



Ararat Rural City

Prevention of Sexual Harassment Policy

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Chief Executive Officer
Councillors

POLICY STATEMENT

Purpose

Sexual harassment is unlawful and prohibited by both the *Equal Opportunity Act 2010 (Vic)* and the *Sex Discrimination Act 1984 (Cth)*.

Ararat Rural City Council (Council) is committed to providing a safe, flexible and respectful environment for Councillors, staff and the community that is free from all forms of sexual harassment. This policy applies to Councillors of Ararat Rural City Council and sets out the legal responsibilities and obligations for Council, the Councillors and its clients.

Scope

This policy applies to circumstances (including but not limited to):

- How Council provides services to clients and how it interacts with other members of the public;
- On-site, off-site, role-related social functions, conferences – wherever and whenever Councillors may be performing aspects of their role;
- Councillors treatment of staff, clients and members of the public encountered in the course of performing their role as Councillor.
- Client treatment of Councillors, other clients and members of the public.

When managing reports of alleged sexual harassment by clients, direct contact with Police may be made.

Principles

The principles associated with this policy are that:

- Sexual harassment is unlawful and will not be tolerated;
- A single incident can constitute sexual harassment;
- Sexual harassment is gendered. Most instances of sexual harassment (but importantly not all) are experienced by women;
- Council has a positive duty to ensure the health and safety of its Councillors and clients;
 - to eliminate risks to health and safety so far as is reasonably practicable; and
 - if it is not reasonably practicable, to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- Councillors may be personally liable if allegations of sexual harassment are substantiated against them;
- Legal action (civil and/or criminal) may be taken against a person who has engaged in sexual harassment;
- Conduct constituting sexual harassment by a Councillor may also expose Council to liability. Council may be vicariously liable for a Councillor's conduct undertaken in the course of, or in connection with, their position as Councillor; and
- Council recognises that comments and behaviour that do not offend one person can offend another. All Councillors are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.

Responsibilities

Councillors

All Councillors must:

- Comply with this policy;
- Model appropriate behaviour;
- Participate in any training provided by Council;
- Treat information in relations to claims of sexual harassment with appropriate confidentiality;
- Ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint; and

- Act in accordance with the Councillor Code of Conduct, Councillor Code of Conduct Support Guide and Councils values, policies and procedures.

Mayor

In addition to their responsibilities as a Councillor, the Mayor must also:

- Promote awareness of this policy with Councillors;
- Treat all complaints seriously and take prompt and appropriate action to address them; and
- Consult the Chief Executive Officer for further detail on management of reports of sexual harassment.

1. LEGISLATION

Sexual harassment is a specific and serious form of harassment that is unlawful and prohibited by both Victorian and Commonwealth legislation.

Victorian legislation

The *Equal Opportunity Act 2010* requires Council to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as practicable.

The *Equal Opportunity Act 2010* section 73 states that a Councillor of a municipal Council must not, in the performance of his or her public function, discriminate against:

- Another Councillor of that Council; or
- A member of a Committee of that Council who is not a Councillor of that Council.

Section 92 of the *Equal Opportunity Act 2010* provides that a person sexually harasses another person:

- If he or she makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person;
- If he or she engages in any other unwelcome conduct of a sexual nature in relation to the other person; or
- 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.

Section 93 of the *Equal Opportunity Act 2010* prohibits sexual harassment in the workplace. This prohibition covers employers, employees, any person seeking employment, contract workers and volunteers. *For the purposes of this section a municipal councillor is to be taken to be an employer of employees of that council.*

Section 94 of the *Equal Opportunity Act 2010* prohibits sexual harassment in common workplaces (i.e. places that are the workplace of both people involved whether or not they have the same employer). *In this section **workplace** means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment.*

Conduct of a 'sexual nature' includes:

- Subjecting a person to any act of physical intimacy;
- Making, verbally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence; or
- Making any gesture, action or comment of a sexual nature in a person's presence.

Commonwealth legislation

Section 28A of the *Sex Discrimination Act 1984* provides that a person sexually harasses another person (the "person harassed") if:

- The person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

- Engages in other unwelcome conduct of a sexual nature in relation to the person harassed 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.

The relevant circumstances to be taken into account may include, but are not limited to, the following:

- The sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- The relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- Any disability of the person harassed; or
- Any other relevant circumstance.

‘Conduct of a sexual nature’ includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Section 28B provides that it is unlawful for:

- A person to sexually harass an employee of the person, or a person who is seeking to become an employee of the person;
- An employee to sexually harass a fellow employee or a person who is seeking employment with the same employer;
- A person to sexually harass a commission agent or contract worker of the person, or a person who is seeking to become a commission agent or contract worker of the commission;
- A commission agent or contract worker to sexually harass a fellow commission agent or contract worker;
- A workplace participant to sexually harass another workplace participant at a place that is a workplace of either or both of those persons.

2. COUNCILLOR CODE OF CONDUCT

Councillor Code of Conduct

Councillors are required to conduct themselves in a manner that is consistent with Council’s values and behavioural principles set out in the Councillor Code of Conduct.

Councillors are required to take personal responsibility to uphold the Code and demonstrate the values and behaviours of Council in the way they perform their role, or at any other time where they may be considered to be representing Council.

Councillors are expected to identify, and report conduct that is not consistent with the Code.

Council has developed this policy to support behaviour consistent with the Councillor Code of Conduct. All Councillors are required to comply with this policy.

Definition of Gross Misconduct Misconduct and Serious Misconduct

The *Local Government Act 2020* defines the following:

Gross misconduct by a Councillor means behaviour that demonstrates that a Councillor—

- a) is not of good character; or
- b) is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.

Misconduct by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.

Serious misconduct (g) by a Councillor means any conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff.

3. SEXUAL HARASSMENT

What is Sexual Harassment?

Sexual harassment may take various forms and can be directed at, and perpetrated by, all persons including male, female, transgender and gender diverse. It may be physical, spoken or written and may include, but is not limited to:

- Unwelcome physical contact of a sexual nature;
- Comments or questions of a sexual nature about a person's private life or their appearance;
- Sexually suggestive behaviour, such as leering or staring or offensive gestures;
- 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;
- Unwanted displays or declarations of affection;
- Requests for sex;
- Sexually explicit emails, text messages or posts on social networking sites;
- Sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences);
- Actions or comments of a sexual nature in a person's presence (even if not directed at that person).

Threshold

The *Equal Opportunity Act 2010* and the *Sex Discrimination Act 1984* provide that sexual harassment occurs in circumstances in which the conduct is unwelcome and where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

There is no requirement that the unwelcome conduct be repeated; a one-off incident can be sexual harassment. Equally, a broader pattern of behaviour can constitute sexual harassment.

Just because someone does not object to inappropriate behaviour at the time it occurs does not mean that they are consenting to the behaviour or consenting for the behaviour to continue at another time.

What is the workplace?

Within the workplace

For the purposes of sexual harassment law, a workplace is any place a person attends for the purpose of carrying out functions in connection with, or in the course of their employment or prospective employment. It includes a place that is a workplace of either, or both people involved in an incident of sexual harassment. For example, this policy also pertains to Councillors who visit other offices i.e. the same behavioural standards that exist in their workplaces, apply in other offices that Councillors visit.

Section 94 of the *Equal Opportunity Act 2010* provides that a workplace is the place a person attends for the purpose of carrying out functions in relation to their employment. It does not need to be the person's principal place of business or employment.

The workplace is not confined to the actual physical location used by the Councillors. It also extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets of the premises.

Beyond the workplace and outside working- hours

Behaviour constituting sexual harassment can occur beyond the usual workplace and outside normal working hours. For example, sexual harassment can occur where there is a link to a Councillors role, including (but not limited to):

- At social functions sponsored and paid for by Council;
- At social functions in connection with the Councillor but not sponsored or paid by Council;
- In vehicles while on the way to functions or meetings;
- At after-parties to such events (regardless of their location);
- In accommodation (including hotel rooms) associated with or provided by Council;
- Online via use of technology and social media; and
- Any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

Consumption of alcohol at functions or at a Council-related event outside the usual hours of work is not an excuse for conduct that constitutes sexual harassment. Councillors should regulate their own behaviour and consumption of alcohol (noting that some workplaces may have a zero-tolerance approach to alcohol) to ensure their behaviour does not adversely impact others. Councillors should be mindful that in such situations, they continue to be subject to the Councillors Code of Conduct.

For further information, please refer to the Councillors Code of Conduct and Councillor Code of Conduct Support Guide.

4. REPORTING SEXUAL HARASSMENT

Council fully endorse the statement made by the Victorian Secretaries Board (VSB) regarding sexual harassment on 22 March 2018 and will not stand for any form of sexual harassment in the workplace. Council strongly encourages Councillors who believe they have been sexually harassed or have witnessed sexual harassment to consider the following actions:

- Make an informal or formal complaint – Councillors are encouraged to approach and inform the Mayor in the first instance. However, if the Councillor feels that it is not appropriate, they may contact the Chief Executive Officer for assistance;
- Talk to the harasser directly – this should be done only if the individual feels comfortable and safe doing so (noting this approach may suit some situations and people but not others); and
- Consider mediation.

Councillors affected by sexual harassment will be supported in carrying out the above actions. Council will listen to and work with Councillors to ensure their safety and wellbeing as required by the *Occupational Health and Safety Act 2004*.

In cases of sexual assault, Councillors will be encouraged to make a report to the police. Councillors will also be encouraged to report the incident to the Mayor, regardless of whether a report is made to the police or not.

Confidentiality

Where appropriate, disclosures/complaints of sexual harassment will be treated in confidence in order to protect a Councillor's personal privacy as much as possible. However, allegations of sexual harassment or potential criminal conduct are serious and should be considered accordingly. In some instances, a matter may need to be escalated or referred without agreement from the Councillor, particularly in circumstances that may:

- Constitute a criminal offence;
- Constitute an occupational health and safety risk; or
- Require disciplinary action.

Only relevant persons at Council will be advised of the declaration/complaint and any arrangements necessary for the purpose of managing the declaration/complaint. At the time a disclosure/complaint is made, Council should notify the parties who, within the organisation, will be privy to this information.

Bystander intervention

Bystanders, including colleagues, who witness or are aware of sexual harassment, can play an important role in preventing sexual harassment. When grounded in behaviours of integrity and respect, action taken by colleagues can positively impact on defining culture.

Bystanders that are aware of sexual harassment are encouraged to:

- Provide support to the colleague who is being subjected to sexual harassment;
- Formally or informally challenge concerning behaviour; and
- Report sexual harassment.

The standard that people walk past is the standard that people accept.

In some situations, a witness may wish to remain anonymous and where appropriate, anonymity will be provided. However, it may not be possible in all circumstances to keep the identity of a person, or people providing information, confidential. In some situations, it may be the case that a respondent may need to be provided with the full details of allegations when consideration of procedural fairness and natural justice are taken into account.

5. RESPONDING TO SEXUAL HARASSMENT

Council's responsibility

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of Council, it must be acted upon as soon as practicable. All complaints are expected to be managed in a manner that gives appropriate consideration to the sensitive and confidential nature of the complaints, while ensuring procedural fairness to those against whom the complaint is made.

All Councillors have a responsibility to improve the Council culture by adopting a zero-tolerance approach to sexual harassment. The Mayor must take active steps to prevent sexual harassment, not just respond to complaints if they arise.

The appropriate action for management to take when a complaint is raised, or when a matter is otherwise brought to their attention, is likely to vary on a case-by-case basis. However, it may not be appropriate not to act, or to keep quiet, even where the complainant states that they do not want any further action to be taken. This is because in some instances, the conduct to which the subject of the complaint relates may constitute an occupational health and safety risk or a criminal offence or require disciplinary action to be taken.

Council must ensure the safety and wellbeing of all Councillors as per the *Occupational Health and Safety Act 2004*.

Ensure that the complainant and the respondent are informed of the supports available to them, such as the Employee Assistance Program, as early as possible.

Process

Complaints of sexual harassment will be considered by Council or an external consultant. Processes will be undertaken in line with the Councillor Code of Conduct and Councillor Code of Conduct Support Guide and organisational policies and procedures, where applicable.

Mayor/Councillors are required to contact the Chief Executive Officer for assistance in dealing with a complaint or for advice as to the best way to address a complaint.

Informal Process

In some instances, it may be that an informal approach is appropriate, such as conducting or facilitating discussions to address the behaviour, or refresher training for the Councillors on the requirements of this policy. This training should support the regular training that is provided for Councillors regarding sexual harassment and other policies and procedures.

Formal Process

In other cases, a more formal approach may be appropriate. Formal processes typically involve investigating the complaint, making a finding as to whether the sexual harassment occurred, and deciding on an appropriate outcome.

Such process will be undertaken in line with the Councillor Code of Conduct Dispute Resolution Procedure

Disclosure of information or making a complaint can be very difficult for the affected Councillor/s. The Mayor and/or Chief Executive Officer should take necessary welfare steps connecting them with a support person and with the EAP.

Natural Justice and Procedural Fairness

Both the complainant and respondent are to be afforded natural justice and procedural fairness. This will allow relevant evidence to be examined in a procedurally fair way. Relevant evidence might include Councillor emails, witness reports of the alleged conduct, text messages or the complainant's personal records.

When considering the report of sexual harassment, the complainant and respondent will be:

- Treated fairly and respectfully; and
- Allowed the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

Findings

A substantiated complaint of sexual harassment may result in a number of outcomes against a Councillor. Depending on the severity of the case, actions following a finding of sexual harassment can range from an apology to disciplinary action against the person found to have engaged in harassment (such as counselling, transfer, warning or termination of Councillor).

Determination of outcomes will be undertaken in line with the Councillor Code of Conduct and Councillor Code of Conduct Support Guide. Each case will be assessed on its own merits.

Criminal Matter

Although sexual harassment is generally a civil matter, not a criminal offence, some types of harassment may also be offences under criminal law. These include, but are not limited to:

- Physical molestation or assault;
- Indecent exposure;
- Sexual assault;
- Stalking; and
- Obscene communications (telephone calls, letters, etc.).

If an allegation appears to be a matter relevant to the police, Council and/or the Chief Executive Officer is obliged to report this to the police regardless of whether the complainant has made a report to the police or not.

It is recommended that Councillors speak to either the Mayor or Chief Executive Officer for advice on individual matters, as each matter must be considered on its own merits.

6. ADDITIONAL CONSIDERATIONS

Consent

A key element of sexual harassment is that it is unwelcome.

It is important to note that if a person does not object to inappropriate behaviour at the time; it should not be assumed that they are giving their consent. Consent exists where clear and unambiguous consent has been freely given and continues to be given.

Intent

The *Equal Opportunity Act 2010* and the *Sex Discrimination Act 1984* provide that sexual harassment occurs in circumstances in which the conduct was unwelcome and a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Sexual harassment can still occur even when a harasser does not intend it. Motive is irrelevant; the test focuses on how the behaviour is received by the other person. It is the responsibility of every Councillor to ensure that they do not engage in any behaviour that could amount to sexual harassment.

Council will not excuse sexual harassment which was intended as a joke if it meets the legal definition of sexual harassment.

Technology and Social Media

Sexual harassment can occur through electronic means (such as emails or text messages or by viewing pornographic websites) and through social media, regardless of whether the post was made during work hours or not. Where there is a link to employment, employees are subject to the same rules about sexual harassment in the virtual world as they are in the real world.

As such, Councillors are required to use technology and social media responsibly in performing their role and in relation to anything or anyone associated with them. This extends to the use of technology and social media outside of performing their roles where there is a strong connection to the Councillor relationship (for example, between colleagues or staff members where the foundation of the relationship is a common one).

Behaviour not considered to be sexual harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting Councillors, is not a form of sexual harassment. This includes sexual interaction, flirting, attraction or friendship which is invited, mutual, consensual or reciprocated action.

Reprisals and Harassment

Any person found to victimise, harass or take reprisal action against people participating in procedures associated with this policy may be subject to separate dispute resolution procedures under the Councillor Code of Conduct Policy and Councillor Code of Conduct Support Guide .

Information or claims without substance

Councillors found to have knowingly provided false information, or knowingly made allegations of sexual harassment without any substantive merit, may be subject to separate dispute resolution procedures under the Councillor Code of Conduct Policy and Councillor Code of Conduct Support Guide.

7. SUPPORT OPTIONS

A range of options are available to provide support in regard to sexual harassment. Council's primary contact is the Chief Executive Officer.

Employee Assistance Program

Council provides an EAP, which is a short-term, confidential, counselling service designed to offer a problem-solving, solution orientated approach to support employees as well as Councillors with personal or role-related issues.

The EAP is staffed by independent qualified practitioners.

All Councillors (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the Councillor and can be provided over the phone or face-to-face.

Council's EAP provider is Allos Australia and can be contacted on 1300 852 911.

External Support

Complaints of sexual harassment can be lodged with the Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances the Australian Human Rights Commission.

If the complaint appears to be a criminal offence, the complainant and/or Council may report the matter to Victoria Police.

A Councillor may also wish to access other support services such as Centres Against Sexual Assault.

Chief Executive Officer

In the context of this policy, the Chief Executive Officer is responsible for:

- Providing advice in relation to matters covered by this policy;
- Assisting Councillors in understanding their roles and responsibilities;
- Conducting reviews and/or engaging in independent external reviewer to do so; and
- Assisting with assessing whether a complaint of sexual harassment requires action under a different process.

Related Policies

Health & Wellbeing Policy
Mobile Phone Policy
Occupational Health & Safety Policy
Councillor Code of Conduct Policy
Councillor Code of Conduct Support Guide

Related Legislation

Equal Opportunity Act 2010
Local Government Act 2020
Occupational Health and Safety Act 2004
Sex Discrimination Act 1984

ADMINISTRATIVE UPDATES

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.