

Prevention of Sexual Harassment in the Workplace Policy

Policy Purpose and Coverage

Sexual harassment is unlawful and prohibited by both State and Federal discrimination laws.

The Department of Planning, Housing and Infrastructure (the Department) is committed to providing a working environment that is free from sexual harassment, sex-based harassment, sex discrimination, hostile workplace environments and victimisation.

The Department acknowledges that sexual harassment and other behaviours in breach of this policy can have a psychological, emotional, and physical impact on individuals experiencing it and those witnessing it and have detrimental consequences on the careers and personal lives of those affected.

The Department also has a legislated positive duty to take reasonable and proportionate steps to eliminate as far as possible sexual harassment, sex discrimination, sex-based harassment, a hostile workplace environment and victimisation.

The Department and all its workers have a role to play in minimising and trying to eliminate sexual harassment, discrimination, sex-based harassment, a hostile workplace environment and victimisation.

Purpose of this Policy

The purpose of this policy is:

- to ensure all workers are aware that sexual harassment, sex discrimination, sex-based harassment, hostile workplace environment and victimisation is unlawful and not acceptable in the workplace.
- to ensure all workers understand the standards of behaviour expected of them and their legal rights and responsibilities in relation to workplace sexual harassment, sex discrimination, sex-based harassment, hostile workplace environment and victimisation.

The Prevention of Sexual Harassment in the Workplace Procedure provides details on how to report sexual harassment and how those reports will be managed.

To whom this Policy applies

This policy applies to all people ('workers') carrying out work in any capacity for the Department.

In this policy:

- 'worker' has the same meaning as in the *Work Health and Safety Act 2011 (NSW)* and includes any person who works, in any capacity, for the Department including an employee (including all leadership and management personnel), a contractor or subcontractor, an employee of a contractor or subcontractor or an employee of a labour hire company who has been assigned to work in the Department's business or undertaking, an outworker, an apprentice or trainee, a student gaining work experience or a volunteer.¹
- 'workplace' is a place where work is carried out for the Department and includes any place a worker goes, or is likely to be, while at work.² The workplace can also extend to conduct occurring out of hours - see section below on Sexual harassment is not confined to on-duty locations or physical/verbal conduct for further information.

This policy applies to circumstances including the following:

- interactions between workers at work or in connection with any work-related activity.
- interactions between workers and third parties (including visitors, clients or customers) where that interaction occurs in connection with any work-related activity, e.g. sexual harassment of a visitor, client or customer by a worker or sexual harassment of a worker by a guest at a work-related function.
- behaviour occurring at work or in the course of, or in connection with, work, whether that is on-site, off-site, work-related social functions or conferences – wherever workers may be for work-related duties, including working from home.
- out of work hours interactions where there is a connection to the employment relationship, including exchanges or posts on social media.

Failure to comply with this policy

Breach

Sexual harassment and other behaviour that breaches this policy and/or the departmental Code of Ethics and Conduct may amount to misconduct under the Government Sector Employment Act

¹ *Work Health and Safety Act 2011 (NSW) s 7.*

² *Work Health and Safety Act 2011 (NSW) s 8.*

(GSE) Act and may otherwise be unlawful. The Department will deal with misconduct in accordance with its departmental Misconduct Policy and departmental Misconduct Procedure.

Should it be alleged that a person external to the Department engaged in conduct that is considered to be sexual harassment, sex-based harassment or sex discrimination against a worker of the Department, then that allegation may be reported by the Department to the external person's agency or employer. The Department may also report complaints directly to NSW Police where appropriate.

Policy Statement

Roles and Responsibilities

Employees and other workers

All employees and other workers must understand and comply with their responsibilities under this policy, the Public Services Commission (PSC) ethical framework and the departmental Code of Ethics and Conduct. This means they:

- must understand what sexual harassment, sex-based harassment, sex discrimination, hostile workplace environment and victimisation mean.
- must treat others with dignity, courtesy and respect.
- must not engage in sexual harassment or condone – implicitly or explicitly - sexual harassment by others.
- should tell a manager or trusted person if they experience sexual harassment or other behaviour that breaches this policy, provided they feel safe and comfortable to do so.
- should intervene in a way that is comfortable to challenge inappropriate behaviour, either if they experience or witness it, provided they feel safe to do so.
- must seek assistance when unsure about how to implement this policy.
- must report suspected breaches of the policy in accordance with the Department's procedures.

Supervisors/Managers/Leaders

In addition to their responsibilities as employees, those with management and leadership responsibilities must also:

- promote a work culture where sexual harassment, sex discrimination, sex-based harassment, hostile workplace environments and victimisation is unacceptable.

- intervene and challenge inappropriate behaviour they see or know of before it escalates, provided they feel safe to do so. Where they do not feel safe to do so, they must refer the matter to their manager or the People & Culture division for appropriate action.
- encourage an environment where workers feel safe to report sexual harassment or other behaviour that breaches this policy they experience or know of.
- prioritise the care and support of those impacted when responding to issues raised with them or observed.
- treat all reports of sexual harassment or other behaviour that breaches this policy seriously and confidentially and take prompt action to address them (taking into account the wishes of the person subjected to the harassment).
- communicate and promote this policy to those they work with.

Sexual harassment in the workplace

What is sexual harassment and what conduct is unlawful?

Sexual harassment and harassment on the ground of sex are unlawful and prohibited by the *Anti-Discrimination Act 1977* (NSW) (*Anti-Discrimination Act*) and the *Sex Discrimination Act 1984* (Cth) (*Sex Discrimination Act*).

Sexual harassment is any conduct:

- that is unwelcome (whether or not the person impacted has explicitly identified it as unwelcome or raised a concern about the conduct); and
- of a sexual nature (a sexual advance, request for sexual favours or other conduct of a sexual nature); and
- 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.³

It can be physical, verbal or written, including through online and phone communication.

It is not relevant if someone engaging in the behaviour assumes, or misapprehends, that their behaviour is welcome when it is not. The person receiving the behaviour does not need to be overt about the fact the behaviour is not welcome. It should not be assumed that a person consents to another person's behaviour simply because they have not complained about it, noting that power imbalances and concerns about victimisation or reprisal, cultural barriers or other reasons may

³ *Anti-Discrimination Act 1977* (NSW) s.22A, *Sex Discrimination Act 1984* (Cth) s.28A.

prevent the person from expressly objecting to the behaviour. Employees must not engage in conduct if in doubt about whether the behaviour is welcome.

Relevant circumstances will be taken into account in determining whether a reasonable person would anticipate the possibility that the conduct was offensive, humiliating or intimidating. These include, but are not limited to, the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, national or ethnic origin of the person harassed, any disability of the person harassed, the relationship between the person harassed and the person who engaged in the conduct, any power imbalance in the relationship between the person harassed and the person who engaged in the conduct, the seriousness of the conduct, whether it had been repeated and any other relevant circumstance.

Examples of behaviour that are or could be sexual harassment in the workplace include:

- unwelcome or inappropriate touching, hugging, cornering or kissing.
- inappropriate staring or leering.
- sexually explicit or indecent physical contact.
- actual or attempted sexual assault.
- being followed or watched or having someone loitering nearby.
- sexual gestures, indecent exposure, or inappropriate display of the body.
- displaying sexually explicit images or objects around the workplace or showing others images on your phone or device that are sexually explicit.
- intrusive or sexually suggestive questions, comments, jokes or banter of a sexual nature.
- comments or questions about a person's sexual activities or body.
- unwanted or repeated invitations to go out on dates, start a relationship or propositions for sex.
- sharing pornography or rude jokes in any form.
- sending sexual text messages, including photos, videos or memes.
- communicating content of a sexual nature through social media.
- threatening to share or sharing intimate images/video of someone without consent.
- ongoing unwelcome contact (e.g. in person, by phone, via social media) following the end of a consensual relationship.

Importantly, sexual harassment may be a workplace issue not just when it occurs at work, but also when it occurs away from the workplace and/or out-of-hours, if there is a sufficient connection to the workplace. See below for further details as to when and how workplace sexual harassment may occur.

There is no requirement that the unwelcome conduct be repeated; a one-off incident can be sexual harassment. A broader pattern of behaviour can also constitute sexual harassment. Sexual harassment may be perpetrated by various people, including an employer, supervisor, co-worker, client, contractor, volunteer, customer, or a member of the public.

A bystander can be sexually harassed by a conversation undertaken in their presence, even if the conversation is not directed to them.

Some forms of sexual harassment are also criminal offences. Sexual assault (including rape and attempted rape), sexual touching without consent and other sexual acts without consent are serious criminal offences.⁴

Sex-based harassment

Some conduct may not meet the definition of sexual harassment but still be unlawful. For example, conduct may not be sexual harassment, but amount to harassment on the ground of sex, sex discrimination and/or the creation of a hostile workplace. A single act of conduct may fall into more than one of these categories, for example both sexual harassment and harassment on the ground of sex.

Harassment on the grounds of sex, otherwise referred to as sex-based harassment, is any unwelcome conduct of a demeaning nature by reason of the person's sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated. For example, a group of male employees ridiculing a female employee that she is not strong enough to complete the same tasks as them may be sex-based harassment.

Hostile work environment

It is unlawful for a person to subject another person to a hostile work environment on the grounds of sex.⁵ The conduct will be unlawful if it results in an offensive, intimidating and humiliating environment for people of one sex, even if the conduct is not directed at a particular person. Factors that point to a sexually hostile workplace may include the display of obscene or pornographic materials, general sexual banter, or innuendo and offensive jokes.

For example:

- employees may be humiliated by the display of pornographic and degrading images in the workplace.

⁴ *Crimes Act 1900* (NSW) Part 3 Division 10.

⁵ *Sex Discrimination Act 1984* (Cth) s 28M.

- jokes which contain sexual innuendo spoken openly in the workplace.
- comments about men not requiring parental leave because ‘children only need their mothers’ and that men are ‘irresponsible parents’.
- demeaning remarks about taking medication for menopause symptoms.

Conduct includes making a statement, whether verbally or in writing, as well as physical acts or gestures. The seriousness of the conduct, whether the conduct was continuous or repetitive, the role, influence or authority of the person engaging in the conduct and any other relevant circumstance will be considered when determining if the conduct is unlawful.

Relationships in the workplace

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

This does not mean that consensual sexual or romantic interactions between workers are always appropriate. Consensual interactions may create conflicts of interest and may adversely affect others in the workplace. If consensual interactions are not in line with all relevant policies to the extent they are a workplace issue, workers may nevertheless face misconduct action.

The Department's Code of Ethics and Conduct requires employees to promptly declare in writing any actual, reasonably perceived, or potential conflict that arises in the course of their work. This includes disclosures about a current or previous intimate relationship between an employee and another worker. Reports of sexual harassment during, or following the breakdown of, a consensual relationship should be handled with care. Just because two individuals are, or used to be, in a consensual sexual relationship does not preclude the possibility of sexual harassment during or following the end of the relationship. Risk factors include where there has been a relationship breakdown or where the relationship involved employees with unequal power dynamics within an organisation.

Sexual harassment is not confined to on-duty locations or physical/verbal conduct

Sexual harassment, sex discrimination, sex-based harassment, hostile workplace environments and victimisation in the Department's workplaces and work-related situations is prohibited by law.

The workplace is not confined to the actual physical location used by workers. It includes any place where work is carried out and extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets of the premises.

Sexual harassment or other similar behaviour can occur beyond the usual workplace and outside normal working hours. For example, workplace sexual harassment can occur in settings where there is a sufficient connection to employment, including but not limited to:

- where a worker is working remotely, including if the person's workplace is their home.
- in a place where the worker is undertaking work at a different location (e.g., at another business premises or a client's home).
- at social functions sponsored and paid for by the Department.
- at social functions in connection with the team/workplace, but not sponsored or paid by the Department.
- at 'after-parties' to such events (regardless of their location).
- in vehicles while on the way to/from work functions or meetings.
- in accommodation paid for by the Department.
- via use of technology and social media.
- any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

Sexual harassment or other similar behaviour can occur through electronic means (e.g. emails, text messages, links to pornographic websites and social media), regardless of whether sent during work hours or not. Where there is a link to employment (e.g. involving communications between workers), workers are subject to the same rules about sexual harassment in the virtual world as they are in the real world. All employees are expected to use technology and social media responsibly both in the workplace and in relation to anything or anyone associated with the workplace.

Reporting and responding to sexual harassment

Please refer to the Department's Prevention of Sexual Harassment in the Workplace Procedure for guidance on where to report, and how the Department will respond to reports of, sexual harassment, sex discrimination, sex-based harassment, hostile workplace environments or victimisation in the workplace.

Recordkeeping

The Department keeps confidential records of all correspondence with parties in relation to reports of sexual harassment or other similar behaviour, including how the report is addressed, letters, emails, file notes of phone calls and conversations, investigation reports and all evidence collected.

Records are kept in accordance with applicable legislation, including the *Government Sector Employment (General) Rules 2014* (NSW), *State Records Act 1998* (NSW) and applicable privacy legislation and applicable Department records management and privacy-related policies. Upon receipt of any request for information for example through the *Government Information (Public Access) Act 2009* process, any such request for access to personal information will be treated with strict confidence in accordance with the GIPA legislation and would only be released if there was a legal requirement to do so.

Monitoring and Evaluation

The Department is committed to effective monitoring, evaluation and organisational learning processes that will foster a safe and respectful work environment. This includes:

- collecting and assessing reports and relevant data for trends, patterns and lessons to drive continuous improvement.
- regularly consulting with workers and unions to share knowledge and understand issues from a worker perspective.
- regularly reviewing and analysing qualitative and quantitative data relating to sexual harassment incidences to drive continuous improvement.
- sharing information about trends, patterns and lessons with staff, leadership, unions, management boards or committees and relevant stakeholders.
- implementing measures to ensure staff have confidence that sexual harassment is being eliminated in their workplace.

Related documents

Other policy documents that should be read with this policy:

- Departmental Prevention of Sexual Harassment in the Workplace Procedure
- Departmental Code of Ethics and Conduct
- Departmental Misconduct Policy
- Departmental Misconduct Procedure
- Departmental Human Resources Delegations
- Departmental Public Interest Disclosure Policy
- Departmental Records and Information Management Policy

Legislation that should be read with this policy:

- [Government Sector Employment Act 2013](#)

- [Government Sector Employment Rules 2014](#)
- [Anti-Discrimination and Human Rights Legislation Amendment \(Respect at Work\) Act 2022](#)
[\(Cth\) Anti-Discrimination Act 1977 \(NSW\)](#)
- [Sex Discrimination Act 1984 \(Cth\)](#)
- [Work Health and Safety Act 2011 \(NSW\)](#)
- [State Records Act 1998](#)
- [Government Information \(Public Access\) Act 2009](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Public Interest Disclosure Act 2022](#)

Policy metadata

Table 1. Policy metadata

Category	Description
Status	Final
Date of approval	27 February 2024
Approver	General Counsel – Deputy Secretary
Group	Strategic Services and Advice
Policy owner	Director Workforce Management and Employee Relations
Branch	People & Culture
Document location	DPHI Intranet and Internet
Next review date	March 2025
Associated procedure	Prevention of Sexual Harassment in the Workplace Procedure
Further information	Daniel Palmer, Director Workforce Management and Employee Relations case.management@dpie.nsw.gov.au
Document Reference	DOC24/23466

Version control

Table 2. Version Control

Version	Date issued	Change
1	1 March 2024	New Policy