

<b>Policy:</b>	<b>Sexual Harassment Policy and Procedure</b>
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<b>Supersedes:</b>	All previous Modern Star Group Sexual Harassment Policies/ or Statements
<b>Authorised by:</b>	CEO
<b>Location:</b>	HR Manual

#### **Philosophy:**

The Modern Star Group (“Modern Star” or “the Company”) is committed to ensuring that the working environment is free from unlawful sexual harassment in compliance with local, relevant legislation across all business locations.

This policy ensures compliance with Australia and New Zealand’s workplace legislative framework including employment, work, health and safety, human rights and anti-discrimination legislation, such as but not limited to the *Sex Discrimination Act 1984, the Sex and Age Discrimination Legislation Amendment Act 2011, Australia; Employee Relations Act 2000 and Employment Relations Amendment Acts, Human rights Act 1993 and Harassment Act 199, New Zealand and New Zealand and Australia’s Work, Health & Safety laws*.

However, the Australian and New Zealand workplace legislative framework incorporates elements of global best practice that can be applied to locations internationally, such as Singapore and Hong Kong in conjunction with local, relevant legislation.

Modern Star aims to ensure all those participating in the workplace are treated with respect, dignity and fairness with an aim of creating an environment which promotes positive working relationships.

This policy and procedure sets out the types of behaviours and conduct which will be taken to constitute sexual harassment under Australian and New Zealand legislation and establishes procedures for handling complaints of sexual harassment in the workplace across all countries Modern Star operates.

Singapore and Hong Kong team members should refer to local, relevant employment, anti- discrimination and harassment legislation (as per Appendix Singapore and Hong Kong Legislation) in conjunction with specific content referenced in this policy, however, should view Australia and New Zealand’s Sexual Harassment definition and unacceptable behaviours as the best practice standard.

**Scope:**

This policy and procedure applies to potential and current employees, consultants, contractors (temporary or otherwise), work experience students and agents of the Modern Star Group across all locations, including but not limited to offices, shops, warehouses, factories.

This policy and procedure is not limited to the workplace or working hours and will include any place where work is carried out for the Company and any place where a worker goes or is likely to be while at work or in connection with a person's employment. This includes, but is not limited to; business travel and business travel locations, lunches, client functions, meetings and conferences, as well as Christmas parties.

The term 'work related' will be referred to throughout this document to include the scope detailed above.

Harassment or discrimination can also be directed at or perpetrated by other people at the workplace, for example clients, customers and members of the public.

**Policy Statement:**

The Modern Star Pty Group accepts and acts on its legal obligations and duty of care as an employer to provide a healthy and safe workplace and safe systems of work. This extends to the physical and psychological well-being of all workers and as with any other workplace hazard Modern Star will take reasonable steps to control sexual harassment in the workplace.

In line with this commitment, Modern Star aims to:

- Commit resources (such as training, policy development) to the prevention and management of unacceptable behaviours at work such as discrimination and harassment.
- Obtain commitment from senior management and consult/ engage with workers about the development of prevention policies and procedures in relation to sexual harassment.
- Create a working environment which is free from sexual harassment and where all team members are treated with dignity, courtesy and respect.
- Promote appropriate standards of conduct at all times.
- Implement training and awareness raising strategies to ensure that all team members know their rights and responsibilities.
- Ensure anyone who has responsibility for dealing with complaints has received appropriate training.
- Provide an effective procedure for complaints, based on the principles of natural justice.
- Encourage the reporting of behaviour which breaches the sexual harassment policy.
- Treat all complaints in a sensitive, fair, timely and confidential manner.
- Provide support and advice to all relevant parties as required using internal and/or external services.
- Protect individuals from any victimisation or reprisals.



Sexual harassment can have a serious and damaging effect on a workplace and those who experience and witness it. It can affect work performance and create a hostile work environment for those who experience and witness it. Therefore, consequences of such behaviour in breach of this policy may include disciplinary action up to and including dismissal. In addition, immediate disciplinary action will be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.

Any reported allegations of sexual harassment will be treated seriously and in confidence, dealt with promptly, thoroughly and fairly. Where confidentiality cannot be guaranteed this will be clearly indicated to the complainant.

Victimisation or unfair treatment of any person making a complaint will not be tolerated. Any worker who aids, abets or encourages other persons to engage in sexual harassment may also be held liable and complaints made maliciously or in bad faith by an employee will result in disciplinary action.

Spreading gossip or rumours may also expose team members to defamation action.

#### **Definitions:**

##### **Sexual Harassment**

Sexual harassment is a type of sex discrimination.

**Australia;** Sexual harassment is defined in the *Sex Discrimination Act 1984 (Cth) (SD Act)* as: 'any unwelcome conduct of a sexual nature that a reasonable person, having regard to all the circumstances would have anticipated would offend, humiliate or intimidate the other person.' Similar definitions are found in Australian State and Territory anti-discrimination and equal opportunity legislation.

This means that sexual harassment would occur when:

- A person makes an unwelcome sexual advance or an unwelcome request for sexual favours, to the person harassed; or
- Engages in other unwelcome conduct of a sexual nature in relation to the person harassed.

**New Zealand;** Sexual harassment is defined in the *Human Rights Act 1993* as 'unwelcome or offensive sexual behaviour that is either repeated, or of such a significant nature, that it has a detrimental effect on that person' and specifies areas of public life covered such as; application for employment, employment (including unpaid work) and access to goods and services. Under the Act the following types of sexual harassment are prohibited:

- Any request for sexual activity together with an implied or overt promise of preferential treatment or a threat of detrimental treatment.
- Any physical behaviour, language or visual material of a sexual nature which is unwelcome or offensive.

## **Hong Kong**

Hong Kong's sex discrimination ordinance (1995) protects both men and women from sexual harassment and discrimination based on gender, marital status or pregnancy. All Hong Kong employers must follow the sexual discrimination ordinance. The law applies to the areas of employment, education, provision of goods, facilities and services, disposal or management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, participation in clubs, and activities of government.

## **Singapore**

In Singapore "sexual harassment" is not defined legally. However, the Protection from Harassment Act (POHA) provides a range of criminal sanctions, civil and self-help remedies to better protect people, including those in the workplace. The Ministry of Manpower describes workplace harassment as "behaviour that causes or is likely to cause harassment, alarm or distress to another party". Sexual harassment is cited as an example of behaviour that may be harassment.

## **Sexual harassment behaviour**

Under legislation across countries, Sexual harassment may include, but is not limited to:

- Staring or leering.
- Unnecessary familiarity, unwelcome touching such as deliberately brushing up against someone, putting an arm around them, slapping them, kissing, touching or patting them.
- Jokes or cartoons about someone's appearance, body shape, or any of the personal matter that may cause embarrassment and make people feel uncomfortable.
- Offensive gestures or "wolf" whistling.
- Sexual remarks or suggestive comments, insults or taunts of a sexual nature.
- Intrusive questions or statements about a person's private/ sex life.
- Displays of sexually graphic material including posters, pinups, cartoons, magazines, graffiti or messages left on notice boards, desks or common areas creating a sexually hostile environment.
- Offensive phone calls, text messages or letters.
- Sexually explicit emails or screen savers.
- 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, stalking or obscene communications.

## **What sexual harassment is not:**

Conduct will only be sexual harassment if it is 'unwelcome'. Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the interaction is consensual or welcome and reciprocated it is not sexual harassment.

**Intention is irrelevant:**

A person does not need to intend to offend, humiliate or intimidate, or even to know that this was the effect of their behaviour for the conduct to be sexual harassment. For example, a practical joke that 'everyone else thinks is funny' can amount to sexual harassment of somebody else who finds it offensive.

Sexual harassment can take many different forms- it can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males and females against people of the same or opposite sex. Sexual harassment can be committed by an employer, workmate or other people in a working relationship with the victim.

**Unlawful Sexual Harassment**

Sexual harassment at work is against the law in most jurisdictions. Discrimination and sexual harassment laws are concerned with participation in public life and sexual harassment behaviour may be unlawful because it affects a person's ability to participate in public life.

It may also be unlawful under local legislation for a person to be victimised because they have made a complaint about sexual harassment.

Unwanted sexual behaviour in private life may amount to sexual assault or stalking under local legislation and should be reported to the police.

**Sexually hostile working environment**

Examples of a potentially hostile working environment are where pornographic materials are displayed and where crude conversations, innuendo or offensive jokes are part of the accepted culture. A person has the right to complain about the effects of a sexually hostile working environment, even if the conduct in question was not specifically targeted at them.

**Employer/ Vicarious Liability**

Under Australian federal anti-discrimination legislation and the *Human Rights Act 1993*, New Zealand, an employer (regardless of their size) may be legally responsible for discrimination and harassment which occurs in the workplace or in connection with a person's employment unless it can be shown that all reasonable steps have been taken to reduce this liability. For Hong Kong and Singapore local, relevant legislation should be referred to for the definition of vicarious liability.

**Victimisation**

A broad definition of victimisation is when a person acts or omits to act towards a person in a way which is intended to cause disadvantage to that person because they have made a complaint, or may make a complaint, or maybe or are the subject of a complaint.

For Hong Kong and Singapore local, relevant legislation should be referred to. However, the broad definition above can be referred to as best practice.



Australia and New Zealand define further;

**Australia-** Victimisation is subjecting or threatening to subject a person to some form of detriment because they have;

- Lodged, or are proposing to lodge, a complaint of discrimination or harassment
- Helped someone else make a complaint
- Provided information or documents as part of an internal or external investigation
- Refused to do something because it would be discrimination, sexual harassment or victimisation

Victimisation is unlawful under state and federal anti-discrimination and equal opportunity laws. It can also be a criminal offence.

**New Zealand-** Victimisation can arise as part of, or as a result of, an experience of harassment or discrimination. It includes treating people (or threatening to treat people) less favourably than they otherwise would have been because they have made use of their rights to complain about harassment or discrimination or intend to make use of their rights; or because the person has given evidence or information in an investigation of a complaint.

The *Human Rights Act 1993*, New Zealand protects people from being victimised because they contacted the Human Rights Commission about harassment, were involved in a dispute or supported another person to make a complaint. In addition, it prohibits victimisation of people for making of a disclosure under the *Protected Disclosures Act 2000*.

### **Responsibilities**

Work, health and safety legislation across all locations obliges that employers create a safe and secure working environment for their workers and take all reasonable practicable steps to manage hazards and avoid exposing workers to unnecessary risk of physical injury or psychological harm.

Employers may also have further obligations and employees further rights under local, relevant privacy, defamation or industrial legislation.

Under the Australian *Sex Discrimination Act 1984* employers must also take all reasonable steps to minimise the risk of sex discrimination and harassment occurring.

In New Zealand under the *Employment Relations Act 2000*, an employee can take a personal grievance case if they are sexually (or racially) harassed by another employee, customer or client, and the employer has had the chance to investigate a complaint, but has not taken any practicable steps to prevent the behaviour recurring. Organisations are held liable if the harassment takes place during work hours, on work-related activities or at work-related social events.

Singapore and Hong Kong team members should refer to Appendix Singapore and Hong Kong Legislation for details of their local, relevant legislation.

**Senior Managers/ Managers**



It is the primary role of the senior managers and managers to ensure workers (temporary or otherwise), clients, customers, suppliers and other business partners are not harassed or discriminated against within the workplace or in connection with the person's employment.

Managers are responsible for developing and encouraging a positive environment where;

- All team members are treated with respect and dignity; and
- Inappropriate attitudes or behaviours are confronted.

***Managers must specifically:***

- Ensure that team members understand this policy and related policies and the consequences of non-compliance.
- Monitor the working environment to ensure that acceptable standards of conduct are observed at all times.
- Provide ongoing support and guidance to management and team members in relation to the prevention of sexual harassment.
- Remove any offensive, explicit or pornographic materials from the workplace if sighted.
- Model appropriate standards of professional conduct at all times.
- Take steps, if sexual harassment is observed, to stop it and warn the person of the consequences if the behaviour continues.
- Treat all complaints seriously and take immediate action to investigate and resolve the matter in accordance with the Company's appropriate Grievance or Complaints Policy or legislation.
- Ensure, as is reasonably practical that persons making complaints, or who are witnesses, are not victimised.
- Refer a complaint to another manager if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the complaint is particularly complex or serious).

**Employees/ Contractors/ Consultants/ Agents**

- Are responsible for their own behaviour.
- Must not participate in discriminatory or harassing behaviour within the workplace.
- Comply with the organisation's sexual harassment policy and related policies and procedures.
- Offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves).
- Maintain complete confidentiality if they provide information during the investigation of a complaint.

**Sexual Harassment Complaints Procedures**

**Note:** There are specific complaint procedures for allegations of Sexual Harassment (or Bullying) adapted from the Company's Grievance Procedure to address the nature and seriousness of such behaviour. Therefore, if a person's complaint relates to discrimination or harassment, rather than sexual harassment



the Company's Grievance Procedure should be referred to. Your Direct manager or HR can advise on how the alleged behaviour should be treated and the relevant policy and procedure.

Any person who believes they have/ are being sexually harassed should not ignore it. Anyone who witnesses unreasonable behaviour should bring the matter to the attention of their Direct manager or HR as a matter of urgency.

Victimisation of any person making a sexual harassment complaint or helping to resolve one will not be tolerated. Complaints made maliciously or in bad faith by employees will result in disciplinary action.

Sexual harassment that directly inflicts physical pain, harm, or humiliation may constitute criminal conduct and should be reportedly directed to the police. Managers/ HR can advise of this option. However, it is not the obligation or duty of the Company to report such matters to the police, unless the behaviour constitutes a criminal act.

The aggrieved person can choose the action they feel most comfortable with and discuss options with HR (or another Manager if more appropriate). The following procedural steps are a guideline of the actions which can be taken once a complaint has been identified. However, team members and management of Modern Star should be mindful of the individual circumstances of each case and act appropriately in response to these. HR/ Managers should also consider their level of expertise and confidence at dealing with or association with the complaint, if there is a conflict of interest or if the complaint is particularly complex or serious.

### **Amicable Resolution**

Similarly, to the initial stage of the Company's Grievance Policy the aggrieved person can in the first instance, if they feel confident try to resolve themselves. However, this is not a compulsory part of the complaint procedure, and if the aggrieved person does not wish to confront the person(s) directly, then this is not encouraged.

This option involves approaching the person responsible for the sexual harassment behaviour. The aggrieved person should tell the person what they are unhappy about, why they are unhappy about it, and what they would like to happen. They can also take another person for support if helpful.

### **Reporting Sexual Harassment**

If the behaviour continues, or if the person feels unable to speak to the person(s) directly, they should contact HR, or any other Manager with whom they feel comfortable, male or female. HR or the Manager will provide support and ascertain the nature of the complaint and the wishes of the complainant.

Complaints can be dealt with informally or formally depending on the seriousness of the complaint. The informal procedure is intended to be used for less serious allegations of sexual harassment. However, complaints can be escalated to a formal complaint if deemed necessary after discussion with HR/ Manager.



## ***Informal Complaints Procedure***

1. The Manager/ HR will explain the aggrieved person's responsibilities under Modern Star policy and procedure.
2. The Manager/ HR will determine how the alleged behaviour should be treated and the relevant policy and procedure. This might include reference to the Grievance Policy and Procedure instead, if the alleged behaviour does not constitute 'sexual harassment'.
3. Different options for handling informal sexual harassment complaints include, but are not limited to:
  - The Manager/ HR having a conversation with the alleged harasser(s) about the behaviour complained of; and
  - The Manager/ HR having a meeting with the individual(s) concerned in an attempt to reach a resolution.

This procedure will be complete when the alleged harasser(s) respect the individual's request to cease unwanted and unwelcome behaviour, or when the complainant accepts that the behaviour is not properly described as sexual harassment. If neither of these outcomes occurs, the organisation's formal procedure should be followed.

## ***Formal Complaints Procedure***

### ***1. i) Formalise Complaint***

Where an individual wishes to lodge a formal complaint, they will be required to do so by communicating this in writing to Group HR Manager, CFO or other senior Manager, if preferred. A written complaint shall include the names of individuals concerned, details of the incident/s and the names of any witnesses present. Please see below for Modern Star's stance on maintaining individual's confidentiality in the course of handling complaints.

### ***ii) Personal Grievance (New Zealand)***

In New Zealand employees under the *Employment Relations Act 2000* can raise a 'personal grievance' in relation to a sexual harassment complaint. Personal grievances should be raised with the CFO, Group HR Manager or other senior manager if preferred.

A personal grievance must be raised within 90 days of when the grievance occurred or came to the employee's attention. However, the Company may consent to a personal grievance being raised after that time (if the Company does not consent the employee may apply to the Employment Relations Authority for the extension).

To raise a personal grievance, employees are required to make the employer aware, or take reasonable steps to make them aware that they are alleging a personal grievance that needs addressing. Employees do not have to make a written complaint, however, it is advisable that the grievance is put in writing, stating the nature of the grievance, the relevant facts, and what the employee wants done to put it right.

## **2. Formal Investigation Commenced**

Where a written complaint/ personal grievance has been lodged, a formal investigation procedure will commence immediately. Formal investigations may be conducted by Group HR Manager, CFO, other Manager or an external person who is appointed by Modern Star e.g. an independent mediator.

Regardless of whether the investigation is carried out by Modern Star, or by an independent mediator, the investigator will aim to follow the procedure set out below:

1. Clarify details of what took place and ensure that all necessary information is obtained.
2. Identify the outcome the complainant is seeking.
3. Discuss with the complainant their legal rights, including lodging a formal complaint to the relevant body, such as state or territory anti-discrimination body, Human Rights Commission, Employment Relations Authority or police (if deemed a criminal matter).
4. Discuss the complaint made with the person(s) accused of sexual harassment and other persons who may be able to assist (if applicable).
5. Examine any relevant documents.
6. Make a determination as to whether the alleged behaviour occurred and if it constituted sexual harassment.

If Modern Star feels it is appropriate, in the interests of the health and safety of workers concerned, and/or the efficiency of the investigation process, team members may be requested to refrain from attending work for a period of time whilst the investigation is underway. Alternatively, team members may be given different duties or work to perform while the investigation is being conducted. Team members who are requested to do either of these will be paid at their normal rate of pay during this period.

Where it becomes apparent that the complaint made related to conduct which constitutes misconduct or otherwise warrants disciplinary action, Modern Star's Disciplinary Policy and Procedure should be referred to for further action and resolution.

### **Confidentiality**

Whilst the HR/ CFO/ Manager will endeavour to preserve the confidentiality of the complainant and the person complained of, it may be necessary to speak with other team members or people involved to determine what happened and to maintain the integrity of the investigation process.

Where potentially unlawful conduct has occurred, Modern Star will need to alert the appropriate authorities.

Those people who are involved in the complaint (including the complainant, witnesses, etc.) are also under a duty to maintain confidentiality and display a commitment to uphold the integrity of the investigation process. If the complainant chooses to bring a support person with them to any meetings, they too are bound by confidentiality. Gossiping and/or the spreading of rumours as a result of, or in



connection with, a process followed under this policy will not be tolerated under any circumstances and may lead to further disciplinary action for those concerned.

### **Outcomes**

The outcomes of a formal or an informal complaint procedure will depend on the nature of the complaint, its severity and what is deemed appropriate in the relevant circumstances. Where the results of an investigation procedure suggest that an individual is guilty of sexual harassment, the appropriate disciplinary procedures will be followed in line with Modern Star's Disciplinary Policy and Procedure. The disciplinary action will depend on the nature and severity of the behaviour and may include termination of employment, which may be instant/ summary dismissal where serious misconduct is deemed to have occurred.

Where the complaint involves a consultant, contractor or agent of Modern Star and an investigation process reveals that a person has engaged in unlawful conduct or other behaviour which is prohibited by this policy, those concerned may face termination of their contracts immediately, or will not be renewed in the future.

In addition to the remedies provided in Modern Star's policies and procedures, other action may be deemed necessary to resolve or remedy the behaviour complained of, including but not limited to:

- Providing coaching and mentoring or training to team members concerned regarding sexual harassment;
- Requiring team members who have breached this policy to apologise to appropriate person/s;
- Adjusting working arrangements where appropriate;
- Conciliation/ mediation through a third party;
- Providing counselling to team members (complainant and the person complained of); and
- Placing employees on performance improvement plans to ensure improved behaviour.

### **Appeal/ Review of Decision**

#### ***Internal Appeals Procedure***

If any parties involved in the complaint process are unhappy with the outcome, or the way the sexual harassment complaints handling procedure was managed by the original investigating manager, they can raise an appeal at the latest within 14 (fourteen) days of the original decision being made. The appeal must be in writing, stating the reasons of discontentment. An appeal should be made to;

- CEO
- A member of the Senior Management team

Once notified, the nominated appeal manager will conduct a review of the procedure followed, the outcome issued and make a final determination on the issue. Once this determination is made, the person who has made the appeal will be notified of the outcome and this determination will be final for the internal process.



### **External**

Whilst the preferred process involves persons covered by this policy resolving issues to their satisfaction internally without referral to external organisations or to authorities for assistance, if a worker is not satisfied with the Sexual Harassment Complaints procedures or outcome;

### **Australia**

In Australia, they can contact the Australian Human Rights Commission or relevant State/ Territory Anti-Discrimination agency for information and confidential advice.

### **New Zealand**

In New Zealand workers can contact the New Zealand Human Rights Commission or the Ministry of Business, Innovation and Employment (MBIE) who can provide a mediation service to help parties resolve a dispute.

If a personal grievance is not resolved at workplace level or following mediation, employees or employers can go to the Employment Relations Authority for a determination. If either party is dissatisfied with the determination of the Employment Relations Authority, the issue can be taken to the Employment Court.

### **Singapore/ Hong Kong**

In Singapore team members can contact the Ministry of Manpower (MOM) or Tripartite Alliance for Fair and Progressive Employment Processes (TAFEP) and in Hong Kong team members the Equal Opportunities Commission (EOC) for external assistance.

### **Worker Support**

Sexual harassment at work is a serious issue that can affect people in a number of ways. Workers who need support should speak to someone. Options include:

- A visit to the doctor
  - Calling local helplines; Australia- Lifeline on 13 11 14 (24-hour service) and Beyond Blue on 1300 22 4636.
  - New Zealand- Citizen's Advice Bureau on 0800 367 222.
  - Singapore – Institute of Mental Health (IMH) helpline, open 24 hours - 6389-2222 or Samaritans of Singapore (SOS)-1800 221 444
  - Hong Kong - The Samaritans – 2896 0000 operated 24 hours a day.

### **Application**

As with all Modern Star Policies and Procedures this policy must be complied with. However, it is not incorporated into an employee's contract of employment and may be amended from time to time.

### **Interpretation and Guidance**

In the event that any additional guidance and/or further interpretation is required, please contact HR.