

Work and Electrical Safety Policy

Office of Industrial Relations

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Proposed Work Health and Safety (Sexual Harassment) Amendment Regulation 2024

Introduction

Master Builders supports the Queensland Government's commitment to address workplace sexual harassment.

Master Builders is of the view that there are adequate requirements in place that address workplace sexual harassment. Additional regulation, rather than furthering the Government's commitment, is likely to add confusion and an unnecessary administration burden, resulting in negative outcomes for workers and PCBU's.

Existing duties to prevent sexual harassment

Duty of care

PCBU's have a primary duty of care in the *Work Health and Safety Act 2011* to ensure the physical and psychological health of persons at work. To meet this duty PCBU's must identify psychosocial hazards, including sexual harassment hazards, and assess the level of risk those hazards may present.

In addition, PCBU's have obligations to prevent sexual harassment within the *Anti-Discrimination Act 1991* (Qld).

Code of practice obligations

The Code of practice - *Managing the risk of psychosocial hazards at work* (the Code) contains detailed information about PCBU (and worker) obligations in relation to preventing sexual harassment, and clear guidance on how to control the risks associated with sexual harassment. This is detailed throughout the Code and its Appendices. A summary of these provisions is at **Attachment 1**.

The Code provides a practical guide for PCBU's on how to prevent psychosocial hazards, including sexual harassment.

Information resources

The Office of Industrial Relations also provides extensive advice and guidance to PCBU's and workers regarding their duties to prevent sexual harassment. This includes:

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- *Mentally healthy workplaces toolkit*¹
- *Act now to stop workplace sexual harassment*²
- *Sexual Harassment guidance material page*³, which includes a link to Safe Work Australia's *Steps to prevent workplace sexual harassment*⁴.

New legislation

On 14 June 2024, a new and separate piece of legislation was introduced to Parliament, the *Respect at Work and Other Matters Amendment Bill 2024*. According to the statement released by the Queensland Government:

The Miles Government has introduced landmark legislation which will ensure Queensland workers will be safer than ever at work ... the Respect at Work and Other Matters Bill will protect all workers – especially women in Queensland – from harm and harassment in the workplace.:

...

The Bill will include:

- *new prohibitions of harassment on the basis of sex*
- *a prohibition on subjecting another person to a work environment that is hostile on the ground of sex; and*
- *a positive duty on all employers to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and other conduct that is unlawful under the Anti-Discrimination Act 1991.*

*It sends a clear and unequivocal message to workers and employers in Queensland that sexual harassment in the workplace is never acceptable.*⁵

Once passed, this legislation will add to the comprehensive protection, negating the need for further overlapping and in some cases contradictory WHS regulation of sexual harassment.

¹ https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0022/128812/mentally-healthy-workplaces-manual.pdf

² <https://www.worksafe.qld.gov.au/news-and-events/newsletters/rehabilitation-and-return-to-work/rehabilitation-and-return-to-work-e-bulletin-editions/2023-e-bulletins/september-2023/act-now-to-stop-workplace-sexual-harassment>

³ <https://www.worksafe.qld.gov.au/news-and-events/newsletters/esafe-newsletters/esafe-editions/esafe/october-2021/new-sexual-harassment-guidance-material-released>

⁴ <https://www.safeworkaustralia.gov.au/doc/steps-prevent-workplace-sexual-harassment-infographic>

⁵ <https://statements.qld.gov.au/statements/100587>

Concerns with the proposed regulation

Potential for confusion

Together, the existing requirements comprehensively detail the PCBU obligations to prevent sexual harassment and advised how to do this practically. Additional unnecessary regulation will only lead to confusion, duplication, and will not achieve positive results for workers.

Characteristics of workers

Master Builders has specific concerns with the proposed Regulation 55E (2)(a), whereby in determining the control measures, the PCBU must have regard to matters relating to characteristics of the workers, such as the workers' gender, sex and sexual orientation.

This could be a sensitive subject and could be problematic for a PCBU to ascertain their workers' gender, sex and sexual orientation. It could lead to an offence caused to workers simply in the process of the PCBU trying to comply with these new obligations. It could also result in PCBU's pressuring workers to disclose such information could be seen as intrusive and disrespectful.

Further, in workplaces that have traditionally less diversity, such as the building and construction industry, workers may feel targeted by being singled out as a result of these proposed Regulations.

We are concerned that PCBU's may even be reluctant to engage a more diverse workforce.

We support and prefer the terminology used in the Commonwealth legislation, specifically the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022*⁶, which amended the *Sex Discrimination Act 1984*⁷, which contains a duty on PCBU's to take reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct, including sex discrimination, sexual harassment, sex-based harassment and certain acts of victimisation in the workplace context, without having to identify people's gender, sex and/or sexual orientation.

New prevention plan

The existing Code provides guidance on how to undertake a risk assessment for psychosocial hazards, including sexual harassment. The proposed Regulations require PCBU's to prepare an additional "prevention plan" outlining how they will manage the risk of sexual harassment at work.

For PCBU's who already have risk assessments or workplace policies for sexual harassment, they will now be required to prepare an additional prevention plan. This additional requirement only serves to create an administrative burden for PCBU's without a demonstrable benefit.

We also raise issue with every PCBU, including small business, micro business, and business with no workers, having to prepare a prevention plan. There is also difficulty in preparing a prevention plan for a workplace where the number of workers and visitors differs daily, and where such workers may only be at the workplace for a limited period of time.

There should be no new requirement to have written prevention plans.

⁶ https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6916_first-reps/toc_pdf/22093b01.pdf

⁷ <https://www.legislation.gov.au/C2004A02868/latest/text>

Enforcement challenges

Master Builders question how the new Regulations, and specifically the development of prevention plans, will be enforced by WHSQ. We are concerned that due to the challenges raised above regarding prevention plans, and the ambiguity in the Regulations, PCBU's may be unfairly penalised based on the opinion of individual WHSQ inspectors.

We do not support that penalties should be issued if a PCBU has prepared a prevention plan, and a WHSQ inspector disagrees when they complete their own assessment and issues an enforcement notice.

Small businesses especially do not have the resources in all cases to have a full understanding of how to comply, and this is exacerbated by the absence of direction in the proposed Regulations.

PCBU's instead should be assisted and supported by WHSQ to comply with their existing obligations. If a PCBU still resists such assistance a penalty may be appropriate, but a penalty is not appropriate where they take steps to comply but WHSQ merely disagrees with them.

19 July 2024

Attachment 1

1.2.	Who has a health and safety duty in relation to psychosocial hazards?	Page 7	A PCBU must ensure, so far as is reasonably practicable, there is a safe work environment, safe systems of work, and sufficient information, training, instruction and supervision to ensure the risk of sexual harassment at work is eliminated or minimised.
		Page 8	workers must cooperate with reasonable policies relating to work-related bullying, work-related violence and aggression, sexual harassment or other forms of harassment.
		Page 9	Visitors and others at a workplace must comply with any reasonable behavioural standards instructed by a PCBU, and adhere, so far as reasonably able, to site rules and procedures. This includes standards from the PCBU regarding prohibitions on violence and aggression, bullying and sexual harassment.
2.1	Consulting workers	Page 12	Workers may be hesitant to raise and discuss psychosocial hazards due to privacy or other concerns, particularly in relation to hazards like work-related bullying or sexual harassment. PCBUs may consider consultation processes that address such concerns. This may include anonymous surveys or reporting, particularly where workers are in insecure or precarious work arrangements, such as casual employment.
3.1	Identifying psychosocial hazards	Page 14	<p>PCBUs must identify reasonably foreseeable psychosocial hazards that could give rise to risks to health and safety. Psychosocial hazards can arise from or relate to ... workplace interactions or behaviours (e.g. social factors at work and the way workers and others behave, including work-related bullying, work-related violence and aggression, sexual harassment, and other forms of harassment</p> <p>...</p>
		Page 17	<p>Common psychosocial hazards</p> <p>...</p> <p>Harassment including sexual harassment</p> <p>...</p>

			<p>Sexual harassment - any unwelcome conduct of a sexual nature that is done either to offend, humiliate or intimidate another person, or where it is reasonable to expect the person might feel that way. It includes uninvited physical intimacy such as touching in a sexual way, uninvited sexual propositions, and remarks with sexual connotations.</p> <p>This includes sexual harassment by workers, clients, patients, visitors, or others.</p> <p>Examples: telling insulting jokes about particular racial groups; making derogatory comments or taunts about someone's disability; asking intrusive questions about a person's body; staring, leering or unwelcome touching; sexual or suggestive comments, jokes or innuendo; unnecessary familiarity, such as deliberately brushing up against a person.</p>
3.3	Controlling the risk of psychosocial hazards	Pages 30-31	<p>Administrative controls commonly include organisational policies and standard operating procedures that are designed to minimise exposure to a hazard, as well as the information, training and instruction needed to ensure workers can work safely.</p> <p>...</p> <p>Example administrative controls include:</p> <ul style="list-style-type: none"> • having clear expectations about acceptable behaviours at work, including policies for work-related bullying, ... sexual harassment and other forms of harassment <p>...</p> <p>PCBUs must ensure, so far as reasonably practicable, that workers are provided with information, training, instruction and supervision to protect them from risks to their health and safety ... Information, training and instruction must be provided in a form that can be understood by all workers (e.g. training may need to be provided in other languages). Training may include formal training courses, in-house training or on the job training. Where training and instruction is about work-related bullying, work-</p>

			related violence and aggression, or sexual harassment at work, a trauma-informed approach may be applied. Information and instruction may also need to be provided to others who enter the workplace, such as customers or visitors.
4.1	Encouraging reporting	Page 35	It is important for psychosocial hazards reported by workers to be taken seriously. Workers can be encouraged to report psychosocial hazards by ... ensuring processes and systems for reporting and responding to complaints of bullying, sexual harassment or other inappropriate behaviours are suitable, transparent and well understood.
4.2	Responding to reports, complaints, or incidents	Page 36	A response to a complaint about sexual harassment may involve discussions with the parties and/or witnesses, providing support to all parties, facilitating an impartial investigation, and maintaining confidentiality and privacy of the parties.

Appendix 3 Examples of psychosocial hazards	Page 54	<p>Factors that may increase the likelihood or risk of harassment include:</p> <ul style="list-style-type: none"> • particular cohorts of workers who are more vulnerable such as young workers, workers with a disability, Aboriginal and Torres Strait Islander workers, workers in insecure or precarious forms of employment, and workers on working visas • low worker diversity (e.g. the workforce is dominated by one gender, age group, race or culture) • power imbalances (e.g. workplaces where one gender holds most of the management and decision-making positions) • workplaces organised according to a hierarchical structure (e.g. police and enforcement organisations, or medical or legal professions) • workplace culture that supports or tolerates sexual harassment, including where lower level (but still harmful) forms of harassment are accepted (e.g. small acts of disrespect and inequality are ignored)
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		<p>and reports of sexual harassment or inappropriate behaviours are not taken seriously) - this conduct can escalate to other forms of harassment, work-related bullying/violence and aggression</p> <ul style="list-style-type: none"> • use of alcohol in a work context, and attendance at conferences and social events as part of work duties (including overnight travel) • workers are isolated (e.g. due to location, hours of work) in restrictive places like cars, working at residential premises, living in employer provided accommodation, working from remote locations with limited supervision, or have restricted access to help and support • working from home, which may provide an opportunity for covert sexual harassment to occur online or through phone communication • 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 including work that involves a high level of contact or work in close proximity to customers or clients • poor understanding among workplace leaders of the nature, drivers and impacts of sexual harassment.
<p>Appendix 4 Examples of control measures for psychosocial hazards</p>	<p>Pages 61-62</p>	<ul style="list-style-type: none"> • Empower workers to refuse, restrict or suspend service if people fail to comply with the expected standard of behaviour. <p>Physical work environment and security</p> <ul style="list-style-type: none"> • Provide facilities that give privacy and security. • Ensure the layout of the workplace provides good visibility of work areas and avoids restrictive movement. • Ensure there are no areas where workers could become trapped, such as rooms with keyed locks. • Provide communication systems like phones or duress alarms (and provide workers with information, instruction and training on how to use these).

	<ul style="list-style-type: none"> • Ensure a safe working environment for workers during access and egress from the workplace, during travel, at client or customer premises and any other location where work is performed. Work systems and procedures for: <ul style="list-style-type: none"> • Responsible service of alcohol policies at work and at work events. • Standards of behaviour and procedures for what a worker should do if they experience or see harassment at work or work-related events or from third parties to the workplace (including sexual harassment). • Addressing reports of harassment consistently and in accordance with procedures, including the provision of sufficient, appropriate and timely feedback to workers who have raised concerns. • Avoiding sexualised uniforms and ensuring clothing is practical for the work undertaken. • Regularly monitoring and reviewing work systems and practices, to evaluate effectiveness in minimising the likelihood of harassment occurring. • Collecting de-identified details of all harassment complaints, including those that are not pursued, to help identify systemic issues. • Effectively reporting and monitoring staff welfare through regular consultation.
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