

Witnessing Sexual Harassment

What you can do if you witness or hear
about workplace sexual harassment



This resource provides information about what you might consider doing if you witness or hear about sexual harassment in the legal profession

Recognising sexual harassment

Sexual harassment is, including within an employment setting. It is defined in both the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act 1998* (Tas) as any type of unwanted or unwelcome sexual behaviour, which could make a person feel offended, humiliated or intimidated. It has nothing to do with mutual attraction or consensual behaviour, and it is irrelevant whether or not someone intends to offend, humiliate or intimidate the person by their conduct.

Harassment can be physical, verbal or occur in writing. You can find more information about the wide spectrum of behaviours that can constitute sexual harassment here:

- [Fair Work Ombudsman](#)
- [Australian Human Rights Commission](#)
- [Equal Opportunity Tasmania](#)
- [WorkSafe Tasmania](#)

Workplace sexual harassment can occur in obvious settings, such as the office, but it can also occur in other locations and spaces that are in some way connected to work, for example:

- in shared spaces on the work premises (for example, kitchens and photocopy rooms) as well as in other common areas such as the carpark, lifts, entrance or reception area and bathrooms outside of the work premises;
- other settings in which you work, for example, at court or a client's office, or at your residence if you are working from home;
- at work-related events, meetings or where people are carrying out work-related functions or activities outside of the physical work premises (for example, at a Christmas party, after work drinks with colleagues, at a conference, on a work trip or when travelling to work);
- online and through technologies and social media platforms (for example, during remote work); and
- between people sharing the same workplace (for example, contractors or people in a co-working space).



What is an active bystander?

An active bystander is someone who takes action after witnessing or hearing about an incident of sexually harassing behaviour.

Active bystanding can include giving a disapproving look, speaking out about or reporting the behaviour. It can also include taking action to challenge a culture that supports sexist and sexually harassing behaviours, for example talking to your employer about a sexual harassment policy, prominently displaying and communicating the policy in your workplace, raising awareness about sexual harassment and providing training to all workers.

Active bystanding does not involve physically restraining someone or hostile or aggressive responses. It involves acting, and conveying your message, in a respectful way.

Why is being an active bystander important?

Bystander action can help break the culture of silence around workplace sexual harassment and assists those experiencing sexual harassment to feel supported to report and recover from their experiences.

People experiencing harassment may blame themselves for the unwanted attention; when bystanders speak out against people who sexually harass others it sends a message to targets that it is the harasser who has behaved inappropriately and that the harasser's conduct is not a reflection on them or their professionalism. This may make the person experiencing harassment feel more confident to take action against the behaviour too.

Being an active bystander is also consistent with the ethical obligations of lawyers. All officers of the court have a shared responsibility to uphold the integrity of the profession, which includes complying with the law.

Further, bystander interventions are effective; research shows that the most common result of people taking action after witnessing or hearing about workplace sexual harassment was that the harassment stopped.

Actions that bystanders can take to respond to sexual harassment

If you witness or hear about sexual harassment, there are a number of actions you can take, both at the time the incident occurs and afterwards.

You may need to adapt what action you take depending on the situation. The focus should always be on your safety and the safety and wishes of the person who is experiencing sexual harassment. Always seek support and guidance if you're unsure of what steps to take.

Diffuse

One option is to make a light-hearted comment to try to stop the situation from escalating. This type of action can be taken in private or with an audience. Try framing your comment as a question that gently expresses disapproval, for example *'What decade are you living in?'* or *'Sorry, what was that you said about women?'*

Another, non-verbal, option is to leave a pointed silence or give a disapproving or shocked look after someone says or does something inappropriate. Any look you direct at a person in this situation should be stronger than your normal 'listening' facial expression, and is likely to be more useful when you know the person or when you are worried about a power imbalance.

Call Out

Being an active bystander can also involve calling out bad behaviour, and explaining why it's wrong. If you feel comfortable doing so, you might calmly disagree with something someone has said or done, and publicly declare it to be wrong or unacceptable. For example, you could say *'Hey, that's inappropriate language. Women deserve to be treated with respect. Your attitude makes it harder for women who just want to do their jobs'* or *'You might have thought it was just a joke, but I think that kind of comment is offensive'*.

Check In

If you observe someone being sexually harassed, check in with them to express your disapproval about the incident, ask whether they're okay, if they want to talk and if they need help to find information to decide what to do next.

For example, you could say, *'That was so wrong of Sam to talk about your shirt like that. Are you okay? Do you want me to find out how you can report that kind of behaviour?'*

There are a range of support and reporting options available to people who experience sexual harassment. You might want to review our resource *What you can do if you experience workplace sexual harassment* and provide and/or discuss this information, including reporting pathways, with the person who experienced the harassment.



Record

If you witness, or someone confides in you about sexual harassment, it is a good idea to keep detailed notes of what occurred. As you would with a file note, document what was said or done, by whom, when and where, whether there were any other witnesses, how it appeared to affect the person experiencing the behaviour and any subsequent action taken.

While the person who experienced the harassment might not feel like reporting the incident to anyone in the immediate aftermath or indeed at all, if they decide to discuss or report the incident in future – for example, if it happens again, you or they become aware of it also happening to others or they change their mind – you will have evidence to support any report or complaint that they make.

Consider how you will store this documentation safely and securely. Email records to your personal email address for retention and security purposes, and to have a timestamped record.

Report !

If you observe or are told about sexual harassment, you might choose to report the incident to your employer. Find out about how your workplace deals with sexual harassment by reviewing any relevant policies and procedures.

Generally, you should have a discussion with the person who was harassed before deciding whether to report their experience to your employer. The person who experienced the sexual harassment may not be ready or willing to be involved in a sexual harassment complaints process, and it could cause significant distress to make a report that identifies them, without their consent. However, in some cases, for example where you witness repeated incidents of sexual harassment, you might choose to report this to your employer without identifying the person or people who were harassed. There may be existing reports about the same person/s, which your employer may use to discuss the person's behaviour with them, and improve the workplace culture in relation to sexual harassment.

You might also consider reporting the incident to the Legal Profession Board as the regulator of lawyers in Tasmania. We will deal with reports and complaints sensitively, and you can remain anonymous if you choose. You can report sexual harassment to our designated Response Team by:

Calling (03) 6226 3000 and asking to speak to a Response Team member



Emailing harassmentcomplaints@lpbt.com.au

Visiting our online reporting tool at
www.lpbt.com.au