

Work Health and Safety (Sexual Harassment) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 173

made under the

Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety (Sexual Harassment) Amendment Regulation 2024

Authorising law

Section 276 of the *Work Health and Safety Act 2011*.

Policy objectives and the reasons for them

Sexual harassment and sex or gender-based harassment are workplace hazards known to cause psychological and physical harm. Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated, or intimidated, where that reaction is reasonable in the circumstances. It can take various forms, including unwelcome physical contact, suggestive comments or jokes, sexually offensive pictures and communication, or online interactions such as social media posts. Sex or gender-based harassment is any unwelcome conduct of an offensive or demeaning nature by reason of the person's gender, sex, or sexuality, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Sexual harassment and sex or gender-based harassment can lead to significant social and economic costs for workers, their families, the organisation, and the broader community. The impacts of workplace sexual harassment and sex or gender-based harassment may include:

- decreased job satisfaction, reduced commitment to work and lower productivity;
- emotional and cognitive impacts such as loss of confidence and self-esteem, behavioural changes, tearfulness and mood swings;
- physical symptoms such as headaches, indigestion, tiredness and loss of appetite;
- other illnesses such as cardiovascular disease, musculoskeletal disorders, immune deficiency and stress-induced gastrointestinal disorders; and
- depression, anxiety, post-traumatic stress disorder, self-harm or suicidal thoughts.

Currently, managing the risk of sexual harassment and sex or gender-based harassment at work is regulated under the general psychosocial risk requirements in the *Work Health and Safety Regulation 2011*. These provisions require a person conducting a business or undertaking (PCBU) to manage psychosocial risks, including risks from workplace interactions and behaviours. While this framework broadly captures sexual harassment and sex or gender-based harassment, it does not explicitly require a PCBU to proactively manage these risks. It is also silent on any specific measures that must be undertaken by PCBUs to fulfill their duty as it relates these risks.

The Australian Human Rights Commission's 2020 report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Respect@Work Report) found that the right of workers to be free from sexual harassment is a human right, a workplace right and a safety right, with all three regulatory schemes having an important and mutually reinforcing role to play.¹ However, despite existing requirements across these jurisdictions, sexual harassment and sex or gender-based harassment at work remains prevalent. This is evidenced by the Australian Human Rights Commission's 2022 National Survey *Time for respect: Fifth national survey on sexual harassment in Australian workplaces*² National Survey found that 77 per cent of Australians aged 15 years or older have experienced sexual harassment at some point in their lives, and 1 in 3 people had been sexually harassed at work in the 5 years preceding the survey. The National Survey found workers at particular risk include women, LGBTQIA+ workers, Aboriginal or Torres Strait Islanders, workers with a disability and migrant workers. In 2022, the Queensland Human Rights Commission (QHRC) report *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* found that over 80 per cent of sexual harassment complaints made to the QHRC in 2020-21 involved the workplace.³

Consequently, the Amendment Regulation amends the *Work Health and Safety Regulation 2011* to introduce specific requirements for PCBUs to manage the risk of sexual harassment and sex or gender-based harassment at work. The Amendment Regulation complements the existing provisions in the *Work Health and Safety Regulation 2011* regarding psychosocial risk, while recognising that the risk of sexual harassment and sex or gender-based harassment requires a specific regulatory response.

The advantages of a prevention model also extend to the fact that it is systems-based and proactive, rather than relying on individual complainant-driven change in workplaces. This increases the recognition of sexual harassment and sex or gender-based harassment as a work health and safety issue, as well as being one that can be actively prevented as opposed to managed once the harm occurs.

Achievement of policy objectives

The Amendment Regulation achieves the policy objective by requiring PCBUs to:

- manage the risk of sexual harassment and sex or gender-based harassment in accordance with the risk management process (e.g., identify the risk and implement, maintain, and review control measures)

¹ *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* Australian Human Rights Commission 2020.

² *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* ([link](#)).

³ *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* ([link](#)).

- have regard to relevant matters when selecting control measures (e.g., personal or workplace characteristics that may increase the risk of sexual harassment and sex or gender-based harassment);
- review control measures if a report is made; and
- prepare and maintain a prevention plan.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Work Health and Safety Act 2011*, as it will protect workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Introducing specific requirements for PCBUs to manage the risk of sexual harassment and sex or gender-based harassment at work is expected to deliver net benefits to the Queensland community and to meet community expectation that sexual harassment and sex or gender-based harassment is proactively prevented in Queensland workplaces.

While it requires initial upfront costs in preparing and maintaining a prevention plan, and to execute the control measures to manage the risk of sexual harassment and sex or gender-based harassment identified in that plan, these costs are for preventative action to target harassment which is associated with significant costs for individuals and workplaces. Decreasing instances of sexual harassment and sex or gender-based harassment leads to reductions in costs for business such as employee turnover, absenteeism, the administrative costs in managing complaints, and the frequency and severity of workers compensation claims for this type of harm.

Prevention also decreases the cost to individuals of experiences of sexual harassment and sex or gender-based harassment at work. For example, health expenses such as medical and counselling/psychological services, as well as longer-term impacts on income, career progression and workforce participation for those affected.

Overall, specific regulations for managing the risk of sexual harassment and sex or gender-based harassment at work is the most effective way to deliver positive net benefits to the Queensland economy and broader society. It also shifts the onus from workers (to prove sexual harassment or sex or gender-based harassment occurred) to PCBUs (to provide safe systems of work and take positive steps to reduce harm caused by sexual harassment or sex or gender-based harassment). The Amendment Regulation also provides clarity and certainty for duty holders so that workers are better protected, and worker wellbeing is promoted and valued.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles under the *Legislative Standards Act 1992*.

Consultation

Significant consultation has occurred throughout the policy and legislative development processes for the Amendment Regulation. This included engagement with relevant parties at various stages including initial problem identification discussions, option development, development of the proposed regulatory approach, and consultation on draft regulations to ensure they achieve the intended policy outcome.

Organisations and parties involved in the consultation process included:

- Office of Work Health and Safety Prosecutor;
- Queensland Industrial Relations Commission;
- Work Health and Safety (WHS) Board including members from the National Retail Association; Ventora Group; Australian Sugar Milling Council; Master Builders Queensland; Ramsey Health Care; the Queensland Teachers Union; the Construction Forestry and Maritime Employees Union; the Australian Workers' Union; the Australian Institute of Occupational Hygienists; and Griffith University;
- Industry Sector Standing Committees including employer and worker representatives from the construction, health and community services, manufacturing, retail and wholesale, rural and transport and storage industries;
- Public Sector Commissioner;
- Special Commissioner, Equity and Diversity
- Queensland Human Rights Commission;
- Local Government Association of Queensland;
- Government agencies including the Department of Justice and Attorney-General; Queensland Health; the Department of Education; Queensland Police Service; Queensland Fire Department; Resources Safety and Health Queensland; the Queensland Reconstruction Authority; the Department of the Premier and Cabinet; Queensland Treasury; and the Office of Best Practice Regulation;
- Worker representative groups including the Queensland Council of Unions; the Construction, Forestry and Maritime Employees Union; the Australian Workers' Union; the Shop and Distributive Allied Association; the Queensland Nurses and Midwives Union and the United Workers Union.
- Business and industry groups including Business Chamber Queensland; Australian Industry Group; AgForce; ACC Beef; Olympus Insights; Cotton Australia; Master Builders Queensland and the Housing Industry Association;
- The legal profession, and
- The women's sector, including Women's Law Association of Queensland; Basic Rights Queensland; the National Council of Women of Queensland; and the National Association of Women in Construction.

Most organisations and representatives consulted either indicated strong support for the Amendment Regulation, including the prevention plan, or had no concerns or comment.

Representatives from the women's sector welcomed the Amendment Regulation as an important step towards creating safer workplaces and hoped the reforms will trigger a shift in Queensland towards a more proactive approach to sexual harassment and sex or gender-based harassment.

The effect of shifting the burden for challenging workplace sexual harassment and sex or gender-based harassment from individuals to a shared responsibility with PCBUs was also welcomed with the Amendment Regulation viewed as a positive step forward. The proposed new prevention plan also received positive feedback including support that PCBUs must identify the risks and implement controls for each risk. Components of the Amendment Regulation that speak to links between male-dominated workforces and prevalence of harassment were also commended.

Four employer representative groups indicated general support for the need to address sexual harassment and sex or gender-based harassment and ensure workplaces are safe, however, their view is that existing requirements are adequate. It was also noted that additional regulation is likely to add confusion and an unnecessary administrative burden and cost. Guidance material will be provided to support the Amendment Regulation and will address these issues.

Notes on provisions

Part 1 – Preliminary

Short title

Clause 1 identifies the short title of the Amendment Regulation.

Commencement

Clause 2 states that Part 2 of the Amendment Regulation commences on 1 September 2024 and Part 3 commences on 1 March 2025.

Regulation amended

Clause 3 states that the Amendment Regulation amends the *Work Health and Safety Regulation 2011*.

Part 2 – Amendments commencing 1 September 2024

Amendment of section 38 (Review of control measures)

Clause 4 amends section 38(2) of the *Work Health and Safety Regulation 2011* to insert a note to advise that new section 55G also applies to the review of control measures where they relate to sexual harassment and sex or gender-based harassment.

Insertion of new part 3.2, division 11, subdivision 1, heading

Clause 5 inserts a new Subdivision 1 Preliminary before section 55A (meaning of psychosocial hazard).

Insertion of new section 55BA – Meaning of sexual harassment and sex or gender-based harassment

Clause 6 inserts a new section 55BA which provides definitions for sexual harassment and sex or gender-based harassment.

Insertion of new part 3.2, division 11, subdivision 2, heading

Clause 7 inserts a new general subdivision before section 55C (duty to manage psychosocial risks).

Amendment of section 55C (Duty to manage psychosocial risks)

Clause 8 amends section 55C (Duty to manage psychosocial risks) to insert new subsection (2) which requires the person conducting the business or undertaking to manage the risk to the health or safety of a worker, or other person, from sexual harassment or sex or gender-based harassment at work.

Amendment of section 55D (Determining control measures for psychosocial risks)

Clause 9 amends section 55D (Determining control measures for psychosocial risks) to insert a note to advise that new subdivision 3 also applies if a psychosocial risk is, or includes, a risk of sexual harassment or sex or gender-based harassment.

Insertion of new part 3.2, division 11, subdivision 3

Clause 10 inserts a new subdivision 3 for sexual harassment and sex or gender-based harassment.

Insertion of new section 55E – Application of subdivision

New section 55E inserts an application provision which states that subdivision 3 applies to a person conducting a business or undertaking who implements control measures, under part 3.1, to manage a psychosocial risk that is or includes a risk of either of sexual harassment or sex or gender-based harassment. This provision applies to both new section 55F (Determining control measures) and new section 55G (Review of control measures).

Insertion of new section 55F – Determining control measures

New section 55F(1) states that in determining the control measures to implement, the PCBU must have regard to all relevant matters in relation to the risk of sexual harassment or sex or gender-based harassment. This includes matters relating to characteristics of workers, such as the workers' age, gender, sex, sexual orientation, or disability (section 55F(1)(a)). The list at section 55F(1)(a) is not exhaustive but rather provides examples of worker characteristics that PCBUs could have regard to. The provision is intended to ensure PCBUs consider worker characteristics but allows flexibility for different workplaces and worker characteristics that may increase the risk of sexual harassment or sex or gender-based harassment. Workers at particular risk of experiencing sexual harassment or sex or gender-based harassment include women, LGBTQIA+ workers, Aboriginal or Torres Strait Islanders, workers with a disability and migrant workers.

New section 55F(1)(b) requires that characteristics of the workplace and work environment must also be considered when determining control measures. Examples of workplace or work environment characteristics are provided in section 55F(1)(b). This list is not exhaustive but rather it is intended to provide examples that could be considered by a PCBU when they are determining relevant workplace or work environment characteristics that may increase the risk of sexual harassment or sex or gender-based harassment.

Examples of workplace or work environment characteristics, as set out in section 55F(1)(b), include:

- a work environment that may give rise to a workplace culture, or system of work, in which unacceptable or inappropriate behaviour is, or may be, permitted. This example highlights the need for PCBUs to consider their workplace culture, noting that there may be workplaces where the risk of sexual harassment or sex or gender-based harassment is increased due to broader tolerance of inappropriate workplace behaviour.
- a lack of diversity in the workplace generally or in particular decision-making positions. This example highlights the need for PCBUs to consider whether there could be

hierarchical or other factors that may give rise to an increased risk for sexual harassment or sex or gender-based harassment.

- other matters about the workplace or work environment that may affect a person's behaviour in relation to a worker. For example, a workplace being a hotel may be a relevant matter if patrons at the hotel may be affected by drugs or alcohol. This example highlights the increased likelihood of sexual harassment or sex or gender-based harassment occurring at workplaces where persons are affected by drugs or alcohol. Alternatively, a worker's employment status as casual or part-time may be a relevant matter if other workers are permanent staff and have a supervisory role in relation to the worker. This example highlights power imbalances that can exist in workplaces which may increase the risk of sexual harassment or sex or gender-based harassment at work.

Section 55F(2) states that section 55F does not limit section 55D. This means that relevant matters listed in section 55D (Determining control measures for psychosocial risks) must also be considered in so far as they relate to the risk of sexual harassment or sex or gender-based harassment. For example, in addition to considering worker, workplace and work environment characteristics under section 55F, PCBUs must also consider relevant matters such as how the risk of sexual harassment may interact and combine with other psychosocial hazards, how work is designed (e.g. could work design mitigate the risk of sexual harassment), and the design and layout of workers' accommodation etc. All the matters in section 55D must be considered when determining control measures for sexual harassment or sex or gender-based harassment.

Insertion of new section 55G - Review of control measures

New section 55G requires PCBUs to review and, as necessary, revise control measures used to manage risks of sexual harassment or sex or gender-based harassment if a person makes a report of sexual harassment or sex or gender-based harassment at work. New section 55G operates in addition to the existing requirements to review control measures in section 38 of the Work Health and Safety Regulation 2011.

Amendment of schedule 19 (Dictionary)

Clause 11 inserts definitions for report, sex or gender-based harassment and sexual harassment in Schedule 19 (Dictionary).

Part 3 Amendments commencing on 1 March 2025

Insertion of new section 55H – Duty to prepare prevention plan

Clause 12 inserts a new section 55H that requires PCBUs to prepare a prevention plan. Under section 55H(1), the PCBU must prepare a plan to manage an identified risk to the health or safety of workers, or other persons, from sexual harassment or sex or gender-based harassment at work. There is a maximum penalty of 60 penalty units for failing to comply with section 55H(1).

Section 55H(2)(a) to (d) provides for the requirements of the prevention plan, including that the plan must be in writing, state each identified risk, identify the control measures implemented or to be implemented to manage each identified risk, and identify the relevant

matters (as contained in both section 55F(1) and 55D(2)) that were considered in determining the control measures.

Section 55H(2)(e) requires PCBUs to describe the consultation undertaken as part of this process, as required under part 5, divisions 1 and 2 of the *Work Health and Safety Act 2011*.

Under section 55H(2)(f), the prevention plan must set out the PCBU's procedure for dealing with reports of sexual harassment or sex or gender-based harassment at work, including how a person may make a report of sexual harassment or sex or gender-based harassment and how a report will be investigated. This provision states that the plan must also state that the person who made the report may be represented by a representative and how the person who made the report and other parties will be informed of the results of the investigation. The term representative is defined in section 55H(5). Section 55H(2)(f)(v) also requires the prevention plan to include that the person who made the report may also use the issue resolution procedures and the dispute resolution process in part 5, divisions 5 and 7A of the Act.

Section 55H(2)(g) requires that the prevention plan be set out and expressed in a way that is readily accessible and understandable to workers.

Section 55H(3) requires PCBU to implement the prevention plan. There is a maximum penalty of 60 penalty units for failing to comply with section 55H(3).

Section 55H(4)(a) states that the PCBU must take reasonable steps to ensure workers are made aware of the prevention plan and know how to access it. Section 55H(4)(b) also requires that the plan is reviewed:

- as soon as practicable after a report of sexual harassment or sex or gender-based harassment is made; or
- if a health and safety committee for the workplace or a worker's health and safety representative requests a review of the plan, the PCBU must review the plan as soon as practicable after the request is made; or
- otherwise, every 3 years.

There is a maximum penalty of 60 penalty units for failure to comply with section 55H(4).

Section 55H(5) defines 'representative' for the purposes of section 55H to mean, in relation to a person other than a worker, someone else who the person authorises to represent them. In relation to workers, the definition of representative in section 45A of the *Work Health and Safety Act 2011* applies.