



PREVENTING AND RESPONDING TO WORKPLACE SEXUAL HARASSMENT POLICY

1. POLICY PURPOSE

The purpose of this policy is:

- to ensure all employees understand the standards of behaviour expected of them and their legal rights and responsibilities in relation to workplace sexual harassment;
- to ensure all employees understand what sexual harassment is, how to prevent it, and how to respond to it in a way that minimises harm and ensures they meet their legal responsibilities.

2. APPLICATION OF THE POLICY

This policy applies to all MSC employees, including:

- permanent, fixed-term temporary, full-time, part-time or casual employees
- anyone who works in any other capacity for the department including volunteer workers, contractors, etc.

This Policy is not limited to the workplace or work hours. It applies to employees in all their work-related dealings with each other and with customers, contacts or clients of the department. It applies to employees while:

- in the workplace or when working off site
- at work-related functions (including social functions and celebrations)
- on work-related travel or
- attending conferences.

This Policy does not form part of any employee's contract of employment. Nor does it form part of any other workplace participant's contract for service. This policy is not intended to override the terms of any award, certified agreement or contract that applies to an employee.

3. DEFINITION OF SEXUAL HARASSMENT

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);
- of a sexual nature (a sexual advance, request for sexual favours or other conduct of a sexual nature);
- that a reasonable person (aware of all the circumstances) would anticipate could possibly make the person subjected to the conduct feel offended, humiliated or intimidated.

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

Examples of Sexual harassment in the workplace include:

- uninvited touching
- uninvited kisses or embraces
- smutty jokes or comments
- making promises or threats in return for sexual favours
- displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas
- repeated invitations to go out after prior refusal
- exposing genitals or sexual gestures
- insults, taunts, teasing or name-calling of a sexual nature
- staring or leering at a person or at parts of their body
- unwelcome physical contact such as massaging a person without invitation, deliberately brushing up against them or forcing a person to perform sexual acts
- touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps, or putting hands in a person's pocket
- requests for sex
- sexually explicit conversation
- persistent questions or insinuations about a person's private life
- offensive phone calls or letters
- stalking
- any digital content portrayed on any mediums of devices, including offensive e-mail messages or computer screen savers. This can include exposing information to humiliate an individual or a group.

Sexual harassment applies to both men and women. Sexual harassment may also be a criminal offence, if it involves sexual behaviour that makes a person feel uncomfortable, frightened, intimidated or threatened, or involves the use of physical or emotional force.

Sexual harassment does not include behaviour which is based on mutual attraction, friendship and respect, if the interaction is consensual, welcome and reciprocated.

4. SEXUAL HARASSMENT IS AGAINST THE LAW

Sexual harassment is against the law. McKinlay Shire Council may be held legally responsible for acts of sexual harassment committed by employees and volunteers. The *Sex Discrimination Act 1984 (Cth)* makes employers liable for acts of sexual harassment unless they have taken all reasonable steps to prevent it from taking place.

5. PREVENTING SEXUAL HARASSMENT

MSC is committed to taking a proactive and holistic approach to prevent sexual harassment in the workplace. Preventing sexual harassment is everyone's responsibility.

Under WHS laws, MSC has a positive duty to prevent sexual harassment, as it is a hazard and risk to a worker's physical and psychological health.

A. Leadership

It is expected that leaders at all levels within MSC will uphold this policy in full and proactively encourage others to do so too.

Power imbalance is a significant risk factor for sexual harassment. Therefore, it is critical that leaders at all levels comply with the Code of Ethics and Conduct for QLD government sector employees and all behavioural policies in place at MSC to better contribute to cultures that prevent workplace sexual harassment.

B. Diversity and Inclusion

Diverse and inclusive workplaces are essential for building safe and respectful workplace environments that are free from sexual harassment. Addressing gender inequality is fundamental to eliminating workplace sexual harassment.

C. Knowledge and education

MSC will ensure all leaders, managers and supervisors are trained to appropriately respond to disclosures of sexual harassment, ensure all workers are trained to appropriately identify sexual harassment, call out behaviour as active bystanders, and are aware of the reporting and response procedures.

D. Risk assessment

The duty requires MSC to eliminate risks to the health and safety of workers and other people so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks, they must be minimised so far as is reasonably practicable.

Prevention requires identification of risks. Leaders and managers should regularly identify and assess risk factors for sexual harassment, including by seeking feedback from staff and in consultation with Health and Safety committee. Workers should understand and consider work systems and practices to identify risks of exposure.

Examples of risk factors include:

- working after hours with minimal supervision;
- working in restrictive spaces like cars or small rooms;
- isolated work locations.

Prevention also requires assessment of the work environment. Sexual harassment may occur where a work environment or culture is sexually charged or hostile, even if the conduct is not directed at a particular person.

E. Transparency

MSC is committed to transparency on the number of incidences of sexual harassment in the organisation. This builds confidence in our reporting processes.

This does not mean full disclosure of all the details or disclosure of any reports which are found to be intentionally falsified or vexatious but rather considered sharing where possible of relevant identified information on a regular basis to encourage organisational learning and prevent similar incidents from happening in the future. In doing so, MSC will ensure confidentiality and privacy is maintained, and that no personal information or information which otherwise identifies victims or perpetrators can be ascertained from that data or any shared learning (or other) material.

6. REPORTING SEXUAL HARASSMENT

MSC strongly encourages individuals who have been sexually harassed or have witnessed sexual harassment to report the behaviour.

MSC will take all reports of sexual harassment seriously. The response to the report will be guided by the person making the report.

Making a report about sexual harassment does not necessarily automatically trigger a formal investigation, although that may be appropriate in some cases. Support, advice and early intervention may prevent further or more serious instances of sexual harassment from occurring.

Employees are encouraged to make timely reports; while being reassured they will not be treated unfairly because of any delay in reporting harassment.

A. A range of reporting pathways

Options available to report sexual harassment include:

- seeking support, advice and making a disclosure;
- reporting internally to MSC;
- reporting to an external authority.

Incidents of sexual harassment can be reported informally, formally, anonymously and confidentially. Reporting pathways are outlined in more detail below

B. Seeking support, advice and making a disclosure

Employees who have experienced or witnessed sexual harassment can:

- speak to a Director, Manager, Supervisor, HR Officer, WHS officer or Union Representative to raise concerns, receive support and discuss options that could help resolve the issue
- access the Employee Assistance Program, a confidential counselling, coaching and wellbeing service that is available to all employees and their immediate family members.
- seek advice from an external body, e.g. Australian Human Rights Commission, Anti Discrimination QLD, Safe Work QLD.

C. Report internally

Where self-management is not appropriate or does not resolve the matter, a report can be made (verbally or in writing) to MSC.

Where a report of sexual harassment is received, MSC will ensure the person impacted receives appropriate support and is involved in decisions about how to respond. All reports will be responded to promptly, taken seriously, and treated confidentially. Steps will be taken to protect anyone who makes a report from reprisals, adverse treatment or victimisation (see section 7 “G” below).

In cases of sexual assault, employees will be supported to make a report to the police and referred to specialised sexual assault support services.

D. Report to an external agency

A formal report about sexual harassment can be made to the following agencies:

- The Queensland Industrial Relations Commission (QIRC)
- The Queensland Human Rights Commission (QHRC)
- Crime and Corruption Commission (CCC)
- Optional, Queensland Police Service (where the conduct, such as alleged sexual assault, could or does constitute a criminal offence)

7. RESPONDING TO REPORTS OF SEXUAL HARASSMENT

MSC is committed to taking a trauma-informed and person-centred approach when responding to reports of sexual harassment. This includes:

- ensuring the safety, privacy and wellbeing of the person impacted are prioritised
- listening to the person impacted in a compassionate, non-judgmental and sensitive manner
- ensuring all processes are designed to minimise harm
- ensuring reports are handled fairly, impartiality and reasonably in accordance with procedural fairness principles
- ensuring all participants in the process have clear information about the process and how procedural fairness will be provided
- ensuring confidentiality is understood and maintained
- ensuring responses are provided in a timely manner.

If an allegation of misconduct has been made, MSC must deal with the allegation in accordance with any applicable legislation. This includes making an initial assessment of whether the allegation is vexatious or trivial, whether the conduct does not amount to misconduct, or whether there is likely to be difficulty in establishing the facts of the matter.

MSC will always seek input from the person impacted on how they would like the matter resolved and take this into account in determining how to proceed with the complaint. Where possible, MSC will explain its reasons if it does not handle or resolve the complaint in the way requested by the person impacted.

In some cases, the person impacted may not want any action taken and is reporting the behaviour so that the organisation knows that it has occurred. MSC has an obligation to deal with any wrongdoing

it becomes aware of. In some cases, action may be warranted, even where the person impacted states that they do not want any further action to be taken. This may be the case in situations where the behaviour constitutes a work health and safety risk or a criminal offence or requires disciplinary action to be taken or where there have been repeated complaints regarding an individual's behaviour.

MSC is also obligated to take measures to eliminate acts of victimisation in relation to sexual harassment complaints (see section "G" below).

A. Informal resolution: Informal resolution or management is where the issue is resolved internally, without a formal response or investigation. Rather than making a determination as to whether the conduct occurred, the aim is to stop escalation or future incidents by educating the alleged harasser about acceptable standards of behaviour and mitigating the risk of the conduct repeating in the future.

Responding to issues through informal resolution may include:

- a leader, manager or supervisor speaking to the alleged harasser about their behaviour
- facilitating/mediating an open and respectful conversation between the parties (mediation will only occur with the full and informed consent of both the person reporting the behaviour and the alleged harasser)
- putting system changes in place to prevent further issues, e.g. moving or changing the shifts of the alleged harasser, directing the alleged harasser to participate in behavioural change counselling
- refresher training for the general work area on the requirements of this policy.

B. Work health and safety investigation: Where a worker has chosen to report the sexual harassment as a work health and safety hazard, or the incident has been identified as a work health and safety hazard, MSC will conduct an investigation in accordance with Work Health and Safety Policy.

C. Formal investigation: Where a formal investigation is appropriate or is the preference of the person impacted, MSC will appoint an internal or external investigator to investigate the allegation/s and make factual findings, and report to MSC, which will then decide an outcome in accordance with applicable legislation.

Investigations will be conducted in a confidential, impartial, timely and fair manner. Investigations will adopt a trauma informed approach, with awareness of power imbalances that may exist between the parties.

The parties involved will be notified of their right to have a support person to assist them throughout the process. MSC will begin the investigation as soon as possible and aim to finalise a formal investigation within 90 business days. The parties will be kept regularly informed during the period of the investigation.

Investigations will be undertaken in line with relevant organisational policies, procedures and industrial instruments. In some circumstances, an employee who is the subject of a complaint

may be suspended from duty whilst an investigation is ongoing and/or a decision is made in relation to the complaint.

D. Procedural fairness: MSC acknowledges that for workers who are the subject of allegations of wrongdoing, the experience may be stressful. MSC will protect their rights by:

- assuring them that any report will be dealt with impartially, fairly and reasonably in accordance with the principles of procedural fairness
- confirming that the report is an allegation only if and until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the Employee Assistance Program for support
- allowing both parties the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

Any reports made that are found to be intentionally falsified or vexatious in nature will be actioned accordingly.

E. Confidentiality, privacy and transparency: MSC will treat reports of sexual harassment confidentially, including:

- the identity of the person impacted, alleged harasser/s, and any other participants involved in the investigation process
- information provided or collected during the investigation of an allegation.

It is expected that all workers involved in an investigation will keep details of the allegation confidential until the investigation has concluded. Failure to do so may result in further consequences or disciplinary action.

Ensuring confidentiality should not prevent the people involved from seeking support, e.g. through the Employee Assistance Program, bringing a support person to meetings.

Some information reported may need to be disclosed to involved parties in order to properly investigate the matter.

Where there is reason to believe that a person is a risk to themselves or others, and in the case of reportable conduct (e.g. child protection, serious indictable offence), MSC may need to notify appropriate authorities.

Once the matter is finalised, MSC will not restrict the impacted person's right to speak in their personal capacity.

F. Possible Outcomes:

1. *Consequences for the responsible person(s)*

Where allegations of sexual harassment are substantiated, action that is consistent and proportionate will be taken to hold the responsible person to account for their behaviour. The

possible outcomes will also depend on whether an informal resolution or a formal complaint was preferred by the person impacted. Possible outcomes include:

- disciplinary action, e.g. warning, suspension, demotion or dismissal
- a change to working hours or locations
- an apology
- agreement on protocols to manage the relationship moving forward
- refresher sexual harassment prevention training
- coaching or performance counselling
- behavioural change counselling.

Where a serious allegation of sexual harassment is substantiated, it is likely this will be found to be misconduct and disciplinary action will follow.

2. Restorative actions for the impacted person(s)

MSC will work with the impacted person(s) to understand and implement, where possible, any actions that may help them to recover from the incident, rebuild relationships at work and continue a successful career with McKinlay Shire Council.

G. Protection against victimisation: Victimising another person for making an allegation or report of sexual harassment is unlawful under the *Anti Discrimination Act* and the *Sex Discrimination Act*, unless it involves lawful action in relation to an allegation that is proven to be false and not made in good faith. Victimisation occurs when a person is subjected to, or threatened with, detriment for their involvement in the matter. It can include:

- bullying or intimidation by co-workers
- being denied a promotion or being moved to a position with lower responsibility
- dismissal or threatened dismissal from employment
- being refused further contract work.

Victimisation of people who have, or might, complain of sexual harassment, as well as bystanders or people perceived to have helped a person make a report of sexual harassment, is also unlawful.

8. RECORD KEEPING

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

9. MONITORING AND EVALUATION

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

- regularly 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 updating sexual harassment prevention plans to drive continuous improvement
- sharing information about trends, patterns and lessons with staff, leadership, unions management boards or committees and relevant stakeholders
- ensuring staff have confidence that sexual harassment is being eliminated in their workplace.

10. ROLES AND RESPONSIBILITIES

A. Employees:

All employees and other workers must:

- comply with this policy
- demonstrate high levels of personal conduct consistent with this policy and their responsibilities under the ethical framework and Code. This means they must treat others with dignity, courtesy and respect and not engage in sexual harassment or condone sexual harassment by others
- seek assistance when unsure about how to implement this policy
- be encouraged to report suspected breaches of the policy in accordance with the reporting mechanisms below.

B. 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 is unacceptable
- communicate and promote this policy to those they work with
- challenge inappropriate behaviour
- encourage an environment where workers feel safe to report sexual harassment
- prioritise the care and support of those impacted when responding to issues raised with them or observed
- treat all reports of sexual harassment seriously and confidentially and take prompt action to address them (taking into account the wishes of the person subjected to the harassment).

11. ASSOCIATED DOCUMENTS

- Code of Conduct
- Performance and Misconduct Policy / Disciplinary Procedures
- Complaints Management Policy
- Anti-Discrimination Bullying Sexual Harassment and EEO Policy

12. LEGISLATION

Industrial Relations Act 2016

Anti-Discrimination Act 1991

Work Health and Safety Act 2011

Local Government Act 2009

Sex Discrimination Act 1984 Cth

Age Discrimination Act 2004 Cth

Australian Human Rights Commission Act 1986 Cth

Local Government Regulations 2012

Public Sector Ethics Act 1994

Human Rights Act 2019 (Qld)