



## Sexual Harassment Policy

NEWBOROUGH PRIMARY SCHOOL – A SCHOOL WIDE POSITIVE BEHAVIOUR SUPPORT (SWPBS) & RESPECTFUL RELATIONSHIPS SCHOOL

OUR 'NEWBEE' VALUES – BE A LEARNER, BE RESPECTFUL AND BE SAFE

### Context

Sexual harassment is unlawful behaviour under the Commonwealth Sex Discrimination Act 1984 and the Victorian Equal Opportunity Act 2010.

The procedures for dealing with allegations or instances of sexual harassment and possible consequences regarding any breach of this policy are dealt with in the Department's Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct and in the school's Statement of Values.

The Sexual Harassment Policy applies to all members of the school community, including Department and School Council employees, casual staff, volunteers, contractors, parents, carers and students.

Every person in the school community is responsible for maintaining a working environment free from sexual harassment and is potentially liable for his or her actions if sexual harassment occurs. The responsibility for providing a school community free from sexual harassment is discharged through the principals.

If a complaint of sexual harassment is made, or sexual harassment is observed or brought to the attention of the Principal, it must be acted upon immediately and managed in a sensitive and confidential manner. The Principal has no option but to take action once a complaint is raised. Action will be taken against any person in the school community is found to have sexually harassed another person. Where sexual harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on a range of factors. The consequences may include an apology, counselling, undertaking training, or disciplinary action such as dismissal. In implementing the Sexual Harassment Policy, Newborough Primary School affirms its commitment to the prevention of sexual harassment and the implementation of equal opportunity principles. These principles:

- uphold the rights of all people in the school to a safe working and learning environment free from sexual harassment
- support diversity and inclusive work and learning practices
- promote respect amongst all people in the school
- encourage fair and equitable treatment of people in the school
- allow people in the school community to have redress against unfair and unreasonable treatment.

In accordance with the public sector values and employment principles in the Public Administration Act 2004, Newborough Primary School is also committed to respecting, promoting, supporting and implementing human rights set out in the Charter of Human Rights and Responsibilities 2006.

### Legislative Context

The Victorian Equal Opportunity Act 2010 addresses sexual harassment in Part 6. Section 92 (1) provides:

“a person sexually harasses another person if he or she -

- makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person
- 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.”

Section 92 (2) provides: “conduct of a sexual nature” includes –

- subjecting a person to any act of physical intimacy
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence
- making any gesture, action or comment of a sexual nature in a person’s presence.”

Similar provisions apply under the Commonwealth Sex Discrimination Act 1984. Sexual harassment can also amount to discrimination on the grounds of gender under both the Commonwealth and State legislation. Sexual harassment is prohibited in any school-related context, including school functions and events even if they are outside normal working hours or away from school. Accordingly, references in this policy to the school include all places in which school activities occur. School activities could include, for example, an after-hours staff or school community event.

### **What is sexual harassment?**

Sexual harassment is conduct of a sexual nature that is unwelcome. Sexual harassment can be physical, verbal or written. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. Even if the behaviour is not intended by the individual to be sexually harassing, it may still be unlawful. Sexual harassment can be physical, verbal or visual and may include statements or transmissions by phone, fax, video conference, internet and e-mail, and will vary in the degree and extent to which it causes affront and distress.

Both males and females can be subjected to sexual harassment from either persons of the same or opposite gender. Sexual harassment may include:

- comments about a person’s sex life or physical appearance
- comments of a sexual nature.
- suggestive behaviours such as leering and ogling
- unnecessary physical intimacy such as brushing up against a person
- physical contact such as touching or fondling
- ‘flashing’ or sexual gestures
- sexual propositions or repeated unwanted requests for dates
- making promises or threats in return for sexual favours
- sexual jokes, offensive telephone calls, displays of offensive photographs, reading matter or objects
- sending jokes or graphics of a sexual nature by e-mail, internet or fax
- unwelcome questioning about a person’s private life
- offensive computer screen savers
- unwanted requests for sex
- stalking, indecent assault or rape (which are also criminal offences).

Sexual harassment is not behaviour that is based on mutual attraction, friendship and respect. Where the interaction is consensual, welcome and reciprocal it will not amount to sexual harassment. However, judgements about what constitutes consensual, welcome and reciprocal interaction may be influenced by the relative power of the people involved. The capacity of persons in positions of authority to influence others and affect their well-being is a factor that will be taken into account in the management of any sexual harassment allegation.

It is not the intention of this policy to interfere in personal lives and relationships. However, the Principal and School Council have an obligation to ensure that sexual harassment does not occur and that high standards of conduct are maintained in our school community.

The effect of sexual harassment on those people involved and on the school community as a whole can range from annoyance to deep distress and can lead to an intimidating, hostile and offensive work and learning environment. This can contribute to reduced quality of work, reduced learning and engagement,

inappropriate behaviour, low productivity, distraction from work, low morale, absenteeism and poor health. Sexual harassment can deny people their entitlement to the quiet enjoyment of life in the school community.

### **Criminal offences**

Sexual harassment may in certain circumstances constitute a criminal offence. A criminal offence of a sexual nature can include inappropriate touching and inappropriate verbal comments concerning people in the school and/or broader school community. Sexual harassment involving physical or indecent assault, stalking, making nuisance phone calls or the sending of obscene material using mail, e-mail or the internet, may be an offence under criminal law. Allegations of this nature must be reported to the police. The employer has a responsibility to deal with allegations even when the police are or have been involved, and to determine appropriate action in the context of the workplace. In relation to complaints involving staff, close liaison by the principal or manager with the Department's Conduct and Ethics Branch and the police is necessary at the outset to ensure that the police investigation is not interfered with or compromised in any way.

### **Allegations involving students**

Sexual offences against children or young persons can have mandatory reporting implications, which require contact with the Department of Human Services. Newborough Primary School teachers, support staff, other members of staff and others involved in the provision of education to students owe a duty of care to students to protect them from risks of injury which are reasonably foreseeable. More information on Student Critical Incident Advisory Unit may be accessed from the Department website: Student Safety: Critical Incidents - Student Critical Incident Advisory Unit (SCIAU).

### **The School's Commitments**

Newborough Primary School's commitment to the elimination of sexual harassment includes:

- widely publicising the policy and providing a copy in electronic form to all employees
- facilitating access to sexual harassment training
- providing support for managing complaints
- reviewing and updating policies in consultation with relevant stakeholders
- maintaining the Department's commitment to its relationship with the Victorian Equal Opportunity and Human Rights Commission in promoting harassment free environments.

The responsibility for providing a learning and working environment free from sexual harassment is discharged through Principals, teachers and School Councils.

Under the Equal Opportunity Act 2010, Newborough Primary School and its School Council may be held to be vicariously liable for the actions of the school's employees and agents unless they can demonstrate that they have taken all reasonable steps to prevent the conduct from occurring. An employer is required to take action if aware of any behaviour which could constitute sexual harassment, even if no complaint has been lodged. Principals, teachers, students, other staff, parents and carers and other persons can be liable for the actions of others if they authorise, encourage or assist sexual harassment within our school community. In some circumstances, inaction can amount to implicit authorisation.

Newborough Primary School is committed to ensuring that all persons in the school community are aware of their rights and obligations with respect to sexual harassment and is committed to providing staff with appropriate training and access to information and services. The school's Principal is the designated contact person who can provide information and support in relation to sexual harassment and support any prospective complainant.

### **Roles and responsibilities**

The responsibilities of principals, teachers, other staff and School Council include:

- modelling appropriate behaviour
- monitoring the environment to ensure as far as practicable that acceptable standards of conduct are maintained at all times and that sexual harassment is not tolerated
- promoting awareness of the avenues for advice and the complaints procedures with respect to sexual harassment as set out in this policy
- treating seriously complaints and behaviour which may constitute sexual harassment and taking immediate action

- treating complaints of sexual harassment with appropriate confidentiality
- ensuring that a person is not victimised for making, or being involved in, a complaint of sexual harassment
- identifying an appropriate contact person to provide information and support to complainants or respondents (the contact person should not provide support to a complainant and a respondent involved in the same matter)
- referring to this policy in the school, student and staff codes of conduct and practice
- where an allegation involves a student, ensuring that an appropriate network of support, guidance, counselling and liaison with parents/guardians is established in accordance with duty of care obligations.

All employees have a responsibility to:

- comply with the Department's Sexual Harassment Policy
- participate in any training provided by the Department, including completing the online sexual harassment training course
- model appropriate behaviour
- treat information in relation to sexual harassment allegations with appropriate confidentiality
- ensure that a person is not victimised for making or being involved in, a complaint of sexual harassment.

The role of the Principal is to:

- be familiar with the Sexual Harassment Policy including the procedures for dealing with allegations of sexual harassment
- understand the negative effects that sexual harassment can have in the workplace, and particularly the effect that making a complaint can have
- act as a point of contact for a person considering making a complaint or seeking information about sexual harassment
- provide the complainant with information about the various options and avenues for advice and the complaints procedures
- understand that the role of the contact person is to provide information and support to the complainant, and does not extend to investigation, conciliation, making a judgement about what constitutes sexual harassment, or other intervention
- participate in any training provided by the Department.

Newborough Primary School encourages all staff and students to report actions or behaviours that contravene our values, policies and statement of values, and take appropriate bystander action to intervene safely and respectfully when they see or hear about sexist language, sex discrimination, sexual harassment or a potentially violence situation in the school community.

### **Counselling**

If at any stage throughout the procedure the complainant or respondent or any other person requires counselling, contact should be made with the Employee Assistance Program. The Program is confidential and employees can access it by contacting the provider, Converge International, on 1800 337 068. Parents and Carers can access support through 1800Respect 1800 737 732 and Lifeline 13 11 14 and eheadspace 1800 650 890 and Kids Helpline 1800 55 1800.

### **Complaints**

The procedures for dealing with allegations or instances of sexual harassment and possible consequences regarding any breach of this policy are dealt with in the Department's Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct. Where sexual harassment is found to be substantiated, the consequences for the person against whom the complaint is made will depend on a range of factors. The consequences may include an apology, counselling, undertaking training, or disciplinary action including dismissal.

Approved by School Council: October 2017  
(Must review in 4 years)

