

2. Human Resources

2a.3 Sexual Harassment Policy

This policy must be read in conjunction with Riverina Conservatorium of Music (RCM) Human Resources Policies General Outline, Definitions and Relevant Legislations.

1. Purpose

- a. Sexual harassment is unlawful and prohibited by both state and territory discrimination law and the *Sex Discrimination Act 1984 (Cth)*.
- b. This sexual harassment policy outlines the RCM's commitment to:
 - i. Creating a workplace culture that is focused on equality and respect, that supports people to take bystander action and takes a **zero-tolerance approach** to sexual harassment, sex-based harassment, behaviour that may result in a hostile workplace environment and victimisation.
 - ii. A work environment that is free from all forms of sexual harassment.
 - iii. The establishment of a safe and supportive complaints procedure.
 - iv. Ensuring that any worker who makes a complaint about sexual harassment, sex-based harassment, behaviour that may result in a hostile workplace environment or takes bystander action in response to inappropriate behaviour, will be protected from victimisation.
- c. It is the obligation and responsibility of everyone working at the RCM to treat others with dignity, courtesy and respect and to ensure that the workplace is free from sexual harassment, sex-based harassment, behaviour that may result in a hostile workplace environment and victimisation.
- d. The RCM also has a positive duty to eliminate the risk of sexual harassment, sex-based harassment, a hostile workplace environment and victimisation so far as is reasonably practicable. This policy is one part of the RCM's strategy for preventing and eliminating sexual harassment in the workplace.

2. Additional Definitions

- a. **Zero Tolerance:** The act of punishing all unacceptable behaviour by strict and uncompromising application of the law with no exceptions.

3. Application of Policy

- a. This policy applies to all workers engaged by the RCM, which includes, but is not limited to:
 - i. Board members
 - ii. The Executive Team and Heads of Department

- iii. All current or prospective employees (full-time, part-time, fixed term, and casual)
 - iv. Customers, students
 - v. Patrons
 - vi. Contractors
 - vii. Work experience students
 - viii. Volunteers and anyone working in an unpaid capacity
 - ix. Any other workers
- b.** All workers must comply with this policy as amended from time to time. While every worker is required to comply with this policy, this policy is not incorporated as a term of any employment contract or contract for services and does not create any rights enforceable by a worker against the RCM.
- c.** To the extent that there is an inconsistency between the law and this policy, the law will prevail.

3.1 When this Policy Applies

- a.** This policy applies when workers are:
- i. working at the RCM (including working from home) during or outside normal working hours;
 - ii. performing functions in connection with or in relation to their work (e.g. lunch breaks, after work drinks, social functions, conferences, travelling to work jobs, at accommodation whilst travelling for work, at work functions and events);
 - iii. working on behalf of or acting in an official capacity for the RCM, including when providing a service to clients and when interacting with members of the public;
 - iv. performing work activities off site (e.g. at other venues);
 - v. out of work hours interaction where there is a connection to work; and
 - vi. using social media and other electronic communication (e.g. email, text message) (this is the case for use of social media professionally or personally, in the workplace and after hours where there is a connection with work e.g. between work colleagues).

3.2 Roles and Responsibilities

- a. All employees must:**
- i. understand and comply with this policy;
 - ii. ensure they do not engage in sexual harassment, sex-based harassment, behaviour which subjects another person to a hostile workplace environment, victimisation or any other unlawful

- conduct towards other workers, customers/clients or others with whom they come into contact with through work;
- iii. ensure they do not aid, abet or encourage other persons to engage in unlawful conduct that constitutes sexual harassment, sex-based harassment, subjects a person to a hostile workplace environment or victimisation;
- iv. follow the reporting and complaint procedure in this policy if they experience any unlawful conduct;
- v. report any unlawful conduct they see occurring to others in the workplace that is in breach of this policy;
- vi. maintain confidentiality if they are involved in the complaint procedure.

4. Details

4.1 Zero Tolerance

- a. The RCM takes a 'zero tolerance' approach to sexual harassment, sex-based harassment, behaviour that may result in a hostile workplace environment and victimisation in the workplace.
- b. The RCM encourages any worker who believes that they have been subjected to or have witnessed sexual harassment, sex-based harassment, a hostile workplace environment or victimisation to report the behaviour.
- c. Zero tolerance means there will be action and consequences that are appropriate and proportionate considering an offender's behaviour and the impact of their actions. However, zero tolerance does not mean that we will respond in the same way to every incident, for example, through automatic dismissal.

4.2 What is Sexual Harassment

- a. Sexual harassment means an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which a reasonable person would anticipate makes the recipient feel offended, humiliated and/or intimidated.
- b. Sexual harassment includes a working environment or workplace culture that is sexually permeated or hostile that can amount to unlawful sexual harassment (e.g. the display of obscene or pornographic materials, general sexual banter, crude conversation or sexual innuendo and offensive jokes).
- c. Sexual harassment in the workplace may be physical, spoken, non-verbal, written or image-based and may include, but is not limited to:
 - i. Unwelcome physical contact of a sexual nature;
 - ii. Comments or questions of a sexual nature about a person's private life or their appearance;

- iii. Sexually suggestive behaviour, such as leering or staring or offensive gestures;
- iv. Suggestive sounds or facial expressions such as winking, licking lips, throwing kisses, howling, smacking of lips;
- v. Brushing up against someone, touching, fondling or hugging;
- vi. Sexually suggestive comments or jokes;
- vii. Displaying offensive screen savers, photos, calendars or objects;
- viii. Repeated invitations to go out on dates;
- ix. Unwanted displays, declarations of affection or personal gifts;
- x. Repeated invasion of personal space or blocking someone's path;
- xi. Requests for sex;
- xii. Sexually explicit emails, text messages or posts on social networking sites;
- xiii. Sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences); and
- xiv. Actions or comments of a sexual nature in a person's presence (even if not directed at that person).

4.3 Threshold

- a. 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.
- b. 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 and if it is unwelcome.
- c. Just because someone is not objecting to inappropriate conduct in the workplace when it happens is not tantamount to giving consent for the behaviour or acquiescing to its repetition in the future.

4.4 Sexual Harassment and Technology and Social Media

- a. Sexual harassment can occur through electronic channels (such as emails, text messages, instant message or by viewing websites) and through social media, irrespective of whether it occurs during work hours or not. Where there is 'a connection' to your employment, you are subject to the same rules about sexual harassment in the virtual world as you are in the real world.
- b. You are therefore required to use technology and social media in a responsible manner at the workplace and in connection with anything or anyone associated with the workplace. This obligation applies to your use of technology and social media outside of work hours where there is a connection to your employment.

4.5 What is Sex-Based Harassment

- a. Sex-based harassment is any unwelcome conduct of a demeaning nature because of a person's sex, in circumstances which a reasonable person would

have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

- b.** Examples of sexual harassment include, but are not limited to:
 - i. making inappropriate comments and/or jokes about a person based on their sex (e.g. joking about a woman being 'hormonal' based on her menstrual cycle or experience of menopause, or criticising a male teacher's ability to teach because he is a man);
 - ii. asking intrusive personal questions based on a person's sex;
 - iii. displaying images or materials that are sexist, misogynistic or misandrist;
 - iv. making sexist, misogynistic or misandrist remarks about a specific person;
 - v. requesting a person to engage in degrading conduct based on their sex.
- c.** There is no requirement that the unwelcome conduct be repeated, a one-off incident or comment can be sex-based harassment.
- d.** The motive of the person who engaged in sex-based harassment is irrelevant. It also does not matter if other workers or colleagues wouldn't have been offended, humiliated or intimidated by the behaviour, only the person to whom the conduct was directed towards needs to have found it unwelcome.

4.6 What is a Hostile Workplace Environment

- a.** A hostile workplace environment is one where a reasonable person having regard to all the circumstances would have anticipated the possibility that a person's behaviour that has occurred or is occurring would result in the workplace environment being offensive, intimidating or humiliating to another person by reason of their particular sex or a characteristic associated with their sex.
- b.** For a workplace to be a hostile workplace environment, the behaviour does not need to have been directed towards any particular person in the workplace and it does not need to have actually resulted in an individual being offended, humiliated or intimidated. The inappropriate behaviour from the person must just have had the possibility of making the person feel unwelcome or excluded by the workplace environment by reason of their sex or a characteristic associated with their sex.
- c.** Examples of conduct that may amount to a hostile workplace environment include but are not limited to:
 - i. Displaying obscene or pornographic materials
 - ii. General sexual banter
 - iii. Sexual innuendos
 - iv. Offensive jokes

4.7 Reporting – Who can Raise a Complaint

- a. The RCM strongly encourages workers to raise concerns or make a report or complaint, if they believe there has been a breach of the RCM's Sexual Harassment Policy, whether they experience, witness, or become aware of inappropriate behaviour occurring in the workplace.
- b. All reports of sexual harassment, sex-based harassment, hostile workplace environments and victimisation will be taken seriously and treated confidentially (to the extent possible).

4.8 How to Raise a Complaint

- a. Workers should raise any concerns or complaints related to breaches of this policy with the Director(CEO).
- b. Where the Director (CEO) is unavailable or it is not appropriate for them to be involved in the process, a complainant should contact the Associate Director.
- c. Workers may raise concerns or complaints verbally or in writing. Depending on the nature of the complaint, a complainant may be asked to document the complaint in writing (e.g. in an email or formal written complaint).
- d. In cases of sexual assault, indecent exposure, stalking, obscene communications or any other criminal conduct, workers are encouraged to make a report to the police. If the assault occurred in the workplace, the RCM may be required to report the matter to police. Workers are encouraged to report the incident to the Director (CEO), regardless of whether a report is made to the police or not.

4.9 Anonymous Complaints

- a. In some situations, a complainant or witness may wish to request to remain anonymous and where appropriate, anonymity will be provided.
- b. It may however 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, including complainant and witness details, when consideration of procedural fairness and natural justice are taken into account.

4.10 Bystander Intervention

- a. Bystanders who witness or are aware of sexual harassment, sex-based harassment, behaviour creating a hostile workplace environment or victimisation occurring, can play an important role in preventing such inappropriate behaviour in the workplace.
- b. In order to promote a safe, equitable and respectful workplace, the RCM encourages all workers to take bystander action to:

- i. provide support to individuals who are being subjected to sexual harassment, sex-based harassment, a hostile workplace environment or victimisation;
 - ii. formally or informally challenge concerning behaviour witnessed; and
 - iii. report all incidents of sexual harassment, sex-based harassment, behaviour resulting in a hostile workplace environment and/or victimisation that they witness or hear about in the workplace.
- c. The RCM will not tolerate any victimisation, bullying, harassment or intimidation against those who take bystander action.

4.11 Confidentiality

- a. Where possible and appropriate, disclosures/complaints of sexual harassment, sex-based harassment, behaviour resulting in a hostile workplace environment and victimisation to the RCM will remain confidential to the extent possible, taking into account the RCM's obligation to provide a safe workplace, afford natural justice to the respondent and require disciplinary action.
- b. Workers who are directly involved with a complaint or an accompanying investigation must maintain confidentiality. A failure to do so may result in disciplinary action.

4.12 Victimisation

- a. Victimisation is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint, or they are involved in a complaint of unlawful conduct.
- b. Workers must not retaliate against a person who raises a complaint or subject them to any detriment.
- c. Victimisation is unlawful and will not be tolerated at the RCM. Any person found to victimise, harass or take reprisal action against individuals participating in procedures associated with this policy may be subject to separate disciplinary action.
- d. Any incidents of victimisation should be immediately reported to the Director (CEO).

4.13 Support

- a. Being involved in a workplace sexual harassment, sex-based harassment, hostile workplace environment incident or investigation can be stressful, difficult, and traumatic and there is no right or wrong way to respond.
- b. If you are involved in a complaint, there are a range of support and advisory services that can provide you with free and confidential support should you need it.

- c. The RCM will endeavour to provide you with the contact details of support services you may be able to access if required. Workers are also encouraged to ask for support if needed.

4.14 Complaint Handling Procedure

- a. If any worker feels they have been subjected to any form of sexual harassment, sex-based harassment, a hostile workplace environment or victimisation, or is a witness to such behaviour they should not ignore it. The RCM has a complaint procedure for dealing with these matters.

Process

- a. The complaint handling process may differ depending on the nature of the concern or problem regarding behaviour in breach of this policy.
- b. The type of complaint procedure used will largely be determined by the nature of the complaint made.
- c. Whilst the RCM will endeavour to outline the complaint process options available to a complainant and may seek their views, it will not always be appropriate for the complainant to determine the procedure but they will be kept informed throughout.

Self-help approach (if appropriate)

- a. If a worker feels comfortable doing so, they may address an issue with the person concerned directly. A worker should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive, and ask that the behaviour stop.
- b. In some instances, informing the instigator that their behaviour is inappropriate and unwelcome, and asking for it to stop may be sufficient, particularly if the individual was unaware of the impact of their behaviour.

Informal Process

- a. 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.
- b. Informal processes emphasise resolution rather than factual proof or substantiation of a complaint.
- c. The informal complaint procedure is better suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

Formal process

- a. 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. Formal processes can be conducted internally or can involve external assistance appointed by the RCM.
- b. If the RCM considers it appropriate for the safe and efficient conduct of an investigation, workers may be required not to report for work during the period of an investigation. The RCM may also provide alternative duties or work during the investigation period. Generally, employees will be paid their normal pay during any such period.

4.15 Possible Outcomes/Findings

- a. Each case will be assessed and determined on its own merits.
- b. A substantiated report of sexual harassment, sex-based harassment or behaviour subjecting another person to a hostile workplace environment or victimisation may result in a number of outcomes against a worker, as detailed in section 4.17.

4.16 Claims Without Substance

- a. The RCM encourages the reporting of behaviours that the worker genuinely believes to be sexual harassment, sex-based harassment, subjecting a person to a hostile workplace environment or victimisation.
- b. If a complainant or witness is found to have made a false claim (knowingly provided a false claim, or knowingly made false allegations) they may be subject to separate disciplinary action, up to and including termination of employment.

4.17 Failure to Comply

- a. Sexual harassment, sex-based harassment, behaviour which subjects another person to a hostile workplace environment and victimisation at work are all forms of serious misconduct.
- b. Failing to comply with this policy at any time may lead to disciplinary action, up to and including termination of employment.
- c. Agents and contractors (including temporary contractors) who are found to have breached this policy may have their contracts with the RCM terminated or not renewed.
- d. Non-compliance with this policy may also breach applicable anti-discrimination, equal employment opportunity or health and safety laws and may result in legal proceedings being commenced against the individual. In the event of legal proceedings, individuals may be exposed to legal costs, penalties, orders to pay compensation and even imprisonment in some circumstances.

- e. Workers, who cause, instruct, induce, aid, abet, or encourage or permit other persons to engage in unlawful conduct, can also be legally liable.

5. Variations

- a. If a worker is unsure about any matter covered by this Policy, they should seek the assistance of the Executive Team Member(s).
- b. *The RCM reserves the right to vary, replace or terminate this policy from time to time.*

Policy version and revision information

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