

Ministerial Staff

# Prevention of Sexual Harassment in the Workplace Policy

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Office of  
the Premier

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## 1. Introduction

- 1.1. Sexual harassment constitutes misconduct and is unlawful and prohibited by both the *Equal Opportunity Act 2010* (Vic) and the *Sex Discrimination Act 1984* (Cth).
- 1.2. The Premier's Office is committed to ensuring sexual harassment is eliminated in the workplace through sustained leadership engagement and commitment, governance approaches and policies, effective complaints mechanisms and ongoing training to Ministerial Staff.

## 2. Purpose and application of this policy

- 2.1. This policy applies to all Ministerial Staff (**Ministerial Staff**).
- 2.2. The purpose of this policy is to outline the expectations of Ministerial Staff to ensure a safe and respectful work environment free from sexual harassment.
- 2.3. It is expected that everyone in the workplace is treated fairly, with dignity and respect. This policy sets out the legal responsibilities and obligations of all Ministerial Staff.
- 2.4. This policy applies to circumstances including:
  - (a) how Ministerial Staff interact with others in the course of their employment
  - (b) all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport
  - (c) on-site, off-site, work-related social functions, conferences – wherever and whenever staff may be as a result of their working duties
  - (d) staff treatment of others in the course of their working duties and not in the course of their duties to the extent that this impacts the workplace, other staff or stakeholders.

## 3. What is sexual harassment?

- 3.1. Sexual harassment may take various forms and can be directed at, and perpetrated by, all persons including male, female, trans and gender diverse people. It may be physical, spoken or written and may include, but is not limited to, unwelcome forms of the following behaviours:
  - (a) physical contact of a sexual nature
  - (b) comments or questions of a sexual nature about a person's private life or their appearance
  - (c) sexually suggestive behaviour, such as leering or staring or offensive gestures
  - (d) brushing up against someone, touching, fondling, or hugging
  - (e) sexually suggestive comments or jokes
  - (f) displaying offensive screen savers, photos, calendars, or objects

- (g) repeated requests to go out
- (h) unwanted displays or declarations of affection
- (i) requests for sex
- (j) sexually explicit emails, text messages or posts on social networking sites
- (k) sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences)
- (l) actions or comments of a sexual nature in a person's presence (even if not directed at that person).

## Threshold

- 3.2. 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.
- 3.3. 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.
- 3.4. 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.

## 4. What is the workplace?

### Within the workplace

- 4.1. The workplace includes any place Ministerial Staff undertake work. This may be the office, places employees visit and employees' homes or other locations from which they may undertake work or interact, in person or electronically, with colleagues and stakeholders.

### Beyond the workplace and outside working hours

- 4.2. 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):
  - (a) at social functions sponsored and paid for by a Ministerial Office or at social functions in connection with the team/workplace but not sponsored or paid by a Ministerial Office
  - (b) in vehicles while on the way to work functions or meetings
  - (c) at after-parties to such events (regardless of their location)
  - (d) in accommodation (including hotel rooms) associated with or provided by the employer
  - (e) online via use of technology and social media

- (f) any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

## 5. Expected standards of behaviour

5.1. Ministerial Staff are expected to observe the following minimum standards of behaviour, including:

- (a) being polite and courteous to others
- (b) being respectful of the differences between people and their circumstances
- (c) compliance with the Ministerial Staff Code of Conduct
- (d) ensuring they do not engage in behaviour which would constitute sexual harassment. This standard of behaviour is expected of Ministerial Staff whether they are dealing with colleagues, supervisors, managers, public servants, stakeholders or anyone else in connection with their duties
- (e) ensuring they do not assist or encourage others in, or in connection with, the workplace to engage in sexual harassment.
- (f) reporting any sexual harassment, whether experienced personally or witnessed against others in, or in connection with, the workplace in line with the Ministerial Staff Complaint Resolution Policy and Procedure
- (g) participating in any complaint resolution process (where requested to do so), which may include an investigation, undertaken in accordance with the Ministerial Staff Complaint Resolution Policy and Procedure or otherwise taken in response to, or connection with, allegations of workplace bullying or occupational violence; and
- (h) keeping information confidential, or otherwise treating information as directed, arising from any complaint resolution process undertaken in relation to allegations of sexual harassment or occupational violence.

### Staff Responsibility

5.2. All Ministerial Staff **must**:

- (a) comply with this policy
- (b) model appropriate behaviour
- (c) report sexual harassment in accordance with this policy
- (d) participate in any training required by the Premier's Office
- (e) treat information in relation to claims of sexual harassment with appropriate confidentiality
- (f) ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint
- (g) act in accordance with the Code of Conduct and within the Ministerial Staff values, policies, and procedures.

## Management Responsibility

- 5.3. In addition to their responsibilities as employees, those with management responsibilities must also:
- (a) monitor the work environment of Ministerial Staff to ensure employees don't engage in behaviour that may constitute sexual harassment
  - (b) promote awareness of this policy within their area
  - (c) treat all complaints seriously and take prompt and appropriate action to address them
  - (d) if the matter is serious and needs to be escalated, discuss the complaint with their immediate supervisor or the General Counsel as appropriate
  - (e) contact the General Counsel for further detail on management of reports of sexual harassment.
- 5.4. These standards of behaviour are intended to operate in addition to, and in conjunction with, the Ministerial Staff Code of Conduct.

## 6. Reporting sexual harassment

- 6.1. The Premier's Office will not tolerate any form of sexual harassment in the workplace. The Premier's Office strongly encourages employees who believe they have been sexually harassed or have witnessed sexual harassment to consider the following actions (subject to the Ministerial Staff Complaint Resolution Policy and Procedure):
- (a) Make an informal or formal complaint – Ministerial Staff are encouraged to approach and inform their Chief of Staff, or direct line manager, in the first instance. However, if the staff member feels that it is not appropriate, they may contact the Premier's Chief of Staff, the General Counsel, or their delegate.
  - (b) 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
  - (c) Consider mediation – with the assistance of the Human Resources Manager, if appropriate
  - (d) The Premier's Chief of Staff, General Counsel, or their delegate, will support all Ministerial Staff affected by sexual harassment in carrying out the above actions. All allegations of sexual harassment will be taken seriously. The paramount concern of the Premier's Office when responding to sexual harassment will be the safety and wellbeing of those affected by the conduct.
- 6.2. Ministerial Staff who witness potential sexual harassment of any colleague, stakeholder or workplace contact must consider reporting that conduct to their direct manager, the Ministerial Chief of Staff, the Premier's Chief of Staff, or the General Counsel. Factors Ministerial Staff should take into account when considering reporting potential sexual harassment include, but are not limited to:
- (a) the seriousness of the conduct; and
  - (b) the views and circumstances of the victim.

The identity of the person who may have engaged in sexual harassment, and the views and circumstances of that person, are not relevant to a Ministerial Staffer's consideration of whether to report that potential sexual harassment.

## Confidentiality

- 6.3. Disclosures or complaints of sexual harassment will be treated in the utmost confidence to protect the privacy of a Ministerial Staffer, as much as possible. However, allegations of sexual harassment or potential criminal conduct can be serious. In some instances, a matter may need to be escalated or referred to police without agreement from the Ministerial Staffer, particularly in circumstances that may:
- (a) constitute a criminal offence
  - (b) constitute an occupational health and safety risk
  - (c) require disciplinary action.
- 6.4. Only the minimum relevant persons in the Ministerial Office and the minimum required Senior Staff in the Premier's Office will be advised of the disclosure/complaint and any arrangements to manage the disclosure or complaint. In most cases, this will be the Ministerial Chief of Staff, the minimum required Senior Staff, and the Human Resources Manager in the Premier's Office. The Premier's Office will aim to advise the complainant regarding who information will be shared with at each step of the process.

## Bystander intervention

- 6.5. 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.
- 6.6. Bystanders that are aware of sexual harassment are encouraged to:
- (a) provide support to the colleague who is being subjected to sexual harassment
  - (b) formally or informally challenge concerning behaviour
  - (c) report sexual harassment.
- 6.7. The standard that people walk past is the standard that people accept.
- 6.8. 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.

# 7. Responding to sexual harassment

## Employer's responsibility

- 7.1. If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of a Ministerial Office, it must be acted upon as soon as practicable. All complaints are expected to be managed with consideration of the sensitive and confidential



nature of the complaints, while ensuring procedural fairness to those against whom the complaint is made.

- 7.2. All Ministerial Staff with management responsibilities, regardless of seniority, have a responsibility to safeguard the work culture by adopting a zero-tolerance approach to sexual harassment. Management must take active steps to prevent sexual harassment in a workplace, not just respond to complaints if they arise.
- 7.3. The appropriate action for management 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 to the complainant and/or to other staff, a criminal offence, or require disciplinary action to be taken.

## Process

- 7.4. Complaints of sexual harassment can be made under the Complaint Resolution Policy and Procedure. Informal matters will proceed under the Complaint Resolution Policy, formal matters and investigations will proceed under the process in the Misconduct Policy and Procedure.
- 7.5. Informal complaint resolution options are set out and described in clause 4 of the Ministerial Staff Complaint Resolution Policy.
- 7.6. 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.
- 7.7. In other cases, a more formal approach may be appropriate. Formal processes typically involve investigating the complaint, making a finding as to whether the sexual harassment occurred, and deciding on an appropriate outcome.
- 7.8. The formal conduct process is set out in clause 5 of the Complaint Resolution Policy, which refers to the Misconduct Policy and Procedure.

## Findings

- 7.9. 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 (such as demotion, transfer or summary termination of employment). Please view the Ministerial Staff Misconduct Policy and Procedure for further detail.
- 7.10. The complainant will be informed of the actions taken by the Premier's Office to respond to the complaint including being informed of the reasons, or a summary of the reasons, for a decision that affects them. Each case will be assessed on its own merits.

## Criminal matter

- 7.11. Although sexual harassment is generally a civil matter, not a criminal offence, some types of harassment may also be offences under criminal law. These include, but are not limited to:
- (a) physical molestation or assault
  - (b) indecent exposure
  - (c) sexual assault
  - (d) stalking; and
  - (e) obscene communications (telephone calls, letters, etc).
- 7.12. If an allegation appears to be a matter relevant to Victoria Police, the Premier's Office may report this to Victoria Police regardless of whether the complainant has made a report to the police or not.
- 7.13. Management should speak with the General Counsel for advice on individual matters, as each matter must be considered on its merits.

## 8. Support for Ministerial Staff

- 8.1. A range of options are available to provide support regarding sexual harassment. Ministerial Staff are encouraged to contact the General Counsel or their delegate as the primary contact.

### Employee Assistance Program (EAP)

- 8.2. All Ministerial Staff (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.
- 8.3. Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.
- 8.4. The EAP provider is Converge International and can be contacted on 1300 687 327.

### External support

- 8.5. Complaints of sexual harassment can also be lodged with the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances, with WorkSafe Victoria, Fair Work Commission, or the Australian Human Rights Commission.
- 8.6. If the complaint appears to be a criminal offence, the complainant and/or the Premier's Office may report the matter to Victoria Police.
- 8.7. Ministerial Staff may also wish to access other support services, such as The Centre Against Sexual Assault.
- 8.8. Ministerial Staff may also wish to contact their union for representation and support.

## 9. Additional Considerations

### Consent

- 9.1. A key element of sexual harassment is that it is unwelcome.
- 9.2. 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

- 9.3. 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.
- 9.4. Sexual harassment can 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.
- 9.5. Sexual harassment, which was intended as a joke, will not be excused if it meets the legal definition of sexual harassment.

### Technology and social media

- 9.6. 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, Ministerial Staff are subject to the same rules about sexual harassment in the virtual world as they are in the real world.
- 9.7. As such, Ministerial Staff 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 connection to the employment relationship (for example, between colleagues where the foundation of the relationship is a common workplace).
- 9.8. In addition to their obligations in the workplace, Ministerial Staff are expected to conduct themselves in a respectful manner in their private lives, including online.

### Behaviour not considered to be sexual harassment

- 9.9. Sexual or romantic interaction that is entered into freely and is reciprocated between consenting staff, is not a form of sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated action.
- 9.10. This does not mean that sexual or romantic interactions between staff are always appropriate. Ministerial Staff may face disciplinary action where their actions adversely affect other staff or their workplace responsibilities, including their obligations to manage

staff in keeping with established reporting lines. Ministerial Staff should refer the Ministerial Staff Complaint Resolution Policy and Procedure for further guidance.

- 9.11. Furthermore, conduct that is welcome at one point in time may become unwelcome (and may therefore be sexual harassment) at different points in time. Sexual harassment will not be tolerated, even if similar conduct was previously welcome.
- 9.12. Sexual activity at any Ministerial Office or in the course of any Ministerial Staffer's duties is **never** appropriate.

## Reprisals and harassment

- 9.13. 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

- 9.14. Ministerial Staff 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.

# 10. Legislation

- 10.1. Sexual harassment is a specific and serious form of harassment that is unlawful and prohibited by both Victorian and Commonwealth legislation.

## Victorian legislation

- 10.2. The *Equal Opportunity Act 2010* requires the Premier's Office to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as practicable.
  - (a) Section 92 of the *Equal Opportunity Act 2010* provides that a person sexually harasses another person:
    - (i) if he or she makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
    - (ii) if he or she engages in any other unwelcome conduct of a sexual nature in relation to the other person;
  - (b) 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.
- 10.3. Section 93 of the *Equal Opportunity Act 2010* prohibits sexual harassment in the workplace. This prohibition covers employers, employees, any person seeking employment, contract workers and volunteers. Section 94 of the *Equal Opportunity Act 2010* prohibits sexual harassment in common workplaces (i.e. places that are the workplace of both people involved whether or not they have the same employer).
- 10.4. Conduct of a 'sexual nature' includes:
  - (a) subjecting a person to any act of physical intimacy;

- (b) making, verbally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence;
- (c) making any gesture, action or comment of a sexual nature in a person's presence.

## Commonwealth legislation

10.5. *Section 28A of the Sex Discrimination Act 1984* provides that a person sexually harasses another person (the “person harassed”) if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

10.6. The relevant circumstances to be taken into account may include, but are not limited to, the following:

- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- (c) any disability of the person harassed;
- (d) any other relevant circumstance.

10.7. ‘Conduct of a sexual nature’ includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

10.8. Section 28B provides that it is unlawful for:

- (a) a person to sexually harass an employee of the person, or a person who is seeking to become an employee of the person;
- (b) an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer;
- (c) a person to sexually harass a commission agent or contract worker of the person, or a person who is seeking to become a commission agent or contract worker of the person;
- (d) a commission agent or contract worker to sexually harass a fellow commission agent or contract worker;
- (e) a workplace participant to sexually harass another workplace participant at a place that is a workplace of either or both of those persons.

## 11. Further information

### Related legislative and regulatory instruments

- Sex Discrimination Act 1984 (Cth)
- Fair Work Act 2009 (Cth)
- Equal Opportunity Act 2010 (Vic)
- Gender Equity Act 2020 (Vic)
- Occupational Health & Safety Act 2004 (Vic)
- Ministerial Staff Collective Agreement (Vic) 2019
- Ministerial Staff Code of Conduct
- Ministerial Staff Complaint Resolution Policy and Procedure
- Ministerial Staff Occupational Health and Safety Policy

## 12. Policy management details

<b>Title and version number</b>	Ministerial Staff Prevention of Sexual Harassment in the Workplace Policy
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For further information, or if you have any queries, please contact your Chief of Staff or the General Counsel.

Ministerial Staff are required to comply with the policies and procedures applicable to Ministerial Staff. Failure to do so may result in disciplinary action, including termination.