

MP-HR70 Prevention of Sexual Harassment

TRIM Reference:	F22/473	Due for Review:	August 2024
Responsible Officer:	Manager People & Culture		

Purpose

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

This policy outlines Surf Coast Shire Council's (Council) commitment to providing and maintaining a safe, flexible and respectful work environment that is free from all forms of sexual harassment. In doing so, Council has a positive duty to ensure the health and safety of employees and Councillors to prevent sexual harassment in the workplace by eliminating and reducing risks to health and safety so far as is reasonably practicable.

Policy Principles

This policy will ensure all Surf Coast Shire employees, councillors, volunteers, students, trainees, apprentices, contractors, subcontractors and consultants are aware of their responsibility and commitment to provide a workplace free from all forms of sexual harassment.

Surf Coast Shire has a positive duty to ensure the health and safety of all employees at all times.

Scope

This policy applies to employees, councillors, volunteers, students, trainees, apprentices, contractors, subcontractors and consultants (i.e. Individuals). This policy applies to circumstances (including but not limited to):

- 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 or Councillors may be as a result of their working duties;
- Out of work hours interaction where there is a strong connection to the employment relationship; and
- Employees and Councillors treatment of other Employees, Councillors, Clients and members of the public encountered in the course of their working duties.
- Any online interactions and use of social media.

Objectives

Council aims to achieve the following objectives through its Sexual Harassment Policy:

- Ensure that all employees, councillors, volunteers, students, trainees, apprentices, contractors, subcontractors and consultants are aware of and comply with this policy;
- Ensure that all aspects of Council's business activities operate in a manner which facilitates a safe work environment;
- Implement training and awareness strategies to inform staff about their rights and responsibilities;
- Take all reasonable steps to prevent and effectively deal with complaints concerning sexual harassment.

Definitions

Complainant	An individual or group of people who allege sexual harassment and makes an informal and/or formal complaint.
Health and Safety Representative	Health and Safety Representatives (HSRs) are an important part of Council's commitment to workplace safety and are elected by their Designated Work Group.
Respondent	An individual or group of people who is/are the subject of a complaint of sexual harassment.
Responsible Officer	The person nominated by the Chief Executive Officer or Manager People and Culture to be the officer responsible for managing and or assisting with the informal/formal complaints.
Support Person	An individual who assists and gives support or representation to another individual during the investigation of complaints of sexual harassment, in the workplace.

Legislation

Sexual harassment is a specific and serious form of harassment that is unlawful and prohibited by both Victorian and Commonwealth legislation. Under Victorian legislation *The Equal Opportunity Act 2010* requires Surf Coast Shire Council to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as practicable.

Sexual Harassment in the workplace

What is 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 and 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).

What is 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. It 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.

Section 94 of the *Equal Opportunity Act 2010* 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.

The workplace is not confined to the actual physical location used by the employees. It also extends to common areas such as lifts, entrances, car parks, vehicles, reception areas, corridors, kitchens and toilets of the premises.

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 paid for by Surf Coast Shire;
- at social functions in connection with the team/workplace but not sponsored or paid by Surf Coast Shire
- 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 Surf Coast Shire;
- online via use of technology and social media; and
- any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

Sexual Harassment by third parties

- People may experience sexual harassment while performing their role by people who are not directly connected with Council. Council may take a range of actions to address sexual harassment by third parties including, but not limited to:
- Liaising with the authority responsible for the person, if relevant;
- Withdrawing council services from a client;
- Banning a person from the workplace; and
- Reporting the matter to the police.

Reporting Sexual Harassment

Surf Coast Shire will not stand for any form of sexual harassment in the workplace and we strongly encourage employees who believe they have been sexually harassed or have witnessed sexual harassment to consider the following actions:

- Make an informal or formal complaint - Employees are encouraged to approach and inform their direct line manager in the first instance. However, if the employee feels that it is not appropriate, they may contact People and Culture directly;
- Talk to the harasser directly - This should be done only if the individual feels comfortable and safe doing so (noting this approach may suit some situations and people but not others); and
- Consider mediation - With the assistance of their manager or People and Culture.

Employees affected by sexual harassment will be supported in carrying out the above actions. Surf Coast Shire supports employees and will listen to and work with employees to ensure their safety and well-being as required by the *Occupational Health and Safety Act 2004*.

In cases of sexual assault, employees will be encouraged to make a report to the police. Employees will also be encouraged to report the incident to their direct manager and to the Manager People and Culture, regardless of whether a report is made to the police or not.

All allegations of sexual harassment will be recorded in Council's Sexual Harassment Complaints Register. This register will provide a summary of allegations received to ensure they can be reported on and allow decisions to be documented such as why complaints have or have not gone through an investigation.

Confidentiality

Where appropriate, disclosures/complaints of sexual harassment will be treated in confidence in order to protect an employee's personal privacy as much as possible. However, allegations of sexual harassment or potential criminal conduct are serious and should be considered accordingly. 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.

Only relevant persons at Surf Coast Shire will be advised of the declaration/complaint and any arrangements necessary for the purpose of managing the disclosure/complaint. At the time a disclosure/complaint is made, Surf Coast Shire should notify the parties who, within the organisation, will be privy to this information.

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.

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.

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 a respondent may need to be provided with the full details of allegations when consideration of procedural fairness and natural justice are taken into account.

Responding to Sexual Harassment

Council responsibility (employer)

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of Surf Coast Shire, it will be acted upon as soon as practicable. All complaints are expected to be managed in a manner that gives appropriate consideration to the sensitive and confidential nature of the complaints, while ensuring procedural fairness to those against whom the complaint is made.

All staff with supervision responsibilities, regardless of level, have a responsibility to improve the work culture by adopting a zero tolerance approach to sexual harassment. Supervisors must take active steps to prevent sexual harassment in a workplace, not just respond to complaints if they arise.

The appropriate action for supervisors to take when a complaint is raised, or when a matter is otherwise brought to their attention, is likely to vary on a case-by-case basis. However, it may not be appropriate not to act, or to keep quiet, even where the complainant states that they do not want any further action to be taken. This is because in some instances, the conduct to which the subject of the complaint relates may constitute an occupational health and safety risk or a criminal offence or require disciplinary action to be taken.

Surf Coast Shire must ensure the safety and well-being of all employees as per the *Occupational Health and Safety Act 2004*. Surf Coast Shire will ensure that the complainant and respondent are informed of the supports available to them, such as the Employee Assistance Program, as early as possible.

Process

A People and Culture team member will work with an individual and / or manager/supervisor to assess the most appropriate way to address any reported complaints of sexual harassment.

Dependent upon the nature of the incident the complaint may be dealt with through a formal or informal process. A more formal process may follow an investigation path which may be through an internal or external investigation.

Managers are required to contact a member from People and Culture for assistance in dealing with a complaint or for advice as to the best way to address a complaint. Processes will be undertaken in line with the Enterprise Agreement and organisational policies and procedures, where applicable.

Council's Dispute Resolution Policy and Procedure also sets out the formal procedures staff can follow for resolution of informal or formal complaints of sexual harassment (and other disputes and grievances).

Where applicable a complaint must be acknowledged within 48 hours and staff will be given a timeframe with the course of action to address the complaint.

Surf Coast Shire will ensure that the complainant is kept updated on the progress of the complaint made and ensure that if an outcome is reached that this is communicated to them as soon as possible.

Informal process

In some instances, it may be that an informal approach is appropriate, such as conducting or facilitating discussions to address the behaviour, or refresher training for the general work area on the requirements of this policy. This training should support the regular training that is provided for employees regarding sexual harassment and other related people and culture matters.

Formal process

In other cases, a more formal approach may be appropriate specifically if the informal procedure is not appropriate, unsuccessful or the person making the complaint wants to pursue the matter further.

Formal processes typically involve investigating the complaint, making a finding as to whether the sexual harassment occurred, and deciding on an appropriate outcome.

Such process will be undertaken in line with Council's HR07 Disciplinary Policy. In consultation with People and Culture a decision on the most appropriate way to take action with the information and resources available will be made – considerations will include:

- Who is going to handle the matter/investigate the complaint?
- Who is the decision maker once an investigation has taken place?
- Is the investigator someone internal or external?

The above considerations will be documented. Depending on the nature of the concerns raised and the parties implicated, it may be necessary or appropriate to temporarily change operations within a team to ensure a safe workplace and maintain the integrity of any review process. Working with a member from People and Culture a number of temporary changes could be considered including:

- Operational change to reporting lines, team composition and/or duties;
- Change to seating arrangements;
- Change to physical work location;
- Taking periods of approved leave; or

- To facilitate an investigation a Respondent may be stood down with pay (such action is not a disciplinary measure and does not prejudge or presume any fault on the part of the Respondent).

It will not be presupposed that the temporary change will involve the complainant. The complainant should be consulted before any decision relating to temporary change involving them or the respondent is finalised. It is important that the measures do not result in any detriment to the complainant (as this may amount to victimisation, which is unlawful). In addition, any of the above arrangements will also be handled through discussion and agreement, rather than giving formal directions to the respondent (where applicable).

Any operational change should only be enacted in collaboration with People and Culture to ensure it is an appropriate and proportionate response to the matter and approved at the necessary delegate level (if required). The People and Culture unit can assist with conducting discussions with affected staff about any operational changes.

Disclosure of information or making a complaint can be very difficult for the affected staff member/s. Managers should take necessary welfare steps, such as letting staff members go home for the day, ensuring they have safe transport, connecting them with a support person and with the EAP or equivalent.

Misconduct

The process for managing misconduct is set out in HR07 Disciplinary Policy. A substantiated complaint of sexual harassment may result in a number of outcomes against an employee, including termination of employment.

Natural justice and procedural fairness

Both the complainant and respondent are to be afforded natural justice and procedural fairness. This will allow relevant evidence to be examined in a procedurally fair way. Relevant evidence might include manager reports, emails, witness reports of the alleged conduct, text messages or the complainant's personal records.

When considering the report of sexual harassment the complainant and respondent will be:

- treated fairly and respectfully; and
- allowed the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.
- Allowed the opportunity for a support person.

Findings

A substantiated complaint of sexual harassment may result in a number of outcomes against an employee, including termination of employment. 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.

Council will collect information every 2 years about the prevalence and nature of complaints received in relation to sexual harassment to review this information.

Criminal matter

Although sexual harassment is generally a civil matter, not a criminal offence, some types of harassment may also be offences under criminal law. If an allegation appears to be a matter relevant to the police, Surf Coast Shire is obliged to report this to the police regardless of whether the complainant has made a report to the police or not.

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 test focuses 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.

Surf Coast Shire 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 zoom, 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). Council staff are to comply with Council's HR40 Digital and Social Media Policy.

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.

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.

Support Options

A range of options are available to provide support in regards to sexual harassment. Surf Coast Shire Council's primary contacts include:

- Your manager / supervisor:
- People and Culture team member;
- Health and Safety Representative.

- The Employee Assistance Program

Council will ensure that reluctant complainants are supported during the process through the options mentioned above. Investigators will be able to provide guidance and support to those involved in an investigation relating to sexual harassment.

Employee Assistance Program

The Surf Coast Shire Council provides an EAP, which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues. The EAP is staffed by independent qualified practitioners.

All employees (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee, and can be provided over the phone or face-to-face. Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues. You can contact Benestar on 1300 360 364.

External support

Complaints of sexual harassment can be lodged with the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances, with a union, WorkSafe Victoria, Fair Work Commission, or the Australian Human Rights Commission.

If the complaint appears to be a criminal offence, the complainant and/or Surf Coast Shire may report the matter to Victoria Police.

An employee may also wish to access other support services, such as Centres Against Sexual Assault. An employee may also wish to contact their union for representation and support.

People and Culture

In the context of this policy, the People and Culture unit is responsible for:

- providing advice in relation to matters covered by this policy;
- assisting employees and managers in understanding their roles and responsibilities;
- conducting reviews and/or engaging an independent external reviewer to do so; and
- assisting with assessing whether a complaint of sexual harassment requires action under a different process.

Related policies

- Australian Human Rights Commission Act 1986 (Cth);
- Equal Opportunity Act 2010 (Vic);
- Fair Work Act 2009;
- HR01 Recruitment and Selection Policy;
- HR05 Equal Opportunity and Workplace Behaviours Policy
- HR07 Disciplinary Policy
- HR21 Grievance Policy;
- HR24 Code of Conduct;
- HR41 Flexible Working Hours Policy;
- HR40 Digital and Social Media Policy.
- Local Government Act 2020 (the Act);
- MPP018 Workplace Health and Safety Policy
- Occupational Health & Safety Act 2004 (Vic);
- Privacy & Data Protection Act (Vic) 2014;
- Sex Discrimination Act 1984 (Cth);
- Surf Coast Shire Council Enterprise Agreement 2021 (or successor);
- The Charter of Human Rights and Responsibilities Act 2006 (the Charter);
- The Local Government (Governance and Integrity) Regulations 2020 (the Regulations);

Document History

Version	Document History	Approved by – Date
1	<i>Policy developed</i>	<i>EMT – August 2022</i>