



# Anti-Bullying / Discrimination / Harassment Policy

Policy Domain:	Human Resources
Policy Area:	All staff, Fellows, Trainees/Candidates
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Related Policies/Regulations	Anti-Bullying / Discrimination / Harassment Procedure; Complaints and Grievances Policy and Procedure documents

## Purpose

The purpose of this policy is to outline the College's position on bullying, discrimination and harassment as informed by the relevant pieces of legislation.

## Scope

This policy covers anti bullying / discrimination / harassment within and external to the workplace through any medium. It applies to all employees, consultants, volunteers, visitors, Fellows, and trainees/candidates. The principles set out in this policy are intended to apply to any context involving the College.

## DEFINITIONS / KEY WORDS / ABBREVIATIONS

*Employee* means full-time, part-time and/or casual.

*Workplace* refers to the College premises, virtual workplaces, teleconferences and any other situation in which employees, Fellows and Trainees/Candidates are interacting together.

*CEO* deals with all matters pertaining to any employee, consultant, volunteer and/or visitor

The *Honorary Secretary* deals with all matters pertaining to Fellows and trainees/candidates

- Bullying** is repeated, persistent, unreasonable behaviour by one or more people, directed towards a worker, or a group of workers, that creates a risk to their health and safety. This can include a range of behaviours over time. Bullying can be carried out verbally, physically or in writing (e.g. via email, internet chat rooms, instant messaging and mobile phone technologies such as text messaging). Bullying can be directed in a range of ways in a

workplace – downwards (from supervisors or managers to workers), sideways (between workers or co-workers) and upwards (from workers to supervisors or managers).

Within this definition:

**unreasonable behaviour** means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten;

**behaviour** includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening;

**risk to health and safety** includes risk to the mental or physical health of the person.

Examples of behaviour that could be bullying include:

- abusive, insulting, rude, offensive language including use of raised voice, berating behaviour
- intimidating, hostile or threatening behaviour
- humiliating someone through sarcasm or insults
- undue criticism
- spreading misinformation or malicious rumours
- deliberately withholding or denying access to information, supervision, consultation or resources that are necessary for effective work performance, resulting in detrimental effects to the worker
- setting unreasonable timelines or constantly changing deadlines
- excluding, isolating or marginalising a person from normal work activities
- unreasonably overloading a person with work, or not providing enough work
- setting tasks that are unreasonably below or beyond a person's skill level
- giving someone the majority of unpleasant tasks
- improper treatment in relation to accessing workplace entitlements, such as leave or training.

**2. Discrimination** refers to when someone is treated unfairly because they belong to a particular group of people or have a particular characteristic. In Australia it is unlawful to discriminate on the basis of the following characteristics. Note that protected characteristics differ between some States and Territories.

- Age
- Disability
- Industrial activity
- Employment activity
- Lawful sexual activity
- Marital status
- Physical features
- Political belief or activity
- Race (including colour, nationality, ethnicity and ethnic origin)
- Pregnancy
- Religious belief or activity
- Sex
- Sexual orientation
- Parental status or status as a carer
- Breast feeding
- Gender identity

- Social origin
- Irrelevant criminal record
- Personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes

Unlawful discrimination may be Direct or Indirect.

Direct Discrimination occurs if a person treats, or proposes to treat, someone with a protected characteristic less favourably or unfairly because of that attribute.

Indirect Discrimination refers to situations where treating everyone the same is unfair. It occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same actually, or potentially, disadvantages someone with a protected attribute.

- 3. Harassment** is unwelcomed or unreciprocated behaviour which makes a person feel intimidated, offended, or belittled in the workplace. Harassment is a form of unlawful discrimination. Harassment based on sex, race, or disability is also unlawful under Commonwealth laws and harassment such as physical assault can be a criminal offence.

Examples of behaviour that could be harassing include:

- physical contact or requests for sexual favours
- persistent following (stalking)
- suggestive looks implying a sexual interest
- persistent verbal abuse or threats
- persistently disrupting an individual's work, work space, equipment or interfering with their personal property
- jokes, derogatory or dismissive comments
- gestures that are insulting or belittling
- circulating, displaying written or pictorial material that is offensive or belittling

*Sexual harassment* is unwelcome conduct of a sexual nature, which offends, humiliates or intimidates the person at which it is directed, regardless of intent. It does not include conduct occurring within a personal relationship of mutual attraction and/or friendship. Sexual harassment may occur in a single incident as well as a series of incidents. The harassment may be subtle and implicit, rather than explicit. This behaviour frequently involves an abuse of power and/or trust and is often directed at a person who is unable to stop the behaviour easily. The behaviour may occur either at the workplace, or outside the workplace at workplace-related functions. The respective genders of the two parties is not relevant.

Sexual harassment may consist of:

- unwelcome physical contact (e.g. touching, patting or brushing against a person)
- leering, patting, touching or unnecessary familiarity
- demands for sexual favours
- offensive or demeaning comments, emails, jokes or innuendo
- unwanted sexual propositions or advances
- sending emails, text messages or mail that may be sexually explicit and offensive to either gender
- offensive telephone calls
- spreading rumours of a sexual nature about a person's private life
- offensive gestures, staring or displaying offensive material

- unwelcome or uncalled for remarks, questions or insinuations about a person's sexual activities or private life

*Victimisation* occurs where a person suffers or is threatened with any form of detriment after making a complaint.

## **The Policy**

Any form of bullying, discrimination and harassment will not be tolerated by the College. These behaviours are disruptive to the well-being of our employees, Fellows and Trainees/Candidates, and affect the performance and safety of everyone. Therefore, the College is committed to the elimination of bullying, discrimination and harassment in the workplace and the implementation of strategies to prevent such behaviour from occurring.

Thus:

- Workplace bullying, discrimination and harassment are not tolerated under any circumstances.
- Any employee, Fellow or Trainee/Candidate may complain about workplace bullying, discrimination and harassment to the CEO (employees), or to the Honorary Secretary (Fellows and Trainees/Candidates). All complaints of workplace bullying, discrimination and harassment are treated seriously, promptly, and confidentially.
- All formal complaints of workplace bullying, discrimination and harassment are investigated fairly and impartially.
- Action is taken to ensure that workplace bullying, discrimination and harassment stops.
- Complaints are settled within the workplace whenever possible.
- Unlawful discrimination can lead to legal proceedings under Anti-Discrimination legislation

It is possible for a person to be bullied, harassed and discriminated against at the same time.

### **In particular:**

- 1 A Fellow or trainee shall not bully, harass or discriminate against:-
  - an employee of the College;
  - a contract worker of the College;
  - a member of the public;
  - another Fellow or trainee.
- 2 A Fellow or trainee must not bully, harass or discriminate against another Fellow or trainee, or a member of the Board or a member of a Committee of the College (who may not be a Board member) in the performance of his or her functions for the College.
- 3 A Fellow or trainee shall not victimise another person, or subject a person to any detriment because that person:-
  - has made a complaint under College Policies;
  - has brought proceedings under College Policies;
  - has, or proposes to, give evidence or information in connection with proceedings, under College Policies.

Victimisation

Employees, Fellows and Trainees/Candidates must not victimise or penalise a person for making a complaint in good faith, or a person who has supported the complainant. The College is committed to making sure that anyone who makes a genuine complaint is supported and is not penalised in any way.

Any act of victimisation constitutes serious misconduct and it may be grounds for summary termination of employment, or dismissal from the relevant Training Program.

Anyone who feels they have been victimised should discuss the matter with their supervisor, manager, DoT or the Hon Sec. This person should investigate the incident and coordinate the resolution of the issue.

False Accusations

False accusations of discrimination, harassment or bullying will be viewed seriously and, where found to be malicious, could expose the complainant to risk of defamation proceedings or disciplinary action up to and including dismissal.

Defamation

Allegations of unlawful discrimination, harassment or bullying are serious matters and can potentially damage an individual's reputation.

All College personnel and other representatives appointed to assist in dispute management are protected under the doctrine of "qualified privilege" provided they act in accordance with the dispute resolution procedures and not maliciously.

**Summary of Parties' Rights**

The following Table summarises the rights of the complainant and the respondent.

<b>The complainant:</b>	<b>The respondent:</b>
<ul style="list-style-type: none"> <li>• is to have their complaint treated informally or formally, at their option.</li> <li>• is to have their complaint investigated and conciliated if requested.</li> <li>• may have support or representation throughout the process.</li> <li>• is to be able to express concerns without fear of retribution or of suffering detriment.</li> <li>• may withdraw a complaint.</li> <li>• is to have the situation remedied.</li> <li>• is to have the matter kept confidential on a "need to know" basis.</li> </ul>	<ul style="list-style-type: none"> <li>• is to be informed of what he/she is accused of and who is making the allegations.</li> <li>• is to respond to the allegations.</li> <li>• is to be afforded fair treatment and procedures.</li> <li>• is not to be prejudged or discriminated against.</li> <li>• may have support or representation throughout the process.</li> <li>• is not to be dismissed unfairly or otherwise treated unfairly, harshly or unreasonably (taking into account all the circumstances).</li> <li>• is to have the matter kept confidential on a "need to know" basis.</li> <li>• is to be protected from defamation and malicious complaints.</li> </ul>

### Informal Resolution

Informal disputes emphasise resolution rather than the presentation of factual proof or substantiation of a dispute. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. An informal dispute generally involves either one or a number of the following processes: mediation, conciliation or education. Informal disputes do not require a formal investigation.

### Formal Complaint

A formal complaint can be verbal but is generally put in writing with a formal investigation then conducted to determine whether there is factual proof or substantiation to the complaint.

All formal complaints will be directed to the CEO or Honorary Secretary as relevant. The CEO or Honorary Secretary may delegate investigation of the complaint to appropriate officers, members or College advisers.

**This part of the policy is to be read in conjunction with the Anti-Bullying / Discrimination / Harassment Procedure.**

### Exceptions

#### 1. Bullying

Some behaviours may not be considered workplace bullying:

##### 1.1 Reasonable management action, for example:

- setting reasonable performance goals, standards and deadlines
- allocating work
- rostering and allocating reasonable working hours
- transferring a worker for operational reasons
- failing to promote someone after a proper, documented selection process
- informing a worker that their performance is unsatisfactory, after following established performance management guidelines
- informing a worker, objectively and confidentially, that their behaviour is inappropriate
- a restructure.

1.2 Workplace conflict is generally not considered to be workplace bullying. Not all conflict is negative nor does it always pose a risk to health and safety. Conflict at a low level producing debate on tasks can lead to innovation. However, in some cases, conflict that is not properly managed may escalate to the point where it fits the criteria for workplace bullying. A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying. Single incidents can still create a risk to health and safety.

#### 2. Discrimination

2.1 Protection of health, safety or property

Discrimination on the basis of a disability or physical feature is not prohibited if the discrimination is reasonably necessary to protect the health, safety, or property of any person. This includes where the person suffers from an infectious disease.

## 2.2 Modifications which result in unjustifiable hardship

Discrimination on the basis of a disability is not prohibited where the prospective or existing employee will require adjustments and modifications to the workplace, the provision of which would lead to unjustifiable hardship for the College.

## 2.3 Legal advice must be sought

In any case where it is considered that grounds for discrimination may exist, legal advice should be sought before any potentially discriminatory actions are taken.

### **Relevant/Associated Legislation**

Racial Discrimination Act 1975

Anti-discrimination Act 1977

Amendment to the Anti-discrimination Act - Anti-discrimination Board of NSW

Sex Discrimination Act 1984

Human Rights and Equal Opportunity Commissions Act 1986

Disability Discrimination Act 1992

Harassment Free Workplace Policy and Guidelines – Equal Opportunity in Public Employment and the Public Employment Office April 1996

Age Discrimination Act 2004

Work Health and Safety Act 2012

WorkCover NSW – Bullying February 2013