

Policy PL92 - Sexual Misconduct Policy

Version

1 APPROVED

Author(s)

Chief People Officer

Owner

Director

Department


People and Culture

Approval Authority

WEHI Board

Key Words

 **Approved**
18 May 2023

 **Effective**
01 Jun 2023

 **Review**
2026

Key Points

NA

1. Purpose

WEHI is committed to providing a safe and positive working environment free from inappropriate behaviour, where everyone is treated with dignity and respect. WEHI does not tolerate sexual misconduct.

This Policy reflects a system-wide approach both to support those who disclose, report or witness sexual misconduct and to ensure accountability of those who perpetrate it.

The goal of this policy is to ensure a shared understanding and expectations of how sexual misconduct is dealt with, and to foster a safe, equal, and inclusive working environment.

This policy:

- defines what constitutes sexual misconduct and the conditions that enable it to occur;
- states WEHI's zero-tolerance position on sexual misconduct;
- identifies the accountabilities and expectations across WEHI for preventing sexual misconduct and upholding a culture of equality and respect;
- outlines the guiding principles WEHI will follow when addressing sexual misconduct and identifies how WEHI will respond;
- details how the safety and wellbeing of individuals making disclosures or complaints about sexual misconduct will be prioritised;
- acknowledges the supports available for those affected by sexual misconduct;
- details the record keeping and reporting requirements for WEHI.

2. Scope

This Policy applies to Board members, staff members, students, and volunteers at WEHI. A reference to staff in this Policy should be read as meaning a reference to WEHI Board members, staff members, students, contractors or volunteers – in this policy, defined as staff.

Sexual misconduct is defined as a range of behaviours including sexual assault, sexual harassment, stalking, and any other conduct of a sexual nature that is non- consensual or has the purpose or effect of threatening, intimidating, or coercing a person.

Please refer to the [Acceptable Workplace Procedure](#) for guidance on disclosures or complaints made against someone who is not a staff member e.g., visitor and or third parties with whom staff engage as part of their duties i.e., collaborator

For the purposes of this Policy, workplace may include:

- any work-related context including Board meetings, on-site, off-site, remote work such as a staff member's home and non-physical places; activities which use online platforms and/or social media; after-hours work; work-related work functions; social events, conferences with universities and/or scientific organisations and business trips; conferences, in accommodation or transport (including hotel rooms, planes, cars) associated with travel for work etc.
- wherever and whenever staff may be because of their duties with WEHI

This policy does not cover other forms of inappropriate workplace behaviours such as bullying, discrimination, and religious or racial vilification. These forms of inappropriate behaviour are covered by and should be read in conjunction with the [Code of Conduct](#), the [Acceptable Workplace Behaviour Policy](#), the [Acceptable Workplace Behaviour Procedure](#), the [Research Integrity Policy](#) and the [Whistleblower Policy](#).

This Policy refers to sexual misconduct related to adults. It does not replace [Child Safe Policy](#) which addresses the standards required when working with children under 18 years old.

3. Definitions

Term	Definition
Victimisation	Victimisation occurs when a person who has made a report or complaint, plans to make a report or complaint, assists another person in making a report or complaint or acts as a witness, is subjected to any form of detriment or reprisal as a result. It is irrelevant whether the detriment or reprisal is initiated by the employee who is the subject of the report or another party, be it on their behalf or in general support of the employee.
Sexual misconduct	In this policy sexual misconduct includes sexual harassment, stalking and sexual assault. Sexual misconduct may be experienced by people of all ages, gender, gender identity and sexual identity, within or outside a relationship. Some forms of sexual misconduct may occur online including through online meetings, social media, games or other forums.
Complaint	A complaint is where a disclosure undergoes a formal investigation process.
Disclosure	<p>Disclosure means a person telling anyone who is part of WEHI about their personally experiencing or witnessing unacceptable behaviour.</p> <p>Disclosures can be anonymous, and the person making a disclosure is able to, but does not have to, identify the other person / people involved.</p> <p>A disclosure does not trigger an investigation or action unless WEHI has a duty of care to do so.</p> <p>A person may wish to make a disclosure that triggers WEHI to follow a documented formal process or take a specific action. In this instance, a review into the allegation will be undertaken by the Chief People Officer and a decision will be made as to whether to proceed with an investigation and/or take a specific action.</p>

Term	Definition
Personal relationships between staff	<p>The existence of close personal relationships between employees is not prohibited. However, a close relationship between employees may give rise to actual, potential, or perceived conflicts of interest. For example, if one person can control or affect the career or other employment opportunity of the other. Consensual Personal Relationships where there is a direct Hierarchical Relationship must be declared to the Chief People Officer. Other Consensual Personal Relationships do not be declared unless there is an actual, perceived or potential Conflict of Interest. For further information on Consensual Personal Relationships refer to the Conflict of Interest Policy.</p>
Positive Duty	<p>WEHI has a positive duty under the Equal Opportunity Act 2010 (VIC) to ensure the health and safety of employees. This includes a duty to:</p> <ul style="list-style-type: none">• Eliminate risks to health and safety so far as is reasonably practicable• If it is not reasonably practicable to eliminate risks to health and safety to reduce those risks so far as is reasonably practicable.
Sexual Assault	<p>Sexual assault is defined in the Crimes Act 1958 (Vic) Part 1 (40) and means a person intentionally touching another person who does not consent to the touching; and the touching is sexual; and the person touching does not reasonably believe that the other person consents to the touching. Touching can be 'sexual' because of:</p> <ol style="list-style-type: none">1. The areas of the body that are touched or used in the touching, including but not limited to the genital or anal region, the buttocks of the breasts;2. The fact that the person doing the touching seeks or gets sexual arousal or sexual gratification from the touching; or3. Any other aspect of the touching, including the circumstances in which it is done.

Term	Definition
Sexual harassment	<p data-bbox="547 185 1442 241">Sexual harassment is unlawful and prohibited by both the Equal Opportunity Act 2010 and the Sex Discrimination Act 1984.</p> <p data-bbox="547 275 1401 331">Sexual harassment as defined in the Sex Discrimination Act 1984 (Cth) occurs if a person:</p> <ol data-bbox="579 365 1409 584" style="list-style-type: none"> <li data-bbox="579 365 1409 421">1. Makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or <li data-bbox="579 432 1409 488">2. Engages in any unwelcome conduct of a sexual nature in relation to the other person, <li data-bbox="579 499 1409 584">3. In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would be offended, humiliated, or intimidated. <p data-bbox="547 618 1082 636">A single incident can constitute sexual harassment.</p> <p data-bbox="547 672 1369 728">Sexual harassment can still occur when a harasser does not intend it. Motive is irrelevant.</p> <p data-bbox="547 761 882 779">Sexual harassment may include:</p> <ul data-bbox="579 813 1442 1491" style="list-style-type: none"> <li data-bbox="579 813 1442 898">• Displays of sexually graphic materials including posters, cartoons or messages left on noticeboards, desks, or common areas, work provided equipment such as phones or computers. <li data-bbox="579 909 1377 965">• Repeated invitations to develop a closer or intimate relationship after prior refusal. <li data-bbox="579 976 1353 1061">• Unwelcome remarks or insinuations about a person's sex or private life, including intrusive questions or comments about gender identity, sexual orientation, sexual relationships and sexual practices. <li data-bbox="579 1072 1385 1128">• Comments of a sexually suggestive nature about a person's appearance or body, including about a person's dress and hairstyles <li data-bbox="579 1140 1342 1158">• Sexually suggestive or offensive phone calls, emails, or text messages. <li data-bbox="579 1169 1442 1254">• Unwanted sexual attention using social media such as making photographs, video, or other visual or auditory recordings of a sexual nature of another person without their consent. <li data-bbox="579 1265 1342 1283">• Sexual propositions or requests for sex, or repeated requests for dates <li data-bbox="579 1294 1390 1350">• Actions or comments of a sexual nature in a person's presence – even if not directed at the person. <li data-bbox="579 1361 1409 1417">• Unwelcome touching, including hugging and light touch gestures e.g., an arm around, a kiss hello <li data-bbox="579 1429 1313 1485">• Sexually suggestive behaviour such as staring, leering or displays or declarations of affection. <p data-bbox="547 1518 1377 1574">In some instances, sexual harassment may also constitute criminal conduct and should be managed as such.</p>
Sexual consent	<p data-bbox="547 1648 1442 1733">Sexual consent is sexual activity that requires affirmative consent, which is defined as positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter.</p> <p data-bbox="547 1767 1442 1852">Consent to some sexual acts does not constitute consent to others, nor does past consent to a given act constitute present or future consent. Consent must be ongoing throughout a sexual encounter and can be revoked by any participant at any time.</p> <p data-bbox="547 1886 1393 2007">Consent cannot be obtained by threat, coercion, or force. Agreement under such circumstances does not constitute consent. Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated due to alcohol, drugs, or some other condition.</p>

Term	Definition
Stalking	<p>Stalking is repeated or obsessive unwanted attention based on sex that is directed toward an individual or group and that is likely to cause alarm, fear, or substantial emotional distress.</p> <p>Stalking may take many forms, including the following: lying in wait, monitoring, and pursuing contact.</p> <p>Stalking may occur in person or through a medium of communication, such as letters, email, text messages, or phone calls.</p>
Bystander	<p>A bystander is someone who responds to witnessing or hearing about unacceptable behaviour. Action could include:</p> <ul style="list-style-type: none"> • Saying or doing something in the moment, if it is safe to do so; • Comforting the victim / target; • Discussing the problem with the person responsible for the unacceptable behaviour; • Reporting the behaviour to a Manager / Supervisor or to People and Culture, and; • Advocating for cultural change within a team or work environment.

4. Policy

WEHI recognises that sexual misconduct, in all its forms, is an abuse of power. It represents behaviours that are beneath the standards we expect from every one of us and across our organisation. Sexual misconduct is completely at odds with our aspiration to create a safe, respectful and inclusive workplace.

4.1 Understanding sexual misconduct

Sexual misconduct is particularly prevalent where gender inequality exists – where organisation demographics, values and structures prioritise men and workplace cultures reinforce rigid gender norms and sexist attitudes.

Imbalance or disparities in power, opportunity, decision-making and resources are the conditions that mean sexual misconduct is more likely to occur, and/or not be reported or addressed:

Within workplaces that have a strict hierarchical structure, such as within academic settings.

When there are positions that have significant power over the careers of others.

Other factors such as age, gender identity, sexual orientation, Indigeneity, other cultural and linguistic diversity, and disability have also shown to increase the likelihood a person may be targeted for sexual misconduct. For example, migrant women can face increased levels of harassment that is driven both by gender and racial inequality.

Sexual misconduct takes a psychological, emotional and physical toll and has detrimental consequences on the careers and personal lives of those affected, as well as their families and those close to them. It also poses a psychosocial health and safety risk.

4.2 WEHI's commitment

WEHI is committed to addressing and eliminating sexual misconduct in the workplace and has established and will maintain procedures that meet or achieve the following principles:

- Sexual misconduct is unlawful, is a breach of this policy and the [Code of Conduct](#) and will not be tolerated in the workplace.
- All staff have a right to expect respectful behaviour from others and have a personal responsibility to behave respectfully towards others.
- All staff have a duty to take all reasonable steps to prevent sexual misconduct undertaken by or directed towards employees.
- Staff are encouraged to make a disclosure or complaint and WEHI supports the safety of those who do.

e) WEHI provides transparent, clear, and easy to use procedures and systems to share their experience of, disclose and/or report sexual misconduct. If any individual wants to make a disclosure or complaint to WEHI, please refer to the [Acceptable Workplace Behaviour Procedure](#), section 6.

f) Where a staff member, student or Board member does not wish to make a complaint or seek any formal action to be taken, WEHI will take their wishes into account wherever possible. However, in some circumstances WEHI may decide that local resolution is not the most appropriate way to handle a particular report of inappropriate behaviour and may still engage a formal process or workplace investigation and take disciplinary action where appropriate. This decision might be made in circumstances where the alleged behaviour may constitute a risk to the health and safety of others, or if proven, may be considered a serious breach of this policy, or where disciplinary action may be an outcome. In such circumstances, WEHI will work closely with the relevant staff or Board member to ensure that any action taken is done in a manner consistent with the safety of that employee and taking into consideration any cultural factors which may be relevant

g) WEHI provides access to education and awareness campaigns with the aim of preventing and responding appropriately to sexual misconduct.

h) Confidentiality and information privacy will be upheld, in accordance with legislative and reporting requirements.

i) WEHI recognises that comments and behaviour that do not offend one person can offend another. All staff are required to treat others with dignity, courtesy, respect and professionalism.

j) Staff must not victimise anyone involved in a disclosure or complaint about sexual misconduct. Victimisation is prohibited under State and Federal anti-discrimination legislation.

k) WEHI complies with relevant Australian laws in relation to sexual misconduct including but not limited to:

- Australian Human Rights Commission Act 1986 (Cth)
- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Crimes Act 1958 (VIC)
- Equal Opportunity Act 2010 (Vic)
- Fair Work Act 2009 (Cth)
- Gender Equality Act 2020 (Vic)
- Occupational Health and Safety Act 2004 (Vic)
- Sex Discrimination Act 1984 (Cth)
- Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

4.3 Guiding principles

WEHI will:

a) Prioritise the safety and wellbeing of victim-survivors by providing a trauma-informed approach which supports, listens to and validates the experience of victim-survivors.

b) Proactively foster a safe, equitable and respectful culture for all employees and thus help to prevent sexual misconduct.

c) Prioritise cultural safety for all staff by being aware of cultural differences, and by recognising and addressing cultural and linguistic barriers, including through engagement with community elders and other means to ensure culturally sensitive support.

d) Respect the many aspects of a person's identity in preventing and responding to sexual misconduct. These may include Indigeneity, race, ethnicity, socio-economic background, age, disability, religion, sex, gender, gender identity and sexuality as well as a range of individual unique characteristics and experiences.

4.4 Expectations and accountabilities

Everyone has a responsibility to prevent and respond to sexual misconduct. This is entirely consistent with our existing workplace health and safety obligations to protect each other from harm to our health and safety, including psychological harm.

There are specific expectations depending on a person's role:

Board and Executive

- Ensure sexual misconduct prevention and early intervention are a leadership priority and organisation systems are in place to support this
- Continually review and improve its structure and practices for an inclusive and diverse workplace.

- Require regular reporting of frequency and types of incidents, immediate outcomes and long-term implications for parties involved
- Support and encourage managers, supervisors and heads of departments to exercise their leadership and authority to ensure a supportive, flexible, safe and inclusive work environment.
- Prioritise the care and support of those impacted in the organisation's approach to resolving the issue
- Support external transparency of incidents involving senior leaders and where there is legitimate public or stakeholder interest

Managers and supervisors

- Identify, address and educate about behaviour that enables or condones sexual misconduct, including tolerance for everyday sexism.
- Speak up when you see, know of or can anticipate the likelihood of sexual harassment.
- Create an environment that encourages teams to feel safe speaking up about or reporting sexual harassment.
- Support an individual who is impacted and understand how they would like the issue managed.
- Prioritise the care and support of those impacted when responding to issues raised with you and observed.
- Report and/or seek advice from People and Culture on incidents, maintaining confidentiality as required by those impacted.
- Speak openly and confidentially with the impacted team/stakeholders about any incidents/outcomes and reinforce expectations of safe, respectful and inclusive behaviour.
- Attend all related training and ensure team members attend.

Teams / Colleagues

- Behave in a way that creates a safe, respectful and inclusive environment that prioritises looking after the safety of others.
- Speak up when you see, know or can anticipate the likelihood of sexual misconduct.
- Intervene in a way that is comfortable for you and if you feel safe to do so, to redirect the conversation or stop the behaviour.
- Ensure the person impacted is safe and check in on them if appropriate.
- Listen to the experience of the person impacted without judgement or preconceived solutions – understand how they would like your help.
- Participate in any inquiries or investigations about incidents.
- Keep details of the incident or investigation confidential.
- Attend any relevant training.

4.5 Personal relationships

Sexual, romantic or intimate interaction that is entered into freely and reciprocated between consenting staff is not a form of sexual misconduct. However, if people behave in sexually inappropriate ways at work, it could still create a sexualised atmosphere that is unwanted by others in the workplace.

Some personal relationships need to be disclosed as they give rise to perceived, potential and/or actual conflicts of interest. Staff must refer to the [Conflict of Interest Policy](#) to determine whether they need to declare that they are in a personal relationship.

4.6 Responding to sexual misconduct

The [Acceptable Workplace Behaviour Procedure](#) outlines the various options available to address sexual misconduct.

If a staff member discloses an experience of sexual misconduct, or this behaviour is observed or brought to the attention of WEHI it must be acted upon as soon as practicable. All disclosures and complaints are expected to be managed in line with the [Acceptable Workplace Behaviour Procedure](#).

Prioritising safety and well-being

- If person discloses an experience of sexual misconduct, WEHI will ensure they are supported and consulted in the decision about how to handle the issue. WEHI will respect their wishes and best interests but this does not mean they solely decide the organisation's response or the consequences for the respondent.
- Issues raised are taken seriously and viewed with integrity. WEHI may take interim action in the interests of health and safety that is supportive and sensitive to the possibility that the reported behaviour occurred, without making conclusions.
- If a person shares their experience, we will, to the extent possible, ensure they do not need to retell their story to multiple people.

- Everyone directly impacted by an issue, including those who disclose or make a complaint, and respondents, will be encouraged to access external support services. A list of these is on [Catalyst](#).
- All parties involved will be kept well informed and supported throughout the process.
- Investigations will be concluded as quickly as possible while ensuring the approach is ethical over expedient.
- Confidentiality will be maintained.

People and Culture can provide further guidance on how to handle reports of sexual misconduct. Advice and guidance can also be sought by contacting an external agency, as listed on [Catalyst](#).

4.7 Bystander action

Bystanders play a critical role in minimising and/or preventing harm. All staff have a responsibility to take action when they witness or are made aware of unacceptable workplace behaviour. Bystanders are encouraged to:

- Provide support to the person who is the target of the unacceptable behaviour;
- Where safe to do so, challenge concerning behaviour; and
- Disclose or report unacceptable behaviour in accordance with the [Acceptable Workplace Behaviour Procedure](#).

4.8 Support

WEHI recognises that employees who are subject to sexual misconduct may need support as well as advice and guidance to assist them to respond to their situation. All parties involved, including witnesses and employees and Board members accused of sexual misconduct, can find the experience confronting and stressful and need support and assistance.

- If you would like to talk to someone at WEHI you can contact your People and Culture Business Partner.
- WEHI provides an [Employee Assistance Program \(EAP\)](#), which is a short-term, confidential, free counselling service designed to offer a problem-solving, solution-oriented approach to support employees, Board members and their families with personal or work-related issues.
- WEHI's EAP program is managed by [AccessEAP](#) can be contacted 24 hours a day, seven days a week via: 1800 818 728
- **1800 RESPECT** : 1800 737 732
- The national sexual assault, domestic and family violence support and counselling service for anyone – women, men and gender diverse people. This includes people who have been victims/targets of sexual misconduct.
<https://www.1800respect.org.au/>

Additional support for employees can be found [here](#).

4.9 Transparency

External

The following principles set out our approach to communicating about sexual misconduct cases in particular where the allegation requires investigation, where the offender or alleged offender is one of our organisation's senior leaders and where there is legitimate public and/or stakeholder interest.

1. Our organisation will be transparent with internal and external stakeholders about the fact that sexual misconduct claims exist.
2. The identity of those involved will be protected by our organisation at all times during the investigation process.
3. We will ask everyone involved to keep any workplace investigation process confidential while that process is underway with an exception for receiving expert counselling or support.
4. Once any investigation is complete, our organisation will not restrict the victim-survivor's right to speak.
5. WEHI may negotiate a settlement agreement to resolve or settle a sexual misconduct complaint. WEHI will consider the need for a confidentiality clause in the agreement on a case-by-case basis and follow the approach recommended by the [Australian Human Rights Commission](#).
6. Where there is legitimate public or stakeholder interest, WEHI may identify the offender, be transparent about the outcomes of an investigation and/or identify the financial settlement that was reached as part of their departure, in the instance the offender leaves WEHI. This will only be done if the following conditions are satisfied:
 - The terms of a settlement agreement allow i.e., there is no confidentiality clause preventing this.
 - The workplace investigation found that the allegations are substantiated.
 - The victim-survivor / complainant is supportive of WEHI doing so.

Internal

The prevention of and response to sexual misconduct is priority at WEHI and, consistent with any other core organisation metric, is reported to our Board/Executive on a regular basis to help inform further action our organisation needs to take to eradicate sexual misconduct.

WEHI will also share what we can about the misconduct cases we deal with, while respecting the privacy of the people involved, on an annual basis.

This does not mean full disclosure of all the details, but rather considered sharing of relevant information in order to encourage organisational learning and prevent similar cases from happening in the future.

4.10 Consequences of failure to comply with this Policy

An established failure to comply with this policy will result in either a finding of unsatisfactory work performance or misconduct in accordance with the provisions of the [Enterprise Agreement](#). Possible disciplinary outcomes may include performance management, counselling, warnings, or the termination of employment.

A Board member's behaviour which is inconsistent with the [Code of Conduct for Directors of Public Entities](#) may be considered misconduct and in the most serious cases may lead to suspension or removal from office.

5. Supporting Information

5.1 References

[Equal Opportunity Act 2010 \(VIC\)](#)

[Crimes Act 1958 \(Vic\)](#)

[Sex Discrimination Act 1984 \(Cth\)](#)

5.2 Related Policies

[Code of Conduct](#)

[Acceptable Workplace Behaviour Policy](#)

[Research Integrity Policy](#)

[Conflict of Interest Policy](#)

[Whistleblower Policy](#)

[Workplace Response to Family Violence Policy](#)


5.3 Related Procedures


[Acceptable Workplace Behaviour Procedure](#)

[Conflict of Interest Procedure](#)

[Workplace Response to Family Violence Procedure](#)

Review Cycle

 **Initial**
3 Year(s)

 **Ongoing**
3 Year(s)

 **Next**
2026

Version History

Approved By	Approval Date	Effective Date	Approval Notes	Version
WEHI Board	18/05/2023	1/06/2023	New Policy	1