



# Sexual Harassment Awareness

## A presentation to Senators and Members

28 November 2012 – Parliament House



Australian Government  
Comcare



Australian Government  
Department of Finance and Deregulation

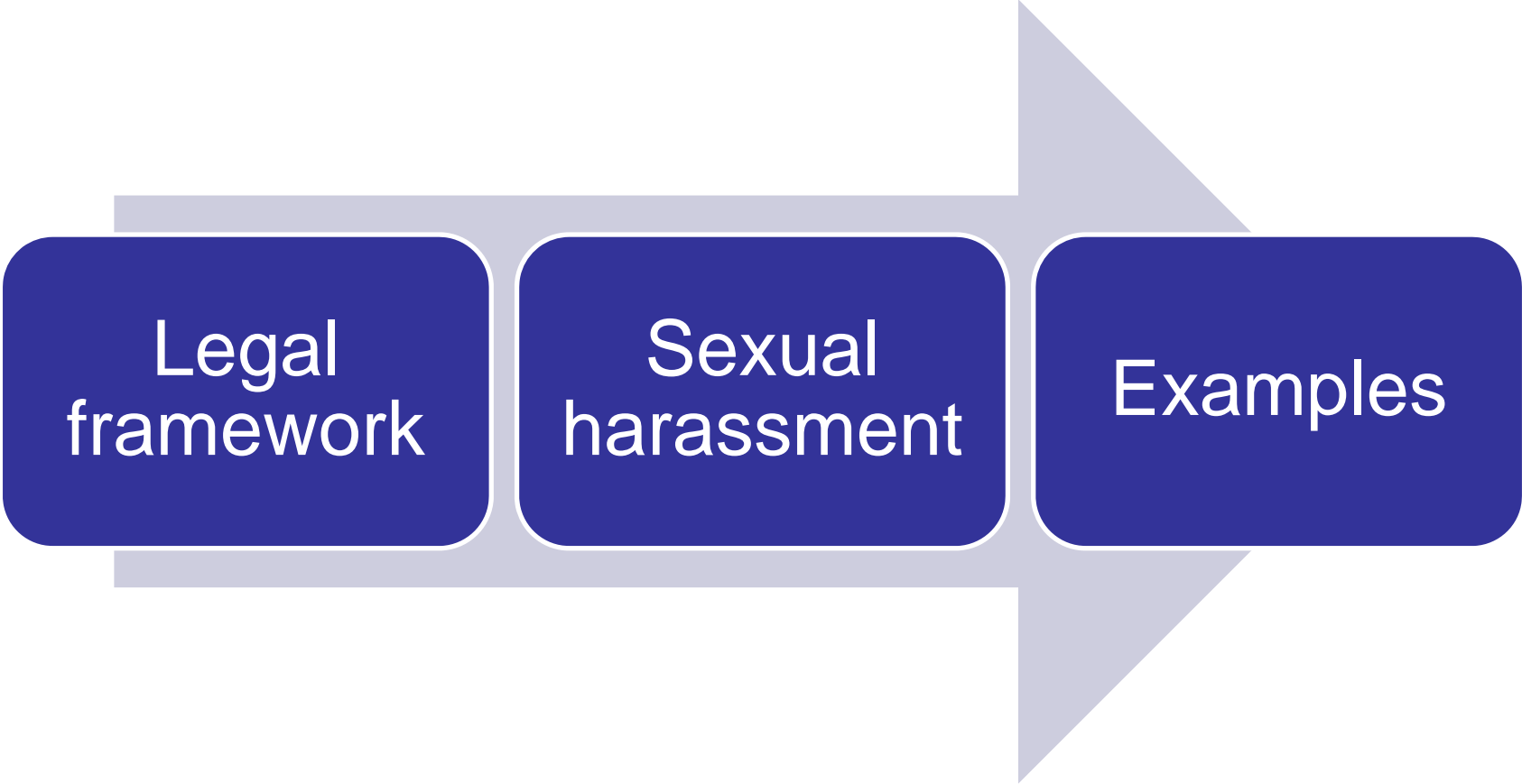
# Sexual Harassment

27 and 28 November 2012

Paul Vane-Tempest, Partner

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN  
PAPUA NEW GUINEA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF  
AMERICA

# Overview



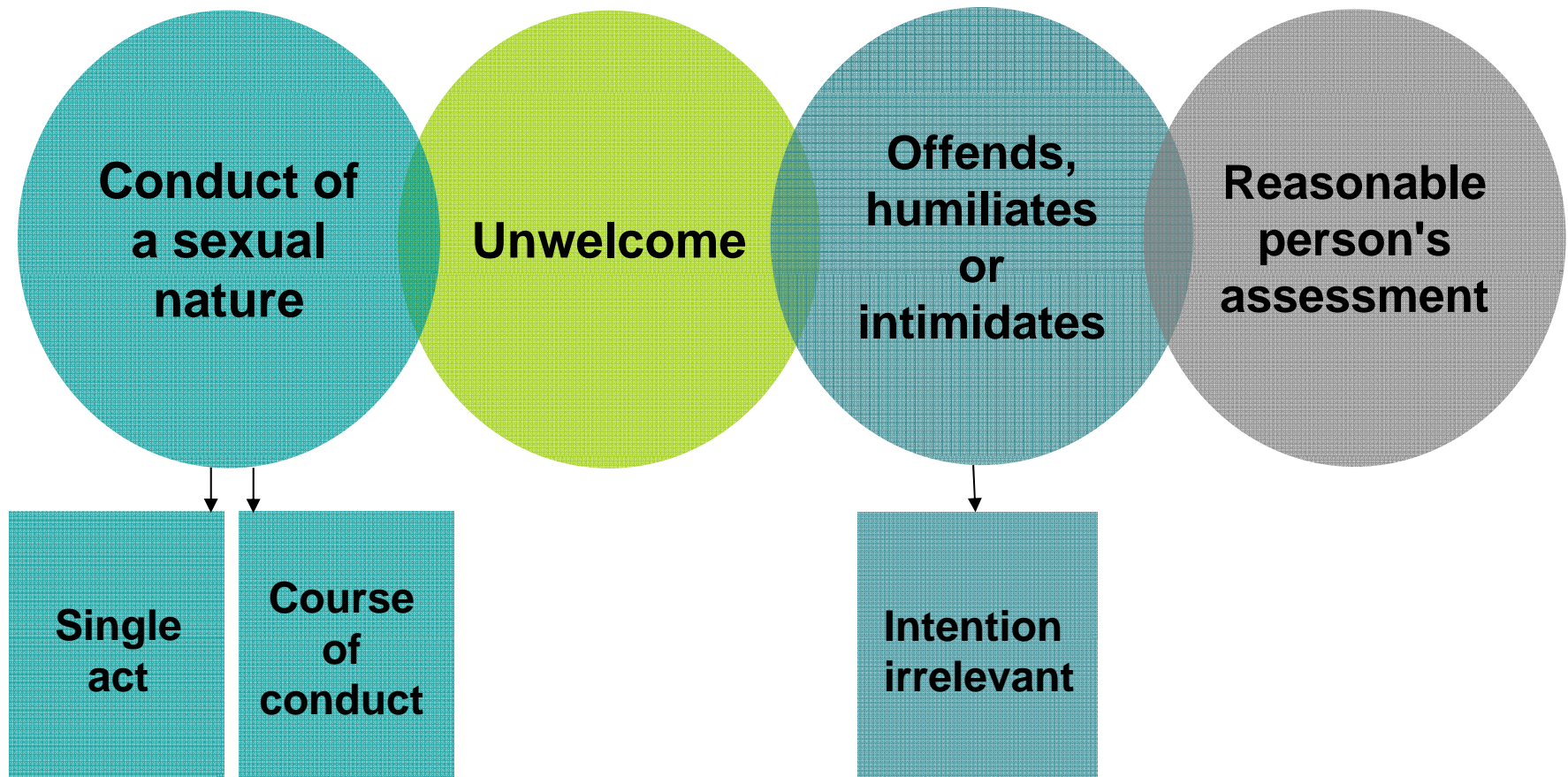
# Sexual harassment legislation

## Federal

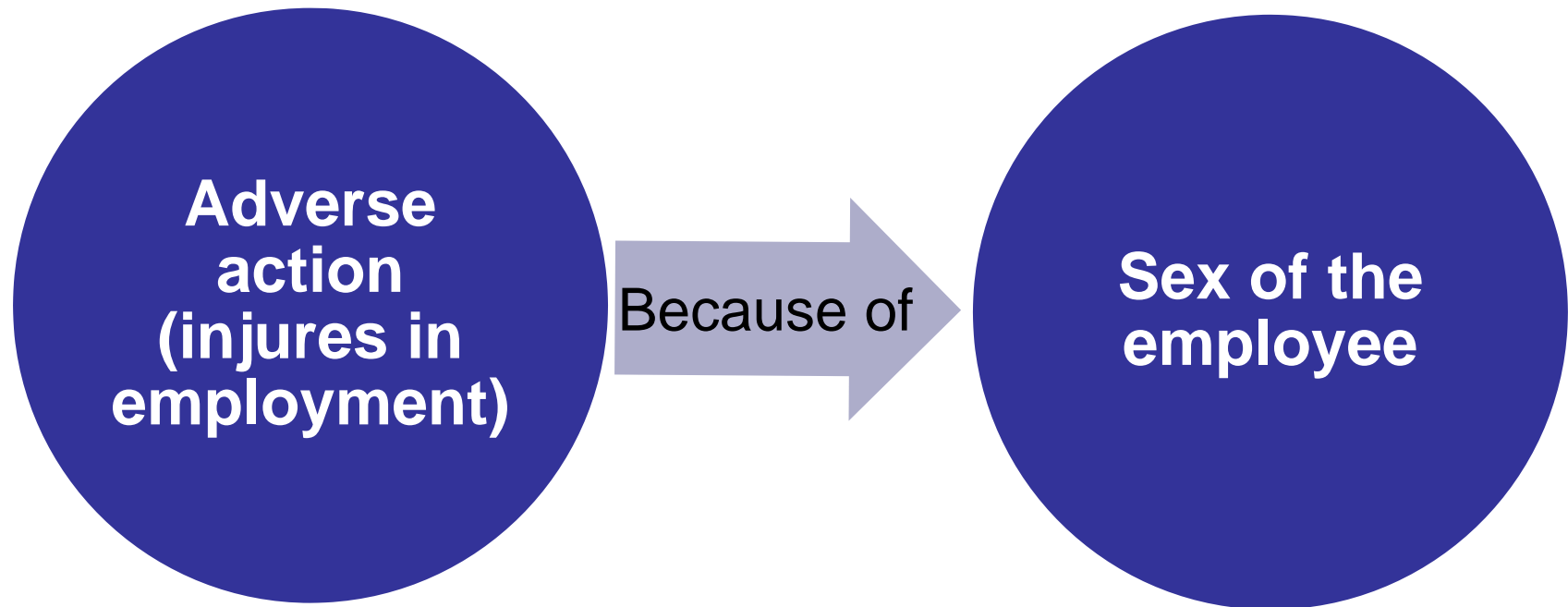
- *Sex Discrimination Act 1984*
- *Australian Human Rights Commission Act 1986*
- *Fair Work Act 2009*

*NB: Human Rights and Anti-Discrimination Bill 2012*

# Sexual Harassment under the *Sex Discrimination Act 1984*

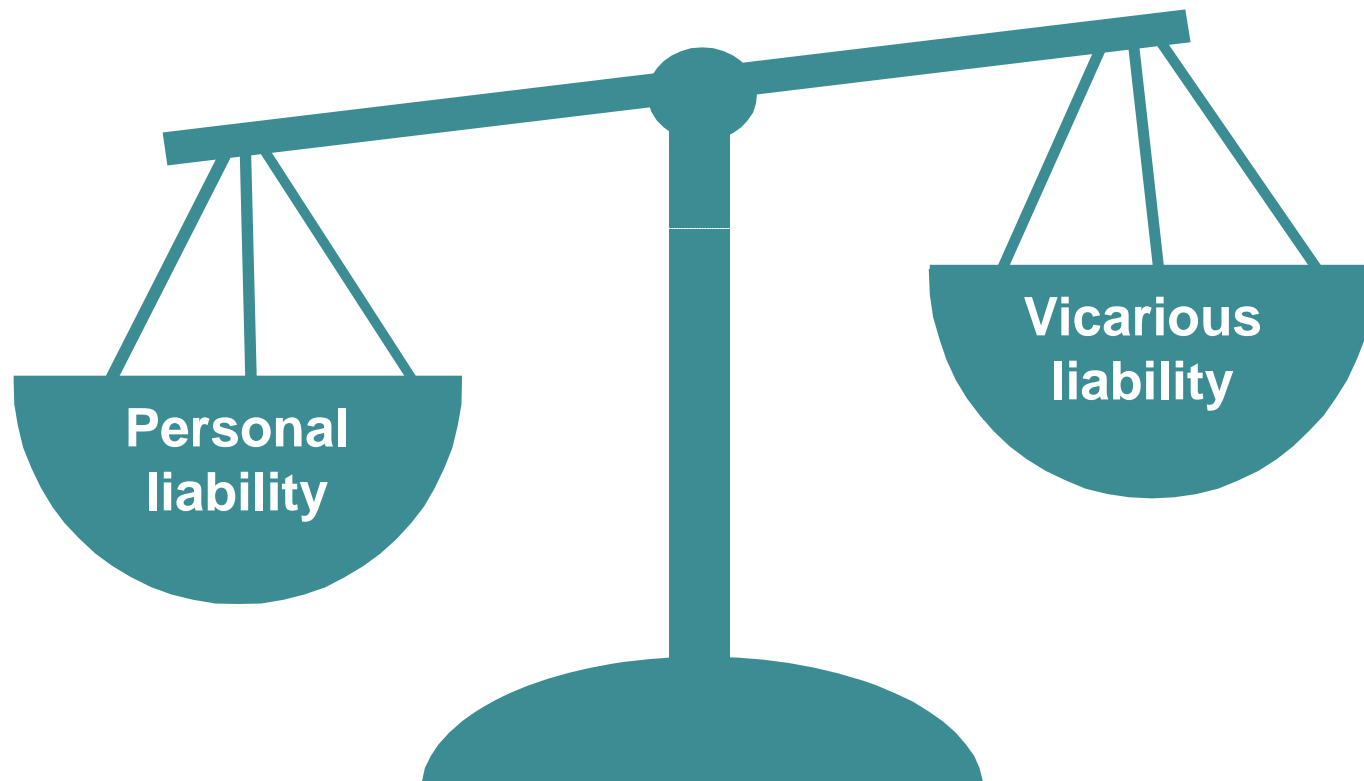


# Sexual Harassment under the *Fair Work Act 2009*



Involved in  
contravention (s 550)

# Liability for discrimination and harassment



# Victimisation

It is unlawful to subject a complainant to detriment

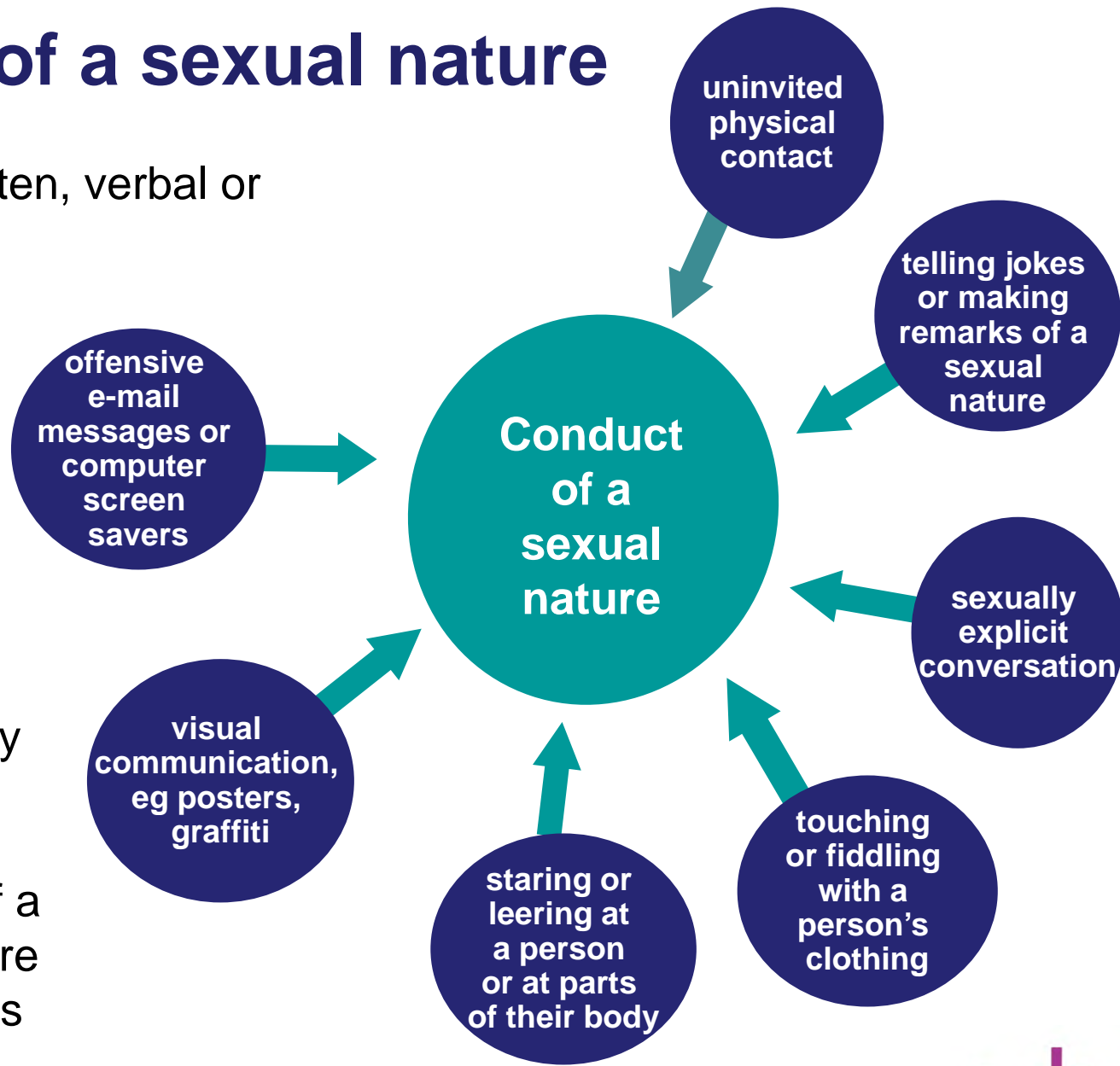


Person makes or intends to make a sexual harassment complaint



# Conduct of a sexual nature

- May be written, verbal or physical



- Includes any gesture, action or comment of a sexual nature in a person's presence

## Sexual harassment laws:

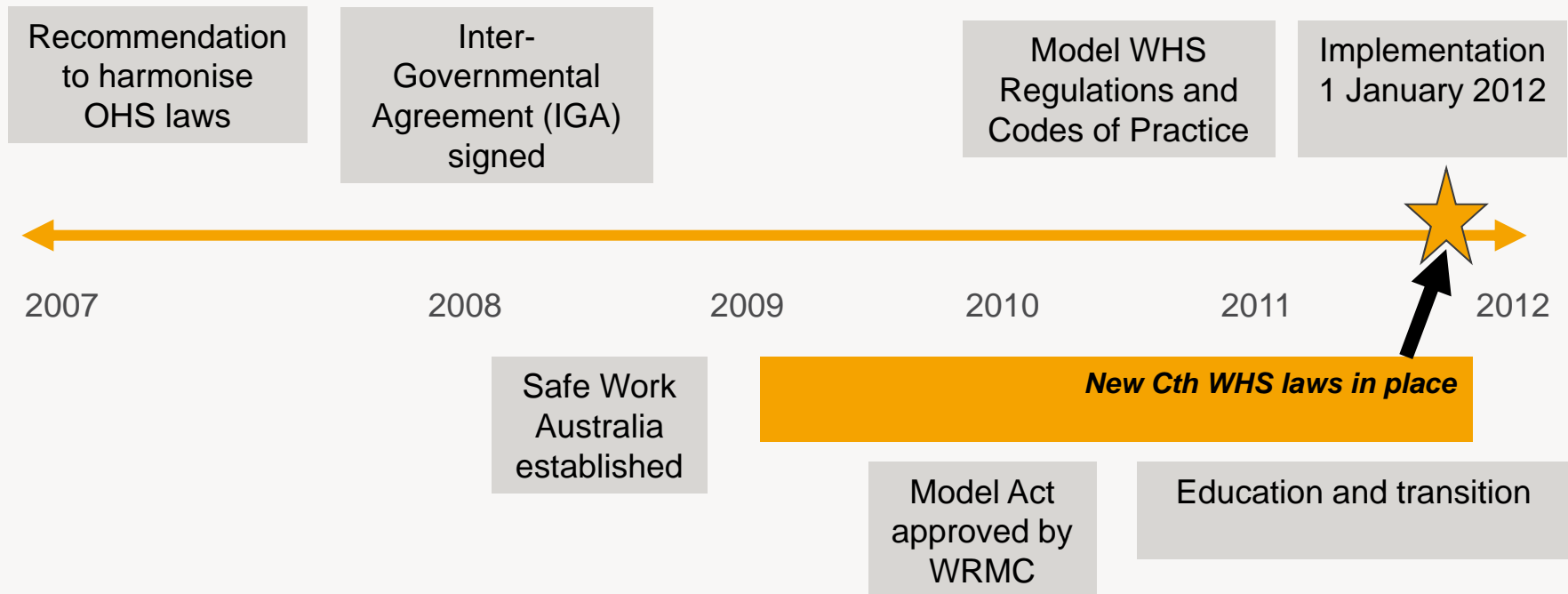
- Do not prohibit friendships or relationships
- Do apply at work related social events, such as conferences and end-of-year parties
- Can capture conduct not intended to harass, if a reasonable person would find it offensive, humiliating or intimidating
- Can include conduct which is not directed at the complainant, such as sexually explicit posters and jokes in the workplace

*This presentation material is intended to provide a summary of the subject matter covered for training purposes only. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this presentation without first obtaining specific professional advice.*

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# BACKGROUND

## Timeline



# AUSTRALIANS AT WORK

## Healthy workers, healthy community

### The workplace is centre stage

- > Workers spend a considerable amount of time at work
- > The workplace is key in changing the health of Australians
- > Use the workplace to drive important behaviour changes
- > Head off problems and intervene early.



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# PREVENTION

## Focus on what's important

The things we need to focus on...

- > **Workplace change** – poorly managed change and uncertainty
- > **Organisational practices** – poor lines of communication and unclear roles and lack of clarity about work
- > **Work design** – unreasonable demands
- > **Relationships at work** – with supervisors and colleagues
- > **Performance management** – not getting the feedback right.



# FEDERAL WHS LAWS

## A new approach to work health and safety



### Support for MOP(S) Act employees

- > All federal workers have the right to a healthy and safe workplace – their welfare is at the centre of the WHS laws
- > Acknowledge that some work takes place in very difficult and challenging operational environments.



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# FEDERAL WHS LAWS

## A new approach to work health and safety



### Core safety obligations remain

- > Health and safety of people must underpin all operational decisions
- > Appropriate consultation, training and safe systems of work
- > Workplaces free from physical and psychological harm
- > Regulatory intervention and enforcement action for breaches
- > Individuals can be independently held to account.





# FEDERAL WHS LAW

## Key features

- > Principal duties cast on 'PCBUs', rather than employers
- > Positive duties on 'officers'
- > Broader focus on 'worker'
- > Expanded obligations to consult
- > Criminal sanctions, fines and imprisonment
- > Establishes Comcare as the WHS regulator in the Federal jurisdiction
- > Inspectorate, including assistance and advice
- > Union right of entry



# FEDERAL WHS LAWS

## Offences

### Category 1

Reckless conduct with no reasonable excuse

- Corporation: \$3 million
- Officer: \$600,000 or 5 yrs jail
- Worker: \$300,000 or 5 years jail

### Category 2

Failure to comply with a duty exposing people to risk of harm

- Corporation: \$1.5 million
- Officer: \$300,000
- Worker: \$150,000

### Category 3

Failure to comply with a duty

- Corporation: \$500,000
- Officer: \$100,000
- Worker: \$50,000



# FEDERAL WHS LAWS

## Duty holders

Duties of care are owed by:

- > A person conducting a business or undertaking (PCBU)
- > Officers of PCBUs
- > Workers of the PCBU, including volunteers
- > Other persons at a workplace where a PCBU is operating



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# SENATORS AND MEMBERS' DUTIES

Under the WHS Act, the Commonwealth is a PCBU.

Each Senator or Member is responsible for discharging the Commonwealth's PCBU duties in relation to:

- > activities related to the representation of the Senator or a Member's electorate
- > work undertaken at the electorate office(s)
- > work undertaken by workers for the Senators or Members at Parliament House and other locations



# SENATORS AND MEMBERS

## Duties of a PCBU

In respect of their own undertaking, a Senator or Member must ensure, so far as is reasonably practicable, the health and safety of:

- > **workers** they have engaged or caused to be engaged
- > **workers** whose activities in carrying out work are influenced or directed

while the workers are at work in the Senator or Member's undertaking.

A Senator or Member must also ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk by work carried out as part of their undertaking



# SENATORS AND MEMBERS

## Duties as 'Officers'

Senators and Members are 'officers' insofar as they make, or participate in making decisions that affect their respective undertakings which would cover:

- > activities connected with the representation of their electorates
- > work carried out in their electorate offices
- > work carried out by MOP(S) Act staff in the Parliamentary precinct and at other locations

As officers, Senators and Members must exercise due diligence to ensure the PBCU's compliance with its WHS Act duties and obligations.



# FEDERAL WHS LAWS

## Due diligence as an 'officer'

### Take reasonable steps to:

1. Acquire **knowledge** of health and safety matters
2. **Understand** your operations and their hazards and risks
3. Allocate the **resources** and **processes** to eliminate or minimise known risks
4. Define the **processes** for timely information and response to incidents, hazards and risks
5. Ensure the processes are **implemented** in the right way
6. **Verify** that the resources and processes are being used.



# FEDERAL WHS LAWS

## Who are workers?

The WHS Act broadly defines a worker to be person who carries out work in any capacity for a PCBU.

In the undertaking of a Senator or Member, a worker would include, for example:

- The Senator or Member
- MOP(S) Act or other employees
- Contractors or sub-contractors engaged by the Senator or Member's office to do work in connection with the undertaking
- Employees engaged through labour hire companies
- Volunteers who work in a Senator or Member's offices or at other locations
- Work experience students





# FEDERAL WHS LAWS

## Worker duties

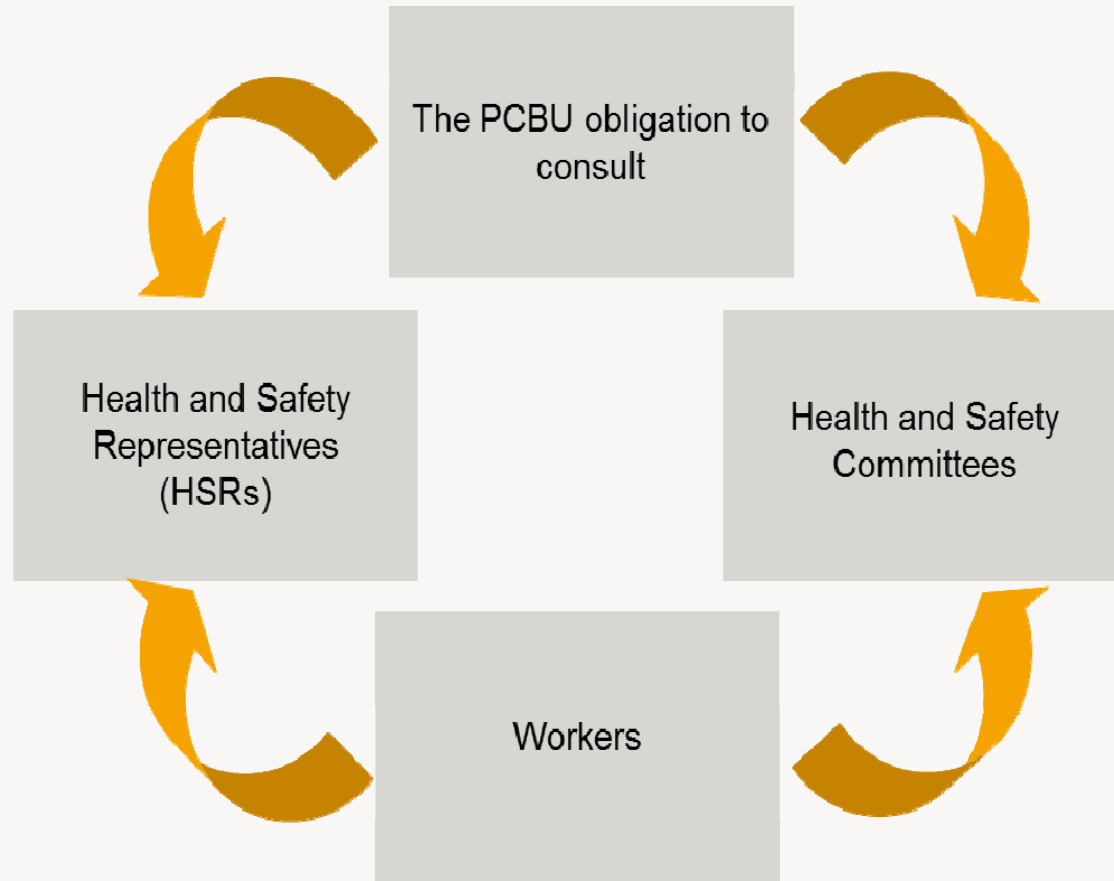
Workers, while at work, must:

- take reasonable care for their own health and safety
- take reasonable care not to allow their acts or omission to adversely affect the health and safety of others
- comply, so far as reasonably able, with any reasonable instruction that is given to them by the Commonwealth to enable compliance with the WHS Act
- co-operate with any reasonable policy or procedure of the Commonwealth relating to the health and safety at the workplace.



# FEDERAL WHS LAWS

## Consultation, participation and representation





## How M&PS Can Help

- **Explore options**
- **Information resources**
- **Case management assistance**
- **Specialist services**





## Information Resources

- M&PS Intranet
  - Circulars
  - WHS Library
- Comcare website
- Online bullying and harassment awareness training, hosted by Konekt
- Entitlements Managers





- Parliamentarians' Travel
- Printing and Communications
- Office IT and Equipment
- Office Accommodation
- Employees' Employment Framework
  - Exit Interviews
  - Final Entitlements Estimator
  - Flu Vaccination
  - Learning and Professional Development
  - Occupational Health and Safety
  - Superannuation
  - Workplace Giving Program
- Employees' Travel
- Office Administration
- Former Parliamentarians

Home >> Employees' Employment Framework >> Occupational Health and Safety

## Occupational Health and Safety

### Introduction

The Occupational Health and Safety (OHS) Program provides workplace rehabilitation and employee assistance to MOP(S) Act employees. The purpose of the OHS Program is to provide support and safety mechanisms for MOP(S) Act employees and to comply with the [Work Health and Safety Act 2011](#) (WHS Act) and the [Safety, Rehabilitation and Compensation Act 1988](#) (SRC Act). Both Acts outline specific roles and responsibilities for Ministerial and Parliamentary Services (M&PS), Senators, Members, former Prime Ministers and MOP(S) Act employees.

### What is OHS?

OHS is about protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work. Everyone in a Senator or Member's office has a duty of care to keep the workplace safe. The following information is provided to assist Senators and Members and MOP(S) Act employees to foster a safe work environment.

- [About MOP\(S\) Act OHS Site Officers](#)
- [How to Report a Hazard](#)
- [How to Report an Accident or Incident](#)
- [Ergonomic Assessments](#)
- [Bullying, Harassment and Workplace Violence](#)
- [Employee Assistance Program](#)
- [Worker's Compensation and Rehabilitation](#)

Konekt Australia Pty Ltd (Konekt) has been engaged by M&PS to assist in the delivery of the OHS Program for MOP(S) Act employees.

More information regarding Konekt is available from their [website](#).

Please [email Konekt](#) if you have any queries or comments in relation to OHS services they provide.

### OHS Policies

Formal OHS policies covering MOP(S) Act employment are being developed, in consultation with MOP(S) Act employees. Each policy will be published upon finalisation.

- [Bullying, Harassment and Workplace Violence Policy and Procedure](#)

### OHS Training

A suite of online OHS training courses for MOP(S) Act employees is being developed in co-operation with Konekt. More information is available on how to access [OHS Online Training](#).

### Health and Safety Committee

#### Legislation

- >> [Enterprise Agreement 2010-2012 Clause 66](#)

#### Guideline

- >> [Occupational Health and Safety and Office Protocols](#)

#### Policies

- >> [Bullying, Harassment and Workplace Violence Policy and Procedure](#)



- [Parliamentarians' Travel](#)
- [Printing and Communications](#)
- [Office IT and Equipment](#)
- [Office Accommodation](#)
- [Employees' Employment Framework](#)
- [Employees' Travel](#)
- [Office Administration](#)
- [Former Parliamentarians](#)

Home >> Employees' Employment Framework >> Occupational Health and Safety >> OHS Library

## Occupational Health and Safety

### OHS Library

#### Suicide Prevention

- [Helping someone at risk of suicide](#) - 252.26 KB
- [I don't know what to do, I don't know what to say](#) - 474.82 KB
- [I know someone who is feeling suicidal](#) - 518.10 KB
- [I am feeling suicidal](#) - 363.66 KB

#### Induction

- [Induction into the workplace](#) - 257.93 KB

#### Workplace Safety

- [Eye Health in the Workplace](#) - 171 KB
- [Smoking in or near Commonwealth workplaces](#)
- [Guide to Preventing Trips, Slips and Falls](#) - 1.02 MB
- [Office Wise – A guide to health and safety in the office](#) - 2.54 MB
- [Injury Prevention](#) - 153.14 KB
- [Working Well – Strategies to Prevent Psychological Injury at Work](#) - 339.85 KB
- [How are you sitting](#) - 128 KB
- [Daily Health Moves](#) - 153 KB
- [Manual Handling Considerations](#) - 107 KB
- [Virtual Office](#) - A risk management tool to help you identify hazards and control risks in an office environment

#### Managing Relationships at Work

- [Managing Difficult Conversations and Providing Feedback](#) - 258.59 KB
- [Looking After Employees During Times of Change](#) - 401.07 KB
- [Prevention and Management of Customer Aggression – A guide for employers](#) - 870.05 KB

#### Bullying and Harassment

- [Workplace Bullying](#) - 167.14 KB
- [Pocket Guide: Responding to Workplace Bullying](#) - 205.57 KB
- [Two Minute Talk Script](#) - 256.04 KB
- [Bullying at Work – A guide for employees](#) - 2.39 MB
- [Preventing and Managing Bullying at Work](#) - 650.60 KB
- [Violence, Harassment and Bullying](#)

#### Legislation

- » [Enterprise Agreement 2010-2012 Clause 66](#)
- » [Enterprise Agreement 2010-2012 Clause 68](#)

#### Guidelines

- » [Occupational Health and Safety and Office Protocols](#)
- » [Employee Assistance Program](#)





## Specialist services

- Davidson Trahaire Corpsych (DTC)
  - Employee Assistance Program for MOP(S) Act employees
  - Mediation services
- Konekt – Reporting and compensation claims
- Comcare





## Checklist – What do I need to do?

- ✓ Set and discuss the standards of behaviour expected in your office
- ✓ Discuss the assistance available to employees
- ✓ Ensure any issues are addressed as they emerge
- ✓ Talk with your Entitlements Manager

