

# Sexual Harassment Policy

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# 1. Overview

The Sexual Harassment Policy sets out the legal responsibilities and obligations of employees of the Department of Education and Training (the Department) in relation to sexual harassment under the [Sex Discrimination Act 1984 \(Cth\)](#) and the [Equal Opportunity Act 2010 \(Vic\)](#). Sexual harassment in our workplaces is an unacceptable form of behaviour which will not be tolerated under any circumstances. The Department is committed to providing safe, inclusive and respectful workplaces, which are free from sexual harassment.

## 2. Scope

The Policy applies to all Department employees in schools, central and regional offices, including:

- the Secretary and Deputy Secretaries
- Executive Officers, managers and principals
- employees (ongoing, fixed term, casual).

The Policy applies to all of the Department's workplaces, including any location that employees may be considered to be carrying out duties in the course of their employment. This may include but is not limited to conduct that occurs:

- in a taxi or work car travelling to an appointment (e.g. meeting or school visit)
- at a team lunch
- at any after-hours work-related social function (e.g. Christmas party)
- in an off-site training session facilitated by a third party
- on a school excursion
- at a conference
- across the Department's IT channels including eduMail, Compass, Polycom and SharePoint
- on social media platforms (e.g. Facebook).

This Policy applies when engaging with other employees, clients or members of the public encountered in the course of working duties.

It is not the intention of this Policy to interfere in personal lives and relationships between consenting employees, which is not a form of sexual harassment.

The Department has an obligation to take reasonable and proportionate measures to eliminate sexual harassment in the workplace. The effect of sexual harassment on those people involved 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 and morale, distraction from work, absenteeism, poor health and high staff turnover.

## 3. Principles

The guiding principles of this Policy are to:

- provide a safe working environment which is free from sexual harassment
- support diversity and inclusive work practices
- promote respect amongst all people in the workplace
- encourage fair and equitable treatment of all people in the workplace
- ensure employees have redress against sexual harassment in the workplace
- inform employees they may be personally liable if allegations of sexual harassment are substantiated against them.

In accordance with the public sector values as set out in the [Code of Conduct for Victorian Public Sector Employees](#) and the employment principles in the [Public Administration Act 2004 \(Vic\)](#), the Department is also committed to respecting, promoting, supporting and implementing human rights set out in the [Charter of Human Rights and Responsibilities 2006 \(Vic\)](#) and implementing the [Department Values](#).

## 4. What is sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature towards another person which could reasonably be expected to make that other person feel offended, humiliated or intimidated.

A single incident is enough to be considered sexual harassment - it does not have to be repeated behaviour.

The person engaging in unwelcome behaviour does not have to intend to be sexually harassing the other person for the behaviour to be considered sexual harassment. Regardless of what was intended, sexual harassment is defined by the nature and the impact of the behaviour, not the intention behind it.

A key element of sexual harassment is that it is unwelcome.

It is important to note that if a person does not object to inappropriate behaviour at the time; it should not be assumed that they are giving their consent. Consent exists where clear and unambiguous consent has been freely given and continues to be given.

Sexual harassment may include:

- comments about a person's sex life or physical appearance
- comments of a sexual nature
- leering and staring
- unwanted touching such as brushing up against a person, fondling or hugging
- 'flashing'
- sexual gestures or imitating a sexual act
- sexual propositions or repeated unwanted requests for dates
- making promises or threats in return for sexual favours
- sexual jokes
- offensive telephone calls, text messages or communications on social media platforms
- displays of offensive photographs, reading matter or objects
- sending jokes or graphics of a sexual nature by email, internet, fax or mobile phone
- unwelcome questioning about a person's private life
- offensive screen savers
- unwanted requests for sex
- stalking, sexual assault, indecent assault or rape (which are also criminal offences)

Sexual harassment can occur in all aspects of employment, such as recruitment, selection, training and promotion processes and discussions around employment conditions and benefits.

Sexual harassment can also occur through electronic means (such as emails or text messages or by viewing pornographic websites) and through social media, regardless of whether the post was made during work hours or not. Where there is a link to employment, employees are subject to the same rules about sexual harassment in the virtual world as they are in the real world.

As such, employees are required to use technology and social media responsibly in the workplace and in relation to anything or anyone associated with the workplace. This extends to the use of technology and social media outside the workplace where there is a strong connection to the employment relationship (for example, between colleagues where the foundation of the relationship is a common workplace). Further information regarding the use of technology is available in the Department's [Acceptable Use Policy for ICT Resources](#).

The Equal Opportunity Act 2010 (Vic) 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 Sex Discrimination Act 1984 (Cth). Sexual harassment can also amount to discrimination on the grounds of gender under both the Commonwealth and State legislation. Further information regarding discrimination is available in the Department’s [Equal Opportunity and Anti-discrimination Policy](#).

## 5. Responsibilities

### 5.1 RESPONSIBILITIES OF THE DEPARTMENT

The Department recognises its obligations under the Equal Opportunity Act and the Sex Discrimination Act to take reasonable and proportionate measures to eliminate sexual harassment from its workplaces. The Department is committed to:

- ensuring that there are clear processes in place for raising grievances and complaints
- taking action if the Department is aware of any behaviour which could constitute sexual harassment, even if no complaint has been lodged. All employees, including principals, teachers, executives, managers and other persons can be liable for the actions of others if they authorise, encourage or assist sexual harassment to occur in the workplace
- clearly communicating and promoting these processes amongst employees
- monitoring the implementation of this Policy
- identifying potential risk factors and taking prompt, reasonable action to minimise those risks including:
  - managing organisational change in an inclusive and participatory way, e.g. consult with employees affected as early as possible and develop and maintain effective communication throughout the process
  - implementing work systems to prevent the risk of sexual harassment, ensuring these systems maintain privacy and confidentiality of the data collected, and review and evaluate those systems, e.g. seek feedback from employees through the People Matter Survey and School Staff Survey
  - promoting positive working relationships in the Department’s workplaces
- ensuring information and training to support the effective implementation of this Policy is accessible
- reviewing the Policy every two years or earlier as required, and communicating any changes or updates to the Policy amongst employees.

### 5.2 RESPONSIBILITIES OF EXECUTIVES, MANAGERS AND PRINCIPALS

Executives, managers and principals are responsible for:

- 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 complaints and behaviour which may constitute sexual harassment seriously and taking immediate action
- treating complaints of sexual harassment with appropriate sensitivity and confidentiality
- ensuring that a person is not victimised for making, or being involved in, a complaint of sexual harassment
- providing contact details for Workplace Contact Officers to complainants or respondents

- ensuring in their practice that their employees abide by the DET Values and the [Code of Conduct for Victorian Public Sector Employees](#).

### 5.3 RESPONSIBILITIES OF ALL EMPLOYEES

The responsibilities of all employees are to:

- comply with this Policy and the [Code of Conduct for Victorian Public Sector Employees](#)
- report any incident of sexual harassment that they have experienced or witnessed
- participate in any training provided by the Department, including completing the [Sexual Harassment eLearning module](#) and the [Equal Opportunity eLearning module](#)
- model appropriate behaviour and the [Department Values](#)
- treat any allegations or complaints of sexual harassment with appropriate confidentiality
- ensure that a person is not victimised for making or being involved in a complaint of sexual harassment.

### 5.4 RESPONSIBILITIES OF THE WORKPLACE CONTACT OFFICER

The Workplace Contact Officer network is a group of employees who have volunteered and been trained as a point of contact for colleagues experiencing harassment, discrimination, bullying, victimisation or family violence. The responsibilities of Workplace Contact Officers are to:

- be familiar with this Policy including the procedures for dealing with allegations of sexual harassment
- understand the negative effects that sexual harassment can have in the workplace, and the importance of reporting.
- act as a point of contact for a person considering making a complaint or seeking information about sexual harassment
- provide the person with information about the various options and avenues for advice and the complaints procedures
- understand that the role of the Workplace Contact Officer is to provide information about the processes and avenues for assistance, and does not extend to investigation, conciliation, making a judgement about what constitutes sexual harassment, or other intervention
- participate in any training related to carrying out these responsibilities provided by the Department.

## 6. Criminal offences

Some types of sexual harassment may also be unlawful under criminal law. These include indecent exposure, stalking, sexual assault and obscene or threatening communications, such as phone calls, letters, emails, text messages and posts on social networking sites.

Employees who believe they have been the victim of a criminal offence are encouraged to report the incident to Victoria Police as soon as possible, as well as reporting the matter to their manager or principal.

The Department also has a responsibility to deal with allegations of sexual harassment even when the police are or have been involved. This is to determine the appropriate action to be taken in the workplace. In relation to complaints involving employees, close liaison by the principal or manager with the Department's Employee Conduct Branch and the police is necessary at the outset. This is to ensure that the police investigation is not interfered with or compromised in any way.

## 7. Reporting or making a complaint

Employees can report or make a complaint about any instance of sexual harassment to their manager, principal and/or seek advice from a Workplace Contact Officer. The Department takes any allegations of sexual harassment seriously.

The procedures for dealing with allegations of sexual harassment and possible consequences regarding any breach of this Policy are managed and investigated in accordance with the Department's [Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct](#). The Department encourages its employees to report any allegations of sexual harassment by using the internal complaints processes.

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of an executive, principal or manager, it must be acted upon immediately and managed in a sensitive and confidential manner.

Where a complaint of sexual harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on the particular circumstances. The consequences may include an apology, counselling, undertaking training, or disciplinary action which may include termination of employment.

At any time employees may also choose to take a complaint of sexual harassment to the following organisations:

**Australian Human Rights Commission**

Phone 1300 656 419 or website: [Australian Human Rights Commission](#)

**Victorian Equal Opportunity and Human Rights Commission**

Phone 1300 292 153 or website: [Victorian Equal Opportunity and Human Rights Commission](#)

**Victorian Civil and Administrative Tribunal**

Phone 1300 01 8228 or website: [Victorian Civil and Administrative Tribunal](#)

**Fair Work Commission**

Phone 1300 799 675 or website: [Fair Work Commission](#)

**Victoria Police (for criminal offences)**

Phone your local police station or website: [Victoria Police](#)

An employee may also wish to contact their union for representation and support.

## 7.1 BYSTANDER INTERVENTION

Bystanders, including colleagues, who witness or are aware of sexual harassment, can play an important role in preventing sexual harassment in the workplace. When grounded in behaviours of integrity and respect, action taken by colleagues can positively impact on defining workplace culture.

When safe to do so, bystanders that are aware of sexual harassment are encouraged to:

- provide support to the colleague who is being subjected to sexual harassment;
- formally or informally challenge concerning behaviour; and
- report sexual harassment.

The standard that people walk past is the standard that people accept.

In some situations, a witness may wish to remain anonymous and where appropriate, anonymity will be provided. However, it may not be possible in all circumstances to keep the identity of a person, or people providing information, confidential. In some situations, it may be the case that full details of allegations are required for appropriate inquiries to be made or so that a respondent is afforded procedural fairness and natural justice.

## 7.2 INFORMATION OR CLAIMS WITHOUT SUBSTANCE

Employees found to have knowingly provided false information, or knowingly made allegations of sexual harassment without any substantive merit, may be subject to separate disciplinary action.

# 8. Confidentiality

Disclosures of sexual harassment will be treated in confidence in order to protect an employee's privacy. However, in some instances, a matter may need to be escalated or referred without agreement from the employee, particularly in circumstances that may:

- constitute a criminal offence;
- constitute an occupational health and safety risk; or
- require disciplinary action.

If a matter needs to be escalated or referred, the person handling the matter will notify the person who made the disclosure of who has been informed of the disclosure.

## 9. Further application

The Department encourages this Policy to be used by schools for volunteers, school council employees and contractors.

## 10. Support, assistance and further information

Support is available to all employees involved in reporting and managing a complaint, even after the matter has been resolved.

The Department encourages all employees to speak to their executive, manager or principal to discuss any concerns they may have regarding the conduct of any Department employee.

Employees can also seek support from a Workplace Contact Officer, the Employee Assistance Program, the Employee Conduct Branch, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Australian Human Rights Commission (AHRC). Contact details for these supports are set out below:

- contact a [Workplace Contact Officer](#)
- contact the [Employee Assistance Program \(EAP\) and/or Manager Assist](#)
- contact the Employee Conduct Branch on (03) 7022 0005 or email any query to [employee.conduct@edumail.vic.gov.au](mailto:employee.conduct@edumail.vic.gov.au)
- contact [VEOHRC's](#) free and confidential dispute resolution service on 1300 292 153
- contact [AHRC's](#) free and confidential dispute resolution service on 1300 656 419.

You can also find further information by accessing the [A-Z topic list](#) on [HRWeb](#).

## 11. Legislation and related policies

There are a range of legislation and related policies that apply to this document. Please refer to the [sexual harassment page](#) on HRWeb.