

# Public Service Commissioner Direction

No 1 of 2023

under the

*Government Sector Employment Act 2013*

I, Kathrina Lo, Public Service Commissioner of New South Wales, pursuant to section 13 of the *Government Sector Employment Act 2013*, give the following direction.

Dated 8 May 2023

**Kathrina Lo**

Public Service Commissioner

# Public Service Commissioner Direction

## No 1 of 2023

Under section 13(1) of the *Government Sector Employment Act 2013*

### 1. Application

This direction is given to the heads of all government sector agencies.

Compliance with this direction is mandatory, subject to section 13(4) and (5) of the *Government Sector Employment Act 2013*.

### 2. Date of operation

This direction has effect from 8 May 2023 until further notice.

### 3. Definitions

In this direction:

**government sector agency** has the same meaning as in section 3 of the *Government*

*Sector Employment Act 2013*, as amended from time to time.

**head of a government sector agency** has the same meaning as in section 3 of the *Government Sector Employment Act 2013*, as amended from time to time.

### 4. Direction

I direct the head of each government sector agency to implement a workplace sexual harassment prevention policy by 1 March 2024 that complies with the minimum standards set out below, and to require employees of that agency to comply with that policy.

### 5. Publication

This direction will be made publicly available on the Public Service Commission website as soon as practicable after it is given.

# Minimum standards

Each Department and agency must have a policy in place in relation to **workplace sexual harassment**.

The policy can be a stand-alone policy, or be included in existing policy frameworks, for example, bullying and harassment policies.

The policy should:

- Identify the **strong organisational commitment** to create a working environment which is free from sexual harassment
- Set out responsibilities to comply with the policy, including minimum expectations as to **personal conduct**
- Define **sexual harassment**
- Highlight best practice **prevention principles**
- Include clear **reporting pathways** for impacted workers
- Emphasise procedural fairness and confidentiality in **complaints handling**
- Emphasise that **no adverse action** will be taken against the impacted person(s) and
- Commit to taking **appropriate remedial action** if sexual harassment occurs
- Commit to **record-keeping** on incidences of sexual harassment
- Be made readily available to employees, including by publishing on the agency's website.

When developing and implementing a sexual harassment policy, Departments/agencies should also ensure compliance with relevant legislation and industrial instruments, including work health and safety and anti-discrimination legislation; specific awards; agreements or policies.

The policy should be supported by broad circulation, information, training and awareness-raising to ensure it is appropriately implemented.

## Statement of Organisational Commitment

The policy should identify that the Department/agency is committed to ensuring that the working environment is free from sexual harassment and that everyone is treated with courtesy, dignity and respect. This should be identified up front and could be done by inserting a statement from the head of the Department/agency.

## Responsibilities

The policy should clearly set out the roles and responsibilities of employees (including leader or management personnel), employees with specific complaint handling responsibilities, and other workers to comply with the policy, including in relation to personal conduct, promotion and implementation of the policy.

## Definitions

The policy should provide a clear definition of sexual harassment having regard to relevant legislation, be clear about the scope of the policy, and provide examples or scenarios that are relevant to the particular working environment.

## Prevention Principles

Eliminating sexual harassment in the workplace requires a significant focus on both prevention and response.

Best practice key concepts in relation to preventing workplace sexual harassment include:

- Risk assessment: using work health and safety mechanisms to identify, assess and manage any risks of workplace sexual harassment.
- Leadership: leaders at all levels must uphold the policy and proactively encourage others to do so too.
- Transparency: consider sharing relevant de-identified information on a regular basis to encourage organisational learning and prevent similar incidents from happening in the future.
- Diversity and inclusion: fostering a diverse and inclusive workplace including by addressing gender inequality as fundamental to eliminating workplace sexual harassment.
- Knowledge and education: ongoing training of managers and workers to identify, prevent and respond to sexual harassment using a range of approaches.

## Reporting Pathways

Workers who experience or witness sexual harassment should be encouraged to make timely reports of sexual harassment or other behaviour which breaches the policy. Policies should outline reporting options for workers, including:

- Informal internal reporting – seeking support, advice, and making a disclosure
- Formal internal reporting – following the Department/agency's grievance procedure and/or work health and safety procedure
- External reporting to an authority or regulator, such as SafeWork NSW, NSW Police Force, Anti-Discrimination NSW, or the Australian Human Rights Commission.

Providing clear details in the policy about the confidentiality principles that underpin these reporting pathways is key to building confidence in the reporting mechanisms.

## Complaint Handling

Procedural fairness for all involved is critical to ensure transparency and effective and timely handling of reports made. All workers impacted by workplace sexual harassment, whether that is because they have experienced it, witnessed it, or been accused of it, must be **treated respectfully and equitably** and in trauma responsive ways.

As necessary, affected workers should also be referred to the **Employee Assistance Program**.

The policy should provide details about the protection provided to persons who make a report of sexual harassment and the obligations on managers and workers to ensure that victimisation of reporters (and those providing them support) does not occur.

## Remedial action

The policy should provide guidance and procedures as to appropriate preventative and remedial action that can be taken in the event of sexual harassment.

## Record Keeping

Departments/agencies should outline record-keeping practices for the handling of reports of sexual harassment.