

Prevention of Sexual Harassment in the Workplace - Councillor Policy



Moreland
City Council

Date Authorised Council:	13 July 2022
Commencement Date:	13 July 2022
Review Date:	13 July 2024
Responsible Department	Business Transformation

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1 INTRODUCTION

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

Moreland City Council (Council) is committed 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 Councillors and prevent sexual harassment in the workplace by:

- eliminating 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.

This policy applies to all Councillors and sets out the legal responsibilities and obligations for Council, its Councillors and its clients.

In this policy:

- 'client' is defined inclusively to include all persons to whom services are provided by Council, and
- 'Councillors' is defined inclusively to include all elected Councillors, Mayor and Deputy Mayor serving their electoral term with Council.

1.1 Principals

In performing their role Councillors are required to conduct themselves in a manner that is consistent with the standards of conduct set out in the Councillor Code of Conduct and uphold Council's obligations to support a safe workplace. Councillors will not engage in behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff including sexual harassment.

Councillors are expected to understand and abide by the principals associated with this policy which includes:

- sexual harassment is unlawful and will not be tolerated in the workplace;
- a single incident can constitute sexual harassment;
- sexual harassment is gendered. Most instances of sexual harassment (but importantly not all) are experienced by women;
- the employment and management practices of Council shall operate in a manner that facilitates the prevention on sexual harassment in the workplace;
- Councillors 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;
- conduct constituting sexual harassment by a Councillor may also expose Council to liability. Council may be vicariously liable for a Councillors conduct undertaken in the course of, or in connection with, their Councillor duties and responsibilities;
- Council recognises that comments and behaviour that do not offend one person can offend another. All Councillors are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.
- Call out any examples of sexual harassment they witness ensuring action is taken.

2 SCOPE

This policy applies across Council and 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 the role of Councillor such as working conditions, benefits, training, equipment and transport;
- on-site, off-site, work-related social functions, conferences – wherever and whenever Councillors may be as a result of their Councillor duties and responsibilities;
- out of work hours interaction where there is a strong connection to the Councillor role and/or relationship;
- Councillor treatment of another Councillor, Council Staff, clients and members of the public encountered in the course of their Councillor duties, and
- client treatment of Councillors, other clients and members of the public encountered in Council buildings and facilities.

When managing reports of alleged sexual harassment, Council will refer to relevant industrial instruments or in the case of reports of alleged sexual harassment by clients, direct contact with Police may be made.

2.1 Alignment

This policy should be read in conjunction with the below mentioned policy;

- Councillor Employee Code of Conduct, and
- Occupational Health and Safety Policy.

2.2 Legislation

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

Victorian Legislation

[The Equal Opportunity Act 2010](#) requires Council to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as practicable.

Section 92 of the *Equal Opportunity Act 2010* provides that a person sexually harasses another person:

- if he or she makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person;
- if he or she engages in any other unwelcome conduct of a sexual nature in relation to the other person; or
- 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 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).

Conduct of a 'sexual nature' includes:

- subjecting a person to any act of physical intimacy;
- making, verbally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence; and

- making any gesture, action or comment of a sexual nature in a person's presence.

Commonwealth Legislation

Section 28A of the [Sex Discrimination Act 1984](#) provides that a person sexually harasses another person (the "person harassed") if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- 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.

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

- 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;
- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- any disability of the person harassed;
- any other relevant circumstance.

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

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

3 OBJECTIVES

Council aims to achieve the following objectives through its Prevention of Sexual Harassment in the Workplace – Councillor Policy:

- Ensure that all Councillors are aware of and adhere to this policy;
- Ensure that all aspects of Council's Councillor business activities operate in a manner which facilitates a safe work environment;
- Implement training and awareness strategies to inform Councillors about their rights and responsibilities;
- Provide fair and effective measures for the resolution of informal and formal complaints; and
- Provide all parties to a complaint with protection from victimisation or reprisals.

4 POLICY DETAILS

4.1 What is sexual harassment

Further to behaviours listed under section 2.2 above; sexual harassment in the workplace may take various forms and can be directed at, and perpetrated by, all persons including man, woman, 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).

4.2 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.

4.3 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.

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 employment.

In addition, the workplace is not confined to the actual physical location used by the Councillors. It also extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets of the premises of all municipal buildings.

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 Council;
- at social functions in connection with Councillor duties but not sponsored or paid by Council;
- in vehicles while on the way to Councillor 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; 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 Councillor functions or at a Councillors-related events outside the usual workplace and hours of work is not an excuse for conduct that constitutes sexual harassment. Councillors should regulate their own behaviour and consumption of alcohol to ensure their behaviour does not adversely impact others. Councillors should be mindful that in such situations, they continue to abide by the Councillor Code of Conduct.

5 REPORTING SEXUAL HARASSMENT

Council will not stand for any form of sexual harassment in the workplace and strongly encourages Councillors who believe they have been sexually harassed or have witnessed sexual harassment to consider the following actions:

- make an informal or formal complaint –
 - an allegation of sexual harassment will be reported to the CEO and/or Councillor Conduct Officer.
 - which can be accepted informally i.e. verbally (in person, or via the telephone).
 - which can be accepted formally i.e. generally in writing. This doesn't exclude a Councillor member making the report verbally in which case a formal statement can be written up by the CEO and/or Councillor Conduct Officer accepting the report and signed by the Councillor lodging the report complaint.
 - Which can also be accepted anonymously.
- 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).

Councillors affected by sexual harassment will be supported in carrying out the above actions.

It is easier to investigate complaints if the Councillor has documented all instances of harassment such as:

- the time, date and place that it occurred;
- exactly what happened, and
- whether anyone was present.

Council will ensure the appropriate parties will listen to and work with Councillors to ensure their safety and well-being as required by the *Occupational Health and Safety Act 2004*.

In cases of sexual assault, Councillors will be encouraged to make a report to the police. Councillors will also be encouraged to report the incident to the CEO and/or Councillor Conduct Officer regardless of whether a report is made to the police or not.

Council understands that some complainants choose to remain completely anonymous. This may be because of a fear (sometimes justifiable, sometimes not) that reprisal action will be taken in response to their complaint. The anonymity of a complaint will not be a basis for deciding that the complaint does not raise a substantive issue. However, anonymous complaints can only as far as practicable be investigated if they are assessed as having some substance, are of reasonable seriousness, and there is sufficient information in the complaint to enable the allegations to be investigated. Anonymous complaints can be forwarded in writing direct to the CEO and/or Councillor Conduct Officer via post to Council's post office box address marked 'Confidential – Anonymous Complaint'.

5.1 Confidentially

Where appropriate, disclosures/complaints of sexual harassment will be treated in confidence in order to protect a Councillors 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 Councillor, particularly in circumstances that may:

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

The CEO and Councilor Conduct Officer will determine any arrangements necessary for the purpose of managing the disclosure/complaint.

5.2 Bystander Intervention

Bystanders, including Councillors, 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 Councillors can positively impact on defining workplace culture.

Bystanders that are aware of sexual harassment are encouraged to:

- provide support to the person 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 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 RESPONDING TO SEXUAL HARASSEMENT

6.1 Sexual harassment complaint

The Councillor Code of Conduct, Section 6., Dispute Resolution, sets out the steps Councillors can follow for resolution of informal or formal complaints of sexual harassment (and other disputes and grievances).

An allegation of sexual harassment will be reported to the CEO and/or Councillor Conduct Officer. The appropriate action for the CEO and/or Councillor Conduct Officer to take when an allegation 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.

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 independent investigation path. The CEO and Councillor Conduct officer will determine the appropriate steps to investigate the allegation, ensuring support for all parties and an impartial investigation. On completion of the investigation, the CEO will make a report to a Council meeting with a recommendation regarding whether an application should be made for Councillor Conduct Panel to make a finding of serious misconduct.

Council must ensure the safety and well-being of all Councillors as per the *Occupational Health and Safety Act 2004*.

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 Councillors on the requirements of this policy and/or general Equal Employment Opportunity training. This training will add additional support to the regular training that is provided for Councillors regarding sexual harassment and other related equal employment opportunity matters.

Other informal processes include:

- talk to the harasser directly to self-manage the situation, such as by telling someone their behaviour is offensive - 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);
- consider mediation - with the assistance of:
 - the CEO and Councillor Conduct Officer *or*;
 - other mutually agreed internal/external mediator *or*;
 - a combination of the above.
- The CEO and/or Councillor Conduct Officer speaks privately to the person the complaint is being made about; and/or
- Observe inappropriate behaviour.

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 The Councillor Code of Conduct, Section 6, Dispute Resolution.

In consultation with CEO and Councillor Conduct Officer a decision on the most appropriate way to take action with the information available will be made.

Depending on the nature of the concerns raised and the parties implicated, it may be necessary or appropriate to temporarily change Councillor operations to ensure a safe workplace and maintain the integrity of any review/investigation process. Temporary changes could be considered including:

- taking periods of approved leave; or
- suspension of Councillor duties (until findings have been determined).

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).

Disclosure of information or making a complaint can be very difficult for the affected Councillor/s. In such cases the CEO and Councillor Conduct Officer will consider appropriate welfare steps.

6.2 Misconduct

The process for managing misconduct is set out in the Councillor Code of Conduct.

6.3 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 CEO/ Councillor Conduct Officer/Mayor 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;
- allowed the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made, and;
- allowed the opportunity for a support person / representative.

6.4 Findings

Following an investigation, a finding will be made based on the available evidence, along with recommendations about actions to be taken, as per the Dispute Resolution process as outlined in the Councillor Code of Conduct. Each case will be assessed on its own merits.

A substantiated complaint of sexual harassment may result in a number of outcomes against a Councillor. 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 person making the complaint and the person who is the subject of the complaint are told about the outcome of the investigation and any action to be taken and future behaviour is monitored by the CEO and/or Councillor Conduct Officer.

6.5 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. These include, but are not limited to:

- physical molestation or assault;
- indecent exposure;
- sexual assault;
- stalking; and
- obscene communications (telephone calls, letters, etc).

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.

7 ADDITIONAL CONSIDERATIONS

7.1 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.

7.2 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.

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

7.3 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 their Councillor working hours or not. Where there is a link to Councillor duties, Councillors are subject to the same rules about sexual harassment in the virtual world as they are in the physical workplace.

As such, Councillors are required to use technology and social media responsibly in the workplace and in relation to anything or anyone associated with their Councillor duties. This extends to the use of technology and social media outside the workplace where there is a strong connection to the Councillor relationship (for example, between Councillors where the foundation of the relationship is a common workplace).

7.4 Behaviour not considered to be sexual harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting Councillors and / or members of staff, 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 Councillors and / or members of staff are always appropriate. Councillors may face disciplinary action where their actions adversely affect other Councillors or their Councillor responsibilities. Please refer to the Conflict of interest laws as prescribed under the [Local Government Act 2020](#) (the Act) and in the [Local Government \(Governance and Integrity\) Regulations 2020](#) (the Regulations) for further information.

7.5 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.

7.6 Information or claims without substance

Councillors 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 SUPPORT OPTIONS

Options are available to provide support in regard to sexual harassment. Council's primary contacts include the CEO and Councillor Conduct Officer.

8.1 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 Council may report the matter to Victoria Police.

A Councillor may also wish to access other support services, such as Centres Against Sexual Assault.

9 ROLES AND RESPONSIBILITIES

Party/parties	Roles and responsibilities
Chief Executive Officer	<ul style="list-style-type: none">• Review and endorse changes to policy.• 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
All Councillors:	<ul style="list-style-type: none">• comply with this policy;• model appropriate behaviour - Councillors have a responsibility to improve the work culture by adopting a zero tolerance approach to sexual harassment.• participate in any training provided by Council 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;• act in accordance with the Councillor Code of Conduct and Occupational Health and Safety Policy.

10 MONITORING, EVALUATION AND REVIEW

The CEO is responsible for the monitoring, evaluation and review of this policy.

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 document, such a change may be made administratively. Examples include, a change to the name of a Federal or State 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 approved by the CEO.

11 DEFINITIONS

Term	Definition
Complainant:	A person who lodges an informal and/or formal complaint of sexual harassment.
Respondent:	The person who is the subject of a complaint of sexual harassment.
Councillor Conduct Officer:	Appointed person who is responsible for assisting the council to implement and conduct its council's internal arbitration process and to support the principal councillor conduct registrar in relation to councillor conduct panel hearings.
Support Person / Representative:	An individual who assists and gives support or representation to another individual during the investigation of complaints of sexual harassment, in the workplace.

12 RELATED POLICIES AND ASSOCIATED DOCUMENTS

- *Equal Opportunity Act 2010 (Vic)*
- *Occupational Health & Safety Act 2004*
- *Sex Discrimination Act 1984 (Clth)*
- *Disability Discrimination Act 1992 (Clth)*
- *Victorian Equal Opportunity and Human Rights Commission, www.humanrightscommission.vic.gov.au*
- *Australian Human Rights and Equal Opportunity Commission, www.hreoc.gov.au/*
- *Prevention of Bullying & Violence at Work WorkSafe Victoria <http://www.worksafe.vic.gov.au/>*
- *Data and Privacy Protection Act 2014 (Vic)*
- *Fair Work Act 2009*
- *Local Government Act 2020(the Act)*
- *the Local Government (Governance and Integrity) Regulations 2020 (the Regulations)*
- Moreland City Council Councillor Code of Conduct
- Moreland City Council Occupational Health and Safety Policy

13 REFERENCES

- *Victorian Public Sector Commission (VPSC) Model Prevention of Sexual Harassment in the Workplace Policy*