

Supplement 88/8

Guidelines For Sexual Harassment Grievance Procedures

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Section A: Introduction

The Education Department of South Australia has had a longstanding and public commitment to the achievement of equal employment opportunities and equal educational outcomes. Within this context, it has given a great deal of serious attention to protecting those who work and learn within the Department from sexual harassment, and to providing effective means of redress to those who do nevertheless experience it.

The Department developed its own policy on sexual harassment in 1983. Since then a thorough series of inservice programmes have been used to ensure it is understood and implemented by all. Action has been taken at Area and school level to develop local versions of the policy and grievance procedures and to encourage a curriculum response to its elimination amongst students. The Department's policy remains relevant, but a number of factors have evolved which require it to be read in conjunction with the information provided in this document.

The Equal Opportunity Act (SA), 1984 has replaced and repealed the South Australian Sex Discrimination Act, 1975. Further, as a result of the attention which has been given to sexual harassment, we are now aware that there is a need for more detailed and precise advice to those developing, reviewing and operating locally based worksite sexual harassment grievance procedures.

In order to fulfil the Department's responsibilities under both the Education Act and the Equal Opportunity Act, I commend the following Guidelines and ask that you use them to review and refine your own school's/worksite's sexual harassment policy and grievance procedures.

Ken Boston

Director-General of Education

Section B: Policy details: sexual harassment

The previously published policy of the South Australian Education Department states the Department's commitment to providing a working and learning environment which is free from sexual harassment. The policy applies to all officers (teachers, public servants, school assistants and Aboriginal education workers) who work in the Education Department, and to the students in our schools.

LEGISLATIVE CONTEXT

Sexual harassment between employer and employee, employee and employee, and employee and student, is explicitly made unlawful by Section 87 (1), (2) and (3) of the Equal Opportunity Act (SA) 1984. Further, Section 87 (7) and (8) make it unlawful for an employer or an educational authority 'to fail to take such steps as may be reasonably necessary to ensure as far as practicable' that such sexual harassment does not occur.

Within the context of legislation, it is important to realise that the definition of an 'educational authority' includes not only the whole Department but individual schools and other units within the Education Department. In other words, not only does the Equal Opportunity Act prohibit sexual harassment by individuals within the Department, it also places a direct obligation on individual supervisors and, in particular, principals to take positive action to prevent it from occurring and to institute monitoring mechanisms to ensure that it is not.

In terms of sexual harassment between students, the Equal Opportunity Act makes it unlawful to deny or limit a student's access to any benefit provided by the authority, or to subject the student to a detriment. A 'detriment' is earlier defined in the Act to include humiliation or denigration. If students' experience of school includes sexual harassment, their access to educational and social development is clearly being limited, and they are being subjected to a detriment in the terms of the Act. It is the responsibility of schools, therefore, to ensure that sexual harassment between students does not occur.

The SA Education Act 1972 adds additional legislative responsibilities in terms of preventing and providing a remedy for sexual harassment. Regulation 121 (1) and (2) makes principals responsible for and requires teachers to be actively concerned with 'the welfare and development of students in their care'. Regulation 122 further makes principals responsible 'for the establishment and maintenance of a social and educational environment favourable to learning and to acceptable forms of behaviour'. Failure to take action to ensure sexual harassment does not occur in schools - whether between staff, between students, staff to students, or students to staff - clearly constitutes a failure to fulfil these responsibilities under the Education Act. Finally, sexual harassment of students by teachers is considered to be a serious matter by the Department and may be deemed to be disgraceful and improper conduct under section 26 of the Education Act. More serious forms of sexual harassment may constitute

sexual assault or child sexual abuse. Such behaviour amounts to criminal misconduct under the Criminal Law Consolidation Act and the Child Protection and Young Offenders Act.

The Equal Opportunity Act provides protection against victimisation of anyone seeking redress from discrimination (including sexual harassment) through the Act itself, and for anyone supporting the right of another to do so. Treating someone less favourably because they have brought proceedings, given evidence or information, or reasonably asserted their rights (or those of another person) under the Act, amounts to a subsequent case of unlawful discrimination. This section of the Act also provides protection against victimisation of anyone doing 'anything under or by reference to this Act' (section 87). Since the Act itself requires specific action to prevent sexual harassment, working to implement the Department's Sexual Harassment Policy could be deemed to be 'under or by reference to this Act'. Any less favourable treatment in these circumstances could therefore amount to discrimination and hence be unlawful.

THE NATURE OF SEXUAL HARASSMENT

Deliberate or repeated sexual comments and gestures, or any other conduct of a sexual nature which is perceived to be embarrassing, demeaning or compromising, constitute sexual harassment.

Sexual harassment can include belittling comments and ridicule which are based on sex role stereotypes, smutty jokes and comments, explicit sexual behaviour including touching, fondling and brushing against, asking for sexual favours and offensive staring.

Although some forms of sexual harassment may be seen to be more subtle, they can nevertheless be equally if not more harmful. For unlike most other forms of misdemeanour, the seriousness of a particular case of sexual harassment lies not only in the actual behaviour, or in the intentions of the person whose behaviour is causing distress, but in the impact of that behaviour on the person (or persons) experiencing it.

RESULTS OF SEXUAL HARASSMENT: IN PLACES OF WORK

Sexual harassment is unlawful. It can have a deleterious effect on the work productivity, morale, career prospects and health of those employees who experience it. Further, its effects are rarely limited to those directly involved. Sexual harassment in the workplace affects the atmosphere, morale and effectiveness of many others in the workplace. When sexual harassment occurs, it not only causes great distress to the person harassed, but it also causes tension and unhappiness amongst surrounding work colleagues.

If sexual harassment is occurring in the workplace, then employees who are experiencing this behaviour will not necessarily be operating at their full

potential. Thus the learning and educational environment for students may be adversely affected, as well as the self esteem of the employee.

RESULTS OF SEXUAL HARASSMENT: IN PLACES OF LEARNING

Sexual harassment negatively affects the learning environment not only for those directly experiencing it, but for many others in the immediate environment. It produces an atmosphere of fear and aggression which is deleterious to social development, destructive of the learning environment and harmful to personal growth and self esteem.

Sexual harassment particularly concerns the Education Department because young people, while at school, learn many of the attitudes and much of the behaviour they carry into adult life. It is the responsibility of adults to demonstrate high standards of conduct and an informed awareness of this issue, since they provide role models for students.

Sexual harassment has an immediate impact on learning because it erodes self-esteem, confidence, constrains participation and choices and defines appropriate behaviour in terms of stereotypes. It contributes to under achievement in many female students. Failure to take notice and action against sexual harassment further erodes confidence because it implies that the discomfort, embarrassment and denigration experienced are not considered significant enough to warrant attention,

Section C: Legislative framework

The following legislation provides the framework within which the Department's Sexual Harassment Policy, and its associated procedures, have been developed.

EQUAL OPPORTUNITY ACT (SA) 1984

Part III Division IV Section 37

- (2) It is unlawful for an educational authority to discriminate against a student-
- (a) by denying her/him* access, or limiting her/his access, to any benefit provided by the authority;
- or
- (b) by subjecting her/him to any other detriment.

Where 'detriment' includes humiliation or denigration (section 5 (1)) and where 'educational authority' means the person or body administering any school, college, university or other institution at which education or training is provided (section 5 (1)).

Part III Section 87

- (2) It is unlawful for an employee or a voluntary worker to subject a fellow employee or voluntary worker, or a person seeking employment or voluntary work with the same employer, to sexual harassment.
- (3) It is unlawful for an employee of an educational authority to subject a student, or a person applying to become a student, to sexual harassment.
- (7) It is unlawful for any employer to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of her/his employees or voluntary workers subjects a fellow employee or voluntary worker, or a person seeking employment or voluntary work, to sexual harassment.
- (8) It is unlawful for an educational authority to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of its employees subjects a student to sexual harassment.

* In the Equal Opportunity Act, the masculine pronoun form is consistently used as an intended generic term for he/she, etc. However, for purposes of this document the masculine pronoun has been replaced by she/he, her/his, her/him.

Part VI Section 86

- (1) It is unlawful for a person to commit an act of victimisation.
- (2) For the purposes of this section, a person commits an act of victimisation if she/he treats another person ('the person victimised') unfavourably on the ground that she/he has -
 - (a) brought proceedings under this Act against any person;
 - (b) given evidence or information in any proceedings under this Act;
 - (c) made allegations that she/he or some other person has been the victim of an act that contravenes this Act
 - (d) reasonably asserted her/his right or the right of some other person to lodge a complaint or take any other proceedings under this Act;or
 - (e) otherwise done anything under or by reference to this Act, or on the ground that she/he knows the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of those things.
- (3) Unfavourable treatment of a person on the ground that -
 - (a) she/he has made a false allegation;or
 - (b) she/he has not acted in good faith, does not constitute an act of victimisation.

Part VI Section 91

- (2) A person is not vicariously liable for an act of sexual harassment committed by an agent or employee, unless she/he instructed, authorised or connived at that act.
- (3) In any proceedings brought under this Act against a person in respect of an act alleged to have been committed by her/his agent or employee acting in the course of her/his agency or employment, it shall be a defence for that person to prove that she/he exercised all reasonable diligence to ensure that her/his agent or employee would not act in contravention of this Act

CRIMINAL LAW CONSOLIDATION ACT, 1935

Part III Section 49

- (5) A person who, being the guardian, schoolmaster, schoolmistress or teacher of a person under the age of eighteen years, has sexual intercourse with that person shall be guilty of a misdemeanour and liable to be imprisoned to a term not exceeding seven years.

SA EDUCATION ACT 1972

Regulations pursuant to the Education Act

Regulation 121 (1) (a)

Principals and head teachers shall be responsible under the Act to the Director-General for the management, organisation and administration of the school and the welfare and development of its pupils.

Regulation 121 (2)

Teachers occupying a position in a school shall be responsible to the principal or head teacher of that school. They shall be actively concerned with the welfare and development of the students in their care. They shall give such assistance as may be required by the principal or head teacher in the general management of the school. They can expect to participate in the formulation of the policies in that school, and when these have been determined, they shall see that such policies are properly implemented.

Regulation 122 (1)

Principals and head teachers shall be responsible within their schools for the establishment and maintenance of a social and educational environment favourable to learning and to acceptable forms of behaviour. It should be designed to develop self-control and self-discipline within students, and a respect for other persons and their property.

Regulation 122 (2)

Principals and head teachers shall be responsible for the formulation of a set of rules with respect to behaviour both inside and outside the classroom, if and when considered necessary. The rules may also refer to school policies in so far as considered desirable or necessary, and may be promulgated to staff, students and parents. In the formulation of these rules, principals and head teachers shall consult with their staffs, school councils, and, where appropriate, the student representatives of the school.

Regulation 123 (1)

Having regard to the rights and duties of students, parents and teachers within the school policies and rules established under regulation 122, principals and head teachers may impose such moderate and reasonable controls on the behaviour of students, and sanctions for offences against those rules, as they consider necessary or as are permitted by these regulations.

Regulation 123 (2)

Subject to these regulations, principals and head teachers may delegate their disciplinary authority, including the imposition of appropriate sanctions on students for breaches of school rules, to such members of their staffs as they determine. This delegation shall not prevent principals or head teachers from exercising directly their own power to impose sanctions on students where they consider it necessary or advisable to do so.

Regulation 124 (1)

For the purpose of this regulation "principal" includes head teacher or the person or the time being in charge of a school.

Regulation 124 (2)

The principal of a school may suspend a student where -

- (a) the student is or, has been, guilty of gross insolence, persistent disobedience, immoral conduct or any other serious breach of discipline;
- (b) the presence of the student is prejudicial to the health or moral welfare of students attending the school;
- (c) the presence of the student is a physical danger to herself/ himself or other students; or
- (d) the student, being above compulsory school age, shows persistent and wilful inattention or indifference to school work

Section 26 Division V - Discipline

- 26. (i) If an officer
- (e) is guilty of any disgraceful or improper conduct there shall be sufficient cause for disciplinary action against that officer.

GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT 1985

Section 7 (c) - Principles of Conduct

“Employees shall, in their dealings with members of the public or fellow employees, exercise proper courtesy, consideration and sensitivity.”

Section 67 - Discipline

An employee who -

- (a) contravenes or fails to comply with -
 - (i) a provision of this Act;
 - or
 - (ii) a direction given to the person as an employee by a person with authority to give that direction (whether being authority derived from this Act or other wise);
- (b) is negligent or indolent in the discharge of the duties of the employee's position;
- (c) is guilty of disgraceful or improper conduct in an official capacity, or is guilty in a private capacity of disgraceful or improper conduct that reflects seriously and adversely on the Public Service;

is liable to disciplinary action.

School Assistants (Government Schools) Interim Award 1986

Clause 13. Contract of Employment

- (2) Subject to the provisions elsewhere contained in this award the contract of hiring of employees bound by this award shall, in the absence of express agreement to the contrary, be deemed to be a hiring by the fortnight and salary shall accrue from day to day; provided however that-
 - (a) employment may be terminated by two weeks notice given by either party which notice may be given at any time. Any termination of the employment shall take effect at the end of a day's work or by the payment or forfeiture (as the case may be) of two weeks wages: provided that nothing herein contained shall derogate from the employer's right at common law to dismiss an employee without notice for *misconduct* or *other sufficient cause*.
 - (b) if any employee is justifiably dismissed for any reason such employee shall be entitled to payment for work performed in that fortnight proportionate to the time worked.

Aboriginal Education Workers Industrial Agreement (1987)

Clause 22 - Contract of Employment

(2) (a)

Employment may be terminated by two weeks notice given by either party which notice may be given at any time. Any termination of the employment shall take effect at the end of a day's work or by the payment or forfeiture (as the case may be) of two weeks wages; provided that nothing herein contained shall derogate from the employer's right at common law to dismiss an employee without notice for *misconduct* or *other sufficient cause*.

Section D: Responsibilities and roles of principals / supervisors

The Education Department is responsible for providing a working and learning environment free from sexual harassment. This responsibility is discharged through the Department's managers. Hence principals/supervisors are directly responsible for ensuring and maintaining a positive working and learning environment, and particularly one which is free from sexual harassment.

In discharging their legal responsibilities (as outlined in section C), principals/supervisors must give attention to the following matters:

1. Policy development

Principals/supervisors are responsible for:

- developing and documenting sexual harassment policies and grievance procedures for their school/worksite
- ensuring that the above are known and understood by all concerned - employees, voluntary workers, parents, students, students on work experience
- taking particular care that contractual workers (e.g. drivers of school buses), voluntary workers (e.g. parents operating shared transport arrangements) and work experience providers are aware of their legal responsibilities with respect to sexual harassment, of the Department's Sexual Harassment Policy and of the school's grievance procedures.

2. Complaint process

Principals/supervisors are responsible for ensuring that complaints of sexual harassment are dealt with promptly and confidentially (as outlined in sections H, I, J, and K), and for ensuring no subsequent victimisation occurs of those who have complained of sexual harassment or of others who have provided them with advice or support (see section G).

Where a parent is alleged to have committed an act of sexual harassment against a teacher, consideration could be given to taking action under Section 104 of the Education Act. For such action to be successful, it would be necessary to show that the parent behaved in an offensive or insulting manner to a teacher acting in the course of his/her duties.

3. Monitoring and review

Principals/supervisors are responsible for

- undertaking regular reviews and evaluation of their sexual harassment policies and grievance procedures

- monitoring the working and learning climate in the school/worksite by regularly meeting with those members of staff likely to be approached for advice and information (contact person(s) and/or other relevant staff) in order to keep fully informed with respect to the nature and number of complaints/enquiries they are receiving.

4. Curriculum

Principals are responsible for ensuring that students are familiar with the sexual harassment policy and grievance procedures. Further details are outlined in section L.

5. Inservice

Principals/supervisors need to ensure that all employees and the parent community:

- understand the nature of sexual harassment
- are familiar with the implications of the Equal Opportunity Act and of the Education Department's Sexual Harassment Policy and Grievance Procedure Guidelines
- know about and understand how to use the worksite/school's grievance procedures
- are aware of other Education Department Officers and other agencies that may be able to assist in providing advice or resolving sexual harassment complaints.

6. Sexual harassment contact person(s)

Principals/supervisors have specific responsibilities with respect to supporting the work of sexual harassment contact person(s) where these have been appointed. These responsibilities are detailed in section E.

7. Students on work experience

Principals are responsible for taking all reasonable care to ensure that students on work experience are in environments free from sexual harassment and for supporting students who complain of sexual harassment. See section I for details.

8. Confidentiality

Principals/supervisors are responsible for ensuring that all complaints or enquiries with respect to sexual harassment are dealt with in absolute confidentiality, and for directing all those who are involved in a particular situation of sexual harassment and in any subsequent procedures, that they must maintain confidentiality. See section F for details.

9. Victimisation

Principals/supervisors bear the major responsibility for ensuring that those who complain of sexual harassment, or those who support them with advice or assistance, are not subsequently victimised. See section G for details.

Section E: Responsibilities and roles of contact people

Due to the nature of sexual harassment and depending on the context in which it occurs, a complainant may feel uneasy about reporting an incident of sexual harassment to his/her principal/supervisor. They may, however, be prepared to discuss the situation with some other person. In other cases, a complainant may prefer to make an initial approach for advice, support and information prior to making a complaint to his/her supervisor.

1. In recognition of the above, many schools and other worksites have appointed sexual harassment contact person(s) to whom initial enquiries may be directed.

Sexual harassment contact person(s) should be:

- person(s) in whom the staff or students have confidence and trust
- person(s) able to work with senior staff
- person(s) well versed in the nature of sexual harassment and its effects, in the effect a complaint is likely to have on others, and, in particular, in the necessity to maintain complete confidentiality at all times, including beyond the resolution of a particular case (see Section F for details).

In any school/worksite which has appointed sexual harassment contact person(s), the administration is responsible for:

- ensuring that the sexual harassment contact person(s) is/are appointed annually and is/are replaced should they transfer, resign, or go on leave
- ensuring that the sexual harassment contact person(s) is/are fully inserviced with respect to:
 - the nature of sexual harassment in the educational context
 - relevant legislation
 - the Department's policies and procedures for dealing with sexual harassment
 - their responsibility for maintaining confidentiality
- supporting the sexual harassment contact person(s) through such action as releasing them at short notice from their normal duties in order to attend to a situation of sexual harassment, and enabling them to attend inservice programmes to maintain and upgrade their skills
- seeking regular informal advice from the sexual harassment contact person(s) with regard to the nature and extent of enquiries they are receiving in order to monitor the climate of the school/worksite
- ensuring that the expectation of others of the sexual harassment contact person(s) is that they are a source of advice, support and information, not of investigation and resolution

- being aware of the effect of the responsibilities of the contact person on their working relationships with other staff and, in particular, intervening to prevent any situations which might be deemed to amount to victimisation of the contact person.
2. Other schools and worksites have identified in their grievance procedures a variety of people from whom initial advice can be sought, for example:
- District Superintendent
 - Area Equal Opportunity Officer
 - Area Equal Opportunity Adviser
 - Selected senior staff of the school or worksite
 - Equal Opportunity Officer
 - South Australian Institute of Teachers
 - Public Service Association
3. In other situations, staff neither appointed nor named in any procedures may be approached either by another member of staff or a student with respect to a case of sexual harassment. Students are likely to approach any teacher whom they trust; often this will be their student counsellor or home group teacher. Members of staff are likely to speak first with another trusted member of staff or one with whom they are particularly close.

In any of the above cases it *must be recognised* that the role of the person initially contacted:

- must be clearly differentiated from that of the principal/supervisor. The former may provide confidential advice, support and information while the latter is solely responsible for the investigation and resolution of all complaints
- will vary according to both the skills and experience of the person contacted and the complexity of the situation of sexual harassment. For example, an experienced sexual harassment contact person who is supported by an adequate inservice programme, and whose role is recognised and supported by the school administration, may be in a position to offer a great deal of personal support and expert advice. Someone else who is approached without the benefit of training and experience may simply provide a sympathetic ear and refer the complainant to the most appropriate person for further advice.

The contact person (or other person initially approached by a complainant) should be able to:

- Listen sympathetically
- maintain absolute confidentiality at all times, including beyond the resolution of a particular case
- counsel the complainant about the need to maintain confidentiality

- refer the complainant to these Guidelines
- name the most appropriate person from whom further advice and support may be sought
- be clear about the extent of their own involvement. *In all cases this is limited to personal advice and support and does not extend to formal complaint, investigation, conciliation, etc.*
- recognise the limits of their own skills and experience.

The contact person (or other person initially approached by a complainant) may be able to:

- provide confidential advice on strategies for dealing directly with the person whose behaviour is causing the complainant distress. (This is only appropriate when the complainant is a staff member, not when a student is involved.)
- inform the complainant of the range of options available (as outlined in sections H, I, J and K)
- provide confidential counselling and ongoing support over the period of time during which a formal complaint is made.

Section F: Confidentiality

In dealing with complaints or enquiries with respect to sexual harassment, the policy and procedures of the Education Department are guided by:

- the responsibility to protect the rights of all those involved, including those who have made the complaint or enquiry and those whose behaviour has led to it
- the goal to return the working and learning environment and relationships back to normal as soon as possible.

The Department can neither fulfil this responsibility nor achieve this goal if the highest level of confidentiality is not maintained at all stages and by all who are involved in a particular case, including beyond the resolution of a particular case. Further, a charge of defamation may be possible in some circumstances if confidentiality is not maintained.

This particularly refers to the following people:

1. The person(s) who have made the complaint or enquiry

Experience has shown that people who experience sexual harassment are usually very resistant to telling anyone about it because they feel embarrassed and because they fear they will not be believed. It is likely, however, that they may seek support, comfort and advice from a range of people whom they trust. While this is appropriate and desirable, the person seeking advice or support should be conscious of the need for confidentiality and, in particular

- that they should make it clear to such people that they are seeking support and assistance and discourage them from making judgements about the situation, taking sides or acting as an advocate
- that the more people who know about the situation, the less likelihood there is of satisfactorily resolving it
- that once the person has decided to take action to resolve the situation through any of the approaches outlined in this document, then maintaining absolute confidentiality becomes their responsibility.

2. The person(s) whose behaviour has led to the complaint or enquiry

Many people whose behaviour leads to a complaint or enquiry regarding sexual harassment are unaware that their behaviour has been causing distress and have not intended it to do so. They commonly react with outraged innocence when this situation is first raised with them. This can lead them to seek allies and supporters, often in a quite public way. Such behaviour

- militates against the achievement of a successful resolution
- increases the harm to the person who has suffered distress in the first place

- is often embarrassing to friends and colleagues
- interferes with their own right to conciliate the complaint in total confidentiality.

3. Principals/supervisors

Principals/supervisors have the main responsibility to ensure the confidentiality of all involved in a situation of sexual harassment which has come to their attention and, in particular, that of the two main parties involved. If necessary, it should be pointed out that failure to maintain absolute confidentiality, as directed, amounts to failing to obey a lawful instruction in terms of Section 26 of the Education Act, School Assistants, Interim Award, Clause 13 (2) Section 67 of the Government Management and Employment Act or Aboriginal Education Workers Industrial Agreement Clause 22, 2 (a).

4. Contact people

Whether they are formally appointed or identified, or are simply someone from whom advice or support is sought, contact people also have an extremely large responsibility in terms of maintaining confidentiality. Not only must they be beyond reproach themselves but they should also counsel the person seeking advice or assistance of the importance of maintaining confidentiality and strictly limiting the number of people involved, as outlined above.

5. Observers/bystanders/well wishers

In many cases of sexual harassment, other people who are not directly involved either in the case or its resolution come to know something of the situation. For example, almost inevitably others often observe or are aware of the distress of the person being sexually harassed prior to their taking any action at all. Others may have been approached for advice, assistance or support in the early stages during which the person being harassed is trying to come to terms with what is occurring and to decide what action, if any, they ought to take.

All people coming to know about a sexual harassment case, but not directly involved in it or its resolution, must be aware that:

- If they are approached individually for advice, assistance or support their role must be strictly limited to just that, and that *they must maintain absolute confidentiality* for the sake of all the main parties, and in order to maximise the possibility of a successful resolution.
- If they are aware to some degree of a situation of sexual harassment but have not been approached for help nor are involved in any way, their role must be strictly limited to that of providing confidential advice or assistance, *if this becomes appropriate*. Discussions amongst those who are not involved in any way, although often well meaning and prompted by concern, only increase the distress of all concerned and militate against a successful outcome.

- It is inappropriate and unacceptable for such people to enter into judgements or advocacy on behalf of one or other of the parties *at any time* since they are not informed of the full situation.
- They cease to have any role whatsoever once the complainant has commenced any one of the processes available to them, as outlined in this document. Whatever the level of concern amongst such outside observers, they have no part in the processes which will subsequently occur and which are in the hands of the principal parties involved and the relevant Departmental officers responsible. Whatever occurs as a consequence in resolution of the situation will necessarily occur in absolute confidence.

Everyone involved in or who comes to know about a particular situation of sexual harassment must maintain confidentiality not only throughout the process of investigation and resolution, but thereafter. Confidentiality has no sunset clause.

Section G: Victimisation

Experience has shown that sometimes the subsequent treatment of a person who complains of discrimination is more damaging and upsetting than the original behaviour which led to the complaint. Part VI Section 86 of the Equal Opportunity Act is framed to give protection against this and makes victimisation unlawful (see Section C). It covers all situations in which people may complain of discrimination on the grounds covered by the Act and, specifically, covers victimisation in terms of sexual harassment.

Not only does the legislation give protection against victimisation but the Education Department is responsible, through its managers, for ensuring that this does not occur. As might be expected, the person whose behaviour has caused a complaint will sometimes express anger and pain with respect to this long after the complaint has been resolved. This situation is particularly damaging when the person complained against is in a position of power or authority relative to the person who has made the complaint, for example, a member of staff in the case of a student complaint, a member of the administration in the case of a teacher complaint. The resulting unfavourable treatment may be quite subtle or quite blatant, but in all cases it is experienced as punishment and, as victimisation, mounts to subsequent discrimination.

Where a large number of people are aware of some aspects of a complaint of sexual harassment, many make judgements about it on the basis of their friendships and allegiances without being fully apprised of all of the facts. Such situations can cause a reaction amounting to group ostracism from students or from staff or from parents which is intolerable to the person concerned and destructive of the working and learning environment of all those at a particular school or worksite.

In all cases, however, it is the responsibility of the principal/supervisor to sensitively monitor this situation and, where necessary, intervene to prevent unfavourable treatment which may amount to victimisation

Section H: Procedures to deal with sexual harassment: employee to employee

An employee may deal with incidents of sexual harassment in the workplace in the following ways:

- Personal resolutions
- Expressions of concern
- Formal complaints within the Education Department
- Other agencies

PERSONAL RESOLUTIONS

An employee may wish to deal with sexual harassment incident(s) personally, with or without reporting the incident(s) to anyone.

- Employees may seek confidential advice from the contact person/supervisor in relation to strategies to deal personally with sexual harassment
- Employees may also seek confidential advice from the contact person/supervisor in relation to the different options available within the Education Department or from other agencies or unions, to resolve complaints of sexual harassment.

EXPRESSIONS OF CONCERN

In cases of sexual harassment where the employee does not wish to lodge a formal complaint, yet wishes the behaviour to stop and/or believes there are implications for other employees/students, the employee may discuss the situation confidentially with their principal/supervisor. When a principal/supervisor receives such a confidential expression of concern from an employee, they are obliged to take action in terms of both the Education Department's policy and the relevant legislation (as outlined in sections B, C and D).

In order to fulfil their responsibilities and obligations, any or all of the following steps must be taken:

- (a) Inform the employee of strategies and options available for dealing with the sexual harassment.
- (b) Monitor the working environment to assess the current climate.
- (c) Review inservice procedures for sexual harassment to assess whether all employees are familiar with the implications of relevant sections of the Equal Opportunity Act, Education Department's Sexual Harassment Policy and other relevant legislation.

- (d) Bring to the attention of all employees the Equal Opportunity Act and the Education Department's Sexual Harassment Policy and other relevant legislation.
- (e) When, as a result of monitoring the climate, the principal/supervisor becomes concerned about the appropriateness of the behaviour of an employee, they should confidentially discuss their concerns directly with that person, making it clear what behavioural changes are expected.
- (f) Subsequently there should be a review of the situation with the employee whose behaviour has caused the expression of concern and agreement reached that:
 - the matter has been resolvedor
 - outside counselling and support be soughtor
 - formal proceedings be instituted.

FORMAL COMPLAINTS WITHIN THE EDUCATION DEPARTMENT

The employee may lodge a formal written complaint about sexual harassment with the appropriate Director or with the Director-General of Education. Formal complaints to the Director-General will be referred through the appropriate Director or dealt with by the Director-General in a manner similar to the following.

- Formal written complaints are to be lodged by complainants with the appropriate Director or with the Director-General. The written complaint (marked confidential) should be forwarded as soon as possible after the event(s) which prompted the complaint.
- The Director will then inform the Director-General of Education in writing that a complaint has been lodged and that an investigating officer has been appointed. The appointment of the latter will be made, in consultation with the Equal Opportunity Officer, within five working days of the receipt of the complaint.
- The Director will acknowledge, confidentially and by letter, that the complaint has been received, and inform the complainant of the name of the investigating officer who will be in contact in the near future. She/he will also inform the complainant of the requirement of absolute confidentiality.
- In like manner, the Director will inform the respondent (i.e. the person whose behaviour has led to the complaint) confidentially and by letter, that the complaint has been received, and inform the respondent of the

name of the investigating officer who will be in contact in the near future. The Director will also inform the respondent of the requirement of absolute confidentiality.

- The Director will instruct the officer to investigate the complaint and provide a written report of the investigation and suggested action, taking into account the complainant's wishes. The Director will negotiate with the investigating officer a date by which the investigation will be completed.
- On receipt of the investigating officer's report, the Director will provide an opportunity for both the complainant and the respondent to respond to the findings of the investigation.
- The Director will then make a determination on the basis of the investigation and subsequent report, in consultation with the Equal Opportunity Officer or Area Equal Opportunity officer, and Crown Law (if required), either to entertain or not to entertain the complaint.
- If the Director decides not to entertain the complaint, a letter will be sent to both the complainant and respondent indicating that the complaint has been dismissed, and directing them to maintain absolute confidentiality about the whole matter.
- If the Director determines to entertain the complaint, then the Director will facilitate negotiation between the respondent and the complainant to reach a conciliatory agreement and will direct both parties to maintain absolute confidentiality for all time.

The outcomes of the conciliation may include the following action by the Director:

1. (a) Advising the respondent in writing that there is cause for concern about her/his professional behaviour and directing the fulfilment of certain requirements within a designated period of time. A copy of this letter will be placed on the employee's personal file. The actions which the Director requires the employee to take will be monitored and a final report will be made to the Director. The Director will subsequently inform the employee, by letter, that she/he is satisfied that the requirements have been met, or, if the Director is not fully satisfied that all the requirements have been met, that further monitoring will be required. A copy of this letter will be placed on the employee's personal file. If the employee does not fulfil the requirements as directed, including maintaining confidentiality, then the Director can recommend to the Director-General of Education that disciplinary action be taken under Section 26 of the Education Act, School Assistants, Interim Award, Clause 13 (2) Section 67 of the Government Management and Employment Act or Aboriginal Education Workers Industrial Agreement Clause 22, 2 (a). Copies of all the above correspondence will be placed on the employee's personal file.

- (b) Counselling the respondent. A letter summarising this session will be provided to the employee and a copy of it will be placed on the employee's personal file.
- (c) In addition to (a) and (b) the following steps may be considered:
- temporary relocation of the complainant, if this is the wish of the complainant
 - temporary relocation of the respondent, if this would improve the situation within the workplace, or if this is the wish of the respondent.
- (d) Where the Director determines that the conciliation procedure has not resolved the complaint, or if the complaint is sufficiently serious, then the Director may recommend to the Director-General of Education that disciplinary action be taken under Section 26 of the Education Act, Section 67 of the Government Management and Employment Act, clause 13 (2) under the School Assistants Interim Award, or clause 22, 2 (a) under the Aboriginal Education Workers Industrial Agreement.

OTHER AGENCIES

While it is preferable that complaints of sexual harassment are dealt with by Education Department officers, employees must be informed of their right to seek advice from or lodge their complaint with the Office of the Commissioner for Equal Opportunity, or the appropriate union, *at any stage of the process of the internal complaint*. Any complaint of sexual harassment, or subsequent victimisation, must be lodged with the Commissioner for Equal Opportunity within 6 months of the incident(s) which caused the complaint. The employee may also register a complaint of sexual harassment, or of subsequent victimisation, with the appropriate union.

Section I: Procedures to deal with sexual harassment: employee to student

Child sexual abuse and/or sexual harassment of students by employees is considered to be a serious matter and is unlawful under the Community Welfare Act, the Criminal Law Consolidation Act, Equal Opportunity Act and the Education Act respectively. (See Section C for relevant details). For the purpose of these procedures the major difference between sexual abuse and sexual harassment is whether or not the allegation is a reportable offence under the Community Welfare Act or the Criminal Law Consolidation Act.

SEXUAL ABUSE

Sexual abuse is any sexual behaviour imposed on a child under the age of eighteen. The child is considered to be unable to alter and/or understand the perpetrator's behaviour due to his/her early stage of development and/or powerlessness in the situation. The perpetrator's position of authority and/or trust enables him/her implicitly or directly to coerce the child into sexual compliance.

Sexual abuse includes, but is not confined to, the following examples:

- Inappropriate genital exposure
- Masturbation
- Vaginal or anal penetration by finger, penis or object
- Exposed to sexual behaviour by others
- Used for prostitution
- Used for pornography
- Expose or exploit child sexually
- Inappropriate fondling
- Oral sexual behaviour
- Penetration by object
- Deliberate exposure to pornography

(From the Department for Community Welfare's *Standard Procedures, Child Protection*)

Decisions about sexual behaviour in the employee to student context need to be carefully examined. If the behaviour is suggested to be a form of sexual abuse, then the Department for Community Welfare office local to the student *must* be notified and take responsibility for the investigation. The procedures for sexual harassment do *not* apply in this instance.

If the allegation of abuse is against a departmental employee, the principal/supervisor should also confidentially inform the Area Director who *will* take appropriate action.

All personnel working in schools should familiarise themselves with the relevant Child Protection Legislation which is outlined in the *Child Abuse* booklet available in schools. Additional copies are available from any District Office of the Department for Community Welfare.

Any registered teacher or person employed in a school as an Aboriginal Education Worker or school assistant is *legally required to report reasonable suspicion of child abuse*. The notification must be made to the Department for Community Welfare which will then decide who will conduct the investigation. *Personnel in schools must not investigate allegations.*

PROCEDURES TO DEAL WITH SEXUAL HARASSMENT COMPLAINTS: EMPLOYEE TO STUDENT AT SCHOOL

All complaints of sexual harassment made by students, or by parents/guardians on behalf of students, must be taken seriously and investigated, as required by the relevant legislation and the Education Department's Policy on Sexual Harassment (see sections B and C).

- The procedures for investigating complaints involving teachers or other staff (as outlined in the Administrative Instructions and Guidelines, Division 7, 75 - 75.4.2) must be followed and appropriate action taken.
- In order to determine what subsequent action to take regarding such a complaint of sexual harassment, the principal may seek advice from:
 - District Superintendent of Schools
 - Area Equal Opportunity officer
 - Area Assistant Director-Personnel
 - Area Director
 - Equal Opportunity Officer
- Principals are responsible for ensuring that no overt or covert victimisation of a complainant occurs from either the staff or students of their school subsequent to a complaint of sexual harassment by a student or their parent/guardian
- Students and their parents/guardians have the right *at any stage* to seek advice or lodge a formal complaint of sexual harassment, or subsequent victimisation with the Commissioner for Equal Opportunity, if this occurs within six months of the incident or incidents which caused the complaint.

STUDENTS ON WORK EXPERIENCE

Sexual harassment of a student on work experience, by the employer, by an employee or by another voluntary worker, is made unlawful by section 87 of the Equal Opportunity Act (SA) 1984.

Duty of Care

The Education Department's obligations in relation to students complaining of sexual harassment whilst on work experience flow from the general duty of care owed by the Education Department to students. Aspects of the duty of care include ensuring that:

- students and their parents/guardians are informed about the nature of sexual harassment, their rights under the legislation and the process of lodging a complaint with the Commissioner for Equal Opportunity
- to the best of the school's knowledge, students on work experience are in environments which are free from sexual harassment
- the rights of the student complaining about sexual harassment are protected
- support and counselling are available to any student who has experienced sexual harassment
- sexual harassment complaints are taken seriously.

Procedures to Deal With Work Experience Sexual Harassment Complaints

Students who are involved in work experience have the right to report to the principal/contact person/teacher that they have experienced sexual harassment at their work place.

The Commissioner for Equal Opportunity is the *only person* who is charged with the responsibility for investigating and conciliating complaints from students who are on work experience. As a consequence, school personnel must not investigate or conciliate sexual harassment complaints.

The following procedures must be followed:

- All teachers/contact persons must immediately report any complaint to the principal.
- Where practicable, the principal should contact the parents or legal guardian of the student. There is no formal legal requirement that parents or guardians should be contacted prior to lodging a formal complaint with the Commissioner for Equal Opportunity. It is however highly desirable that parents be contacted in the early stages. It should be noted that in the case of minors, no legally binding settlement can be obtained without the ratification of the legal guardian.
- The principal will then assist the student or legal guardian to contact the Office of the Commissioner for Equal Opportunity to discuss the matter and lodge a formal complaint.
- In situations where it is not possible or practicable to contact the parent or legal guardian the decision whether or not to lodge a formal complaint *must then be left to the student* after all available support and counselling has been offered. In such cases an officer from the Office of the Commissioner for Equal Opportunity will visit the school to interview the student and take a formal complaint.

- In the case of country schools the Commissioner for Equal Opportunity will forward a complaint form direct to the complainant, care of the school, with a covering letter requesting the principal to assist the complainant to fill out the complaint form.
- Strict confidentiality must be maintained by all school personnel involved in sexual harassment complaints, including staff, parents and students.
- If any written records are prepared by the principal for the Commissioner for Equal Opportunity these records must be marked "private and confidential".
- The principal will be informed of the outcome of the investigations. She/he will be advised as to whether or not the complaint has been substantiated and where relevant brief details of any conciliation will be supplied.
- Where there is concern about continuing to send students to the work site from which the complaint has arisen, the principal should seek advice from the Commissioner for Equal Opportunity.

Advice may be sought on the above procedures from:

- Equal Opportunity Officer
- Area Equal Opportunity officer
- Area Director.

The address and telephone number for the Commissioner for Equal Opportunity is as follows:

Office of the Commissioner for Equal Opportunity
30 Wakefield Street
ADELAIDE 5000
Telephone number - 227 0944
Toll free - (008) 188 163

Section J: Procedures to deal with sexual harassment: student to student

The school's grievance procedures must be congruent with the school's stated policy on behaviour and discipline, and in accordance with Regulations 123 and 124 pursuant to the Education Act.

The following preconditions are essential for effective grievance procedures for students who experience sexual harassment from other students.

Students and their parents/guardians need to:

- understand the nature of sexual harassment
- know the school's grievance procedures
- understand each of the steps of the grievance procedures
- be able to easily gain advice and support from the nominated contact person
- be confident that grievances will be treated seriously, confidentially and with sensitivity by the principal/deputy principal
- be aware of their right to take their complaint or enquiry to officers outside of the school e.g. Education Department's Equal Opportunity Officer, Superintendent of Schools, and other Departmental officers.
- understand that subsequent unfavourable treatment by either staff or students as a result of their complaint may amount to victimisation.

DEALING WITH SEXUAL HARASSMENT COMPLAINTS

As well as considering the established procedures for investigation and discipline (pursuant to Regulations 122, 123, 124 of the Education Act) in acting upon sexual harassment complaints between students, the principal/deputy needs to consider the gravity of the complaint. In order to determine this, advice may be sought from:

- District Superintendent of Schools
- Area Equal Opportunity officer
- Equal Opportunity Officer
- Commissioner for Equal Opportunity

The principal will also need to determine whether or not the matter can be satisfactorily resolved within the school. This will depend upon:

- whether the incident may be of a criminal nature (e.g. rape). If so, it must be reported to the police and the principal must not investigate.
- whether the incident may be child sexual abuse. Sexual abuse does occur between students when there is a power relationship or lack of

informed consent arising from, for example, significant age differences or intellectual impairment. The Community Welfare Act Section 91 requires cases of suspected child sexual abuse to be reported immediately to the Department for Community Welfare. Advice must be sought from appropriate officers from the Department of Community Welfare if a case of child sexual abuse is suspected. *Principals and/or other personnel in schools must not investigate* cases of suspected child sexual abuse.

- the gravity of the respondent's behaviour and of the subsequent disciplinary action required (e.g. suspension of a student for longer than one week requires Area approval). In cases of alleged serious sexual assault of students by other students, the rights of the victim should override the rights of the alleged offender. While the principal may suspend the alleged offender, under Regulation 124 (5) the Minister may direct the Director-General to give notice to the student's parents that his/her enrolment at the school will cease and that the student be enrolled at the school nominated by the Director-General or at a non government school.

Other matters concerning sexual harassment complaints which the principal needs to consider include the following:

- the sensitivity with which the investigation is undertaken. This means that the contact person or parent/guardian may be present to provide support for the complainant during the procedures.
- the need to minimise the number of people who are involved, or who know about, a particular situation of sexual harassment, and the responsibility for directing all those who are involved to maintain confidentiality at all times, including beyond the resolution of a particular case (see Section F).
- support and monitoring structures for the complainant. The incident(s) may have long term effects on the self-esteem of the complainant and may affect their educational achievements and involvement within the school.
- monitoring the learning environment of all who come to be involved, or know something about, a particular situation of sexual harassment and, in particular intervening to prevent any unfavourable treatment which may amount to victimisation (see Section G).
- establishing counselling and monitoring procedures for the respondent, in consultation with parent(s)/guardian(s). If the respondent is transferred to another school, arrangements must be made between the principals for the counselling and monitoring programmes to continue.

Section K: Procedures to deal with sexual harassment: student to employee

The school's grievance procedures must be congruent with the school's stated policy on behaviour and discipline, and in accordance with Regulations 123 and 124 pursuant to the Education Act.

The following preconditions are essential for effective grievance procedures for employees who experience sexual harassment from students.

Students and their parents/guardians need to:

- understand the nature of sexual harassment
- know the school's grievance procedures
- understand each of the steps of the grievance procedures
- be aware that grievances will be treated seriously and confidentially by the principal/deputy principal.

Employees need to:

- understand the nature of sexual harassment
- know the school's grievance procedures
- be confident that grievances will be treated seriously, confidentially and with sensitivity by the principal/deputy principal.

DEALING WITH SEXUAL HARASSMENT COMPLAINTS

As well as considering the established procedures for investigation and discipline (pursuant to Regulations 122, 123, 124 of the Education Act) in acting upon sexual harassment complaints from employees about students the principal/deputy principal needs to consider the gravity of the complaint. In order to determine this, advice may be sought from:

- District Superintendent of Schools
- Area Equal Opportunity officer
- Equal Opportunity Officer

The principal will also need to determine whether or not the matter can be satisfactorily resolved within the school. This will depend upon:

- whether the incident may be of a criminal nature (e.g. rape). If so, it must be reported to the police and the principal must not investigate.
- the gravity of the respondent's behaviour and of the subsequent disciplinary action required (e.g. suspension of a student for longer than one week requires Area approval).

Other matters the principal needs to consider:

- the sensitivity and confidentiality with which the investigation is undertaken.
- the need to minimise the number of people involved in or who know about a particular situation of sexual harassment, and directing all those who are involved to maintain confidentiality at all times, including beyond the resolution of a particular case (see Section F).
- support and monitoring structures for the complainant. The incident(s) may have long term effects on the self-esteem of the complainant and may affect their ability to perform at their full potential.
- monitoring the working and learning environment of all who come to be involved, or know something about, a particular situation of sexual harassment, and intervening to prevent any unfavourable treatment which may amount to victimisation (see Section G).
- establishing counselling and monitoring procedures for the respondent, in consultation with parent(s)/guardian(s). If the respondent is transferred to another school, arrangements must be made between the principals for the counselling and monitoring programmes to continue.

Section L: Curriculum development for students

Sexual harassment which is unquestioned teaches students that men and women relate from an unequal power base, and legitimises that inequality.

Known and accessible school policy and grievance procedures challenge inequality and provide information about 'acceptable forms of behaviour' (Education Act Section 122 (1)). The effectiveness of the grievance procedures can be assessed by the confidence with which students use them.

Many schools provide the opportunity to question, interpret and understand sexual harassment so that behaviour can change. Planned programmes range from student inservice programmes about the policy and grievance procedures to the development of curriculum units which are included in the school's planned teaching programme.

A bibliography of resources and specific advice about curriculum development for students are available from:

Area Equal Opportunity officer
District Superintendent of Schools
Equal Opportunity Advisers
Education of Girls Unit