

DISCRIMINATION, HARASSMENT AND BULLYING POLICY AND PROCEDURE

PURPOSE

This policy is designed to ensure the Central Coast Community College's (the College's) workplace, and learning environments remain free from discrimination, harassment, bullying, victimisation, vilification and workplace violence.

APPLICATION

This Policy applies to the Board, employees, contractors, visitors and students. This policy does not form part of your contract and may be varied at any time by the business.

The College is committed to the principles of access and equity and to providing a harmonious work and learning environment for our staff and our students.

The Work Health and Safety Act 2011 requires employers to ensure the health, safety, and welfare of all employees at work. Employers have a duty of care to provide a safe place of work for all employees, contractors, and visitors. Similarly, employees, contractors and visitors have a duty of care for the health and safety of others in the workplace through their own conduct.

The Fair Work Legislation Amendment Act 2022 outlines that any inappropriate behaviours such as discrimination, harassment, bullying, victimisation and vilification in the workplace are unlawful. Such behaviours will not be tolerated at HVTC or any work related business, social functions on or off site.

Responsibilities

The following roles have discrete responsibilities regarding the implementation of this procedure: Group Human Resources and Safety Manager, Human Resources and Safety Team.

These responsibilities are described in the procedure.

Document Owner

General Manager

PROCEDURES

Any grievances or concerns will be handled confidentially and sensitively within a formal process.

1. Direct approach: a clear and polite request for the behaviour to stop. This is important as silence may be misconstrued as consent.

This approach can assist when:

- Unreasonable behaviour first occurs
- When the inappropriate behaviour is directly observed

This request can be made by the person affected, their supervisor or manager, or another relevant person. Anyone requested to act on behalf of the person affected should adopt a confidential non-confrontational approach with a view to resolving the issue.

If a Supervisor or Manager is involved, their actions should be documented.

2. Mediation/discussion involving an independent third party

Discussion of the issues facilitated by a neutral person. The mediation must be conducted by a suitably experienced and independent person. The independence of the facilitator needs to be recognised by all parties involved. All parties should agree to this approach. The discussion should focus on resolving the problem.

This approach can be used where:

- The direct approach has not resolved the issue
- An investigation has recommended it

3. Investigation

An investigation will be undertaken when:

- Allegations involve senior staff/management
- Allegations cover a long period of time
- Allegations involve threats
- Allegations involve multiple workers
- Allegations involve vulnerable workers (apprentices/trainees)
- Other approaches have failed

The investigation must be conducted by a suitably experienced and independent person. The process needs to be established and agreed to by all parties prior to commencement. The potential outcomes of the investigation will be communicated to those involved, including to whom the outcomes will be reported.

At the completion of an investigation, a report will be completed, and recommendations will be made regarding actions to be taken to resolve the issue.

The outcomes of the investigation will be communicated to relevant parties in a fair and consistent manner that avoids bias.

When a complaint is substantiated

The following may occur:

- Disciplinary action up and to and including termination
- Perpetrator may be required to make a formal apology
- Conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- Disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious

Appeal Process

If the complainant feel as though the complaint has not been properly dealt with, an appeal may be made, in writing, to the GM against any decision. The GM will then be responsible for any further action.

Appeals made by Senior or Executive Management shall be considered by the Board of Directors who shall determine if any further action is warranted.

Support

It is important to advise your Manager about the issue and discuss the plan for resolution. This provides you with support and ensures that he/she is informed about the issue if there is a need to escalate it in the future.

Support can be provided by your Manager and through the Employee Assistance Program (EAP). Our EAP provider is AccessEAP ,they provide free professional confidential counselling to staff members and their immediate family members. This can be particularly helpful for staff members involved in a workplace grievance issue.

Failure to comply with this policy

All participants are required to always comply with this policy. If a staff member breaches this policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Staff members who are found to have breached this policy may have their contracts with the College terminated or not renewed. Students who are found to have breached this policy may be suspended from attending the College.

Induction and Training:

CCCC Induction

Includes a Bully and Harassment training module that all employees are taken through and are made aware of what constitutes unacceptable behaviour and will be encouraged to report inappropriate behaviour directed towards themselves or others at work.

Training and Education:

Information regarding bullying and harassment in the workplace will be delivered to CCCC employees and students periodically at monitoring visits via Toolbox Talks, staff meetings and other communications.

DEFINITIONS

Discrimination

Direct discrimination is when you are treated unfairly because of a characteristic you have or are assumed to have that is protected by law.

Indirect discrimination is when a rule or requirement that applies to everybody unfairly disadvantages people who possess a characteristic protected by law and is not reasonable in the circumstances. For example, a requirement that employees work full time to receive a particular benefit may amount to indirect discrimination against employees with family responsibilities who work part-time.

Federal and state legislation prohibits discrimination against employees and prospective employees, contractors, and visitors on a variety of grounds, as listed in Table 1.

Table 1

• Race	• Physical or mental disability
• Colour	• Marital status
• Sex	• Family or carer's responsibilities
• Sexual orientation	• Pregnancy
• Breastfeeding	• Religion
• Gender identity	• Political opinion
• Age	• National extraction
• Intersex status	• Social origin
• Trade Union activity	• Medical record

Workplace harassment

Harassment is a form of unlawful discrimination.

It is any form of behaviour that is unwelcome and that a reasonable person would have anticipated would:

- Humiliate someone
- Offend someone
- Intimidate someone

Workplace harassment can consist of a pattern of behaviour or just one act. There is no requirement that the perpetrator intends to offend or cause harm for it to be unlawful. All that is required under the law is that a reasonable person would consider that the person being harassed would be offended, humiliated or intimidated by the behaviour in question.

Workplace harassment can be based on such grounds as race, disability, age, pregnancy, marital status, homosexuality, transgender, carer's responsibility, gender/sex or HIV/AIDS status.

Sexual harassment

Sexual harassment is behaviour of a sexual nature that is unwelcome and has the effect of offending, intimidating or humiliating the person being harassed. There is no requirement that the harasser intends to offend, humiliate or intimidate another person. A person's intention is irrelevant.

Examples of harassment and sexual harassment include:

- Inappropriate physical contact, such as unwelcomed touching, pinching, grabbing, kissing or hugging
- Comments about a person's body or appearance
- Staring or leering at a person or parts of their body
- Gender-based insults or taunting
- Suggestive comment or joke
- An unwanted invitation to go out on dates
- Requests for sexual favours
- Persistent requests to go out, where they are refused
- Sexually explicit conversations
- Making jokes, verbal abuse or derogatory comments based on a personal characteristic;
- Intrusive questioning about a person's private life or body
- Unnecessary familiarity, such as deliberately brushing up against a person
- Sexually explicit email or text message.
- Displaying screensavers or internet sites or any other visually inappropriate material which may be visible to another employee (refer to HVTC Communication and Information Technology Policy)
- Bullying (as discussed below).

Bullying

Bullying in a workplace context consists of a repeated, unreasonable pattern of behaviour directed towards an employee by another person or group of people, which may be considered to be unreasonable or inappropriate workplace behaviour, or which may create a risk to health and safety. Unreasonable behaviour is such that a **reasonable person**, having regard to all the circumstances, could anticipate the behaviour would **humiliate, intimidate, undermine or threaten**. Examples of bullying a particular employee or group of employees may include:

- Verbal or physical abuse;
- Excluding or isolating employees;
- Psychological harassment;
- Initiation rites that could offend, humiliate, harm or intimidate an employee;
- Deliberately undermining work performance, for example, by refusing to give sufficient instructions, imposing unnecessary deadlines or impossible assignments;
- Belittling an employees' contribution or opinion;
- The misuse of a performance management system, or a return to work process;
- Publicly criticising an employee or employees
- Cyber bullying

Reasonable management actions carried out in a fair way are **not bullying**.

For example:

- Setting performance Key Performance Indicators, standards and deadlines
- Allocation of work to a worker
- Rostering and allocating work hours
- Transferring a worker
- Deciding not to select a worker for promotion
- Informing a worker about unsatisfactory work performance
- Informing a worker about inappropriate behaviour
- Implementing organisational changes
- Performance management processes
- Constructive feedback
- Downsizing

Victimisation

Victimisation is any conduct which disadvantages a person because he or she has complained, or intends to complain about, being harassed, sexually harassed, discriminated against, bullied or vilified. Victimisation also includes any conduct which disadvantages a person who is assisting or supporting a person who has been subjected to inappropriate behaviour. Victimisation can take any form including intimidation, exclusion from team or Company activities, withholding opportunities, dismissing an employee or refusing a promotion, threatening a person or limiting their access to benefits. If an employee lodges a grievance pursuant to State or Federal legislation, it is unlawful to victimise that employee or any person assisting with the grievance. There are penalties for individuals and corporations, which include fines and imprisonment.

Vilification

Vilification is a public act that could incite hatred, serious contempt or severe ridicule towards a person or a group. Vilification is unlawful if it is on the grounds of race, homosexuality, being transgender or having HIV/AIDS. Examples of vilification include displaying

Vexatious Behaviour

Making false or frivolous claims of bullying or harassment that cause annoyance and/or embarrass the alleged perpetrator (without sufficient grounds) will be regarded as vexatious behaviour. This may be subject to disciplinary action.

External Resources

- National Anti-Discrimination Information Gateway – provides information about discrimination and harassment legislation and external agencies that address complaints
- Fair Work Commission – provides information about the Fair Work Commission antibullying legislation and complaint handling processes
- Safe Work Australia Guide to Preventing and Responding to Workplace Bullying – a comprehensive guide that covers the work health and safety responsibilities of employers with regard to workplace bullying and aligns with the requirements of the Fair Work Act.

Compliance

The College's Discrimination, Harassment, and Bullying Policy and related procedures contribute to compliance with the following legislation/regulations:

- Anti-Discrimination Act 1977
- Disability Standards for Education 2005
- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986) (Cth)
- Disability Discrimination Act 1992 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Work Place Gender Equality Act 2012 (Cth)
- Fair Work Act 2009 (Cth)

RELATED DOCUMENTS

Student Handbook

Trainer Handbook

Code of Conduct

[Student Code of Conduct](#)

Complaints and Grievance Policy and Procedure

Staff Recruitment Policy and Procedure

Work Health and Safety Policy and Procedure

Privacy and Confidentiality Policy and Procedure

Bullying and Harassment Flowchart

