



STAFF HARASSMENT, DISCRIMINATION AND BULLYING POLICY

Updated: 2022
Review: 2026

Rationale

In Catholic education, Christ is the foundation. All members of the Catholic education community are committed to reflecting Gospel values in everyday activities and personal encounters. The harassment of, unlawful discrimination against, victimisation or bullying of any person within Catholic education is contrary to the Gospel and the vision for Catholic education.

'Respect for the human person considers the other 'another self'. It presupposes respect for the fundamental rights that flow from the dignity intrinsic to the person.'

Principles

1. Our Lady of Mercy College is committed to ensuring that the working environment is free from harassment, discrimination, victimisation and bullying which will not be tolerated under any circumstances. Disciplinary action shall be taken against any employee (or agent) who breaches the policy.
2. Our Lady of Mercy College aims to:
 - create a working environment which is free from harassment, where all members of staff are treated with dignity, courtesy and respect;
 - provide an effective procedure for complaints based on the principles of natural justice;
 - treat all complaints in a sensitive, fair, timely and confidential manner;
 - ensure protection from any victimisation or reprisals;
 - encourage the reporting of behaviour which breaches the harassment policy;
 - promote appropriate standards of conduct at all times;
 - implement training and awareness raising strategies to ensure that all employees know their rights and responsibilities.
3. Harassment, discrimination, victimisation and bullying are unlawful, not only during school hours or in the school grounds, but in any work-related context, including conferences, work functions, school camps or field trips. The employer may be held vicariously liable for the actions of employees that constitute harassment, unlawful discrimination, victimisation and bullying.
4. Our Lady of Mercy College will act in a timely manner upon being made aware of any instance of harassment, unlawful discrimination, victimisation or workplace bullying.
5. Harassment, unlawful discrimination, victimisation and workplace bullying are dismissible offences.



6. The principles of natural justice shall be applied in all investigations of complaints of harassment, unlawful discrimination, victimisation or bullying. Therefore, all investigations shall be conducted in a fair, unbiased and transparent manner and all parties shall be kept fully informed of the progress of the investigation.
7. A concern or complaint that is determined to have been levelled with the intention of upsetting, annoying, undermining, slandering or to achieve retribution against others may be considered to be malicious or vexatious and appropriate action taken.
8. Those in a supervisory/leadership role in the workplace have a legal right and responsibility to monitor workflow and to manage workplace behaviour and performance.
9. All those involved in a workplace share a responsibility to act upon observed instances of harassment, unlawful discrimination, victimisation or bullying.
10. All staff have a responsibility to ensure that they do not promote or engage in behaviour that could constitute harassment and are encouraged to seek advice and report any incidents of such behaviour so that a process of resolution can be initiated.
11. All those involved in a situation of harassment, unlawful discrimination, victimisation or bullying share a responsibility to attempt to resolve issues in a non-adversarial manner.
12. Confidentiality is vital at all times when dealing with complaints of harassment, unlawful discrimination, victimisation and bullying.

Definitions

Discrimination

Unlawful discrimination means treating one person less favourably than another, in the same or similar circumstances, on any of the grounds detailed in the *Equal Opportunity Act 1984*. These include:

- disability
- race
- sex
- pregnancy
- political conviction
- impairment
- family responsibility or status
- age
- religion
- gender reassignment

Sex discrimination occurs when a person is treated less favourably because of his or her sex or marital status or because she is pregnant or potentially pregnant. It also includes being dismissed from employment because a person has family responsibilities.

Discrimination may be direct or indirect.

An exemption may apply to educational institutions established for religious purposes (Sect 73 of the Act).





Direct discrimination occurs when a person receives less favourable treatment by comparison to another person in the same or similar circumstances as themselves on any of the grounds covered by anti-discrimination legislation. This includes discrimination that applies because of a characteristic that applies, or is assumed to apply, to a group to which that person belongs.

Indirect discrimination occurs when any rule, policy or practice is implemented that is not reasonable in the circumstances and which may, in effect, have a negative impact on a particular person or group of people.

Harassment

Harassment is unwelcome and unwanted conduct that discriminates against, humiliates, offends or intimidates another person, including bullying, belittling, threatening, victimising and abusive behaviour, and which is based on any of the discrimination factors including gender, race, disability and age.

Sexual harassment is any unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome, sexually orientated behaviours. A person is taken to have sexually harassed another if they have made an unwelcome request for sexual favours or have engaged in other unwelcome conduct of a sexual nature; and

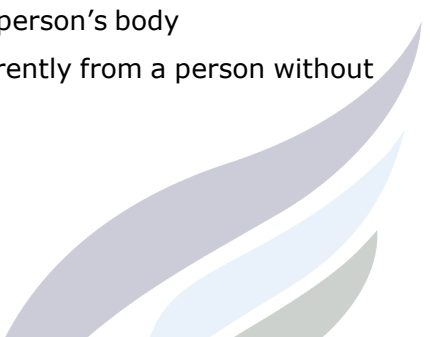
- the object of the advance has been disadvantaged in some manner regarding his/her employment or work; or
- the object of the advance believes that rejection or refusal of the advance/proposal/request/suggestion would disadvantage him/her in any way in connection with his/her employment or work.

Sexual harassment can take many different forms and includes physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment. If the interaction is based on mutual attraction and is consensual, welcomed and reciprocated, it cannot be construed as sexual harassment.

Racial harassment is any threat, abuse, insult, taunt or other offensive behaviour directed at a person's race or characteristic that relates generally to their race, such as nationality, colour, language proficiency (or lack thereof) or physical features.

As is the case for sexual harassment, racial harassment applies to people who believe they have been disadvantaged in some way because they have made it clear that they objected to such behaviour or who reasonably held a belief that they might have been disadvantaged if they pursued this course of action.

Disability harassment is defined as discrimination or harassment against a person on the basis of one or more of the following characteristics:

- total or partial loss of the person's bodily or mental function
 - total or partial loss of part of the body
 - the presence in the body of organisms causing disease or illness
 - the presence in the body of organisms capable of causing disease or illness
 - the malfunction, malformation or disfigurement of a part of the person's body
 - a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
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- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour and includes a disability that:
 - (a) presently exists
 - (b) previously existed but no longer exists
 - (c) may exist in the future
 - (d) is imputed to exist

All other forms of unwanted and unwelcomed behaviour on grounds covered by anti-discrimination legislation are dealt with as unlawful discrimination.

Victimisation

Under the *Equal Opportunity Act 1984*, victimization is unlawful. Victimisation is defined as any unfavourable treatment or threat of unfavourable treatment of a person because they have made, intend to make or have been involved in levelling a complaint of harassment or discrimination against a colleague.

Workplace Bullying

Due to the effect on the safety and health of employees and others at the workplace, bullying is unlawful under the *Occupational Safety and Health Act 1984*.

Bullying is generally defined as the tormenting of others via verbal, physical or more subtle methods of coercion such as manipulation. It may include one or more behaviours over time and involve one or more recipients.

Where bullying involves assault or threat of assault, it may be referred to the police for investigation and resolution.

Workplace bullying is repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety. Workplace bullying also involves misuse of power, be it actual or perceived, and may include subtle or obvious behaviours.

There are two types of workplace bullying – overt and covert.

Overt bullying may include, but is not limited to:

- the use of abusive, insulting or offensive language
- behaviour or language that frightens, humiliates, belittles or degrades including criticism that is delivered via yells and screams
- derogatory comments about a person's appearance, lifestyle or their family
- teasing or repeatedly making a person the brunt of pranks or practical jokes
- deliberate attempts to isolate a worker(s) from others
- spreading destructive gossip and rumours about a person(s)
- physical assault or threats

Covert bullying may include, but is not limited to:

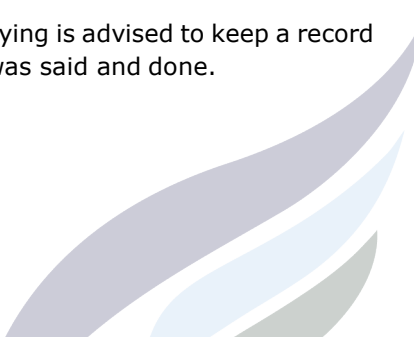
- setting unreasonable timelines for task completion or constantly changing deadlines
- constantly setting tasks that are below or beyond a person's skill level

- ignoring or isolating a person
- deliberately denying access to information, consultation or resources required for task completion

Procedures

1. The complaint procedures contained within the Catholic Education Western Australia Limited (CEWA Limited) Harassment, Discrimination and Bullying Procedures shall be used when a complaint alleging harassment, discrimination or bullying is lodged by a staff member.
2. Our Lady of Mercy College has appointed/elected a contact officer(s) to assist in preventing and dealing with harassment, discrimination, victimisation and bullying in the workplace through advice and information. Appropriate initial training and regular updating of this training for the Contact Officer is provided at the expense of the school.
3. The Contact Officers for Our Lady of Mercy College is Terri Gann and Marina McCoster. Terri can be contacted via phone on 0422 914 932 and Marina on 0434 634 315. The Contact Officer's details shall be circulated on at least an annual basis for all staff. The Contact Officer's details must be publicised to staff, when advising of a Review.
4. Where a formal complaint of harassment, discrimination, victimisation or bullying is made against the Principal, the Contact Officer shall refer the matter directly to the Director of Catholic Education Western Australia Limited (CEWA Limited) or the Congregational Leader. The Director of Catholic Education Western Australia Limited (CEWA Limited) or the Congregational Leader shall appoint an Investigating Officer to deal with the matter. If the Director of Catholic Education Western Australia Limited (CEWA Limited) receives a complaint against a Principal or an order-accountable school, then the Director shall refer the matter to the Congregational Leader.

Note: If the complaint is made to the Principal then the Principal shall refer the matter back to the Contact Officer.

5. Where possible and appropriate, it is desirable to resolve complaints informally or through conciliation. In more serious or persistent cases, investigations shall proceed using the formal investigation procedures outlined in the Catholic Education Western Australia Limited (CEWA Limited) Harassment, Discrimination and Bullying Procedures.
 6. A staff member may wish firstly to seek confidential advice on how to deal with the situation. This may be from the school-based Contact Officer, a Consultant from the Catholic Education Western Australia Limited (CEWA Limited) Workforce Relations Team, the Independent Education Union, a counsellor from the Employee Assistance Program, Equal Opportunity Commission, Human Rights and Equal Opportunity Commission (HREOC) or another appropriate source.
 7. A staff member electing to address a situation personally may later decide to report the matter to Catholic Education Western Australia Limited (CEWA Limited) via the Workforce Relations Team or Equal Opportunity Commission if dissatisfied with the outcome. Conversely, a staff member commencing a process may elect to withdraw the complaint.
 8. A person experiencing harassment, discrimination, victimisation or bullying is advised to keep a record of what happened, including times, dates, witnesses, if any, of what was said and done.
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9. The following options are available to staff members who feel they are being harassed, discriminated against, bullied and/or victimised as a result of making a complaint.
- deal with the situation personally
 - seek resolution through conciliation
 - lodge a formal complaint with the Equal Opportunity Commission or with the Human Rights and Equal Opportunity Commission (HREOC).
 - make a formal complaint which will be dealt with via a formal investigative pathway

Complaints Procedures

Any employee who believes he or she is experiencing harassment of any nature should follow one of the following options:

- **Informal complaint procedures**
Informal procedures emphasise an expedient resolution and can be utilised at the discretion of the complainant.
- **Formal complaint procedures**
Formal procedures focus on proving whether a complaint is substantiated.

1. Informal complaint procedures

- 1.1 Informal procedures emphasise an expedient resolution and can be utilised at the discretion of the complainant.
- 1.2 Informal ways of dealing with harassment can include the following action:
- 1.2.1 The individual who has alleged harassment may want to deal with the situation themselves but may seek advice on possible strategies from a leadership team member or the contact officer(s).
 - 1.2.2 The individual who has alleged harassment may ask the contact officer to speak to the alleged harasser on their behalf. The contact officer privately conveys the individual's concerns and reiterates the school's harassment policy to the alleged harasser without assessing the merits of the case;
 - 1.2.3 A complaint is made, the alleged harasser admits the behaviour, investigation is not required, and the complaint is resolved through conciliation or counselling of the harasser;
 - 1.2.4 The contact officer or a member of the leadership team observes unacceptable conduct occurring and takes appropriate action even though no complaint has been made.
- 1.3 Informal procedures are usually appropriate where:
- 1.3.1 The allegations are of a less serious nature and
 - 1.3.2 the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.
- 1.4 A staff member should not be required to exhaust informal attempts at resolution before formal action commences. A member of staff at any point in time has the right to formalise their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission (HREOC). Once an external agency such as HREOC has commenced proceedings the informal school based.
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2. Formal Complaint Procedures

- 2.1 Formal procedures focus on proving whether a complaint is substantiated.
- 2.2 Formal procedures usually involve:
 - 2.2.1 an investigation of the allegation;
 - 2.2.2 application of the principles of natural justice;
 - 2.2.3 making a finding as to whether the alleged harassment occurred;
 - 2.2.4 submitting a report with a recommended course of action to the Principal;
 - 2.2.5 implementation of an appropriate outcome.
- 2.3 Formal procedures are usually appropriate where:
 - 2.3.1 informal attempts at resolution have failed;
 - 2.3.2 the person alleging harassment has been victimised;
 - 2.3.3 the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;
 - 2.3.4 the complaint is against a senior member of staff and the person believes that formal procedures may help to ensure that the complainant is not victimised or disadvantaged;
 - 2.3.5 the allegations are denied, the person who claims to have been harassed wishes to proceed and an investigation is required to substantiate the complaint;
 - 2.3.6 the person alleging sexual harassment wishes to make a formal complaint from the outset.
- 3 To ensure consistency and fairness, the school must document the steps involved in a formal complaint. The usual sequence of events is as follows:
 - 3.1 the complainant is interviewed, and the allegations are particularized in writing;
 - 3.2 the allegations are conveyed in writing to the alleged harasser. This would include the process to be followed to resolve the issue;
 - 3.3 the alleged harasser is given the opportunity to respond in writing and defend themselves against the allegations;
 - 3.4 the alleged harasser has the right to have representation i.e. a colleague, union representative;
 - 3.5 if there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered;
 - 3.6 a finding is made as to whether the complaint has substance;
 - 3.7 a report documenting the investigation process, the evidence, the finding and a recommended outcome/s is submitted to the Principal/decision-maker;
 - 3.8 the Principal/decision-maker implements the recommended outcome/s or decides on an alternative course of action.
- 4 A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of harassment. Those responsible for investigating complaints should consider all available evidence including any surrounding evidence and make their finding on the balance of probabilities. The Industrial and Community Relations Team can be contacted on a confidential basis to discuss and provide advice at any time. The following type of evidence may be relevant:



- 4.1 supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
 - 4.2 supervisor's reports and personnel records (eg. sudden increase in sick leave);
 - 4.3 factual complaints or information provided by other employees about the behaviour of the alleged harasser;
 - 4.4 records kept by the person claiming to have been harassed;
 - 4.5 whether the evidence was presented by the parties in a credible and consistent manner.
- 5 Outcomes may include any combination of the following but are not limited to the outcomes below:
- 5.1 counselling;
 - 5.2 formal apologies;
 - 5.3 conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;
 - 5.4 official warnings that are noted on the harasser's personnel file;
 - 5.5 disciplinary action against the harasser (eg. demotion, dismissal, removal of some duties, etc);
 - 5.6 disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;
 - 5.7 reimbursing any costs associated with the harassment;
 - 5.8 re-crediting any leave taken as a result of the harassment.
6. Outcomes will depend on factors such as:
- 6.1. severity and frequency of the alleged harassment;
 - 6.2. the weight of the evidence;
 - 6.3. the wishes of the person who was allegedly harassed;
 - 6.4. whether the alleged harasser could have been expected to know that such behaviour was a breach of policy;
 - 6.5. the level of contrition;
 - 6.6. whether there have been any prior incidents or warnings.
7. If there is insufficient proof to decide whether or not the harassment occurred employers should nevertheless:
- 7.1. remind those involved of expected standards of conduct;
 - 7.2. conduct further training and awareness raising sessions for staff;
 - 7.3. monitor the situation carefully.



8. Our Lady of Mercy College will ensure that the outcome of the substantiated complaint does not disadvantage the person who was allegedly harassed in any way.
9. The only case where no action is warranted is where it is deemed that the action did not take place. Even where it is determined that the behaviour did take place but that it did not constitute harassment, some action should be taken to reconcile the parties involved.
10. If the school based proposed resolution does not resolve the situation, or the person making the allegation does not feel able to follow through with the complaint procedures, they should contact the Industrial and Community Relations team at the CEO.
11. Throughout the process of investigating the complaint, the rights of all individuals will be respected, and confidentiality maintained wherever possible.
12. Notes will be kept of all incidents - date, time, place, witnesses, what was said or done.
13. A written explanation of the findings and action taken should be provided to:
 - the person/s making the allegation;
 - the person/s against whom the allegation is made.

