

PREVENTION OF SEXUAL HARASSMENT IN THE WORKPLACE POLICY

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Responsible Officer:	Manager People and Culture
Owner:	People and Culture
Responsible Director:	Corporate Performance
Relevant Legislation/Authority:	<i>Australian Human Rights Commission Act 1986 Equal Opportunity Act 2010 (Vic) Fair Work Act 2009 Occupational Health and Safety Act 2004 Sex Discrimination Act 1984 (Cth) The Victorian Charter of Human Rights and Responsibilities 2006</i>
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1. PURPOSE

The purpose of this policy is to prevent and eliminate sexual harassment by:

- 1.1 Ensuring all Individuals recognise sexual harassment; and
- 1.2 Informing Individuals of the organisation's position regarding sexual harassment within the workplace, behavioural expectations within the workplace, and the related obligations and responsibilities of the City of Greater Bendigo (the City) and Individuals.

2. BACKGROUND

- 2.1 The City expects all Individuals to display the standards of behaviour outlined in the [Code of Conduct](#) in their treatment of other Employees, of Clients, and of other members of the public encountered in the course of their working duties.
- 2.2 The City is an Equal Opportunity employer and is committed to providing:
 - 2.2.1 A safe, healthy and supportive work environment that is free from sexual harassment; and;
 - 2.2.2 A workplace where all Individuals associated with the City treat each other with respect, dignity and courtesy and behave in ways that are safe and inclusive

- 2.3 The City will take all reasonable and proportionate measures to prevent and eliminate sexual harassment.

3. SCOPE

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

- 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; and
- Employees' treatment of other Employees, Clients and members of the public encountered in the course of their working duties.

Responding to and/or reporting sexual harassment is outside the scope of this policy. The City strongly encourages Individuals who believe they have experienced or witnessed sexual harassment to respond to or report the inappropriate behaviour. A range of responding and reporting options are available. Further information and guidance on the options and procedures for responding to and/or reporting sexual harassment is available from the City's [Responding to and/or Reporting Sexual Harassment Procedure](#). Where reporting of sexual harassment does occur, the City commits to taking a Victim-centred, Safety-driven approach to management of the process.

4. DEFINITIONS

Bystander means an individual who heard or witnessed the incident of offensive behaviour / sexual harassment or hears about it subsequently. In the workplace, Bystanders can include co-workers who are informed of workplace sexual harassment through the 'grapevine' or those sought out by victims or harassers for support or advice.

Client means all persons to whom services are provided by the City.

Employee means a person who receives a salary or wages from the City (employed on either a full-time, part-time or casual basis where the nature of the work is permanent/ongoing or temporary for a specified period).

Individual means an Employee, volunteer, student, trainee, apprentice, contractor, subcontractor or consultant.

Safety-driven means, in line with Health & Safety focused, the requirement that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

Victim-centred means giving priority to the complainant's wishes, safety, and wellbeing in all matters and procedures. This ensures the compassionate, sensitive and non-judgemental responses to complaints.

5. PRINCIPLES

The principles associated with this policy are that:

- Sexual harassment is unlawful and will not be tolerated in the workplace or beyond the workplace where there is a link to employment, including from third parties;
- A single incident can constitute sexual harassment;
- Sexual harassment is driven by gender inequality;
- Sexual harassment is gendered. Most instances of sexual harassment (but importantly not all) are experienced by women;
- The City has a positive duty to ensure the health and safety of employees:
 - to eliminate risks to health and safety so far as is reasonably practicable; and
 - if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- Victimisation (subjecting or threatening to subject someone to detrimental or unfavourable treatment because they have raised a complaint or issue) is unlawful and will not be tolerated by the City;
- All Individuals have a role to play in intervention and action when behaviour is inconsistent with expectations;
- Employees may be personally liable 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; and
- Conduct constituting sexual harassment by an Employee may also expose the City to liability. The City may be vicariously liable for an Employee's conduct undertaken in the course of, or in connection with, their employment.

The City recognises that comments and behaviour that do not offend one person can offend another. All City Employees are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.

6. POLICY

Sexual harassment is unacceptable, unlawful and prohibited by both the *Equal Opportunity Act 2010* (Vic) and the *Sex Discrimination Act 1984* (Cth) and has the potential to adversely affect the harmony of the workplace and cause harm or injury to others.

Individuals are required to conduct themselves in a manner that is consistent with the organisation's values and [Code of Conduct](#). The City's [Appropriate Workplace Behaviour Policy](#) also describes the City's expectations and standards regarding acceptable and appropriate behaviour within the workplace.

6.1 Sexual Harassment in the Workplace

6.1.1 What is Sexual Harassment?

Sexual harassment means an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

A working environment or workplace culture that is sexually permeated or hostile will also amount to unlawful sexual harassment.

Sexual harassment in the workplace may be physical, spoken, written or image-based 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 invitations to go out on dates;
- 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).

6.1.2 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.

6.1.3 What is the workplace?

Within 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 Individuals who visit

other offices i.e. the same behavioural standards that exist in their workplaces, apply in other offices that Individuals 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 Individuals. It also extends to common areas such as lifts, entrances, 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 the City;
- At social functions in connection with the team/workplace but not sponsored or paid by the City
- 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 the City;
- 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.

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. Individuals should regulate their own behaviour and consumption of alcohol to ensure that their behaviour does not adversely impact others. The City's [Code of Conduct](#) sets expectations of Individual behaviour with regard to alcohol and drug use to ensure that Individuals carry out their safely and avoid conduct that puts themselves or others at risk.

6.1.4 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.

6.1.5 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

Individual to ensure that they do not engage in any behaviour that could amount to sexual harassment.

The City will not excuse sexual harassment that was intended as a joke if it meets the legal definition of sexual harassment.

6.1.6 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.

6.1.7 Bystander intervention

Bystanders 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 bystanders can positively impact on defining workplace culture.

Bystanders that are aware of sexual harassment are encouraged to:

- Provide support to the Individual 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.

Guidance on responding to sexual harassment or making an anonymous or formal report as a Bystander is provided in the [Responding to and/or Reporting Sexual Harassment Procedure](#).

A Bystander may wish to remain anonymous and where appropriate, anonymity will be provided. In certain circumstances it may not be possible to keep the identity of a person, or people providing information, confidential. In some situations, 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.

6.1.8 Failure to comply

Failure to comply with this policy may lead to disciplinary action, including termination of employment, in accordance with the City's [Managing Misconduct Procedure](#).

Non-compliance with this policy may breach applicable anti-discrimination, equal employment opportunity or health and safety laws and may result in legal proceedings being commenced against the Individual. In the event of legal proceedings, Individuals may be exposed to legal costs, penalties, orders to pay compensation and even imprisonment in some circumstances.

6.2 Support Options

A range of options are available to provide advice and support in regard to sexual harassment. The City's primary contacts include:

- Manager, People and Culture
- HR Coordinator, People and Culture
- Senior HR Advisor, People and Culture
- Contact Officers (listed [here](#))

Relevant external service providers are listed in the [Responding to and/or Reporting Sexual Harassment Procedure](#).

6.2.1 Employee Assistance Program

The City 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), volunteers and work-experience students have access to the EAP, which provides for a limited number of counselling sessions at no cost to the Employee, volunteer or work experience student and can be provided over the phone or face-to-face.

People managers can access Manager Assist through the EAP, to help with workplace issues.

The City EAP provider is Converge International. Appointments can be made by calling 1300 687 327, email eap@convergeintl.com.au or via the website www.convergeinternational.com.au.

7. ROLES AND RESPONSIBILITIES

Individuals

All Individuals must:

- Comply with this policy;
- Model appropriate behaviour;
- Participate in any training provided by the City, including completing any assessments;
- Treat information in relation to claims of sexual harassment with appropriate confidentiality;
- Ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint; and
- Act in accordance with the [Code of Conduct](#) and the City's values, policies and procedures.

People Managers

In addition to their responsibilities as Employees, those with management responsibilities must also:

- Monitor the work environment;
- Promote awareness of this policy within their area;
- Treat all complaints seriously and take prompt and appropriate action to address them;
- Discuss the complaint with their immediate supervisor as appropriate;

- Contact the Manager People and Culture, HR Coordinator or Senior HR Advisors for further information and support for the management of reports of sexual harassment as appropriate and;
- Proactively improve the work culture by adopting a zero-tolerance approach to sexual harassment and take active steps to prevent sexual harassment in the workplace.

Human Resources

In the context of this policy, the Human Resources team within the People and Culture Unit is responsible for:

- Providing advice in relation to matters covered by this policy;
- Assisting Individuals 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.

8. RELATED DOCUMENTS

Employees are encouraged to access the related internal documents which are available on the intranet and/or external resources which are available as per the below.

These include:

- [City of Greater Bendigo Code of Conduct](#) (DOCSETID 3603208)
- [Responding to and/or Reporting Sexual Harassment Procedure](#) (DOCSETID 4579208)
- [Managing Misconduct Procedure](#) (DOCSETID 2172947)
- [Appropriate Workplace Behaviour Policy](#) (DOCSETID 1822685)
- [Health and Safety Policy](#) (DOCSETID 3157309)
- [Procedure for the Management of Issues, Concerns and/or Complaints](#) (DOCSETID 1822684)
- [Procedure for the Management of Issues, Concerns and/or Complaints Flow Chart](#) (DOCSETID 1975498)

Further information or advice on this policy should be directed to People and Culture

9. HUMAN RIGHTS COMPATIBILITY

The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

10. ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a Business Unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation with the staff Consultative Committee and with the approval of EMT or where required, resolution of Council.

11. DOCUMENT HISTORY

Date Approved	Responsible Officer	Unit	Change Type	Version	Next Review Date
<i>July 2021</i>	<i>JW</i>	<i>People & Culture</i>	<i>Develop initial</i>	<i>1</i>	<i>July 2023</i>