

Sexual Harassment Policy Framework

Introduction

The Law Institute of Victoria (**LIV**) represents more than 19,000 lawyers and people working in the law in Victoria, interstate and overseas. The LIV calls for the profession to stand together with a zero tolerance towards harassment, to educate the profession and support vulnerable employees with avenues to address complaints¹. In doing so, we also note the position of Victoria's legal regulator, the Victorian Legal Services Board and Commissioner, (**VLSB+C**), as outlined in its 2019 regulatory statement², is that, for lawyers, sexual harassment is conduct that is capable of constituting professional misconduct.

This policy acts as a framework for the Victorian legal profession, and seeks to promote a culture of respect, professionalism and inclusiveness within Victoria's legal profession.

The LIV encourages all Victorian legal workplaces to develop and implement their own workplace policies to address inappropriate sexual behaviour in the workplace and commit to responding to complaints effectively: see 'best practice steps' on page 3 of this policy.

To assist with this, a one-page template policy framework ('**Model Policy**') is **attached**. If adopted, it is recommended that the Model Policy be placed in an appropriate, accessible location – for example, the staff kitchen. This does not prevent the workplace from having a more comprehensive policy in place that encompasses as a minimum, the contents of the Model Policy.

What are the objectives of this policy?

The objectives of this policy are:

- To create an environment where all people working in the legal profession are treated with dignity, courtesy and respect;
- To set standards of appropriate conduct among legal professionals;
- To provide for effective procedures for handling complaints of sexual harassment based on the principles of natural justice;
- To encourage the reporting of sexual harassment;
- To ensure that complainants are protected from victimisation or reprisals;
- To ensure that all legal professionals have access to sexual harassment awareness training; and
- Promoting appropriate standards of conduct at all times and all workplace settings.

¹ Law Institute of Victoria, 'Legal profession has a problem with sexual harassment' (Media release, 24 June 2020) <<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/June-2020/Legal-profession-has-a-problem-with-sexual-harassm>>.

² Victorian Legal Services Board and Commissioner, 'Sexual Harassment Statement to the Profession' (Statement, February 2019) <<https://lsbc.vic.gov.au/lawyers/practising-law/sexual-harassment/sexual-harassment-statement-profession>>.

Definition

Under the *Equal Opportunity Act 2010* (Vic), a person sexually harasses another person if he or she:

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

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.³

A person's (the harasser's) intention is irrelevant under this definition.

Sexual harassment can take many forms. Sexual harassment can be obvious or indirect, physical or verbal, repeated or one-off and can be perpetrated by males and females against people of the same or opposite sex.

Examples of sexual harassment include ⁴ :	
staring, leering or unwelcome touching	emailing pornography or rude jokes
suggestive comments or jokes	displaying images of a sexual nature around the workplace
unwanted invitations to go out on dates or requests for sex	communicating content of a sexual nature through social media or text messages
intrusive questions about a person's private life or body	unnecessary familiarity, such as deliberately brushing up against a person

Complaints

All sexual harassment policies must include a clear internal grievance procedure, as well as information on where to lodge an external and confidential complaint, including:

- The Victorian Legal Services Board and Commissioner (VLSB+C)
Ph: (03) 9679 8001
Email: harassmentcomplaints@lsbc.vic.gov.au
- The Victorian Equal Opportunity and Human Rights Commission
Ph: 1300 292 153
Email: complaints@veohrc.vic.gov.au
- The Australian Human Rights Commission
Ph: 1300 656 419
Email: complaintsinfo@humanrights.gov.au

What are the legal obligations of an employer and employee?

Sexual harassment is unlawful under the *Sex Discrimination Act 1984* (Cth) and the *Equal Opportunity Act 2010* (Vic) in any work-related context. It is also covered by the *Occupational Health and Safety Act 2004* (Vic) as it is a workplace hazard that creates physical and psychological risks to health and safety. Employers can be held legally responsible for sexual harassment that occurs during formal and informal work settings. Lawyers also have additional obligations not to sexually harass people. The Australian Solicitors' Conduct Rules provides that a solicitor must not in the course of practice, engage in conduct which constitutes sexual harassment.⁵

³ *Equal Opportunity Act 2010* (Vic) s 92.

⁴ Australian Human Rights Commission, 'Quick Guide - Sexual Harassment' (Webpage, accessed 29 October 2020) <<https://humanrights.gov.au/quick-guide/12096>>.

⁵ Rule 42.1.2, Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 under the Legal Profession Uniform Law <<https://www.legislation.nsw.gov.au/regulations/2015-244.pdf>>. The LIV notes that the wording of Rule 42 is currently being reviewed by the Law Council of Australia.

What 'best practice' steps should employers take?

To prevent sexual harassment from occurring in workplaces, there needs to be a comprehensive, whole of organisation approach including:

- Responding to complaints effectively, by ensuring responses are timely and consistent with proportionate disciplinary outcomes and ensuring that workers are safe and supported throughout the complaints process;
- Developing and monitoring 'good' policy (that is policy that is visible, raises awareness of rights, presented to new employees at induction, is refreshed and has clear grievance processes);
- Eliminate the risks from sexual harassment so far as reasonably practicable. If the risk cannot be eliminated, take steps to minimise risk as far as reasonably practicable (for example: implementing a policy that limits the amount of alcohol permitted at work functions);
- Dissemination and communication of the policy;
- Effective training for all and in particular line managers to help them build teams that respect others with an understanding that preventing sexual harassment in their team is their responsibility;
- Promoting standards of behaviour through discussion, with positive leadership styles and modelling of behaviour;
- Adopting a victim-focused approach, while including the right to a support person, for both the complainant and respondent, and providing referrals for additional support;
- Appointing a designated person or contact officer whom employees can speak to if they have any concerns regarding sexual harassment in the workplace;
- Promoting bystander responses (for example: see something - say something); and
- Responsive and assertive grievance handling procedures.⁶

Employers adopting this policy should do all that is reasonably necessary to create an environment that does not tolerate any form of sexual harassment. This includes providing adequate support during the complaint process, and ensuring that sexual harassment complaints are handled swiftly, confidentiality, and fairly with protection from reprisal.

This policy provides general information only about the subject matter covered. It is not intended, nor should it be relied on, as providing legal advice. The LIV encourages organisations, employers and employees to seek their own independent legal advice if required.

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⁶ Victorian Public Sector Commission, 'Prevention' (Web page, updated 22 November 2018) <<https://vpsc.vic.gov.au/html-resources/guide-prevention-sexual-harassment-workplace/5-prevention/>>.

SEXUAL HARASSMENT MODEL POLICY

[Organisation name] considers workplace sexual harassment as unacceptable and a known cause of psychological and physical harm. [Organisation name] will strive to facilitate a workplace environment that is free from offensive or intimidating conduct.

Breaches of this policy will result in disciplinary action.

What is Workplace Sexual Harassment

Sexual harassment is any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, in circumstances where a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person harassed would be offended, humiliated or intimidated.

Acts of sexual harassment may include:

- uninvited touching, kissing or embraces
- smutty jokes or comments
- insults, taunts, teasing or name-calling of a sexual nature
- making promises or threats in return for sexual favours
- displays of sexually graphic materials
- repeated invitations to go out after prior refusal
- sexual gestures
- staring or leering at a person
- unwelcome physical contact
- requests for sex
- sexually explicit conversation
- persistent questions or insinuations about a person's private life
- offensive phone calls or letters
- stalking
- offensive email or SMS messages or computer screen savers
- threats to share intimate images or video without consent
- actual or attempted sexual assault

[Some of the above examples may amount to offences under criminal law and will be referred to police as well as being dealt with under OH&S laws.]

What is a "Workplace"

Under Victorian OHS Laws, a workplace means a place, whether or not in a building or structure, where employees or self-employed persons work.

Consequently, sexual harassment can occur:

- at a worker's usual workplace;
- when working remotely, such as on client premises;
- at work-related activities, such as conferences and social events; or
- by electronic means, including through social media platforms.

What is Not Sexual Harassment

Behaviour and interaction which is consensual, welcome and reciprocated is not sexual harassment.

Disciplinary Action

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

The Australian Solicitors' Conduct Rules provides that a solicitor must not in the course of practice, engage in conduct which constitutes sexual harassment.

Legal action can be brought against both employees and employers where for example, the employer failed to take reasonable measures to eliminate sexual harassment, as far as possible.

[Organisation name] has a legal responsibility to prevent sexual harassment and will monitor the workplace to ensure as far as reasonably practicable, that it is free from sexual harassment.

[Organisation name] shall ensure that all employees receive training and regular refresher training in the prevention of sexual harassment in the workplace.

Complaints Process

[Organisation name] will treat all complaints seriously and take immediate action to resolve the matter. You may also lodge a complaint with the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission. You can also lodge a confidential complaint to the Victorian Legal Services Board and Commissioner: phone: (03) 9679 8001; email: harassmentcomplaints@lsbc.vic.gov.au.

If you have a complaint of sexual harassment, please contact [relevant department or individual] as soon as possible following the alleged event. If you feel that the above may not be the best persons to report the conduct to, feel free to raise the matter with a more senior person. You can also request a support person. [Organisation name] will ensure that the complaint is investigated promptly, confidentially and impartially and that the person making the complaint is protected from victimisation or reprisals.