

LESCHENAULT CATHOLIC PRIMARY SCHOOL

HARASSMENT, UNLAWFUL DISCRIMINATION, VICTIMISATION AND BULLYING (Staff) POLICY



First implemented	2000
Updated	2003
Updated	2008
Review	2011
Reviewed	2012
Reviewed	2014

Rationale:

At Leschenault Catholic Primary School, Christ is the foundation. All members of the school community are committed to reflecting Gospel values in everyday activities and personal encounters. The harassment of, unlawful discrimination against, victimisation or bullying of any person within Leschenault Catholic Primary School is contrary to the Gospel and the vision for Catholic education.

The contact officer for Leschenault Catholic Primary School is Sue Newman. At commencement of each school year, the Harassment officer should be introduced and the procedure for grievances outlined by the officer. Alternatively, you may seek support from any member of the Leschenault Catholic Primary School Leadership Team.

Leschenault Catholic Primary School aims to:

- create a working environment which is free from harassment, unlawful discrimination, victimisation or bullying and where all members of staff are treated with dignity, courtesy and respect;
- Ongoing 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;
- treat all complaints in a sensitive, fair, timely and confidential manner;
- ensure protection from any victimization or reprisals;
- encourage the reporting of behaviour which breaches this policy;
- promote appropriate standards of conduct at all times.

Scope:

This policy applies to all staff members within the Leschenault Catholic Primary School community.

PRINCIPLES:

1. Leschenault Catholic Primary School is committed to ensuring that the working environment is free from harassment, unlawful discrimination, victimization and bullying in any work related context. Harassment, unlawful discrimination, victimization and bullying will not be tolerated under any circumstances and that disciplinary action will be taken within a timely manner, against any employee (or agent) who breaches the policy.
2. Leschenault Catholic Primary School is committed to the rationale and principles as outlined in the CECWA policy on Harassment, Unlawful Discrimination, Victimization and Bullying in Schools.
<http://internet.ceo.wa.edu.au/AboutUs/Governance/Policies/Documents/Stewardship/Policy%20C4%20Harassment%20Unlawful%20Discrimination%20Victimisation%20and%20Bullying%20%28Staff%29.pdf>
3. Immediate disciplinary action will be taken against anyone who victimizes or retaliates against a person who has complained of harassment, unlawful discrimination, victimisation and bullying.
4. All staff have a responsibility to:
 - a. comply with the school's harassment, unlawful discrimination, victimisation and bullying policy;
 - b. offer support to anyone who is being harassed, unlawfully discriminated against, victimised and/or bullied, including advising them of the appropriate support networks (they should not, however, approach the alleged offender themselves);
 - c. maintain complete confidentiality if they provide information during the investigation of a complaint. The spreading of gossip or rumours may expose them to a defamation action.
5. Leschenault Catholic Primary School is committed to providing an environment which is safe for its employees and free of harassment, unlawful discrimination, victimisation and bullying. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

PROCEDURES:

1. Any employee who believes he or she is experiencing harassment, unlawful discrimination, victimization and bullying of any nature should follow one of the following options:

INFORMAL COMPLAINT PROCEDURES

Informal procedures emphasise an expedient resolution and can be utilized at the discretion of the complainant.

Informal ways of dealing with harassment, unlawful discrimination, victimization and bullying can include the following actions.

- The individual who has alleged harassment, unlawful discrimination, victimization and bullying may want to deal with the situation themselves but may seek advice on possible strategies from a leadership team member or the contact officer.
- The individual who has alleged harassment, unlawful discrimination, victimization and bullying, may ask the contact officer to speak to the alleged offender on their behalf. The contact officer privately conveys the individual's concerns and reiterates the school's harassment, unlawful discrimination, victimization and bullying policy to the alleged offender without assessing the merits of the case;
- A complaint is made, the alleged offender admits the behaviour, investigation is not required and the complaint is resolved through conciliation or counseling of the offender;
- The contact officer or a member of the leadership team observes unacceptable conduct occurring and takes appropriate action even though no complaint has been made.

Informal procedures are usually appropriate where:

- The allegations are of a less serious nature and
- The parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

A staff member should not be required to exhaust informal attempts at resolution before formal action commences. A member of staff at any point in time has the right to formalize their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission (HREOC). Once an external agency such as HREOC has commenced proceedings the informal school based investigations will cease.

FORMAL COMPLAINT PROCEDURES

- a. Formal procedures focus on proving whether a complaint is substantiated.
- b. Formal procedures usually involve:
 - An investigation of the allegation
 - Application of the principles of natural justice
 - Making a finding as to whether the alleged harassment, unlawful discrimination, victimization or bullying occurred
 - Submitting a report with a recommended course of action to the Principal
 - Implementation of an appropriate outcome.
- c. Formal procedures are usually appropriate where
 - Informal attempts at resolution have failed
 - The person alleging harassment, unlawful discrimination, victimization and/or bullying has been victimized
 - The complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties

- The complaint is against a more senior member of staff. Formal procedures may help to ensure that the complainant is not victimized or disadvantaged
 - The allegations are denied, the person who claims to have been harassed wishes to proceed and an investigation is required to substantiate the complaint or
 - The person alleging sexual harassment wishes to make a formal complaint from the outset.
- d. To ensure consistency and fairness, the school must document the steps involved in a formal complaint. The usual sequence of events is as follows:
- The complainant is interviewed and the allegations are particularized in writing
 - The allegations are conveyed in writing to the alleged harasser. This would include the process to be followed to resolve the issue
 - The alleged harasser is given the opportunity to respond in writing and defend themselves against the allegations
 - The alleged harasser has the right to have representation i.e, a colleague, union representative
 - If there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered
 - A finding is made as to whether the complaint has substance
 - A report documenting the investigation process, the evidence, the finding and a recommended outcome/s is submitted to the Principal/decision-maker
 - The Principal/decision-maker implements the recommended outcome/s or decides on an alternative course of action.
- e. A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of harassment. Those responsible for investigating complaints should consider all available evidence including any surrounding evidence, and make their finding on the balance of probabilities. The Industrial and Community Relations Team can be contacted on a confidential basis to discuss and provide advice at any time.
- f. The following type of evidence may be relevant:
- Supporting evidence provided by a medical practitioner, counselor, family member, friend or co-worker
 - Supervisor's reports and personnel records (e.g. sudden increase in sick leave)
 - Factual complaints or information provided by other employees about the behaviour of the alleged harasser
 - Records kept by the person claiming to have been harassed
 - Whether the evidence was presented by the parties in a credible and consistent manner.

- g. Outcomes may include any combination of the following but are not limited to the outcomes below
 - Counseling
 - Formal apologies
 - Conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
 - Official warnings that are noted on the offender's personnel file
 - Disciplinary action against the offender (e.g. demotion, dismissal, removal of some duties, etc)
 - Disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious
 - Reimbursing any costs associated with the harassment, unlawful discrimination, victimization and bullying
 - Re-crediting any leave taken as a result of the harassment, unlawful discrimination, victimization and bullying
 - h. Outcomes will depend on factors such as
 - Severity and frequency of the alleged harassment, unlawful discrimination, victimization and bullying
 - The weight of the evidence
 - The wishes of the person who was allegedly offended
 - Whether the alleged offender could have been expected to know that such behaviour was a breach of policy
 - The level of contrition
 - Whether there have been any prior incidents or warnings.
 - i. If there is insufficient proof to decide whether or not the harassment, unlawful discrimination, victimization and bullying occurred, employers should nevertheless
 - Remind those involved of expected standards of conduct
 - Conduct further training and awareness raising sessions for staff
 - Monitor the situation carefully
 - j. Leschenault Catholic Primary School will ensure that the outcome of the substantiated complaint does not disadvantage the person who was allegedly offended in any way.
 - k. The only case where no action is warranted is where it is deemed that the action did not take place. Even where it is determined that the behaviour did take place but that it did not constitute an offense, some action should be taken to reconcile the parties involved.
2. If the school based proposed resolution does not resolve the situation, or the person making the allegation does not feel able to follow through with the complaint procedures, they should contact the Industrial and Community Relations team at the CEO.

3. Throughout the process of investigating the complaint, the rights of all individuals will be respected and confidentiality maintained wherever possible.
4. Notes will be kept of all incidents – date, time, place, witnesses, what is said or done.
5. A written explanation of the findings and action taken should be provided to
 - The person/s making the allegation
 - The person/s against whom the allegation is made.

PART C: ROLE OF THE CONTACT OFFICER

Upon receipt of a complaint, the contact officer will discuss and determine with the complainant whether an informal or formal process is to be adopted. The contact officer will then record in writing the allegations and include the following details

- Name of person registering the complaint
 - Name of person (or persons) alleged to have offended the complainant
 - Details of the specific incident and any related incidents, including the date and place incidents are alleged to have taken place
 - The names of any staff members who witnessed the event or related events and
 - Suggestions of possible resolutions of outcomes from the complainant should be requested.
6. A copy of this record will be provided to the Principal and a plan of action agreed. This will include a discussion with the person (or persons) alleged to have offended the complainant.

Definitions

2.1 Harassment

2.1.1. 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.

2.1.2. 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/suggestion would disadvantage him/her in any way in connection with his/her employment or work

2.1.3. Sexual harassment can take many different forms and includes physical contact, verbal comments, 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.

2.1.4. 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.

2.1.5. 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.

2.2 Discrimination

2.2.1 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
- age
- religion
- gender reassignment

2.2.2 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.

Catholic schools are exempt from the discrimination provisions in the context of the employment of a staff member as detailed under the *Equal Opportunity Act 1984* where such discrimination occurs in good faith to avoid injury to the religious susceptibilities of adherents of that religion.³

2.3 **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.

2.4 **Workplace Bullying**

2.4.1 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.

2.4.2 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
- 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