

15 February 2019



CITY OF MELBOURNE

Ms Kerry Thompson
Chief Executive Officer
Municipal Association of Victoria (MAV)
GPO Box 4326
MELBOURNE VIC 3001

GPO Box 1603
Melbourne VIC 3001

Phone 61 3 9658 9658
Fax 61 3 9654 4854
www.melbourne.vic.gov.au

DX210487
ABN 55 370 219 287

Dear Ms Thompson

Kerry,

SEXUAL HARASSMENT IN WORKPLACES INQUIRY

As you are aware, on 3 December 2018, Mr Doyle was granted an injunction by the Supreme Court which has the effect of placing the independent investigation into inappropriate behaviour by former Lord Mayor, Robert Doyle, on hold. The Supreme Court is due to consider a point of law regarding the City of Melbourne's power to investigate these matters on 18-19 February 2019.

While the above is not necessarily a workplace matter directly impacting the City of Melbourne, it is likely to provide useful insights on the expectations required of elected officials at all times, the accountability of local governments to respond to allegations and the broader issue of clear guidance on where to lodge a complaint. Given the context of impending legal proceedings, we cannot comment on these matters as this time. It is important the MAV consider the implications and convene discussions across the sector on the standard of behaviour expected of elected officials in modern society, and indeed what constitutes a councillor's workplace beyond the definitions in legislation.

At the City of Melbourne, as with all municipal councils, employees and councillors work together. The following comments focus specifically on issues relating to sexual harassment involving councillors.

Occupational Health and Safety issues such as sexual harassment need to be expressly dealt with in either legislation or regulations. There are gaps that make the current legislation inadequate in handling allegations of sexual harassment involving councillors. The City of Melbourne has repeatedly advocated to the Victorian Government for change to the framework designed for the local government sector.

As users of the framework provided under the current *Local Government Act 1989* (Act) for handling councillor conduct matters, the challenges we have encountered over the past 14 months are very useful for those considering systemic issues across sectors relating to sexual harassment.

The current legislative framework in Victoria does not provide appropriate pathways for allegations such as sexual harassment. Given the concerning statistics on the prevalence of sexual harassment in the workplace, it is difficult to believe that no sexual harassment involving councillors is occurring in the 79 councils across Victoria. Further, other councils across Victoria are unlikely to have the resources to commission repeated independent investigations that would meet community expectations and withstand media and legal scrutiny when allegations such as this arise.

While the rationale underpinning the Councillor Conduct Framework established under the Act is premised on councillors sorting conduct matters out among themselves, we think this is unrealistic given the reality of power dynamics in workplaces, particularly for elected officials. Coupled with efforts to attract more women to political office, we think it is crucial the Victorian Government considers City of Melbourne's recent experience when reviewing the need for significant reform across the sector.

It is important that the Federal Sex Discrimination Commissioner expressly consider the management of sexual harassment matters in workplaces that are difficult to govern due to power dynamics – such as where a CEO of a local government authority is accountable for the Occupational Health and Safety of councillors, but rightly has no ability to control an individual councillor's behaviour.

Chief Executive Officers are public servants who are accountable to councils, and through councils to the community. It is right and proper that a CEO does not have the power to control or manage councillors' behaviour or actions. However, it is important that when allegations of sexual harassment involving councillors arise, that there are clear, effective and timely avenues for effective management of all parties.

In considering an appropriate response to the events of the last 14 months the City of Melbourne has asked the Victorian Government to consider:

- providing for the Chief Municipal Inspector (CMI) to consider a request by a Council, Councillor or CEO to commission a preliminary investigation, independent of the relevant Council, into whether the conduct of a Councillor presents a serious risk to OH&S. Such an investigation should be conducted in confidence, subject to the confidentiality provisions of the Act, and on a 'without admission' basis - in other words, the fact that a preliminary investigation is taking place is not to be taken as the existence of a problem. The preliminary investigation may result in no action, or in a recommendation from the investigator to Council to take action under the Councillor Conduct Framework, or in a recommendation to the CMI to commence a formal investigation regarding misconduct.
- providing the ability for the CMI to immediately issue 'interim directions' requiring a Councillor to absent themselves from the workplace during a preliminary investigation, if a reasonable person would consider that necessary to protect the health and safety of Councillors, staff or the community.
- including sexual harassment and sexual misconduct within the definitions of serious misconduct, and clarifying that a single incident can be sufficiently problematic to sustain an allegation of gross misconduct, if that incident is seriously inconsistent with the Councillor continuing to function effectively in that role.
- strengthening the sanctions applicable to serious misconduct, if the conduct is considered by a Councillor Conduct Panel to warrant it.

In addition, we believe that an Independent Respectful Conduct Adviser (IRCA) service (such as we have now implemented at the City of Melbourne) should be established and funded by either the Victorian Government or the Municipal Association of Victoria to allow all councillors across the state the opportunity to receive impartial, independent, confidential and informal information and guidance for the resolution of sexual harassment and other unacceptable behaviours.

This service was introduced by the City of Melbourne following concerns by our Councillors that they didn't know who to talk to about sensitive issues such as sexual harassment. The IRCA is a confidential place for Councillors to voice concerns, talk through their experiences, develop options and problem solve. The IRCA does not investigate allegations or represent a councillor but rather a sounding board to provide advice on councillor's rights and obligations and the reporting avenues open to them.

In respect of systems in place to prevent and respond to allegations of unacceptable workplace behaviours for employees, the City of Melbourne has comprehensive policies and procedures in place. These are all available on the intranet and are promoted and referred to regularly within our workplace. The policies, procedures and guidance materials in place include:

- Gender equity policy
- Sexual harassment policy and procedure
- Equal opportunity (harassment and discrimination prevention) policy and procedure
- Preventing violence against women staff resource booklet
- Preventing violence against women policy
- Preventing violence against women bystander policy and procedure
- Bystander toolkit
- Response to family violence policy and procedure
- Assisting Victims of Family Violence Reference Guide: Managers, BPs, Contact officers
- Individual Family Violence Workplace Safety Plan

In addition, City of Melbourne has Contact Officers in place who are there to assist employees if they have a matter of concern. City of Melbourne has an extensive People Assist Policy and Employee Assistance Program.

City of Melbourne also provides thorough training (induction and refresher), along with other face to face training for all employees. Training includes:

- Sexual Harassment in the Workplace
- Equal Opportunity in Employment
- City of Melbourne Code of Conduct
- Bystander
- Work place Bullying
- Leading Diversity
- Family Violence and Gender Equality

City of Melbourne has a robust investigations procedure in the event of allegations of unacceptable workplace behaviour. Investigations are conducted in a timely manner, adhering to the principles of natural justice. We provide support, care and consideration to our employees throughout any investigation process.

Yours sincerely



Justin Hanney
Chief Executive Officer

DM#12183616
SR# 4064210