

POLICY DOCUMENT

EQUAL EMPLOYMENT OPPORTUNITY (EEO), DISCRIMINATION, HARASSMENT AND WORKPLACE BULLYING POLICY - STAFF

1. Purpose and Scope

ACPE supports equal employment in the workplace and eliminating unlawful discrimination, bullying and harassment in the workplace. This policy is intended to provide managers and employees with information to help the College achieve its policy objectives by outlining expectations of behaviour and procedures for dealing with complaints.

Scope:

- 1.1 The EEO and Discrimination, Bullying and Harassment Policy is applicable to all employees, agents, volunteers and contractors ('employee/s').
- 1.2 Employees must comply with the policy at all times during work (even outside of ordinary working hours), when representing or acting on behalf of the College and at work related events and social functions.
- 1.3 This policy also applies where there is a relevant connection to the workplace or where there is a significant effect on the workplace (e.g. posting a discriminatory message about an employee or customer on a social media platform).
- 1.4 Behaviour that is inconsistent with this policy will not be tolerated and depending on the severity may lead to disciplinary action including termination of employment or engagement.

2. Policy

2.1 Equal Employment Opportunity

2.1.1 It is the policy of the College that all persons in the workplace be treated on the basis of merit and according to their skills and abilities. This shall include, but is not limited to, matters involving:

- i. Recruitment, selection, transfers, promotions, performance reviews, training and development, task allocation, supervision and management of staff, counselling, disciplinary procedures and termination of employment; and
- ii. Remuneration practices and benefits.

2.1.2 An employee's gender, marital status, pregnancy, parental or family responsibilities, race, age, physical or mental disability, sexual orientation, transgender, political or religious beliefs, social origin, trade union activity or inactivity or any other attribute prohibited by law will not form the basis of employment or engagement decisions.

2.2 Discrimination and Harassment

2.2.1 The College believes that all employees have a right to work in a productive environment in which unlawful discriminatory conduct or harassment of others is not tolerated.

2.2.2 Unlawful discrimination and harassment can have many negative effects in the workplace. Employees who are subjected to, or witness this type of treatment often feel intimidated or anxious at work.

What is Unlawful Discrimination?

2.2.3 Unlawful discrimination may occur when an employee is treated less favourably than others because of that person's individual characteristics or because that person belongs to a particular group of people. Discrimination does not have to be calculated or intentional to be unlawful. The intention of the person discriminating is irrelevant. Basically, two types of unlawful discrimination can occur in the workplace:

i. **Direct Discrimination** - this occurs when an individual treats another person less favourably for an unlawful reason.

ii. **Indirect Discrimination** - this occurs when a policy or practice appears neutral but in fact results in an individual or group being treated less favourably.

2.2.4 Employment decisions may be unlawful if they are made on the basis of a person's:

- i. Sex (including marital status, pregnancy or potential pregnancy);
- ii. Race (including colour, descent, nationality, ethnic or ethno-religious origin);
- iii. Sexual orientation, intersex status and gender identity (including sexual preference, transgender status);
- iv. Age;
- v. Marital status;
- vi. Family or carer's responsibilities;
- vii. Pregnancy and breastfeeding;
- viii. Religion;
- ix. Political opinion/ activities;
- x. Irrelevant criminal records;
- xi. Disability, disease or injury;
- xii. Industrial activity (including trade union activity or not deciding to join a union);
- xiii. An association with someone who has or is assumed to have one of these characteristics.

2.2.5 It is also unlawful to treat someone unfavourably because you assume they have a personal characteristic or may have it at some time in the future.

The following examples may constitute unlawful discrimination in the workplace:

- i. A pregnant employee being pressured to resign prior to taking any maternity leave; or
- ii. Making the decision not to hire an employee on the basis of the person's ethnicity.

What is Harassment?

2.2.6 Harassment is any uninvited or unwelcome behaviour that is based on one of the unlawful reasons that a reasonable person would anticipate might offend, humiliate or intimidate another person, whether or not that effect is intended.

2.2.7 Harassment may occur as a single act, or as a series of incidents, persistent innuendoes or threats. It can take many forms: it may be silent or loud, subtle or openly hostile; it can be private or public.

2.2.8 Harassment specifically aimed at people with a particular attribute listed above may amount to discrimination, which is unlawful.

Sexual Harassment

2.2.9 Sexual harassment in the workplace, generally includes any unwelcome conduct of a sexual nature which a reasonable person would find offensive. It may be physical, verbal or written.

2.2.10 Certain conduct that may be tolerated socially could constitute sexual harassment in the workplace when it is unwelcome. At the same time, sexual harassment must not be confused with conduct that has the consent of all involved. Behaviour that is based on mutual attraction, friendship and respect is not likely to constitute sexual harassment as long as the interaction is consensual and reciprocated.

2.2.11 The College is committed to maintaining a working environment which is free from sexual harassment. The College regards sexual harassment as a serious issue and aims to treat any complaints in a sensitive, fair and confidential manner.

Examples of Sexual Harassment

The following examples may constitute sexual harassment when they are offensive to an employee, regardless of any innocent intent on the part of the offender:

- i. The public display of pornography, including on the Internet;
- ii. Continued use of jokes containing sexual innuendo;
- iii. Intrusive enquiries into another employee's private life, their sexuality or physical appearance;
- iv. Persistent requests from a colleague to go for a drink where such requests have been consistently declined;
- v. Persistent staring or leering at a person or parts of their body;
- vi. Sexually offensive telephone calls or text messages;
- vii. Requests for, or expectations of, sexual activity under threat, or in exchange for favours or promises of preferential treatment;
- viii. Deliberate or unnecessary physical contact, such as groping, patting, pinching, fondling, deliberate brushing up against another body, or attempts at kissing;
- ix. Public displays of nudity - commonly referred to as flashing;
- x. Sexual violence at the most extreme, sexual assault and forced attempts at sexual intercourse.

2.3 Victimization

2.3.1 Victimization occurs when a person is treated detrimentally by others because they have lodged a discrimination or harassment complaint or takes certain related actions.

2.3.2 Victimization of others is unlawful. The intention of such protective measures is to ensure that a person who wants to use or does use their statutory rights to protect themselves against discrimination or harassment, is not further disadvantaged by other detriments being imposed on them.

2.3.3 Disciplinary action will be taken against an employee who is found to have engaged in threatening, intimidating or other inappropriate behaviour against a person who has complained of harassment.

2.4 Bullying

2.4.1 Workplace bullying is repeated, unreasonable behaviour directed towards a person, or a group of persons, that causes a risk to health and safety. For the purposes of this policy, the following are defined:

- i. **Repeated behaviour** refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.
- ii. **Unreasonable behaviour** means behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable, for example because the behaviour is victimising, humiliating, undermining or threatening.
- iii. **Risk to health and safety** means that the bullying behaviour must be repeated, unreasonable and cause a risk to health and safety. 'Health' includes both physical and psychological health.

2.4.2 Bullying may be direct or indirect and may include, but is not limited to:

Direct bullying:

- i. Abusive, insulting or offensive language;
- ii. Spreading misinformation or malicious rumours;
- iii. Behaviour or language that frightens, humiliates, belittles or degrades, including over criticising, or criticism that is delivered with yelling or screaming;
- iv. Displaying offensive material;
- v. Inappropriate comments about a person's appearance, lifestyle, their family or sexual preferences;
- vi. Teasing or regularly making someone the brunt of pranks or practical jokes;
- vii. Interfering with a person's personal property or work equipment;

viii. Harmful or offensive initiation practices.

Indirect bullying:

- i. Unreasonably overloading a person with work or not providing enough work;
- ii. Setting timelines that are difficult to achieve or constantly changing deadlines;
- iii. Setting tasks that are unreasonably below or beyond a person's skill level;
- iv. Deliberately excluding, isolating or marginalising a person from normal work activities;
- v. Withholding information that is vital for effective work performance;
- vi. Deliberately denying access to information, consultation or resources;
- vii. Deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular person;
- viii. Unfair treatment in relation to accessing workplace entitlements such as leave or training.

What is not bullying?

2.4.3 Many things that happen at work are generally not considered to be bullying, although some experiences can be uncomfortable for those involved. Differences of opinion, performance management, conflicts and personality clashes can happen in any workplace, but do not necessarily result in bullying.

2.4.4 Reasonable management of workers carried out in a reasonable manner is not bullying. Managers have the right, and should, manage their employees. This includes directing the way in which work is performed, undertaking performance reviews and providing feedback (even if negative) and disciplining and counselling staff.

Examples of reasonable management action include:

- i. Setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience;

- ii. Allocating work to a worker in a transparent way;
- iii. Fairly rostering and allocating working hours;
- iv. Transferring an employee for legitimate and explained operational reasons;
- v. Deciding not to select an employee for promotion, following a fair and documented process;
- vi. Informing an employee about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements;
- vii. Informing an employee about inappropriate behaviour in an objective and confidential way;
- viii. Implementing organisational changes or restructuring, and
- ix. Performance management processes.

3. Procedure

3.1 Responsibilities

All employees have a responsibility to:

- i. Comply with this policy;
- ii. Monitor the working environment to ensure that acceptable standards of conduct are observed at all times;
- iii. Model appropriate behaviour;
- iv. Ensure that all employment, advancement and training decisions are consistent with this policy;
- v. Seek appropriate advice and assistance when dealing with formal or informal complaints; and
- vi. When appropriate, deal with sensitive information in a confidential manner.

3.2 What if you do have a complaint

- 3.2.1 Employees who become aware of a breach or suspected breach of this policy are encouraged to discuss the matter with their Manager on a confidential basis. In instances of any alleged policy breach, discretion is important to protect all people concerned. All employees are required to observe confidentiality of complaints of which they become aware. Should you be found to be inappropriately discussing a complaint, you may be disciplined for that conduct.
- 3.2.2 Management, or others involved in managing a complaint or investigation will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other workplace participants in order to determine what happened in order to resolve the complaint.
- 3.2.3 An employee who believes they are the victim of discrimination, bullying or harassment may deal with the matter:
- i. Informally - by raising the matter with the person with whom they are aggrieved; and/or
 - ii. Formally - by using the College's grievance procedure.
- 3.2.4 Should the employee elect to raise a formal grievance, the College may carry out an investigation. Alternatively, the College may take whatever action it deems necessary to attempt to resolve the employee's grievance.
- 3.2.5 The College expects that grievances are raised in good faith. If after an investigation by the College, an employee's complaint or statement is found to be false and malicious, disciplinary action may be taken against the employee up to and including termination of employment or engagement.
- 3.2.6 If an employee's complaint is substantiated, the College may take disciplinary action against the perpetrator. Depending upon the seriousness of the breach of this policy, such action may include termination of employment or engagement.

3.2.7 All employees are encouraged to talk to their supervisor/immediate manager or Human Resources if they have any questions or are unsure about any aspect of this policy.

4. Definitions

None

5. Related Documents

College policies and procedures:

- Performance Counselling and Discipline Policy
- Staff Code of Conduct
- ACPE Values Statement
- Grievances, Complaints and Appeals Policy

Legislation:

- Equal Employment Opportunity (Commonwealth Authorities) Act 1987
- Fair Work Australia
- Sex Discrimination Act (1984)
- Work Health and Safety Act 2011 (NSW)

6. Document Administration

Policy Name & Code:			EEO, Discrimination, Harassment and Workplace Bullying Policy - Staff (POL-45)
Policy Owner:			CEO and Dean / HR
Approval Authority:			Board of Directors
Next Review:			September 2023
Approval Date	Effective Date	Version	Summary of changes
09.04.20	10.04.20	1	Approved by Board of Directors as an interim policy.
15.06.20	16.06.20	1.5	Minor adjustments made.

* Unless otherwise indicated, this policy will still apply beyond the review date.