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**Government of South Australia**

Department of Education and  
Children's Services

## HUMAN RESOURCES SERIES

Policy ID no. **HR31**

# Sexual Harassment Prevention Policy

This policy is applicable to: DECS employees, Governing/School Council members and employees, volunteers, contractors, students, workplace/site participants. There are no exclusions to this policy.

Further assistance: [DECS Human Resources and Workforce Development](#)  
Ethical Standards and Merit Protection Unit

### DOCUMENT CONTROL

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# 1 TITLE

Sexual Harassment Prevention Policy

## 2 POLICY STATEMENT

DECS is committed to providing a workplace for employees and a learning environment for children and students that is safe and free from sexual harassment. Sexual harassment is unacceptable conduct and will not be tolerated. DECS is committed to taking preventative action to ensure that there is no place for sexual harassment in a DECS workplace, work related context or learning environment.

## 3 PURPOSE

DECS has a legal obligation to prevent sexual harassment in the workplace and to take steps where necessary to ensure it is stopped. This policy supports DECS taking preventative action against sexual harassment and provides for remedial measures, including counselling or disciplinary action to redress any reported or found incidents of sexual harassment.

This policy affirms the DECS commitment to the prevention of sexual harassment and the implementation of the following principles:

- The right of all people to have a safe working and learning environment free from sexual harassment.
- Respect for all people in the workplace and learning environment.
- Support for diversity and inclusive work and learning practices.
- Fairness and equitable treatment of all people in the workplace and learning environment.
- Redress against unfair and unreasonable treatment.

### 3.1 Objectives

- To prohibit and prevent sexual harassment in a DECS workplace or learning environment.
- To create and maintain a culture in DECS that does not tolerate sexual harassment under any circumstances.
- To inform DECS employees and students about their rights and obligations with respect to sexual harassment through the provision of induction, information and training.
- To enable appropriate remedial action to be taken where required.
- To provide for the management and resolution of a sexual harassment complaint.

## 4 SCOPE

Sexual harassment is unlawful in all work related and educational contexts. This policy applies to all people in a DECS workplace including DECS employees, (current and prospective) Governing/School Council members and employees, students (current and prospective), volunteers, contractors, and any other workplace participants.

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

## 5 POLICY DETAIL

### 5.1 Legislative Context

Sexual harassment is unlawful conduct under the Commonwealth *Sex Discrimination Act 1984* and the South Australian *Equal Opportunity Act 1984* and similar provisions apply.

Under State law, sexual harassment is addressed in Part 6 – Other unlawful acts. Section 87 (9) provides:

(a) a person **sexually harasses** another (*the person harassed*) if –

- (i) *the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
- (ii) *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 that the person harassed would be offended, humiliated or intimidated; and*

- (b) **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; and*
- (c) *a person **works with another** if both carry out duties or perform functions, in whatever capacity and whether for payment or not, in or in relation to the same business or organisation; and*
- (d) *a person **works for** an authority if he or she carries out duties or performs functions, in whatever capacity and whether for payment or not, in or in relation to that authority; and*
- (e) **workplace** *means a place (including a ship, aircraft or vehicle) at which a person works or attends in connection with the person's work.*

Under State and Commonwealth legislation sexual harassment is a civil offence. Some forms of sexual harassment may also be offences under the criminal law (see Part 8 Definitions) and if criminal incidents are suspected they must be reported to the police.

Behaviour of a sexual nature in relation to children or young persons 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.

## **5.2 Legal Liability**

### **5.2.1 Personal 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. Where sexual harassment is found or reported, a person being the subject of a complaint can be held responsible for their conduct through an internal departmental complaint process, a complaint to the Equal Opportunity Commission or Australian Human Rights Commission or through legal proceedings.

### **5.2.2 Vicarious liability**

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 DECS employee sexually harasses another employee, DECS will be legally liable unless it can be shown that reasonable steps were taken to prevent the conduct. Action as required, will be taken by DECS where conduct which could constitute sexual harassment is reported or found.

### **5.2.3 Code of Ethics**

For the purposes of this policy and pursuant to the *Public Sector Act 2009*, all DECS employees must comply with the Professional Conduct Standards set out in the Code of Ethics for the South Australian Public Sector. Contravention of or non compliance with these will constitute misconduct and disciplinary action or termination may result.

## **6 ROLES AND RESPONSIBILITIES**

### **Chief Executive**

This policy is issued under the authority of the Chief Executive who has a legal obligation to ensure the prohibition and prevention of sexual harassment and compliance with professional conduct standards.

### **Executive Director, Human Resources and Workforce Development**

The Executive Director, Human Resources and Workforce Development is responsible for the maintenance and review of this policy.

### **Site Leaders and Managers**

- model appropriate and professional conduct at all times
- monitor the work/learning environment to ensure that professional conduct standards are maintained
- take appropriate and immediate action if any unacceptable behaviour which may constitute

sexual harassment is observed

- promote awareness of this policy and relevant services for advice and complaint procedures
- ensure this policy forms part of every new employee's induction
- manage complaints with due process and timeliness
- must ensure there is a sexual harassment prevention policy which is provided to enrolled or prospective students aged 16 years or over.

### **Students aged 16 or over**

- comply with the school's sexual harassment prevention policy
- behave appropriately at all times.

### **Employees**

- model appropriate and professional conduct at all times
- comply with this policy
- participate in any information or training sessions as required by DECS
- take appropriate action and/or report any unacceptable behaviour which may constitute sexual harassment.

## **7 COMPLAINT RESOLUTION**

For the purposes of this policy, any complaint or reported behaviour involving allegations of sexual harassment by an employee will be managed in accordance with the DECS Complaint Resolution for Employees Procedure. 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.

Any complaint or reported behaviour involving allegations of sexual harassment by a student will be managed in accordance with requirements under DECS School Discipline and Anti-Bullying and Harassment Policies and grievance procedures.

Where a complaint or report indicates a criminal incident, the matter should be referred to the South Australian Police and DECS Investigations Unit. Where behaviour of a sexual nature or an offence against a child or young person is indicated, the appropriate mandatory notification process must be followed and the site leader informed to ensure appropriate liaison with the DECS Investigations Unit, South Australian Police and other relevant agencies.

## **8 DEFINITIONS**

Within this document, the following terms have the meanings given.

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<b>Term</b>	<b>Meaning</b>
sexual harassment	Unwelcome sexual conduct which makes a person, (male or female, of the same or opposite gender, same-sex attracted, bisexual and transgender) feel offended, humiliated and/or intimidated, where that reaction to the conduct is reasonable in the circumstances. Sexual harassment can be a single incident or repeated or continuous, direct or indirect and take various forms, including but not limited to: <ul style="list-style-type: none"><li>• unwelcome touching, hugging, kissing, brushing up against a person</li><li>• staring or leering</li><li>• suggestive comments or jokes</li><li>• sexually explicit pictures, screen savers, posters, graffiti, letters,</li></ul>

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- messages, magazines or any other visual or written medium
  - unwelcome invitations to go out on dates
  - requests for sex
  - inappropriate and intrusive personal questions about a person's private life or their body
  - insults, taunts, teasing or name calling of a sexual nature or sexually explicit conversation
  - accessing sexually explicit internet sites
  - offensive phone calls, letters, emails or mobile phone text messages
  - posting filmed or photographed images or comments on social networking sites
  - behaviour which may constitute a criminal offence under criminal law and reportable to the police, such as physical or indecent assault, stalking, obscene communications, sexual assault

Sexual harassment is a legally recognised form of sex discrimination.

Behaviour of a sexual nature based on mutual attraction, friendship and respect which is welcome or invited, consensual and reciprocal does not constitute sexual harassment.

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## 9 ASSOCIATED DOCUMENTS

- DECS Protective Practices for Staff in their Interactions with Students
- DECS Complaint Resolution for Employees Policy
- DECS Complaint Resolution for Employees Procedure
- DECS ICT: Electronic Mail Access and Use Policy
- DECS ICT: Internet Access and Use Policy
- Code of Ethics for the South Australian Public Sector
- DECS School Discipline Policy
- DECS Anti-Bullying and Harassment Policy
- *Equal Opportunity Act 1984 (SA)*
- *Sex Discrimination Act 1984 (Cth)*
- *Children's Protection Act 1993 (SA)*
- *Public Sector Act 2009 (SA)*
- *Occupational Health Safety and Welfare Act 1986 (SA)*

## 10 REFERENCES

- Effectively preventing and responding to sexual harassment: A Code of Practice for Employers 2008 edition, Australian Human Rights Commission
- Sexual Harassment Policy, Department of Education and Early Childhood Development, Victoria
- Sexual Harassment Policy, Archdiocese of Canberra and Goulburn Catholic Education Office
- Prevention of Sexual Harassment Policy, Centre for Adult Education, Victoria

**REVISION RECORD**

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