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policy

Countering Discrimination, Harassment and Bullying Policy

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Catholic Education
Diocese of Parramatta

Countering Discrimination, Harassment and Bullying Policy

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Policy

1. Introduction

The Church's mission is to proclaim the Word of God and to be the lived example of Christ in the world.

As part of the church's mission, the system of schools in the Diocese of Parramatta, educates young people in the Gospel and forms them to live their life to the full.

Integral to fulfilling its mission it works to improve learning outcomes for all students and promote a professional and rewarding working life for all staff.

The purpose of this policy is to facilitate this mission.

2. Policy Statement

Schools and the Catholic Education Office (CEO) aim to be free from discrimination, harassment, bullying and provide for fair and equal opportunity in employment consistent with State and Commonwealth legislation.

3. Scope and Application

This policy is to be made accessible to all participating in the mission of Catholic schooling within the Diocese of Parramatta. This includes employees, volunteers, contractors and parents in schools.

- This policy is to be made accessible to all personnel.
- This policy and procedures will be reviewed every three (3) years.
- The [Complaint Handling Guidelines and Procedures](#) detail steps for resolving a complaint.
- The Catholic Education Office [Anti-Bullying Policy for Students 2005](#) applies to students.

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Procedures

Complaints under this policy are to be dealt with under the **Complaint Handling Procedures and Guidelines**. To assist with understanding the scope of this policy, the following additional information is made available for a person managing a complaint and interested parties.

Legislation

The Catholic Education Office (CEO) is required to comply with State and Commonwealth laws. These laws identify grounds for discrimination, harassment, bullying and equal opportunity. An essential aspect of the legislation is the provision of exemptions and exceptions which are applicable to the CEO and system of schools within the Parramatta diocese. Some exceptions or exemptions are available because of the inherent requirements of employment in a Catholic education setting.

It is not the intention of these procedures to fully detail the relevant laws. However, some information is provided in the annexures.

In processing a complaint under this policy the person managing a complaint may need to obtain legal advice through the Catholic Education Office on the obligations of the employer in individual circumstances. All parties concerned must be conscious of confidentiality and privacy when dealing with allegations of discrimination, harassment and bullying as inappropriate dissemination of information may lead to claims of defamation.

Additional Information

- Information in relation to discrimination and harassment is provided in **Annexure 1**.
- Information in relation to bullying is provided in **Annexure 2**.
- Information in relation to equal employment opportunity is provided in **Annexure 3**.
- Information in relation to legislation is provided in **Annexure 4**.

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Annexure 1: Information about discrimination and harassment

Discrimination

1. Commonwealth legislation

Under commonwealth legislation it is unlawful to discriminate against a person in relation to their employment on the grounds of:

- race, colour, descent or national or ethnic origin
- impairment or disability
- sex, marital status, pregnancy or potential pregnancy, breastfeeding or family responsibilities (for example looking after a sick child)
- age
- trade union activity
- political opinion

These grounds of discrimination apply to recruitment (includes advertising vacancies, conducting interviews, short listing, and selection criteria), conditions of employment, promotion, transfer, training, access to benefits and subjecting an employee to detriment and/or dismissal.

2. Racial vilification

Racial vilification is a public act that incites hatred towards a person or group of a particular race. A public place is one to which the public has access. Any written or spoken communication available to the public is covered by the laws. An act of vilification is one that is likely to offend, insult, humiliate or intimidate a person because of their race, colour, national or ethnic origin.

3. Disability

It is unlawful for an employer to discriminate against an employee on the grounds of the employee's disability or disability of that employee's associates. This covers present, past, future and imputed disability, and means that an employer must reasonably accommodate a person's disability (e.g. provide more lighting) so that s/he may perform the inherent requirements of the position.

4. Age

It is unlawful to discriminate against an employee on the grounds of age, and characteristics imputed to persons of a particular age. Age includes a specific age as well as an age group.

5. Trade Union Activity or Political Opinion

It is unlawful to discriminate against employees on the basis of trade union involvement or legitimate industrial activity. It is also unlawful to discriminate against employees on the basis of political opinion.

6. Inherent requirements

If a person is unable to carry out the inherent requirements of the job (e.g. because of a disability or age), it may be lawful to discriminate against them. The inherent requirements are those that are necessary for the goal of the job to be achieved. As part of an assessment whether a person is able to fulfil the inherent requirements of their role the employer must consider whether making reasonable adjustments (e.g. supply special services or facilities) would enable an employee to perform the inherent requirements of the job or access services or premises. The employer will not be required to make adjustments if this involves unjustifiable hardship to the employer.

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It is not unlawful to discriminate on the basis of age when a person is unable to carry out the inherent requirements of their job because of their age. However, the person's relevant qualifications, training, experience and on the job performance must be considered.

One of the inherent requirements of leadership positions within the Catholic Education system is respect of the teachings and practice of the Catholic faith.

7. Race

The application of special measures for the advancement of certain racial groups is not discriminatory (e.g. employing an Aboriginal person for a role involving support of Aboriginal students).

8. Disability

Another important exception is where a disability is an infectious disease and the discrimination is reasonably necessary to protect the public health. For example, if a person has HIV/AIDS it is not necessarily lawful to discriminate against them if they have a job where there is no risk of infection such as a desk job, as opposed to a doctor or nurse where there may be a much higher risk.

9. Sex

An employer may discriminate on the grounds of sex in connection with certain jobs where it is a genuine occupational qualification to be an employee of a particular sex. Such qualifications are usually related to authenticity or decency, for example being female for a role in a dramatic performance. Other exceptions include the provision of services of a nature that can only be supplied to one sex, for example male and female toilets, residential care of children, special measures intended to achieve equality and some accommodation for employees.

10. Age

Payment of junior pay rates under awards and agreements is not considered as discrimination.

It is not unlawful to discriminate on the grounds of age where age is a genuine occupational qualification. Age is a genuine occupational qualification in dramatic performance, or other entertainment for reasons of authenticity, and where age relates to the provision of welfare educational services, and such services can most effectively be provided by an employee of a certain age group.

With respect to charities, religious and voluntary bodies, discrimination is possible where charitable benefits are offered to people of a certain age, to protect religious sensitivities and regarding admission as a member of a voluntary body. Lastly, discrimination in superannuation matters arising from the requirements of the federal superannuation legislation is an exception, as well as discrimination regarding statistical and actuarial data about age that is used for superannuation purposes.

11. State legislation: Anti-Discrimination Act 1977

In employment under State legislation, homosexuality, transgender and religion are additional grounds of discrimination. A transgender person is a person who identifies as a member of the opposite sex. Race is defined more broadly than in Commonwealth legislation to include ethno-religious origin.

12. Exceptions

It is not unlawful for a private educational authority to discriminate on the grounds of transgender or homosexuality, marital status or sex. The Catholic Education Office and its system of schools have an exception from state legislation in relation to 'the appointment of any person to a position that conforms with the doctrine of the Catholic religion or where it is necessary to avoid injury to the religious susceptibilities of the adherents of that religion'.

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Direct discrimination and indirect discrimination

1. Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances on the basis of sex, race, disability, marital status, age and other grounds of discrimination.

Examples of direct discrimination:

- only promoting or employing staff of Australian or English speaking background to middle management
- determining that a person is too young to be responsible or too old to understand new technology and not promoting them
- refusing to provide a promotional opportunity to someone because of a real or supposed disability (an exception would be if the disability makes it impossible for the person to perform the inherent requirements of the position)

2. Indirect discrimination

Indirect discrimination occurs when there is a requirement, condition or practice in the workplace that applies equally to all employees, but which has an unfair practical effect upon a particular group of people.

Examples of indirect discrimination:

- providing professional development and promotions only to full-time staff, when most part time staff are women
- saying that only a person with ten years work experience can be appointed to a particular position, when it can be shown that someone with less experience could do the job well

3. Harassment

Harassment occurs when behaviour in the workplace is:

- unwelcome; and
- targets a person because of one or more of the characteristics specified under commonwealth or state anti-discrimination legislation; and
- would offend, humiliate or intimidate a reasonable person

Some forms of harassment are criminal offences.

Examples of harassment:

Verbal

- Sexist or racist jokes
- Comments of a sexual nature
- Referring to a person's age in a demeaning way
- Imitating someone's accent
- Putting someone down because of a disability

Non-verbal

- Unwanted suggestive looks or stares
- Offensive hand or body gestures
- Displaying of offensive or pornographic posters or screen savers
- Invading someone's personal space
- Mimicking a disability

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4. Sexual harassment

Sexual harassment may consist of:

- unwelcome sexual advances, an unwelcome request for sexual favours in the workplace
- unwelcome conduct of a sexual nature in the workplace

In circumstances where a reasonable person, having regard to all the circumstances, could foresee that their actions could offend humiliate or intimidate the other person

Some examples of sexual harassment that amount to criminal behaviour include:

- indecent exposure
- sexual assault or attempted sexual assault
- sending or making obscene communications in any form through the use of internet, emails, instant messaging, chat room discussion, mobile phone facilities, personal digital assistants, video or still cameras.

Criminal acts should be reported to the police immediately.

5. What is not harassment?

Workplace harassment does not include behaviour which is consensual, welcome and reciprocated.

6. What is vilification?

Vilification is a public act that incites or encourages hatred based on one of the grounds of discrimination.

7. What is victimisation?

Victimisation is subjecting someone to detriment including:

- paybacks or repercussion for reasonable actions
- intimidation

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Annexure 2: Information about bullying

1. Legislation

The Work Health and Safety Act 2011 (WHS Act) sets out the legal obligations that must be complied with to help ensure the health and safety of workers. In the context of the WHS Act, bullying is regarded as a risk that needs to be addressed on a proactive basis and managed in the workplace should issues arise.

2. What is bullying?

Bullying involves behaviour that is:

- unwelcome and unsolicited; and
- offensive, intimidating, humiliating or distressing; and
- usually part of a pattern; repeated and systematic behaviour
- potentially a risk to health and safety
- is considered offensive, intimidating, humiliating or distressing to the individual to whom it is directed, or to others who witness or are affected by it

Bullying can be:

- **Intended:** it could be reasonably inferred that the behaviour was intended to humiliate, offend, intimidate or distress; or
- **Unintended:** although not intended to humiliate, offend, intimidate or distress, did cause and should reasonably have been expected to have that effect.

Work Cover (2008) has defined workplace bullying as 'behaviour that is usually repeated, that is inappropriate, unreasonable and possibly aggressive and that creates a risk of physical and/or psychological harm'.

2. Examples of workplace bullying

Examples include:

- humiliating others through sarcasm, belittling someone's opinions or unjustified criticism, including criticism delivered by yelling or screaming
- teasing or making others the brunt of practical jokes
- slamming doors and swearing
- persistent silent treatment
- assigning meaningless tasks unrelated to the position
- unreasonably withholding information that is vital to effective work performance
- intruding on a person's personal space by pestering, spying or tampering with work equipment or personal effects
- spreading misinformation or malicious rumours
- participating in collective bullying or mobbing
- isolating and excluding a person from various work or groups
- actions which make competent employees appear incompetent, in the hope that they will resign or be demoted or dismissed
- taking credit for someone else's work or ideas and/or undervaluing their work
- inappropriate use of electronic media which may offend, embarrass, humiliate, distress, intimidate workplace colleagues

3. How may bullying manifest in an employee?

Anxiety, fear, anger, loss of self esteem, health problems, absenteeism or presenteeism (a person attending work but not performing their duties), high turnover, loss of dignity and/or public standing.

Workplace bullying can be physical and/or psychological in nature and can be directed towards a peer, subordinate or supervisor.

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4. What is not bullying?

Reasonable managerial actions do not constitute bullying. Some examples include:

- allocating work to an employee, setting reasonable goals, standards and deadlines
- corrective action relating to performance issues
- business processes for organisational changes such as restructure, redeployment, redundancies, technological change
- constructive feedback
- differences of opinion
- poor or bad management practices on their own provided such practices do not contribute to a workplace which condones or supports bullying behaviour
- humour that would not reasonably offend

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Annexure 3: Information in relation to Equal Employment Opportunity

Equal employment opportunity

Equal employment opportunity means that a person may expect to be treated equally to others in the course of their employment, in relation to:

- recruitment
- terms and conditions of employment
- termination of employment
- access to promotion, transfer or training opportunities

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Annexure 4: Relevant legislation and related documents

- Sex Discrimination Act, 1984 (Cth)
- Racial Discrimination Act, 1975 (Cth)
- Disability Discrimination Act, 1992(Cth)
- Age Discrimination Act, 2004 (Cth)
- Anti-Discrimination Act, 1977 NSW
- Australian Human Rights Commission Act 1986
- Equal Employment Opportunity for Women in the Workplace, 2006
- Workplace Relations Act, 1996 (Cth) update
- Industrial Relations Act, 1996 NSW
- Work Health and Safety Act 2011
- Crimes Act, 1900 NSW
- Fair Work Act, 2009 (Cth)
- Safe Work Australia-Model Codes of Practice

Related documents

- Complaints Handling Policy (2012)
- Complaint Handling Procedures and Guidelines (2012)