



UNLAWFUL DISCRIMINATION, HARASSMENT AND BULLYING POLICY

Introduction

Penola Catholic College considers unlawful discrimination, harassment or bullying in any form to be unacceptable forms of behaviour, which will not be tolerated under any circumstances.

It is recognised that unlawful discrimination, harassment or bullying may be experienced by either sex, staff to staff, staff to members of the public, student to student or staff to student.

Strategies for the prevention of unlawful discrimination, harassment and bullying are an integral part of workplace practices and culture at Penola Catholic College. This policy supports the Acts of Parliament, which state that unlawful discrimination, harassment and bullying are unlawful.

These are:

- The Equal Opportunity Act 2010 (Vic)
- The Australian Human Rights Commission Act 1986 (Cth)
- The Racial Discrimination Act 1975 (Cth)
- The Sex Discrimination Act 1984 (Cth)
- The Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- The Fair Work Act 2009 (Cth)
- Occupational Health and Safety Act 2004 (Vic)**
- Crimes Amendment (Bullying) Act 2011 (Vic)
- Accident Compensation Act 1985 (Vic)
- Racial and Religious Tolerance Act 2001 (Vic)
- Child Wellbeing and Safety Amendment (Child Safety Standards) Act 2015

Discrimination and harassment on the basis of any of the attributes listed below are unlawful

- age
- physical features
- carer status
- disability or impairment
- lawful sexual activity
- religious belief or activity
- race
- political belief or activity
- gender
- industrial activity

- marital status
- parental status
- pregnancy
- personal association with a person who is identified with reference to any of the above attributes
- employment activity
- breastfeeding
- gender identity
- sexual orientation
- making or pursuing a compensation claim

Harassment

Harassment is any behaviour that is unwelcomed and is based on one of the legislatively proscribed attributes, listed above. It may be repeated behaviour, but could also consist of a single act.

Harassment has the effect of offending, humiliating, belittling or intimidating the person at whom it is directed. It makes the College environment unpleasant and sometimes even hostile. If a person is being harassed, their ability to do their work or study may be affected. They may become stressed or suffer health problems as a result.

Harassment can often be the result of behaviour, which is not intended to offend or harm, such as jokes or unwanted attention. The fact that harassment is not intended does not mean that it is not unlawful. The differences between people should be acknowledged and respected – never ridiculed.

Types of Harassment

There are many types of harassment. These can range from direct forms, such as physical and verbal abuse, threats, name calling, and sexual advances, to less direct forms such as where a hostile work environment is created, but no direct attacks are made on the individual.

Examples of verbal harassment:

- sexual comments, advances or propositions
- racist comments or jokes
- spreading rumours, gossiping
- belittling someone on the basis of the attribute/s listed above
- repeating unwelcome invitations of a sexual nature
- unwelcome telephone calls, letters, mobile text messages, social media contacts or postings, emails which reference any protected attribute

Examples of non-verbal harassment:

- putting material on notice boards, computer screen savers, emails etc which reference any protected attribute and could be offensive
- displaying sexist or racist cartoons or literature

- demoting, failing to promote, or transferring someone because of the attributes listed
- mimicking someone with a disability

Examples of sexual harassment

Sexual harassment is any verbal or physical sexual conduct that is unwelcomed and offensive.

There are three basic categories of sexual harassment - non-explicit, explicit and criminal action.

Subtle (not always obvious) forms of harassment tend to be the most common. They include:

- offensive staring and leering
- offensive comments about a person's physical appearance or sexual preference
- offensive comments or jokes, gestures or language
- degrading comments based on sex-role stereotyping
- invasion of personal space
- questions or comments about another's sexual morality or activity
- physical contact e.g. brushing up against another's body
- offensive name-calling

Explicit (obvious) forms of sexual behaviour are easier to identify as they often involve overtly offensive or intimidating behaviour. They include:

- punching, patting, touching, embracing
- repeated requests to go out with someone, especially after prior refusal
- offensive jokes and comments
- sexually provocative remarks
- displays of sexually graphic material
- requests for sexual favours

Criminal forms of sexual behaviour may be reported to the police and may include some of the above examples but also includes:

- indecent exposure
- sexual assault
- attempted and/or actual rape
- physically molesting a person
- sending obscene letters, emails, text messages or making obscene telephone calls or other communications

If you experience any of the above behaviour which results in you feeling offended, humiliated, intimidated, frightened, then it is a reportable matter, and you should follow the grievance procedure open to you. Ignoring behaviour, which you believe is unlawful, will not always mean that such behaviour will stop.

Unlawful Discrimination

Discrimination is making unlawful distinctions between individuals and groups on the basis of any of the proscribed attributes listed above.

Direct discrimination means treating or proposing to treat another person unfavourably on the basis of the proscribed attribute. The discriminator's motive is irrelevant. Under the Equal Opportunity Act 2010 direct discrimination will occur if a person treats, or proposes to treat, a person with a protected **attribute** (persona characteristic) unfavourably because of that attribute.

This removes the *Equal Opportunity Act 1995*'s technical requirement to prove that certain treatment was less favourable than would have been received without the attribute, or with a different attribute in the same or similar circumstances (the comparator test).

The new test is whether or not certain treatment was unfavourable to the person claiming discrimination, focusing on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

Indirect discrimination occurs when a requirement, condition or practice, which on its face appears to be neutral, in effect has a disproportionate impact on a group of which the complainant is a member. Indirect discrimination will occur where a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with a protected attribute, and that is not reasonable.

Bullying

Bullying refers to any unreasonable, repeated behaviour from which the targeted person feels belittled, intimidated, threatened, abused, offended or undermined.

Bullying behaviours may also include:

- making threats to a colleague, parent etc
- using abusive or offensive words to, or in the presence of, a colleague, parent etc
- performing abusive or offensive acts in the presence of the colleague, parent etc
- directing abusive or offensive acts towards the colleague, parent etc
- acting in any other way that could reasonably be expected to cause a colleague, parent etc to engage in self-harm (physically or mentally)

Cyber Bullying includes:

- Electronic material that could be deemed by a reasonable person to be offensive to members of the community must not be created, copied, stored, forwarded nor accessed. Vulgarities, profanities, swearing, pictures, words or photographs that degrade or defame other people or organizations are not acceptable.
- The sending of unwanted/threatening/obscene email and the addition of person's details to Bulletin Boards, creating profiles on Social Media sites, the publication of a person's photo, involvement in chain letters etc are all unacceptable.

Bullying behaviour creates a risk to the health and well being of employees.

Examples of bullying behaviour may include but are not limited to:

- Unreasonable, excessive or harsh criticising
- Yelling, screaming, name calling, abusive / threatening / sarcastic comments
- Throwing objects, intimidating gestures
- Malicious teasing, practical jokes/pranks
- Deliberate damage of personal property
- Isolation from normal work activities
- Withholding information vital for work
- Ignoring someone, excluding someone
- Unwanted physical contact
- Gossiping and innuendo

Bullying is not:

- Legitimate and constructive advice from those with a duty to comment on an individual's workplace or employment performance
- Reasonable action by management - including lawful directions, and requirements for compliance with laws and policies
- Reasonable performance management or disciplinary action
- Allocating work in compliance with systems, procedures and abilities
- A single incident
- Non-aggressive conflicts and problems

College and Staff Responsibilities

Penola Catholic College has a legal responsibility to ensure, where reasonably practical, that unlawful discrimination, harassment or bullying does not happen in the workplace.

The College aims to:

- create a working environment which is free from bullying and harassment and where all members of staff are treated with dignity, courtesy and respect
- implement training and awareness raising strategies to ensure that all employees know their rights and responsibilities
- provide an effective procedure for complaints, based on the principles of natural justice and procedural fairness
- treat all complaints in a sensitive, fair, timely and confidential manner
- discourage any victimisation or reprisals toward someone who has requested that inappropriate behaviours be stopped or who has made a formal complaint
- encourage the reporting of behaviour which breaches this policy
- promote appropriate standards of conduct at all times

All staff have a responsibility to:

- comply with this policy,
- display appropriate standards of conduct at all times when at work or representing the College,
- report any incidents of inappropriate behaviour (that you witness or any alleged inappropriate behaviours that you may hear about) to your manager or senior member of staff,
- refrain from raising a vexatious or malicious complaint,
- offer support to anyone who believes they are being discriminated against, harassed or bullied by encouraging them to make a complaint and seek support via the College's Employee Assistance Program service. You should never approach the person whom the allegations have been raised against. You should remain confidential about any alleged incidences except for reporting the alleged behaviours to your manager/senior member of staff,
- participate in an investigation process if requested and maintain complete confidentiality if such a request is made of them. This includes remaining confidential about the existence of an investigation and the information that is provided to the investigator. Spreading gossip or rumours may expose a staff member to a possible defamation action.

Any complaints made informally or formally will be taken seriously by the College. The complaint will be investigated in a procedurally fair and confidential manner. If any allegations are found to be substantiated, steps will be taken to make sure that the offending behaviour stops. Appropriate warnings or disciplinary action will be taken where unlawful discrimination, harassment, bullying, victimisation or the raising of a vexatious complaint is found to have occurred. You should not be victimised or treated unfairly for making a bone fide complaint.

Responsibilities of the Principal

It is part of the role of Principal to ensure, where reasonably practical, that unlawful discrimination, harassment or bullying does not happen in the workplace.

The Principal should not engage in inappropriate behaviour themselves – either of other staff, students or visitors. When the Principal observes unlawful discrimination, harassment or bullying happening in the workplace, steps should be taken to stop it and warn the person involved of the consequences if the offending behaviour continues.

The Principal is also responsible for ensuring that all staff and students are aware that unlawful discrimination, harassment and bullying will not be allowed in the school and that complaints will be dealt with in accordance with the terms of Penola Catholic College's Complaints Handling Procedure.

Responsibilities of Members of the Community

Staff and students are obliged to ensure that they do not unlawfully discriminate against, harass or bully other staff, students or visitors at Penola Catholic College. Staff and students must also ensure that they do not encourage others to do so.

If you become aware that someone you work or study with is being unlawfully discriminated against, harassed or bullied, you can assist them in a number of ways.

If you have first hand evidence of the incident/s, tell them that you are willing to act as a witness if they decide to make a complaint. You may support them in requesting that the alleged behaviour be stopped. However, it is not your responsibility to say anything to the alleged offender. Remember that if you spread rumours about anyone, you may be subject to a defamation action. You also have a responsibility to maintain a safe working place and as such, if you witness or become aware of allegations of harassment or bullying, you should report this to a member of the College Executive.

Grievance Procedure for Staff and Adult Visitors to the College

This Grievance Procedure is based on the College Philosophy and Value Statements including:

- The building of a community in which all members feel welcome and valued;
- The College upholds the Gospel Values with a commitment to justice, service and collaboration;
- We embrace the Gospel Values of justice, compassion and reconciliation in the ways we relate and work with each other; and
- We believe that all people should be treated with dignity and compassion, respecting and celebrating the richness of our social and cultural diversity.

All complaints of unlawful discrimination, harassment or bullying should be:

- taken seriously by any person to whom the complaint is raised;
- addressed in a timely and respectful manner;
- treated as confidential; and
- managed in accordance with this policy and the principles of natural justice and procedural fairness.

Any person who witnesses any actions or behaviours which they believe could be in breach of this policy, but who themselves are not the target of such behaviour, are responsible for reporting such incidents to a member of the College Executive.

Informal Complaints Handling Process

This process is for less serious incidents that are either 'one off' or a repeated pattern of behaviours that have not resulted in serious physical or mental harm or been the subject of threats to physical harm.

All employees, where they feel safe to do so, are encouraged to follow this informal process to resolve complaints in the first instance. All parties to this process are reminded of the College expectation that they participate with a commitment to justice and reconciliation.

Step 1: Self-Management

All employees are expected and encouraged to respectfully approach the respondent (the person whom they believe has breached this policy), either at the moment of the incident or as soon after as is practically possible. This step is designed, not to belittle or demean the respondent, but to raise their awareness that you believe their actions or behaviours have not been appropriate. If you are unsure of how to approach this person or what to say, you are invited to seek advice from a member of the College Executive.

If you are uncomfortable speaking with the respondent privately, you may approach a member of the College Executive and request they be present in the meeting as a support person for both parties. The role of the member of the College Executive, in this case, is not to be an advocate for either party.

Step 2: Report the incident or issue to a manager

If you believe it is unsafe to directly approach the respondent or you have tried but believe the incidents have since been repeated, you are invited to approach a member of the College Executive to report such behaviours/actions that you feel are not appropriate. The member of the College Executive is encouraged to follow a restorative practices model in which both parties are spoken to individually and informally then brought together to discuss issues and collaborate on reaching a negotiated outcome.

Step 3: Report the incident or issue to the Principal

If a resolution has not been achieved via step 2, either party may approach a member of the College Executive and request that the issue be escalated to the Principal. The Principal (or senior representative) shall then conciliate on the matter making a determination on the outcomes that both parties are expected to abide by.

Formal Complaints Handling Process

This process is for serious allegations such as physical assault, threat of physical assault, damage to property, repeated and ongoing instances of behaviour for which there has been no satisfactory resolution via the informal process.

The employee is required to submit a written complaint to:

- A member of the College Executive outlining the allegations and any past attempts to reach resolution of the issue/s.
- The member of the College Executive (in consultation with the Principal) shall determine if formal mediation or an investigation is required. The member of the College Executive must ensure that the complaint is addressed in a timely manner and is responsible for setting up and/or delivering either process.

Where the employee is not satisfied with the outcomes of this process, they may appeal to the Principal. If after discussion with the Principal, there is still no satisfaction with the resolution or process offered, the employee may approach an external statutory body.

Note: Changes to legislation states that if a claim specifically relates to bullying an employee may lodge a claim directly with the Fair Work Commission. The Fair Work Commission must deal with an employee's application within 14 days."