



MCA INDUSTRY TOOLKIT

The minerals industry is committed to eliminating sexual harassment in its workplaces and has adopted a national Industry Code that provides clear expectations on members to establish both preventative and response measures to address sexual harassment.

This document is part of the MCA Industry Toolkit that has been developed for our members and their employees and comprises a suite of Fact Sheets, Guidance and Templates.

GUIDANCE

Responding to historical complaints

There may be instances where your organisation needs to respond to historical reports of sexual harassment. That is, when allegations of sexual harassment are made or resurface about the past behaviour of a current employee and where some time has elapsed since the incident. It may relate to their time with a previous employer or be raised by a former employee of your organisation.

How organisations respond, irrespective of the time that has elapsed, is important because it ensures consideration is given to the risk of a having a repeat offender in a workplace; reinforces what an organisation values and prioritises and demonstrates to internal and external stakeholders that sexual harassment is treated as a serious workplace issue.

This guidance is reproduced courtesy of Champions of Change Coalition, *Disrupting the System: Preventing and responding to sexual harassment in the workplace* (Sept 2020)¹. It is not intended to account for every scenario or offer legal advice, which may be required in some cases.

Understand the circumstances of the issue:

- Speak to the person who raised the issue or the person who was the subject of the harassment to understand their wishes, noting it may not always be possible to do this. Speak with the person who was alleged to have sexually harassed to understand the circumstances and their perspective.
- Contact the former employer to understand the circumstances, whether an investigation was conducted and what the outcome of the investigation was.
- Make inquiries about whether other people in your organisation have experienced or observed similar behaviour from the person.

Respond to internal and external stakeholder questions:

- Respond to any inquiries (for example media) consistent with the Champions of Change Coalition transparency principles outlined in *Disrupting the System: Preventing and responding to workplace sexual harassment*. This is particularly important in circumstances involving high-profile employees.

¹ <https://championsofchangecoalition.org/resource/preventing-and-responding-to-sexual-harassment-resources/> (Page 113)

- Confirm the fact of the allegation(s) and that the organisation is taking steps to understand the full picture.
- Protect the identity of all parties until you have further information and an assessment is made by the organisation.
- When your inquiries are concluded, be transparent with your stakeholders, as appropriate, about the steps you have taken to understand the issue, your assessment and any action your organisation has taken.

Support the people involved:

- Offer support as needed to the person who has been impacted by the allegations.
- If appropriate, reach out to the person who raised this historical issue to refer them to external support organisations who may be able to help them with any unresolved concerns.

Organisations are likely to discover one of three outcomes:

1. The issue was unresolved, for example an investigation was not conducted, the investigation was never completed because of poor process or because the alleged offender resigned before the investigation was complete:
 - You may need to initiate your own inquiries to understand the circumstances, if appropriate.
 - You may then need to make an assessment of what most likely happened, based on the information you have available.
2. An investigation was conducted by the former employer and the former employer advises the allegations were unsubstantiated:
 - Consider whether there is new information available that could affect the conclusion reached by the other employer, and if so perform your own assessment.
 - Otherwise, your organisation does not need to make any further inquiries into the matter, other than to understand the circumstances so you can respond appropriately.
3. An investigation was conducted by a former employer and the allegations were substantiated:
 - Your organisation should endeavour to understand the seriousness of the issue, time passed, context of the matter and action taken by the former employer and employee (for example, restorative actions, further education).

In deciding what action to take next, there are some important considerations for organisations:

- Whether the person who was accused of sexual harassment had failed to disclose details of this issue or provided false information when asked at the time they joined your organisation.
- Whether the person who sexually harassed has insight into the impact of their behaviour or is potentially at risk of reoffending.
- Whether any grievances have been lodged within the workplace against that individual, the nature of those, and how they were resolved.
- Whether in today's context, substantiated sexual harassment by a leader responsible for employee engagement and organisational culture impacts their ability and credibility to hold a leadership position now or in the future.