



# **Sexual Harassment Prevention Policy**

**Inclusion & Diversity Unit**  
**People & Culture Directorate**

Policy no: CG02 - 015  
Version 07 – 8 May 2020

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## 1 Purpose

Fire & Rescue NSW (FRNSW) is committed to providing a healthy and safe working environment that is free from sexual harassment. Such behaviour has detrimental effects on those who experience and witness it, on workplace morale and on the provision of service to our community. Sexual harassment will not be tolerated under any circumstances.

The purpose of this policy is to provide a detailed definition of sexual harassment, describe the impact of such behaviour and promote a risk management approach to prevent and combat sexual harassment in all FRNSW workplaces. Contained within this document are clearly defined responsibilities for all persons employed or contracted by FRNSW and a set of procedures which outline the steps to be taken in reporting and responding to allegations/complaints of sexual harassment, and how they are dealt with by FRNSW.

## 2 Scope and application

This policy applies to all Fire and Rescue NSW Employees, volunteers, contractors and consultants engaged by, or on behalf of, Fire and Rescue NSW.

All parties must be aware of and comply with this policy and its associated procedures, programs and strategies. This document will be provided to all new parties engaged with Fire and Rescue NSW at the time of onboarding.

## 3 Legal and policy framework

### 3.1 Legal framework

The principles and practices set out within this document have been developed to eliminate unacceptable behaviours and practices within FRNSW, in particular decisions made under the authority of the Commissioner under the Fire and Rescue Act 1989, the *Fire Brigades Regulation 2014* and the *Government Sector Employment Act 2013*.

Sexual harassment is prohibited under and is subject to the following legislation:

- Anti-Discrimination Act 1977 (NSW)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Crimes Act 1900*
- *Privacy and Personal Information Protection Act 1998*
- *Sex Discrimination Act 1984* (Cth)
- *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth)
- Work Health and Safety Act 2011

### 3.2 Policy framework

This policy sits within the context of the above statutory scheme and operates in conjunction with internal and external policies and plans, including:

- *FRNSW Code of Conduct and Ethics*
- *FRNSW Employee Engagement Plan*
- *FRNSW Equity, Diversity and Inclusion Strategic Framework*
- *FRNSW Preventing and Responding to Bullying and Harassment Policy*
- *FRNSW Records Management Policy*
- *FRNSW Resolving Workplace Complaints policy*

## 4 Policy principles

FRNSW is committed to developing a workplace culture which embraces workforce diversity, equity, inclusion and respect across all areas of the organisation.

### Principle 1: Zero Tolerance of Inaction

Sexual Harassment is never acceptable. It is important to note that zero tolerance is not the same as zero incidents. Increasing reports may indicate growing awareness of sexual harassment and changing attitudes, with employees feeling more comfortable to report and organisations more likely to take action. The reporting of incidents and responses is an indicator that the risk of sexual harassment is being managed appropriately. For the purpose of this policy, FRNSW defines zero tolerance as acting on every allegation in a fair and reasonable way with regard for procedural fairness.

### Principle 2: Strong Leadership

FRNSW expects leaders to set clear expectations and model respectful behaviour in their interactions at work. This will support employees and reporters to feel safe, report concerns and be assured their allegations are taken seriously. Capable leaders address and take measures to improve diversity and inclusion and to address incidences or allegations of inappropriate conduct and behaviour.

### Principle 3: Needs of all parties are prioritised.

Action to address sexual harassment should prioritise the rights, needs and wishes of the complainant and should ensure adequate support is provided to the respondent while ensuring procedural fairness to all parties. This approach:

- Treats all parties with dignity and respect
- Takes into consideration the impact of the matter on the complainant
- Ensures all parties are provided with support and kept informed of progress.
- Provides all parties with relevant information

## 5 Policy implementation

FRNSW is committed to achieving the principles and requirements of this policy by:

- Providing ongoing training to all staff on respectful workplace behaviour, and bullying and harassment prevention and response to increase awareness and communication skills;
- Monitoring workplace trends on sexual harassment complaints, equity and diversity issues, health and safety risks associated with sexual harassment; and
- Providing information and resources to all staff on sexual harassment issues.

## 6 Definitions and Key Terms

- ❖ Active Bystander Intervention – means seeing and recognising a potentially inappropriate or harmful situation and choosing to respond in a safe way that could prevent or stop the harm from occurring or continuing.
- ❖ Consent means a person freely and voluntarily engages/participates in a sexual act. This must be clearly demonstrated. Omission of the word 'no' or lack of physical resistance does not clearly demonstrate consent is given.
- ❖ Complainant – means any person who makes a complaint of sexual harassment in accordance with this policy.
- ❖ Complaint – means a report of sexual harassment made in accordance with this policy
- ❖ Managers – this extends to any employee at FRNSW who have 1 or more staff members reporting to them.
- ❖ Respondent – means a person whose conduct is the subject of a complaint of sexual harassment.
- ❖ Victimisation or reprisal action means singling out and adversely treating a person who has made a complaint or witnessed sexual harassment for the purpose of silencing them or 'punishing' them for their actions. Victimisation or vilification will be treated as an allegation of misconduct.

### 7.1 What is sexual harassment?

*Sexual Harassment is against the law.*

FRNSW adopts the legal definition of sexual harassment as per the Anti Discrimination Act 1977 (NSW) which defines sexual harassment as a person making an unwelcome sexual advance, or an unwelcome request for sexual favours, or engaging in 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.

This conduct includes but is not limited to:

- Unwelcome touching, hugging or kissing
- Inappropriate staring or leering
- Gestures of a sexual nature and sexually suggestive comments or jokes
- Displaying, sending or requesting explicit pictures or posters

- Making or distributing a sexually explicit audio/video recording of another person – this also extends to utilising photoshop to alter images
- Repeated or inappropriate invitations
- Intrusive questions or comments about a person's private life, sexual preference or physical appearance

The above conduct can occur either in person or using technology (email, text messages, social media and other interactive apps and other forms of electronic communication). They may also be single occurrences – a single act is sufficient to breach the law.

Acts of sexual harassment may also cross over into criminal conduct and may also amount to discrimination on the grounds of gender or sexuality under both Commonwealth and State legislation.

*Sexual harassment of a colleague or member of the community is unlawful at any time.*

Sexual harassment is **not** mutual and consensual interaction, flirtation or participation in consensual sexual acts.

Sexual Harassment is not limited to two parties – there are a significant number of cases where a court has determined sexual harassment has occurred where other parties witnessed consensual interaction with offence caused.

*While this conduct is not deemed sexual harassment, it is important to note that it is not appropriate workplace conduct and should be reserved for hours, functions and locations external/not affiliated with Fire and Rescue NSW.*

## 7.2 What is sexual assault?

Sexual assault is a serious criminal offence.

The concept of sexual assault has been included in this policy for the purpose of education and awareness however any matters relating to sexual assault will be reported to the NSW Police Force for investigation as per the *Procedural Guidelines for dealing with serious offences*.

For the purpose of this policy, sexual assault is defined as an act of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion, including any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), penetration by objects, forced sexual activity that did not end in penetration, and attempts to force a person into sexual activity.

The following behaviours may also constitute criminal offences:

- Unwanted physical contact by way of touching a person's body parts in a sexual nature (e.g. Groping, sexual touching, indecent assault)
- Inappropriate gestures of a sexual nature
- Voyeurism - observing a person without their consent in a state of undress or utilising bathroom facilities for the purpose of obtaining sexual gratification
- Recording or distributing an intimate image of another person without their consent (either in person or by electronic, digital or other means)

Threatening or making attempts to engage in any of the above acts may also be criminal offences.

### 7.3 Impact versus Intent

It is important to note the definition of sexual harassment does not consider the intent of the person engaging in the behaviour.

The intent is not the measure of which an action will be judged. Whether or not the behaviour is unwelcome is determined by the other person, not the respondent. There is no mistake in interpreting innocence behind jokes or other conduct where a reasonable person would anticipate offence, humiliation, discomfort or intimidation.

What may be socially acceptable in a person's private life may not be the same for another (e.g. crude jokes or comments of a sexual nature) and interaction deemed appropriate with one colleague is not automatically appropriate for another (e.g. hugging hello) or complimenting the appearance of another (e.g. "you look nice today").

Each employee has a responsibility to be aware of their conduct and behaviour and to work respectfully and professionally together. All employees should be aware of and avoid behaviours that would not satisfy the 'reasonable person' test and that may be in breach of policy.

If an employee believes they may have offended a colleague, they are encouraged to immediately reflect on their actions, offer a genuine apology and cease the behaviour in future.

### 7.4 Bystander Intervention

Your actions matter. Diffusion of responsibility can occur when multiple parties witness an incident and a bystander does not step forward assuming another bystander will. (In other situations bystanders may fail to intervene if the situation feels ambiguous and there is a concern the situation may be misunderstood or misjudged)

All employees who observe or witness an incident have an obligation to be an active bystander, that is a witness to an incident that acknowledges the unacceptable conduct and takes action in responding.

There are four options in taking action as an active bystander:

- Directly intervene (if it is safe to do so) and challenge the behaviours
- Distract or divert the attention to stop the incident from escalating
- Escalate – if you are unsure how to respond, escalate the matter to the most senior ranking person available or contact Professional Standards directly.
- Delay – you may choose to check in after the fact (if you are unable to action the above) and speak to the affected party. Assess how they feel and encourage them to seek support.

The consequences for not acting range from personal (diminished health/wellbeing, occupational stress and lowered morale) to legal (breach of vicarious liability and failing to act to prevent sexual harassment) and both are costly to the individual and the organisation.

## 8 Roles and Responsibilities

All parties employed or contracted by Fire and Rescue NSW have an obligation to act professionally, protect others from sexual harassment and are prohibited from committing, excusing or ignoring incidents of sexual harassment.

### 8.1 Executive Leadership Team and Managers must:

- Comply with all the requirements of this policy and not engage in behaviours that amount to sexual harassment.
- Model appropriate behaviour that represent the FRNSW values and best practice within this policy
- Monitor the working environment to ensure as far as practicable, acceptable standards of conduct are maintained at all times
- Enforce zero tolerance of sexual harassment.
- Promote programs that encourage awareness and training for sexual harassment.
- Participate in any training provided by FRNSW on sexual harassment.
- Familiarise themselves with the legal frameworks supporting this policy and promote and support this policy and the accompanying guidelines.
- Provide support and refer to relevant advice/support options and complaints procedure with respect to sexual harassment.
- Treat complaints and behaviour that amount to sexual harassment seriously and take immediate action when receiving reports.
- Treat complaints with absolute confidentiality.
- Ensure that a person is not victimised for making or being involved in a complaint of sexual harassment (extends to all parties involved).

### 8.2 All persons employed or contracted by FRNSW must:

- Comply with all the requirements of this policy and are prohibited from engaging in behaviours that amount to sexual harassment.
- Model appropriate behaviour that represent the FRNSW Values and best practice within this policy.
- Report any incident of sexual harassment they have experienced, witnessed or otherwise made aware of.
- Be an Active Bystander by safely intervening to prevent or stop sexual assault and/or harassment from occurring or continuing.
- Participate in any training provided by FRNSW on sexual harassment.
- Treat complaints of sexual harassment with absolute confidentiality and are prohibited from making comment (publicly or privately) about any matters involving complaints of sexual harassment. This includes but is not limited to:
  - o the identity of complainants, respondents, participants involved in the investigation of the complaints;
  - o information provided or collected during the investigation of a complaint;



- any interim measures and any reports, outcomes or determinations of the complaint.
- Ensure that a person is not victimised for making or being involved in a complaint of sexual harassment (extends to all parties involved).

### **8.3 People & Culture Directorate**

#### **8.3.1 Inclusion & Diversity team, along with the Professional Standards branch, will:**

- Provide advice and support to supervisors, firefighters and other staff in the effective implementation of this policy, procedures and legislation.
- Provide assistance to supervisors in determining safe work arrangements to temporarily relocate those experiencing sexual harassment during the course of formal process. The complainant will be given the option to request temporary transfer/relocation in order to provide minimal disruption. If no request is made, the needs of the complainant will be first taken into account when determining temporary working arrangements.
- Make appropriate referrals to Wellbeing Co-ordinator and Employee Assistance Programs.

#### **8.3.2 Professional Standards team will:**

- Take, assess, investigate, or otherwise assist to resolve complaints or adverse action relating to sexual harassment.
- Keep confidential all information relating to a disclosure or complaint of sexual harassment, as far as possible with consideration of obligations to report all criminal conduct to the NSW Police Force and requirements of procedural fairness.
- Resolve complaints sensitively, fairly and confidentially with minimum disruption while following rules of procedural fairness.
- In instances of criminal conduct, support the rights of the complainant to determine whether they wish to formally report the incident/s to the NSW Police or not. It must be noted however, that FRNSW are mandatory reporters of criminal conduct and are legally obliged to report on behalf of the complainant. This does not necessarily preclude FRNSW from investigating the matter internally however internal processes would ordinarily be suspended pending completion of the criminal process.
- Comply with the requirement to report information of any 'serious indictable offences' to the NSW Police Force in accordance with sections 326 and 316A of the Crimes Act 1900 (NSW).
- In some limited circumstances, report to the NSW Police Force against the wishes of the person to ensure their safety or the safety of other employees or to maintain legal obligations. Wherever possible, this will be communicated to the complainant.

## 9 PROCEDURES

### 9.1 Options for reporting sexual harassment

#### 9.1.1 Safely confront the individual

No employee should feel compelled to manage the situation if they feel threatened, vulnerable or unsafe or if the conduct is criminal in nature. If you have been subjected to sexual harassment or any criminal behaviours, you can report this to any manager, Professional Standards or NSW Police Force.

However – a complainant or bystander has the option of addressing the witnessed behaviour in the first instance.

A complainant or bystander may approach the other party if they experience or witness behaviour they believe to be sexual harassment, however this is only recommended if they feel safe and comfortable to do so. Make it clear to the other person that the behaviour is unwanted, unacceptable and will not be tolerated. It is advisable to do this as soon as practicable after the incident in question.

Inaction may reinforce the inappropriate behaviour, and if not addressed it may continue or worsen. The person in question may be completely unaware of their behaviour and its impact on other people and may apologise and/or cease the behaviour immediately.

You may find the Straight Talk™ framework helpful in providing a platform to approach the situation. Straight Talk™ is a two-way dialogue which aims to increase understanding of each other's point of view and find a mutual agreement on future behaviours.

It is also advisable to keep notes about the situation (time, date, location, any witnesses and what was said) and inform your manager of the situation if appropriate.

If the complainant is unsatisfied with the outcome of this method, they may escalate the issue and seek additional support.

#### 9.1.2 Approach your manager or another senior manager

If you do not feel comfortable approaching the person, you are encouraged to speak to your line manager/supervisor or another superior officer which you feel safe confiding in. Provide them with the details of the incident and any documentation you may have as soon as practicable after the incident in question.

#### 9.1.3 Directly to Professional Standards

For matters relating to sexual harassment or assault, you are not required to report via your chain of command – you have the option of contacting Professional Standards in the first instance. Provide Professional Standards with the details of the incident and any documentation you may have as soon as practicable after the incident in question.

If you are unsure of what your options are, or whether you would like to report, you may contact Professional Standards in confidence and seek advice on available options.

### 9.1.4 NSW Police Force

If you have been subjected to criminal conduct such as sexual touching or sexual assault, you can report this directly to the NSW Police Force. FRNSW can assist you to do this and we encourage you to obtain assistance as early as possible via a manager or Professional Standards.

As per 8.3.2; FRNSW are mandatory reporters – where a complaint involves a ‘serious indictable criminal offence’, such as assault, sexual touching or sexual assault, Professional Standards will report the matter to the NSW Police Force.

## 9.2 Assessing complaints

Managers and Supervisors who receive the complaint must refer the matter to the most senior ranking officer in that section (e.g. Zone Commander or Director) or directly to the Professional Standards branch.

All complaints are required to be referred to Professional Standards for assessment under the Resolving Workplace Complaints policy.

If there is any doubt about whether or not the alleged behaviour falls within the scope of this policy, the manager/supervisor must discuss the matter with Professional Standards who will advise on the appropriate course of action.

Where the employee’s health and safety may be at immediate risk, due to the reported behaviour, the supervisor/manager must consult with senior Zone management, Professional Standards and/or the Health and Safety Branch, and ensure that the employee is provided with immediate support.

In such cases, it may be advisable that the complainant and respondent are temporarily separated, pending further assessment and/or action. Wherever possible, this will be done with minimal disruption first prioritising the wellbeing and safety of all parties and taking into account operational requirements.

## 9.3 Assessment by Professional Standards

Professional Standards will acknowledge and review the complaints and undertake a detailed assessment of each matter in line with the *Resolving Workplace Complaints Policy* and the *Procedural Guidelines for dealing with Misconduct*.

Factors that will be considered include:

1. What welfare and other supports may be needed for the parties?
2. What risk management actions may need to be taken to mitigate any immediate risks to the reporter, respondent, other employees, workplace and reputation of FRNSW?
3. Does the alleged behaviour constitute bullying, harassment, sexual harassment, discrimination or vilification as per the definitions in this policy and the Preventing and Responding to Workplace Bullying and Harassment Policy?
4. Does the alleged behaviour amount to misconduct as per the Procedural Guidelines for the Management of Conduct or Government Sector Employment Act?

Sexual harassment matters are often complicated to assess as there are, at times, a range of considerations including the wishes of the complainant, the prospect of making findings and legal obligations to provide a safe workplace. Matters are to be assessed in accordance with the processes set out in the *Procedural Guidelines for the Management of Misconduct*, and in this regard, a range of factors will be considered in determining the course of action. However, this cannot be the only consideration in determining the way forward, as there may be important competing legal and other considerations relevant to the assessment of the matter. For this reason, it is recommended that decision making concerning the course of action to be undertaken in sexual harassment matters be informed by a formal risk assessment.

#### 9.4 Matters which do not amount to sexual harassment

There are many examples of workplace situations involving conflict between staff which may give rise to concerns or complaints of sexual harassment from one or both parties. However, not all these situations will meet the criteria of sexual harassment as defined in this policy. Even if the alleged behaviour does not constitute sexual harassment, it may still be unacceptable and unprofessional behaviour in the workplace.

Such matters will be considered for further action under the *Resolving Workplace Complaint Policy*, *Procedural Guidelines for the Management of Conduct or Government Sector Employment Act 2013*. Professional Standards will advise the complainant and/or the referrer of the nature and reasons for the decision in writing.

#### 9.5 Investigations

Even if the alleged behaviour does amount to misconduct, it is not always necessary to conduct an investigation into the matter. Where possible, action should be taken to prevent a continuation of the inappropriate behaviour and focus on managing and repairing future working relationships. Where misconduct has occurred without investigation, a record of this will be maintained by Professional Standards in the event further incidents arise.

An investigation may be necessary where there are complex issues which require clarification for the complaint to be dealt with, or where the complaint makes credible assertions of serious misconduct.

The purpose of an investigation is to gather and analyse all relevant information to help identify whether or not the complaint is able to be substantiated, and whether there are any extenuating circumstances or other contributing factors that may need to be considered. If a complaint is to be further investigated, a suitably qualified person (representative from Professional Standards or an investigator/company external to FRNSW) will be appointed to investigate. Any interviews or meetings will be conducted at a neutral location (strongly recommended that this does not take place at the location of the harassment). There may also be instances where an independent investigator is appointed due to the sensitive nature of the claim and other mitigating circumstances.

The conduct of an investigation will vary depending upon the particular case, its circumstances and the complexity of the issues, incidents and facts of the matter – this may include formal interview(s) with the complainant, respondent(s) and any relevant witnesses and provision of a written statement about the events that occurred.

Depending on the outcome of the investigation, this may result in management and/or disciplinary action under the *Procedural Guidelines for the Management of Conduct Fire Brigades Regulation 2014* or the *Government Sector Employment Act 2013* with penalties including but not limited to dismissal.

Where Professional Standards determines that the alleged behaviour does not amount to misconduct then action may be undertaken in accordance with appropriate policies and guidelines.

Where a complaint involves a 'serious indictable criminal offence', such as assault, sexual touching or sexual assault, Professional Standards will report the matter to the NSW Police Force.

## **9.6 Vexatious complaints**

For the purposes of this policy, a complaint will be considered vexatious or malicious if the complainant submits knowingly false information or a complaint for the primary purpose of damaging the reputation/career of the person to which the complaint is made or the reputation of FRNSW.

Where the evidence suggests that a complaint is not made honestly and was intentionally malicious or vexatious, the matter will be viewed seriously and may be investigated. Depending on the outcome of the investigation, this may result in disciplinary action up to and including dismissal.

## **10 Training and support**

### **10.1 Training**

Information on this policy will be communicated to all employees via email, workplace forums, the Intranet and the CFU portal.

### **10.2 Internal support mechanisms:**

#### **Employee Assistance Program**

The Employee Assistance Program (EAP) provides state-wide, confidential, professional counselling services for employees and members of their family.

Employees with a complaint and employees against whom a complaint has been raised may wish to use this free service. Managers can also use the EAP's Manager's Assist service to receive advice and support when handling a complaint of bullying or harassment.

EAP can be contacted on 1300 687 327 (24 hours a day, seven days per week).

#### **FRNSW Chaplains**

The FRNSW Chaplains can also provide confidential counselling and support to employees and their families.

To speak to a Chaplain, please contact 0418 869 280 or 0418 268 754 or via email [chaplain@fire.nsw.gov.au](mailto:chaplain@fire.nsw.gov.au).

**Wellbeing Co-ordinator**

The Wellbeing Co-ordinator also offers a confidential and independent advice about a range of counselling, welfare and support options that are available to employees and their immediate family members when they are experiencing work or personal difficulties.

The Wellbeing Co-ordinator can help facilitate access to these services and provide further information on the EAP service. The Wellbeing Coordinator can be contacted on 0448295725.

**11 Monitoring and review**

The Policy will be reviewed annually via internal audits, statistical data relating to sexual harassment claims and related information, staff feedback and other review mechanisms.

The Executive Leadership Team through line management will monitor and review the activities and undertakings within their area of responsibility to ensure compliance with this policy.

The Professional Standards Unit will work in conjunction with Diversity and Inclusion to monitor the effectiveness of this policy in achieving reduced incidents of sexual harassment.

**12 Further information**

Please contact Professional Standards via [ProfessionalStandards@fire.nsw.gov.au](mailto:ProfessionalStandards@fire.nsw.gov.au) or the Diversity and Inclusion team via [inclusion@fire.nsw.gov.au](mailto:inclusion@fire.nsw.gov.au) for further information relating to this policy or the rollout of training.

## 13 Document control

<b>Policy Manager</b>	Executive Director People & Culture
<b>Contact Officer</b>	Natalie Francis, Inclusion & Diversity officer
<b>Contact No</b>	02 9265 3913
<b>Document type</b>	Policy
<b>Applies to</b>	<input checked="" type="checkbox"/> Permanent Firefighters <input checked="" type="checkbox"/> Retained Firefighters <input checked="" type="checkbox"/> Community Fire Unit Members <input checked="" type="checkbox"/> Administrative and Trades Staff <input checked="" type="checkbox"/> Contractors and Consultants
<b>Status</b>	Approved
<b>Security</b>	Sensitive: Legal
<b>File Reference</b>	NFB/[File no.]
<b>Review Date</b>	8 May 2023
<b>Rescinds</b>	N/A
<b>Copyright</b>	© State of New South Wales through Fire and Rescue NSW