

Fact sheet

Sexual misconduct: definitions & penalties

Under the University of Melbourne [Sexual Misconduct Response and Prevention Policy](#), sexual misconduct is a form of serious misconduct and can include either sexual harassment or sexual assault.

Sexual harassment

Under the *Sex Discrimination Act 1984* (Cth), sexual harassment is unlawful and occurs when:

- a person makes an unwelcome sexual advance, an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to a person; and
- the person harassed feels offended, humiliated or intimidated; and
- where a reasonable person would determine that reaction to be understandable in light of the circumstances.

Under the *Sexual Misconduct Response and Prevention Policy* sexual harassment is considered an example of serious misconduct and is not tolerated at the University of Melbourne.

Sexual assault

Sexual assault is a criminal offence and is punishable by up to 10 years' imprisonment.

Under the *Crimes Act 1958* (Cth), a person commits an offence of sexual assault if they intentionally touch another person and:

- the touching is sexual; and
- the recipient does not consent to the touching; and
- the person touching does not reasonably believe that the recipient consented.

Sexual assault is another form of serious misconduct and is not tolerated at the University of Melbourne.

Harsher penalties now apply

In Victoria, there are prosecutions for sexual harassment underway for breaches of the *Occupational Health and Safety Act 2004* (Vic). This reflects the fact that sexual harassment itself, without there being sexual assault, may also be regarded as a quasi-criminal offence for which a perpetrator may be prosecuted.

In March 2023, WorkSafe Victoria charged a director, a worker and two companies after multiple allegations of sexual harassment of young workers at hospitality outlets at two Melbourne hospitals.

The director faced two charges under section 26(1) of the *OHS Act* in relation to seven workers for failing to ensure that, as far as was reasonably practicable, the workplace was without risks to health.

A worker at the company was charged with a single breach of section 25(1)(b) of the *OHS Act* for failing to take reasonable care for the health and safety of a person who may have been affected by their acts or omissions at a workplace.

Source: <https://www.worksafe.vic.gov.au/news/2023-03/boss-charged-after-alleged-harassment-young-workers>