

# Responding to Discrimination, Bullying & Harassment in the Workplace

## Procedure



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## 1 Purpose

Catholic Education SA (CESA) is committed to providing its Workers with a safe work environment that is free from inappropriate behaviour and will take all reasonable steps to minimise any form of workplace discrimination, bullying or harassment and to treat all people with equity and dignity. It is in this context that the discrimination, bullying or harassment of any person is not tolerated.

CESA acknowledges that Workers may experience discrimination, bullying and harassment by people who are and who are not CESA employees.

## 2 Scope

These procedures apply across Catholic Education SA (CESA).

## 3 Policy Supported

This Procedure supports the [Code of Conduct](#) for Staff Employed in Catholic Education SA.

It should also be read in conjunction with the [Charter for Staff in Catholic Schools South Australia](#) and the Dealing with Allegations of Misconduct Procedure.

## 4 Definitions

**Another Catholic school** means a Catholic school owned and governed by an authority other than the Archdiocese of Adelaide or the Diocese of Port Pirie.

**Catholic Education Office or CEO** means either or both of the Adelaide and Port Pirie Catholic Education Offices as the context permits.

**CESA** means Catholic Education SA, including any School or CEO, as the context may permit.

**Complainant** means the person raising a concern that they are subject to discrimination, bullying or harassment in the workplace.

**Contact Officer** means a staff member, specifically trained and designated to provide information to employees with regard to workplace rights, obligations and options in responding to discrimination, bullying or harassment issues.

**Diocesan school** means a school owned and operated by the Archdiocese of Adelaide or the Diocese of Port Pirie.

**Employer Representative** means:

- the Principal of that school where the complaint involves a Worker on a school site;
- the Director of Catholic Education where the complaint involves the Principal of a Diocesan school;
- the person appointed by the relevant employing authority where the complaint involves a Principal of Another Catholic School;
- the relevant Assistant Director where the complaint involves a CEO employee.

**Repeated** refers to the persistent or ongoing nature of the behaviour and can refer to a range of different types of behaviour over time.

**Workers** means all employees and volunteers together with third parties who agree to be bound by this Procedure.

## 5 What is Workplace Discrimination

Workplace Discrimination is denying any person equality of treatment in employment matters for any grounds other than those directly related to the requirements of the job.

Discrimination can occur directly or indirectly:

Direct Discrimination occurs when a person or group of people are treated in an unfair or less favourable way because of an attribute such as age, gender, race, religion, sexual orientation, disability, pregnancy or marital status.

Indirect discrimination occurs when a person or organisation imposes a requirement (a rule, policy, practice or procedure) that is the same for everyone, but has an unequal or disproportionate effect on a particular group or groups. If the requirement is not reasonable in all the circumstances, it is likely to be indirect discrimination.

As an equal opportunity employer, CESA will treat all employees and prospective employees fairly and on the basis of their individual merit.

## 6 What is Workplace Bullying

Workplace bullying is the repeated, unreasonable treatment of a person by another or others in the workplace. It includes behaviour that intimidates, offends, degrades or humiliates a Worker and creates a risk to health and safety.

Examples of bullying include:

- behaving aggressively;
- teasing or practical jokes;
- pressuring someone to behave inappropriately;
- excluding someone from work-related events; or
- unreasonable work demands.

Bullying **does not** include:

reasonable management and administrative action taken by an employer, carried out in a reasonable way, regarding poor performance, disciplinary action and direction and control of the way work is carried out.

## 7 What is Workplace Harassment

**Workplace harassment** is any verbal, written or physical behaviour or conduct that is unwelcome, unsolicited, unreciprocated and usually (but not always) repeated. It is behaviour that is likely to offend, humiliate, threaten or intimidate a Worker.

In most cases, for behaviour or conduct to amount to workplace harassment, it must meet one of the following two criteria:

- 7.1..1 the Worker must have acted in a manner that would cause a reasonable person to feel harassed, having regard to all of the circumstances; or
- 7.1..2 the Worker, having been made aware that their behaviour or conduct was reasonably perceived as harassment by the person towards whom it was directed, and the behaviour or conduct was subsequently repeated.

Further, 'workplace' in this context is defined to include not only the usual work environment, but also work related activities and events, seminars, conferences, work functions, Christmas parties, and work-related trips.

Some examples of workplace harassment might include:

- offensive physical contact, derogatory language or intimidating actions;
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace;
- unjustified and unnecessary comments about a person's work or capacity for work;
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some;
- phone calls or messages on electronic mail or computer networks which are threatening, abusive or offensive to employees;
- persistent following or stalking within the workplace, or to and from work; and
- the exclusion of a person or group from normal conversations, work assignments, work related social activities and networks in the workplace.

Workplace harassment should not be confused with legitimate comment and advice on the work performance or work-related behaviour of an individual or group. However, feedback and counseling should always be carried out in a constructive way that is not humiliating or threatening, and that is consistent with the performance appraisal process.

## 8 Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature that is likely to offend, humiliate or intimidate.

A single incident is enough to constitute sexual harassment – it does not have to be repeated.

Sexual harassment is more fully defined in section 28A of the *Sex Discrimination Act 1984 (Cth.)*

Sexual harassment can take many forms and may include:

- belittling jokes or comments based on gender stereotypes;
- behaviour which insists that gender stereotypes be maintained and exercised in the workplace;
- uninvited touching, kissing or embracing;
- making promises or threats in return for sexual favours;
- displays of sexually graphic material including posters, cartoons and screen savers;
- repeated invitations to go out after prior refusal;
- staring or leering at a person or parts of their body;
- sexually explicit conversation;
- persistent questions or insinuations about a person's private life; and
- any behaviour that creates a sexually hostile work environment.

## 9 Victimisation

Victimisation involves treating someone unfairly because they have made, or intend to make, a discrimination, harassment or bullying complaint. This also includes those who have supported another person in making a complaint.

Victimisation is against the law.

## 10 Confidentiality

It is unacceptable for staff to talk with other staff members, clients, suppliers or other parties not involved in a formal investigation process, about any complaint of discrimination or harassment.

Breaching the confidentiality of a formal complaint investigation or inappropriately disclosing personal information obtained in a professional role (for example, as a leader or Contact Officer) is a serious breach of CESA policy and may lead to disciplinary action.

## 11 Merit Selection

All Catholic Education SA recruitment and job selection decisions will be based on merit – the skills and abilities of the candidate as measured against the inherent requirements of the position.

It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their personal characteristics, unless this can be shown to be directly relevant to a genuine requirement of the position.

## 12 Responsibilities

### 12.1 Principals' / Leaders' and Employers' Responsibilities

Principals/leaders and employers within CESA have additional responsibilities, and are expected to:

- be aware of and support CESA's policies and procedures relating to workplace discrimination, bullying and harassment;
- actively support and promote this procedure;
- set a good example of professional behaviour and establish high standards of behaviour in the workplace;
- take action to stop discrimination, harassment and bullying as soon as it is observed or reported;
- respond promptly, seriously and with sensitivity to every complaint;
- ensure that information about Workplace Discrimination, Bullying and Harassment policies, and the resolution of complaints is available to all Workers;
- ensure Contact Officers are appointed, appropriately trained and supported and staff know who the nominated Contact Officers are;
- keep confidential records of all complaints detailing actions taken, and store them appropriately;
- monitor workplace behaviours to assist in identifying (potential) risks associated with discrimination, bullying and harassment. (Refer to Workplace Culture Self-Assessment Checklist in Appendix B).

## 12.2 Workers' Responsibilities

All Workers within CESA have the responsibility to monitor their own conduct and to maintain appropriate standards of behaviour. Further, all employees must:

- act in accordance with CESA values and the Code of Conduct;
- not engage in discriminatory, bullying or harassing behaviours;
- speak out against discrimination, bullying and harassment if it is witnessed;
- respect the authority of the Principal/leader (or Employer Representative) and comply with and accept their reasonable directions;
- comply with s.28 of the *Work Health and Safety Act 2012 (SA)* ('WHS Act')<sup>2</sup>.

## 12.3 Contact Officers' Responsibilities

Every site will nominate a person(s) to carry out the role of Contact Officer. Nomination will be made in a way that allows for gender balance and availability and will be endorsed by the majority of staff. Nominated person(s) will receive training for their role. Contact Officers should work within a context of neutrality and impartiality and should have no vested interest in the outcome. They:

- provide advice on what constitutes workplace discrimination, bullying and harassment;
- find out what the Complainant wants to happen and explains available and appropriate options;
- maintain a brief record of contact with the Complainant;
- maintain confidentiality so far as is reasonably practical;
- maintain impartiality in the role; and
- assist in raising awareness of workplace discrimination, bullying and harassment issues in the workplace (educative role).

The Contact Officer will not:

- become involved in investigating complaints or try to resolve them by mediating between the parties;
- become involved if a conflict of interest may exist;
- stay involved if a conflict of interest arises.

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<sup>2</sup> Section 28—Duties of Workers

While at work, a Worker must—

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, so far as the Worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and
- (d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to Workers



- take any action without the agreement of the Complainant, except where the Contact Officer determines there is an imminent risk of serious harm either to the Complainant or to someone else, because of the behaviour complained about;

or

where there is a statutory or legal obligation to do so (such as where the Contact Officer reasonably believes a criminal act has occurred). In these instances, the Contact Officer must inform the Principal/Leader (or Employer Representative).

## 13 Procedure

### 13.1 Resolution Process

Discrimination, bullying and harassment can be stopped. The handling of these matters will depend on the particular work environment and the nature of the issues. Every situation is different.

If a Worker is being discriminated against, bullied or harassed, they can choose to resolve the issue informally or follow a more formal approach. They should not ignore it as this may be seen as unspoken consent and the behaviour will continue.

If a Worker believes they are being bullied, harassed or discriminated against, there are a number of ways to approach the problem. Informal steps are recommended as a first approach and may include the following:

- Seek advice from a Contact Officer. The Contact Officer's role is to listen and advise you of your options. They do not investigate any complaints.
- Make a detailed and accurate record of each incident - place, date, time, people and what was said or done, date the matter was raised and with whom. This information may be useful later, particularly if more formal steps need to be taken. It may also help you to establish whether the behaviour is actually discrimination/bullying/harassment and to keep things in perspective;
- Consider talking to the person whose behaviour is making you feel uncomfortable (if you are able). Make it quite clear to the person that their behaviour is unwanted and unacceptable, and that if it doesn't stop you will take further action. You may want to discuss this approach with a Contact Officer or Human Resources Adviser before acting. Your records may assist in deciding which approach to take. Another alternative to stop the behaviour is to ask someone else, such as a Contact Officer or an appropriate support person to approach the person with you.
- Seek personal counselling through the Employee Assistance Program (currently [ACCESS](#) Programs). This is a free and confidential service. Counselling may assist a Worker to develop ways of dealing with a person/s or the effects of the discrimination/bullying/harassment.

If the above informal options are not appropriate or do not successfully resolve the concerns, the Worker should speak about the behaviours being experienced with their Principal/Leader, WHS Coordinator, Catholic Safety Health and Welfare SA Consultant, Human Resources Adviser, or Union Representative, who will seek to resolve the concern.

A Worker may formally report a complaint by:

- lodging a WHS Online Incident Report
- lodging a [Workplace Discrimination, Bullying and Harassment Complaint Notification](#) (attached to these Procedures as Appendix B), or
- providing a written statement detailing the situation, to their Principal/Leader.



Where the allegation is against:

- a volunteer or staff member, including a Deputy Principal, direct the report to the Principal (or delegate). If the person making the report is concerned regarding follow up, the allegation should be reported to a Principal Consultant at the Catholic Education Office (CEO) (and/or with the relevant employer in the case of Another Catholic School);
- the Principal of a Diocesan school, the allegation should be reported to the relevant CEO Director or the Assistant Director People and Culture ;
- an employee in the Catholic Education Office, the allegation should be reported to the relevant Assistant Director;
- a Principal of Another Catholic School, the report should be directed to the Principal's Employer.

It is important that sufficient details are provided to enable a full response to be made and for the employer to meet their obligations of procedural fairness to all parties.

### 13.2 The Panel

Once a written complaint is lodged with the Principal (or Employer Representative), a Panel will be convened in response to the complaint. The Panel will consist of a minimum of two people.

Where the complaint is against:

- an employee at a school, the Panel will generally consist of the Principal and Principal Consultant from the Catholic Education Office, with advice sought from Human Resources and/or other appropriate persons as necessary;
- the Principal of a Diocesan school, or in relation to an employee at the Catholic Education Office, the applicable CEO Director will authorise the convening of the Panel;
- the Principal of Another Catholic School the relevant employing authority will convene the Panel.

Please note that where an employee's complaint is made about the behaviour of a non-employee (e.g. a parent or volunteer) these procedures will in most cases not be applicable. However, the Panel will consider what action, if any, can or ought to occur to best provide the employee with a safe work environment.

All complaints will be taken seriously and responded to in a fair and timely manner. The matter will be treated with sensitivity and kept confidential as far as this is possible. The Panel will assess the complaint, seek further assistance or advice as necessary and explore appropriate options with the Complainant.

### 13.3 Complaints response intervention and other processes

In assessing a complaint, the Panel must consider the appropriate investigation process required, regardless of the intentions of the parties and having regard to the seriousness of the complaint.

An investigation will be in accordance with the Dealing with Allegations of Misconduct Procedure.

Where an [Accident/Incident/Near Miss Report Form](#) is lodged with [Catholic Safety, Health and Welfare SA \(CSHW SA\)](#) in relation to a discrimination, bullying and/or harassment complaint CSHW SA will refer the complaint to the Principal/leader (or Employer Representative).

**Please note:** It is important that confidentiality is maintained at all times to the extent possible. This applies to the Complainant, the Respondent and all Officers associated with the complaint.

An investigation, in accordance with the Dealing with Allegations of Misconduct Procedure, will include consideration as to whether the person subject of the allegation should remain in their current position, be relocated or released from duties.

### 13.4 External Agencies

At any time it is open to a Complainant to seek advice from and/or to lodge a complaint with any of the following:

- Australian Human Rights Commission;
- Equal Opportunity Commission;
- Fair Work Commission;
- Independent Education Union [IEU (SA)];
- SafeWork SA.

### 13.5 Outcomes

If discrimination, harassment and/or bullying is found to have occurred, appropriate action will be taken. A range of possible outcomes may include:

- appropriate retraining, support, awareness raising, mentoring, counselling and/or coaching for any/all relevant parties;
- an apology and undertaking from the perpetrator that the inappropriate behaviour will cease and not be repeated.

Following an investigation, where the perpetrator is an employee and the allegations are sustained, the outcomes may include those listed above or disciplinary action including a formal warning or termination of employment.

## 14 Related/Useful documents/links

### External Documents/Links

Fair Work Act: <http://www.fwc.gov.au/index.cfm?pagename=legislationfwact>

[Work Health and Safety Act 2012 \(SA\)](#)

### Internal Links

[Code of Conduct](#)

## 15 Assistance

Assistance or further information is available from:

- Assistant Director, People and Culture, Catholic Education Office, Ph 8301 6667
- Principal Consultants, Catholic Education Office, Ph 8301 6885
- Catholic Safety, Health and Welfare SA Consultants, Ph 8210 9342
- IEU (SA) Ph 8410 0122 [www.ieusa.org.au](http://www.ieusa.org.au)
- Fair Work Commission - [www.fwc.gov.au](http://www.fwc.gov.au)
- Equal Opportunity Commission (SA) - Ph 8207 1977; country toll-free line: Ph 1800 188 163;
- SafeWork SA - 1300 365 255; [www.safework.sa.gov.au](http://www.safework.sa.gov.au)

## 16 Revision Record

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## APPENDIX A

Complaints can be lodged electronically using the Catholic Safety Health & Welfare SA [Online Incident Report](#).

Alternatively, the following form may be completed and submitted to the applicable WHS representative<sup>1</sup>.

### **CONFIDENTIAL WHEN COMPLETED**

#### **Workplace Discrimination, Bullying and Harassment Complaint Notification**

Date	
Complainant's Name	
Complainant's Position	
Complainant's Workplace	

Complainant made against	
Person's Position	
Person's Workplace	

Outline of complaint (please provide sufficient detail to explain the issue/s or situation)

Please attach additional pages and/or supporting information if necessary.

Have you sought advice or discussed the issue/s or situation with anyone?

☐

YES

☐

NO

If yes, please provide their name, position and contact details:

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Have you taken any action to address the issue/s or situation?

☐

YES

☐

NO

If yes, please outline what action has occurred:

--

General comments (if applicable):

--

Signature

--

Date

--

*Please forward completed form to the Principal/Leader (or Employer Representative). Where a complaint is made against the Principal of a diocesan School, the form should be lodged with or referred to the Assistant Director: People & Culture, Catholic Education Office. If the complaint is about a Principal of Another Catholic school, the written complaint should be lodged with or referred to the appropriate employing authority e.g. Religious Congregation.*

*This complaint is confidential. Details are not to be discussed by or with any person not involved in this matter.*

## APPENDIX B

### WORKPLACE CULTURE SELF-ASSESSMENT CHECKLIST

	YES/NO	COMMENTS
Are workplace procedures and reporting mechanisms relating to discrimination, bullying and/or harassment in place?		
Where grievances/complaints have been raised, have you responded in accordance with the procedure?		
Do absenteeism rates suggest that discrimination, bullying and/or harassment may be a workplace issue?		
Are there blatant incidents of discrimination, bullying and/or harassment that are accepted (or rewarded) in the workplace such as initiation of new employees, offensive literature, pictures, behaviour etc.?		
Is the workplace receptive to differences in gender, age, nationality, religious beliefs etc.?		
Is there potential for racial or cultural tension in the workplace?		
Are there unusual levels of employee turnover or requests for transfer that may be attributed to discrimination, bullying and/or harassment?		
Would it be difficult for another person to see that assistance was needed if discrimination, bullying and/or harassment was occurring?		
Are employees made aware of procedures and appropriate behaviours concerning discrimination, bullying and/or harassment?		
Is there a clear process for dealing with conflict and aggression?		

Source: Adapted from the Occupation Violence check list attached to Guidelines for reducing the risk of Violence at Work produced by Return to Work SA