

# **HONG KONG WATER SKI ASSOCIATION**

## **Sexual Harassment Policy and Procedures**

(Effective from 16/7/2019)

### **1. Objective**

Sexual harassment is discriminatory and unlawful. Sexual harassment may lead to disciplinary action by HKWSA and may also entail civil liability and even criminal consequences. Once any act of sexual harassment occurs, any person in HKWSA has a right to lodge a complaint. Sexual harassment will not be tolerated in the HKWSA.

### **2. Legal Definition of Sexual Harassment**

2.1 Section 2(5) of Sex Discrimination Ordinance (SDO) provides the definition of sexual harassment:

(a) If any person

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favors, to another person; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to that person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated; or

(b) The person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.

2.2 Under the SDO, sexual harassment covers sexual harassment of both men and women.

2.3 In determining whether certain conduct constitutes sexual harassment, the entire record and the totality of the circumstances will be considered.

### **3. Examples of Sexual Harassment**

3.1 The following behaviour is illustrative of, but not limited to, what may be regarded as sexual harassment:

- a) Unwelcome sexual advances – e.g., persistent requests for dates, leering or lewd gestures, touching, grabbing or deliberately brushing up against another person;
- b) Unwelcome requests for sexual favours (Misuse of authority) – e.g., explicit or implicit suggestions that sexual co-operation or the toleration of sexual advances may further a person's career or affect a person's academic results;
- c) Unwelcome verbal, non-verbal or physical conduct of a sexual nature – e.g., sexually derogatory or stereotypical remarks; questioning regarding a person's marital status or sex life; and
- d) Conduct of a sexual nature that creates a hostile or intimidating environment – e.g., sexual or obscene remarks around the workplace or displaying sexist or other sexually offensive materials. Offensive communications of a sexual nature (letters, phone calls, faxes, e-mails and text messages, etc.)

3.2 For the purposes of this policy, sport and/or workplace harassment can occur in the following places:

- a) at sporting events, competitions, and in training sessions;
- b) at the office
- c) at sport related social functions
- d) at the business functions of HKWSA such as meetings, conferences;
- e) during sport related travel;
- f) through any form of communication device/system including but not limited to telephone, email, fax, websites, postal service;

g) any formal or informal location where the harassment of a person is a result of their sport related involvement.

#### **4. Principles for Handling Sexual Harassment Complaints**

##### **4.1 HKWSA Investigation (SHI)**

An HKWSA Sexual Harassment Investigation Committee (HKWSA SHIC) will be established comprising 2-3 members of HKWSA executive committee and or other HKWSA members as determined by the Executive Committee.

##### **4.2 Complainant**

A Complainant is a person who has made a complaint alleging that he or she has been subject to discrimination or harassment, including any person who has sought the assistance from the members of the HKWSA Sexual Harassment Investigation Committee.

##### **4.3 Respondent**

A Respondent is the person against whom a complaint of discrimination/harassment has been made.

4.4 All complaints must be handled promptly, seriously, objectively and without any bias.

4.5 At least one of the members of the HKWSA Executive Committee for each case for investigation shall be a woman and at least one of the members shall be a man.

4.6 Any person who has a direct interest in the complaint shall not be involved in the investigation of that case.

4.7 The complainant and the witnesses should be protected against victimisation for making or being involved in the complaint. No retaliatory measure by anyone will be allowed against a member, a student or a member of staff who reports harassment or cooperates in a harassment investigation.

4.8 As a general rule, a complainant should normally not be removed from his/her usual duties/studies or treated in an unusual manner whilst awaiting the outcome of the complaint as this may constitute less favourable treatment to the complainant, which is not justified and may constitute grounds for a complaint of victimisation. There may however be cases where it is difficult to keep the parties together until the outcome is known, for instance, when an investigation is suspended pending consideration by the

statutory bodies. Under such circumstances, the HKWSA SHI Committee should take appropriate measures to deal with the situation but the wishes of the complainant and the alleged respondent have to be taken into account.

## **5. Guidelines for Complaint Procedure**

5.1 A complaint shall provide the identity of the complainant; and details of the alleged discrimination and the identity of the person alleged to be responsible for the discrimination reported.

5.2 A sexual harassment complaint can be classified as either formal or informal, depending on whether an investigation is conducted into the case. The two approaches are both valid, and the exact approach to be adopted depends on the wish of the complainant.

5.3 The procedures for handling informal and formal sexual harassment complaints are detailed in Appendices I & I respectively.

## **6. Confidentiality**

Subject to the requirements of the Personal Data (Privacy) Ordinance, all complaints of sexual harassment will be received and handled in a confidential manner and any information relating to a complaint of sexual harassment will only be disclosed on a strict need-to-know basis. However, investigation of such complaints will in most cases require disclosure to the accused and to other witnesses in order to gather pertinent facts. It gives assurance to the individuals involved in the complaint that management appreciates the sensitive nature of sexual harassment and details of the complaint will not be disclosed to unrelated individuals. Both the victim-complainant and the alleged harasser should be informed of the outcome of the investigation.

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Procedures for Handling Informal Sexual Harassment Complaints

1. A complaint will be handled informally when a complainant prefers that informal actions be taken to stop the harassment at the earliest possible stage instead of requesting an investigation into his/her case. In general, informal action may be suitable for minor and single incidents of sexual harassment but not for more serious and repeated acts of sexual harassment.
  
2. On receiving an informal complaint of sexual harassment, the HKWSA SHI Committee (SHIC) should take preventive or remedial measures to address the situation as soon as possible and no later than two weeks after receiving a complaint, e.g. to communicate with the alleged harasser on behalf of the complainant, pointing out that his/her behaviour is deemed unwelcome and should be stopped. Such informal action can be particularly useful when the party concerned does not realize that certain behaviour is offensive to the recipient.
  
3. On conclusion of the case, the HKWSA SHIC shall report to the HKWSA Chairman in writing, giving a brief account of the complaint and measures taken to resolve the complaint. The HKWSA shall maintain records of complaints or cases handled.
  
4. If the complainant requests an investigation into his/her allegation, the complaint should be dealt with in a formal manner according to the procedures laid down in Appendix II.

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Procedures for Handling Formal Sexual Harassment Complaints

1. On receiving the sexual harassment complaint, the HKWSA Sexual Harassment Investigation Committee (SHIC) shall acknowledge a written complaint in writing within two weeks of receipt. In case of an oral complaint, the SHIC shall record it in writing and confirm the record with the complainant as soon as possible, and in any case within two weeks.

**2. Interviewing the complainant**

The nature of the details of the complaint should be ascertained. To facilitate subsequent investigations, a written statement should be taken which should be signed and confirmed as correct by the complainant.

**3. Interviewing the respondent/ alleged harasser**

Details of the allegations should be given in writing to the alleged respondent who should then be interviewed to give explanations or comments. The interview should be recorded in writing and signed and confirmed as correct by the alleged respondent.

**4. Interviewing witnesses**

The Investigation Panel shall have the discretion to determine the number of witnesses it will interview (if any).

**5. Provisions during the interview**

Given that cases of sexual harassment involve issues of a sensitive and embarrassing nature, both the complainant and the alleged respondent may need help and support during the interview. Under such circumstances, both parties may be accompanied by another person.

6. Reasonable measures should be taken to avoid the complainant and the alleged respondent to appear in the same meeting as far as practicable.

7. The HKWSA SHIC members of the Investigation Panel shall maintain a record of proceedings as the Chairperson considers appropriate.
8. All interviews should be recorded in writing and, where practicable, signed and confirmed as correct by each witness.
9. At the conclusion of the investigation, the HKWSA SHIC shall make a finding on facts and determine whether the complaint (or one or more of the complaints, as the case may be) is substantiated and whether the respondent has engaged in discrimination. The Committee shall dismiss the complaint if it concludes that the complaint is not substantiated, the respondent has not engaged in discrimination. The HKWSA SHI Committee may, whether it finds a complaint substantiated or not, make any specific recommendation in relation to the complaint and any general recommendation for better enhancing or upholding the association's policy relating to equal opportunity.
10. If the complaint is established, the HKWSA SHIC shall also make recommendation on whether consideration should be given to instituting disciplinary action against the alleged respondent and have the option to make recommendation on the penalties to be imposed when considered appropriate. Both the complainant and the alleged harasser should be informed of whether the complaint is established.
11. Upon receipt of the report and recommendations of the HKWSA SHIC, the HKWSA Executive Committee concerned shall decide whether to adopt the recommendation to take disciplinary action against the harasser.
12. Both the victim-complainant and the alleged harasser should be informed by the disciplinary authority concerned whether the complaint is established, and whether disciplinary action will be taken and the penalties imposed.
13. Both the complainant and the alleged harasser should be informed by the HKWSA SHIC whether the complaint has been established and the proposed action to be taken. If the

complaint is not established, the reasons and the outcome of the investigation should be given to both the complainant and the alleged harasser.

14. If at the conclusion of an investigation or disciplinary proceedings, there is clear evidence to show that such complaint is frivolous or vexatious or malicious, which amounts to an abuse of process, the party concerned may be liable to disciplinary action.