

Council Policy

<h2>SEXUAL HARASSMENT POLICY</h2>	Date Adopted:	10 November 2021
	Adopted By:	Council
	Review Due:	November 2025
	Responsible Officer:	Manager Organisational Development
	Directorate:	Community and Corporate Services
	RM8 No:	D/21/114261

PURPOSE

Sexual harassment is unlawful and prohibited by both the *Equal Opportunity Act 2010 (Vic)* and the *Sex Discrimination Act 1984 (Cth)*.

Southern Grampians Shire Council is committed to providing a safe, flexible and respectful environment for staff and clients that is free from all forms of sexual harassment.

DEFINITIONS

Bystander	Includes a person who observes someone sexually harassing another person
Client	is defined inclusively to include all persons to whom services are provided by Council.
Complaint	means a statement (verbal or written) containing allegations of sexual harassment
Complainant	a person who has made allegations, whether orally or in writing, about harassment
Council	means Southern Grampians Shire Council
Councillors	All Council members of Southern Grampians Shire Council
Employees	All employees of Council which includes permanent, part-time and casuals.
External Parties	External parties engaged by Council includes contract workers, consultants, trainees and apprentices

Natural Justice and Procedural Fairness	This means that both the complainant and respondent will be: <ul style="list-style-type: none"> • treated fairly and respectfully; • allowed the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made
Respondent	means the person identified by the complainant and/or investigator as having engaged in the alleged behaviour
Sexual Harassment	Sexual harassment in the workplace may take various forms and can be directed at, and perpetrated by, all persons including male, female, transgender and gender diverse. It may be physical, spoken or written
The Workplace	Section 94 of the <i>Equal Opportunity Act 2010</i> provides that a workplace is the place a person attends for the purpose of carrying out functions in relation to their employment. It does not need to be the person's principal place of business or employment.
Volunteers	Volunteers are considered to be employees of the Council for the purposes of this policy

RESPONSIBILITIES

Group	Responsibilities
Councillors	All Councillors are to uphold the provisions of Division 5, Section 28 within the <i>Local Government Act 2020</i> ; and <ul style="list-style-type: none"> • demonstrate good governance and ethical behaviour in the provision of all services to the community and in the management of Council; • ensure management has the appropriate measure to detect and prevent sexual harassment within Council and the community; • undertake mandatory training; • see advice from the Chief Executive Officer/Manager Organisational Development if an incident of sexual harassment or sexual assault is identified, reported or experienced; • maintain the confidentiality required by this policy;
Executive, Managers, Supervisors, Coordinators, Team Leaders	All employees in Council in management or supervisory positions have the responsibility to ensure that, when an instance of sexual harassment is brought to their attention, they need to take appropriate action to address or remedy the situation immediately: <ul style="list-style-type: none"> • ensure all employees under their supervision are familiar with Council's policies and procedures regarding conduct and undertake mandatory training where required; • ensure all employees are aware of the Staff Code of Conduct

	<ul style="list-style-type: none"> • model exemplary behaviours in regards to themselves; • monitor workplace behaviours to ensure compliance; • remove any inappropriate materials from the work and community environment; • take appropriate and immediate action when they observe instances of potential sexual harassment • maintain the confidentiality required by this policy; • Give appropriate consideration to the sensitive nature of these complaints and treat all parties in line with Council's values • seek advice from Organisational Development if an incident of sexual harassment is identified or reported;
Employees	It is the responsibility of all employees to maintain appropriate behaviour of themselves and to report any incidents of sexual harassment

APPLICATION AND SCOPE

This policy applies to all employees, councillors, volunteers, external parties and clients of Council, and sets out the legal responsibilities and obligations for Council and its employees.

This policy applies to circumstances (including but not limited to):

- how Council provides services to clients and how it interacts with other members of the public;
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport;
- on-site, off-site, work-related social functions, conferences – wherever and whenever employees may be as a result of their working duties;
- out of work hours interaction where there is a strong connection to the employment relationship;
- employee treatment of other employees, clients and members of the public encountered in the course of their working duties.

Council acknowledges that whilst performing duties as Council employees, that employees may experience behaviour that constitutes sexual harassment outside of Council locations and/or by an individual who is not connected with Council. Council will liaise with the responsible authority to ensure proper procedures are followed and will provide support services.

Employees affected by sexual harassment will be supported. Council will listen to and work with employees to ensure their safety and well-being as required by the *Occupational Health and Safety Act 2004*.

When managing reports of sexual harassment, Council will also refer to relevant policies and procedures as outlined in Associated Documents

GENERAL PROVISIONS

The principles associated with this policy are that:

- sexual harassment is unlawful and will not be tolerated in the workplace;

- a single incident can constitute sexual harassment;
- Council has a duty to provide a safe work place and to eliminate risks to health and safety as far is reasonably practicable.
- employees may be stood down or terminated if allegations of sexual harassment are substantiated against them;
- legal action (civil and/or criminal) may be taken against a person who has engaged in sexual harassment;
- Council recognises that comments and behaviour that do not offend one person can offend another;
- all Council employees are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.

SEXUAL HARASSMENT IN THE WORKPLACE

Sexual Harassment may include, but is not limited to:

- unwelcome physical contact of a sexual nature;
- comments or questions of a sexual nature about a person's private life or their appearance;
- sexually suggestive behaviour, such as leering or staring or offensive gestures;
- brushing up against someone, touching, fondling or hugging;
- sexually suggestive comments or jokes;
- displaying offensive screen savers, photos, calendars or objects;
- repeated requests to go out;
- unwanted displays or declarations of affection;
- requests for sex;
- sexually explicit emails, text messages or posts on social networking sites;
- sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences); and
- actions or comments of a sexual nature in a person's presence (even if not directed at that person).

The Workplace

For the purposes of sexual harassment law, a workplace is any place a person attends for the purpose of carrying out functions in connection with, or in the course of their employment or prospective employment

The workplace includes a place that is a workplace of either, or both people involved in an incident of sexual harassment. For example, this policy also pertains to employees who visit other offices i.e. the same behavioural standards that exist in their workplaces, apply in other offices that employees visit.

Beyond the workplace and outside working hours

Behaviour constituting sexual harassment can occur beyond the usual workplace and outside normal working hours. For example, workplace sexual harassment can occur where there is a link to employment including (but not limited to):

- at social functions sponsored and or paid for by Council;
- at social functions in connection with the team/workplace but not sponsored or paid by Council;
- in vehicles while on the way to work functions or meetings;
- at after-parties to such events (regardless of their location);
- in accommodation (including hotel rooms) associated with or provided by Council;
- online via use of technology and social media;
- any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

Consumption of alcohol at work functions or at a work-related event outside the usual workplace and hours of work is not an excuse for conduct that constitutes sexual harassment. Employees should regulate their own behaviour and consumption of alcohol to ensure their behaviour does not adversely impact others. Employees should be mindful that in such situations, they continue to be subject to the Staff Code of Conduct and behavioural standards. Councillors are subject to the Councillors Code of Conduct and behavioural standards.

REPORTING SEXUAL HARASSMENT

Refer to the Sexual Harassment Procedure to report allegations of Sexual Harassment.

CONSIDERATIONS

All allegations of Sexual Harassment are to be reported to the Chief Executive Officer via Manager Organisational Development or a Senior Executive.

The Chief Executive Officer needs to inform the Mayor of any allegation of Sexual Harassment if the allegation is against a Councillor.

Consent

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.

Intent

The *Equal Opportunity Act 2010* and the *Sex Discrimination Act 1984* provide that sexual harassment occurs in circumstances in which the conduct was unwelcome and a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Sexual harassment can still occur even when a harasser does not intend it. Motive is irrelevant; the focus is on how the behaviour is received by the other person. It is the responsibility of every employee to ensure that they do not engage in any behaviour that could amount to sexual harassment.

Council will not excuse sexual harassment which was intended as a joke if it meets the legal definition of sexual harassment.

Technology and social media

Sexual harassment can 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).

Behaviour not considered to be sexual harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting employees, is not a form of sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated action.

This does not mean that sexual or romantic interactions between employees are always appropriate. Employees may face disciplinary action where their actions adversely affect other employees or their workplace responsibilities.

Threshold

The *Equal Opportunity Act 2010* and the *Sex Discrimination Act 1984* provide that sexual harassment occurs in circumstances in which the conduct is unwelcome and where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

There is no requirement that the unwelcome conduct be repeated; a one-off incident can be sexual harassment. Equally, a broader pattern of behaviour can constitute sexual harassment.

Just because someone does not object to inappropriate behaviour in the workplace at the time it occurs, does not mean that they are consenting to the behaviour or consenting for the behaviour to continue at another time.

Reprisals and harassment

Any person found to victimise, harass, or take reprisal action against people participating in procedures associated with this policy may be subject to separate disciplinary action.

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.

Policy Non-Compliance

Breaches of this policy by a Council employee will constitute a breach of the Code of Conduct, or in the case of a breach by a Councillor, the Councillor Code of Conduct. Council may instigate disciplinary proceedings for the alleged breach of Code of Conduct. Breaches of this policy by Councillors will be addressed through the Council's procedure prescribed for Council members through the Councillor Code of Conduct.

Substantiated claims

A substantiated complaint of sexual harassment may result in a number of outcomes against the staff member. Depending on the severity of the case, actions following a finding of sexual harassment can range from an apology to disciplinary action against the person found to have engaged in harassment. The final decision and outcome on the matter is made by the CEO or Mayor as per the Sexual Harassment Procedure.

Criminal Matter

If an allegation appears to be a matter relevant to the police, Council is obliged to report this to the police regardless of whether the complainant has made a report to the police or not.

IMPLEMENTATION

This Policy and associated procedure will be distributed throughout Council by Human Resources utilising available communication channels such as the Exchange, All Staff Meetings and Induction.

All councillors, employees, and volunteers are required to undertake mandatory sexual harassment training. All external parties will go through an induction prior to commencing with Council

Face to face training must be undertaken once every two years and annual online training via Council Learning Management Software must be undertaken.

Human Resources will be available to support employees to gain clarity and subsequent engagement with this policy if required.

CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy is compatible with the relevant human rights identified in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

GENDER EQUALITY COMPLIANCE

It is considered that this policy is compatible with the relevant gender equality principles identified in the *Gender Equality Act 2020*.

Is a Gender Impact Assessment required?

- Yes (*legally required for all policies that have a direct and significant impact on the public*)
- No (*please provide an explanation why a Gender Impact Assessment is not required*)

ASSOCIATED DOCUMENTS

Council's Sexual Harassment Procedure should be read in conjunction with this policy. The following Policies, Procedures and Legislated reference may be referred to for further information.

Council Policies and Procedures:

Councillor and Staff Interactions Policy

Councillor Code of Conduct

Staff Code of Conduct

Legislation Commonwealth:

Occupational Health and Safety Act 2004

Sex discrimination Act 1984

Workplace Gender Equality Act 2012

Legislation Victoria:

Equal Opportunity Act 2010

REVIEW

This Policy must be reviewed a minimum of every four years or in-line with legislative change.

AUTHORISED

Adopted at Council Meeting on 10 November 2021.

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