



## **SEXUAL HARASSMENT: It's No Joke!**

### **Your Right to Quiet Enjoyment of Employment**

*"It is now well established that one of the conditions of employment is quiet enjoyment of it. That concept includes not only freedom from physical intrusion or from being harassed, physically molested or approached in an unwelcome manner, but extends to not having to work in an unsought sexually permeated work environment."* WA Equal Opportunity Tribunal

## **What is Harassment?**

Harassment is unwanted behaviour that is uncomfortable, that offends, humiliates or intimidates, and is directed at you because of your sex, pregnancy, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities.

## **What is Sexual Harassment?**

A legal definition of Sexual Harassment is contained in Section 22A of the NSW Anti-Discrimination Act 1977 as follows:

"a person sexually harasses another person if he or she:

- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
- (b) engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated."

Sexual harassment is unlawful under the Federal Sex Discrimination Act 1984 and the NSW Anti-Discrimination Act 1977.

## **Harassment, Bullying and Discrimination Policy**

The University has in place a Harassment, Bullying and Discrimination Policy that sets out the relevant definitions, underpinning principles and the University's commitment to eliminating harassment, bullying and unlawful discrimination across the University:

<http://www.scu.edu.au/admin/hr/procedures/index.php/89/>

## **Consequences of Sexual Harassment**

The consequences of sexual harassment are serious for the complainant and the work organisation and may include:

- Distress, fear
- Poor work performance
- Ill-health and absenteeism
- Low morale and productivity
- Impact on individual and organisational reputation
- Personal and organisational liability

## **Key Points to Remember about Sexual Harassment**

### ***Unwelcome behaviour:***

Sexual harassment occurs when a person makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person. Sexual harassment is not behaviour, which is based on mutual attraction or private, consenting friendships whether sexual or otherwise. If the interaction is consensual, welcome and reciprocated, it is not sexual harassment.

### ***Women and men can feel sexually harassed:***

Sexual Harassment is not behaviour that only affects women. Sex discrimination is prohibited behaviour in the workplace irrespective of a person's sex.

### ***Sexual harassment does not need to be directed at a particular individual:***

Sexual harassment does not need to be directed at a particular individual. In other words, a person can feel offended by virtue of artwork, posters or calendars posted in the work environment, by over-hearing a particular conversation or being part of a group discussion or by receiving a group email. A public display of pornography (especially when it is directed at particular individuals) ranging from material that might be considered mildly erotic through to material that is sexually explicit could constitute sexual harassment.

### ***A person can feel sexually harassed by virtue of a single incident:***

Offensive behaviour does not necessarily need to be repetitive, ongoing behaviour in order to constitute sexual harassment. Sexual harassment may occur as a single incident or a series of incidents.

### ***The intention behind offensive behaviour is irrelevant:***

It is irrelevant at law whether or not the inappropriate comments or behaviour were intended. The person being subjected to the comments or behaviour, determines whether the comments or behaviour are welcome or unwelcome. In applying this subjective test, the law recognises that comments and behaviour, which do not offend one person, can offend another. In addition, there is also recognition that people from different cultural backgrounds may find different behaviours to be offensive. The basis of the subjective test is respecting the right of individuals to react differently to offensive comments and behaviour.

### ***Sexual Harassment can constitute a criminal offence:***

Some forms of sexual harassment also constitute offences. Sending obscene items through the mail and nuisance phone calls can be criminal offences. Actual or attempted indecent assault or rape, are serious criminal offences.

### ***Sexual Harassment can occur outside the work environment:***

If the offensive behaviour occurs in a work-related environment, it constitutes sexual harassment. In other words, an incident of sexual harassment can happen at Christmas parties, gatherings after the Christmas parties, off site functions,

work sporting events, conferences and business trips, training courses and business dinners.

***Sexual Harassment can be physical, visual, verbal or non-verbal conduct:***

Specific Examples of Sexual Harassment include:

- persistent, unwelcome suggestions demands or even subtle pressures of a sexual nature;
- offensive comments on physical appearance, dress or private life;
- displaying sexually graphic material, such as posters, calendars, cartoons;
- e-mail, voice mail, screen savers (words & images), material of a sexual nature from the internet, telephone calls, faxes or gifts;
- deliberate & unnecessary physical contact, such as pushing, jostling, patting, pinching, fondling, or deliberately brushing against another body or leaning over them at their computer;
- leering or staring at a person's body;
- "humour" (smutty, sexist or homophobic jokes/comments);
- innuendo, sexual provocative remarks, or derogatory comments about a person's physical appearance, inferences of sexual morality or tales of sexual performance;
- constantly asking someone out, especially after prior refusal;
- demands/requests for sexual favours, gestures or body movements of a sexual or intimidating nature;
- intrusive inquiries into a person's private life or about a person's sexuality or physical appearance.
- sexual coercion through offering rewards (such as favourable assessment) or threatening penalties to secure sexual involvement.
- use of sexist or patronising language, particularly addressed at subordinates, eg sweetheart, pet

## **WHY tolerate sexual harassment?**

People often tolerate incidents of sexual harassment for the following reasons:

- wanting to fit in;
- not wanting to be seen as a troublemaker;
- guilt that something they did encourages the behaviour;
- not trusting their own judgement;
- low self-esteem;
- social conditioning;
- power imbalances;
- distrust of management;
- fear of work-related reprisals;
- no adequate or trusted complaint procedure; and/or
- feeling that harassment is a normal part of the work unit culture.

## **WHY report incidents of sexual harassment?**

- you get expert help and support in dealing with the situation;
- the person may change their behaviour;
- other people experiencing sexual harassment may be encouraged to come forward;
- persistent patterns of behaviour may be identified;
- measures exist within University policies to address complaints of sexual harassment.

## **What to do if you are feeling sexually harassed?**

Any person, who believes they have been sexually harassed, should not ignore the behaviour. The earlier the situation is addressed the more likely it is to be resolved. If you consider that the behaviour is not of a serious nature but nonetheless want the behaviour to stop, the following options are available to you:

- inform the person that their behaviour is offensive and unacceptable and against university policy; and/or
- speak to your supervisor or Head, Equity & Diversity for confidential support and advice; and/or
- refer to the Grievance Policy for University Staff

## **Grievance Policy for University Staff**

The Grievance Policy for University Staff provides a process for resolving staff grievances so that work-related concerns and problems are managed fairly, sensitively and expeditiously. The policy applies to grievances arising from any work-related issue including, but not limited to harassment, bullying and discrimination. The policy provides informal and formal processes for addressing grievances.

Grievances are treated seriously, expeditiously, sensitively and as close as possible to their source having due regard to procedural fairness, confidentiality and potential for victimisation. Concerns should be raised as early as possible after the incident relating to the complaint has occurred. The policy can be found at:

<http://www.scu.edu.au/admin/hr/procedures/index.php/88/>

## **Negative consequences of reporting sexual harassment - Victimisation**

If you are treated badly because you raised (or intend to raise) a sexual harassment issue, or if your complaint is not taken seriously, you are entitled to raise a complaint of victimisation. The initial complaint of harassment need not have to be upheld for a victimisation complaint to succeed.

## **Responsibility of Managers and Supervisors**

All managers and supervisors are accountable to ensure compliance with the University's Equal opportunity policies and procedures and should do the following:

- Create and promote an environment free of harassment and discrimination
- Comply with state and federal legislation on discrimination and equal employment opportunity.
- Model appropriate behaviour.
- Treat all complaints seriously and take immediate action to resolve complaints expeditiously
- Seek assistance from the Equity Manager/HR Services if they do not feel they are the best person to deal with the complaint.

## **Responsibility of Staff Members**

- Think before you act. If you suspect your behaviour is offensive or inappropriate, check it out by asking if it is offensive. If you are offending someone else, stop and apologise.
- Treat colleagues and students with respect
- Consult with the Equity Manager or your supervisor if you require a greater understanding of the University's Equal Opportunity policies and procedures.
- Comply with the University's Equal Opportunity policies and procedures.
- Offer support to anyone who is feeling harassed and guide them to the appropriate support procedures.
- Maintain confidentiality if they provide information of a complaint. Information should only be provided to those who are legitimately involved in the process of resolving the grievance. Failure to do so could result in defamation action.

## **For Advice and Assistance**

Confidential advice and information is available. Concerns raised by staff and students will be treated with complete confidentiality.

### ***Internal contacts***

University Equity and Diversity Contacts  
<http://www.scu.edu.au/equity/index.php/53/>

Equity and Diversity Office  
Southern Cross University  
**Phone:** (02) 6626 9110  
**Fax:** (02) 6626 9409

HR Services  
**Phone:** (02) 6620 3667

Student Equity & Disability  
Student Support Services  
Southern Cross University  
**Phone:** (02) 6620 3943  
Email: [studentequity@scu.edu.au](mailto:studentequity@scu.edu.au)

University Counselling Clinic  
Phone:  
(02) 6620 3943 (Lismore)  
(02) 6659 3263 (Coffs Harbour)  
(07) 5589 3001 (Gold coast & Tweed Heads)  
Email: [counselling@scu.edu.au](mailto:counselling@scu.edu.au)  
For counselling and support

### ***External contacts***

Human Rights Equal Opportunity Commission NSW  
Phone: 1300 656 419 (local call) or 02 9284 9888  
Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)  
TTY: 1800 620 241 (toll free)  
Fax: 02 9284 9611

Sexual Assault Unit & Counselling  
Lismore Base Hospital  
Uralba Street  
LISMORE 2480  
**Ph** (02) 6621 8000 (24 hours)

Legal Aid Office  
Suite 6, Level 429 Molesworth Street  
LISMORE NSW 2480  
**P** (02) 6621 2082  
**F** (02) 6621 9874

Lismore and District Womens Health Centre Inc  
Ph 6621 9800

Equity & Diversity Office January 2012