

# PREVENTION OF SEXUAL HARASSMENT POLICY

<b>Policy Number:</b>	2.1.5
<b>Approved by:</b>	Chief Executive Officer
<b>Date Approved:</b>	December 2025
<b>Date of Next Review:</b>	December 2027
<b>Applicable to Unit(s):</b>	Councillors, Council employees and temporary staff, volunteers, contractors, consultants engaged by Council and members of delegated committees
<b>Responsible Officer:</b>	Manager People and Capability
<b>Related Policies:</b>	Discipline and Performance Management Policy
<b>Related Documents:</b>	Employee Code of Conduct Councillor Code of Conduct
<b>Statutory Reference:</b>	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> <i>Equal Opportunity Act 2010 (Vic)</i> <i>Sex Discrimination Act 1984 (Cth)</i> <i>Fair Work Act 2009</i> <i>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth)</i> <i>Gender Equality Act 2020</i> <i>Local Government Act 2020</i> <i>Occupational Health and Safety Act 2004</i>

## 1. POLICY STATEMENT

### 1.1 Purpose

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

Wellington Shire Council (Council) is committed to providing a safe, flexible and respectful environment that is free from all forms of sexual harassment.

This policy applies to individuals undertaking Council duties or activities. This includes employees (including contractors), Councillors, volunteers, clients and other external parties and sets out the legal responsibilities and obligations for Wellington Shire Council.

### 1.2 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;
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport;
- on-site, off-site, work-related social functions, conferences – wherever and whenever individuals undertaking Council duties or activities may be as a result of their working duties;

- out of work hours interaction where there is a strong connection to the employment relationship; and
- Individual's treatment of other staff, clients and members of the public encountered in the course of undertaking their Council duties or activities.

### **1.3 Principles**

The principles associated with this policy are that:

- Sexual harassment is unlawful and will not be tolerated;
- Sexual harassment reports will be taken seriously and treated consistently and confidentially with a prioritisation of the wellbeing of the person who has made the report;
- Sexual harassment is a form of gendered violence. Most instances of sexual harassment (but importantly not all) are experienced by women;
- Sexual harassment disproportionately affects some groups of workers and is often experienced with other forms of discrimination on the basis of disability, race, gender identity, sexual orientation, marital status and age. Sexual harassment and discrimination against people in these groups is driven by harmful attitudes, biases and stereotypes, as well as structures or systems that maintain existing power disparities;
- A single incident can constitute sexual harassment;
- Council has a positive duty to ensure the health and safety of employees:
  - 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.
- Council recognises that comments and behaviour that do not offend one person can offend another. Individuals undertaking Council duties or activities are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.
- Individuals undertaking Council duties or activities 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.

### **1.4 Objectives**

Council aims to prevent sexual harassment by:

- Creating a working environment that is free from sexual harassment where everyone is treated with dignity, courtesy and respect.
- Providing information, instruction, training and support about the importance of preventing and addressing sexual harassment in the workplace;
- Providing an effective procedure for reporting of sexual harassment based on the principles of procedural fairness;
- Addressing unwanted or offensive behaviour early;
- Encouraging the reporting of sexual harassment; and
- Promoting appropriate standards of conduct at all times.

When managing reports of sexual harassment by clients or other external parties, Council will liaise with the responsible authority to ensure proper procedures are followed and will provide support services. This may include direct contact with Police.

## 1.5 Definitions

In this policy:

<b>Active Bystander</b>	Someone who interrupts a potentially harmful situation, especially when it comes to sexual harassment. They may not be directly involved but they do have the choice and opportunity to speak up and intervene.
<b>Bullying</b>	Bullying at work means: When a person or group of people repeatedly behave unreasonably towards another worker or group of workers; When the behaviour creates a risk to health and safety.
<b>Bystander</b>	A person who is present at an event or incident but does not take part.
<b>Client</b>	'Client' is defined inclusively to include all persons to whom services are provided by Wellington Shire Council.
<b>Commission Agent</b>	The <i>Sex Discrimination Act 1984</i> defines a commission agent as "a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission."
<b>Council</b>	Means Wellington Shire Council, being a body corporate constituted as a municipal Council under the Local Government Act 2020.
<b>Councillors</b>	Councillors is defined to include the elected representatives (councillors) democratically voted for by the residents and ratepayers of Wellington Shire.
<b>Discrimination</b>	Discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain characteristics.
<b>Employee</b>	Employee is defined inclusively to include employees of Wellington Shire Council including employees covered by the current Wellington Shire Council Enterprise Agreement and Executive Officers as well as persons seeking employment, contract workers, consultants, agency on-hire staff, students and volunteers. The legislation and instruments mentioned in this policy may apply to particular categories of staff.
<b>Members of the public</b>	Members of the public means any other individual not described above, which includes ratepayers, customers, independent contractors, vendors, suppliers and/or any parties involved in a business relationship with Wellington Shire Council.
<b>People Leader</b>	Means an employee responsible for managing/supervising an employee or volunteer – typically managers, coordinators, team leaders and supervisors.
<b>Sexual Harassment</b>	Sexual harassment is defined as any unwanted, unwelcome, or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Please see section 4.1 of this policy for further information.
<b>Volunteer</b>	Volunteer means any person engaged by or a part of an organisation which provides a service without receiving a

	financial benefit. There is no minimum period of engagement to be considered a volunteer.
<b>Workplace Participant</b>	Includes an employer or employee, a commission agent or contract worker or a partner in a partnership
<b>Individuals undertaking Council duties or activities</b>	This includes employees (including contractors), Councillors, volunteers, clients and other external parties and sets out the legal responsibilities and obligations for Wellington Shire Council.

## 1.6 Responsibilities

### **Individuals undertaking Council duties or activities:**

These individuals must:

- o Comply with this policy;
- o Model appropriate behaviour;
- o Promote gender equality and inclusion in the workplace;
- o Participate in any training provided by Council including completing any assessments;
- o Treat information in relation to claims of sexual harassment with appropriate confidentiality;
- o Ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint; and
- o Act in accordance with the relevant Code of Conduct and Wellington Shire Council's values, policies and procedures.

### **People Leaders:**

In addition to their responsibilities as individuals undertaking Council duties or activities, those with people management responsibilities must also:

- o Monitor the work environment;
- o Promote awareness and implementation of this policy within their area including ensuring individuals undertaking Council activities or duties are aware of how and where to make a report;
- o Treat all reports of sexual harassment seriously and take prompt and appropriate action to address them;
- o Discuss the report with their immediate supervisor as appropriate; and
- o Contact People and Capability for further detail on management of reports of sexual harassment.

### **Mayor:**

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

- Monitor the Councillor environment;
- Promote awareness of this policy with Councillors;
- Treat all reports of sexual harassment seriously and take prompt and appropriate action to address them;
- Discuss the report with their immediate supervisor as appropriate; and
- Consult the Chief Executive Officer for further detail on management of reports of sexual harassment.

## 2. LEGISLATION

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

### 2.1 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.

Section 15 of the *Equal Opportunity Act 2010* imposes a positive duty to eliminate discrimination, sexual harassment or victimisation.

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

- If they make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
- if they engage in any other unwelcome conduct of a sexual nature in relation to the other person;
- 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. The *Equal Opportunity Act 2010* also explicitly covers Councillors and council committee members as part of the local government workplace in this context.

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).

Conduct of a 'sexual nature' may occur in person, in writing, or online, and 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;
- making any gesture, action or comment of a sexual nature in a person's presence.

### 2.2 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;
- 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 person;
- 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.

Sections 92-94 of the *Equal Opportunity Act 2010* and Parts 3-5A of the *Fair Work Act 2009* require Wellington Shire Council to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as reasonably practicable.

These legislations acknowledge that a person has sexually harassed someone if they:

- make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
- engage in any other unwelcome conduct of a sexual nature in relation to the other person 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.

### 3. CODES OF CONDUCT

#### 3.1 Council values

Individuals undertaking Council duties or activities are required to conduct themselves in a manner that is consistent with the Council values and the Employee Code of Conduct. Individuals undertaking Council duties or activities are obliged to adhere to the Code of Conduct. In the context of sexual harassment, demonstrating the following is particularly relevant:

##### **Integrity**

- acting with respect, honesty, reliability, trust, tolerance and understanding;
- using powers responsibly and reporting improper conduct;
- promoting an environment that encourages respect for colleagues and others by creating an environment that is free from discrimination, harassment and bullying
- **Leading by example** - modelling behaviours based on Council values and acting in an ethical manner. For People Leaders, providing a safe, encouraging and supportive work environment.

### **3.2 Codes of Conduct (Councillor and Employee)**

Individuals undertaking Council duties or activities are required to conduct themselves in a manner that is consistent with Council's values and behavioural principles set out in the applicable Code of Conduct.

Individuals undertaking Council duties or activities are required to take personal responsibility to uphold the relevant Code of Conduct 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.

Individuals undertaking Council duties or activities are expected to identify, and report conduct that is not consistent with the Code of Conduct.

Council has developed this policy to support behaviour consistent with the relevant Code of Conduct. All Individuals undertaking Council duties or activities are required to comply with this policy.

### **3.3 Definition of Misconduct**

Misconduct means any breach by an Individual undertaking Council duties or activities of the prescribed standards of conduct included in the Code of Conduct.

Serious misconduct by an Individual undertaking Council duties or activities includes any conduct that is sexual harassment of an Individual undertaking Council duties or activities

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.

Each case needs to be considered individually.

## **4. SEXUAL HARASSMENT IN THE WORKPLACE**

### **4.1 What is sexual harassment?**

Sexual harassment in the workplace may take various forms and can be directed at, and perpetrated by, all persons including men, women, transgender people, and those who identify as non-binary. 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 unwanted 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);

- and actions or comments of a sexual nature in a person's presence (even if not directed at that person).

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;
- Making any gesture, action or comment of a sexual nature in a person's presence.

## 4.2 Threshold

The *Equal Opportunity Act 2010*, *Fair Work Act 2009* 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 in the workplace 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.

## 4.3 What is 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 employees who visit other offices i.e. the same behavioural standards that exist in their workplaces, apply in other offices that employees 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. In addition, Part 3-5A of the *Fair Work Act* considers sexual harassment "in connection with" work, i.e., can apply where a worker is sexually harassed by another worker, or by another person when they are working (for example by a customer or member of the public).

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

## 4.4 Beyond the workplace and outside working hours

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

- How Council provides services to both internal and external clients and how it interacts with other members of the public (physical, or through digital or electronic mediums such as email, phone, social media);
- On-site, off-site, role related social functions, conferences – wherever and whenever Councillors, employees and volunteers may be performing aspects of their role or during travel in a vehicle or in accommodation (including hotel rooms) associated with work purposes;



- Out of work hours interaction where there is a strong connection to the employment relationship, such as functions or events;
- Councillor, employees and volunteer treatment of others in the performance of their Council duties or activities;
- Client and other external party treatment of Councillors, employees and volunteers;
- Any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

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

## **5. REPORTING SEXUAL HARASSMENT**

Wellington Shire Council has zero tolerance for any form of sexual harassment in the workplace.

Wellington Shire Council strongly encourages individuals undertaking Council duties or activities who believe they have been sexually harassed, or have witnessed sexual harassment, to report their experience through one of the following pathways:

### **5.1 Internal Reporting Options**

- Speak to your direct supervisor or manager – Employees are encouraged, where appropriate, to raise concerns directly with their manager in the first instance.
- If you are not comfortable talking to your manager, you may:
  - Contact People and Capability for confidential advice and guidance.
  - Contact one of Council's Contact Officers.
- Make a report via Council's Speak Up Platform (recommended). This secure, independent reporting service (hosted by Your Call) allows individuals to report sexual harassment confidentially and, if they choose, anonymously.
  - Employees may submit a report through the Sexual Harassment Reporting Form on the Speak Up platform.
  - Reporters can choose from three anonymity settings: remain fully anonymous, disclose their identity only to Your Call, or share their identity with both Your Call and Council – refer link to 'Speak Up' to report sexual harassment: [www.yourcall.com.au/wellingtonvic](http://www.yourcall.com.au/wellingtonvic)
- Make a Public Interest Disclosure (PID) via the Speak Up platform if the matter meets PID criteria.
- Talk to the person directly where safe and appropriate. This may suit some individuals and situations but is not required.

Employees and volunteers can indicate in their report how they would prefer the matter to be resolved. This preference will be considered as part of Council's assessment of the most appropriate action to take.

## **5.2 External Reporting Options**

Reports of sexual harassment can also be made to one or more of the following external bodies:

- Victorian Equal Opportunity and Human Rights Commission
- Victorian Civil and Administrative Tribunal
- A union representative
- WorkSafe Victoria
- Fair Work Commission
- Australian Human Rights Commission

## **5.3 Criminal Conduct**

In cases where the conduct may constitute a criminal offence—such as sexual assault, indecent exposure, stalking, or obscene communication—employees and volunteers will be encouraged to report the matter to Victoria Police.

Where an alleged assault occurs in the workplace, Council may have an obligation to notify police. Employees and volunteers are also encouraged to inform their People Leader or People and Capability (HR), regardless of whether they choose to make a police report.

## **5.4 Support for Employees and Volunteers**

Employees and volunteers affected by sexual harassment will be supported in carrying out the above actions. People and Capability will listen, provide guidance, and work proactively with individuals to ensure their safety and wellbeing, as required under the Occupational Health and Safety Act 2004.

## **5.5 Further Guidance for Councillors**

Councillors should refer to section 7.9 for guidance on reporting processes relevant to their obligations.

## **5.6 Confidentiality**

Where appropriate, disclosures/complaints of sexual harassment will be treated in confidence to protect an employee's/volunteer'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 employee/volunteer, particularly in circumstances that may:

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

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

## **5.7 Bystander intervention**

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

Bystanders who 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.

## **5.8 Anonymous Reports**

Individuals undertaking Council duties or activities reporting sexual harassment may request to remain anonymous.

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.

## **5.9 Health, safety and Accessibility**

Employers must provide and maintain a working environment that is safe and free of risks to health, so far as is reasonably practicable.

Wellington Shire Council will support Individuals undertaking Council duties or activities affected by sexual harassment in making reports of sexual harassment and in participating in any process required to deal with a report.

The Wellington Shire Council will listen to and work with Individuals undertaking Council duties or activities, including bystanders and others impacted by sexual harassment, to ensure their safety and well-being as required by the *Occupational Health and Safety Act 2004*.

Wellington Shire Council will prioritise the safety, wellbeing and wishes of Individuals undertaking Council duties or activities wishing to make a report. Wellington Shire Council will ensure that reasonable adjustments to the reporting process are provided to help an Individual undertaking Council duties or activities with disability make their report and participate in the process as well as connecting to appropriate support services. Any assistance will be done so in the strictest of confidence to ensure confidentiality is maintained. Wellington Shire Council will communicate with the employee who they will be seeking assistance from and why, prior to doing so. Please contact the People and Capability team for assistance and support.

## **6. RESPONDING TO SEXUAL HARASSMENT**

### **6.1 Employer's responsibility**

If a report of sexual harassment is made, or sexual harassment is observed or brought to the attention of Wellington Shire Council, it must be acted upon as soon as practicable. Reports will be managed with appropriate consideration to the sensitive and confidential nature of the reports and ensuring procedural fairness to those against whom the report is made.

All People Leaders (staff with management responsibilities), regardless of level, have a responsibility to improve the work culture by adopting a zero-tolerance approach to sexual harassment. People Leaders must take active steps to prevent sexual harassment in a workplace, not just respond to reports if they arise.

The appropriate action for management to take when a report 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 individual making the report 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.

Wellington Shire Council must ensure the safety and well-being of all employees as per the Occupational Health and Safety Act 2004 and ensure that the complainant and respondent are informed of the supports available to them, such as the Employee Assistance Program or equivalent (EAP), as early as possible.

### **6.2 Process to follow for employees, contractors and volunteers**

Reports of sexual harassment will be considered by the People Leader with advice from People and Capability, unless an external consultant is engaged (this may occur in complex matters). Processes will be undertaken in line with relevant industrial instruments and organisational policies and procedures, where applicable.

People Leaders are required to contact People and Capability for assistance in dealing with a report or for advice as to the best way to address a report.

The People Leader, in consultation with People and Capability, must conduct a risk assessment of the report to determine an appropriate course of action/s with the safety of the person who has made the report a priority. The person who has made the report will be advised how their report will be managed and the anticipated timeframes of any process. The person who has made the report will be informed of delays or changes to anticipated timeframes.

Councillors should refer to section 7.9 in relation to process.

### **6.3 Informal process**

In some instances, it may be appropriate to address a report of sexual harassment at a local level, such as conducting or facilitating discussions to address the behaviour, or refresher training for the general work area on the requirements of this policy. This training should support the regular training that is provided for employees regarding sexual harassment and other related people and culture matters.

### **6.4 Formal process**

In other cases, a more formal approach may be appropriate. Formal processes typically involve investigating the report, making a finding, and deciding on an appropriate outcome.

Such processes will be undertaken in line with relevant organisational policies, procedures and industrial instruments.

In some instances, it may be necessary or appropriate to temporarily change operations within a team to ensure a safe workplace and maintain the integrity of any review process. Changes may include:

Operational change to reporting lines and team composition;

- Change to seating arrangements;
- Performing alternative duties;
- Change to physical work location;
- Taking periods of approved leave; or
- Suspension.

It will not be presupposed that the temporary change will involve the person who has made the report. The person who has made the report should be consulted before any decision relating to temporary change involving them or the respondent is finalised. It is important that the measures do not result in any detriment to the person who has made the report (as this may amount to victimisation, which is unlawful). Safety and confidentiality of the process are key considerations in identifying appropriate temporary changes.

Any operational change should only be enacted in collaboration with People and Capability to ensure it is an appropriate and proportionate response to the matter and approved at the necessary delegate level (if required). People and Capability can assist with conducting discussions with affected staff about any operational changes.

## **6.5 Outcomes of substantiated claims**

A substantiated report of sexual harassment may result in a number of outcomes against an individual undertaking Council duties or activities, including termination of employment or engagement, consistent with the Wellington Shire Council Discipline and Performance Management Policy.

The standard contracts of employment for executives note that an executive shall conform to, observe and comply with the directions and restrictions and regulation of the employer and comply with all legal requirements.

## **6.6 Natural justice and procedural fairness**

Both the person who made the report 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 manager reports, emails, witness reports of the alleged conduct, text messages or the person who made the report's personal records.

When considering the report of sexual harassment the person who made the report 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.

## **6.7 Support/welfare**

Disclosure of information or making a report can be very difficult for the affected individuals. People Leaders will take necessary welfare steps following the making of a report of sexual harassment.

This may include allowing an employee to go home for the rest of the day, ensuring they have safe transport, connecting them with a support person and with the EAP or equivalent as well as supporting alternative work arrangements or other reasonable work adjustments for as long as is necessary.

## **6.8 Victimisation**

Wellington Shire Council has a zero-tolerance approach to victimisation or detrimental treatment of any person who has made a report or witnessed an offence.

It is unlawful to victimise a person, which means treat them badly or unfairly, because they have made a report about discrimination, sexual harassment or vilification, or have witnessed and / or helped someone else to make a report.

Please contact People and Capability immediately if you have experienced any unfair treatment or detriment as a result of making a report of sexual harassment or helping another person to make a report.

## **6.9 Findings**

A substantiated report of sexual harassment may result in a number of outcomes against an individual undertaking Council duties or activities, including termination of employment or engagement.

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 demotion, transfer or termination of employment).

Determination of outcomes will be undertaken in line with relevant industrial instruments. Each case will be assessed on its own merits.

In the instance a report of sexual harassment is unsubstantiated, both the person who made the report and the respondent will be advised of the findings and reasons for the decision. All individuals involved have the option of making an application to the Fair Work Commission as detailed in 6.11 below.

## **6.10 Criminal matter**

Although sexual harassment is generally a civil matter, not a criminal offence, some types of harassment may 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, the Manager People and Capability 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 People Leaders speak with People and Capability for advice on individual matters, as each matter must be considered on its merits.

### **6.11 Legal liability**

Individuals undertaking Council duties or activities 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 and/or any other person who requests, instructs, induces, encourages, authorises or assists the unlawful conduct.

Conduct constituting sexual harassment by an Individual undertaking Council duties or activities may also expose Wellington Shire Council to liability. Wellington Shire Council may be vicariously liable for the individual's conduct undertaken in the course of, or in connection with, their employment.

### **6.12 Mandatory notifications**

Depending on the situation, Wellington Shire Council may also have mandatory reporting requirements.

### **6.13 Application to the Fair Work Commission to resolve a sexual harassment dispute**

All individuals have the right to make an application to the Fair Work Commission to resolve a sexual harassment dispute. Applications can be made to:

- Make a stop sexual harassment order to prevent future sexual harassment
- Deal with a sexual harassment dispute to remedy past harm, or
- Do both of these things.

Further information is available on the Fair Work Commission's website:

[Sexual harassment | Fair Work Commission](#).

## **7. ADDITIONAL CONSIDERATIONS**

### **7.1 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.

### **7.2 Intent**

The *Equal Opportunity Act 2010*, *Fair Work Act 2009* 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.

Motive is irrelevant; the test focuses on how the behaviour is received by the other person. It is the responsibility of every employee to ensure that they do not engage in any behaviour that could amount to sexual harassment.

Sexual harassment can occur even when a respondent does not intend to offend or humiliate.

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

### **7.3 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, Individuals undertaking Council duties or activities are required to use technology and social media responsibly in the workplace and in relation to anything or anyone associated with the workplace. This extends to the use of technology and social media outside the workplace where there is a strong connection to the employment relationship (for example, between colleagues where the foundation of the relationship is a common workplace).

### **7.4 Behaviour not considered to be sexual harassment**

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting Individuals undertaking Council duties or activities, is not a form of sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated action.

This does not mean that sexual or romantic interactions between employees are always appropriate. Individuals undertaking Council duties or activities may face disciplinary action where their actions adversely affect other individuals undertaking Council duties or activities or their workplace responsibilities.

### **7.5 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 disciplinary action.

### **7.6 Information or claims without substance**

Individuals undertaking Council duties or activities found to have knowingly provided false information or knowingly made allegations of sexual harassment without any substantive merit, may be subject to separate disciplinary action as per Council's 'Discipline and Performance Management Policy'.

### **7.7 Third Party Sexual Harassment**

Third-party sexual harassment happens when the harassment is committed not by another employee, Councillor or volunteer, but by an external party. Typical perpetrators of this type of harassment include clients, customers, vendors who come on site or otherwise interact with employees, independent contractors who work for the company, and employees or contractors of a different company.

### **7.8 Customer Facing Staff**

Working in a customer service orientated role can make it challenging for Individuals undertaking Council duties or activities to establish and reinforce boundaries with customers. However, customer-perpetrated sexual harassment is unlawful and will not be tolerated under any circumstances. Sexual harassment of employees, Councillors or volunteers by customers or other third parties will be taken seriously, and appropriate action taken, where possible, to prevent harassment.



Individuals undertaking Council duties or activities are encouraged to notify their People Leader if they feel unsafe in dealing with a particular customer. If any Individual undertaking Council duties or activities witnesses or becomes aware of an incident they need to report it to their People Leader.

The People Leader in conjunction with the Manager People and Capability then needs to investigate the incident and will treat all reports of sexual harassment by a customer the same way they would treat reports of sexual harassment by a co-worker or supervisor and interview any witnesses in a timely and fair manner.

People Leaders will document their findings and inform the individual having made the report of their findings. Depending on the results of the investigation, management may then have an obligation to take prompt remedial action such as banning customers who behave indecently from entering Council facilities in future.

If you witness or receive a report of a customer or third party sexually harassing an Individual undertaking Council duties or activities on behalf of Wellington Shire Council, you should:

- Be proactive and speak directly with customers or clients who exhibit this type of behaviour.
- Act in accordance with this policy, particularly regarding procedures for dealing with reports of sexual harassment.
- Speak up about the conduct, including conduct from customers or clients.

Sexual harassment from any source will not be tolerated; the customer is not “always right” and it may be necessary, to refuse service to customers or in extreme cases, to ban certain customers or clients from entering Council owned facilities.

In instances of sexual harassment towards an employee from a customer or third party the police should be contacted immediately.

## **7.9 Councillors**

Councillors are encouraged to speak to the CEO in the first instance.

Councillors have full access to the Employee Assistance program. In the event that the CEO feels that other resources could be required for support, the General Manager Corporate Services and/or the Mayor can assist in handling the process internally.

Where the allegation/dispute cannot be resolved, Councillors have the ability to commence an external mediation process which is facilitated by an external and independent mediator engaged by the CEO and failing that, commencement of the internal arbitration process which involves an independent arbiter.

Councillors also have the option to contact external bodies, such as the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or Victoria Police or the Victorian Civil and Administrative Tribunal (VCAT).

For further details see the Councillor Code of Conduct.

## **8. SUPPORT OPTIONS**

A range of options are available to provide support in regards to sexual harassment. The Wellington Shire Council's primary contacts include Manager People and Capability, HR support, EEO Contact Officers, and General Manager Corporate Services.

## 8.1 Employee Assistance Program

The Wellington Shire Council provides an EAP, which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues. The EAP is staffed by independent qualified practitioners.

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

People Leaders can access Manager Assist through the EAP, to help with workplace issues.

The Wellington Shire Council's EAP provider is Converge International 1300 687 327.

## 8.2 External support

An employee may wish to access external support services, such as:

- **1800RESPECT** - 1800RESPECT provides information, referral and counselling services to people experiencing or at risk of experiencing sexual assault, domestic or family violence.  
It is also available to friends, family and professionals.  
1800RESPECT provides a confidential service 24 hours a day, seven days a week. You can contact 1800RESPECT by visiting [www.1800respect.org.au](http://www.1800respect.org.au) or calling 1800 737 732.
- **Centres Against Sexual Assault** - Centres Against Sexual Assault are non-profit, government-funded organisations that provide support, counselling and crisis care to child and adult victims of sexual assault and their family. You can find your local centre by visiting [www.gcasa.org.au](http://www.gcasa.org.au)
- **Lifeline** - Lifeline is a national charity providing all Australians experiencing a personal crisis with access to 24-hour crisis support and suicide prevention services. You can contact Lifeline by visiting [www.lifeline.org.au](http://www.lifeline.org.au), calling 13 11 14 or texting 0477 13 11 14.
- **Sexual Assault Crisis Line** - The Sexual Assault Crisis Line is a state-wide, after-hours, confidential, telephone crisis counselling service for people who have experienced both past and recent sexual assault. You can contact the Sexual Assault Crisis Line Victoria by visiting <https://www.sacl.com.au> or by calling 1800 806 292.

An employee may also wish to contact their union for representation and support.

## 8.3 People and Capability

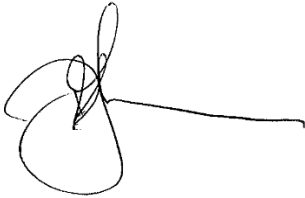
In the context of this policy, People and Capability is responsible for:

- Providing advice in relation to matters covered by this policy;
- Assisting individuals undertaking Council activities and duties and People Leaders in understanding their roles and responsibilities;
- Conducting reviews and/or engaging an independent external reviewer to do so; and
- Assisting with assessing whether a report of sexual harassment requires action under a different process.

#### **8.4 Regular Policy Review**

This policy will be reviewed every two years and if necessary following significant incidents if they occur.

**This policy** is approved by the Chief Executive Officer on 18 December 2025.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

.....  
**DAVID MORCOM**  
**Chief Executive Officer**

**REVISION HISTORY**

VERSION	DATE	SUMMARY OF CHANGES
1.0	May 2024	New Council Policy converted from Employee Policy to Council Policy. Formatting changes. Definition of volunteer added.
1.1	December 2025	Date of Next Review updated to December 2027 (every two years). Formatting and number sequencing changes. Updated to reflect VPS Model Policy.