

# Improper Conduct Policy

## *Anti-discrimination, harassment and bullying*

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### Overview

1. The College rejects all forms of harassment, vilification, bullying and unlawful discrimination. The College takes steps to ensure that all students and staff are aware of the types of discrimination that are against the law in NSW.
2. This policy covers all staff and students of the College who are engaged in College-related activity either on a College campus or away from a campus.
3. Harassment, discrimination, bullying and victimisation of any kind by any member of the College community is prohibited.

### Definitions

4. **Improper Conduct** means, for the purposes of this policy, any behaviour of management, staff or students of the College which constitutes discrimination, harassment, sexual harassment, racial vilification, victimisation or bullying. It is not limited to behaviour undertaken on a College campus but relates to any behaviour undertaken while engaged in a College-related activity (including College organised social events).

## Legislation

5. This policy reflects the intent and standards of behaviour codified in key anti-discrimination and related legislation as well as the common law. In particular, the following legislation has been identified as being of critical importance to the development and interpretation of this policy:
  - a) Age Discrimination Act 2004 (Cth)
  - b) Disability Discrimination Act 1992 (Cth)
  - c) Racial Discrimination Act 1975 (Cth)
  - d) Sex Discrimination Act 1984 (Cth)
  - e) Human Rights and Equal Opportunity Commission Act 1986 (Cth)

## Rationale for policy

6. Improper conduct by any member of the College community is unacceptable and contrary to the educational and employment policies of the College.
7. Improper conduct is of concern as the behaviour may:
  - a) create an intimidating hostile, offensive or distressing work or study environment;
  - b) adversely affect the performance of individual staff or students;
  - c) adversely affect a person's admission into a program or progress within a program;
  - d) adversely affect an individual's recruitment, level of appointment, promotion and progress opportunities; adversely affect an individual's access to and participation in the range of educational opportunities, support services, social and recreational facilities provided by the College;
  - e) adversely reflect on the integrity and standing of the College;
  - f) cause the College as an employer and an educational institution to be exposed as being vicariously liable.

## Responsibilities

8. Managers and training staff have a responsibility to:
  - a) monitor their work and training environments to ensure that acceptable standards of conduct are maintained;

- b) promote this policy and the availability of a complaints process within their area of responsibility; and
  - c) handle all complaints seriously and confidentially and take immediate action to refer the staff member or student to the relevant policy and procedures.
9. All staff have a responsibility to:
- a) comply with this policy;
  - b) offer support to anyone who claims that they are experiencing improper conduct and let them know where they can get help and advice; and
  - c) consult with their supervisor or manager on reports of improper conduct.
10. All students have a responsibility to:
- a) comply with this policy.

## **Discrimination**

### **Direct Discrimination**

11. Direct discrimination occurs when rules, practices or behaviours specifically exclude people or treat people less favourably on the basis of irrelevant personal characteristics. An example of direct discrimination may occur if access to certain benefits is refused on the basis of race.

### **Indirect Discrimination**

12. Indirect discrimination occurs when a rule or condition appears to be neutral and fair but in practice unfairly excludes a person or particular group.
13. The College prohibits discrimination in employment or student recruitment on the grounds of sex, sexuality, transsexuality, relationship status, status as a parent or carer, pregnancy, breastfeeding, race, religious or political conviction, disability (please refer to the College's disability policy for more information), membership or non-membership of an association or organisation of employers or employees, age, profession, trade, occupation or calling, or association with any such person.

## **Harassment**

14. A person is subjected to 'workplace harassment' if the person is subjected to repeated behaviour by a person or a co-worker or group of co-workers of the person that:
- a) is unwelcome and unsolicited; and
  - b) the person considers to be offensive, intimidating, humiliating or threatening; and

- c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.
15. 'Workplace harassment' does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment.
16. This definition is intended to cover a wide range of behaviours that can have an adverse impact on the workplace health and safety of workers and other persons. Harassing behaviours can range from subtle intimidation to more obvious aggressive tactics. Detailed below are examples of behaviours that may be regarded as workplace harassment, if the behaviour is repeated or occurs as part of a pattern of behaviour. This is not an exhaustive list; however it does outline some of the more common types of harassing behaviours. Examples include:
- a) abusing a person loudly, usually when others are present;
  - b) repeated threats of dismissal or other severe punishment for no reason;
  - c) constant ridicule and being put down;
  - d) leaving offensive messages on email or the telephone;
  - e) sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways;
  - f) maliciously excluding and isolating a person from workplace activities;
  - g) persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters;
  - h) humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers;
  - i) spreading gossip or false, malicious rumours about a person with an intent to cause the person harm
17. There are bound to be occasional differences of opinion, conflicts and problems in working relationships – these are part of working life. However, if the workplace behaviour is repeated, unwelcome and unsolicited, and offends, intimidates, humiliates or threatens a person, then workplace harassment exists and action must be taken to stop the behaviour.

### **What is not workplace harassment?**

18. The following situations are not considered to be workplace harassment.
19. **Single incidents** - A single incident of harassing type behaviour is not considered to be workplace harassment. Nevertheless, single incidents of harassing type behaviour should not

be ignored or allowed. Well-managed intervention in response to single incidents will help prevent the situation from escalating.

20. **Managerial actions** - Reasonable management actions include legitimate:
- a) performance management processes;
  - b) action taken to transfer or retrench a worker;
  - c) a decision not to provide a promotion in connection with the worker's employment;
  - d) disciplinary actions;
  - e) allocated work in compliance with systems and policies;
  - f) injury and illness processes;
  - g) business processes, such as workplace change or restructuring.
21. However, these management actions may still be relevant to assessing whether harassment has occurred:
- a) managerial actions which are primarily used to offend, intimidate, humiliate or threaten workers;
  - b) processes are imposed which create an environment where workplace harassment is more likely to occur.

### **Sexual harassment**

22. Sexual harassment is any form of offensive sexual attention that is uninvited and unwelcome. It can be a persistent pattern of unwelcome behaviour or occur on a single occasion. It may be intentional or unintentional and is not confined by definition to any gender or sexuality. Sexual harassment can range from subtle behaviour to explicit demands for sexual activity, or even criminal assault.
23. Conduct may constitute sexual harassment regardless of the intention of the person engaged in the behaviour. It is immaterial whether particular behaviour is acceptable in a particular culture – what matters is the effect that the conduct has on the person to whom it is directed.

### **Racial vilification**

24. A person racially harasses another person if they:
- a) make offensive remarks with racial connotations relating to the other person;
  - b) engage in any other unwelcome conduct of a racial nature in relation to the other person.

25. Racial harassment includes:
- a) making offensive verbal or written statements of a racial nature, either to the person or in his or her presence;
  - b) using offensive language, (whether oral or written), visual materials or engaging in physical behaviour of a racially offensive nature likely to have a detrimental effect on persons to whom it is intended to have application.
26. Racial vilification includes behaviour that is communicated in public and incites others to hate, to have serious contempt for or to severely ridicule individuals or groups because of their race, sexuality, transsexuality, HIV/AIDS status, or other personal characteristic.

### **Victimisation**

27. Victimisation occurs when a person does or threatens to do something because another person has lodged a complaint or is in the process of complaining about them or an organisation. Victimisation usually involves some type of retaliation.

### **Bullying**

28. Bullying is a form of harassment and involves behaviour where a person uses their power to coerce, threaten, intimidate or persecute others. Bullying involves the threat or exercise of verbal, physical or psychological force and is often associated with unequal power relationships.
29. Bullying may include the following types of behaviour:
- a) yelling, abusive or offensive language, insults, inappropriate comments about a person or defamation;
  - b) teasing or regularly being made the brunt of jokes, particularly after an objection has been made known;
  - c) displaying written material or pictures or photographs which degrades or offends an individual;
  - d) in the workplace creating unexplained job changes, setting meaningless tasks or tasks well beyond a persons job description;
  - e) abusive e-mails.
30. Bullying does not include mere discourtesy, reasonable requests of supervisors or managers, the refusal of leave requests or reasonable managerial actions.

## **Making a complaint**

31. A member of the College community who feels that they have been the subject of Improper Conduct should take the following steps:
  - a) attempt to resolve the conflict informally by advising the person concerned that their behaviour is unwelcome and requesting that it cease or inviting another person (such as a trainer or manager) to approach the person engaged in the improper conduct;
  - b) request the College to appoint a mediator to resolve the complaint between the parties;
  - c) if the above steps have not been successful, the aggrieved party should lodge a formal complaint. In the case of students, the process for making a complaint is contained in the Student Complaint and Appeals Policy. In the case of staff, the complaint should be made in writing to the Chief Executive Officer. All complaints should be accompanied by evidence where available.

## **Investigation and resolution of complaint**

32. If a formal complaint is made, the Chief Executive Officer (or approved delegate) will interview the parties, investigate the complaint and attempt to resolve the situation through negotiation. During the investigation, all concerned parties will have the right to make submissions to the Chief Executive Officer (or approved delegate).
33. The complaint resolution process is carried out in good faith and complaints that are frivolous, vexatious, misconceived or lacking in substance will be rejected if a preliminary investigation of the facts indicates this.
34. Reports and complaints of harassment, bullying and discrimination will be treated seriously by the College and will be investigated promptly in a thorough and confidential manner ensuring that complainants and witnesses are not victimised. The principles of natural justice apply and will guide the application of this policy.
35. All reasonable steps will be taken to conclude the investigation within 30 days of the complaint being lodged. All parties will be resolved of the outcome of the investigation in writing and the reasons for it.
36. If the allegation is determined by the Chief Executive Officer to be true or more than likely to be true, one or more of the following actions will be taken:
  - a) an order will be made directing the person to stop the behaviour;
  - b) the offending person will be directed to apologise for their improper conduct;
  - c) the offending person will be directed to undertake counselling;

- d) disciplinary action (including, in the case of students, suspending or cancelling their enrolment or, in the case of staff, issuing a written warning);
- e) such other actions as the Chief Executive Officer determines to be appropriate.

### **Record keeping**

- 37. Records must be kept of any complaints made by this policy as well as written records of the steps taken in an investigation and the outcome of the investigation.

### **Appeals**

- 38. Any party affected by a decision under this policy has the right to access the College's appeals processes.
- 39. Please note that the availability of a complaints and appeals process does not remove the right to take further action under Australia's consumer protection laws (in the case of students) or the right to access complaints processes through the relevant legislation and Human Rights and Equal Opportunity Commission (in the case of staff and students).

### **Continuous improvement**

- 40. The College will ensure that staff, students and members of the College community are informed of this policy and their responsibilities in ensuring that it is upheld, and that managers and other supervisory staff are aware of their particular responsibilities in the prevention and resolution of complaints of harassment, bullying and discrimination.
- 41. The College will use reports of improper conduct as an opportunity to review its practices and implement strategies and procedures that will prevent inappropriate behaviours arising in the future.
- 42. Staff development days will include training in relation to this policy.
- 43. Any changes to legislation governing the subject areas covered by this policy will be monitored and the Compliance Officer is responsible for making any consequential changes to the policy and implementing steps to educate College stakeholders about the effect of these changes.

### **Related policies**

- Disabilities policy
- Student Code of Conduct
- Student Complaints and Appeals Policy
- Deferring, suspending or cancelling student enrolments' policy