



## INFORMATION SHEET

# Gendered violence: Sexual assault

This information sheet is intended to assist persons conducting a business or undertaking (PCBUs) to prevent and respond to incidents of workplace gendered violence.

## Background

Exposure to psychosocial hazards, including gendered violence, poses risk of significant harm to the psychological and physical health of workers. Under the *Work Health and Safety Act 2020* (WHS Act), PCBUs must ensure, so far as is reasonably practicable, the health and safety of workers they engage or cause to be engaged. These obligations include controlling workplace risk factors that increase the risk of workers' exposure to psychosocial hazards, such as gendered violence.

## Summary of hazard

Gendered violence at work is any behaviour, directed at a person or that affects a person, because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety. Work-related gendered violence can include incidents of sexual assault, and can be by a client, patient, the public, a co-worker or a manager.

Sexual assault is defined as any sexual behaviour which is threatening, violent, forced, coercive or exploitative and in which the victim has not given or was unable to give consent. Consent is when the person freely and voluntarily agrees to sexual activity and they have the freedom and capacity to make that choice. In Western Australia, legislation requires that consent must be freely and voluntarily given without force, threat, or coercion (see Appendix 1 for the Criminal Code definition of consent, along with other legal definitions and offences in relation to sexual crimes). A person may be unable to consent to sexual activity if that person is heavily intoxicated.

Sexual assault describes a broad range of sexual crimes committed against a person, including sexual penetration without consent and indecent assault.

Exposure to sexual assault at work can potentially lead to a number of significant physical and psychological outcomes for exposed persons who have been affected and that may have short or longer-term implications. These include:

- physical injuries resulting from sexual assault
- psychological injuries including depression, anxiety and post-traumatic stress disorder (PTSD)
- suicidal thoughts
- sexually transmitted infections (STIs)
- unwanted pregnancy.

## Contributing factors

Organisational and work environment factors that contribute to the risk of gendered violence, inclusive of sexual assault, include:

- poor understanding among workplace leaders of the nature, drivers and impacts of gendered violence
- a workplace culture that perpetuates or reinforces attitudes supportive of gendered violence (such as victim blaming or attitudes dismissive of consent)
- a workplace culture that supports or tolerates sexual harassment and sexual assault
- low worker diversity, including gender imbalances in the workforce and management
- workplaces organised according to a hierarchical structure
- use of alcohol in a work context
- isolated workers, living in employer provided accommodation or working from remote locations with limited supervision
- work involving interaction with clients/customers, such as the retail and hospitality sectors and the health care and social assistance industries.

Some groups are also more at risk of experiencing gendered violence at work. Factors which increase the risk of exposure to gendered violence include:

- gender – women are significantly more likely to be sexually assaulted than men
- workers under 30 years of age
- workers who identify as lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQ+)
- Aboriginal or Torres Strait Islander workers
- workers with a disability
- workers from culturally and linguistically diverse backgrounds
- migrant workers or temporary visa holders
- people employed in insecure working arrangements, such as casual or labour hire employment.

The interaction of these organisational, work environment and individual risk factors increases the likelihood of workers being exposed to incidents of gendered violence, such as sexual assault.

Incidents of sexual assault are significantly underreported by workers due to a number of factors, including fear of repercussions, feelings of shame, reliance on reporting and investigation processes that are not suitable for this type of hazard, and the belief that reporting sexual assault will not result in change.

## Risk management

A PCBU is required to eliminate or minimise the health and safety risks of gendered violence in the workplace so far as is reasonably practicable.

All workplaces need to apply a risk management process by:

- identifying the hazards
- assessing the associated risks
- implementing control measures to eliminate or minimise risks
- monitoring and reviewing control measures regularly to ensure they remain effective.

## Identifying hazards and assessing risks

An officer is a person who has the ability to make, or participate in making, decisions that affect the whole, or substantial part, of a PCBU or its financial standing. For more information, see the [Interpretive guide: The health and safety duty of an officer](#). Officers are required to proactively seek information on hazards in the workplace, including sexual assault and gendered violence. Ways to gather information include:

- analysing workplace data including sick leave utilisation, exit interview data, workers' compensation applications, grievances and incident reports
- observing the culture of the workplace to identify attitudes or behaviours that may be supportive of gendered violence and are accepted as the norm
- conducting regular anonymous worker surveys to measure/evaluate workplace culture and worker exposure to gendered violence, or related behaviours that have caused discomfort
- consulting with health and safety representatives (HSRs) and worker representatives, if you have them, about whether concerns have been raised by workers.

Risk assessment involves determining the likelihood that someone will be harmed by gendered violence, taking into account potential exposure to the organisational and work environment risk factors identified in the hazard identification process. Consideration should be given to the following:

- How often are particular tasks done? Does this make harm more or less likely to occur?
- Has gendered violence, including sexual assault, happened before in this workplace? If so, how often, where and what contributory factors may still be present?
- Are there workplace factors which may increase risk, for example low worker diversity, use of alcohol in a work context, or a hierarchical organisational culture?
- Are there industry specific risk factors for workplace sexual assault? For example, interaction with higher risk members of the public and/or clients, or isolated work with employer provided accommodation?
- Have there been reports of other forms of gendered violence in the workplace, such as sexual harassment?

Where workers are at risk of gendered violence from people external to the workplace, including sexual assault from customers, clients, patients, or members of the public (collectively called 'third parties' in this information sheet), inspecting the physical work environment for security risks and identifying work practices which might increase risks is recommended. Further information on managing risks associated with violence or aggression from third parties can be found in the [Code of practice: Violence and aggression at work](#).

## Eliminating or controlling the risks

To address the risk of physical and psychological injury from exposure to gendered violence, controls should be implemented with regard to all organisational and work environmental factors that may increase the likelihood of exposure. This includes taking into consideration those workers and groups who may be at greater risk of exposure. There must also be systems in place to monitor the effectiveness of these controls and to make changes as required. Some controls relevant to this issue include:

- establishing and maintaining a respectful and inclusive workplace culture where disrespect and incivility is not tolerated. Leadership, values, language, attitudes and interactions all contribute to a respectful and inclusive workplace culture
- prioritising wellbeing and support to workers who report sexual assault and using an approach centred around the affected person when investigating a report of gendered violence
- implementing workplace behaviour policies and practices that promote a respectful and inclusive workplace culture at all levels of the organisation – policies should include a clear statement that sexual harassment or assault will not be tolerated, including from third parties such as clients
- ensuring facilities and amenities offer workers privacy and security, such as controlled access to employee-only areas; separate, secure toilet cubicles; or private change rooms
- implementing security features in the workplace, particularly in high-risk areas, such as CCTV, security personnel and duress alarms
- ensuring adequate security features are implemented where employer provided accommodation is supplied, including well-lit entries and pathways, secure door locks with systems to ensure no locks are keyed alike and no master keys are in circulation, and other controls such as CCTV for high risk or isolated areas such as laundries
- encouraging workers to report gendered violence and providing safe, confidential and clear avenues to do so, including anonymous reporting
- applying appropriate consequences for gendered violence in the workplace, such as disciplinary action consistent with other workplace misconduct, and accountability for managers to create a safe and respectful workplace free from gendered violence
- implementing a policy and operational processes to ensure any consumption of alcohol is controlled, and alcohol is not consumed to excess at workplaces, work-related accommodation, and work events
- providing information, instruction and training for workers in relation to respectful and appropriate behaviour and how to report workplace behaviour issues. This includes providing training and information on when and how to intervene as a bystander
- arranging for training for first aiders and managers in relation to responding to reports of sexual assault
- using recruitment and promotion strategies that create a diverse workforce
- providing support for affected persons, such as an employee assistance program (EAP) or access to appropriate medical or allied health professionals subsequent to a gendered violence incident (see further information on incident response on page 5)
- monitoring and reviewing the effectiveness of control measures
- consulting, cooperating and coordinating with other businesses you work with or share premises with about managing this risks, for example how security will be managed in common areas

- ensuring a safe working environment for workers during travel, including when workers are in a vehicle together, at conferences, off site, at client or customer premises and any other location where work is performed
- refusing service to third parties with a history of gendered violence against workers, or if that is not practicable implement additional control measures such as additional staff or security
- training workers and managers in how to deal with difficult third parties including how to escalate the response.

PCBUs should encourage workers to report gendered violence by providing reporting systems which support a timely response to incidents such as sexual assault. These reporting systems should be well-promoted and accessible to all personnel, especially those who may be at higher risk of exposure. This may be done by:

- providing workers with a range of accessible and user-friendly ways to report sexual assault informally, formally, anonymously and confidentially
- talking to workers to make sure they understand how to report sexual assault or behaviours of concern and the support, protection and advice available
- training key workers (contact persons) to receive reports of sexual assault and give support and advice
- helping workers understand the process of how reports of sexual assault will be dealt with
- implementing systems to prevent retaliation and victimisation of people involved in reports of sexual assault.

## Incident response

**If a worker or anyone at your workplace is in immediate danger, call 000.**

If an exposure to a psychosocial hazard does occur controls should be in place to reduce the impact of the hazard exposure, support the physical and psychological health of the people affected and assist in their recovery or return to work if required.

The initial response to a disclosure of sexual assault is a proven factor in the likelihood of an affected person progressing a report through the criminal justice system, and is a predictor of mental health recovery.

Early access to medical and psychological support services should be prioritised, with systems established to support access to these services. Note that both the person reporting an incident of gendered violence and the respondent may require support. Ensure that all staff are aware of the support systems available to them, including crisis services.

Maintain a supportive work environment where workers feel safe to discuss their concerns about violence and aggression, or to report incidents. Reporting of gendered violence should be promoted, however, not all individuals will seek help or make a report following a sexual assault. As such, access to medical and psychosocial support should be widely available irrespective of whether a formal report of sexual assault is made.

Anyone who reports being sexually assaulted should be encouraged to contact the Sexual Assault Resource Centre (SARC), which provides services to people in Western Australia affected by recent sexual assault (including medical and forensic services) and past sexual assault. These services include medical and forensic services, as well as a 24-hour support line and telephone service for people located in regional areas (1800 199 888). SARC offers a telephone support service to the affected person, which includes consideration of their medical needs. Where a sexual assault is reported, evacuation or transport to the most appropriate medical service may be warranted. PCBUs are expected to facilitate such evacuation or transport where it is required.

For advice on how to manage the care of an individual who reports sexual assault, you should contact SARC who can provide information on appropriate care and reporting procedures.

Additionally, the affected person should be offered information regarding reporting sexual assault to the Western Australian Police. This should include contact details so the person can speak with Police directly if they wish to make a report, noting that a decision not to report to WA Police should also be respected and does not detract from the seriousness of the issue. Sexual assault can be reported to a local police station or via telephone on 131 444. Additional contact information is available from the WA Police Sexual Assault Squad [website](#).

Early evidence kits (EEK) have been developed by SARC and may be utilised where the following conditions are met:

- there has been consultation with SARC medical and forensic staff and in accordance with SARC's requirements, and
- a medical professional who has also been trained in both responding to disclosures of sexual assault and the use of the EEK will administer the kit (by providing guidance to the affected person), and
- the affected person is capable of and assents to self-collection of samples.

The use of EEK allows for the person's comfort whilst retaining potentially evidentiary material.

Please note that prior to handing over of any EEK to police, formal informed consent is required from the affected person.

## Workplace investigations

As with any workplace incident, you should review your risk management systems after a reported incident to identify and address factors that may have increased the risk of sexual assault, evaluate what worked and identify any areas for improvement. Consider the following:

- Sexual assault is a criminal act in Western Australia and any workplace investigation must not compromise WA Police investigations.
- Privacy and confidentiality must be managed when keeping information and records.
- Investigate as soon as possible after the incident, so that information can be gathered while the people involved can remember events and the order in which they occurred.
- As far as practicable, avoid asking the affected person to repeat their account of the incident, to minimise trauma.
- Identify contributing factors by considering all aspects of the incident, such as the environment, work tasks, systems and procedures, responses and people involved.
- Review the risk control measures to identify if they worked as intended and how they could be improved. This process should be undertaken in consultation with HSRs where applicable.

Any conclusions you reach in relation to contributing factors and risk control measures to change or implement should be documented and communicated to all relevant parties, such as HSRs, health and safety committees and affected workers. It is important to de-identify information communicated within the organisation and to maintain the privacy and confidentiality of affected workers.

If a matter has been referred to WA Police, the incident should still be investigated by the workplace to assess whether risk controls are effective, and if the response procedures worked the way they were supposed to. To avoid compromising WA Police investigations, discuss with them the appropriateness of potential investigative actions such as taking witness statements. It is possible to investigate the response and control measures separately from making a determination about an incident that is the subject of a WA Police investigation.

In response to a reported incident of gendered violence, workplace investigation activities should focus particularly on organisational and work environment risk factors that contributed to the incident, the frequency and likelihood of repeat exposure to the hazard, and the identification of controls that can assist in preventing recurrence of workers' exposure to these hazards. These factors can be assessed without identifying or requiring the direct involvement of the affected person. Additionally, records should be managed so that the confidentiality of persons reporting gendered violence, and the respondent, is maintained.

Consideration should also be given to the welfare of the alleged perpetrator of a sexual assault whilst investigations are undertaken by WA Police, and/or during workplace investigations to identify contributing organisational and work environment factors. This may include the provision of support and consideration for the management of the alleged perpetrator and their employment so as not to cause disadvantage to that person. Standing down parties who are accused of gendered violence without also taking steps to identify factors that may have contributed can compromise the ability of PCBUs to provide a safe work environment.

## Notification to WorkSafe

Sections 36 and 38 of the WHS Act provide that certain injuries and incidents must be reported to the regulator immediately after becoming aware of the incident. If a workplace sexual assault causes injuries of a type specified in the WHS Act, then the incident is notifiable.

Additionally, for sites to which the WHS Mines Regulations apply, there is a requirement that the regulator is notified of reportable incidents, including a workplace incident that could have caused serious harm to a person (r. 675V, with definitions provided in r. 5). Sexual assaults would generally fall into this category. More information is available in the [Information sheet – Gendered violence: Notification of sexual harassment and/or assault to Mines Safety](#).

Personnel with responsibility for statutory reporting should clearly understand these requirements. PCBUs should ensure that processes for responding to incidents of gendered violence include notification to the regulator. Notifications can be made without including the names of the persons involved. If you are not sure if an incident is notifiable, you are encouraged to contact WorkSafe for advice.

Workers and other persons affected by workplace gendered violence can also report any incidents or concerns to WorkSafe on 1300 307 877 or via [wscallcentre@dmirs.wa.gov.au](mailto:wscallcentre@dmirs.wa.gov.au)



## Role of WorkSafe

WorkSafe receives and responds to notifications and complaints about workplace gendered violence. As a risk based regulator, WorkSafe makes decisions about which matters to investigate, based on its *Compliance and enforcement policy* and *Triaging policy*. An education and information approach is used for matters that are not referred for investigation. All reports are recorded and the data is analysed to inform WorkSafe's ongoing compliance work.

WorkSafe investigations into reports of gendered violence, including sexual assault, focus on the contributing organisational and work environment factors and the PCBU's compliance with WHS laws in relation to these hazards.

WorkSafe inspectors consider the impact of enquiries on the affected person. This includes consideration for the sensitivity of the information provided, the use of indirect means of contacting affected persons and providing them with optional invitations to speak with inspectors. Inspectors focus enquiries with the affected person on the controls available and supports provided relevant to the hazard, rather than the detail of what the person experienced with respect to the behaviour. WorkSafe inspectors can arrange for the WorkSafe Family Support Liaison Officer to contact the affected person and provide assistance in getting any support they need.

WorkSafe does not have a role in substantiating whether or not a particular assault occurred, as WA Police have specific legislation on this issue. WorkSafe focusses on workplace risk factors that may increase the likelihood of gendered violence occurring and ensuring controls are in place to prevent or reduce the risk of workers being exposed to these hazards. Actions taken may include providing the workplace with information, issuing notices to require the workplace to make improvements, or (less commonly) taking evidence for a potential prosecution.

## Further information

### Department of Mines, Industry Regulation and Safety

- [Mentally healthy workplaces hub](#)
- [Work health and safety laws](#)
- [Code of practice: Mentally healthy workplaces for fly-in fly-out \(FIFO\) workers in the resources and construction sectors](#)
- [Code of practice: Violence and aggression at work](#)
- [Code of practice: Workplace behaviour](#)
- [Code of practice: Psychosocial hazards in the workplace](#)
- [Information sheet: Gendered violence – Sexual harassment](#)

### Sexual Assault Resource Centre (SARC)

- [SARC Website](#)
- 24-hour Crisis Line: 6458 1828 or freecall: 1800 199 888

### Western Australia Police

- [WA Police website](#)
- Emergency Line: 000
- Police Assistance: 131 444



## Safe Work Australia

- [Guide: Preventing Workplace Violence and Aggression](#)
- [Guide: Preventing Workplace Sexual Harassment](#)

## Australian Human Rights Commission

- [Australian Human Rights Commission website](#)
- [Respect@Work Report: Sexual Harassment National Inquiry Report \(2020\)](#)

## Appendix 1 Terminology from the WA *Criminal Code Act Compilation Act 1913*

Term	Definition
Assault s. 222	<p>A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.</p> <p>The term <i>applies force</i> includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.</p>
Consent s. 319	<p>(2) For the purposes of Chapter XXXI – Sexual offences (a) consent means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means; (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act; (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.</p>
Sexual penetration s. 319	<p>to sexually penetrate means – (a) to penetrate the vagina (which term includes the labia majora), the anus, or the urethra of any person with – (i) any part of the body of another person; or (ii) an object manipulated by another person, except where the penetration is carried out for proper medical purposes; or (b) to manipulate any part of the body of another person so as to cause penetration of the vagina (which term includes the labia majora), the anus, or the urethra of the offender by part of the other person’s body; or (c) to introduce any part of the penis of a person into the mouth of another person; or (d) to engage in cunnilingus or fellatio; or (e) to continue sexual penetration as defined in paragraph (a), (b), (c) or (d).</p>