

Sexual Harassment and Assault Policy and Procedure

Applies to: This policy and procedure applies to all employees, volunteers, contractors, visitors and people we support.

Specific responsibility: Inclusion Melbourne staff and volunteers

Version: 1

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Policy context:

ISO 9001: 2015	6.1; 6.2; 6.3; 7.1; 7.1.1; 7.1.2; 7.1.4
Legislation or other requirements	EO Act 2010: Equal Opportunity Act 2010
Contractual obligations	

OBJECTIVE

This policy and procedure outlines Inclusion Melbourne's position on protecting the people we support, employees and volunteers of the organisation to be free from sexual harassment and/or assault.

In this policy and procedure, Inclusion Melbourne puts forth preventative and responsive measures taken to reduce the risk and minimise the harm of sexual harassment and/or assault.

Inclusion Melbourne's responsive and proactive measures include:

- Full and frank reporting of adverse events.
- Understanding the detailed causes and factors relating to adverse events.
- Holding those responsible for the harassment and assault accountable for their actions.
- Responding immediately and efficiently, with sensitivity and confidentiality.
- Upholding a 'zero-tolerance' policy towards offenders.

SCOPE

This policy and procedure applies to all employees, volunteers, contractors, visitors and people we support. The measures in this policy and procedure can be enacted at any time, regardless of the individual's contact with Inclusion Melbourne and to be actioned by Inclusion Melbourne, the incident can occur at work, at work events, or between stakeholders outside of work hours.

POLICY STATEMENT

Inclusion Melbourne does not tolerate any form of sexual harassment or assault, either attempted or enacted. Inclusion Melbourne is committed to providing a workplace and support service that is free from sexual harassment and/or assault. This policy and procedure complies with all relevant legislative requirements including the Equal Opportunity Act (2010), the Sex Discrimination Act 1984 and recommendations by the Human Rights Equal Opportunity Commission Victoria.

PROCEDURES

1. Definitions

Sexual Harassment is defined by the Equal Opportunities Act 2010 as unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written. It can include:

- comments about a person's private life or the way they look
- sexually suggestive behaviour, such as leering or staring
- 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
- requests for sex
- sexually explicit emails, text messages or posts on social networking sites.

In law, co-workers can be named sole respondents in cases of alleged sexual harassment.

Sexual Assault includes rape, assault with intent to rape and indecent assault. An indecent assault is an assault that involves unwanted sexual actions forced upon a person against their will, through the use of physical force, intimidation and/or coercion without that person's consent. Examples are unwelcome kissing or touching in the area of a person's breasts, buttocks or genitals. Indecent assault can also include behaviour that does not involve actual touching, such as forcing someone to watch pornography or masturbation.

Rape involves the alleged penetration or attempted penetration (anal, oral or vaginal) through the use of physical force, intimidation and/or coercion without the other person's consent.

Note: Any allegation of rape must immediately be reported to the Police, with the assistance of a staff person.

2. Responsibilities

All people we support are responsible for:

- Talking to staff if anything concerning happening, or if any questions arise on the topic.
- Listening and engaging with Inclusion Melbourne employees and volunteers who are explaining their rights and responsibilities.

All employees and volunteers are responsible for:

- Reading material as per this topic provided by Inclusion Melbourne.
- Participating in training offered by the organisation that includes issues related to sexual harassment.
- Reporting concerns to their supervisor, or the police.
- Promoting awareness of sexual harassment policies and procedures within their workplace.

All managers are responsible for:

- Reading material as per this topic provided by Inclusion Melbourne.

- Participating in training offered by the organisation that includes issues related to sexual harassment.
- Reporting situations of potential concern to their manager and writing Incident Reports.
- Promoting awareness of sexual harassment policies and procedures within their workplace.
- Preventing sexual harassment and victimisation, where possible.
- Promoting the timely reporting and resolution of sexual harassment within their workplace.
- Ensuring that all staff, volunteers, residents, people we support and contractors are aware of the appropriate and acceptable standards of behaviour in the workplace.
- Providing appropriate information and training in relation to sexual harassment which includes staff, volunteers and contractors.
- Dealing effectively and promptly with any sexual harassment concerns or enquiries within the workplace.

3. Grievance Complaints and Resolutions

Sexual harassment and assault is against the law and Inclusion Melbourne responds to all sexual assault incidents, occurring within the scope of this policy and procedure, regardless of the context. All Inclusion Melbourne personnel must respond to complaints of sexual harassment and assault in an appropriate and efficient manner, regardless of their position in the organisation.

Where an individual has not reported sexual assault or harassment that has happened to them, Inclusion Melbourne does not consider that consent was given.

4. Observing or Experiencing Sexual Harassment or Assault

Anyone who has observed or experienced sexual harassment must enact the following steps:

Step one: Confront the behaviour, explain that it is against basic rights and that it is a serious breach of Inclusion Melbourne policy, then report the behaviour to your supervisor.

Step two: If uncomfortable to confront the behaviour, or raise the issue with the supervisor, an alternative supervisor must be contacted, such as the Human Resources Manager.

Step two: If step one is unsuccessful and the behaviour continues, a documented discussion between yourself and the supervisor must take place in order to develop proactive and reactive strategies.

Step three: If behaviour continues, follow Warning Policy and Procedures.

Anyone who has observed or experienced assault must enact the following steps:

Step one: If comfortable to do so, advise the person enacting the behaviour that it is against the law and must be reported to the police. Consent is not required in this instance.

Step two: Contact the police, 000

Step three: Contact your supervisor or Human Resources Manager for support.

Step four: Seek advice from the Human Rights Equal Opportunity Act Victoria

<http://www.humanrightscommission.vic.gov.au/index.php/about-us>, if necessary.

5. Receiving a Complaint

Where an Inclusion Melbourne supervisor, or the Human Resources Manager receives a complaint of sexual harassment, the following steps must be taken:

1. Listen to the complaint seriously and treat the complaint confidentially. Allow the complainant to bring another person to the interview if they choose to.
2. Ask the complainant for the full story, including what happened, step by step.
3. Take notes, using the complainant's own words.

4. Ask the complainant to check your notes to ensure your record of the conversation is accurate.
5. Explain and agree on the next action with the complainant.
6. Where the complaint does not comply with the definitions of sexual harassment or assault, then the standard Warnings Policy and Procedure must be followed.

6. Investigating a Complaint

When a supervisor or Human Resources Manager investigates a complaint, they must enact the following procedure.

1. Contact the police to inform them of the allegation and follow instructions given.
2. Do not make assumptions of guilt or false allegations.
3. Advise the individuals involved of the potential outcomes of the investigation if the allegations are substantiated.
4. Interview all individuals involved and inform everyone of their rights and responsibilities.
5. Notify those involved of external bodies, including the Human Rights Equal Opportunity Commission Victoria.
6. Keep records of interviews and the investigation.
7. Interview the alleged harasser, separately and confidentially and let the alleged harasser know exactly of what they are being accused. Give them a chance to respond to the accusation. The person accused does not have to answer questions and can seek legal advice.
8. Listen carefully and record details. Ensure the individual being interviewed signs all notes taken.
9. Ensure confidentiality, minimise disclosure.
10. Decide on appropriate action based on investigation and evidence collected.
11. Check to ensure the action meets the needs of the complainant and the operations of Inclusion Melbourne.
12. Discuss any outcomes affecting the complainant with them to make sure where appropriate you meet their needs.

Falsified complaints:

Some complaints may be found to be false. In this circumstance, the individuals involved will be advised, verbally and in writing as to why.

7. Potential Outcomes of the Complaint

If the supervisor or Human Resources Manager finds the complaint is justified, the person handling the complaint must discuss the potential outcomes with the complainant. The discussion must be documented and filed. The outcomes can include:

- Immediate dismissal
- Change the environment or work practices to reduce the risk of future incidents.
- Offering counselling for the individuals involved.
- Reimbursement of counselling or medical expenses associated with the incident.
- Referral to the Human Rights Equal Opportunity Commission Victoria.
- Suspension or termination of support for the person we support.
- Involvement of the police.

As stipulated by the Staff Discipline Policy and Procedure, all documents concerning the complaint will be filed under the names of the people involved, regardless of the outcomes. The investigating person must write a report on the incident, detailing the incident, outcomes and recommendations for future

operations. The outcome agreed on will depend on circumstances including the severity and frequency of the complaint, the wishes on the complainant, prior incidents, counselling and warnings and the perpetrators awareness of their own actions.

8. Serious Offences

Some forms of sexual harassment and assault can be considered 'serious' and must be reported to the police. The following are considered 'serious':

- indecent exposure
- stalking
- sexual assault
- obscene or threatening phone calls, letters, emails, text messages and posts on social networking sites
- rape

9. Additional Information

Vexatious or Frivolous Complaints

If a person is found to have made a vexatious or frivolous complaint then action may be taken by the employer against this person. This action may include disciplinary action.

Withdrawing A Complaint

A complainant may withdraw their complaint at any time. Withdrawal of the complaint must be in writing and forwarded immediately to the person managing the complaint.

Please note a complainant who withdraws a complaint may face disciplinary action for making a vexation or frivolous complaint or continued investigation by the police.

Defamation

Information on sexual harassment allegations and investigations must be limited to people whose job it is to deal with the issue or complaint. If this basic principle is ignored, then it may invite a defamation suit from the respondent who may claim their reputation has been damaged by information spread about them.

Generally, if the complainant only discusses the complaint with appropriate people in the workplace, for example supervisors, coordinators, support workers, Complaints Officers, and is acting in good faith, that is, not making a complaint out of spite or malice, then the person will not be liable for defamation.

Protection of designated personnel

Anyone with a recognised genuine interest in the resolution or investigation of a complaint of sexual harassment (either informally or formally) is protected by the defence of qualified privilege.

Victimisation

Management has a legal duty to prevent victimisation resulting from any person exercising their rights to complain. It should be noted that a complaint of victimisation will be treated as a separate complaint.

Subpoena of records

All records and documentation which come into existence during the sexual harassment investigation may be subpoenaed. It is therefore vital that the documentation accurately record the complaint as comprising 'allegations'.

Reports of sexual assault and rape

In the case of sexual assault or rape the matter should be reported immediately to the police. Also contact the Centre Against Sexual Assault; this is a 24 hour service which provides immediate crisis support for victims, plus on-going counselling and support.

10. Additional Support

For individuals who have experienced or perpetrated sexual harassment or assault managers must offer the Employee Assistance Program to provide additional and professional support.

OTHER INFORMATION

Complainant- Is the person making the complaint regarding the claim of sexual harassment

- The complainant has the following right to:
- Bring a support person, or any other relevant person, to the complaints interview if they choose.
- Have their complaint heard and treated sympathetically, seriously and confidentially.
- Have an interpreter present, if appropriate.
- Peruse, correct and endorse their complaint and record of interview and to receive a copy of their record of interview, if requested.
- Be informed on the outcomes resulting from the investigation report.
- Have professional counselling, if in the opinion of the CEO, it is warranted.

The complainant has the following responsibility to:

- Not make vexatious or frivolous complaints about another person.
- Keep the complaint confidential within the workplace to minimise gossip and potential defamation claims.
- Report the complaint as accurately as possible given the circumstances.

Respondent - The respondent is the person about whom the complaint of sexual harassment has been made. The respondent to a formal complaint of sexual harassment has the right to:

- Contact a support person or union representative to discuss the issue before attending the complaints interview.
- Ask their support person or union representative or other relevant party to attend the complaint investigation interview.
- Seek independent advice.
- Have an interpreter present, if appropriate.
- Be treated fairly and without judgement.
- Receive and read the written complaint during the investigation interview.
- Respond to the formal complaint and discuss it from their perspective.
- Be informed of the outcomes resulting from the investigation report.

The respondent to a formal complaint of sexual harassment has the responsibility:

- To keep the complaint confidential so as to minimise gossip within the workplace.
- Not to approach the complainant or witnesses regarding the complaint.
- Not to victimise the complainant or witnesses relevant to the complaint.

DOCUMENTATION

Documents related to this policy	
Related policies	<ul style="list-style-type: none"> • Bullying, Harassment and Discrimination • Code of Conduct • Employee Assistance Program • Freedom from Abuse and Neglect • Privacy and Confidentiality
Forms, record keeping or other organisational documents	<ul style="list-style-type: none"> • Complaints Investigation Form

Policy review and version tracking			
Review	Date Approved	Approved by	Next Review Due
1		<i>Update Master Quality Manual.</i>	
2			
3			