

SEXUAL HARASSMENT POLICY

FEBRUARY 2022

1. POLICY STATEMENT

1.1 Purpose

Sexual harassment is unlawful and prohibited by both the Anti-Discrimination Act 1977 (NSW) and the *Sex Discrimination Act 1984* (Commonwealth).

Robertson Bowling Club Ltd (the Club) is committed to providing a safe, flexible and respectful environment for staff and clients that is free from all forms of sexual harassment. This policy applies to staff and clients of the Club and sets out the legal responsibilities and obligations for the Club and its staff.

In this policy:

- 'staff' and 'employees' are defined inclusively to include employees of the Club as well as persons seeking employment, contract workers, consultants, agency on-hire staff, students and volunteers.
- 'client' is defined inclusively to include all persons to whom services are provided by the Club. This includes all categories of members of the Club, guests of members and visitors to the Club

1.2 Scope

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

- how the Club 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 staff may be as a result of their working duties and out-of-work hours where it is work-related;
- staff treatment of other staff, clients and members of the public encountered in the course of their working duties and treatment of staff by clients.

1.3 Principles

The principles associated with this policy are that:

- sexual harassment is unlawful and will not be tolerated in the workplace.
- a single incident can constitute sexual harassment.
- Sexual harassment is gendered. Most instances of sexual harassment (but not all) are experienced by women. The Club has a duty of care to ensure the health and safety of its employees and to eliminate or minimise risks to health and safety as far as is reasonably practicable
- staff 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 an employee or by a client may also expose the Club to liability.
- The Club recognises that comments and behaviour that do not offend one person can offend another. All Club staff are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment. Equally, Club staff should have a reasonable expectation that they will be treated the same way by clients

1.4 Responsibilities

Staff

All staff must:

- comply with this policy;
- behave appropriately;
- participate in any training provided by the Club, including completing any assessments;
- treat information in relation to claims of sexual harassment with appropriate confidentiality; and
- ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint; and
- act in accordance with the Club's Code of Conduct and its values, policies and procedures.

Management

In addition to their responsibilities as employees, those with management responsibilities (including Directors) must also:

- monitor the work environment;
- promote awareness of this policy within their area;
- treat all complaints seriously and take prompt and appropriate action to address them; and
- discuss the complaint with their immediate supervisor as appropriate.

2. LEGISLATION

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

2.1 New South Wales legislation

The Anti-Discrimination Act 1977 requires the Club to take reasonable and proportionate steps to eliminate sexual harassment in the workplace as far as practicable.

Section 22B of the Act 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.

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.

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 contract worker of the person, or a person who is seeking to become a contract worker of the person or a contract worker to sexually harass a fellow contract worker.

3. CODE OF CONDUCT

3.1 Code of conduct and values

Employees are required to conduct themselves in a manner that is consistent with the Club’s Code of Conduct

Employees are obliged to adhere to the Club’s values. In the context of sexual harassment, demonstrating the following values are particularly relevant:

- **Integrity** - using powers responsibly and reporting improper conduct;
- **Respect** - 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 the Club’s values and acting in an ethical manner. For managers, providing a safe, encouraging and supportive work environment; and
- **Human rights** - seeking to protect the human rights of colleagues and the community by raising concerns regarding circumstances that could breach those rights and reporting any suspected breaches in accordance with procedures established by the Club.

3.2 Contract of employment

The Club's standard contract of employment provides that an employee shall conform to, observe and comply with the directions and restrictions and regulation of the employer and comply with all legal requirements.

The standard contract of employment detail that the employer has the right to summarily dismiss the employee at any time without the requirement to give notice, counselling or warning if the employee is guilty of serious misconduct.

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

4.2 Threshold

The Anti-Discrimination Act 1977 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?

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.

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.

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 employment including (but not limited to):

- at social functions sponsored and paid for by the Club;
- at social functions in connection with the team/workplace but not sponsored or paid by the Club;
- in vehicles while on the way to work functions or meetings;
- at after-parties to such events (regardless of their location);
- in accommodation (including hotel rooms) associated with or provided by the Club;
- 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 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. Staff 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 affect others.

5. REPORTING SEXUAL HARASSMENT

The Club strongly encourages employees who believe they have been sexually harassed or have witnessed sexual harassment to consider the following actions:

- Make an informal or formal complaint - Employees are encouraged to approach and inform their direct line manager in the first instance. However, if the employee feels that it is not appropriate, they may contact the Secretary or another Director 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 - With the assistance of their manager or a Director.

Employees affected by sexual harassment will be supported in carrying out the above actions. The Club will listen to and work with employees to ensure their safety and well-being.

In cases of sexual assault, employees will be encouraged to make a report to the Police.

5.1 Confidentiality

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

- constitute a criminal offence;
- constitute an occupational health and safety risk; or
- require disciplinary action.

Only relevant persons in the Club will be advised of the declaration/complaint and any arrangements necessary for the purpose of managing the disclosure/complaint.

5.2 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 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.

6. RESPONDING TO SEXUAL HARASSMENT

6.1 Employer's responsibility

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of the Club, 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 staff with management responsibilities, regardless of level, have a responsibility to improve the work culture by adopting a zero-tolerance approach to sexual harassment. Management must take active steps to prevent sexual harassment in the workplace, 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.

The Club must ensure the safety and well-being of all employees as per the Work health & Safety Act 2011(NSW).

6.2 Process

Complaints of sexual harassment will be considered by the Club. Processes will be undertaken in line with relevant industrial instruments (e.g. the Award) and organisational policies and procedures, where applicable. Managers are required to contact a Director 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.

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.

Disclosure of information or making a complaint can be very difficult for the affected staff member/s. Managers should take necessary welfare steps, such as letting staff members go home for the day, ensuring they have safe transport or connecting them with a support person.

6.3 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 manager reports, 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.

6.4 Findings

A substantiated complaint of sexual harassment may result in a number of outcomes against an employee or client, including termination of employment or suspension of membership. 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.

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

6.5 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 for the Police, the Club is obliged to report this to the Police regardless of whether the complainant has made a report to the Police or not.

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 Anti-Discrimination Act 1977 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 employee and client to ensure that they do not engage in any behaviour that could amount to sexual harassment.

The Club will not excuse 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, employees 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 employees of the Club).

7.4 Behaviour not considered to be sexual harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting employees, 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. Employees may face disciplinary action where their actions adversely affect other employees 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

Employees or clients 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.