



Law Council
OF AUSTRALIA

Guidance Note 3

Information for persons facing a complaint about sexual harassment

**National Model Framework Addressing Sexual Harassment for the
Australian Legal Profession**

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Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639
Email mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra
19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

1. Background

These guidelines are designed to be read together with the National Model Framework, in which all relevant terms are defined.

This document has been developed as a guidance material only and is not legal advice.

This *Guidance Note 3* has been developed by the Law Council of Australia to provide information for those who have had a sexual harassment complaint made against them (**Respondent**), where the complaint is being addressed in accordance with the best practice recommendations for complaints procedures (**Recommendations**)¹ contained in the Law Council's National Model Framework Addressing Sexual Harassment for the Australian Legal Profession (**Model Framework**).

2. You've had a complaint about your conduct - what do you do?

It may be tempting to reach out to the person who has made a complaint to ask questions, but trying to speak to them outside of the processes in the Recommendations is unlikely to help. Please also remember that any form of retaliation against those involved in the complaint is a serious issue.

If you consider that changes to your working arrangements may be required while the matter is investigated, please contact your human resources manager and/or the complaints investigator.

Find a support person(s) and consider seeking out legal advice. There are many support services available that may assist you in navigating this process, including:

- [Beyond Blue](#); and
- [Better Help](#).

You can contact your local [law society](#) or professional association for help seeking legal assistance.

3. The process

3A. Notification

The person who has made the complaint and (if a different person)² the Targeted Person,³ will be informed both before and after you have been notified of the complaint. Depending on the nature of the complaint, the complaints investigator(s) may also be required to inform other organisations.⁴

While the Recommendations do provide for anonymous reporting, anonymous complaints cannot progress to a formal investigation of an individual's conduct. This is on the basis that you need to have sufficient information about the complaints made against you for you to be able to respond to the complaint.

3B. Responding to the complaint

You will be provided with sufficient details so that you can properly respond to the complaint made against you. The details provided will depend on the facts of the particular case, but may include:

- statements from the complaints or any witnesses setting out their views about the complaint; and/or
- any documents relevant to the complaint, such as email communications or policies.

You must be given a sufficient period of time to respond to the complaint made against you. You may disagree with the information provided to you, and you will have an opportunity to explain your views on the relevant facts and events.

When responding to the claim, try to state your views clearly and in direct response to the allegation(s) in the complaint. If you have any statements, documents or the like to support your views, include them with your response.

3C. What to expect from an investigation?

Subject to the organisation or complaints handling body that is investigating the claim, there may be opportunities to attempt to resolve the complaint informally. This, for example, might involve discussions with a mediator or negotiator.⁵

Should a formal investigation be pursued, the complaints investigator must:⁶

- conduct the investigation fairly, applying the principles of procedural fairness and natural justice;
- consider and analyse the strength of the information and evidence provided by the parties to the complaint, including any statements or other supporting documentation;
- consider and apply the applicable thresholds, as addressed in the Model Framework; and
- determine whether sexual harassment occurred on the balance of probabilities.⁷

3D. What happens after the complaints investigator has reached a decision?

If it is determined that the sexual harassment occurred on the balance of probabilities, the complaints investigator will consider appropriate remedies, subject to the applicable regulatory circumstances of the complaints handling body.

Once a determination has been made in respect of the complaint, the outcome should be communicated to all parties as soon as practicable. Subject to the facts of the individual case, remedies might include (as relevant):

- an apology;
- a requirement to undertake sexual harassment prevention training;
- counselling;
- an agreement on protocols regarding arrangements and interactions between the parties going forward;
- structural changes, including changes in reporting lines;
- demotion or termination of employment or engagement;
- clear expectations, codes of conduct and/or protocols established with contractors, clients, members and other applicable third-parties;
- for associations - cancellation, or limitations to, membership or licence;
- reporting of conduct to the relevant regulator (e.g. law society, bar association, legal services commissioner); and/or
- referral for civil or criminal legal action.
- a finding of unsatisfactory professional conduct or professional misconduct for legal practitioners;⁸
- fines;
- restrictions or cancellation of a practising certificate or membership;
- removal from the Roll of practitioners;
- a finding that the Respondent breached workplace or discrimination legislation; and/or
- a referral to an external body.

There will be circumstances where the complaints investigator determines that it would be appropriate for the matter to be referred to an external body, regulator, agency and/or tribunal including and not limited to Police and the applicable state or territory Workplace Health and Safety regulator.⁹

4. More information

For more information about sexual harassment or the Model Framework, please see the Law Council's [Time for Change: Addressing Sexual Harassment](#) portal.

Endnotes

¹ The Recommendations can be found at:

- a. **Appendix A** to the Model Framework- for complaints to organisations who take external complaints about sexual harassment - for example, disciplinary bodies; and
- b. **Appendix B** to the Model Framework – for complaints within organisations, such as workplaces.

² Under the Model Framework, it is recommended that complaints also be accepted from a bystander or witness to the conduct addressed in the complaint.

³ As defined in the Model Framework.

⁴ Depending on the circumstances of the case and the extent to which they intersect with other work, health and safety and any other statutory obligations.

⁵ If you would like more information about informal complaints resolution, you can contact the complaints investigator to ask if it is possible in your circumstances and/or to signal your interest in this approach if available.

⁶ The applicable thresholds that complaints investigators must consider are set out in **section 3** of the Model Framework.

⁷ It is important to note that complaints of sexual harassment often lack corroborating evidence, and this alone will not prevent a determination. The Recommendations provide for appropriately trained complaints investigator to carefully assess the circumstances of the complaint in reaching a determination.

⁸ Noting, for example, Rule 42 of the Australian Solicitors' Conduct Rules and Rule 123 of the Australian Bar Association's Rules.

⁹ You, the Complaint and Targeted person will be advised as soon as reasonably practicable of this course, if it is appropriate in the circumstances to do so. This must include information about next steps and the applicable timeframes for those steps. For more information about external referrals, please refer to **section 4C** of the Recommendations.