



Volunteers and the Equal Opportunity Act 2010

> Sexual harassment – frequently asked questions

Does behaviour need to be repeated to be sexual harassment?

Sexual harassment does not have to be repeated or continuous to be against the law. It can be a one-off incident.

Does sexual harassment cover incidents between volunteers, or between volunteers and staff, outside of the organisation's premises?

Yes, it can. For example when:

- > the conduct occurs near work hours, such as while volunteers and staff are packing up to leave, or walking to their car to go home for the night
- > volunteers are required to travel off site for an event, such as attending a training session, function or sporting match
- > the organisation encourages volunteers to spend time at a particular place or in a certain way, for example, organising after work drinks or an end-of-year get-together at someone's house.

Can men be sexually harassed or just women?

Both men and women can experience sexual harassment, although it is most commonly experienced by women. Any kind of unwanted conduct of a sexual nature – whether from a man or woman and whether directed toward a man or woman – is sexual harassment and it is against the law.

Is an organisation responsible if a volunteer sexually harasses a client or another member of staff?

An organisation to which the *Equal Opportunity Act 2010* applies can be responsible for sexual harassment against, or by, a volunteer where the volunteer was acting as their agent or where the organisation's conduct could be taken to have authorised or assisted the sexual harassment.

The *Wrongs Act 1958* may be relevant here as well. This Act provides that an incorporated community organisation may be responsible for the actions of its volunteers, rather than the volunteers themselves being directly liable in civil proceedings, for things done in good faith when undertaking community work. This protection will not apply when the actions are not in good faith or when they were contrary to instructions given by the community organisation.

The organisation should also consider any obligations it has under occupational health and safety legislation to provide a safe working environment for its staff, and any duty of care it may have to clients. This will be dependent on the particular circumstances.

The best thing for an organisation to do is to provide clear guidance on what volunteers are authorised to do, for example, by providing a role or position description, and to make clear its expectations that sexual harassment is not acceptable.

What about where someone wears provocative or revealing clothing – aren't they sexually harassing other staff or volunteers?

Wearing revealing or provocative clothing may not amount to sexual harassment in the absence of indecent exposure or some other form of unwanted sexual conduct. It may, however, breach an organisation's dress code if one applies.

Organisations can set standards of dress for staff and volunteers. Standards must be reasonable and applied in a manner that does not contravene anti-discrimination legislation.

Organisations must not directly or indirectly discriminate against employees when setting dress and appearance codes. Dress codes should be sensitive to people's sex, religion, race, disability, age, pregnancy and gender identity. For example, discriminatory dress codes include specifying that women must wear skirts or that a Sikh man cannot wear his turban at work in a restaurant.

Sexual harassment may arise if a volunteer, or a staff member, is asked to wear revealing or provocative clothing, or comments of a sexual nature are made about their appearance. Wearing revealing clothing isn't an invitation to be sexually harassed.

To avoid complaints of sexual harassment is it better to say that workplace romances aren't allowed?

No. It is better for organisations to make it clear that sexual harassment isn't acceptable, for example, make sure they have a policy about sexual harassment and that both staff and volunteers are aware of it.

Discriminating against people for 'lawful sexual activity' is also against the law. This applies to a volunteer having a consensual relationship with another volunteer, or a staff member.

A volunteer complained about a suggestive comment made on her Facebook page by another volunteer. Is that sexual harassment?

It may be sexual harassment if it occurs in the course of the volunteering relationship – for example, if it happened between two people who work for the same organisation.

Comments don't need to be made face-to-face to form sexual harassment. Various forms of electronic communication – such as smart phones, instant messaging and social networking websites – are creating new environments where sexual harassment can take place.

Sexual harassment involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. This can include sexually explicit emails, text messages or comments on social networking sites. To help ensure good practice, organisations should make sure they have a sexual harassment policy, that it covers this aspect of life, and that both staff and volunteers are aware of it.

What happens if one of our volunteers makes a complaint to the Commission?

Under the *Equal Opportunity Act 2010*, the Commission provides a free and fair dispute resolution service.

The Commission is not a court and cannot make a decision about whether a breach of the law has occurred.

When a complaint is made the Commission may contact the person or organisation the complaint is made against and try to resolve the issue. The Commission does not advocate or act for people making a complaint.

Complaints to the Commission are resolved through a process known as conciliation. This is where the people involved in a dispute talk through the issues with the help of the Commission, and with the aim of reaching an agreement on how the dispute will be resolved.

The aim of conciliation is for the complainant and respondent to reach an agreement about resolving the complaint. The Commission does not have the power to make orders or award compensation.

Many complaints are resolved at conciliation and outcomes may include:

- > an apology (verbal or written, private or more public)
- > financial compensation
- > access to a previously denied job opportunity or service
- > an agreement to change or stop behaviour
- > an agreement to amend or develop policies.

If a complaint can't be resolved by the Commission, the complainant may make an application to the Victorian Civil and Administrative Tribunal (VCAT) to have the matter listed for hearing.

Under the *Equal Opportunity Act 2010*, a person who feels they have experienced sexual harassment could also make an application directly to VCAT for hearing. However, if a settlement agreement has been reached at the Commission, the matter cannot be reopened by making an application to VCAT.



Victorian Equal Opportunity
& Human Rights Commission

Need more information?

Contact the Commission:

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We welcome your feedback!

Were these resources useful? Easy to use?
Would you like to see something else included?
Please email us at research@veohrc.vic.gov.au

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