

<b>Policy Name:</b>	<b>Sexual Harassment and Sex Discrimination</b>
<b>Policy Number:</b>	<b>3.11</b>
<b>Date:</b>	<b>April 2023</b>

## **POLICY STATEMENT:**

JC Steele has a zero tolerance approach to any form of harassment and/or discrimination and makes every effort to provide a work environment that is free from all forms of sexual harassment and sex discrimination.

It is against the policies of JC Steele for any employee to make any unwelcome advances of a sexual nature towards any person in the business. It is likewise against the policies of JC Steele for any employee to discriminate against a person because of their sex, gender identity, intersex status, sexual orientation, marital or relationship status, family responsibilities, because they are pregnant or might become pregnant or because they are breastfeeding.

This policy applies to the direct and indirect actions of all JC Steele employees.

This policy operates in conjunction with the following JC Steele policies:

- Bullying, Harassment & Victimisation Policy
- Code of Conduct
- Disciplinary Procedure & Termination Policy
- Equal Employment Opportunity (EEO) Policy
- Occupational Health & Safety (OH&S) Policy

Sexual harassment and sex discrimination in connection to employment may be considered serious misconduct and may lead to disciplinary action up to and including termination of employment.

## **PROCEDURES:**

### **1. Zero Tolerance**

- a. JC Steele will be proactive in preventing all forms of unwanted or offensive behaviour. Zero tolerance means there will be action(s) and consequences that are appropriate and proportionate considering the Respondent's behaviour, the impact of their actions and considering the wishes of the person(s) subjected to the harassment.
- b. Zero tolerance does not mean that JC Steele will respond in the same way to every incident, each report will be responded to promptly, and the Complainant will be consulted on how they wish to pursue their complaint (formally, informally or in some other way) and all decisions will be determined based on the findings of each reported incident.

## 2. Positive Duty to Prevent Sexual Harassment

The Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 and the Sex Discrimination Act 1984 (SDA) require an employer to undertake reasonable and proportionate measures to eliminate unlawful sex discrimination, including sexual harassment.

Client name has developed the following initiatives to proactively eliminate sexual harassment and sex discrimination as far as reasonably practicable:

- Business Policies
- Employee Inductions
- Respect and Inclusion Training
- Sexual Harassment and Discrimination Training

## 3. Recognising Sexual Harassment

- a. Sexual harassment is generally characterised by behaviour that is unwanted, sexual in nature and reasonably anticipated to offend, humiliate, demean or intimidate. It can be overt, covert or subtle. It can be repeated or a one-off incident. Sexual harassment can cause harm to the person it is directed at, as well as anyone who witnesses the behaviour.
- b. To constitute sexual harassment, it has to be reasonable to expect that there is a possibility that the person being sexually harassed would be offended, humiliated or intimidated by the behaviour. This means that whether the behaviour is sexual harassment depends on how a reasonable person would interpret the behaviour in that situation. Behaviour that is sexual harassment in one situation may not be considered so in a different situation.
- c. Sexual harassment takes many forms. It can be a one-off incident or a pattern of behaviour. Examples of behaviour that could be considered sexual harassment include, but are not limited to:
  - Unwelcome, suggestive, or degrading comments about a person's physical appearance
  - Repeated and inappropriate invitations that are non-work-related
  - Touching or fiddling with a person's clothing including lifting skirts or shirts, flicking bra straps, or putting hands in another person's pocket
  - Sexual objectification
  - Personal contact via phone, text, email or social media that is out of context of the work setting
  - Ongoing unwelcome contact following the end of a consensual relationship
  - Sexually explicit pictures, posters or gifts
  - Intrusive questions or sexually explicit comments about a person's private life, gender identity, sexual orientation, sexual relationships and sexual practices
  - Jokes of a sexual nature
  - Staring or leering at a person
  - Stalking, following or watching a person
  - Whistling at, catcalling or honking a car horn at a person
  - Unwelcome physical gestures (e.g. an arm around the body)

- Forced intimacy (e.g. touching, massaging, hugging, cornering or kissing)
- Exposing or implied exposure of one's genitalia to another person
- Coercing people to look at pornography
- Requesting intimate images or videos of someone
- Requests or pressure for sex or other sexual acts in exchange for favourable treatment
- Sharing intimate images or videos of someone without consent
- Actual or attempted sexual assault or rape.

#### **4. Recognising Sex Discrimination**

- a. The SDA protects people from discrimination in public life, including employment. Sex discrimination in employment occurs when someone is treated less favourably than a person of another sex or intersex would be treated in the same or similar circumstances. It can occur when an employee holds assumptions about what sort of work a person is capable or not capable of performing based on their sex or sexual orientation.
- b. It is unlawful to discriminate when advertising jobs, during recruitment and selection processes, when making decisions about training, transfer and promotion opportunities, and in the terms, conditions and termination of employment.
- c. Some forms of sex discrimination are:
  - not hiring a person because the employer thinks they won't fit into the 'traditional' gender of the workplace (ie. male or female or heterosexual dominant workplace).
  - not paying a person the same salary as another person, for doing the same work, role, or position, or not providing a person with the same opportunities for training, coaching, mentoring or promotion, on the basis of their sex or gender identity.
  - allocating work tasks based on a person's sexual orientation and or gender identity.
- d. It is unlawful to discriminate in the provision of services. This means that it is against the law for a business to discriminate against a person by refusing to:
  - provide a person with goods, services and facilities; or
  - provide them with goods, services and facilities on less favourable terms and conditions; or
  - provide goods, services and facilities unfairly;because of their sex, gender identity, intersex status, sexual orientation, marital or relationship status or family responsibilities, because they are pregnant or might become pregnant, or because they are breastfeeding.

#### **5. Guidelines for Addressing Sexual Harassment or Sex Discrimination**

- a. An employee who believes they are being sexually harassed or discriminated against on the basis of their sex should follow these guidelines:
  - Politely but firmly, confront the Respondent and ask them to stop. State how you feel about the actions and explain how you feel harassed or discriminated against by these actions. Be specific about the exact behaviour you want to be stopped and if practical, have a witness present. If expressing concerns verbally, document what you have said,

and the responses made by the Respondent and document the location, time and date of the discussion.

- Any employee who is uncomfortable with a face-to-face discussion with their Respondent(s) may put their concerns in writing to the Respondent, retaining a copy of the letter/email for their record.
  - JC Steele encourages employees to report incidences of sexual harassment or sex discrimination.
- b. If the harassment or discrimination does not stop, the employee should immediately notify their manager. In situations where an employee feels that they are unable to address their concern with their manager, they should contact their HR Representative or speak directly with the Managing Director.

## **6. Reporting Sexual Harassment or Sex Discrimination**

- a. JC Steele offers different reporting options. Reports or complaints can be made by people directly impacted by, or by others who witness or know of, sexual harassment or sex discrimination.
- b. The Complainant will not be restricted by a time limit between the incident and reporting the concern. JC Steele understands that people will share their experience(s) when they feel comfortable doing so and that it may take time to process what has happened and feel ready to talk. Knowing about incidents and concerns is helpful for JC Steele future efforts to control the risk of repeated or escalated incidents.
- c. It is important to understand that reporting an incident and raising a concern does not necessarily trigger a formal investigation, although that may be appropriate in some cases. Support, advice and early intervention may resolve the concern and it will also help JC Steele understand what is happening in the business.
- d. All reports and complaints will be handled in a timely and confidential manner.
- e. Any retaliation against any person who reports harassment or discrimination will be considered an act of victimisation.
- f. Any person in authority with JC Steele who gives poor performance appraisals, assigns demeaning tasks, demotes, or is found to take any kind of adverse action against a person who complains about sexual harassment and sex discrimination will be subject to immediate disciplinary action, up to and including termination of employment.

### **Reporting to a manager**

- g. You may wish to speak to a manager in the first instance. A manager can listen to the concern(s), talk with you about options, where to get support and the different ways JC Steele may help to resolve the concern.

- h. The manager can also provide feedback to the Respondent on your behalf or provide you with support to have a conversation with that person.
- i. There are some circumstances where a manager may need to refer the concern to the HR Representative or Managing Director, for example, where the behaviour is serious, creates a risk to the psychological and physical safety of others or where involves a senior member of the business.
- j. Depending on the nature and seriousness of the complaint, JC Steele may engage an external HR Representative or an independent licensed investigator to investigate the matter. The purpose of this provision is to maintain impartiality and confidentiality. Both the Complainant and the Respondent have equal privacy rights under the law.

#### **Reporting to Human Resources (HR)**

- k. In situations where an employee feels that they are unable to address their concern with their manager, they should contact the business' HR Representative. The HR Representative can help in various ways depending on the Complainant's wishes and circumstances. They will:
  - Listen to the concern(s), talk about options, where to get support and the different ways JC Steele could help resolve the concern.
  - Provide feedback to the Respondent on your behalf or provide you with support to have a conversation with that person.
  - Recommend, or where authorised, initiate a formal process to investigate, where appropriate (using an internal or external investigator) and make formal findings.

### **7. Investigating claims of Sexual Harassment or Sex Discrimination**

Investigations will generally follow these guidelines:

- a. The Complainant will be asked for specifics about what happened, where it happened and when it happened. The Complainant may be asked if they know why this may have happened.
- b. Other persons may also be interviewed, as they may also be victims of the alleged sexual harassment or sex discrimination or may have witnessed the activities reported by the Complainant.
- c. The Respondent will be interviewed. They will be informed of the complaint and asked to explain their alleged actions. They will be warned not to retaliate against or victimise the Complainant and advised not to discuss the matter with anyone directly or indirectly associated with the complaint or the Complainant.
- d. Dependent upon the circumstances, and to ensure workplace health and safety, JC Steele may elect to stand down the Complainant and/or the Respondent from duties, on full pay, until the completion of an investigation.
- e. In some cases, JC Steele may elect to engage an external party to conduct the investigation.

- f. All employees are expected to participate fully, openly, and honestly in any investigation.

## 8. Prioritising the Safety and Well-Being of the Complainant(s)

- a. If you make a report of sexual harassment or sex discrimination, JC Steele will ensure the Complainant is supported and consulted in the decision about how to resolve the concern. JC Steele will respect the Complainant's wishes and their best interests, but this does not mean they have responsibility for JC Steele's response or the outcome of the investigation.
- b. JC Steele takes all concerns seriously and treats all Complainants with respect and integrity. We may choose to take interim action that is supportive and sensitive to the possibility that the reported behaviour occurred. Any such action taken does not represent any acceptance of the Complainant's claim or any assumption or pre-emptive conclusion of any subsequent investigation, rather any action taken will be solely in the interests of the health and safety of all parties and the workplace at large.
- c. If you share your experience with us, JC Steele will, to the extent possible, ensure you do not need to retell your story to multiple people.
- d. All parties involved will be kept well-informed and supported throughout the process.
- e. Investigations will be concluded as quickly as possible while ensuring the approach is ethical and over expedient.

## 9. Procedural Fairness and Natural Justice

All investigations will be conducted with consideration to procedural fairness and natural justice, irrespective of your position with JC Steele. This means:

- allowing someone to understand the allegations made against them and to respond to these allegations providing appropriate support for both the Complainant and the Respondent, as well as any witness required to provide evidence within the investigation.
- facilitating a timely and objective process and ensuring that investigations are conducted by an independent person, without bias or any perceived or real conflict of interest.
- taking decisions on the basis of a balance of probabilities.
- ensuring outcomes are reasonable and proportionate.
- maintaining confidentiality throughout the process.

## 10. Possible Outcomes

- a. **Consequences for the Respondent** - The decision about any outcomes of a sexual harassment or sex discrimination investigation will consider all the circumstances of the case including the seriousness of the behaviour, the context, the impact on the individual, the seniority of the Respondent and relevant industrial instruments.

There is a range of outcomes and implications for a person's employment that JC Steele might consider once a report of sexual harassment or sex discrimination has been substantiated.

- b. **Restorative action for the individual impacted** - JC Steele will work to understand and implement, where possible, any actions that may help a Complainant to recover from the incident, rebuild relationships at work and continue a successful career at JC Steele.
- c. **Organisation action** - On an ongoing basis, JC Steele will take steps to identify the potential risk of sexual harassment and sex discrimination. After an incident, it may be necessary to undertake a review of a particular work environment and implement targeted interventions.

Transparency of the existence of incidents and sharing de-identified case studies will ensure JC Steele and its employees continue to build capability in preventing future incidents.

- d. **Reprisals and victimisation** - If any person is found to have victimised, harassed or taken reprisal action against people who intervene to stop, report or participate in any inquiries or investigations relating to an allegation or complaint, they may be subject to separate disciplinary action.

Victimisation includes any action that treats someone adversely, such as ostracising, reducing shifts or overtime opportunities, giving menial jobs, removal from key client accounts or projects and/or giving a poor performance review.

- e. **Information or claims without substance** - While claims without substance are rare if any person is found to have knowingly provided false information or knowingly made allegations without any substantive merit or for vexatious or malicious reasons, they may be subject to separate disciplinary action.

## 11. Corrective Action

- a. At the conclusion of an investigation, a determination will be made on the balance of probabilities as to whether or not sexual harassment or sex discrimination has occurred.
- b. The Complainant and the Respondent will be served notice of the completion of the investigation.
- c. Prompt corrective action, if warranted, will follow immediately. This may include disciplinary action or termination of employment of the Respondent or the Complainant, in the case that a falsified complaint or contributory behaviour was determined.
- d. Whenever any disciplinary action is taken against a Respondent, the Complainant will be informed only that "corrective action was taken."
- e. It will be an ongoing policy of JC Steele that all prior Complainants be contacted by an authorised employee of JC Steele, periodically, to be certain they are currently working in an

environment free from all forms of sexual harassment and sex discrimination.

## 12. Confidentiality

- f. The nature of sexual harassment and sex discrimination and the obligations that JC Steele has when a report is made means that there are limits to what may or may not be disclosed. Confidentiality means only those who need to know about the concern in order to help resolve it and prevent further incidents will know the details.
- g. This means there may be times when we cannot meet a person's request that the information goes no further than the person to whom they reported the concern. This is particularly the case, for example when the concern is serious, involves someone senior in the organisation or there are psychological and safety risks to others.
- h. JC Steele will prioritise and protect the identity of any person impacted by sexual harassment and/or sex discrimination, and anyone else that the investigation reveals has been subjected to the same treatment as the Complainant.
- i. JC Steele preserves the right to keep all details of the concern raised confidential while investigations are underway. JC Steele therefore expects everyone to keep all details of the concern(s), the complaint and any subsequent investigation confidential. Failure to do so may result in disciplinary action up to and including termination of employment.

## 13. Definitions

**Complainant** – the person or persons making a complaint under this policy and in accordance with the JC Steele Grievance Procedure.

**Respondent** – the person or persons alleged to have subjected the Complainant to sexual harassment and/or sex discrimination.