

## Code of Conduct to Prevent Sexual Harassment - final draft

**Thursday 1 February 2018:** Screen Australia has today published its **final draft** of the proposed Code of Conduct to Assist the Prevention of Sexual Harassment. After considering further industry feedback, the aim is for all Screen Australia productions approved from 2 April 2018 onwards to be required to put the Code into effect.

In practice, this will mean that all people working on a production will need to be made aware of the Code and producers will be required to nominate a trained staff member to be a Sexual Harassment Prevention Contact to address any harassment complaints. Producers will be required to submit a Code Compliance Report at the conclusion of production, in the form of a statutory declaration, confirming all Code obligations were met.

“The Sex Discrimination Act was enacted in 1984, but that has not stopped sexual harassment occurring in Australian workplaces, including in the screen industry,” said Screen Australia COO **Fiona Cameron**. “The proposed Code gives visibility to the standards and responsibilities that already exist, and makes it clear that on any Screen Australia production there is zero tolerance for harassment.”

“Because the screen industry depends heavily on freelancers and contractors, the Code also gives producers a method of clearly setting an expectation that the workplace must be safe for all, regardless of how people come to work on a production or for how long. We look forward to receiving feedback on the final draft.”

Screen Australia’s intention to create the Code was first announced at the Safe Workplace Strategies industry forum on 12 December 2017. The final draft of the Code was presented late yesterday at the Screen Producers Australia (SPA) Safe Workplace Training workshop.

SPA and the Media Entertainment and Arts Alliance (MEAA) are also currently working on an [industry-wide policy](#) in consultation with the industry, including Screen Australia. It is hoped that a standard industry code will be put in place for all entertainment organisations in the future.

**Fiona Cameron** added, “The Australian screen industry has a lot to be proud of - our talent, stories and screen businesses are world class. We cannot allow improper, or indeed illegal, workplace behaviour to tarnish our good name. By placing genuine emphasis on protecting our highly valued staff at work, we are also addressing a very real reputational and commercial risk.”

“Of course the aim of the Code is not to manage harassment, but to eradicate it. Creativity cannot thrive in environments where people don’t feel safe.”

- View the Code [here](#).
- Feedback to the Code must be lodged in writing to [code@screenaustralia.gov.au](mailto:code@screenaustralia.gov.au) by 1 March 2018.

## FAQs - THE CODE

### What motivated the Code's creation?

Sexual harassment in the screen industry has been a topic of discussion internationally for some time. The discourse in Australia made it apparent that awareness of what actually constitutes sexual harassment and assault was low. Willingness to report incidents and/or confusion over how to report incidents and to whom, were also topics of discussion.

The Code is designed to set out existing responsibilities in plain language and raise awareness of these responsibilities. The appointment of a Sexual Harassment Prevention Contact for productions makes the path to reporting incidents easier for victims.

A fact sheet on what constitutes sexual harassment and assault is available [here](#).

### Does Screen Australia have the authority to require special workplace policies?

The Code sets a minimum standard based on existing laws and is modelled on guidelines issued by the Human Rights Commission that all employers should follow. The Code does not introduce new legal requirements above existing statutory requirements but does make the requirement to comply with the Sex Discrimination Act a condition of funding.

The designation of a Sexual Harassment Prevention Contact is a new title, however the function of that role would already exist in many production houses as part of human resources. The creation of the role is in response to reports of misconduct not being properly addressed in the workplace, not just in the screen industry but in the broader entertainment sector. It is critical that a suitably qualified and experienced Contact is available to all participants involved in making a title.

## FAQs - CODE FUNCTION

### What contracts will the Code be included in?

All Screen Australia production agreements i.e. production grant agreements and production investment agreements. Essentially this means all Screen Australia titles approved from 2 April 2018 will be subject to the final version of the Code.

### In practice, what will the implementation of the Code look like?

Practically speaking the Code will mean that producers will need to:

- Make it clear to every participant in a production that there is zero tolerance for sexual harassment.
- Give a copy of the Code to all participants and place abridged versions of the Code in poster form in prominent places in the workplace.
- Designate a Sexual Harassment Prevention Contact to deal with sexual harassment complaints - someone who is available to everyone participating in the production and is suitably qualified and experienced.
- Deal with any complaints in a way that is fair, timely and confidential.

## FAQs - THE CONTACT ROLE

### What training will the Sexual Harassment Prevention Contact be required to have? Is there a qualification?

To act as the Contact no specific accreditation is required, however producers should provide training and support as is appropriate for the size of their company and the production.

The Human Rights Commission has published very comprehensive [guidance material](#) on dealing with sexual harassment, and most HR practitioners will already be experienced in this area. There are also private training organisations who provide contact officer training.

There is still work to be done across the industry in getting people up-skilled in this area and [SPA is taking a leading role in this](#) in consultation with Screen Australia.

**How long will the role of Sexual Harassment Prevention Contact be active on the production?**

The Sexual Harassment Prevention Contact role must exist throughout production and post-production.

**Is it appropriate for producers to ask a staff member to act as the Sexual Harassment Prevention Contact?**

The legal responsibility already sits with producers so they need to feel comfortable to appoint a suitable Contact who will be able to perform the role adequately, just as they would appoint a staff member to look after workplace health and safety.

Producers must support and work closely with the Contact officer, just as they would do any staff member whose job involves people management.

**Will the Sexual Harassment Prevention Contact give advice or simply document incidents?**

It will depend on the nature of the complaint - the key will be to deal with complaints in a way that is fair, timely and confidential, and following a complaints process that is suitable for the scale of the production.

The Contact will also need to ensure that confidentiality is protected and that a person making a complaint is not victimised (because it is against the law to victimise a person making such a complaint).

**Can there be multiple Contacts throughout the production period?**

Yes. Producers should staff the role as appropriate for the size and length of their production.

**What if an employee does not have faith in the Contact officer?**

A complainant can also go directly to the producer, as ultimately it is the producer's responsibility to adhere to the Code.

There are other avenues as outlined in the [fact sheet](#).

## FAQ - CODE APPLICATION

**Does it apply to employees on payroll only?**

No, the Code applies to everyone that is involved in the production e.g. contractors, consultants and subcontractors. This is because employer responsibilities cover all 'workers', no matter how they are engaged.

**Is it practical for Screen Australia to expect producers to be able to enforce the Code on contractors who may be located in different locations e.g. casting agencies?**

All businesses must adhere to the Sex Discrimination Act and state/territory-based law. The Code simply gives producers another tool to meet these existing responsibilities, and allows them to set the tone for how they expect all people working on a production to behave.

In practice, the Code will apply to anyone working directly on the production (regardless of whether they are staff, freelancers, contractors, interns/placements/attachments) and affiliated businesses working on the production (e.g. casting agents).

#### What if Screen Australia funds a production that has already started filming?

The producer must apply the Code from the date of the Screen Australia Application Approval process until the Delivery Date. In practice, that means everyone working on the production must receive the Code as quickly as possible once the producer knows they will get Screen Australia funding, irrespective of whether participants have already been working on the project.

#### What if a producer already has a similar Code?

Many employers will already have workplace policies, work health and safety policies, and statements or policies on sexual harassment.

Screen Australia's Code is a minimum standard designed to be scaled up for larger projects, so producers must activate it in full and verbatim, however they can add extra stipulations or policies as is appropriate for their workplace and business.

#### Where does the producer's responsibility to 'enforce' the Code end, and the role of law enforcement begin?

All employers, including producers, have a legal obligation to ensure a safe workplace and protect their workers from harm, including from sexual harassment. In the case of criminal conduct, such as sexual assault or indecent exposure etc, these are crimes and should be reported to the police.

A victim of sexual harassment also has the option of independently consulting their union representative, seeking legal representation or going to the Human Rights Commission, as outlined in the [fact sheet](#).

#### What ramifications are there if producers fail to formally activate the Code on a production?

Failure to comply with the Code will be considered a serious contract breach. As per Screen Australia's existing [Terms of Trade](#), that puts the producer's ability to secure funding at risk.

There are two main consequences if a producer does not comply with the Code requirements:

- If a producer fails to submit a Code Compliance Report - this will be considered a breach of contract and the final Screen Australia payment on a production will be withheld (typically this represents 5% of the Screen Australia funding).
- If a producer fails to comply with the contractual obligations relating to the Code, they may be in breach of contract and as a result may be deemed ineligible for further funding from Screen Australia under the Terms of Trade.

Notably if a producer does everything in their power to activate the Code on their production, but there is still an incident of sexual harassment, this will not affect their funding as long as the situation is dealt with quickly, sensitively and in accordance with the law and the Code.

#### How will Screen Australia know if the Code Compliance Report is accurate?

It is a self-reporting process and ultimately it is the producer's responsibility. If there was serious and credible evidence that there had been a failure to comply with the Code, that would be a serious matter, particularly given that the producer is required to give Screen Australia a statutory declaration that they have complied with the Code. There may be civil and or criminal consequences.



If the MEAA and SPA policy is adopted by industry, will Screen Australia's Code be replaced by the industry-wide policy?

This will be considered by Screen Australia at the appropriate time.

Do other codes exist?

Australian industry bodies SPA and MEAA are [currently working on developing a code](#).

Overseas, other screen bodies have put forth policies against sexual harassment, [including the Producers Guild of America](#).

#### FAQs - FUNDING

How do producers deal with any anticipated costs?

If costs are incurred to enact the Code, producers will need to reflect these in the production budget. However these costs are expected to be minimal.

Screen Australia is currently working with industry bodies to determine if there is a need for online-based training for staff taking on the Sexual Harassment Prevention Contact role.

#### FUTHER READING

- [Gender Matters Taskforce Statement on Sexual Harassment](#)
- [Code of Conduct to Prevent Sexual Harassment - final draft](#)