

RESPECT @WORK



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.

TEMPLATE

Investigation Report

This template has been adapted from an existing industry report.

COMPANY NAME AND LOGO

INVESTIGATION REPORT

Report number	
Date received	
Investigation Report Date	
Investigation Officer	
Region and Project	
Subject to legal professional privilege? (Prepared for the dominant purpose of obtaining legal advice or for use in actual or anticipated litigation?)	
Was a report to the safety regulator (insert relevant) required?	
Was a report to the police made?	

DELETE GREY HIGHLIGHTED GUIDANCE PRIOR TO ISSUING REPORT

Disclaimer: These resources have been prepared to provide general guidance on the systems that can be developed to respond to risks of sexual harassment. They are not intended to be used for any other purpose and are not comprehensive. These resources are current as at November 2021. You should obtain specific advice about your own circumstances.

Scope of investigation – Terms of Reference

This investigation relates to [xxxxx at [location] at [date/time].

The scope is detailed in the Terms of Reference/Investigation Plan, attached in Appendix 1.

[delete if Terms of Reference/Investigation Plan is not completed].

If no plan completed, investigator to ensure the detail of the complaint is fully understood and ensure precise scope of the investigation is set out here - consider each allegation, the source of complaint, from whom and explain any allegations which are outside of scope or the terms of reference of this investigation and why.

Record any notifications made to regulators and police through reporting requirements.

Investigation process

Interviews/statements are provided in Attachment 2

Make sure to cover off:

- *Was a list of the allegations provided to the Respondent at the beginning of the investigation? (This is not always necessary, especially if prior warning of the allegations will affect credibility or if fraud allegations are involved)*
- *What interviews are necessary?*
 - *In what order?*
 - *Is it necessary to interview the respondent and impacted person more than once, to ensure all allegations are put to the respondent for comment?*
- *What physical evidence (if any) e.g. documents/email, social media extracts/text messages/CCTV/property damage (e.g. tampered with locks) was gathered?*
- *Where the investigator wishes to record an interview, this must be undertaken in compliance with relevant legal requirements. Usually this requires a person's consent to making the recording.*

EXECUTIVE SUMMARY of allegations and findings

[Complete this last]

Allegation	Finding on the balance of probabilities
1.	Substantiated / Not substantiated / Partially substantiated [why]
2.	Substantiated / Not substantiated / Partially substantiated [why]

Factual findings

Based on the evidence available to the Investigator, attached in *Appendix 3* and the credibility of the witnesses as set out below, the following findings are made:

[Include here your findings about whose evidence is preferred, credibility of the witnesses on each allegation and why.]

The findings must be made on the balance of probabilities, not the higher standard of beyond reasonable doubt. Where serious allegations are being considered, particular care should be exercised in determining what facts are established on the available evidence.

Also make findings about credibility.

Factors to consider in making your findings:

- *Does the version of events make sense? Does it seem logical?*
- *Does someone seem to be telling the truth or lying?*
 - *Did the person have a reason to lie?*
- *Is there witness evidence, physical evidence, or documentation that corroborates one side's statement?*
 - *Can IT, or email records be obtained, is CCTV footage available*

Note: *sexual harassment can be a one-off incident, differing to bullying, which is characterised by repeated behaviour. Prior behaviour is not relevant.*

Chronology of events *[delete if not helpful or needed]*

Date	Event

Relevant provisions of company code of conduct/policy/legislation

[Extract relevant parts of legislation and the Company Code of Conduct/policy which are relevant to the behaviour]

[If the report is being prepared for the dominant purpose of legal advice or use in actual or reasonably anticipated legal proceedings, it may be subject to a claim of legal professional privilege.]

How does the substantiated behaviour fall short of [INSERT] code of conduct/policy/legislation?

[Explain clearly how the behaviour is inconsistent with the relevant policy extracted above]

- *Is the behaviour disrespectful or potentially unlawful?*
 - *If potentially unlawful, consider what reports are required to relevant authorities*
- *Is the behaviour consistent with the values of our company?*
- *Is the behaviour consistent with our company's commitment to providing safe, respectful and inclusive environments for all?*

Conclusion and recommendations

1. Communicate the findings of the report to the complainant prior to or after finalisation.
2. The behaviour of xxxxxx be assessed against the [Discipline Guideline], and [Executive Team] to determine appropriate disciplinary action in the circumstances.
3. Continue to provide support to complainant. Describe any restorative actions.
4. [others] examples
 - An apology by the respondent and / or a company representative.
 - An agreement on protocols to manage the relationship moving forward.
 - A change to working hours or locations.
 - Whole of company or team specific refresher sexual harassment prevention training.

Appendix 1 – Terms of reference/Investigation plan *[delete if not needed]*

Appendix 2 – Notes of interview or signed witness statements

[Prepare individual notes of interviews or signed witness statement and consider whether to attach].

Appendix 3 - Evidence *[delete if not needed]*