



Prevention of Bullying, Harassment and Discrimination Policy

Reviewed: August 2020

Ratified: December 2020

Next Review: 2023

Rationale

The Diocese of Ballarat Catholic Education Limited (DOBCEL) is committed to establishing a workplace which values respectful relationships, upholds the dignity of every person and creates a safe environment with a sense of belonging for all employees.

This policy seeks to foster a safe and inclusive workplace, aligned to all relevant State and Federal legislative requirements.

DOBCEL aspires to an authentic and mission inspired workplace in which all employees respect the diverse range of experiences and backgrounds of others. These aspirations are central to the wellbeing of staff and an environment for all to flourish.

Definitions

Bullying: is a significant occupational health and safety issue, as it can cause harm to a person's health and wellbeing. Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. Bullying can be either direct or indirect. Direct bullying is the more obvious form, indirect bullying is covert but no less serious, generally conducted out of sight and may be less obvious to others.

For a situation to amount to workplace bullying it needs to satisfy all parts of the definition of bullying:

- **Repeated:** the alleged bullying behaviour must be persistent, not merely a one-off incident. *Single/Isolated incidents will not be ignored as they have the potential to escalate. It is not necessary for the same specific behaviour to be repeated as bullying may consist of a range of incidents over time. For example, for a situation to constitute bullying it is not necessary that there be multiple incidents of name-calling; bullying could be made up of one incident of name-calling, one incident of vandalising property and one inappropriate email.*
- **Unreasonable behaviour:** Behaviour that a reasonable person in the circumstances would see it as unreasonable. For example, the behaviour may be victimising, humiliating, intimidating, or threatening (this is an objective test).
- **Directed at a worker or a group of workers:** the behaviour may be carried out by one or more employees and directed at one individual employee or a group of employees.

- **Creates a risk to health and safety:** the behaviour must be a substantial cause of the risk of harm. It is not necessary to have proof of actual harm to health and safety, only that there is a risk of such. *'Health' includes both psychological and physical health, for example, depression, anxiety, sleep disturbance, nausea, or muscle tension.*

Examples of bullying

Some examples of behaviour that may amount to bullying (provided all the elements of the bullying definition are met) include:

- Verbal abuse
- Putting someone down, teasing, or practical jokes
- Spreading rumours or innuendo
- Sending inappropriate emails or communications
- Making unjustified criticism or complaints
- Deliberately excluding someone from meetings/workplace activities
- Setting unreasonable timelines or constantly changing deadlines, scrutinising work excessively
- Deliberately changing work arrangements (for example, rosters or leave) to inconvenience a staff member
- Setting tasks that are unreasonably below/beyond the staff member's skill.

It is important to understand that when an employee has a disagreement with a colleague or is not happy with actions taken by leadership, this does not mean that the employee is being bullied at work. Low-level workplace conflict and reasonable management action taken in a reasonable (transparent) way is not workplace bullying.

Defamation

Defamation is unlawful under the Victorian *Defamation Act 2005* and the Victorian common law. A person should not be deterred from making a complaint by concerns about defamation laws. Generally, if a complainant only discusses the complaint with appropriate people in the workplace (Leadership/HR/CECV ER Unit) and is acting in good faith (i.e. is not making a vexatious claim), then the person will not be liable for defamation.

Discrimination

The Equal Opportunity Act 2010 (Vic) prohibits unlawful discrimination in the form of direct and indirect discrimination. Discrimination is also unlawful under federal legislation (see Relevant Legislation).

Direct discrimination: treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed below). The test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

Indirect discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

Protected attributes: The Equal Opportunity Act 2010 (Vic) provides the following protected attributes:

| | | |
|------------------------------|---|------------------------|
| Age | Disability / impairment | Lawful sexual activity |
| Breast-feeding | Gender identity | Marital status |
| Carer status | Industrial activity | Parental status |
| Physical features | Pregnancy | Race |
| Political belief or activity | Religious belief or activity | Sex/gender |
| Sexual orientation | Personal association (with a person who has, or is assumed to have one of these attributes) | |

Harassment: is unlawful under the Victorian *Equal Opportunity Act 2010*. A person unlawfully harasses another person if he or she makes that other person (another employee or member of the public) feel offended, humiliated, or intimidated because of one of the protected attributes. It may involve inappropriate actions, behaviour, comments, or physical contact that is objectionable or causes offence.

It is important to note that from a legal perspective it is irrelevant whether or not the harassing behaviour was intended.

Unlawful harassment may have occurred if the behaviour makes the victim feel offended and humiliated intimidated or frightened, and/or uncomfortable at work.

Unlawful harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails
- displaying offensive or pornographic posters or screen savers
- making derogatory comments or taunts about someone's race or religion
- asking intrusive questions about someone's personal life, including their sex life

Sexual harassment: Sexual harassment is **unlawful** under the Victorian *Equal Opportunity Act 2010* and under federal legislation (*Sex Discrimination Act 1984* (Cth))

- when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person or engages in any other unwelcome conduct of a sexual nature in relation to another person.
- In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

Sexual harassment is **unlawful** in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace can also extend to social functions.

In Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

Some examples of sexual harassment include:

- persistent, unwelcome demands or even subtle pressures for sexual favours or outings
- staring or leering at a person or at parts of their body
- unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
- offensive comments or questions about a person's physical appearance, dress, or private life
- sexually explicit pictures or images, telephone calls, voice mail messages, letters, or emails
- smutty or suggestive jokes or comments
- innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality, or tales of sexual performance
- requests for sex, insults or taunts based on sex, or sexually explicit physical contact.

Some types of sexual harassment can also be offences under the criminal law, such as:

- physical molestation or assault
- indecent exposure
- sexual assault
- stalking
- obscene communications (by way of telephone calls, letters, emails etc.).

Occupational Violence: any incident where an employee is physically attacked or threatened in the workplace. The term occupational violence refers to direct or indirect force by a person to the body of, or to the clothing or equipment worn by the recipient creating a risk to their health and safety.

Leadership: refers to the person that the employee reports to on a day-to-day basis. For school-based employees this is likely to be the **principal**, or for Catholic Education Ballarat employees this is likely to be the **team leader**

Victimisation: any unfavourable treatment of a person who has been involved with a discrimination, harassment, or bullying complaint. In order for complaints to be brought forward, employees must feel secure in the knowledge that DOBCEL's procedures will be followed without fear of detriment.

Vexatious claims: Where a Complainant makes frivolous or malicious claim without basis against a Respondent, such as where intentionally false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution.

Policy

DOBCEL is committed to building and nurturing workplaces that are free from bullying discrimination, and harassment. It is important that all DOBCEL employee's share responsibility for upholding professional standards of conduct and for building and nurturing safe workplaces. It is therefore expected that all employees (including contractors and volunteers) do not engage in or condone such behaviour and practices.

It is also expected that employees who make a complaint, or who may be witnesses to circumstances giving rise to a complaint, participate fully and confidentially in any investigation and resolution procedures.

This policy and its accompanying procedure are compliant with the legislative framework under which our schools and offices operate. Schools and offices are guided by the applicable legislation in determining its prevention and intervention measures.

Principles

Human dignity

Our common humanity requires respect for and support of the sanctity and worth of every human life. All other rights and responsibilities flow from the concept of human dignity. This principle is deemed as the central aspect of the Church's social teaching. The belief that each life has value is shared with International Human Rights which are universal, inviolable and inalienable.¹

Subsidiarity in fostering local expressions of the Church's common mission

All people have the right to participate in decisions that affect their lives. Thus, decisions should be made at the most appropriate level, by the people most affected by the decision and by those who exercise responsibility for carrying out the decision. It also means that those in positions of authority have the responsibility to listen to everyone's voice and make decisions according to the common good.² Implementing the principle of subsidiarity supports the interdependence of all decision makers.

Solidarity and synodality involving the breadth of the diocesan community

Synodality involves the active participation of all members of the Church in its processes of discernment, consultation and co-operation at every level of decision-making and mission. Every member of the People of God is involved, though with varied roles and contributions.³

Solidarity, on the other hand, presupposes a commitment to a more just social order and urges each to consider the impact of how they live and interact with others from the point of view of justice. Being in solidarity means recognising others as equals and actively working for their good.⁴

¹ *ibid.*

² See <https://caritas.org.nz/catholic-social-teaching/subsidiarity>. See also *The Light from the Southern Cross, op.cit.*, 5.2.1. p.41.

³ http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_sinodalita_en.html ¶ 7, 21. See also *The Light from the Southern Cross, op.cit.*, 5.2.3., p.43

⁴ See <https://caritas.org.nz/catholic-social-teaching/solidarity>

References

- The Occupational Health and Safety Act 2014
- Victorian Catholic Education Multi-Enterprise Agreement 2018
- Minimum Standards - Victorian Registration and Qualifications Authority
- The Education and Training Reform Act 2006 (Vic)
- Workplace Gender Equality Act 2012 (Cth)
- Age Discrimination Act 2004 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Equal Opportunity Act 2010 (Vic)
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- Fair Work Act 2009 (Cth)

Related Policies and Procedures

CECV Guidelines on the Employment of Staff in Catholic Schools available at
<http://www.cecv.catholic.edu.au/Industrial-Relations/Communications/Child-Safety>

CECV Workplace Equal Opportunity template for schools
<http://www.cecv.catholic.edu.au/Media-Files/IR/Policies-Guidelines/Workplace-Equal-Opportunity/Workplace-Equal-Opportunity-Policy-for-Staff.aspx>

CECV Anti-Bullying Guide for Principals and Leaders
<http://www.cecv.catholic.edu.au/Media-Files/IR/Policies-Guidelines/Anti-Bullying/Anti-Bullying-Guide.aspx>

DOBCEL Employee Grievance Policy and Procedure

DOBCEL Occupational Health and Safety Policy

DOBCEL Complaints Procedure for complaints concerning the Director of Catholic Education