



Originally released:	2015
Reviewed:	2018
Next Review:	2020

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## WORKPLACE BULLYING, HARASSMENT AND UNLAWFUL DISCRIMINATION (Staff)

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### RATIONALE

Central to the mission of CBC Fremantle (College) in the Edmund Rice tradition is an unequivocal commitment to fostering a safe workplace culture that is characterised by an atmosphere of mutual respect and dignity.

In alignment with the Edmund Rice Education Australia Code of Conduct, the College is committed to providing a harmonious work environment that is free from unlawful discrimination, harassment, bullying and victimisation. Furthermore, the College seeks to embrace diversity within a values-based workplace.

### PURPOSE

It is unlawful to harass, unlawfully discriminate against, victimise or bully a person within a workplace. Where a person experiences such behaviours in the workplace, the employer may be legally responsible. Furthermore, all those involved in a workplace share a responsibility to promote an environment that is free from harassment, unlawful discrimination, victimisation and bullying.

### SCOPE

It is expected that all College staff members will conduct themselves in accordance with this policy.

### DEFINITIONS

#### 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 or 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,



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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, ethnic background, colour, language proficiency (or lack thereof) or physical feature(s). 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
- 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 unwelcome behaviour on grounds covered by anti-discrimination legislation are dealt with as unlawful discrimination.

### **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 (WA). These include:

- disability
- race
- sex/gender
- pregnancy
- marital status
- political conviction
- impairment
- family responsibility or status



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- age
- religion
- gender reassignment

Discrimination may be direct or indirect as follows:

**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 the 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.

Within the *Equal Opportunity Act 1984*, there are exceptions for education institutions established for religious purposes in connection with the employment of a staff member, where such *'discrimination occurs in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.'*

### Victimisation

Victimisation, which is unlawful under State legislation, 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 and where bullying involves assault or threat of assault, it may be referred to the police for investigation and resolution.

**Bullying** is generally defined as the tormenting of others via verbal, electronic, 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.

**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 main types of workplace bullying:

- a) 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



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- 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
- b) 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

### **Workplace**

The workplace is the environment in which a staff member is required to carry out their work. The legal responsibility extends beyond the College campus, to include working at a client's premises, work related trips, seminars, training and work-related social functions.

### **PRINCIPLES**

1. All Catholic schools in Western Australia have a legal and ethical responsibility to put in place procedures and processes that aim to create workplaces free from harassment.
2. Harassment is unlawful under Federal and State legislative provisions, not only during school hours or in the College grounds, but also in any work-related context including conferences, work functions, College camps or excursions.
3. The College may be held vicariously liable for conduct that constitutes harassment unless they can show that they have taken all reasonable steps to prevent inappropriate behaviour occurring and managed incidents promptly.
4. The College may be held vicariously liable for the conduct of:
  - a. an individual staff member
  - b. a group of staff members
  - c. a student or group of students over the age of 16 (only relates to sexual harassment as per the Australian Government Sex Discrimination Act 1984)
  - d. a student or group of students (only relates to workplace bullying or violence as per the Occupational, Safety and Health Act 1984)
  - e. a visitor or group of visitors
5. The College shall act in a timely manner upon being made aware of any instance of harassment.



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6. Harassment constitutes misconduct that may result in disciplinary measures being initiated, including termination of employment.
7. The principles of natural justice shall be applied in all investigations of complaints of harassment. 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.
8. 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 deemed malicious or vexatious and appropriate action taken.
9. 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.
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 share a responsibility to attempt to resolve issues in a non-adversarial manner.
12. Confidentiality is required when dealing with complaints of harassment.

### **ACCOUNTABILITY**

The Principal has overarching responsibility for the direction and conduct of the College's Workplace Bullying, Harassment and Unlawful Discrimination Policy.

The College Leadership Team (CLT) Members are required to model appropriate standards of professional conduct at all times, raise awareness and support the implementation of this policy.

All College Staff Members are accountable for ensuring that their own conduct and work are conducted in an environment that is based on the principles of this policy; mutual respect, dignity, free from unlawful discrimination, harassment and bullying behaviour.

### **REFERENCES**

- i. Bishops of Western Australia 2009, Mandate of the Catholic Education Commission of Western Australia: 2009-2015

### **Related Documentation**

- Equal Opportunity Act 1984 (WA)
- Disability Discrimination Act 1992 (Cth)
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- Human Rights and Equal Opportunity Commission Regulations 1989 (Cth)



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- Occupational Safety & Health Act 1984 (WA)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Industrial Relations Act 1979 (WA)
- Fair Work Act 2009 (Cth)
- The Roman Catholic Archbishop of Perth Teachers Enterprise Bargaining Agreement 2012
- The Roman Catholic Archbishop of Perth Non-Teaching Staff Enterprise Bargaining Agreement 2012