

# PREVENTING SEXUAL HARASSMENT

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## 1 PURPOSE

- 1.1 The purpose of this policy is to establish a consistent approach to preventing and addressing incidences of sexual harassment in the workplace.
- 1.2 This policy explains what sexual harassment is, what Workers can do to prevent it from occurring, and what Workers can do to address sexual harassment that has occurred.
- 1.3 This policy observes the legislative requirements of an Organisation and its Workers under the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (*Cth*) (*Respect@Work Act*) and the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 with regard to taking reasonable and proportionate measures to eliminate unlawful sex discrimination, including sexual harassment, as far as possible.

## 2 PRINCIPLES + FRAMEWORK

- 2.1 The Organisation will not tolerate sexual harassment. The Organisation is committed to taking all reasonable steps to prevent an employee from committing acts of sexual harassment in connection with his or her employment or duties to the Organisation. In this regard the Organisation's adoption and implementation of this policy is an important preventative step.
- 2.2 Acts of sexual harassment occurring after work or away from the workplace may still have a relevant connection with an employee's employment or duties. This policy applies to any conduct occurring after work hours or away from the workplace, including at social activities, where there is a possible connection with the Organisation.
- 2.3 Every Worker will receive this policy when they join the Organisation. Workers will have access to the policy during their association with the Organisation and receive regular refresher training about its content. The Organisation will periodically review the policy to ensure it is up to date. If necessary, the Organisation will vary the policy and make Workers aware of the changes.

- 2.4 Every person associated with the Organisation is entitled to expect that this policy will be followed. Workers who do not comply with it will face disciplinary action, which may include dismissal.
- 2.5 The Organisation takes all reasonable steps to prevent a Worker from committing acts of sexual harassment in connection with his or her employment or duties with the Organisation to mitigate the Organisation's exposure to vicariously liability for that conduct.

### **3 WHAT IS SEXUAL HARASSMENT?**

- 3.1 Sexual harassment is unwelcome conduct of a sexual nature. However, unwelcome conduct of a sexual nature will only be sexual harassment if it occurs 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 by the conduct. The actual motives or intentions of the person engaging in the conduct are irrelevant.
- 3.2 The relationship between the person harassed and the person who engaged in the unwelcome conduct of a sexual nature is also relevant to the question of whether the conduct is sexual harassment. For example, a reasonable person might anticipate that unwelcome conduct of a sexual nature engaged in by a senior manager of an Organisation in relation to an employee under his or her supervision is highly likely to humiliate or intimidate that employee. Other relevant circumstances might include age, marital status, culture/race, sexuality, gender, diversity or religious belief of the person harassed.
- 3.3 Conduct of a sexual nature in relation to another person includes:
- a sexual advance or a request for sexual favours to that person;
  - conveying a message with content of a sexual nature to that person, or in the presence of that person (whether by SMS, email, in person or otherwise);
  - sharing online or social media content of a sexual nature and/or social media profiles displaying images of a sexualised nature to that person, or in the presence of that person;
  - staring, leering or unwelcome touching of that person, such as kissing, touching in a sexual manner, patting, pinching or unnecessary familiarity, such as deliberately brushing against the person;
  - issuing gender-based insults or obscene gestures to that person, wolf-whistling or taunting that person;
  - directing suggestive comments, innuendo or intrusive questions about that person's private life or body;
  - displaying obscene or pornographic material to, or near, that person;
  - directing sexual banter, offensive jokes or crude conversation to or near that person.
- 3.4 Conduct between parties that is the subject of mutual acceptance or consent is not considered to be sexual harassment, however consenting parties must consider impacts of their behaviour to others in the workplace and adhere with acceptable behaviour requirements. Failure to behave in an appropriate manner, may result in disciplinary action, including up to dismissal if behaviour is deemed unacceptable.

### **4 WHEN IS SEXUAL HARASSMENT UNLAWFUL?**

- 4.1 It is unlawful under anti-discrimination legislation for:
- a Worker of the Organisation to sexually harass an employee of this Organisation, or a person who is seeking to become a Worker of this Organisation; or
  - any person to sexually harass another person in the course of providing, or offering to provide, goods or services to that other person on behalf of this Organisation.
- 4.2 Acts of sexual harassment may also constitute criminal offences, such as:

- physical molestation or assault;
- indecent exposure;
- sexual assault or aggravated sexual assault occasioning bodily harm;
- stalking; or
- obscene communications (telephone calls, faxes, letters, emails etc.)

4.3 Intoxication will never excuse sexual harassment or other unacceptable behaviours.

## **5 REPORTING SEXUAL HARASSMENT**

- 5.1 If you are the victim of sexual harassment, you might wish to let the person engaging in the conduct know that you consider their behaviour to be unacceptable and that if it continues you will report the conduct under this policy. This may be enough to stop the conduct.
- 5.2 If you are the victim of sexual harassment, you are encouraged to report this to a manager and/or your People Experience (PE) Business Partner.
- 5.3 If you are not a victim but have information to suggest that a person is experiencing sexual harassment in connection with the Organisation, you are also encouraged to report this to a manager and/or your People Experience Business Partner – this is referred to as ‘upstanding behaviour’ and can improve cultural norms regarding behaviour and reporting.
- 5.4 If you are uncomfortable raising the matter with a manager or your PE team, you can raise the matter with the Feros Care Integrity Officer at [integrity@feroscare.com.au](mailto:integrity@feroscare.com.au).
- 5.5 Managers and the Integrity Officer will treat all complaints and reports of sexual harassment seriously. If you are a victim, they are able to discuss with you the options to resolve the matter effectively.
- 5.6 If you speak to a manager or the Integrity Officer about a sexual harassment matter, you can indicate that your communications be treated as confidential. The manager or Integrity Officer will respect your confidence so long as it is consistent with the Organisation’s commitment (and legal obligation) to taking reasonable and practical steps to prevent sexual harassment occurring.
- 5.7 You can also raise the matter with a state or Commonwealth agency that has the power to resolve sexual harassment matters, such as the Australian Human Rights Commission or the Fair Work Ombudsman.
- 5.8 If the matter is a criminal matter, you should also raise it with the police.
- 5.9 If you are not a victim but you have information to suggest that a person is experiencing sexual harassment in connection with the Organisation, you must not spread gossip or rumours about what you know. You must only report this information to a manager, the People Experience team or the Integrity Officer. Otherwise, you will undermine the Organisation’s ability to deal with the conduct effectively.
- 5.10 If you make a report of sexual harassment without a genuine belief in the truth of the matters you are reporting, you may be subject to disciplinary action.

## **6 HANDLING OF SEXUAL HARASSMENT REPORTS**

- 6.1 If you have made a report as having experienced sexual harassment to a manager, the People Experience team or the Integrity Officer, you will have the option of making a formal complaint. This means that you are formally asking the Organisation to take some action in relation to the conduct.
- 6.2 If the Organisation receives a report from a person who is not a victim, the Organisation may approach the person who was the victim of the alleged conduct and ask if they want to make a formal complaint.

6.3 A formal complaint is made by making a written statement outlining what the alleged victim believes occurred, stating names, dates and witnesses. The parties to the complaint-resolution process will be the alleged victim, the alleged harasser and the Organisation.

6.4 If you are the victim of sexual harassment, you do not have to make a formal complaint. However, the Organisation may still act on the matters raised in any report if consistent with the Organisation's commitment (and legal obligation) to taking reasonable and practical steps to prevent sexual harassment or occurring. The Organisation will consult with the victim before taking any action.

6.5 Courses of action may include:

- **Investigation:** The Organisation may arrange for a formal investigation of the matters raised in the report for the purposes of ascertaining whether any disciplinary action should be taken against the alleged harasser. In this case, the Organisation will appoint a suitably qualified, independent person to investigate whether it is more likely than not that the facts alleged in the report or complaint are true.

Prior to making any finding out alleged facts, the investigator will give the alleged harasser a fair and reasonable opportunity to respond to the matters alleged.

As far as reasonably practicable, the Organisation will ensure any investigation is undertaken promptly and confidentially, and that the parties are kept up to date about its progress. All documentation relating to the report or complaint will be kept secure and access confined to those persons who need access.

Depending on the extent to which the complaint is substantiated, the Organisation may warn or dismiss the alleged harasser, or implement some other arrangement.

- **Informal counselling:** The Company may informally counsel the alleged harasser and remind them of the requirement to comply with this policy. No formal findings would be made about the matters that are the subject of the report or complaint.
- **Conciliation:** The parties may consent to the complaint being submitted to a process of conciliation. Under this process, a suitably qualified independent person will convene a meeting of the parties to explore options for resolving the matters that are the subject of the complaint by agreement. This may occur even when an investigation is in progress.
- An example of an outcome of conciliation is an agreement between the parties that provides:
  - The investigation into the complaint will cease;
  - The Organisation will issue a confidential written warning to the alleged harasser that any future breach of the policy will place his or her employment in jeopardy;
  - The alleged harasser will be required to undertake refresher training about the policy;
  - The alleged harasser will apologise to the victim for his or her conduct;
  - All parties agree to keep the agreement confidential and the victim will agree not to pursue the complaint any further (provided that the alleged harasser complies with this policy).

## 7 VICTIMISATION (INCLUDING ADVERSE ACTION)

7.1 Victimisation happens where someone subjects another person to a detriment or takes (or threatens to take) another form of adverse action because they propose to, have, or are believed to have taken any of the following steps under this policy, under anti-discrimination legislation, work health and safety legislation, the Fair Work Act 2009 (Cth) (FW Act), or any other workplace law:

- exercised a right under this policy, or their contract of employment or engagement with the Organisation;
- exercised a workplace right under the FW Act;
- alleged that another person has breached this policy or applicable legislation, or any other law; or
- assisted someone in raising a workplace issue, concern or complaint.

- 7.2 A detriment includes demotion, dismissal, suspension, loss of a benefit, being ostracised or excluded from work or any work-related event or being the subject of gossip or innuendo.
- 7.3 Adverse action against a Worker can include a detriment, as well as any prejudicial alteration of, or injury to, the Worker's position, employment or engagement, and discrimination between Workers.

## 8 BEHAVIOUR CAN BREACH THIS POLICY EVEN IF IT IS NOT UNLAWFUL

- 8.1 The Organisation may form the view that the behaviour is Unacceptable Behaviour that breaches this policy even if it is not unlawful behaviour, or a complaint has not been made about the behaviour.

## 9 COMPLAINTS

- 9.1 Workers are encouraged to report any instances of Unacceptable Behaviour. If a Worker believes that they are being subjected to Unacceptable Behaviour, the Worker should follow the processes set out in the Dispute and Grievance Policy and Procedure.
- 9.2 More serious forms of Unacceptable Behaviour such as stalking, sexual or physical assault or indecent exposure may also constitute a criminal offence. Complaints of this nature or conduct seriously endangering others are serious and are to be directly referred to the General Manager People Experience. Where a Worker's complaint involves criminal conduct, the Organisation also encourages the Worker to report the matter to the police. Where a Worker advises the Organisation that they wish to take such action, the Organisation will provide appropriate support.
- 9.3 The Organisation takes complaints of Unacceptable Behaviour seriously and will determine the appropriate way to deal with a complaint about alleged or suspected Unacceptable Behaviour in accordance with Dispute and Grievance Policy and Procedure.

## 10 NON-COMPLIANCE WITH THIS POLICY

- 10.1 Workers covered by this policy are required to comply with the reasonable directions and instructions that this policy contains.
- 10.2 Due to the serious nature of workplace behaviour issues, in the event that the Organisation discovers a breach of this policy, or a complaint is made about a breach that is substantiated, then disciplinary action may be taken by the Organisation.
- 10.3 Disciplinary action may include counselling, training, warnings, and termination of a Worker's employment or engagement.

## 11 DEFINITIONS

Term	Definition
Complainant	means the Worker raising the grievance.
Unacceptable Behaviour	means the behaviours set out in the Company's Preventing Sexual Harassment Policy, including unlawful discrimination, harassment, bullying and victimisation.
Party/Parties	means the Complainant and the Respondent.
Principles of Natural Justice	means procedural fairness in the handling of a grievance that involves all of the following elements:

	<ul style="list-style-type: none"> <li>• the opportunity for all Parties involved to be heard;</li> <li>• no unreasonable refusal to have a Support Person, if required;</li> <li>• the Respondent having knowledge of the nature and substance of the grievance in sufficient detail to allow them to formulate a meaningful response;</li> <li>• the right to an objective decision-maker; and</li> <li>• a final decision based on the relevant evidence</li> </ul>
Respondent	means the Worker against who the grievance is made by the Complainant.
Support Person	Includes a person who: <ul style="list-style-type: none"> <li>• is not a Worker in the same department as the Parties;</li> <li>• is not associated with the grievance or the issues being addressed in a meeting or discussion;</li> <li>• has provided the Company their name and contact details at least 24 hours prior to supporting a Party in a meeting or discussion;</li> <li>• is not in a more senior role than the person conducting the meeting or discussion; and</li> <li>• is not someone who may be disruptive to the process (for example, a former Worker).</li> <li>• supports the Worker during the process, but is not permitted to advocate on their behalf;</li> </ul>
Workers	Refers to any employees or volunteer in any part of the organisation. It also includes external contractors engaged to provide support services and equipment to our client groups.

## 12 KPIs, DATA COLLECTION AND ANALYSIS

- 12.1 Number of reported incidences of sexual harassment
- 12.2 Number of substantiated incidences of sexual harassment and outcomes
- 12.3 Number of reports of sexual harassment that proceed to the Fair Work Ombudsman or Australian Human Rights Commission.

## 13 REFERENCES TO STANDARDS AND LEGISLATION

### External Links:

Aged Care Act 1997: <https://www.legislation.gov.au/Details/C2021C00344>

Aged Care Quality Standards: <https://www.agedcarequality.gov.au/providers/standards>

NDIS Act 2013: <https://www.legislation.gov.au/Details/C2022C00157>

Fair Work Act 2009 <https://www.legislation.gov.au/Details/C2017C00323>

Anti-Discrimination Legislation <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law>

## 14 RELEVANT RESOURCES / DOCUMENTS

Customer Feedback Program	<a href="https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=39978&amp;13606">https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=39978&amp;13606</a>
Dispute and Grievance Management Policy	<a href="https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=41139&amp;13606">https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=41139&amp;13606</a>

Social Media Policy	<a href="https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=29612&amp;13606">https://ekey.au/ssl/AKS2/tpg/x3docgrp1.asp?docID=29612&amp;13606</a>
Integrity Officer Position Description	<a href="https://ekey.au/ssl/AKS2/tpg/x3docgrp4.asp?docID=39205&amp;13606">https://ekey.au/ssl/AKS2/tpg/x3docgrp4.asp?docID=39205&amp;13606</a>
Workplace Bullying, Discrimination and Harassment Procedure	<a href="https://ekey.au/ssl/AKS2/tpg/x3docgrp2.asp?docID=41138&amp;13606">https://ekey.au/ssl/AKS2/tpg/x3docgrp2.asp?docID=41138&amp;13606</a>

## 15 APPROVAL AND REVIEW DETAILS

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