

# Sexual Harassment Policy



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# Introduction

The Department of Education and Training is committed to providing safe workplaces, free from sexual harassment. The Department considers sexual harassment an unacceptable form of behaviour which will not be tolerated under any circumstances. The Department's *Sexual Harassment Policy* sets out the requirements for maintaining workplaces free from sexual harassment.

Sexual harassment is unlawful behaviour under the Commonwealth [Sex Discrimination Act 1984](#) and the Victorian [Equal Opportunity Act 2010](#).

The procedures for dealing with allegations or instances of sexual harassment and possible consequences regarding any breach of this policy are dealt with in the Department's [Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct](#).

The *Sexual Harassment Policy* applies to all people in the workplace including Department and school council employees, casual staff, volunteers, contractors and students. It covers all persons in the workplace acting as agents of the Department. Every person in the workplace is responsible for maintaining a working environment free from sexual harassment and is potentially liable for his or her actions if sexual harassment occurs.

The responsibility for providing a working environment free from sexual harassment is discharged through principals, managers and school councils.

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of a principal or manager, it must be acted upon immediately and managed in a sensitive and confidential manner. Managers and principals have no option but to take action once a complaint is raised. Action will be taken against any person in the workplace found to have sexually harassed another person.

Where sexual harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on a range of factors. The consequences may include an apology, counselling, undertaking training, or disciplinary action such as dismissal.

In implementing the *Sexual Harassment Policy*, the Department affirms its commitment to the prevention of sexual harassment and the implementation of equal opportunity principles.

These principles:

- uphold the rights of all people in the workplace to a safe working and learning environment free from sexual harassment;
- support diversity and inclusive work and learning practices;
- promote respect amongst all people in the workplace;
- encourage fair and equitable treatment of people in the workplace;
- allow people in the workplace to have redress against unfair and unreasonable treatment.

In accordance with the public sector values and employment principles in the Public Administration Act 2004, the Department is also committed to respecting, promoting, supporting and implementing human rights set out in the *Charter of Human Rights and Responsibilities 2006*.

## Legislative Context

The Victorian [Equal Opportunity Act 2010](#) addresses sexual harassment in Part 6. Section 92 (1) provides:

*“a person sexually harasses another person if he or she -*

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or*
- b) engages in any other unwelcome conduct of a sexual nature in relation to the other person - in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.”*

Section 92 (2) provides:

*“conduct of a sexual nature” includes –*

- a) subjecting a person to any act of physical intimacy;*

- b) *making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;*
- c) *making any gesture, action or comment of a sexual nature in a person's presence."*

Similar provisions apply under the Commonwealth Sex Discrimination Act 1984. Sexual harassment can also amount to discrimination on the grounds of gender under both the Commonwealth and State legislation.

Sexual harassment is prohibited in any work-related context, including work functions, conferences and training programs even if they are outside normal working hours or outside the location of the primary workplace.

Accordingly, references in this policy to the workplace include all places in which work-related activities occur. Work-related activities could include, for example, an after hours staff social function.

The legislation covers, amongst others, employees, prospective employees, employers, people in a common workplace, students and prospective students.

## What is sexual harassment?

Sexual harassment is conduct of a sexual nature that is unwelcome. Sexual harassment can be physical, verbal or written. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. Even if the behaviour is not intended by the individual to be sexually harassing, it may still be unlawful.

Sexual harassment can be physical, verbal or visual and may include statements or transmissions by phone, fax, video conference, internet and e-mail, and will vary in the degree and extent to which it causes affront and distress. Both males and females can be subjected to sexual harassment from either persons of the same or opposite gender.

Sexual harassment may include:

- comments about a person's sex life or physical appearance;
- comments of a sexual nature;
- suggestive behaviours such as leering and ogling;
- unnecessary physical intimacy such as brushing up against a person;
- physical contact such as touching or fondling;
- 'flashing' or sexual gestures;
- sexual propositions or repeated unwanted requests for dates;
- making promises or threats in return for sexual favours;
- sexual jokes, offensive telephone calls, displays of offensive photographs, reading matter or objects;
- sending jokes or graphics of a sexual nature by e-mail, internet or fax;
- unwelcome questioning about a person's private life;
- offensive computer screen savers;
- unwanted requests for sex; and
- stalking, indecent assault or rape (which are also criminal offences).

Sexual harassment is not behaviour that is based on mutual attraction, friendship and respect. Where the interaction is consensual, welcome and reciprocal it will not amount to sexual harassment. However, judgements about what constitutes consensual, welcome and reciprocal interaction may be influenced by the relative power of the people involved. The capacity of persons in positions of authority to influence others and affect their well-being is a factor that will be taken into account in the management of any sexual harassment allegation.

It is not the intention of this policy to interfere in personal lives and relationships. However, an employer has an obligation to ensure that sexual harassment does not occur and that professional standards of conduct are maintained in the workplace. The effect of sexual harassment on those people involved and on the workplace as a whole can range from annoyance to deep distress and can lead to an intimidating, hostile and offensive work environment. This can contribute to reduced quality of work, low productivity, distraction from work, low morale, absenteeism, poor health and high staff turnover. Sexual harassment can deny people their entitlement to the quiet enjoyment of life in the workplace.

## Criminal offences

Sexual harassment may in certain circumstances constitute a criminal offence. A criminal offence of a sexual nature can include inappropriate touching and inappropriate verbal comments concerning people in the workplace and members of the public. Sexual harassment involving physical or indecent assault, stalking, making nuisance phone calls or the sending of obscene material using mail, e-mail or the internet, may be an offence under criminal law. Allegations of this nature must be reported to the police. The employer has a responsibility to deal with allegations even when the police are or have been involved, and to determine appropriate action in the context of the workplace. In relation to complaints involving staff, close liaison by the principal or manager with the Department's Conduct and Ethics Branch and the police is necessary at the outset to ensure that the police investigation is not interfered with or compromised in any way.

## Allegations involving students

Sexual offences against children or young persons can have mandatory reporting implications, which require contact with the Department of Human Services. Teachers and others involved in the provision of education to students owe a duty of care to students to protect them from risks of injury which are reasonably foreseeable.

More information on Student Critical Incident Advisory Unit may be accessed from the Department website: [Student Incident and Recovery Unit \(SIRU\)](#).

## Commitments

The Department's commitment to the elimination of sexual harassment includes:

- widely publicising the policy and providing a copy in electronic form to all employees;
- facilitating access to sexual harassment training;
- providing support for managing complaints;
- reviewing and updating policies in consultation with relevant stakeholders;
- maintaining the Department's commitment to its relationship with the Victorian Equal Opportunity and Human Rights Commission in promoting harassment free workplaces.

The responsibility for providing a working environment free from sexual harassment is discharged through principals, managers and school councils.

Under the *Equal Opportunity Act 2010*, the Department and school councils may be held to be vicariously liable for the actions of their employees and agents unless they can demonstrate that they have taken all reasonable steps to prevent the conduct from occurring. An employer is required to take action if aware of any behaviour which could constitute sexual harassment, even if no complaint has been lodged. Principals, teachers, managers, students, staff and other persons can be liable for the actions of others if they authorise, encourage or assist sexual harassment. In some circumstances, inaction can amount to implicit authorisation.

The Department is committed to ensuring that all persons in the workplace are aware of their rights and obligations with respect to sexual harassment and is committed to providing staff with appropriate training and access to information and services.

The Department will appoint designated contact persons who can provide information and support in relation to sexual harassment and support any prospective complainant.

## Roles and Responsibilities

The responsibilities of principals, managers and school councils include:

- modelling appropriate behaviour;
- monitoring the working environment to ensure as far as practicable that acceptable standards of conduct are maintained at all times and that sexual harassment is not tolerated;
- promoting awareness of the avenues for advice and the complaints procedures with respect to sexual harassment as set out in this policy;
- treating seriously complaints and behaviour which may constitute sexual harassment and taking immediate action;

- treating complaints of sexual harassment with appropriate confidentiality;
- ensuring that a person is not victimised for making, or being involved in, a complaint of sexual harassment;
- identifying an appropriate contact person to provide information and support to complainants or respondents (the contact person should not provide support to a complainant and a respondent involved in the same matter);
- referring to this policy in the school, student and staff codes of conduct and practice;
- where an allegation involves a student, ensuring that an appropriate network of support, guidance, counselling and liaison with parents/guardians is established in accordance with duty of care obligations.

All employees have a responsibility to:

- comply with the Department's Sexual Harassment Policy;
- participate in any training provided by the Department, including completing the online sexual harassment training course;
- model appropriate behaviour;
- treat information in relation to sexual harassment allegations with appropriate confidentiality;
- ensure that a person is not victimised for making or being involved in, a complaint of sexual harassment.

The role of any contact person is to:

- be familiar with the Sexual Harassment Policy including the procedures for dealing with allegations of sexual harassment;
- understand the negative effects that sexual harassment can have in the workplace, and particularly the effect that making a complaint can have;
- act as a point of contact for a person considering making a complaint or seeking information about sexual harassment;
- provide the complainant with information about the various options and avenues for advice and the complaints procedures;
- understand that the role of the contact person is to provide information and support to the complainant, and does not extend to investigation, conciliation, making a judgement about what constitutes sexual harassment, or other intervention;
- participate in any training provided by the Department.

## Fairness

The principal or manager must ensure that every complaint is dealt with in a manner that is both procedurally and substantively fair. The principles of natural justice to be observed include:

- the right of each party to be heard;
- the right of each party to be treated fairly;
- the right of the respondent to have a witness or support person, who may be a union representative, present at any meetings;
- the right of the respondent to know the allegations made against him or her;
- the right of the respondent to respond to the allegation(s) made against him or her;
- the right of both parties to a decision-maker who acts fairly and in good faith.

## Counselling

If at any stage throughout the procedure the complainant or respondent or any other person requires counselling, contact should be made with the [Employee Assistance Program](#). The Program is confidential and employees can access it by contacting the provider.

# Complaints

## CONSEQUENCES IF THIS POLICY IS BREACHED

The procedures for dealing with allegations or instances of sexual harassment and possible consequences regarding any breach of this policy are dealt with in the Department's [Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct](#).

Where sexual harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on a range of factors. The consequences may include an apology, counselling, undertaking training, or disciplinary action including dismissal.