

Prevention of Sexual Harassment Policy

Operational Policy & Procedure	Policy No:	PC 001/2
	Adopted by Council	27 February 2024
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	Version No:	01
Policy/Procedure Owner:	Chief Executive Officer	
Related Policies:	Councillor Code of Conduct Staff Code of Conduct PC020 Disciplinary Policy Governance Rules	
External References:	Equal Opportunity Act 2010 (Vic) Sex Discrimination Act 1984 (Cth) Local Government Act 2020 Occupational Health and Safety Act 2004 (Vic) Fair Work Act 2009 (Cth) Crimes Act 1958 (Vic) Charter of Human Rights	

1. PURPOSE

This policy outlines the definitions of sexual harassment to ensure that those utilising Council services and those undertaking duties on behalf of Moyne Shire Council are aware of their rights and responsibilities.

2. INTRODUCTION

Sexual harassment is unlawful and prohibited by both the Equal Opportunity Act 2010 (Vic) and the Sex Discrimination Act 1994 (Cth).

Moyne Shire Council (Council) is committed to providing a safe, flexible and respectful environment for Councillors, staff and the community that is free from all forms of sexual harassment.

3. SCOPE

The policy applies to all employees, councillors, contractors, volunteers, job applicants, and those undertaking duties on behalf of Moyne Shire Council. It pertains to any work-related activity including work related social functions (e.g, Christmas party) and work-related training and conference events. It applies to work performed both on and off Moyne Shire Council premises and applies to the delivery of all Moyne Shire Council services.

This policy applies to circumstances including but not limited to:

- Councillor and employee treatment of other councillors, employees, clients, and also members of the public encountered in the course of their duties.
- All aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, hours, leave arrangements, workload, plant, and equipment.
- Work performed wherever and whenever employees may be as a result of their duties, for example: out of hours or off-site work when working from home.
- During work-related events, for example at work relation social functions or conferences.
- In vehicles while performing work, or while travelling to work functions.
- In accommodation (i.e., hotel rooms) provided by the Council, at work related functions such as conferences, events, or training programs.
- Out of hours interaction when there is a strong connection to the employment relationship.
- Face to face or electronic communication interactions, including SMS, email, and social media platforms.

4. DEFINITIONS

Bystander	Someone who witnesses or overhears sexual harassment.
Client	All persons to whom services are provided by Council.
Informal Complaint	Informal complaints are not dealt with through a formal process or investigation. They explore options to resolve a matter without requiring factual proof or substantiation.
Formal Complaint	A process where an employee cannot resolve a matter informally, or from the outset wishes to have the matter formally investigated.
Complainant	A person who makes a formal or informal complaint of sexual harassment or victimisation.

Gender Equality	<p>Gender Equality requires:</p> <ul style="list-style-type: none"> • women, men, and non-binary people to be treated the same because they are equal (formal equality). • equality of opportunity and results, which sometimes necessitates non-identical treatment to address biological, and socially and culturally constructed differences (substantive equality). • the redistribution of power and resources among genders, the transformation of institutions, systems and structures that cause inequality, and the modification of harmful norms, prejudices and stereotypes that deny women their autonomy and agency, and the opportunity to develop their abilities, pursue their professional careers and make choices without the limitations they set for women (transformative equality).
Natural Justice	<p>All people have a right to natural justice in an investigation or complaint. This includes:</p> <ul style="list-style-type: none"> • being considered innocent until proven guilty. • being protected from false or malicious allegations. • being fully informed of the complaint and complaint process. • having the right of reply to the complaint. • having a support person, • the maintenance of confidentiality.
Positive Duty	<p>Under the Act, employers have a duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and victimisation as far as possible.</p>
Respondent	<p>The person identified by the complainant and/or investigator as having engaged in the alleged behaviour.</p>
Sexual Harassment	<p>Unwanted conduct of a sexual nature, which could reasonably be expected to make the other person feel offended, humiliated, or intimidated. It can be physical, verbal or written (including electronic communication).</p>
Vicarious Liability	<p>Refers to an employer's legal responsibility for unlawful actions undertaken by their agents or employees. Employers can be held legally responsible for acts of discrimination or harassment that occur in the workplace in connection with a person's employment.</p>

Victimisation	Treating a person less favourably because they have asserted their right to raise a complaint, supported someone else to raise a complaint, acted as a witness to a complaint or refused to do something because it is unlawful, or breaches Council policies or the Staff Code of Conduct.
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5. PRINCIPLES

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

The Moyne Shire Council is committed to providing a safe, flexible and respectful environment for staff, councillors, employees, volunteers, contractors and clients that is free from all forms of sexual harassment.

The principles associated with this policy are that:

- sexual harassment is unlawful and will not be tolerated in the workplace.
- sexual harassment is gendered. Most instances of sexual harassment (but importantly not all) are experienced by women,
- council has a positive duty to ensure the health and safety of employees:
- staff 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.
- council recognises that comments and behaviour that do not offend one person can offend another. What is important is whether a reasonable person would anticipate that the other person would be offended.

What is Sexual Harassment *The Victorian Equal Opportunity Act 2010* defines sexual harassment as any unwelcome behaviour of a sexual nature that makes a person feel offended, humiliated, and/or intimidated.

Sexual harassment can be physical, verbal or written. Examples include:

- 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 images or objects;
- repeated requests to go out on dates;
- unwanted displays or declarations of affection;
- requests for sex;
- sexually explicit emails, text messages or posts on social media;

- sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences);
- actions or comments of a sexual nature in a person's presence (even if not directed at that person).

Sexual harassment can occur at any level of the organisation, it can be experienced or perpetrated by anyone and may involve a councillor, co-worker, volunteer, supervisors, manager, service provider client or customer. Lack of intent is no defence in sexual harassment cases.

Whether the harasser intended to offend is not relevant. What is important is whether a reasonable person would anticipate that the other person would be offended. A single incident can be enough to constitute sexual harassment, it does not need to be a pattern of behaviour.

Sexual harassment in workplaces is also shown to be driven by gender inequality. Women are much more likely than men to experience sexual harassment, and women living with a disability, young women, ATSI women, people of diverse sexual orientation and other diverse backgrounds are even more likely to experience sexual harassment.

Harassment by third parties

People may experience sexual harassment while performing their role at the Council by people who are not directly connected with Council.

Council may take a range of actions to address sexual harassment by third parties including, but not limited to:

- Liaising with the authority responsible for the person, if relevant
- Withdrawing council services from a client
- Banning a person from a workplace
- Reporting a matter to the police

Technology and social media

Sexual harassment can occur through electronic means such as emails, phone calls, text messages, by viewing pornographic websites, and through social media, regardless of whether the post was made during work hours or not. It can start in 'real life' and carry over to online spaces. It can also occur in online spaces from third parties.

The same rules about sexual harassment apply in the virtual world as they are in the real world.

What is not sexual harassment

Sexual harassment is not behaviour which is based on mutual attraction, friendship, and respect. If the interaction is consensual, welcome, and reciprocated, it is not sexual harassment.

6. POLICY

Professional and appropriate behaviour

- 6.1 Sexual harassment in our workplaces in an unacceptable and unlawful form of behaviour which will not be tolerated under any circumstances.
- 6.2 All Council staff are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.
- 6.3 A failure to behave in accordance with 6.2 above may result in a breach of this policy and any employee may be subject to disciplinary action in accordance with Council disciplinary policy. Sexual harassment may be deemed to constitute 'serious misconduct' under the *Fair Work Act 2009 (Cth)*.
- 6.4 Council will provide appropriate training for all employees in relation to sexual harassment. Contracted staff are required to abide by their employer's sexual harassment policies providing they meet Council's expected standards, and they must otherwise abide by this Policy.

Reporting Sexual Harassment

- 6.5 Employees or contracted staff who experience sexual harassment from other staff, clients, customers, suppliers or members of the public are encouraged to immediately report such behaviour.
- 6.6 Council understands that staff members experiencing sexual harassment may be reluctant to report inappropriate workplace behaviours. Council will provide care and support to create a safe environment as much as it reasonably can.
- 6.7 All reports of sexual harassment will be taken seriously.
- 6.8 Bystanders that are aware of sexual harassment are encouraged to discuss or report sexually harassing behaviours to People and Culture.
- 6.9 Victimisation due to involvement in a sexual harassment complaint will not be tolerated and may result in disciplinary action in accordance with Council's Disciplinary Policy. A complaint that is vexatious or frivolous and motivated by malicious intent could be considered to be in breach

of the Staff Code of Conduct.

Confidentiality

6.10 Where appropriate disclosures/complaints of sexual harassment will be treated in confidence in order to protect personal privacy as much as possible. However, allegations of sexual harassment or potential criminal conduct are serious and should be considered accordingly. In some instances, a matter may need to be escalated or referred without agreement from the employee, contracted staff or bystanders, particularly in circumstances that may:

- Constitute a criminal offence;
- Constitute an occupational health and safety risk; or
- Require disciplinary action.

Only relevant persons in Council, on a need-to-know basis, will be advised of the complaint.

7. RESPONSIBILITIES

Accountability and responsibility for this policy is outlined below.

All Employees, Councillors, Contractors and volunteers, must:

- comply with this policy;
- model appropriate behaviour and support the organisation to be free from all forms of sexual harassment;
- participate in related training provided by Council;
- 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 Moyne Codes of Conduct and Council's values, policies and procedures; and
- promote gender equality and inclusion in the workplace.

Leaders

In addition to their responsibilities as staff, those with leadership responsibilities must also:

- monitor the work environment and risk factors to ensure appropriate standards of conduct are observed;
- encourage a respectful, safe and inclusive environment and role model

- appropriate behaviours;
- promote awareness of this Policy within their area;
- report observed incidents immediately to People & Culture;
- treat all complaints seriously and take immediate and appropriate action to address them;
- advise complainants that action is being taken;
- ensure that bystanders are supported to act if inappropriate behaviour is witnessed;
- discuss any complaint with their immediate supervisor (if appropriate) and People & Culture as soon as possible; and
- contact People & Culture for further detail on management of reports of sexual harassment.

People and Culture

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

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

8. TRAINING REQUIREMENTS

To ensure organisational compliance, the Prevention of Sexual Harassment & Reporting training will be conducted on Induction and every two years for all Moyne Shire Council employees.

9. QUALITY RECORDS

Record	Retention/Disposal Responsibility	Location
Documentation relating to complaints made, the investigation process and outcomes	People & Culture	EDRMS
Training Attendance	People & Culture	Employee Training Records

10. SUPPORT OPTIONS

A range of options are available to provide support in regard to sexual harassment. Moyne Shire Council's primary contacts include People & Culture on 5568 0504 and/or jobs@moyne.vic.gov.au

Employee Assistance Program

Moyne Shire Council provides an EAP, which is a short-term, confidential, counselling service. The EAP is staffed by independent qualified practitioners.

All employees have access to the EAP.

External Support

Psychological and general support and advice can be accessed at:

- **1800RESPECT** – 1800RESPECT provides information, referral and counselling services to people experiencing or at risk of experiencing sexual assault, domestic or family violence. It is also available to friends, family and professionals. 1800RESPECT provides confidential service 24 hours a day seven days a week. You can contact 1800RESPECT by visiting www.1800respect.org.au or calling 1800 737 732.
- **Centres Against Sexual Assault** – Centres Against Sexual Assault are non-profit, government-funded organisations that provide support, counselling and crisis care to child and adult victims of sexual assault and their family. You can find your local centre by visiting www.casa.org.au
- **Lifeline** – Lifeline is a national charity providing all Australians experiencing a personal crisis with access to 24-hours crisis support and suicide prevention services.
You can contact Lifeline by visiting www.lifeline.org.au, calling 13 11 14.
- **Sexual Assault Crisis Line** – The Sexual Assault Crisis Line is a state-wide, after-hours, confidential, telephone crisis counselling service for people who have experienced both past and recent sexual assault. You can contact the Sexual Assault Crisis Line Victoria by visiting <https://www.sacl.com.au> or by calling 1800 806 292.
- **Victorian Human Rights and Equal Opportunity Commission** – The Victorian Human Rights and Equal Opportunity Commission can be contacted on 1300 292 153 and www.humanrightscommission.vic.gov.au/

An employee may also wish to contact their union for representation and support.

11. HUMAN RIGHTS

It is considered that this policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

12. ATTACHMENTS

Any complaints and subsequent investigations made under this policy will be conducted in line with the Equal Opportunity, Harassment and Bullying Procedures.

This policy should be read in conjunction with Council's other relevant workplace policies and procedures.

Version Number	Details of change
OD001/2 version 2	
OD001/2 version 3	