



Prevention of Bullying, Harassment and Discrimination Policy

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Ratified: December 2020

Next Review: 2023

Rationale

The Diocese of Ballarat Catholic Education Limited (DOBCEL) is committed to establishing a workplace which values respectful relationships, upholds the dignity of every person and creates a safe environment with a sense of belonging for all employees.

This policy seeks to foster a safe and inclusive workplace, aligned to all relevant State and Federal legislative requirements.

DOBCEL aspires to an authentic and mission inspired workplace in which all employees respect the diverse range of experiences and backgrounds of others. These aspirations are central to the wellbeing of staff and an environment for all to flourish.

Definitions

Bullying: is a significant occupational health and safety issue, as it can cause harm to a person's health and wellbeing. Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. Bullying can be either direct or indirect. Direct bullying is the more obvious form, indirect bullying is covert but no less serious, generally conducted out of sight and may be less obvious to others.

For a situation to amount to workplace bullying it needs to satisfy all parts of the definition of bullying:

- **Repeated:** the alleged bullying behaviour must be persistent, not merely a one-off incident. *Single/Isolated incidents will not be ignored as they have the potential to escalate. It is not necessary for the same specific behaviour to be repeated as bullying may consist of a range of incidents over time. For example, for a situation to constitute bullying it is not necessary that there be multiple incidents of name-calling; bullying could be made up of one incident of name-calling, one incident of vandalising property and one inappropriate email.*
- **Unreasonable behaviour:** Behaviour that a reasonable person in the circumstances would see it as unreasonable. For example, the behaviour may be victimising, humiliating, intimidating, or threatening (this is an objective test).
- **Directed at a worker or a group of workers:** the behaviour may be carried out by one or more employees and directed at one individual employee or a group of employees.

- **Creates a risk to health and safety:** the behaviour must be a substantial cause of the risk of harm. It is not necessary to have proof of actual harm to health and safety, only that there is a risk of such. *'Health' includes both psychological and physical health, for example, depression, anxiety, sleep disturbance, nausea, or muscle tension.*

Examples of bullying

Some examples of behaviour that may amount to bullying (provided all the elements of the bullying definition are met) include:

- Verbal abuse
- Putting someone down, teasing, or practical jokes
- Spreading rumours or innuendo
- Sending inappropriate emails or communications
- Making unjustified criticism or complaints
- Deliberately excluding someone from meetings/workplace activities
- Setting unreasonable timelines or constantly changing deadlines, scrutinising work excessively
- Deliberately changing work arrangements (for example, rosters or leave) to inconvenience a staff member
- Setting tasks that are unreasonably below/beyond the staff member's skill.

It is important to understand that when an employee has a disagreement with a colleague or is not happy with actions taken by leadership, this does not mean that the employee is being bullied at work. Low-level workplace conflict and reasonable management action taken in a reasonable (transparent) way is not workplace bullying.

Defamation

Defamation is unlawful under the Victorian *Defamation Act 2005* and the Victorian common law. A person should not be deterred from making a complaint by concerns about defamation laws. Generally, if a complainant only discusses the complaint with appropriate people in the workplace (Leadership/HR/CECV ER Unit) and is acting in good faith (i.e. is not making a vexatious claim), then the person will not be liable for defamation.

Discrimination

The Equal Opportunity Act 2010 (Vic) prohibits unlawful discrimination in the form of direct and indirect discrimination. Discrimination is also unlawful under federal legislation (see Relevant Legislation).

Direct discrimination: treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed below). The test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

Indirect discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

Protected attributes: The Equal Opportunity Act 2010 (Vic) provides the following protected attributes:

Age	Disability / impairment	Lawful sexual activity
Breast-feeding	Gender identity	Marital status
Carer status	Industrial activity	Parental status
Physical features	Pregnancy	Race
Political belief or activity	Religious belief or activity	Sex/gender
Sexual orientation	Personal association (with a person who has, or is assumed to have one of these attributes)	

Harassment: is unlawful under the Victorian *Equal Opportunity Act 2010*. A person unlawfully harasses another person if he or she makes that other person (another employee or member of the public) feel offended, humiliated, or intimidated because of one of the protected attributes. It may involve inappropriate actions, behaviour, comments, or physical contact that is objectionable or causes offence.

It is important to note that from a legal perspective it is irrelevant whether or not the harassing behaviour was intended.

Unlawful harassment may have occurred if the behaviour makes the victim feel offended and humiliated intimidated or frightened, and/or uncomfortable at work.

Unlawful harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails
- displaying offensive or pornographic posters or screen savers
- making derogatory comments or taunts about someone's race or religion
- asking intrusive questions about someone's personal life, including their sex life

Sexual harassment: Sexual harassment is **unlawful** under the Victorian *Equal Opportunity Act 2010* and under federal legislation (*Sex Discrimination Act 1984* (Cth))

- when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person or engages in any other unwelcome conduct of a sexual nature in relation to another person.
- In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

Sexual harassment is **unlawful** in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace can also extend to social functions.

In Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

Some examples of sexual harassment include:

- persistent, unwelcome demands or even subtle pressures for sexual favours or outings
- staring or leering at a person or at parts of their body
- unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
- offensive comments or questions about a person's physical appearance, dress, or private life
- sexually explicit pictures or images, telephone calls, voice mail messages, letters, or emails
- smutty or suggestive jokes or comments
- innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality, or tales of sexual performance
- requests for sex, insults or taunts based on sex, or sexually explicit physical contact.

Some types of sexual harassment can also be offences under the criminal law, such as:

- physical molestation or assault
- indecent exposure
- sexual assault
- stalking
- obscene communications (by way of telephone calls, letters, emails etc.).

Occupational Violence: any incident where an employee is physically attacked or threatened in the workplace. The term occupational violence refers to direct or indirect force by a person to the body of, or to the clothing or equipment worn by the recipient creating a risk to their health and safety.

Leadership: refers to the person that the employee reports to on a day-to-day basis. For school-based employees this is likely to be the **principal**, or for Catholic Education Ballarat employees this is likely to be the **team leader**

Victimisation: any unfavourable treatment of a person who has been involved with a discrimination, harassment, or bullying complaint. In order for complaints to be brought forward, employees must feel secure in the knowledge that DOBCEL's procedures will be followed without fear of detriment.

Vexatious claims: Where a Complainant makes frivolous or malicious claim without basis against a Respondent, such as where intentionally false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution.

Policy

DOBCEL is committed to building and nurturing workplaces that are free from bullying discrimination, and harassment. It is important that all DOBCEL employee's share responsibility for upholding professional standards of conduct and for building and nurturing safe workplaces. It is therefore expected that all employees (including contractors and volunteers) do not engage in or condone such behaviour and practices.

It is also expected that employees who make a complaint, or who may be witnesses to circumstances giving rise to a complaint, participate fully and confidentially in any investigation and resolution procedures.

This policy and its accompanying procedure are compliant with the legislative framework under which our schools and offices operate. Schools and offices are guided by the applicable legislation in determining its prevention and intervention measures.

Principles

Human dignity

Our common humanity requires respect for and support of the sanctity and worth of every human life. All other rights and responsibilities flow from the concept of human dignity. This principle is deemed as the central aspect of the Church's social teaching. The belief that each life has value is shared with International Human Rights which are universal, inviolable and inalienable.¹

Subsidiarity in fostering local expressions of the Church's common mission

All people have the right to participate in decisions that affect their lives. Thus, decisions should be made at the most appropriate level, by the people most affected by the decision and by those who exercise responsibility for carrying out the decision. It also means that those in positions of authority have the responsibility to listen to everyone's voice and make decisions according to the common good.² Implementing the principle of subsidiarity supports the interdependence of all decision makers.

Solidarity and synodality involving the breadth of the diocesan community

Synodality involves the active participation of all members of the Church in its processes of discernment, consultation and co-operation at every level of decision-making and mission. Every member of the People of God is involved, though with varied roles and contributions.³

Solidarity, on the other hand, presupposes a commitment to a more just social order and urges each to consider the impact of how they live and interact with others from the point of view of justice. Being in solidarity means recognising others as equals and actively working for their good.⁴

¹ *ibid.*

² See <https://caritas.org.nz/catholic-social-teaching/subsidiarity>. See also *The Light from the Southern Cross, op.cit.*, 5.2.1. p.41.

³ http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_sinodalita_en.html ¶ 7, 21. See also *The Light from the Southern Cross, op.cit.*, 5.2.3., p.43

⁴ See <https://caritas.org.nz/catholic-social-teaching/solidarity>

References

- The Occupational Health and Safety Act 2014
- Victorian Catholic Education Multi-Enterprise Agreement 2018
- Minimum Standards - Victorian Registration and Qualifications Authority
- The Education and Training Reform Act 2006 (Vic)
- Workplace Gender Equality Act 2012 (Cth)
- Age Discrimination Act 2004 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Equal Opportunity Act 2010 (Vic)
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- Fair Work Act 2009 (Cth)

Related Policies and Procedures

CECV Guidelines on the Employment of Staff in Catholic Schools available at

<http://www.cecv.catholic.edu.au/Industrial-Relations/Communications/Child-Safety>

CECV Workplace Equal Opportunity template for schools

<http://www.cecv.catholic.edu.au/Media-Files/IR/Policies-Guidelines/Workplace-Equal-Opportunity/Workplace-Equal-Opportunity-Policy-for-Staff.aspx>

CECV Anti-Bullying Guide for Principals and Leaders

<http://www.cecv.catholic.edu.au/Media-Files/IR/Policies-Guidelines/Anti-Bullying/Anti-Bullying-Guide.aspx>

DOBCEL Employee Grievance Policy and Procedure

DOBCEL Occupational Health and Safety Policy

DOBCEL Complaints Procedure for complaints concerning the Director of Catholic Education



DOBCEL Prevention of Bullying, Harassment and Discrimination Procedures

Reviewed: August 2020

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Procedure

Procedure for resolving complaints under the Prevention of Bullying, Harassment or Discrimination Policy.

Definitions

Leadership: For Schools, Leadership refers to the Principal or their nominated delegate. For Catholic Education Ballarat, Leadership refers to the employees direct Team Leader or their Directorate member.

Leadership Responsibilities

Leadership is required to:

- treat allegations of bullying, discrimination, or harassment seriously;
- ensure a safe and healthy workplace environment for employees;
- take reasonable measures to prevent bullying, discrimination, and harassment from taking place and ensure adherence to policy;
- ensure that employees understand their responsibility, to not bully, discriminate, or harass other employees or members of the school community;
- ensure that their own actions do not result in harassment or bullying of any employees or members of the school community and set a good example for employees;
- where leadership is involved in an investigation, handle all allegations and complaints in a prompt, sensitive and confidential manner;
- seek prompt advice from the Manager Human Resources or the CECV ER Unit regarding the appropriate management of a complaint under the Prevention of Bullying, Discrimination, and Harassment Policy.

Leadership must act on any report or suspicion of discrimination, harassment, or bullying in the workplace. As the employer, DOBCEL may be legally responsible for discrimination, harassment or bullying that occurs in the workplace, or in connection with the person's employment. Leadership must demonstrate that reasonable steps were taken to reduce this liability (referred to as vicarious liability).

- If no complaint is made but leadership has cause to believe that discrimination, harassment, or bullying is occurring, the issue should be addressed in a general manner such as a memo or reminder at a staff meeting

- Leadership does not need to wait for a formal complaint to be made to act. If the Leader witnesses an incident(s) of discrimination, harassment or bullying themselves, they become the complainant
- If leadership hears of an incident from a third party, they can sensitively ask the affected employee(s) if they would like to make a complaint and/or discuss their options for resolving the matter

Investigation Officer responsibilities

DOBCEL may appoint a designated Investigation Officer for the purpose of investigating allegations of discrimination, harassment, and bullying. The Investigation Officer may be internal such as the Principal, Team Leader, Manager HR or Assistant Director People and Development. An external investigator may be appointed for sensitive and complex cases or where the allegations may involve a member of the leadership team.

The designated Investigation Officer will:

- Treat allegations of bullying, discrimination, or harassment seriously
- Investigate all allegations and complaints in a prompt, sensitive and confidential manner and with regard to the principles of procedural fairness
- Manage all incidents and complaints in accordance with DOBCEL policy and in respect of relevant legislation
- Organise mediation and/or conciliation to resolve the complaint if required
- Recommend any further action or recourse required where mediation and/or conciliation is not sufficient to resolve the matter

Human Resources responsibilities

The Manager, Human Resources will:

- promote a safe work environment for all employees;
- provide education and support as required;
- treat any allegations of harassment or bullying seriously;
- provide information and support to leadership and employees as required;
- where allegations of discrimination, harassment or bullying have been substantiated, advise leadership on appropriate action.
- provide information about employee rights and responsibilities;
- act on, and/or provide support to Leadership, to act on any report or suspicion of discrimination, harassment, or bullying.

All allegations of discrimination, harassment or bullying will be taken seriously. Breaches of this policy will not be tolerated. Any complaint of bullying, discrimination, or harassment will be managed promptly, confidentially, and in accordance with this procedure. This may include a formal investigation and remedial action to resolve the matter.

Remedial Action

Remedial action may include, but is not limited to, an apology, education/training, performance management, mediation and/or conciliation. Where the claim has been substantiated disciplinary action may be taken, up to and including termination of employment.

Resolution Procedure

For the purposes of complaint resolution processes:

- the person who makes a complaint is the Complainant; and
- the person about whose actions or behaviour a complaint relates is the Respondent

Before taking any steps to resolve the matter, the complainant may elect to speak to a member of the leadership team or Manager, Human Resources for guidance on their options for handling the complaint.

Where the complaint is about a Principal the employee may speak to the Education Consultant or the Assistant Director People and Development.

Anyone who believes they have been bullied, discriminated, or harassed is strongly encouraged to take appropriate action to ensure that the matter is resolved quickly and effectively. There are four options for resolving complaints:

1. Resolve Directly

Complainants are encouraged to take appropriate steps to resolve the matter directly by speaking with the other person firsthand.

The complainant must advise the other employee that her/his behaviour is offensive, unwelcome and not consistent with DOBCEL policy, and that they want the behaviour to stop immediately.

It is the complainant's choice to attempt to resolve a matter informally or to request Leadership support or intervention.

2. Informal resolution

The complainant may ask their Principal or Team Leader to intervene or initiate a conversation with another employee on their behalf. Where this occurs:

- the Leader cannot intervene on a complainant's behalf without their consent.
- the respondent has the right to know the details of the complaint and who the complainant is.
- the respondent must have the complaint clearly explained to them and be allowed time to respond.

Where the complaint is about a Principal or Team Leader the employee may ask the Education Consultant or Assistant Director People and Development to intervene on their behalf.

Mediation or conciliation

If unsuccessful. The appropriate leader can organise or provide mediation and/or conciliation to resolve the complaint. It may be necessary or helpful for the Principal or Team Leader to consult with the Manager Human Resources on this matter. For complaints involving a Principal the Education Consultant may consult with the Assistant Director People and Development.

In mediation, the Mediator negotiates with the respondent on the complainant's behalf but not in their presence. If resolution is not reached through mediation, or if conciliation is considered the best option, it should be considered at this point. Both the complainant and respondent are present at conciliation.

3. Formal resolution – Internal

Where a complainant seeks a formal investigation, this shall be referred immediately to the Principal or Team Leader. The Principal or Team Leader, in consultation with the Manager Human Resources, will designate the role of Investigation Officer. Where the concern is about a Principal or Team Leader the Assistant Director People and Development will coordinate the investigation process.

All parties involved in any part of this process have the right to have the matter treated confidentially and sensitively.

Written Complaint

A formal written complaint must be provided by the complainant detailing specific information including: Names, dates, times, locations, witnesses and any actions.

Investigation

The complainant will be formally interviewed by the Investigations Officer and detailed notes of the alleged incident recorded. The respondent will be informed of the allegation, the name of the complainant and the need to formally investigate the complaint.

The respondent is allowed to contest the accuracy of the written report and to respond to the allegations made against them.

Following the investigation of the complaint, the Investigations Officer, in consultation with the Manager Human Resources or Assistant Director People and Development will make a determination on the balance of probabilities.

Outcome

The complainant and the respondent will be informed of the outcome of the investigation. In respect of an individual's the right to privacy, the involved parties may not always be informed of the actions taken as a result of the investigation.

In the case of a substantiated claim, following determination a recommendation will be made regarding the appropriate remedial action. This recommendation will be made to the position the employees Team Leader.

Remedial action

This may include, but is not limited to, an apology, education/training, performance management, or disciplinary action up and including possible termination of employment. In some cases, criminal charges may also apply.

A summary of the substantiated complaint will be included on the respondent's personnel file. A monitoring process will be established to ensure the matter has been successfully resolved and that a professional and respectful working relationship continues.

Inconclusive Investigation

If an investigation is inconclusive (i.e. a complaint cannot be proved due to a lack of evidence) further action may nevertheless be taken which may include counselling, mediation, changed working arrangements and/or conducting training for employees on relevant policies.

Complaints involving Leadership members

If a Complainant wishes to make a formal complaint about their Principal/Team Leader, the complaint will be directed to the Directorate member to whom they report, or in the case of a Principal to the Assistant Director People and Development.

If a Complainant wishes to make a formal complaint about a CEB Directorate Member, the complaint will be directed to the Executive Director Catholic Education Ballarat.

If the Complainant wishes to make a complaint about the Executive Director Catholic Education Ballarat, please refer to the *DOBCEL Complaints Procedure for complaints concerning the Director of Catholic Education*.

4. Formal complaint – External

A Complainant may choose to seek assistance, information and/or mediation support at any time during the process from a range of statutory and employee support agencies in Victoria.

Each agency will have specific requirements for lodging a complaint and will have varied investigation procedures.

In dealing with complaints, the school or DOBCEL may seek external advice and assistance from professional mediators, investigators, external agencies, and any other appropriate persons.

Documentation

A record of any disciplinary action that is taken arising from a formal investigation will be placed on the personnel file of any person who is formally cautioned or disciplined.

Confidentiality

All parties involved in a complaint under this policy, must ensure that the circumstances and facts of the complaint are disclosed only to those people who are directly involved in progressing its investigation and resolution. In particular, it is important that staff who either make a complaint, or who may be witnesses to the circumstances giving rise to the complaint, do not discuss the matter outside the investigation and resolution processes.

Victimisation or Retaliation Claims

Disciplinary action will be taken against any person who victimises or retaliates against a person who has lodged or is involved in a matter under this Policy. Such action may include termination of employment.

Vexatious Claims

Where an employee makes frivolous, vexatious or malicious claims against a respondent, for example, where false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution; depending on the circumstances, disciplinary action may be taken against that individual.

Access to Support and Representation

The complainant, respondent and any witnesses can elect to seek advice and to be accompanied by a support person. A support person's role is to support and advise the employee, ensure procedural fairness is afforded and to assist the employee to articulate their responses and participate as appropriate.

An employee, party to the matter, may utilise confidential, complementary counselling services provided by Converge International at any stage of the process. The contact phone number for this support is 1300 687 327.

APPENDIX: DOBCEL Prevention of Bullying, Harassment and Discrimination Procedure - Flowchart

