

Checklist: Responding to employees who choose   
to use family violence   
and/or sexual harassment

This checklist will help managers and human resources/people and culture teams to design responses to employees who choose to use family violence, sexual harassment or other forms of abuse, and to ensure that these responses prioritise the safety and well-being of victims/survivors and hold perpetrators accountable.

Given the many female victims/survivors of violence in formal employment, it is safe to assume that there are people who choose to use family violence, sexual harassment, or other forms of abuse employed in workplaces. It is important that workplaces carefully consider how they respond to employees who choose to use family violence, sexual harassment, or other forms of abuse. Workplaces need to send a clear message to these employees that they will always be held to account for their behaviour and that the workplace does not condone violence against women under any circumstances.

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A brief note on ‘zero tolerance’. First, there is a difference between having zero tolerance in the workplace for behaviours and attitudes that perpetuate violence against women and sexual harassment, and zero tolerance for employing someone who chooses to use family violence or sexual harassment.

Every organisation should make it clear to its employees that in their workplace, there is zero tolerance for behaviours and attitudes that perpetuate violence against women and sexual harassment. However, there is little evidence to suggest that zero-tolerance policies on employing someone who chooses to use family violence or sexual harassment are an effective prevention approach. These policies can be counterproductive in that:

* they discourage reporting by people who are experiencing sexual harassment, as many such policies include a vexatious clause (for example, if the complaint is unproven, there are consequences for making a false claim)
* they remove the opportunity for workplaces to support those who use violence to seek help and change their behaviour
* they can place the victim/survivor at greater risk of harm.

# Ensure the response is based on a solid legal foundation and evidence-based

Have senior executives of the organisation:

* Ensured that people with relevant expertise have reviewed relevant legislation, common law, Enterprise Bargaining Agreements (EBAs), codes of conduct, and other policies and procedures to ensure that the organisation and employees legal obligations and rights are upheld, including the legal duty of care to provide a safe workplace?
* Consulted with family violence and sexual harassment specialists and employment lawyers to develop an appropriate violence and harassment prevention strategy and determine an appropriate response to the personal and legal risks faced by victims/survivors?
* Ensured that the policies and practices that address employees who have chosen to use family violence or sexual harassment align with relevant national, and state/territory laws on workplace discrimination and abide by essential principles of employment law, including the employee’s right to a fair process (particularly if the violence has occurred outside of the workplace)?
* Ensured that the organisation’s approach to responding to employees who have chosen to use family violence or sexual harassment fits within and compliments the broader context of providing a safe working environment and preventing family violence/violence against women within the workplace (for example, positive duty obligations)?
* Ensured that the organisation’s policies, procedures, practices, and tools are aligned and connected with state/territory family violence and sexual harassment prevention and response frameworks? For example, confidently reporting criminal behaviour and child protection issues and understanding the constraints around sharing information or breaching privacy and confidentiality.

# Ensure the response is principles-based

Does the organisation’s approach to responding to employees who choose to use family violence and sexual harassment ensure that the following principles are upheld?

* Sexual harassment and violence against women are never excused or minimised.
* Policies, practices, and projects are designed to prioritise prevention and the safety of victims/survivors within and outside the workplace and are tailored to provide equal outcomes across the intersecting identities of all employees (e.g., gay men, women with disabilities).
* A safe work environment is maintained to prevent violence and sexual harassment, and assistance is offered to victims/survivors, supporters, and witnesses of violence or sexual harassment.
* People who choose to use violence or sexual harassment are held accountable for their actions while also provided with a fair process and employment when it is appropriate.
* Other workplace initiatives are implemented to address the underlying drivers of sexual harassment and violence against women to prevent it from occurring.
* All employees are educated about the key principles guiding the workplace’s prevention efforts and responses to staff who choose to use family violence, violence against women or sexual harassment.

# Ensure the response is strong and fair

* Is the safety and well-being of victims/survivors prioritised when responding to allegations of violence or sexual harassment, and are appropriate support, protection measures, and resources in place for them whenever possible?
* Do employees managing disclosures collaborate with relevant external agencies, such as family violence services and law enforcement, to ensure comprehensive support for victims/survivors and appropriate intervention for people who choose to use family violence or sexual harassment?
* Are employees who choose to use family violence or sexual harassment held accountable for their actions through appropriate disciplinary measures, including legal consequences when necessary?
* Are employees who choose to use family violence or sexual harassment provided with support to help them stop abusive behaviour and reduce the likelihood of collusion with managers and decision-makers, manipulation, or deceit?
* Are employees who choose to use family violence or sexual harassment referred to Employee Assistance Programs that employ staff who specialise in working with family violence and sexual harassment?
* Does the organisation’s response:
  + enable those responsible for managing disclosures to comprehensively assess each incident according to its evidence, context and unique characteristics?
  + provide managers / senior executives with the capacity to administer a suite of responses ranging from an informal warning to temporary workplace adjustments to reporting criminal behaviour by themselves or in collaboration with specialist services while considering the safety and well-being of all people involved?
  + clarify whether people who choose to use family violence are eligible for family violence leave?
  + clarify that while the organisation does not tolerate violence or sexual harassment, its response will not necessarily involve summary/immediate dismissal? Other factors must be considered before deciding on the most appropriate course of action, such as continued use of violence, breach of workplace policies or code of conduct?
  + consider consulting with the victim/survivor before an employee is terminated for using violence or sexual harassment in case the outcome has a detrimental impact on the victim/survivor’s safety and wellbeing (for example, retaliation)? Alternatively, consider consulting with the victim/survivor or a family violence specialist before terminating an employee.

# Upskill managers and human resource / people and culture teams

Have managers and human resources / people and culture teams been provided with the following?

* Information to help them understand the complexity of responding to people who choose to use family violence or sexual harassment, and the risks this raises for victims/survivors and witnesses (for example, the abuser’s behaviour can be dangerous, their stories may be distorted and unreliable, they might invite collusion, attempt to evade accountability or minimise their responsibility).
* Clear protocols and procedures for fairly responding to allegations against employees who choose to use violence or sexual harassment while ensuring a safe and supportive environment for victims/survivors and other employees.
* Contact information for specialists trained in this area for referral and advice.

Do managers and human resources/ people and culture teams understand that research and practice experience indicates that employees who choose to use family violence or sexual harassment:

* may be more likely to seek help from their employers in certain situations, such as during a crisis, after being arrested, when required to alter work practices due to a family violence intervention order, or when needing time off work for court attendance?
* may not be honest about their violence or sexual harassment and try to minimise their responsibility, shift blame onto others, present with other issues like alcohol problems or depression, or portray themselves as victims?
* may exhibit warning signs of committing violence against women or sexual harassment, such as damaging or sexist comments about women, coded disclosures about needing help or couples counselling, uncharacteristic mood swings and depression, avoidance of socialising, repeated injuries on wrists and forearms (for example, cuts, scratches) and frequent communication with their partner or ex-partner?

# Focus on prevention

* Do the organisation’s policies, procedures, practices, and tools (for example, code of conduct):
  + support managers to prevent violence and sexual harassment in the workplace?
  + clarify expectations and consequences for the use of violence and sexual harassment, including incidents outside the workplace?
  + take into account different aspects of employee’s identities (for example, gender, sexual orientation, disability, age, race/ethnicity) and recognise how organisational processes and systems impact different people differently?
* Has the organisation’s human resources/ people and culture team developed policies, procedures, training, and tools that offer clear, comprehensive guidance to employees on preventing, identifying, reporting, and managing violence, abuse, and sexual harassment?
* Are employees provided with contact details for agencies and programs that specialise in assisting people who choose to use family violence and sexual harassment, and is this information provided through multiple channels (for example, intranet or posters or emails) so that it is easily accessible to those who self-disclose and those who do not?
* Do the organisation’s leaders clearly and consistently reinforce relevant organisational policies and practices through awareness campaigns, training programs, and ongoing communication across all levels of management and all departments? Do they:
  + aim to prevent family violence, violence against women and sexual harassment and support the specific needs and safety concerns of victims/survivors and witnesses?
  + consider multiple aspects of employee’s identities when upholding all their legal rights and obligations, and procedural fairness?
  + provide safe, confidential mechanisms for employees to seek guidance, support or report concerns or incidents of family violence, violence against women or sexual harassment?
  + support cultures that prevent violence and sexual harassment and hold people who choose to use these behaviours accountable?
* Have employees been trained to:
  + understand the importance of preventing and addressing violence and sexual harassment at work?
  + understand the signs and impact of family violence, violence against women and sexual harassment and know how to respond appropriately at work?
  + promote a culture of respect, equality, and non-violence within the workplace?
  + understand and adhere to the requirements of relevant policies, practices and cultural expectations, including the complexities of working with people who choose to use violence and sexual harassment?
* Does the workplace culture consistently promote equality, respect and zero tolerance for violence against women and sexual harassment?
* Are employees encouraged to participate in initiatives aimed at addressing the underlying drivers of violence against women and sexual harassment both within the workplace and the broader community?

# Monitor, evaluate, review and update

* Have review dates been set for all relevant policies, procedures, and training materials to ensure compliance with legal obligations, evolving research, and best practice?
* Is feedback on the prevention and response system regularly sought from employees, legal advisors, and relevant stakeholders (for example, victims/survivors or advocates, experts aware of emerging trends and challenges) and incorporated into reviews?
* Has a plan been developed and implemented to regularly monitor, evaluate, review, and update the following aspects of the system to ensure compliance with legal obligations, evolving research, and best practice?
  + The workplace’s adherence to legal requirements, procedural fairness, and consistency with state/territory policies and approaches.
  + The effectiveness of the workplace’s prevention, complaint, response, and referral systems for staff who choose to use family violence, violence against women, or sexual harassment in collaboration with relevant services that specialise in risk assessment and intervention.
  + Mechanisms to support employees who want to alert leaders of incidents of violence or sexual harassment but do not want to proceed with a formal complaint.
  + Education and training for all employees on the workplace’s approach and their relevant legal rights and obligations.

# Acknowledgements

Our Watch acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander peoples past and present, and we value Aboriginal and Torres Strait Islander histories, cultures, and knowledge.

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 Australian Government

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