

# Sexual Harassment and Sexual Assault Policy

## 1. PURPOSE

To outline Holmesglen's commitment to, and processes for, ensuring the Institute is an environment which is free from sexual harassment and sexual assault.

## 2. SCOPE

Applies to all Holmesglen employees, learners and visitors.

## 3. POLICY STATEMENT

Holmesglen is committed to ensuring that all members of the Institute's community, can work and learn in an environment free from sexual harassment and sexual assault. Holmesglen will not tolerate behaviour of this nature under any circumstances and disciplinary action will be taken against any employee who breaches the policy.

## 4. PRINCIPLES

Holmesglen aims to:

- 4.1 Create a working environment where all employees are treated with dignity, courtesy and respect.
- 4.2 Ensure that all employees know their rights and responsibilities by providing individual training.
- 4.3 Provide an effective procedure for complaints based on the principles of procedural fairness
- 4.4 Treat all complaints in a sensitive, fair, timely and confidential manner.
- 4.5 Guarantee protection from any victimisation or reprisals.
- 4.6 Encourage the reporting of behaviour which breaches the sexual harassment and sexual assault policy
- 4.7 Promote appropriate standards of conduct at all times
- 4.8 Establish a Sexual Harassment Committee to consider appropriate actions for dealing with sexual harassment or sexual assault based on guidelines as per [Appendix 1](#) of this policy

## 5. ACCOUNTABILITIES

Action	Accountability
(i) Report complaints to the Associate Director, Human Resources to seek specialist advice on receipt of the complaint	Manager
(ii) Hear complaints of alleged sexual harassment or sexual assault.	
(iii) Initiate processes to convene separate and/or joint meetings with the complainant(s) and the respondent(s) in conjunction with Human Resources within seven working days.	
(iv) Escalate complaints of alleged sexual harassment or sexual assault that are not resolved at the local level to the Sexual Harassment Committee.	
<b>Note:</b> Complaints as well as summaries of meeting/s will be recorded on the Sexual Harassment Report Form.	

Action	Accountability
(i) Initiate processes to convene the Sexual Harassment Committee within seven working days of receiving an escalated complaint. (ii) Advise the complainant(s) and the respondent(s) in writing that the matter will lapse when judged by the Committee as not having substance. (iii) Take appropriate action where a complaint is deemed to have substance. (iv) Maintain any report and relevant documentation relating to the processing of a complaint dealt with under the provision of this Policy	Chief Executive
Consider and adopt appropriate procedures in dealing with any complaints of alleged sexual harassment or sexual assault against any member of the Sexual Harassment Committee.	Chair Holmesglen Board
Hear and determine appropriate course of action based on the complaint.  <b>Note:</b> The Sexual Harassment Committee consists of the Chief Executive, Associate Director, Human Resources (where an employee is involved) and/or Manager Student Wellbeing (where a learner is involved) and a co-opted member, if required, to ensure gender representation or relevant nominees.	Sexual Harassment Committee

## 6. DEFINITIONS

Term	Meaning
Sexual Harassment	<p>Unlawful behaviour that can result in both civil and criminal prosecution. Sexual harassment is a form of discrimination which can be defined as any unwelcome behaviour of a sexual nature that a reasonable person would anticipate the recipient would be offended, humiliated or intimidated by.</p> <p>Whether a reasonable person would anticipate that the recipient would be offended, humiliated or intimidated is an objective standard. Namely, the perspective of a reasonable person in the role of a hypothetical observer with knowledge of all the circumstances.</p> <p>Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.</p> <p>Sexual harassment includes 'unwelcome' behaviour that is:</p> <ul style="list-style-type: none"> <li>▪ Uninvited</li> <li>▪ Non-reciprocal</li> <li>▪ Intimidating and/or offensive</li> </ul> <p>Behaviour that is of a sexual nature includes:</p> <ul style="list-style-type: none"> <li>▪ physical gestures of a sexual nature</li> <li>▪ verbal comments of a sexual nature</li> <li>▪ pressure to engage in sexual activity</li> <li>▪ unwanted invitations to go out on dates</li> <li>▪ offensive jokes</li> <li>▪ displaying offensive material such as screen savers, posters, drawings, models of a sexual nature</li> </ul>

Term	Meaning
	<ul style="list-style-type: none"> <li>▪ staring or leering</li> <li>▪ physical contact such as pinching, patting, hugging, brushing against a person</li> <li>▪ discussions or statements about explicit sexual experiences</li> <li>▪ offensive hand or body gestures</li> <li>▪ written communication of a sexual nature such as emails, letters, sms, social media communications</li> <li>▪ intrusive questions about an employee's private life or body</li> <li>▪ insults or taunts of a sexual nature</li> <li>▪ accessing sexually explicit internet sites.</li> </ul> <p>Sexual harassment that can result in criminal prosecution includes:</p> <ul style="list-style-type: none"> <li>▪ indecent exposure</li> <li>▪ physically molesting a person</li> <li>▪ sexual assault</li> <li>▪ obscene written or spoken communication.</li> </ul> <p>Sexual harassment may occur:</p> <ul style="list-style-type: none"> <li>▪ as a single incident or series of incidents</li> <li>▪ where it is initiated by a member of the Institute community, either individually or as a group</li> <li>▪ when submission to sexual conduct is implicitly or explicitly a condition of an individual's continuing employment or educational achievement</li> <li>▪ outside of the usual working environment such as at work functions, or in the course of employment where colleagues are gathered together.</li> </ul>
Sexual Assault	<p>Is sexual abuse, rape, indecent behaviour, indecent assault, sexual molestation, incest, child sexual abuse, child sexual assault and/or touching.</p> <p>Consent underpins the way the law considers these offences. In the State of Victoria, the law states this means 'free agreement' and that both parties must agree to a sexual act in order for there to be consent. In Victoria the law also outlines a number of circumstances in which someone is automatically considered as unable to give consent including if a person is:</p> <ul style="list-style-type: none"> <li>▪ drunk</li> <li>▪ drug affected</li> <li>▪ asleep or unconscious</li> <li>▪ unable to understand the sexual nature of what is happening</li> <li>▪ submitting because of force or fear of force or harm (including to someone else)</li> <li>▪ held against their will</li> <li>▪ a child</li> <li>▪ mistaken about the identity of the other person</li> <li>▪ led to believe it is for a medical or hygienic purpose</li> <li>▪ consents then later withdraws consent to the act.</li> </ul>
Sexual Harassment Committee	<p>Consists of the Chief Executive, Associate Director, Human Resources (where an employee is involved) and/or Manager Student Wellbeing (where a learner is involved) and a co-opted member, if required, to ensure gender representation or relevant nominees.</p>

## 7. CONTEXT AND/OR REFERENCED DOCUMENTS

### Internal

Conduct Rule

Sexual Harassment Report Form

### External

Equal Opportunity Act 2010 (Vic)

Sex Discrimination Act 1984 (Cth)

Public Administration Act 2004 (Vic)

## 8. REVIEW

8.1 This policy must be reviewed no later than three years from the date of approval.

8.2 The policy will remain in force until such time as it has been reviewed and re-approved or rescinded. The policy may be withdrawn or amended as part of continuous improvement prior to the scheduled review date.

## 9. VERSION HISTORY

Version Number	Date	Summary of changes
1	July 2019	Updated into new format
2	February 2020	Minor update to the purpose of the policy.

## **APPENDIX 1: GUIDELINES FOR DEALING WITH SEXUAL HARASSMENT AND SEXUAL ASSAULT**

Once a complaint has been made and Holmesglen is on notice of a possible risk to health and safety, the responsibilities and positive obligations of the Institute and its managers to ensure the workplace is safe for everyone override the complainant's wishes to terminate an investigation.

Holmesglen has a responsibility to take action in relation to any behaviour which:

- (i) creates an intimidating, hostile or oppressive work or learning environment
- (ii) adversely affects an individual's work or academic performance
- (iii) causes embarrassment, distress or ill health to any member of the Institute community
- (iv) may cause an employee to transfer, take leave without pay, or resign
- (v) may cause learners to abandon their course
- (vi) reflects on the integrity and standing of the Institute.

### **1. Resolution of complaints - Verbal and Written**

- (i) Complaints of alleged sexual harassment or sexual assault against a member or members of the Institute community should be made to the Manager or the next most senior officer. Details of such complaints should be documented immediately.
- (ii) Upon receiving the complaint, the Manager in conjunction with the Associate Director Human Resources should, within seven working days, initiate processes to convene separate meetings with the complainant(s) and respondent(s).
- (iii) If the complainant(s) chooses to withdraw the complaint, the Institute is obliged to continue the investigation.
- (iv) Where both the complainant(s) and respondent(s) are willing to meet to discuss the matter with each other, the Manager should advise all parties concerned within seven working days.
- (v) Where resolution is reached a summary is documented (see Sexual Harassment Report Form) and the matter rests.
- (vi) Where resolution is not reached between the parties, the Manager must advise the complainant(s) that the matter will be escalated to the Chief Executive who will initiate a process to convene the Sexual Harassment Committee within seven working days of being advised of the matter.
- (vii) The Sexual Harassment Committee will regulate its own procedures.
- (viii) The Sexual Harassment Committee will formally hear the complainant(s) and advise the complainant(s) and respondent(s) of the procedures it will follow to resolve the complaint(s).
- (ix) The Sexual Harassment Committee will discuss the complaint(s) with the respondent(s). If the complaint was in writing, a copy will be issued to the respondent(s).
- (x) The Committee will conduct further investigations if required.
- (xi) The Committee will attempt to conciliate the matter between the complainant(s) and the respondent(s). This process may involve bringing the parties together so that apologies and undertakings about future behaviour may be stated.
- (xii) If a complaint is judged by the Committee to have substance, appropriate disciplinary action will be taken against the respondent(s) and if necessary the matter will be referred to other bodies for further investigation.
- (xiii) If a complaint is judged by the Committee not to have substance, the complainant(s) and the respondent(s) will be advised in writing by the Chief Executive accordingly.

### **2. Holmesglen Responsibilities**

Holmesglen accepts responsibility for ensuring positive action is taken:

- (i) To educate employees and learners about the nature of sexual harassment and assault and the negative outcomes of such behaviour for the victim(s) and the institute environment in general.
- (ii) To investigate and act upon reported cases of sexual harassment and assault
- (iii) To ensure that the confidential nature of all information presented by all involved parties shall be recognised and maintained.