



**GREATER BENDIGO CITY COUNCIL**

**COUNCILLOR PREVENTION OF SEXUAL HARASSMENT POLICY**

**DOCUMENT INFORMATION**

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## **1. PURPOSE**

- 1.1 The purpose of this policy is to support the Councillor Code of Conduct and prevent and eliminate sexual harassment by:
- Ensuring all Councillors recognise sexual harassment; and
  - Informing Councillors of behavioural expectations and related obligations.

## **2. BACKGROUND**

- 2.1 All Councillors are expected to display the standards of behaviour outlined in the Councillor Code of Conduct in their treatment of other Councillors, City staff, volunteers, and of other members of the public encountered in the course of their duties including:
- To take positive action to eliminate discrimination, sexual harassment, and victimisation in accordance with the *Equal Opportunity Act 2010* (Vic);
  - Not to engage in behaviour that is or is likely to be discrimination, sexual harassment or victimisation as defined in the *Equal Opportunity Act 2010* (Vic); and
  - To acknowledge that Councillors engaging in bullying or sexual harassment of other Councillors or Council staff commit serious misconduct in accordance with the *Local Government Act 2020* (Vic) and may face other consequences at law.
- 2.2 The City is an Equal Opportunity employer and is committed to providing:
- A safe, healthy and supportive work environment that is free from sexual harassment; and
  - A workplace where all Individuals associated with the City treat each other with respect, dignity and courtesy and behave in ways that are safe and inclusive
- 2.3 The City will take all reasonable and proportionate measures to prevent and eliminate sexual harassment.

## **3. SCOPE**

- 3.1 This policy applies to Councillors and delegated committee members and includes but is not limited to:
- All activities undertaken whilst performing duties as outlined in the Role of a Councillor;
  - On-site, off-site, Councillor-related social functions, conferences or meetings regardless of time and location; – wherever and whenever a Councillor may be as a result of their duties; and
  - Treatment of all people encountered in the course of their duties.
- 3.2 Responding to and/or reporting sexual harassment is outside the scope of this policy.
- 3.3 Councillors who believe they have experienced or witnessed sexual harassment are encouraged to respond to or report the inappropriate behaviour. A range of responding and reporting options are available.
- 3.4 For further information and guidance please refer to the Councillor Code of Conduct.

- 3.5 Where reporting of sexual harassment does occur, the City commits to taking a Victim-centred, Safety-driven approach to management of the process.

#### **4. DEFINITIONS**

- 4.1 In this Policy:

**Bystander** means an individual who heard or witnessed the incident of offensive behaviour / sexual harassment or hears about it subsequently. In the workplace, Bystanders can include co-workers who are informed of workplace sexual harassment through the 'grapevine' or those sought out by victims or harassers for support or advice.

**City** means the Greater Bendigo City Council, being a body corporate constituted as a municipal Council under the *Local Government Act 2020 (Vic)*

**Client** means all persons to whom services are provided by the City.

**Councillor Conduct officer** means a person appointed by the CEO pursuant to Section 150 of the *Local Government Act 2020 (Vic)*

**Council** means the Greater Bendigo City Council being all the Councillors collectively.

**Councillor** means a person holding the office of member of Greater Bendigo City Council.

**Delegated Committee** means delegated committees defined under section 63 *Local Government Act 2020 (Vic)*

**Delegated Committee member** means a person appointed to a Delegated Committee

**Council Officer** means a person who receives a salary or wages from the City (employed on either a full-time, part-time or casual basis where the nature of the work is permanent/ongoing or temporary for a specified period).

**Individual** means a Councillor, employee, volunteer, student, trainee, apprentice, contractor, subcontractor or consultant.

**Safety-driven** means, in line with Health & Safety focused, the requirement that Councillors, employees, other persons at the City and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

**Victim-centred** means giving priority to the complainant's wishes, safety, and wellbeing in all matters and procedures. This ensures the compassionate, sensitive and non-judgmental responses to complaints.

## **5. PRINCIPLES**

- 5.1 The principles associated with this policy are that:
- 5.1.1 Sexual harassment is unlawful and will not be tolerated in the workplace, beyond the workplace where there is a link to employment or in any other situation connected to the performance of a Councillors duties and functions including from third parties;
  - 5.1.2 A single incident can constitute sexual harassment;
  - 5.1.3 Sexual harassment is driven by gender inequality;
  - 5.1.4 Sexual harassment is gendered. Most instances of sexual harassment (but importantly not all) are experienced by women;
  - 5.1.5 The City has a positive duty to ensure the health and safety of employees to eliminate risks to health and safety so far as is reasonably practicable; and
  - 5.1.6 If it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
  - 5.1.7 Victimization (subjecting or threatening to subject someone to detrimental or unfavourable treatment because they have raised a complaint or issue) is unlawful and will not be tolerated;
  - 5.1.8 All Councillors have a role to play in intervention and action when behaviour is inconsistent with expectations;
  - 5.1.9 Councillors may be personally liable if allegations of sexual harassment are substantiated against them;
  - 5.1.10 Legal action (civil and/or criminal) may be taken against a person who has engaged in sexual harassment; and
  - 5.1.11 Conduct constituting sexual harassment by a Councillor may also expose the City to liability. The City may be vicariously liable for a Councillor's conduct undertaken in the course of, or in connection with, their duties.
- 5.2 Councillors recognise that comments and behaviour that do not offend one person can offend another. Councillors are required to treat others with dignity, courtesy, respect and professionalism and must not engage in unlawful conduct, including sexual harassment.

## **6. POLICY**

- 6.1 Sexual harassment is unacceptable, unlawful and prohibited by both the *Equal Opportunity Act 2010 (Vic)* and the *Sex Discrimination Act 1984 (Cth)* and has the potential to adversely affect the harmony of the City and cause harm or injury to others.
- 6.2 Councillors are required to conduct themselves in a manner that is consistent with the Councillor Code of Conduct.

### **Sexual Harassment in the Workplace**

#### **6.3 What is Sexual Harassment?**

- 6.3.1 Sexual harassment means an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.
- 6.3.2 A working environment or workplace culture that is sexually permeated or hostile will also amount to unlawful sexual harassment.
- 6.3.3 Sexual harassment in the workplace may be physical, spoken, written or image-based and may include, but is not limited to:
- (a) Unwelcome physical contact of a sexual nature;
  - (b) Comments or questions of a sexual nature about a person's private life or their appearance;
  - (c) Sexually suggestive behaviour, such as leering or staring or offensive gestures;
  - (d) Brushing up against someone, touching, fondling or hugging;
  - (e) Sexually suggestive comments or jokes;
  - (f) Displaying offensive screen savers, photos, calendars or objects;
  - (g) Repeated invitations to go out on dates;
  - (h) Unwanted displays or declarations of affection;
  - (i) Requests for sex;
  - (j) Sexually explicit emails, text messages or posts on social networking sites;
  - (k) Sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences); and
  - (l) Actions or comments of a sexual nature in a person's presence (even if not directed at that person).

#### **6.4 Threshold**

- 6.4.1 The *Equal Opportunity Act 2010 (Vic)* and the *Sex Discrimination Act 1984 (Cth)* 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.
- 6.4.2 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.
- 6.4.3 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.

## 6.5 Councillors and the workplace

- 6.5.1 Sexual harassment by a Councillor towards a fellow Councillor or an employee of the Council is unlawful under the *Equal Opportunity Act 2010 (Vic)*, just as for employees. However, as they are not contracted employees, Councillors are not subject to the same internal disciplinary procedures as staff.
- 6.5.2 The *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* sets out how employees can access compensation for workplace injuries, including those caused by sexual harassment. This legislation considers Councillors to be employees of the Council who can access compensation for workplace injuries.
- 6.5.3 The Councillor Code of Conduct sets out expectations for Councillor behaviour and applies to Councillors, at all times and in all places, in the course of performing their duties and functions as Councillors.

## 6.6 Within the workplace

- 6.6.1 For the purposes of sexual harassment law, a workplace is any place a person attends for the purpose of carrying out functions in connection with, or in the course of their employment or prospective employment. It includes a place that is a workplace of either, or both people involved in an incident of sexual harassment.
- 6.6.2 Section 94 of the *Equal Opportunity Act 2010 (Vic)* provides that a workplace is the place a person attends for the purpose of carrying out functions in relation to their employment. It does not need to be the person's principal place of business or employment.
- 6.6.3 The workplace is not confined to the actual physical location used by the Individuals. It also extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets of the premises.

## 6.7 Beyond the workplace and outside working hours

- 6.7.1 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 a Councillor's role including (but not limited to):
- (a) At social functions sponsored and paid for by the City;
  - (b) At social functions in connection with the team/workplace but not sponsored or paid by the City
  - (c) In vehicles while on the way to Council functions or community meetings;
  - (d) At after-parties to such events (regardless of their location);
  - (e) In accommodation (including hotel rooms) associated with or provided by the City;
  - (f) Online via use of technology and social media; and
  - (g) Any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice versa.



6.7.2 Consumption of alcohol at Council functions or at a Council-related event outside the usual workplace and hours of work is not an excuse for conduct that constitutes sexual harassment. Individuals should regulate their own behaviour and consumption of alcohol to ensure that their behaviour does not adversely impact others.

## 6.8 Consent

6.8.1 A key element of sexual harassment is that it is unwelcome.

6.8.2 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.

## 6.9 Intent

6.9.1 The *Equal Opportunity Act 2010 (Vic)* and the *Sex Discrimination Act 1984 (Cth)* 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.

6.9.2 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 Individual to ensure that they do not engage in any behaviour that could amount to sexual harassment.

6.9.3 The City will not excuse sexual harassment that was intended as a joke if it meets the legal definition of sexual harassment.

## 6.10 Technology and social media

6.10.1 Sexual harassment can occur through electronic means (such as emails or text messages or by viewing pornographic websites) and through social media, Councillors are subject to the same rules about sexual harassment in the virtual world as they are in the real world.

6.10.2 As such, Councillors are required to use technology and social media responsibly and in relation to anything or anyone associated with their role of a Councillor.

## 6.11 Bystander intervention

6.11.1 Bystanders who witness or are aware of sexual harassment, can play an important role in preventing sexual harassment.

6.11.2 Bystanders that are aware of sexual harassment are encouraged to:

- (a) Provide support to the Individual who is being subjected to sexual harassment;
- (b) Formally or informally challenge concerning behaviour; and
- (c) Report sexual harassment.

6.11.3 The standard that people walk past is the standard that people accept.

6.11.4 Councillors who are bystanders to sexual harassment involving an Individual or a member of the public, in the course of performing their duties, must report this in accordance with the Dispute Resolution process of the Councillor Code of Conduct.

6.11.5 A Bystander may wish to remain anonymous and where appropriate, anonymity will be provided. In certain circumstances it may not be possible to keep the identity of a person, or people providing information, confidential. In some situations, 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.

#### **6.12 Failure to comply**

6.12.1 Failure to comply with this policy may lead to a breach of the Councillor Code of Conduct.

6.12.2 Non-compliance with this policy may 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.

#### **Support Options**

#### **6.13 Contacts**

6.13.1 A range of options are available to provide advice and support in regard to sexual harassment. The City's primary contacts include:

- (a) Mayor or Deputy Mayor
- (b) CEO
- (c) Councillor Conduct Officer

6.13.2 Relevant external service providers are listed in the attachment.

#### **6.14 Employee Assistance Program**

6.14.1 Councillors at the City are entitled to professional and confidential counselling free of charge via our EAP. Councillors can access EAP by contacting Converge International on 1300 687 327 or by visiting [www.convergeinternational.com.au](http://www.convergeinternational.com.au).

6.14.2 The EAP is staffed by independent qualified practitioners.

### **7. REVIEW**

7.1 Further information or advice on this policy should be directed to the Governance Unit at [corporate.governance@Bendigo.vic.gov.au](mailto:corporate.governance@Bendigo.vic.gov.au).

7.2 This Policy will be reviewed within 12 months of each municipal election.

**8. ROLES AND RESPONSIBILITIES**

8.1 In accordance with section 28 of the *Local Government Act 2020 (Vic)*:

8.1.1 The role of every Councillor is to:

- (a) participate in the decision making of the Council
- (b) represent the interests of the municipal community in that decision making
- (c) contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

8.1.2 In performing the role of a Councillor, a Councillor must:

- (a) consider the diversity of interests and needs of the municipal community
- (b) support the role of the Council
- (c) acknowledge and support the role of the Mayor
- (d) act lawfully and in accordance with the oath or affirmation of office
- (e) act in accordance with the standards of conduct
- (f) comply with Council procedures required for good governance.

- 8.2 For the purpose of clarification in given effect to this Policy, Councillor duties may include, but are not limited to:
- 8.2.1 attendance at meetings of Council and its committees
  - 8.2.2 attendance at briefing sessions, workshops, civic events or functions convened by Council
  - 8.2.3 attendance at conferences, workshops and training programs related to the role of Councillor, Mayor or Deputy Mayor
  - 8.2.4 attendance at meetings, events or functions representing Council
  - 8.2.5 duties in relation to constituents concerning Council business.
- 8.3 All Councillors must:
- 8.3.1 Comply with this policy;
  - 8.3.2 Model appropriate behaviour;
  - 8.3.3 Participate in any training mandated by the CEO and Mayor, including completing any assessments;
  - 8.3.4 Treat information in relation to claims of sexual harassment with appropriate confidentiality;
  - 8.3.5 Ensure that a person is not victimised for making, or being involved in, a sexual harassment complaint; and
  - 8.3.6 Act in accordance with the Councillor Code of Conduct and the City's values, policies and procedures.
- 8.4 This Policy also applies to members of Council Delegated Committees members when undertaking duties in accordance with their agreed role.

## **9. RELATED DOCUMENTS**

- 9.1 The following documents are related to this Policy:
- 9.1.1 [Local Government Act 2020 \(Victoria\)](#)
  - 9.1.2 [Councillor Code of Conduct](#)
  - 9.1.3 Councillor Appropriate Behaviour Policy
  - 9.1.4 Councillor Communication & Information Policy
  - 9.1.5 Community Complaints Against a Councillor Policy

## **10. HUMAN RIGHTS COMPATIBILITY**

- 10.1 The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

**11. ADMINISTRATIVE UPDATES**

11.1 It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a City unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation and by resolution of Council only.

**12. DOCUMENT HISTORY**

<b>Date Approved</b>	<b>Responsible Officer</b>	<b>Unit</b>	<b>Change Type</b>	<b>Version</b>
July 2021	Manager People & Culture	People & Culture	Developed (Staff)	1
Feb 2022	Manager Governance	Governance	Revision (Councillor)	1.1

**13. ATTACHMENTS**

13.1 External Support, Information and Advice

### **Attachment 1 - External Support, Information and Advice**

All Councillors, employees, volunteers and work-experience students can access free and confidential counselling, coaching and support for workplace and personal issues from the **Employee Assistance Program**. Appointments can be made via phone: 1300 687 327, email: [eap@convergeintl.com.au](mailto:eap@convergeintl.com.au) or the provider's website: [www.convergeinternational.com.au](http://www.convergeinternational.com.au)

A Councillor, employee, volunteer, contractor or work-experience student who believes that they have experienced or been affected by Sexual Harassment may also wish to access other support services listed below.

#### **Victorian Centres Against Sexual Assault (CASA)**

CASA provides confidential support and intervention for women, children and men who are victim-survivors of sexual assault and who have experienced or been affected by Sexual Harassment.

Phone: 1800 806 292 (24 hours)  
Email: [casa@thewomens.org.au](mailto:casa@thewomens.org.au)  
[casacv@casacv.org.au](mailto:casacv@casacv.org.au) (local)  
Web: [casa.org.au](http://casa.org.au)  
[casacv.org.au](http://casacv.org.au) (local)

#### **Victorian Sexual Assault Crisis Line (SACL)**

SACL provides advice on services available in cases of sexual assault (emergency healthcare, protection services, police complaints processes).  
Phone: 1800 806 292 (24 hours) – diverts to local CASA services during standard business hours  
Email: [SACLFeedback@thewomens.org.au](mailto:SACLFeedback@thewomens.org.au)  
Web: [sacl.com.au](http://sacl.com.au)  
Police/emergency contact line: (03) 8345 3494  
SACL admin line: (03) 8345 3201

#### **National Sexual Assault, Domestic Family Violence Counselling Service**

**(1800RESPECT)** Qualified and experienced counsellors provide free telephone and online counselling, information and assistance to access other services.  
Phone: 1800RESPECT (1800 737 732) (24 hours)  
Web: [1800respect.org.au](http://1800respect.org.au)