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Introduction

Sexual harassment is unlawful in Australia

No one should have to tolerate unwelcome sexual advances in the course of their work or study. The *Sex and Age Discrimination Legislation Amendment Act 2011* and the *Work Health and Safety Act 2011* impose an obligation on the workplace to provide a safe and healthy working environment. This means the provision of a workplace and learning environment that is free from sexual harassment.

GEM College of International Business recognises that it is the legal responsibility of management to take all reasonable steps to ensure that staff and students are not subject to sexual harassment. GEM College of International Business has developed a sexual harassment complaint resolution procedure, which details the rights and responsibilities of staff members and students and provides an efficient and effective means of redress in the event that sexual harassment occurs.

What is sexual harassment?

Sexual harassment is any unwelcome behaviour of a sexual nature in the working or learning environment. Sexual harassment is not confined to a particular gender or sexuality and may include but is not limited to the following behaviours:

- Requests for sexual favours, either directly or by implication
- Deliberate physical contact such as kissing, touching or fondling, embracing, patting, pinching and brushing against another person
- Wolf whistles, catcalls, leering or offensive staring and gesturing
- Persistent social invitations or obscene or unsolicited communications by co-workers or other students either at work or at home
- Persistent questioning about a person's private life
- Suggestive comments about a person's physical appearance or sexuality
- Displays of erotic or sexually graphic material (posters, photographs etc)

Sexual assault is a criminal offence and may be the subject of police proceedings.

Sexual harassment may be: (a) staff-to-staff; (b) staff-to-student; (c) student-to-staff; or (d) student-to-student.

Sexual harassment does not refer to mutually acceptable behaviour.

What are the effects of sexual harassment?

Sexual harassment has serious consequences for the person who is being harassed, the harasser/s and GEM College of International Business. It can create an intimidating and hostile work or learning environment, which may:

- Adversely affect a staff member's work performance or employment prospects or work satisfaction;
- Adversely affect a student's course results or learning experience;
- Result in resignation; and

- Detract from the integrity and public image of GEM College of International Business.

Staff and student responsibilities

GEM College of International Business is legally responsible for the actions of its staff and students and will not tolerate sexual harassment.

All staff and students are expected to behave in a sensitive, courteous, considerate and equitable manner when dealing with other staff and students.

What can you do to prevent sexual harassment?

You can assist in the prevention of sexual harassment by:

- Reading GEM College of International Business sexual harassment policy and complaint resolution procedure;
- Openly supporting and promoting the GEM College of International Business sexual harassment policy;
- By discussing it with your friends or co-workers and encouraging them to be assertive about their rights; and
- Not blaming the victim (any person can be a target of sexual harassment).

What can you do if you are sexually harassed?

If you have been sexually harassed, you are advised to keep a record of incidents, dates, times, places, witnesses, any reprisals and effects on your work or study.

You have the choice of following one or more of the GEM College of International Business Sexual Complaint Resolution Options:

- **Option 1: Take No Action**

In some instances, you may choose to take no action. While this decision will be respected, you are encouraged to consider the likely consequences of your decision, as studies suggest that when ignored most sexual harassment continues and often worsens.

- **Option 2: Seek Information or Assistance**

Contact the Sexual Harassment Contact Person at GEM College of International Business.

- **Option 3: Resolve the complaint informally**

Informal resolution can be a quick and effective solution to complaints of sexual harassment. Therefore, where practicable, staff and students are encouraged to resolve the complaint by:

- Telling the person who is harassing them that their behaviour is unacceptable and ask them to stop. The GEM College of International Business Sexual Harassment Contact Person will accompany you on request; and
- Requesting an informal mediation.

- **Option 4: Formal Resolution**

If the unacceptable behaviour fails to stop or mediation breaks down, you can lodge a formal written complaint with the **National Manager** or **Corporate Leader**. While it is preferable for complaints to be resolved internally, every staff member and student retains the right, at any time, to seek advice or lodge a complaint with the Equal Opportunity Commission.

SEXUAL HARASSMENT COMPLAINT RESOLUTION PROCEDURE

Introduction

What is 'SEX-BASED' Harassment?

Sex-based harassment is a form of sex discrimination and is the expression of attitudes or behaviour based on false assumptions or social myths of the superiority of one gender over another. Examples of sex-based harassment may include name-calling, sexist graffiti, demeaning jokes concerning a person's gender or derogatory statements about the interests or capabilities of either men or women. The complaint resolution procedures outlined in this policy refers only to sexual harassment.

What is 'SEXUAL' Harassment?

Sexual harassment is a term covering many forms of behaviour, which are inappropriate in the workplace. Sexual harassment is not confined to a particular gender or sexuality and may include but is not limited to the following behaviours:

- Requests for sexual favours, either directly or by implication.
- Deliberate physical contact such as kissing, touching or fondling, embracing, patting, pinching and brushing against another person.
- Wolf whistles, catcalls, leering and offensive staring and gesturing.
- Persistent social invitations or obscene or unsolicited communication by co-workers or students either at work or home.
- Persistent questioning about a person's private life.
- Suggestive comments about a person's physical appearance or sexuality.
- Displays of erotic or sexually graphic material (posters, photographs etc) ...

Sexual assault is a criminal offence and may be the subject of police proceedings.

Legislative Obligations

The legislation referred to in the introduction of this policy (and such legislation as promulgated from state to state) make sexual harassment unlawful. The law says that a person harasses another person by making an unwelcome sexual advance or request for sexual favours, or by engaging in unwelcome conduct of sexual nature in circumstances where a reasonable person would anticipate that the person being harassed would be offended, humiliated or intimidated.

GEM College of International Business also has an obligation under legislation to ensure that the working and learning environment is safe and healthy.

Sexual harassment may be (a) staff-to-staff; (b) staff-to-student; (c) student-to-staff; or (d) student-to-student.

Liability

GEM College of International Business is responsible for:

- Promoting a working, teaching and learning environment which is free of sexual harassment; and
- Providing a grievance procedure for the resolution of complaints of sexual harassment

Both GEM College of International Business, through the **Corporate Leader** and the alleged harasser/s may be liable for an incidence of sexual harassment in the workplace. Managers, who do not act to stop inappropriate behaviour of a sexual nature in the workplace, may also be subject to disciplinary action.

Sexual harassment complaint resolution principles

Complaints of sexual harassment are to be treated seriously and dealt with promptly, impartially, sensitively and confidentially. In order to protect the rights of all parties (the complainant and the person complained) against the followed principles must be observed:

- GEM College of International Business will take all reasonable steps to ensure, as far as practicable, a working, teaching and learning environment free from sexual harassment.
- The complaint resolution procedures are based on the understanding that no action will be undertaken without the knowledge and consent of the complainant.
- Complaints will be handled with absolute fairness and in accordance with the principles of natural justice. Natural justice is designed to ensure that all parties have a right to be heard and that any decision maker is free from bias.
- The rights of the person(s) complained against will be acknowledged and protected throughout the entire complaint resolution process.
- In the interest of confidentiality, the number of people involved in the resolution process will be kept to a minimum.
- Staff or students involved, in an official capacity, in any aspect of the process will maintain absolute confidentiality at all times.
- The complaint resolution procedure emphasises mediation and education while acknowledging that in some instances formal procedures and disciplinary action may be required.
- Where possible, complaints will be resolved informally.
- Victimisation of complainants or anyone else involved in the complaint resolution process will not be tolerated.
- The Sexual Harassment Contact Person, Mediators and Managers will be provided with appropriate training.
- Complainants retain the right to lodge a complaint with the Equal Opportunity Commission at any point during the complaint resolution process.

GEM College of International Business will notify the Department for Family and Community Services (FACS) of any alleged criminal offence upon a juvenile (under 18 years of age). In this case, GEM College of International Business will cease to act and FACS will determine appropriate action.

Sexual harassment complaint resolution process

Staff or students who believe that they have been sexually harassed can seek resolution in one or more of the following ways:

1. Take no action.
2. Seek information or assistance.
3. Resolve the complaint informally.
4. Make a formal complaint.

The choice of the resolution option rests with the complainant. Complainants are advised to choose the resolution option(s) which best suits them. The complainant may choose to change their option or withdraw their complaint at any time during the complaint resolution process.

- **Option 1: Take no action.** In some instances, a staff member or student who has been sexually harassed may choose to take no action if the harassment has stopped, and/or the person who has been/is being sexually harassed does not wish to raise the matter. This decision is legitimate and must be respected.
- **Option 2: Seek Information and assistance.** Staff members or students who believe that they have been sexually harassed are encouraged to seek information or advice from any of the following:
 - **Sexual Harassment Contact Person.** Staff members or students who believe that they have been subjected to sexual harassment are encouraged to speak to the GEM College of International Business Sexual Harassment Contact Person about their rights and resolution options.
 - **External Contact Agencies**
 - **The Equal Opportunity Commission** will inform you of your rights and the Commission's complaint procedure. A complainant may, at any time during the complaint resolution process, choose to seek advice from, or make a complaint to, the Commission. All internal organisational resolution processes must cease when GEM College of International Business is notified that an official complaint of sexual harassment has been lodged with the Commission, which will then investigate and conciliate the complaint.
 - **The Police** can be contacted in instances where sexual harassment may constitute a criminal offence (i.e. sexual assault). All organisational resolution processes must cease when a police investigation is initiated.
- **Option 3: Informal Resolution.** Informal resolution often proves to be a quick and effective solution to complaints of sexual harassment and may be more likely to assist in the maintenance of working/study relationships. Where appropriate, therefore, staff and students who believe that they have been sexually harassed are encouraged to resolve the complaint themselves or through informal mediation. In this instance, the following guidelines will apply:
 - **Self Help** - A staff member or student may choose to deal with sexual harassment themselves by one of the following:
 - **Telling** the alleged harasser(s) that they find their behaviour offensive and asking them to stop the harassment. A Sexual Harassment Contact Person is available to discuss this option and will, if requested, accompany the complainant when they approach the alleged harasser. **Note:** Neither the Complainant nor the Sexual Harassment Contact Person should enter into debate with the alleged harasser/s, but advise them that further action will be taken should their inappropriate behaviour continue.
 - **Writing** to the alleged harasser/s to inform them that their behaviour is offensive and asking them to stop the harassment. If the complainant chooses this option, they are advised to: keep a photocopy of the letter; deliver it in person, accompanied by a Sexual Harassment Contact Person; or ask the Sexual Harassment Contact Person to deliver the letter and keep a brief personal record of the response of the alleged harasser/s. **Note:** Both the Complainant and the person complained against need to ensure that the letter is confidentially secured, as to make it public may result in a defamation action.

If the self-help option does not stop the harassment or is not a suitable option for the complainant informal mediation may be used.

- **Informal Mediation** - Informal mediation **will only** be initiated at the request and/or agreement of both the complainant and the alleged harasser. Mediation aims to assist the complainant and the alleged harasser reach a resolution agreement; it is not an adversarial process and does not involve proving guilt or instituting punishment. The following principles will be observed during informal mediation:
 - Only the complainant, alleged harasser, the Mediator and contact/support people will be present at the mediation session. The complainant and alleged harasser(s) may have a contact/support person (usually one per person) who is acceptable to the Mediator and has no direct involvement with the complaint.
 - The Mediator will maintain absolute confidentiality and will not notify any authority of the mediation session except where administrative or management arrangements arise from the mediated agreement (i.e. transfer of the alleged harasser/s).

All mediated agreements should be signed by the complainant and the alleged harasser/s and a copy retained by both parties. If informal mediation does not resolve the complaint, the complainant maintains the right to make a written complaint to the Corporate Leader or their Company Director.

- **Option 4: Formal Resolution.** A staff member or student may choose, at any time, to lodge a formal written complaint of sexual harassment with the Corporate Leader or a Company Director. All formal complaints must be directed to the Corporate Leader or the relevant Company Director. It is useful if the written complaint includes details of the allegation/s, such as:
 - Who is/are the harasser(s);
 - What happened;
 - When it occurred; and
 - How the Complainant feels.

Once the Corporate Leader or Company Director receives a written complaint of sexual harassment from a staff member or student, they will appoint an appropriate senior manager to manage the complaint resolution process. The **Corporate Leader** or **Director** will then:

- Acknowledge, by letter, that the complaint has been received, name the senior officer who will contact them within five working days, and stress the requirement for absolute confidentiality.
- Inform the alleged harasser(s), by letter, that a complaint of sexual harassment has been received, name the senior officer who will contact them within five working days, and stress the requirement for absolute confidentiality.

The **Senior Manager** will act as follows:

- Open a confidential case file that will be secured at all times. It will contain details of the complaint, records of meetings, witness statements, agreed resolution processes, outcomes and recommendations to the Corporate Leader or Company Director.
- Inform the complainant during a personal interview (a Sexual Harassment Contact Person may accompany the complainant) of the formal resolution process and their rights. At this time, the Senior Manager will determine the details of the complaint and offer them the option of either a formal mediation or investigation.

Mediation will only be conducted after agreement from both the complainant and alleged harasser.

A **formal investigation** must be initiated where:

- The complainant or the alleged harasser refuses to engage in formal mediation;
- The formal mediation process is unsuccessful;
- A student lodges a formal complaint of sexual harassment against an employee;
- The alleged harasser/s is/are senior staff member/s; or
- It is determined that the basis of the complaint constitutes a criminal offence.

Mediation

A trained Mediator will be selected from within GEM College of International Business.

The Mediator will conduct separate pre-mediation sessions with the complainant and the alleged harasser/s aimed at clarifying the complainant's resolution requirements (i.e. a public or private, written or verbal apology). The mediation process will only proceed past this point with the agreement of both parties.

If agreement to continue with mediation is not reached at this stage, the Mediator will inform the Senior Manager who will instigate a formal investigation. However, if agreement is reached the mediation process will continue.

Mediation may consist of more than one meeting of the Mediator and the complainant and alleged harasser, either together or separately. Only the complainant, alleged harasser, the Mediator and contact/support people will be present at the mediation session. The complainant and alleged harasser may have a contact/support person (usually one per person) who is acceptable to the Mediator, and has no direct involvement with the complaint.

The Mediation, complainant or the alleged harasser may stop the mediation process at any time if an agreement cannot reasonably be reached.

Mediation is successful when the complainant and the alleged harasser reach an agreement and a date is set for further sessions to monitor the implementation of the agreement. The Mediation will then inform the Senior Manager of:

- The initial outcome of the mediation process;
- The review dates;
- Any administrative arrangements or requirements which arise from the agreement (i.e. staff development programs for relevant parties, transfer of the alleged harasser to another work area); and
- The long-term success of the mediated agreement following the review dates.

The Senior Manager will note these facts in the confidential case file and provide the Corporate Leader or Company Director with a written report on the outcome of the mediation process, and where mediation has failed request that formal investigation be initiated.

Formal Investigation

When a formal complaint of sexual harassment is lodged, the **Corporate Leader or Company Director** will have responded by letter.

Alternatively, if formal mediation has failed, the **Corporate Leader or Company Director** will appoint an Investigating Officer (i.e. a Senior Manager or an external investigator) will:

- Inform, by letter, both the complainant and the alleged harasser that as formal mediation has failed an investigation has been initiated, name the investigating officer who will contact them in the near future, and stress the requirement for absolute confidentiality;

- Establish the facts by interviewing the complainant, the alleged harasser(s) and any other relevant witnesses individually (each of the parties to the complaint must be informed that they have the right to have a contact/support person present during the interview);
- Conduct the interview privately and maintain confidentiality;
- Caution all parties of the need to maintain confidentiality;
- Follow the GEM College of International Business Investigation and Disciplinary Guidelines;
- Where necessary, consult with Crown Law, Human Resources Branch or the Equal Opportunity Commission; and
- Provide a written report making recommendations to the Corporate Leader or the Company Director.

Following the receipt of a written report, the Corporate Leader or Company Director may convene an inquiry panel made up of the Corporate Leader or Company Director and a Senior Organisational Officer to provide the alleged harasser with the opportunity to respond to the Investigator's report.

Investigation Outcomes

The Corporate Leader or the Company Director will then determine what action will be taken and advise the complainant and the alleged harasser of any action that will be taken.

If the **Corporate Leader** or **Company Director** concludes that sexual harassment has not taken place, the person against whom the complaint has been lodged must be:

- Re-instated, if they have been suspended;
- Not be disadvantaged in their study program or career; and
- Protected from victimisation.

If the **Corporate Leader** or **Company Director** concludes that sexual harassment has taken place, disciplinary action may be imposed on the harasser, in consultation with Crown Law and the Human Resources Branch.

Students may:

- Be instructed to attend sexual harassment awareness training programs;
- Have course time tables changed;
- Be transferred to another campus;
- Be required to study externally;
- Be suspended; or
- With approval of the Minister, be expelled.

Staff may:

- Be instructed to attend sexual harassment awareness training programs;
- Have a warning or a formal record of the offence placed on their personal file;
- Be transferred;
- Be temporarily suspended without pay; or
- In serious cases, have temporary contracts terminated, or be dismissed.

Both parties have the right to appeal against the Corporate Leader or Company Director's decision.

Management role and responsibilities

Division and Company Directors have a responsibility to:

- Be familiar with GEM College of International Business Sexual Harassment Policy and complaint resolution process;
- Provide all staff and/or students with information and training about sexual harassment, its prevention and the complaint resolution process;
- Ensure that the learning, teaching and working environment is safe and free from sexual harassment;
- Support and effectively implement the GEM College of International Business sexual harassment complaint resolution process;
- always Ensure confidentiality;
- Ensure there is no victimisation of complainants, witnesses or anyone involved in the complaint resolution process;
- Ensure that staff members are identified/trained as Sexual Harassment Contact Persons; and
- Promote the use of language, publications and teaching and learning materials which conform to the principles of equal opportunity and inclusively.

Senior Managers who have a role to play in the complaint resolution process will:

- Remain impartial and independent;
- Follow the principles of natural justice;
- always Ensure confidentiality; and
- Treat all complaints seriously and investigate them promptly and sensitively.

Educational Managers, Program Manager and other managers have a responsibility to:

- Be familiar with the GEM College of International Business Sexual Harassment Policy and complaint resolution process;
- Distribute the GEM College of International Business Sexual Harassment Policy to all existing and new staff;
- Make sexual harassment complaint resolution procedures available to all staff members for whom they are responsible;
- Advise staff of the names and role of Sexual Harassment Contact Person;
- Refer complainants, when approached on an informal basis, to a Sexual Harassment Contact Person and ensure that confidentiality is always maintained; and
- Take early action to prevent sexual harassment in the working, teaching and learning environment.

Sexual Harassment Contact Person's role and responsibilities

The role of **Sexual Harassment Contact Person** in the resolution process is as follows:

- Provide information to staff and students making inquiries about sexual harassment. This information includes details of legislation, Government and Organisational policy and the Sexual Harassment complaint resolution process.
- Provide support, advice and assistance to people complaining of sexual harassment. This means listening with empathy, discussing possible resolution options, supporting the person

if they decide to resolve the matter themselves by approaching the alleged harasser or pursuing informal mediation, or referring the complainant to an external agency for counselling or resolution. **Note:** The Contact Person does not become involved in the resolution or investigation of complaints - this is the role of management or mediators.

- Promote a working, teaching and learning environment free of sexual harassment by contributing to awareness raising activities.
- Publicise their identity and role as Contact Officers.
- Always ensure confidentiality.

Mediator role and responsibilities

The role of **Mediator/s** is to:

- Fully explain the mediation process to both the complainant and the alleged harasser(s);
- Facilitate an agreement between the complainant and the alleged harasser(s);
- Notify management of any administrative or management agreements, which arise from an informal mediation agreement; and
- Notify the senior manager charged with managing the formal complaint process with the outcomes of a formal mediation.

Record Keeping

GEM College of International Business has no official position on keeping personal records by parties involved in the resolution of sexual harassment complaints.

Personal Notes

As the majority of complaints will be resolved promptly, it is anticipated that there will be only a few instances where notes will need to be taken and retained. However, it may be useful for:

- People being sexually harassed to record the dates, places and details of every episode of harassment as well as meetings with the Sexual Harassment Contact Person and any mediation agreement which is reached;
- People who have been complained against should document similar details as those of the complainant;
- Both the complainant and the person complained against need to ensure that their notes are confidential, as to make them public may result in a defamation action;
- The Sexual Harassment Contact Person is to keep brief chronological notes of interviews with the complainant;
- Mediators are to record a brief description of the outcome of any mediation sessions and any agreement, which may have been reached between the complainant and the alleged harasser(s); and
- Managers are to keep records of sexual harassment complaint if they are a legitimate part of a disciplinary process or as part of an investigation into a formal complaint. These records may include the chronological details of the complaint and a brief description of the outcome of discussions with the person complained against.

Organisational Records

GEM College of International Business will keep records concerning a sexual harassment complaint only where a formal complaint has been made to the Corporate Leader/a Company Director, or a formal complaint has been lodged with an outside agency. **Note:** All records are confidential and will

be stored securely in accordance with the *'Privacy and Personal Information Policy and Procedures'* of GEM College of International Business.

Personal Files

Only detail of disciplinary action or a formal warning is indicated on a staff member's personal file. No mention of a complaint of sexual harassment will be reflected on a complainant's personal file.

Statistical Records

The Sexual Harassment Contact Person will maintain **non-identifying** statistical data regarding the number of annual reported complaints. Such data used to assist to measure the level of complaints across GEM College of International Business.

Victimisation

Victimisation is also unlawful. Victimisation has occurred if a person/s treats another less favourably because they have:

- Lodged an informal/formal complaint of sexual harassment;
- Provided evidence or information about a complaint;
- Reasonably maintained their right or the right of another person to lodge a complaint; or
- Acted on their rights provided by Legislation.

Victimisation may constitute verbal abuse, deliberate isolation by other students or staff, denial of promotional or training opportunities or any other detriment. While the legislation provides protection against victimisation, GEM College of International Business is also responsible, through its managers, for acting to ensure that it does not occur.

Defamation

Everyone involved in the complaint resolution process is bound by the principle of confidentiality. Only discuss the complaint with people who have a role to play in the complaint resolution process to maintain the privacy of all the parties involved in the complaint, and ensure that no one has grounds for instituting a defamation action.

A person can sue others if they believe that a false statement about them is likely to lower their reputation in the community or cause others to shun them. Defamation consists of written, printed or pictorial material (libel) or verbal statements (slander).

However, if the complainant makes a complaint truthfully and in good faith, and limits their discussion to the details of the complaint, they may be protected in the event of a defamation action. Everyone involved in the complaint resolution process including Sexual Harassment Contact Person, Managers, Mediators or witnesses, who act within their role and the GEM College of International Business complaint resolution process, may claim qualified privilege in defence of a defamation action.

Applicable Legislation and Policy

This policy is based on and/or should be read in conjunction with the following:

• The Sex and Age Discrimination Legislation Amendment Act 2011
• The Work Health and Safety Act 2011
• Related State Legislation
• GEM Policies Related – See Website