

## Rationale

Horizon Christian School (School) seeks to be a working and learning environment for staff and students that is free from all forms of harassment including sexual harassment. Sexual harassment is unlawful under the Australian *Sex Discrimination Act 1984* and *Equal Opportunity Act 1984 (SA)* and will not be tolerated.

## Aim

The aim of this Policy is to ensure that the working and learning environment is free from all forms of harassment, particularly sexual harassment, and that all members of the School community know their rights and responsibilities and to provide clear definitions of what constitutes as sexual harassment.

It is not the aim of the Policy to interfere in the personal lives and relationships of School employees, however, the School has an obligation to ensure that professional standards of conduct are maintained at the School at all times.

## Policy statement

The School recognizes that all forms of harassment, including harassment of a sexual nature, particularly in the workplace and learning environment of the School are unlawful and will not be tolerated, leading to disciplinary action against those who breach this Policy.

## Scope

This Policy applies to School staff (whether temporary, contracted or permanent), authorised volunteers, authorised visiting speakers and guests, and for guiding School staff in the event an adult student has been involved in sexual harassment while on the School site or while involved in School activities. If the student is the recipient of sexual harassment and under 18 years of age, please refer to the *HCS Child Protection Policy* for more detailed instruction on how to proceed.

## Definitions

**adult** – though usually over 18 years of age, the *Australian Human Rights Commission (2010)* considers any student over the age of 16 as personally liable as an adult when it comes to sexual harassment

**at/to the School** – this refers to being on the School grounds, but also to being present at School activities such as excursions, on or off site, and special days (e.g. Sports Days)

**School community** – this includes but may not be limited to: students, parents of students, immediate family of students, authorised volunteers, authorised visiting speakers and guests, staff (whether temporary, contracted or permanent), staff spouses and dependent children (who are not staff or family), School leadership, and leadership who are connected in some way to the School (e.g. not unconnected church attendees)

**School leadership** – includes Principal, and principal’s advisors

**complainant** – a person who, individually or in conjunction with others, makes a complaint of sexual harassment under the School’s Workplace Sexual Harassment procedure

**Head** - refers to a Head of School, a Senior Line Manager or, at times, a Coordinator

**parent** – includes caregivers and guardians, or responsible person as listed on the enrolment form

**respondent** – a person or against whom a complaint has been made under the School’s Workplace Sexual Harassment procedure

**sexual harassment** - an unwelcome sexual advance, request for sexual favours, or any other unwelcome conduct of a sexual nature (*see section defining workplace sexual harassment*)

**staff** – refers to the student’s class teacher or a paid School staff member who is responsible for supervising the student during School hours or activities

**student** – any student enrolled at the School through a contract with their parent, regardless of their age

## 1. School commitment

The School commits, as much as is practicable is to:

- ensure the working and learning environment is free from all forms of harassment, particularly sexual harassment
- ensure all members of the School community are treated with courtesy, dignity and respect
- ensure all members of the School community know their rights and responsibilities
- actively cultivate a culture and environment where sexual harassment is prohibited
- actively discourage inappropriate standards of conduct at all times through education and training
- encourage and provide avenues for the reporting of prohibited behaviour
- provide an effective complaints procedure that treats complaints in a serious, sensitive, fair and timely manner (*see point 7 of this policy*)
- guarantee against victimisation or reprisals by the workplace to the person making a report

The School, under current workplace legislation, has *Vicarious Liability* which means that organisations (including schools) can be found vicariously liable for sexual harassment inflicted on others by its employees or other associated individuals (e.g. board members, volunteers, etc.)

## 2. Definition of sexual harassment

Sexual harassment is defined, by law, from the perspective of the complainant and occurs when there is:

- an unwelcome sexual advance
- an unwelcome request for sexual favours
- any unwelcome conduct of a sexual nature where a reasonable person, having regard to the circumstances, would have anticipated that the person would be offended, humiliated or intimidated.

Sexual harassment comes in many forms and can be:

- obvious or indirect
- in the form of direct or indirect discrimination when given a sexual connotation
- physical or verbal
- repeated or one-off
- perpetrated by males or females
- against people of opposite or the same sex.

Additionally, the *Australian Human Rights Commission* has listed the following examples of sexual harassment. They include, but are not limited to:

- staring and leering
- unnecessary familiarity, such as deliberately brushing up against a person or unwelcome touching or kissing
- suggestive comments or sexual jokes
- insults or taunts of a sexual nature
- intrusive questions or statements about a person's private life
- displaying posters, magazines or screen savers of a sexual nature
- sending sexually explicit emails or text messages
- inappropriate advances on social networking sites
- accessing sexually explicit internet sites
- requests for sex or repeated unwanted requests to go out on dates
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, rape, stalking or obscene communications.

Other examples of behaviour that may constitute sexual harassment include, but are not limited to:

- lewd suggestions, "wolf" whistling (or similar), foul language and obscene gestures
- belittling comments on a person's anatomy or based on sex-role stereotypes
- asking about a person's private or sex life
- explicit sexual suggestions in return for 'reward'

- sexually offensive written, telephone or electronic communications.

### 3. Discernment of behaviours

Sexual harassment does not refer to behaviour that is mutually acceptable to the parties involved. It does not include behaviour that is based on mutual attraction, friendship and respect. Where the interaction is consensual, welcome or 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.

In establishing appropriate standards of behaviour, it is important to recognise that:

- social and cultural backgrounds may lead people to perceive the same conduct differently
- some people may accept, as reasonable, a behaviour that other people find offensive
- sexual harassment can arise where different values and beliefs are not respected
- both men and women may be sexually harassed by a person or persons of opposite or the same sex
- appropriate behaviour is behaviour which respects the rights and sensitivities of all people in the School, work and learning environment
- all individuals have a responsibility to contribute towards an environment of trust and respect which forms the basis of appropriate professional relationships.

### 4. Victimisation of complainant

**Victimisation** is prohibited, and disciplinary action will be taken against a person alleged to have victimised another. Victimisation is an attempt to subject a person to any detriment (or threat of) because they have:

- made, or propose to make, a sexual harassment complaint under the School's Workplace Sexual Harassment procedure (*see point 7 of this policy*)
- furnished, or propose to furnish, information or documents to a conciliator or formal investigation
- attended or propose to attend a conciliation conference
- appeared or proposed to appear as a witness or support person in a formal investigation
- reasonably asserted their own or another person's rights under a School policy.

### 5. Sexual harassment allegations and defamation

An allegation of sexual harassment against another is a serious matter. Points to consider when bringing an allegation of sexual harassment include the following.

#### 5.1 Unsubstantiated Complaint

An unsubstantiated complaint of sexual harassment may result in the respondent threatening legal action for **defamation**, which is the publication of a statement about a

person which causes that person's reputation damaged without reason. It is important to note that:

- if the statement is in a permanent form (e.g. written) the alleged defamation is **libel**
- if the statement is verbal, the alleged defamation is **slander**
- it is **not defamatory** for an individual to confront a harasser directly (either in person or by letter) to alert them that their behaviour is unwelcome
- it is also **not defamatory** to make a complaint to a person who has a legitimate interest in knowing about the incident in order to seek redress under the Policy (for example to a line manager or teaching staff member, a chaplain, or a counsellor).

## 5.2 False or Malicious Intent

Protection for the complainant will be lost if the complaint is false, is made in bad faith or is motivated by malice (e.g. made with the intention of causing harm to the respondent). In this case the complainant may be subject to disciplinary action by the School.

## 6. Confidentiality and qualified privilege

### 6.1 Confidentiality

The confidentiality of information is important to protect from potential victimisation, or the risk of a claim of defamation where the respondent is found innocent. It is best practice to obtain permission from the complainant before releasing information concerning a complaint. However, if the complainant does not give permission, they need to realise that they will be restricting how the complaint may be dealt with. Certain information, like the respondent's right to the details of the accusation, and the right of parties to have support people present during meetings, must be upheld for the process to proceed.

### 6.2 Qualified Privilege

School Leadership, line managers, staff members, chaplains and counsellors are able to convey information or take action on a complaint, and to claim the defence of qualified privilege provided that they:

- act in good faith and without malicious intent
- act strictly in accordance with the School's Workplace Sexual Harassment procedure
- maintain confidentiality at all times and ensure that information about a complaint is communicated only in accordance with the Workplace Sexual Harassment procedure.

## 7. Procedure for handling sexual harassment complaints

Where there is an allegation of sexual harassment, this procedure is to be followed as much as is practicable and safe to do so.

### 7.1. The complainant

- The complainant must first make their feelings known to the person giving the unwanted attention or engaging in the offensive behaviour, and request they refrain from repeating it.

## SEXUAL HARASSMENT POLICY

- If the sexual harassment continues, the complainant concerned must inform an appropriate member of staff of the situation. This person may include the Principal, Heads, a trusted teacher or colleague, or a School counsellor or chaplain.
- A complainant may take the allegation to a higher authority if they feel they haven't been heard or treated in a fair and unbiased way.

### **7.2 The receivers of a complaint of sexual harassment**

- Upon receiving a sexual harassment complaint, the receiver of such a complaint will refer the complaint to the Principal, unless the Principal is the subject of concern, in which case it is to be taken to a Head, or the School Board.
- Where there is reasonable belief that the complaint is genuine, the complaint will be thoroughly investigated, including informing the respondent that a complaint has been made against them.
- The School leadership will work with the complainant and respondent via a mediation or conciliation process with a delegated nominee acting as an intermediary between the parties with the aim of reaching an agreed solution.
- If mediation or conciliation fails, the matter may then proceed to a formal investigation. The function of the investigation is to investigate and determine the facts in dispute, to make an appropriate finding based on all available evidence and to make recommendations about resolution (which may include disciplinary action). The investigator shall be guided by the principles of equal opportunity and of procedural fairness to all parties concerned. The investigator would normally interview the complainant, respondent and any relevant witnesses. Proceedings of the investigation shall be held in confidence. No information about the investigation shall be disclosed except to a person to whom disclosure is consistent with her or his official position and responsibilities.
- After gathering information, the investigator shall make a recommendation to the Principal who will first consider whether the complaint is substantiated, and then consider the appropriate recommendations and then formulate a response. Unless the Principal is the subject of concern, in which case it is to be taken to the School Board.
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### **8. Handling complaints of sexual harassment committed by a student**

Should a student engage in inappropriate behaviour of a sexual nature, either toward a staff member, adult or another student, immediate action must be taken. The matter must be reported promptly to the Principal and accurately documented. Depending on the age, the development capacity of the student and contextual information, the plan of action may involve the need to report the incident to the Child Abuse Report Line on 131 478.

Sexual harassment via any medium, at any time or place, or assault of a staff member by a child or young person will be dealt with by following the School's behaviour management

protocols, with the involvement of parents, and where appropriate, police may be involved. Please refer to the *HCS Student Sexual Harassment Procedure* for detailed information on this issue.

## **9. Consequences of a sexual harassment allegation**

A variety of consequences will apply according to the severity of the situation and whether it is a first or repeated offence. Consequences may include an apology, counselling, undertaking training, compensation, and disciplinary action including dismissal (staff member), misconduct proceedings or suspension or expulsion (student). The School will continue to review the resolutions and the wellbeing of the complainant and the alleged harasser for a period, to ensure the actions taken have been effective in stopping the sexual harassment.

**9.1 During the initial investigation, if the report is verified**, the School must view the matter seriously and take appropriate action. Actions that schools take will depend on the nature and severity of the harassment, and may include:

- dealing with the situation informally through a 'no blame' or 'shared concern' approach
- mediation
- counselling
- dealing with the situation through restorative practices
- taking disciplinary action in accordance with the School's discipline or behaviour management policies.

**9.2 In a formal investigative situation if a complaint is found to be substantiated**, an investigator may recommend appropriate action, including but not limited to:

- referring the matter to the School's legal representative for legal action or advice
- counselling the respondent
- censuring the respondent and making a formal note
- warning the respondent that any repetition of the conduct may be regarded as misconduct or serious misconduct
- instituting disciplinary action including possible dismissal
- in the case of students; placing temporary or permanent conditions upon enrolment, or suspending or excluding the respondent for a defined period, or expulsion.

**9.3 When the complaint is found not to be substantiated**, the complainant and the respondent will be advised. If necessary, a relevant staff member must be requested to take appropriate steps to prevent the complainant or the person against whom the complaint was made, being subjected to reprisals or discrimination of any kind by any person by reason of the complaint having been made. If the complaint is found to be frivolous, vexatious, or made in bad faith, the Principal or his/her delegate must be advised.

## **Other relevant policies and documents:**

- HCS Child Protection Policy
- HCS Privacy Policy

## SEXUAL HARASSMENT POLICY

- HCS Staff Code of Conduct
- HCS Staff Manual (annually updated)
- HCS Bullying and Harassment Policy
- HCS Student Sexual Harassment Procedure (*see point 8 of this policy*)
- HCS Teacher Role Statement
- *Education and Early Childhood Services (Registration and Standards) Act 2011*
- *Sex Discrimination Act 1984 (Cth)*

### Review

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### Review

The Policy will be reviewed every three years or when there are changes to legislation. The review will be conducted by relevant staff and leadership of the School, with advice from the Association of Independent Schools of South Australia (AISSA) and any other relevant bodies, codes and regulations.