace culture that supports or tolerates sexual and other types of harassment
- alcohol and social duties as part of work
- workers in locations where they can't get help and support
- leaders who don't understand sexual harassment, its nature, drivers and impacts.



Risks can also come from working with clients, customers and members of the public.

*You must think about all the psychosocial risks together, rather than just each risk on its own. For example, a worker exposed to sexual harassment from a customer is more likely to be harmed if they do not have other workers to support them (low job support) and aren't allowed to change the way they work (low job control) to prevent the situation occurring.*

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## Controlling Risks

When controlling the risk of sexual harassment, you must consider:

- the likely duration, frequency and severity of the exposure of workers and other persons to sexual harassment
- how the risk of sexual harassment may interact or combine with other psychosocial hazards
- the design of work, including job demands and tasks
- the systems of work, including how work is managed, organised and supported
- the design and layout, and environmental conditions, of the workplace, including the provision of safe means of entering and exiting the workplace, and facilities for the welfare of workers
- the design and layout, and environmental conditions, of workers' accommodation
- the plant, substances and structures at the workplace
- workplace interactions or behaviours, and
- the information, training, instruction and supervision provided to workers

Choosing the right control measures depends on your workplace.

Consult with your workers and any HSRs and identify as many controls as you can.

Consider which controls would be most reliable and effective in eliminating or minimising the risk of sexual harassment so far as is reasonably practicable. Multiple controls will usually be needed.

Keep trying to minimise the risk of sexual harassment until further steps are not reasonably practicable.



## 6 Monitor and Review Control Measures

The last step of the risk management process is to monitor and review the effectiveness of the implemented control measures to check they are working as planned. If a **control measure** is not working well, it must be changed or replaced.

Reviewing control measures should be done regularly and is required:

- when the control measure is not eliminating or minimising risks so far as is reasonably practicable
- before a change at the workplace that is likely to have new or different WHS risks that the control measure may not effectively control
- if a new hazard or risk is identified
- if the results of consultation indicate a review is necessary, or
- if an **HSR** requests a review because they reasonably believe one of the above has occurred and it has not been adequately reviewed already.

## 7 Training

Employers should provide training for senior employees, managers, supervisors, and employees on how to recognise, prevent, and respond to sexual harassment in the workplace. Training should emphasise the employer's zero tolerance policy towards sexual harassment and the importance of respectful workplace interactions.

Types of training that should occur include:

1. Senior employees should be trained on their obligations to proactively manage issues in the workplace and appropriately respond to complaints. Employees who will be managing complaints should be trained on the grievance policy and how to use a trauma informed approach to investigating complaints. **This training should occur annually.**
2. All other employees should be trained on the policies and procedures, what's acceptable and unacceptable, how to make complaints and how to be ethical bystanders in an organisation. **This training should occur on induction and annually.**

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# EAP and Support Services



Employers have a duty to provide support and care to employees who have been victims of sexual harassment.

Creating a supportive workplace environment can help victims overcome the trauma of sexual harassment and promote their mental health and wellbeing.

Employers should consider offering Employee Assistance Programs (EAP) to survivors and other impacted employees. In some instances time off to access these services where required is additionally needed.

Employers should provide details of support services such as Lifeline and Beyond Blue in the Sexual Harassment Policy.



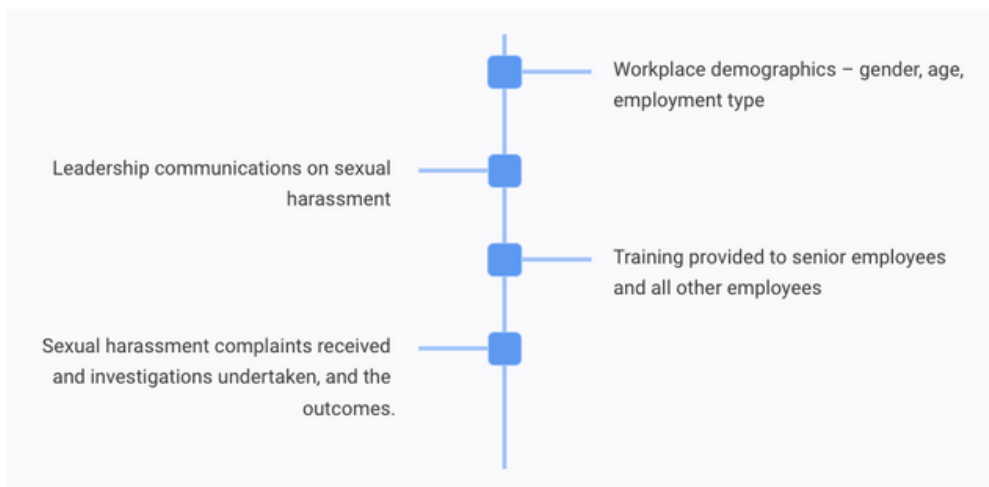
# Reporting Obligations



By reporting on sexual harassment, organisations can create a culture of accountability and transparency, which can help build trust with employees.

Having sexual harassment as a standing agenda item in leadership team meetings and providing a reporting dashboard on key metrics, demonstrates a commitment by the organisation to effectively manage the risks of sexual harassment in the workplace.

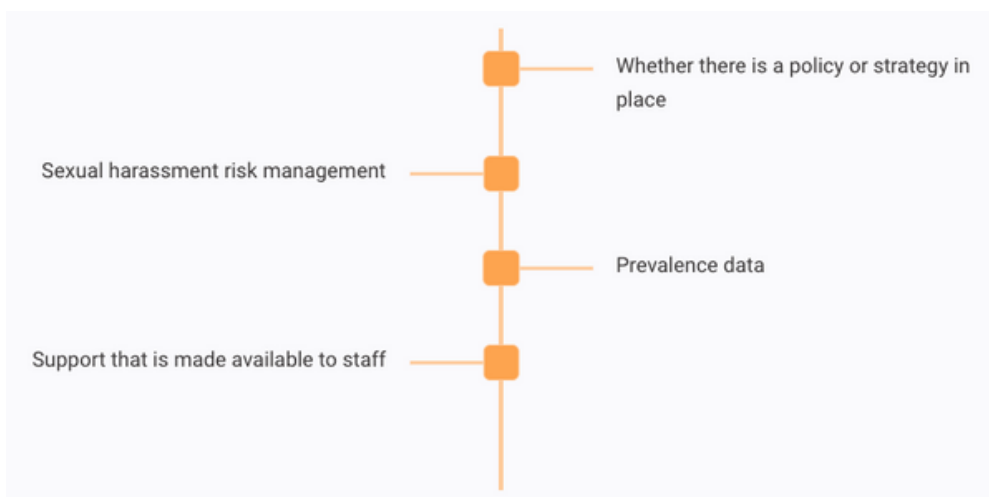
## Reporting Dashboards should include:



## For organisations with reporting obligations to the Workplace Gender Equality Agency (WGEA)

The Gender Equality Act has been amended to include mandatory reporting for relevant employers (over 100 employees) on sexual harassment, sex-based harassment and discrimination from April 2024.

### Reporting will include:





Employers with over 500 employees will be required to have a policy or strategy for each of the six Gender Equality Indicators as well as the reported data being published.

#### The six Gender Equality Indicators are:

1. Gender composition of the workforce
2. Gender composition of governing bodies of relevant employers
3. Equal remuneration between men and women
4. Availability and utility of employment terms, conditions and practices related to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
5. Consultation with employees on issues concerning gender equality in the workplace
6. Sexual harassment, harassment on the grounds of sex and discrimination

**Reported data will be published by WGEA.**

## Appendix 1 - Risks to consider

Sexual Harassment, Sex-Based Harassment, Hostile Work Environment

Factors that can indicate, increase the likelihood and/or impact of sexual harassment:	Control measures
<p>Low worker diversity e.g. the workforce is dominated by one gender, age group, race or culture.</p> <p>Concentration of men in management, leadership or board.</p> <p>Men being promoted more often than women</p>	<p>Have strategies for achieving gender equality and diversity and inclusion targets.</p> <p>Have gender equality in leadership including at the board.</p> <p>Address pay gaps and other inequities based on gender, age, race or culture.</p> <p>Regular segmented reporting on diversity. Refer to our Reporting dashboard examples.</p>
<p>Sex-segregated workplaces (where work is typically or historically performed by men or women) and workplaces with rigid workplace norms based on gender stereotypes e.g. a person of particular gender routinely organise catering, prepare rooms for meetings and clean up after events.</p>	<p>Have strategies for achieving gender equality and diversity and inclusion targets.</p> <p>Break down gender stereotypes at work.</p> <p>Provide unconscious bias training.</p> <p>Set expectations for, and hold accountable, middle management who work with front line workers.</p>
<p>Power imbalances e.g. workplaces where one gender holds most of the management and decision-making positions.</p>	<p>Have strategies for achieving gender equality and diversity and inclusion targets.</p> <p>Have gender equality in leadership including at the board.</p> <p>Regular reporting on diversity, including recent hiring and promotions. Refer to our Reporting dashboard examples.</p>

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Workplaces that value profit over protecting workers.

Build trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Take into account the prevention of sexual harassment and related inappropriate conduct when setting KPIs.

Sexual harassment and related inappropriate conduct policy, training and reporting. Refer to our Reporting dashboard, Charter Wording and Risk Register examples.

Workplaces organised according to a hierarchical structure.

Ensure board members and leaders role model appropriately.

Set expectations for, and hold accountable, middle management who work with front line workers.

Have greater transparency over the prevalence of sexual harassment and related inappropriate conduct and how the Organisation is dealing with this conduct and learning from incidents.

Consider how you will use NDAs and confidentiality clauses in settlement agreements so as not to prevent the person impacted from telling their story, or preclude the Organisation from monitoring emerging systemic issues.

Sexual harassment sexual harassment and related inappropriate conduct policy, training and reporting. Refer to our Reporting dashboard, Charter wording and Risk register examples.

A workplace culture that supports or tolerates sexual harassment and related inappropriate conduct, including where lower level, harmful forms of harassment are accepted.

For example, small acts of disrespect and inequality, casual sexism and hostile workplace environments are ignored and reports of inappropriate behaviours are not taken seriously.

This conduct can escalate to other forms of harassment, aggression and violence.

Ensure board members and leaders role model appropriately.

Set expectations for, and hold accountable, middle management who work with front line workers.

Implement human-centred and trauma-informed processes and systems for managing reports of sexual harassment and related inappropriate conduct.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Sexual harassment and related inappropriate conduct policy, training and reporting, including education on safe early intervention techniques and how to safely exercise bystander responsibilities.

Refer to our Reporting dashboard, Charter wording and Risk register examples.

Use of alcohol in a work context, and attendance at conferences and social events as part of work duties, including overnight travel.

Have in place and implement a responsible service of alcohol policy.

Consider holding events that are not focused on alcohol consumption.

Workers who work in isolated places with limited supervision, in restrictive spaces like cars, at residential premises or employer-provided accommodation, or where limited help and support is available.

Increase the number of supervisors in remote locations.

Improve safety systems in remote locations such as remote surveillance, alarms and lighting.

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Working from home which may provide an opportunity for covert sexual harassment and related inappropriate conduct to occur online or through phone communication.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Regular reporting e.g. on complaints, employee assistance calls by category. Refer to our Reporting dashboard examples.

Worker interactions with clients, customers or members of the public (either face-to-face or online) which may give rise to third-party sexual harassment and related inappropriate conduct.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Educate third-party providers about the Organisation's culture of prevention.

Refuse to deal with third parties that breach the Organisation's policies.

Regular reporting e.g. on complaints, employee assistance calls by category. Refer to our Reporting dashboard examples.

Poor understanding among workplace leaders of the nature, drivers and impacts of sexual harassment and related inappropriate conduct.

Ensure board members and leaders role model appropriately.

Sexual harassment and related inappropriate conduct policy and training.

High-pressure workplaces, with an attitude that workers need to let off steam to deal with the pressures of work and certain behaviours don't need to be taken seriously.

Build trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Take into account the prevention of sexual harassment and related inappropriate conduct when setting KPIs.

Sexual harassment and related inappropriate conduct policy, training and reporting.



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Short-term contracts with a reliance on reputation and word-of-mouth for securing the next job, for example individuals in the fashion and entertainment industries and junior doctors completing their training.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Sexual harassment and related inappropriate conduct policy, training and reporting. Refer to our Reporting dashboard, Charter Wording and Risk Register examples.

Some areas in or around the workplace are isolated, poorly lit or intimidating to enter.

Audit such areas and improve safety in those areas.

Sexualised or sexist materials are on display (e.g. posters, calendars, screensavers).

Build trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Set expectations for, and hold accountable, middle management who work with front line workers.

Lack of privacy or security for workers using bathrooms or change rooms.

Make bathrooms and change rooms private and secure.

In-home work (such as providing childcare, nursing, cleaning services, aged or disability care) with direct client contact and little or no oversight.

Audit workers performing such work to identify the risks; consult with workers about how to address the risks.

Sexual harassment policy and training.

Male-dominated customer or client base.

Seek to improve the diversity of clients the organisation services.

Set out expectations of working together with both parties.

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Small businesses where confidentiality and confidence to raise issues may be difficult to achieve.

Engage a third-party provider that can receive complaints and provide regular reports.

Provide anonymous reporting options.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Sexual harassment and related inappropriate conduct policy, training and reporting, including education on safe early intervention techniques and how to safely exercise bystander responsibilities. Refer to our Reporting dashboard, Charter Wording and Risk Register examples.

A cohort of young workers (including under 18 years), interns, apprentices, graduates or other junior workers.

Audit the risks associated with such workers and change their working environment in response to those risks. For example, limit the extent to which such workers are permitted to work long hours.

Sexual harassment and related inappropriate conduct policy, training and reporting.

A cohort of women from migrant and non-English speaking backgrounds, people on employer-sponsored visas, First Nations women, women with disabilities and LGBTIQ+.

Audit the risks specific to these workers and implement control measures in response to those risks.

Specifically reference these groups in training materials.

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A cohort of casuals, contractors, short-term workers, temporary workers and freelancers.

Encourage greater levels of reporting by building trust that the Organisation will take proportionate action when sexual harassment and related inappropriate conduct occurs.

Ensure that these groups are captured in training and reporting.

High staff turnover, particularly of female or junior workers.

Ensure exit interviews are comprehensive and capture the reasons for the worker leaving the business and include in reporting.

Gender differences in shifts or teams that may be caused by a group or individual being more reluctant to work with particular workers or take on particular tasks.

Understand the reasons for the reluctance and implement measures to improve diversity in teams.

Have strategies for achieving gender equality and diversity and inclusion targets.

Different uniform requirements for men and women, or prescriptive dress codes or expectations for how women should look at work (such as high heels, skirts and make-up).

Review uniform requirements through a gender and cultural lens, and implement changes to break down the gender and cultural stereotypes in relation to how workers are required to dress.

Travel and overnight stays.

Consider the necessity of travel and overnight stays. Where necessary, ensure secure accommodation is provided.

Placements in regional or remote locations where workers may be socially isolated or confined with co-workers, such as fly-in-fly-out workers in camps.

Ensure that secure accommodation is provided, and supervisors regularly check in with such workers.

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Frequent formal or informal client functions or after-work events.

Acknowledge the consumption of alcohol is not part of some employees' culture and consider the necessity and focus of such functions.

Implement a responsible service of alcohol policy and ensure non-alcoholic beverages are available.

Ensure the organisation provides transport home for workers.

Shift work, after-hours and longer hours.

Identify the risks associated with workers performing such shifts and implement control measures in response to those risks.

Gendered and binary networking events or mentoring opportunities, such as work lunches at men's clubs, invitations for men to play golf with the boss.

Cease offering such events, or invite women, and people of all backgrounds and cultures.

Differences in the unspoken expectations of men and women workers.

Train staff and raise awareness in the business of unconscious bias and discrimination.

Male workers dominating meetings or decisions.

Train staff and raise awareness of unconscious bias.



For more information or to discuss your specific questions contact:

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