

Sexual harassment

Please note this policy is mandatory and staff are required to adhere to the content.

Policy overview

The Department for Education (the department) is committed to providing a workplace, and care and learning environments free from sexual harassment. It is expected that interpersonal interactions and communications occur with dignity, courtesy and respect. The purpose of this policy is to:

- Provide a clear statement to all people engaged with departmental sites and services that sexual harassment is not acceptable and will not be tolerated.
- Contribute to a departmental culture that ensures awareness of the individual and organisational impacts of sexual harassment, that does not support sexual harassment, and that properly deals with sexual harassment.
- Ensure awareness among people engaged with departmental sites and services including staff, students, and other children and young people of available avenues to report sexual harassment.
- Encourage, support and enable the use of procedures to complain of sexual harassment of themselves or others.
- Treat all complaints in a fair, timely and confidential manner.
- Guarantee protection from victimisation or reprisals.
- Promote appropriate standards of conduct at all times.

Scope

This policy applies to all departmental employees.

This policy incorporates responsibilities to students and responsibilities to children and young people in departmental care.

This policy applies in any departmental workplace including places which have a work related context, such as conferences, work functions, training programs, school excursions, and in which work, learning and care related activities occur, irrespective of whether these occur within or outside of normal work hours or the primary place of work.

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Policy officer:	Ethical Conduct Unit	Policy sponsor:	Director Employee Relations	Responsible executive director:	Executive Director People & Culture
Approved by:	Director, Employee Relations	Approval date:	6/11/2018	Review date:	6/11/2021

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1. Policy detail

1.1 Legislative context

The department is committed to providing a healthy and safe workplace free from sexual harassment and in which people engage with each other with fairness, integrity and respect.

This policy is based on the Commonwealth *Sex Discrimination Act 1984* and the South Australian *Equal Opportunity Act 1984*, *Children and Young People (Safety) Act 2017*, *Public Sector Act 2009* and *Work Health and Safety Act 2012*.

1.2 Complaint resolution

Where employee sexual harassment is reported the complaint will be subjected to an internal departmental complaint resolution process. Complaints should be made to the appropriate manager who will manage a resolution process in a fair, timely and confidential manner, ensuring procedural fairness and protection from victimisation.

Allegations of sexual harassment of a student or child in care against an employee will be reported to the Incident Management Division.

This policy is supported by the department's Complaint resolution policy and procedure, Protective practices for staff in their Interactions with children and young people guidelines and [Anti-bullying requirements in schools](#).

Where sexual harassment is found to be substantiated, the consequences will depend on a range of factors. The consequences may include an apology, counselling, undertaking training, performance management, or disciplinary action that may extend to dismissal.

1.3 Sexual harassment involving adults

Under State and Commonwealth legislation sexual harassment can be pursued as a civil matter. A decision to pursue a civil claim of sexual harassment rests solely with the complainant.

Some forms of sexual harassment may also be offences under the criminal law ([see Part 3 Definitions](#)). Employees who believe the circumstances of their complaint may amount to a criminal offence are responsible for reporting their matter to police.

The departmental responsibility extends to resolving a complaint in the administrative setting with relevant and proportionate resolution pathways and outcomes.

1.4 Sexual harassment involving children

Behaviour of a sexual nature in relation to children and young people can have mandatory reporting implications. It is incumbent on teachers and other officers involved in the provision of education to students and who owe a duty of care to students, to protect them from risks of injury which are reasonably foreseeable.

Students aged 16 years or over, while in attendance at a place in connection with their education, can be held responsible for sexual harassment of another student of any age, and of a person who works at the educational institution.

All secondary schools are legally required to have a written policy against sexual harassment and make this readily available to students.

Any complaint or reported behaviour involving allegations of sexual harassment by a student will be managed in accordance with requirements outlined in the departmental anti-bullying requirements.

1.5 Liability

A person covered by the sexual harassment provisions of State and Commonwealth legislation is personally liable for her or his own acts of sexual harassment. Under Commonwealth legislation, a person who causes, induces, aids, instructs or permits sexual harassment may incur liability as an accessory to the act.

Under State and Commonwealth legislation employers will be held vicariously liable for acts of sexual harassment committed by employees or agents while acting in the course of their employment or agency, unless it is demonstrated that all reasonable steps were taken to prevent the conduct. This means that if a departmental employee sexually harasses another employee, the department will be legally liable unless it can be shown that reasonable steps were taken to prevent the conduct.

2. Roles and responsibilities

Role	Authority/Responsibility for
Employees	<ul style="list-style-type: none">• Complying with this policy and related legislation and instruments (see supporting documents and references section);• Monitoring the workplace to ensure acceptable standards of conduct are observed at all times;• Modelling appropriate behaviours themselves;• Promoting the department's sexual harassment policy within their work area;• Treating all complaints seriously and take action to enable a response and resolution;• Offering support to a person who is being harassed and let them know where to go to seek assistance;• Maintaining confidentiality around a complaint.
Students aged 16 or over	<ul style="list-style-type: none">• Complying with this policy and their school's sexual harassment policy and processes;• Behaving appropriately at all times.
Executives and Management (including Site/Service Leaders)	<ul style="list-style-type: none">• Disseminating this policy at induction and in-service, including through targeted training and development;• Enabling an environment that makes control and prevention of sexual harassment a responsibility of all people engaged with the site/service;• Ensuring compliance by responding to emerging problematic behaviours;• Respond to complaints of sexual harassment;• For site leaders ensure a local policy is developed relevant to allegations of sexual harassment against students over 16 years of age.

Ethical Conduct Unit	<ul style="list-style-type: none"> • Providing consultancy advice and support in responding to complaints of employee sexual harassment; • Extending advice to ensure compliance with the Complaint resolution for employees policy and procedure; • Developing resources to support employee compliance with this policy.
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Chief Executive	The Chief Executive is responsible to the Minister for facilitating effective implementation of this policy and compliance with related legislation.
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3. Definitions

Term	Meaning
Departmental sites/services	All services, functions and facilities of the Department for Education.
Children and Young People	A person who is under the age of 18 years.
Employee	Persons employed by the department including on a permanent, term, temporary, contract or casual basis, during the term of their employment.
Line manager	A departmental employee who continuously or who during periods of time is responsible for the management of a departmental employee or employees.

Sexual Harassment	<p>Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.</p> <p>Sexual harassment is not limited to behaviour that occurs between people of another gender.</p> <p>Sexual harassment may include:</p> <ul style="list-style-type: none"> • Comments about a person’s sexual life or physical appearance; • Sexualised comments; • Suggestive behaviours, leering and ogling; • Unwanted physical intimacy for example busing up against a person; • ‘exposing’ and sexual gestures; • Sexual propositions, including persistent and repeated unwanted proposition’s; • Sexual jokes, phone calls, display or distribution of offensive photographs or other material, including by phone, facsimile, email or social media; • Unwelcome questions about a person’s sex life, their sexual preferences or gender orientation or status; • Stalking or criminal sexual offences.
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Site/service leader	A departmental employee who has overall responsibility for a worksite or organisational function, including a Chief Operating Officer, Executive Director, Director, Principal, Education Executive Director and Preschool Director.
Student	Those receiving care and instruction from the department in a care or learning environment.
Workplace	The workplace is a place where an employee works or otherwise carries out their functions in connection with being a workplace participant. The workplace is not limited to the physical work location; it extends to places attended in connection with your work. It can include conferences, work-related functions, training programs and excursions irrespective of whether they occur within or outside normal work hours or the primary place of work.

SUPPORTING INFORMATION

Published December 2018

Related legislation [Sex Discrimination Act 1984](#)
[Equal Opportunity Act 1984](#)
[Children and Young People \(Safety\) Act 2017](#)
[Public Sector Act 2009](#)
[Work Health and Safety Act 2012](#)

Related policy documents [Code of Ethics for the South Australian Public Sector](#)
[Protective Practices for Staff in their Interactions with children and young people guidelines](#)
[Complaint Resolution for Employees Policy](#)
[Complaint Resolution for Employees Procedure](#)
[Electronic Mail Access and Use Policy](#)
[Internet Access and Use standard](#)
[School Discipline Policy](#)
[Cyber-safety: Keeping children safe in a connected world guideline](#)
[Anti-bullying requirements in schools](#) intranet page
[Sexual harassment](#) intranet page
[Employee Conduct](#) intranet page

Keywords Sexual harassment, preventative action; inclusive work and learning practices; fairness and equitable treatment

REVISION RECORD

Version	Approved by	Approved date	Review date	Amendments
v1.0		07/2011		New policy; replacement for Guidelines for Sexual Harassment Grievance Procedures 1988
v1.1		06/2015	26/06/2018	Review of policy to reflect current legislation; to ensure capture of Families SA staff and properly represent application across all people working in sites/services. Ensure consistency with current legislative provisions and interpretive guidelines. Incorporate roles/responsibilities and definitions/abbreviations in accordance with policy template.
v1.2	Director, Employee Relations	6/11/2018	6/11/ 2021	Minor edit - review of policy to reflect current legislation.