



**SEXUAL HARASSMENT  
IN THE WORKPLACE POLICY**

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## **FOREWORD**

It gives the National Human Rights Commission (NHRC) much pleasure to collaborate with the United Nations Development Programme (UNDP) and the Office of the High Commissioner for Human Rights (OHCHR) through Transitional Justice and Human Rights Project (TJHR Project) for the Research and Development of a Sexual Harassment in the Workplace Policy. This Policy developed for the public, non-profit and private sectors in The Gambia, prepared by Dr. Satang Nabaneh, is based on findings from the Sexual Harassment in the Workplace in The Gambia Study. This followed an Advisory Note prepared by the NHRC on the subject and recommendations to initiate a national dialogue and develop a Sexual Harassment in the Workplace Policy. The Policy draws from regional and international benchmarks and intends to make the workplace safer for employees.

The National Human Rights Commission (NHRC) was created by an Act of Parliament in 2017 to promote and protect human rights in The Gambia. Specifically, section 12 (e) (ii) (iii) (iv) of the Act empowers the NHRC to undertake studies on matters concerning human rights, assist the Government in formulating appropriate policies to guarantee human rights, publish guidelines, manuals, and other materials to explain the obligations of public officials in the protection of human rights and adopt best practice guidelines and policies on human rights.

The development of this comprehensive Sexual Harassment in the Workplace Policy is essential as employers largely rely on ordinary internal disciplinary proceedings in handling sexual harassment at workplaces which are not ideal to combat sexual harassment as they usually do not focus on the victims.

The NHRC counts on the support of the Government and relevant institutions to implement this Policy to collectively combat sexual harassment in the workplace.

Since the Policy is generic, the intention is for the sectors to adapt or customise the Policy to their context and situation.

Emmanuel D. Joof  
Chairperson NHRC

## **ACKNOWLEDGMENT**

The timing for this Policy is quite apt as it comes against the background of the many challenges encountered by employees, especially women, in their workplaces. This Policy sets a minimum standard for all employers to safeguard the rights of their employees and serves as a useful reference material in the fight against sexual harassment.

The NHRC expresses its gratitude to the TJHR Project for its continuous commitment and support to the NHRC, in particular seeing this laudable initiative through. We also acknowledge and greatly appreciate the active participation of the Expert Committee members who substantially contributed to the development of this document including Theresa Sagarr Diara, Gambia Chamber of Commerce and Industry; Alhagie Jeng, Bankers Association of The Gambia; Fatoumatta Sanneh, Department of Labour; Siaka Marong, Ministry of Gender, Children and Social Welfare; Ms. Ramou Sonko, UNFPA; Mariatou J. Newlands, Think Young Women; Mrs. Fanta Jatta Sowe, Action Aid International The Gambia; Modou A.F Bahoum, Gambia Federation of the Disabled; Fallu Sowe, Network against Gender Based Violence; Awa Peters and Ida Persson, UNDP Transitional Justice and Human Rights Project; and Commissioner Njundu Drammeh, Mansour Jobe, Sainey Bah and Aminata L.B Ceesay of the National Human Rights Commission. Special thanks to the consultant Dr Satang Nabaneh for the exceptional work, and all our partners for their invaluable contributions.

We hope that the Policy will be adapted by the State, private institutions, and civil society organisations to mitigate the prevalence of sexual harassment in the workplace. Together, we can make the workplace better and safer for all everyone.

## **ACRONYMNS**

AC	Appeal Committee
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CSW:	Commission on the Status of Women
DFP:	Designated Focal Person
IC:	Implementation Committee
ILO:	International Labour Organization
NHRC:	National Human Rights Commission
HRC:	Human Rights Council
UN:	United Nations
UNDP:	United Nations Development Programme
UNGA:	United Nations General Assembly
OHCHR	Office of the High Commissioner for Human Rights
TJHRP	Transitional Justice and Human Rights Project

# **SEXUAL HARRASSMENT IN THE WORKPLACE POLICY**

## **1. Background**

The National Human Rights Commission (NHRC), established by the National Human Rights Commission Act 2017, is the State organ mandated, inter alia, to promote and protect human rights in The Gambia. <sup>1</sup> In fulfilment of that mandate, the Commission's functions include to monitor, receive, investigate and consider complaints of human rights violations in the Gambia, including violations by private persons and entities. The Commission also promotes the culture of human rights and assists the Government in formulating appropriate policies to guarantee human rights. <sup>2</sup> As an independent institution that receives and investigates complaints of human rights violations, the NHRC is aware of the absence of a national sexual harassment policy in the Gambia and resolved to initiate a national process for the development of a comprehensive national anti-sexual harassment in the workplace policy.

## **2. Introduction**

This Policy addresses sexual harassment in the workplace both within the public, private and non-profit sectors. It provides a standard definition of sexual harassment, complaint mechanism for the investigation of sexual harassment, processes for reporting, psychosocial support for complainants, and punishment of perpetrators. The Policy obliges institutions or employers to immediately identify a Designated Focal Person (DFP) and establish a Sexual Harassment Implementation Committee (IC) that will receive complaints of sexual harassment at their institutional level and make appropriate recommendations. The Policy is intended as a guide that can be tailored to institutional needs and circumstances to realise its maximum impact.

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<sup>1</sup> Sec 12 of the NHRC Act, 2017

<sup>2</sup> Ibid.

## **2.1 Policy Statement**

2.1.1 This Sexual Harassment in the Workplace Policy intends to make the workplace safe for everyone; and encourages the reporting of incidents of sexual harassment experienced by any employee as a result of his or her engagement within the workplace and or in relation to the work.

2.1.2 In return, both public and private institutions and civil society organisations are required to commit to promoting equality in the workplace by putting in place mechanisms to prevent sexual harassment. This is in recognition that sexual harassment is a manifestation of power relationships that occurs within unequal relationships in the workplace, for example, between manager or supervisor and employee, or between employees and beneficiaries.

2.1.3 Where allegations of sexual harassment are substantiated, the harasser should be sanctioned in accordance with this Policy or other relevant laws of The Gambia, regardless of his or her status at the institution. This Policy does not preclude the reporting of sexual harassment complaints to relevant authorities established by law including the police, the Ombudsman, the NHRC, or any other relevant body.

## **2.2 Purpose of the Policy**

2.2.1 The purpose of this Policy is to create safe spaces free of sexual harassment for all employees; to inculcate a culture of zero tolerance for sexual harassment; and to provide the expected standard of behaviour.

2.2.2 The Policy applies to every person regardless of gender, sexual orientation, function, seniority, status, or other protected characteristics.

## **2.3 Scope of the Policy**

2.3.1 This Policy serves as a guide for the prevention of sexual harassment in the work environment. Its application extends, but not limited, to the following:

- a) Employers
- b) Managers
- c) Employees
- d) Clients or customers
- e) Partners
- f) Suppliers
- g) Contractors
- h) Consultants
- i) Volunteers
- j) Board Members
- k) Job applicants
- l) Interns
- m) Others having dealings with institutions/ organisations

2.3.2 Applies to the physical offices; and extends outside of the physical offices (such as off-site meetings, business travel, and office-sanctioned social events, electronic communications and digital spaces).

2.3.3 A non-employee who is a victim of sexual harassment may lodge a grievance with the manager/supervisor of the harasser, where the harassment has taken place in the workplace or in the course of the harasser's employment.

## **2.4 Guiding principles**

This Policy should be implemented by taking into account the fundamental rights of aggrieved persons as guaranteed in the Constitution of The Gambia, Domestic violence Act, 2013, Sexual Offences Act, 2013, Labour Act, 2007, Criminal Code, Act 25 of 1933 (as amended) and relevant international and relevant instruments and standards, including international human rights instruments the Gambia is party to.

This Policy should also be implemented in a way that recognises the unique characteristics of the complainant such as gender, sexual orientation, age, cadre, and socio-economic background.

### **2.4.1 Zero tolerance**

The Policy aims to provide all employees with a safe work environment free from sexual harassment. As a minimum standard setting document, this is a zero tolerance Policy, that is, sexual harassment will not be tolerated in the workplace. That such behavior will be addressed seriously, and appropriate disciplinary action taken regardless of the status of the harasser in the institution or organisation. Anyone who violates this Policy of zero tolerance is subject to appropriate disciplinary action, up to and including immediate termination or dismissal.

### **2.4.2 Non-retaliation**

Retaliation means taking adverse action against an individual as a consequence of reporting sexual harassment or expressing an intent to report, for assisting a survivor to report, for testifying or assisting in a proceeding involving sexual harassment. Therefore, a complainant or witness should be protected from any retaliation or reprisal for

reporting or taking part in investigations of sexual harassment. It will be a misconduct to victimise or retaliate against a complainant who, in good faith, lodges a grievance of sexual harassment. reporting or taking part in investigations of sexual harassment. It will be a misconduct to victimise or retaliate against a complainant who, in good faith, lodges a grievance of sexual harassment.

### **2.4.3 Non-disclosure & confidentiality**

Every effort shall be made to maintain confidentiality during any process required under this Policy. Where necessary, parties and persons involved in the investigation may be required to sign a confidentiality agreement to protect the names of the parties, witnesses, or the circumstances related to the complaint; except where disclosure is necessary for the purpose of investigating the complaint or measures concerning disciplinary or legal action.

### **2.4.4 Reporting in good faith**

Reports of workplace sexual harassment must be made in good faith. Any person determined to have intentionally made a false claim, acts maliciously, or offers false statements will be treated as having committed an act of misconduct.

### **2.4.5 Professionalism**

All complaints of sexual harassment shall be handled with professionalism. Remedial actions will depend on the nature and the impact of the harassment on the complainant. Disciplinary recommendations shall include summary dismissal, compensation, administrative leave, and demotion. Employers shall take measures that will deter the recurrence of sexual harassment in the institution where it is alerted to be prevalent and systemic.

The remedial action should be taken within a reasonable time. Any party aggrieved by any process, decision, or remedial action under this Policy, shall have the right to challenge it and seek appropriate redress in a court of law.

#### **2.4.6 Do No Harm Principle**

In all circumstances and at all times, employers have an obligation not to jeopardize the life, physical and psychological safety, freedom and well-being of complainants, witnesses and all those who enter into contact with them in the framework of this Policy.

It is critical to remember that the foremost responsibility of the employer is to the aggrieved person and potential complainant of sexual harassment. While undertaking investigations employers have a responsibility to balance the need to gather information and the potential risk of harm to those who may be in a position to provide such information.

### **3. Definition of Sexual Harassment**

#### **3.1 Sexual harassment**

3.1.1 For purposes of this Policy, Sexual Harassment is defined as:

Sexual harassment is unwanted or unwelcome conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include situations where a person is asked to engage in sexual activity as a condition of that person's employment, contract, or supply of services (quid pro quo) as well as situations that create an environment that is hostile, uncomfortable, intimidating, or humiliating for the recipient.

3.1.2 The unwelcome nature of sexual harassment distinguishes it from behaviour that is welcome and mutual. Sexual attention becomes sexual harassment if:

- (a) The behaviour is persisted in, or of such a nature that a single incident suffices;
- (b) Involves actions or behaviour that are physical, verbal, or non-verbal conduct;

3.1.3 An action or behaviour can still be considered sexual harassment even if the alleged harasser did not intend for it to be harmful.

3.1.4 Anyone can be a victim of sexual harassment. It can also occur between people of the same sex.

## **3.2 Forms of Sexual Harassment**

3.2.1 Sexual Harassment can take various forms and may include but not limited to the following examples:

- a) Repeated making of telephone calls, sending of letters or inducing a third person to make telephone calls to the harassed person whether or not conversation ensued
- b) Unnecessary familiarity such as deliberately brushing up against a person
- c) Uninvited kisses or embraces
- d) Sexual or suggestive comments or jokes
- e) Making promises or threats in return for sexual favours
- f) Displays of sexually graphic material including posters, pinups, cartoons, graffiti, or messages left on notice boards, desks or common areas
- g) Repeated invitations to go out on a date after prior refusal
- h) Repeated, unwanted comments on a person's appearance

- i) Exposing genitals or sexual gestures
- j) Grading or rating of appearance by a verbal comment, or wolf-whistling, or other noises
- k) Insults, taunts, teasing, or name-calling of a sexual nature
- l) Staring or leering at a person or parts of their body
- m) Unwelcome physical contact such as massaging a person without invitation, or forcing a person to perform sexual acts
- n) Touching or fiddling with a person's clothing including lifting skirts or shirts, flicking bra straps, or putting hands in a person's pocket
- o) Requests or demands for sex in exchange for benefits
- p) Sexually explicit conversation
- q) Persistent questions or insinuations about a person's private life
- r) Stalking
- s) Offensive e-mail messages or computer screen savers
- t) Derogatory comments, including in relation to a person's gender non-conformity
- u) Non-consensual recording, or broadcasting of sexual activity
- v) Non-consensual distribution of photographs or other images of or information about another person's sexual activity, nakedness or intimate parts; and non-consensual voyeurism.
- w) Written or graphic material that is placed on walls or notice boards or circulated in the workplace including by email, text messaging, social media and voicemail.
- x) Intrusive questions about a person's private life or body

3.2.1 Some forms of sexual harassment, such as physical/sexual assault, rape, indecent exposure and stalking are also criminal offences and will be reported to the police.

### **3.3 What sexual harassment is not? (Consensual Relationships)**

3.1.1 Sexual behaviour between employees arising from a mutual sexual or romantic relationship is not sexual harassment. However, managing this situation can become particularly difficult for employers where the relationship later breaks down and a complaint of sexual harassment is made.

3.1.2 Employers also need to take care to ensure that sexual behaviour between employees, even if reciprocated, does not create an unpleasant and sexualised workplace for other employees.

3.1.3 What may be acceptable socially or in private life could well be inappropriate in a work context. Employers should be careful to ensure that professional standards are maintained in the workplace and that a culture of inappropriate behaviour does not develop.

3.1.4 To avoid abuse of authority, romantic dealings between employees with direct supervisory relationships is strictly prohibited. That is, a supervisor is prohibited from dating anyone who reports directly or indirectly to him or her. If they do, they'll face disciplinary action up to and including termination.

## **4 Existing legal framework on sexual harassment**

This Policy makes it clear that sexual harassment is against the laws of The Gambia. All persons are protected from violence and discrimination by the 1997 Constitution of The Gambia. Similarly, legislation such as the Criminal Code, Domestic Violence Act, Women's Act, Children's Act, Sexual Offences Act also prohibits

same. Therefore, employers should make it clear to all employees that legal action could be taken against them for sexual harassment, and they could also be exposing the institution to liability.

## **5 Prevention of sexual harassment**

- 5.1 This Policy endeavours to create an environment that ensures sexual harassment does not happen. Measures to this end shall include:
- a) Encouraging staff to learn and fully understand what sexual harassment is and how it manifests.
  - b) Require existing and new members of staff to sign commitments not to engage in sexual harassment, as well as to adhere to any existing institutional Code of Conduct.
  - c) Requiring all new and current staff to familiarize themselves with this Policy, and all other policies, especially those dealing with professional ethics, and sexual harassment.
  - d) Hosting regular workshops with staff to strengthen awareness on sexual harassment and build capacity for appropriate responses.
  - e) Making the policy accessible online or via the institution's drive.
- 5.2 Senior management must promote this policy at all times, role model positive behaviours, and encourage a workplace culture where people are able to raise concerns of sexual harassment and receive support.

## **6 Implementation of the policy**

Sexual harassment should not be tolerated under any circumstances in the workplace. This includes whether it occurred in any work-related context such as conferences, work functions, or business trips. Prompt action should be taken by employers within the framework outlined below to ensure any sexual harassment within the workplace is redressed either as an individual case or at the institutional level.

## **7 Institutional framework**

Every employer is encouraged to set up internal mechanisms to facilitate the hearing and determination of complaints of sexual harassment. The internal process must ensure that it accords the complainant a fair, transparent, confidential, responsive, efficient, effective, and expeditious process. Such internal procedures do not preclude anyone from filing a criminal complaint with the Gambia Police Force for prosecution.

### **7.2 Complaints and procedures**

All complaints pertaining to sexual harassment in the workplace may be lodged with the following persons:

- a) The Designated Focal Person (DFP)
- b) The Implementation Committee (IC)
- c) Officers as designated from time to time by the DFP;
- d) Managers or supervisors;
- e) Head of institution/organisation

However, complainants may, if they wish, report the harassment to the Police, the National Human Rights Commission, the Ombudsman or any other Office with the powers to hear such complaints.

#### **7.2.1 Establishment of Designated Focal Person & Implementation Committee**

- a) Institutions shall identify a Designated Focal Person (DFP) & an Implementation Committee (IC) that is a standing committee, to create a safe space for employees to report sexual harassment in a confidential manner to the highest extent possible without fear of stigmatization, reprisal, ostracism, punishment, or victimisation.
- b) The DFP and IC shall also be responsible to receive and handle complaints of sexual harassment.
- c) The DFP and the IC may institute their own investigation in the absence of a complaint, and where it suspects the existence of sexual harassment or otherwise inappropriate sexual behaviour in the workplace. Where this happens, actions will be taken to update and support any potential survivors/witnesses and ensuring that any action taken does not adversely affect them.

#### **7.2.2 Composition of the Designated Focal Person & Implementation Committee**

- a) The DFP referred to in Article 7.2.1 above shall be the Director of Human Resources of the Institution or any other person so assigned by the Institution. It is important, however, that any such designated person is trusted by staff to encourage reporting.

- b) The IC also referred to in Article 7.2.1 shall consist of 5 members including the DFP and at least two sexual harassment subject matter specialists. The composition of the IC for purposes of considering a complaint will, as far as possible, be gender-balanced.
- c) The Chairperson of the IC shall be agreed upon and decided by the members of the IC

## **8 Sexual Harassment Reporting Procedure**

- 8.2 Staff, volunteers and third parties engaging with institutions in any contractual capacity have a responsibility to report all cases of sexual harassment against them.
- 8.3 Any employee who believes they have been subjected to sexual harassment is strongly encouraged to report the incident to the DFP. The complainant who wishes to pursue or make a complaint has two options through which they can make the complaint: either through an informal complaint or through a formal complaint.
- 8.4 The individual offended by sexual harassment who wishes to pursue or make complaints has two options through which they can make the complaint: either through an informal complaint or through a formal complaint.
- 8.5 Anyone who is affected or has knowledge of any case of sexual harassment as defined under this Policy, may make a report in either of the following ways as they consider most convenient to them:

8.6 Report directly to the DFP;

- a) Anonymously present a written and clear complaint; or
- b) Otherwise confiding in any other staff member who may then make the complaint on their behalf.

8.7 When the DFP receives a complaint of sexual harassment, it shall:

- a. Record the dates, times, and details of the incident(s);
- b. Ensure that the complainant understands the institution's procedures for dealing with the complaint;
- c. Discuss and agree on the next steps: either informal or formal complaint, on the understanding that choosing to investigate the matter informally does not preclude the complainant from pursuing a formal complaint if he/she is not satisfied with the outcome;
- d. Ascertain the views of the complainant as to what outcome he/she wants;
- e. Keep a confidential record of all discussions;
- f. Respect the choice and rights of the complainant;
- g. Ensure that the complainant knows that they can lodge the complaint outside of the institution through the relevant framework put in place.
- h. Provide support to the complainant regardless of whether or not they choose to go forward with a complaint including psychosocial support, medical support and legal support.
- i. Re-assure the complainant that she/he will not face job loss or any adverse consequences if she/he chooses to follow either the formal or informal procedure.

For either type of reporting sexual harassment, the DFP is required to assist the aggrieved person throughout the complaint's procedure.

## **9 Informal Procedure**

9.1 A complainant of sexual harassment may choose to follow either of the following informal procedures:

- a) the complainant, another appropriate person or the DFL explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him/her feel uncomfortable and that it interferes with his/her work; or
- b) an appropriate person approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make the employee feel uncomfortable and interfere with his/her work.

9.1 If the aggrieved person wants to make a formal complaint or if the informal complaint mechanism has not led to a satisfactory outcome for the complainant, the formal complaint mechanism should be used to resolve the matter. The DFP in the institution who received the complaint shall refer the matter to the IC or other relevant institution such as the Gambia Police Force for a formal investigation.

9.2 If there is a conflict of interest (e.g., a member of the IC is implicated in a complaint, or a member of the IC has a personal relationship with anyone involved), he or she must recuse themselves from this process.

## **10 Formal Procedure**

- 10.1 A complainant may choose to follow a formal procedure, either with or without first following an informal procedure.
- 10.2 Complaints of sexual harassment should be submitted as soon as possible after an incident has occurred, preferably in writing and using the institution's Complaints Form, and send same by email or delivered to the DFP.

## **11 Complaint by third parties and protection of whistle-blowers**

- 11.1 A complaint can also be reported by a third party i.e., any person is free to call attention to any cases or patterns of clear or suspected sexual harassment happening within the context of this Policy, whether such harassment affects them or not. The third-party can become a complainant even if the perceived aggrieved person does not make a complaint, and the third party establishes the occurrence of sexual harassment.
- 11.2 Where such an individual reports such conduct, the report shall be treated confidentially. No person shall face punishment and shall be protected from reprisals for exposing sexual harassment in the workplace.

## **12 Procedure to hear and determine complaints of sexual harassment**

Upon receipt of a complaint of sexual harassment, the DFP shall refer the matter within 1 week (7 days) to the IC for the purpose of investigation. During the investigation, the IC shall ensure these equities and procedural guarantees:

- a) Inform the head of the institution the need for necessary interim action especially in cases where the alleged perpetrator is in higher authority than the complainant and is likely to interfere with investigations;
- b) The IC shall endeavour to establish the circumstances leading to the incidence, nature of the incidence, the relationship between the parties, frequency and the context under which the alleged incident occurred;
- c) Interview the complainant, respondent (alleged perpetrator) and relevant witnesses to obtain statements from them. The Interviews shall be confidential and discreet.
- d) The IC will maintain clear minutes of meetings convened to consider complaints of sexual harassment. All communications, discussions and information including interviews relating to the complaint will be treated as confidential and maintained in a secure location.
- e) Where there is a hearing, both parties shall be given the opportunity to be heard in relation to the complaint.
- f) The IC shall share the outcome of the investigation and recommendations to the institution and parties.

### **13 Disciplinary Actions**

- 13.1 Anyone found to have sexually harassed another person under the terms of this Policy is liable for any of the following disciplinary actions. However, the nature of the disciplinary action will depend on the gravity and extent of the harassment as determined by the IC following an investigation. Suitable deterrent sanctions will be applied to ensure that incidents of sexual harassment are not treated as trivial.

### **13.2 The sanction may include:**

1. Apology from the harasser to the complainant of sexual harassment
2. A warning in writing to the harasser, who shall be required to sign an acknowledgement of receipt.
3. Demotion
4. Termination of services/employment.
5. Suspension or expulsion of the employee.
6. Barring such persons from accessing the workplace premises, or
7. Other forms of disciplinary action deemed appropriate by the Committee.

13.3 Disciplinary measures taken by the IC would not prevent the complainant from reporting the harassment to the Police or other appropriate State organ

### **14 Appeal for Review of the Decision of the IC**

14.1 The complainant or the respondent may request a review of the decision of the IC. Request for review shall be submitted within one week (7 calendar days) after receiving the outcome of the complaint.

14.2 An ad-hoc Appeal Committee (AC) will be established within two (2) weeks after lodging of review. The AC consists of 4 members including the DFP, and three (3) independent expert members, none of whom should be employees and at least one of whom is female. If someone is in any way involved in the complaint, this person is excluded from participating in the process.

- 14.3 The AC will convene to discuss and review the report. It will schedule a date to hear both the complainant and respondent. It will also allow the complainant and respondent to present further information if any, rebut evidence, and present witnesses. In cases involving allegations of sexual assault, the parties will not be allowed to directly question each other, and questions shall be provided to the Committee for presentation.
- 14.4 The Appeal Committee is expected to provide a final decision at least two weeks (14 days) after the review is requested and at most four weeks (28 days) after receiving the request for review.
- 14.5 The Appeal Committee can affirm the decision of the IC and uphold any disciplinary sanction or modify the decision of the IC.
- 14.6 If a complainant, or a person against whom the complaint is made, is not satisfied with the outcome of the process, they reserve the right to refer the issue to any other adjudication and law enforcement procedures outside of the institution or company.

## **15 Documenting sexual harassment**

- 15.1 The DFP has a duty to maintain a clear, confidential and traceable record of all cases of reported, considered and decided complaints of sexual harassment.
- 15.2 The IC shall, from time to time, request a review of reported and considered complaints and provide guidance on the institution's progress towards elimination of sexual harassment in the workplace.

## **16 Responsibilities of management**

It shall be the responsibility of the management of institutions to prevent sexual harassment in the workplace and ensure the implementation of the anti-sexual harassment policy.

## **17 Responsibilities of employees**

It is the responsibility of every employee to contribute to creating a safe work environment. An employee of the institution should:

- a) know their rights and responsibilities at the workplace and the work environment;
- b) know where to report cases of sexual harassment and misconduct.
- c) know and understand the form of support they will be provided when being sexually harassed.
- d) know what unacceptable behaviour is;
- e) know what to do when they or someone else is being sexually harassed;
- f) know what to do if one is being accused of sexual harassment.
- g) comply with the institution/organisation's sexual harassment policy;
- h) offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves);
- i) maintain complete confidentiality if they provide information during the investigation of a complaint. Employees should be warned that spreading gossip or rumours may expose them to a defamation action or a claim of victimization or institutional sanction.

## **18 Support services for complainants of Sexual Harassment**

18.1 There is usually stigma and undue pressure associated with sexual harassment and most complainants, especially female complainant who experience this with their supervisors, opt to keep quiet for fear of victimisation. Once there is a complaint, the institution shall provide appropriate counselling for the complainant and any other member of the family of the complainant where appropriate.

### **18.2 Additional sick leave**

Where an employee's existing sick leave entitlement has been exhausted, the institution or organisation should give due consideration to granting additional paid sick leave in cases of serious sexual harassment, where the employee, on medical advice, requires trauma counselling.

## **19 Declaration of close relationships**

19.1 Filial and domestic, and consensual sexual and/or romantic relationships amongst staff, and which do not violate the principles laid out elsewhere in this Policy, shall be declared to DFP if they have or are likely to have an impact on the working relationship of the staff involved or others in their immediate work environment and will not lead to conflict of interest or fraudulent behaviour.

19.2 The Policy prohibits romantic or sexual relationships between a manager or other supervisory employee and a junior employee who reports directly or indirectly to that person, because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception

by others that there is favouritism or bias in employment decisions affecting the employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others, or at a later date by the staff member, as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favouritism, intimidation, coercion, or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment.

- 19.3 Due to potential issues regarding quid pro quo harassment, this Policy has made reporting of any relationships mandatory.
- 19.4 Where such relationships are declared, they will be taken into account in defining accountability lines and other decision-making within the work environment.

## **20 Declaration of conflicts of interests**

- 20.1 All staff members have a responsibility to declare any relationships that would put such member of staff, in a situation of a conflict of interest in the performance of their duties.
- 20.2 Where a declaration is made, it will be taken into account in decision making regarding the responsibilities of the staff member.

## **21 Protection from reprisal**

- 21.1 No hardship, loss, benefit or penalty may be imposed on an employee in response to:
- a) Filing or responding to a bona fide complaint of discrimination or harassment.

- b) Appearing as a witness in the investigation of a complaint.
- c) Serving as an investigator of a complaint.
- 21.2 Lodging a bona fide complaint will in no way be used against the employee or have an adverse impact on the individual's employment status.
- 21.3 Where, in the determination of the IC, a complaint is considered to be clearly false and malicious, a decision will be made as to the appropriate disciplinary measures to be instituted against the person filing the complaint.

## **22 Safeguarding**

- 22.1 All staff and volunteers have a duty to ensure that their conduct and work does not harm fellow colleagues, or third-party beneficiaries of their work.
- 22.2 Where a staff member has reason to believe that their conduct or work or has reason to believe that a staff member/the organisation's work is likely to cause harm to a beneficiary, they are obliged to notify the DFP at the earliest opportunity.
- 22.3 The institution or company's management will endeavour to ensure that all its work and staff do not cause harm to all who engage with it.

## **23 Dissemination and implementation of the Policy**

### **All employers are required to:**

- a) Regularly distribute and promote the policy at all levels of the organisation.
- b) Provide the Policy and other relevant information on sexual harassment to new staff as a standard part of induction.

- c) Ensure documents are available in a format suitable for Persons with Disabilities
- d) Reasonable efforts are taken to ensure that the Policy is available in an accessible format that may include, without limitation, large print, clear text, recorded audio, and electronic formats, braille and other formats usable by Persons with Disabilities.
- e) Ensure that the policy is accessible to staff members with disability.
- f) Ensure that managers and supervisors discuss and reinforce the policy at staff meetings.
- g) Conduct regular training sessions for all staff and management on sexual harassment and the organisational policy. Ensure that the training is specific about the types of behaviours that may amount to sexual harassment. Regular refresher training is recommended.
- h) Train all line managers on their role in ensuring that the workplace is free from sexual harassment.
- i) Display anti-sexual harassment posters on notice boards in common work areas and distribute relevant brochures.
- j) Include accountability mechanisms in position descriptions for managers.
- k) Ensure that selection criterion for management positions include the requirement that managers have a demonstrated understanding of and ability to deal with discrimination and harassment issues as part of their overall responsibility for human resources.
- l) Check that managers are fulfilling their responsibilities through performance appraisal schemes.
- m) Remove offensive, explicit or pornographic calendars, literature, posters, and other materials from the workplace.
- n) Develop a policy prohibiting inappropriate use of computer technology, such as e-mail, screen savers, and the Internet.

- o) Periodically conduct workplace audits to monitor the incidence of sexual harassment.

## **24 Monitoring and Evaluation**

- 24.1 The DFP and IC created by this Policy will develop tools to monitor and evaluate the progress made in the implementation of the Policy strategies. They will continue to undertake research, collect, collate and analyse information to monitor or track the progress of the implementation.
- 24.2 Evaluation of interventions shall be undertaken yearly to assess the extent of impact and the shortcomings thereof, which in turn will feed the Policy cycle for improvement in content and context.
- 24.3 The DFP and IC shall further ensure that data relating to Sexual Harassment incidences in the workplace is updated annually.

## **25 Funding**

Adequate funds and resources must be allocated towards the implementation of this Policy and allocated funds and resources must be efficiently utilised.

## **26 Alternative legal remedies**

Nothing in this Policy may prevent the complainant or the respondent from pursuing formal legal remedies or resolution through law enforcement agencies or the courts.

## **27 Policy Review**

- 27.1 The Policy will be reviewed every three (3) years and the Sexual Harassment Implementation Committee will take into account new developments in research and lessons learned from the monitoring and evaluation of the Policy.
- 27.2 The review will also take into account the social and economic realities associated with Sexual Harassment and the overall institution environment.

## APPENDICES

### **Annex One: Sexual Harassment Policy in the Workplace Template**

A key aspect of prevention is the development and promotion of a written policy which makes it clear that sexual harassment will not be tolerated under any circumstances. Some employers incorporate information on sexual harassment into a general workplace harassment policy which covers other forms of unlawful harassment (such as harassment on the grounds of race, disability, sexual preference or age). Others decide there is a need for a stand-alone sexual harassment policy, particularly if sexual harassment is a common or recurring problem within the workplace. Both options are valid, and it is up to employers to decide what is most appropriate for them. If a general policy is adopted, however, it is important that the different types of harassment are well-defined and addressed comprehensively. If the policy is too broad or generic its impact and clarity may be compromised.

#### **Essential elements of a sexual harassment policy**

A sexual harassment policy should include the following:

#### **A strong opening statement on the institution/organisation's stance on sexual harassment**

This should state that the organisation/institution is committed to ensuring that the working environment is free from sexual harassment, that it will not be tolerated under any circumstances and that swift disciplinary action will be taken against any employee (or agent) who breaches the policy. To give the policy credibility and maximum impact, the opening statement should appear above the signature of the head of the institution or organisation.

### **An outline of the institution/organisation’s objectives regarding sexual harassment**

This demonstrates that the organisation/institution is committed to a comprehensive strategy for eliminating sexual harassment. Employers may wish to consider something along the following lines.

#### **This organisation/institution aims to:**

1. Create a working environment which is free from sexual harassment and where all members of staff are treated with dignity, courtesy and respect.
2. Implement training and awareness raising strategies to ensure that all employees know their rights and responsibilities.
3. Provide an effective procedure for complaints based on the principles of procedural fairness.
4. Treat all complaints in a sensitive, fair, timely and confidential manner.
5. Guarantee protection from any victimisation or reprisals.
6. Encourage the reporting of behaviour which breaches the sexual harassment policy.
7. Promote appropriate standards of conduct at all times.

#### **A clearly worded definition of sexual harassment**

There is no single, universally accepted definition of sexual harassment. However, the definition adopted should be consistent with the legal definition in the appropriate Act to avoid any confusion (for example the Domestic Violence Act 2013). The most important element to emphasise in any definition is that sexual harassment is unwelcome behaviour of a sexual nature. For example, sexual harassment can be defined in the following way.

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.

Examples of sexual harassment that may be relevant to the particular working environment

The policy should identify specific examples of sexual harassment, such as:

- a) Repeated making of telephone calls, sending of letters or inducing a third person to make telephone calls to the harassed person whether or not conversation ensued
- b) Unnecessary familiarity such as deliberately brushing up against a person
- c) Uninvited kisses or embraces
- d) Sexual or suggestive comments or jokes
- e) Making promises or threats in return for sexual favours
- f) displays of sexually graphic material including posters, pinups, cartoons, graffiti, or messages left on notice boards, desks or common areas
- g) Repeated invitations to go out on a date after prior refusal
- h) Repeated, unwanted comments on a person's appearance
- i) Exposing genitals or sexual gestures
- j) Grading or rating of appearance by a verbal comment, or wolf-whistling, or other noises
- k) Insults, taunts, teasing, or name-calling of a sexual nature
- l) Staring or leering at a person or parts of their body
- m) Unwelcome physical contact such as massaging a person without invitation, deliberately brushing up against them, or forcing a person to perform sexual acts

- n) Touching or fiddling with a person’s clothing including lifting skirts or shirts, flicking bra straps, or putting hands in a person’s pocket
- o) Requests or demands for sex in exchange for benefits
- p) Sexually explicit conversation
- q) Persistent questions or insinuations about a person’s private life
- r) Stalking
- s) Offensive e-mail messages or computer screen savers
- t) Derogatory comments, including in relation to a person’s gender non-conformity
- u) Non-consensual recording, or broadcasting of sexual activity
- v) Non-consensual distribution of photographs or other images of or information about another person’s sexual activity, nakedness or intimate parts; and non-consensual voyeurism.
- w) Written or graphic material that is placed on walls or notice boards or circulated in the workplace including by email, text messaging, social media and voicemail.
- x) Intrusive questions about a person’s private life or body

### **What sexual harassment is not?**

The policy should explain that sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated it is not sexual harassment.

## **A statement that sexual harassment is against the law**

The policy should make it clear that sexual harassment is against the law. Reference should be made to laws that prohibit sexual harassment in the country (1997 Constitution, Criminal Code, Women’s Act 2010, Children’s Act 2005, Tourism Offences Act 2003, Domestic Violence Act 2013, Sexual Offences Act 2013, etc.). Staff need to know that legal action could be taken against them for sexual harassment and that they could also be exposing the institution/organisation/company to liability.

## **The circumstances in which sexual harassment may occur**

The policy should state that sexual harassment is unlawful, even if perpetrated by a supervisor or manager, co-worker, contractor, service provider, client or customer. Although not all these situations would necessarily give rise to a complaint under the legislation, it makes good sense to provide an internal procedure for dealing with any sexual harassment which could affect the welfare of employees. The policy should also state that sexual harassment is not just unlawful during working hours or in the workplace itself and not only between co-workers. The behaviour is unlawful in any work-related context, including conferences, work functions, office social events and business or field trips and includes interactions with clients and customers. The behaviour is also unlawful when it occurs away from the workplace but is a culmination or extension of events in the workplace.

## **The consequences that can be imposed if the policy is breached**

The policy should operate as a general warning to all employees of the consequences they can expect if they do not comply. Depending on the severity of the case, consequences can include an apology,

transfer, dismissal, demotion or other forms of disciplinary action. Employees should also be informed that immediate disciplinary action

will be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.

### **Responsibilities of management and staff**

The policy should state that the institution/organisation has a legal responsibility to prevent sexual harassment, otherwise it can be liable for the behaviour of its employees. This means that managers and supervisors have a responsibility to:

- monitor the working environment to ensure that acceptable standards of conduct are observed at all times;
- model appropriate behaviour themselves;
- promote the institution/organisation's sexual harassment policy within their work area;
- treat all complaints seriously and take immediate action to investigate and resolve the matter;
- refer complaints to another officer if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the complaint is particularly complex or serious).

### **All staff have a responsibility to:**

- comply with the institution/organisation's sexual harassment policy;
- offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves);
- maintain complete confidentiality if they provide information during the investigation of a complaint. Staff should be

warned that spreading gossip or rumours may expose them to a defamation action or a claim of victimisation.

### **Information on where individuals can get help, advice or make a complaint**

The policy should tell employees where they can get help if they are sexually harassed. Depending on the size of the institution/organisation and the system that is in place for dealing with sexual harassment, employees can be advised to approach their manager or supervisor, sexual harassment contact officer, equal employment opportunity officer, human resources manager, industrial relations manager, lawyer and/or their union delegate. Where possible a number of different contact people of both sexes should be provided so that staff can approach someone, they feel comfortable with. It is not appropriate to only give staff the option of approaching their line manager because there may be cases where the manager is the alleged harasser or is perceived to be closely associated with the harasser and therefore not impartial. Where available, employers should offer referrals to employee assistance programs. Employers should also offer referrals to external services where employees can get legal advice and emotional support if they experience sexual harassment.

### **A brief summary of the options available for dealing with sexual harassment**

Employees should be advised of the different ways that sexual harassment can be addressed. This includes informal action such as confronting the harasser directly (but only if the individual feels confident enough to do so), making a formal complaint to a manager or using the institution/organisation's internal complaints procedures.

The way that complaints will be handled should be documented in the policy or in a separate complaints procedure. Staff can be referred to this if they require more information.

Employees can also approach their union, the Commission or the relevant state or territory anti-discrimination agency for information and confidential advice.

In summary the essential elements of a sexual harassment policy should include the following:

- a strong opening statement on the institution/organisation's stance on sexual harassment
- an outline of the institution/organisation's objectives regarding sexual harassment
- a clearly worded definition of sexual harassment
- specific examples of sexual harassment that may be relevant to the particular working environment
- a statement of what is not sexual harassment
- a statement that sexual harassment is against the law
- a statement that sexual harassment will not be tolerated in the workplace
- examples of places and times where unlawful sexual harassment may happen e.g. in the office, work conferences, work field trips etc.
- how sexual harassment complaints will be dealt with
- the consequences for employees if the policy is breached/ sanctions that will attach to sexual harassment if it occurs
- responsibilities of management and staff
- information on where individuals can get help, advice or make a complaint/ contact numbers for external complaints agencies such as the National Human Rights Commission, the Police, Office of the Ombudsman
- a brief summary of the options available for dealing with sexual harassment

<b>Name of Complainant:</b>
<b>Institution/Organisation:</b>
<b>Address of Institution/organisation</b>
<b>Name(s) of individual engaged in the harassment:</b>
<b>Name of institution/organisation where alleged perpetrator works:</b>
<b>Please describe the specific incident of harassment alleged. Describe each incident separately, including dates, times and locations. If you cannot remember exact dates, times or locations, please provide approximations. Use additional pages if necessary.</b>
Are there others who may have witnessed this alleged harassment? If so, please provide their name(s).
Did you tell anyone about your experience after the alleged incident(s)? If yes, please provide their name(s).
Attached evidence (if any)
Complainant Signature: _____ Date: _____
Print Name: _____
Job Title: _____
Email Address: _____
Telephone Number: _____
<i>*I attest that the information I have provided is a true and accurate description of my complaint and that I have not willfully or deliberately made false statements.</i>
<b>OFFICIAL ONLY:</b>
Signature of person receiving complaint: _____

Print Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

### **Annex Three: Commitment Form**

I, \_\_\_\_\_ (*Employee's Name*), have received a copy of the Policy on Harassment dated [...]. I have read and understood it and agree to adhere, at all times, to the stipulated terms. I acknowledge that this policy is a contract of employment. I also understand that I shall be subjected to the stipulated consequences, if I fail to adhere to the terms.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICIAL ONLY:

*Human Resources Manager / Hiring Officer*

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Annex 4: Incident Reporting Form<sup>3</sup>**

I N C I D E N T   R E P O R T I N G   F O R M			
INCIDENT NUMBER (Issued by DFP)			
<b>INCIDENT CATEGORY</b>			
Critical <input type="checkbox"/> Serious <input type="checkbox"/> Moderately serious <input type="checkbox"/> Minor <input type="checkbox"/> Near miss <input type="checkbox"/>			
<b>DETAILS OF THE PERSON REPORTING THE INCIDENT (if other than the affected staff)</b>			
Full name:		Date: / /	
Mobile & Email:			
Relationship to the staff involved in the incident:			
<b>DETAILS OF PERSON (s) INVOLVED IN THE INCIDENT</b>			
Name:		Gender/Gender Identity:	Nationality:
Role:		Unit:	Line manager:
Best way to contact the affected staff (or someone on their behalf):			
<b>INCIDENT DETAILS</b>			
Date: / /		Time:	Location:
<b>Tick the relevant box(es)</b>			
Travelling on duty <input type="checkbox"/> In the office <input type="checkbox"/> On personal business <input type="checkbox"/> ActionAid activity/meeting <input type="checkbox"/> After Hours <input type="checkbox"/>			
<input type="checkbox"/> Other (explain)			
<b>Brief description:</b>			
<u>What has happened?</u>			
<u>What has been done in response?</u>			
<u>What else is needed?</u>			
<b>INVESTIGATION FINDINGS- WHY THE INCIDENT TOOK PLACE (write in bullet points)</b>			
<b>ACTIONS – WHAT SHOULD BE DONE TO MINIMISE THE RISK IN FUTURE (write in bullet points)</b>			
<b>ACTIONS – WHAT SHOULD BE DONE TO MINIMISE THE RISK IN FUTURE (write in bullet points)</b>			
Action	By whom	By when	Who will bear the cost if any
<b>ADDITIONAL COMMENTS</b>			
<b>INDIVIDUAL INVOLVED</b>		<b>CONCERNED LINE MANAGER</b>	<b>SECURITY FOCAL PERSON</b>
E-Signature:		E-Signature:	E-Signature:

## **Annex 5: Case Register Template**

When an employee reports sexual harassment, the organisation or company has a legal and ethical responsibility to record the complaint, investigate the allegation and act promptly. Developing and implementing a common mechanism for tracking the length to resolution and outcomes (such as disciplinary actions) of sexual harassment allegations is important.

The case register should ideally be on excel and may have the following element:

### **1. Status**

- Incident type
- Incident/ Programme
- Subject of concern
- Third-party complainant
- Incident Summary
- Advisory (Yes/No)
- Investigated (Yes/No)
- Open/closed
- Date Case Closed

### **2. Reporting**

- Incident date
- Reporting date (initial)
- Reporting method (initial)
- Reporting date (to DFP)
- Reporting method (to DFP)
- Recipient of concern/complaint

### **3. Complainant**

- Complainant (name)
- Complainant relationship with organisation
- Child/Adult/Adult At-Risk
- Gender
- Survivor consider themselves to have a disability?
- Support offered
- Third-party complainant (name)
- Third-party complainant relationship with organisation

### **4. Information Sharing**

- Does this relate to another case?
- Has a crime possibly been committed?
- Reported to police (Yes/No)
- Date reported to the police
- Reported to other relevant authority (Yes/No)
- Other relevant authority
- Persons requiring notification of incident
- Notified (Yes/No)

### **5. Investigation**

- Investigated by
- Investigation team
- Update 1
- Update 2
- Update 3