

Anti-Discrimination, Equal Employment Opportunity, Bullying and Harassment Policy

1. Purpose

- 1.1 Catholic Education Northern Territory ('Catholic Education'), aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, bullying, harassment and vilification. All of these are a risk to health and safety in the workplace and will not be tolerated by Catholic Education.
- 1.2 Catholic Education aims to ensure that when employment decisions are made, they are based on merit, not on attributes or characteristics that an individual may possess. Catholic Education also tries to create a work environment which promotes good working relationships.

2. Commencement of Policy

- 2.1 This Policy will commence from November 2015. It replaces all other Discrimination, Bullying and Harassment, Equal Employment Opportunity and Conflict Resolution Policies (whether written or not).

3. Scope of Policy

- 3.1 This Policy applies to employees, agents and contractors (including temporary contractors) of Catholic Education, collectively referred to in this Policy as 'workplace participants'.
- 3.2 This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services. This Policy does not form part of any employee's contract of employment nor does it form part of any contract for service.

4. Equal Employment Opportunity laws

- 4.1 Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

5. Rights and responsibilities

- 5.1 All workplace participants must:
- understand and comply with this Policy;
 - ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom they come into contact through work;
 - ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
 - follow the conflict resolution process in this Policy if they experience any unlawful conduct;

- report any unlawful conduct they see occurring to others in the workplace in accordance with the conflict resolution process in this Policy; and
- maintain confidentiality if they are involved in the conflict resolution process.

5.2 Workplace participants should be aware that they can be held legally responsible for their unlawful conduct;

5.3 Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

6. Management's role

6.1 Managers and leaders have a key role in the prevention of workplace bullying.

6.2 Managers and leaders must:

- a) ensure that they do not bully workplace participants, clients or customers;
- b) ensure that they do not aid, abet or encourage other persons to engage in bullying behaviour;
- c) ensure all workplace participants who report to them are aware and understand this policy and their responsibility to comply with it;
- d) ensure that all workplace participants who report to them understand that any bullying in any form is unacceptable and will not be tolerated by Catholic Education;
- e) act promptly and appropriately if they observe bullying behaviours;
- f) Ensure that all workplace participants who report to them understand that they should report any bullying behaviour;
- g) ensure all workplace participants who report to them are aware and understand the conflict resolution process;
- h) act promptly if a complaint is made. If this is not possible, or is inappropriate, inform the Employee Relations Coordinator / WHS Manager as soon as possible.

7. Discrimination

7.1 Discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law.

7.2 The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include but are not limited to sex, race, age. Some examples of grounds of discrimination are listed below but not limited to;

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Gender

- Pregnancy (including potential pregnancy)
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Homosexuality, transsexuality, sexuality, sexual preference/orientation, lawful sexual activity, gender identity
- Disability/impairment, including physical, mental and intellectual disability

8. Indirect discrimination

- 8.1 Indirect discrimination occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute.
- 8.2 Example: It could be indirect disability discrimination if the only way to enter a public building is by a set of stairs because people with disabilities who use wheelchairs would be unable to enter the building.
- 8.3 Indirect discrimination is unlawful if the discrimination is based on certain attributes protected by law such as a person's race, gender, pregnancy, marital or relationship status, breastfeeding, age, disability, sexual orientation, gender identity or intersex.
- 8.4 Indirect discrimination is not unlawful when the rule or policy is reasonable having regard to the circumstances of the case.

9. Direct discrimination

- 9.1 Direct discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or personal characteristics.
- 9.2 Direct discrimination is unlawful under federal discrimination laws if the discrimination is based on protected characteristics, such as a person's race, sex, pregnancy, marital status, family responsibilities, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. Some limited exemptions and exceptions apply.
- 9.3 Example: It could be "direct age discrimination" if an older applicant is not considered for a job because it is assumed that they are not as familiar or comfortable with new technology compared with a younger person.
- 9.4 This includes the situation where a workplace participant harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

10. Vilification

10.1 Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transsexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

11. Sexual Harassment

11.1 Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workplace participants can also be unlawful.

11.2 Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging;
- staring or leering at a person or at parts of their body;
- sexual jokes or comments;
- accessing or downloading sexually explicit material from the internet;
- suggestive comments about a person's body or appearance;
- sending rude or offensive emails, attachments or text messages.

12. Bullying

12.1 Bullying is repeated, unreasonable and inappropriate behaviour directed towards an individual or group, which creates a risk to health and safety.

12.2 Examples of Workplace Bullying

12.3 Bullying behaviours can take many different forms, from the obvious (direct) to the more subtle (indirect). The following are some examples of both direct and indirect bullying but not limited to these.

Direct bullying:

- a) abusive, insulting or offensive language or comments;
- b) behaviour or language that frightens, humiliates, belittles or degrades, including over criticising, or criticism that is delivered with yelling or screaming;
- c) inappropriate comments about a person's appearance, lifestyle, family, sexual preferences or any personal or private matter;
- d) interfering with a person's personal property or work equipment.

Indirect bullying:

- a) unreasonably overloading a person with work, or not providing enough work;
- b) setting tasks or timeframes that are difficult to achieve, or constantly changing them;
- c) deliberately excluding or isolating a person from normal work activities;
- d) deliberately denying access to resources or workplace benefits and/or entitlements, for example training, leave etc.

12.4 A single incident of unreasonable behaviour does not usually constitute bullying. However, it should not be ignored as it may have the potential to escalate into bullying behaviour.

12.5 What does not constitute workplace bullying?

12.6 Managing workplace participants does not constitute bullying, if it is done in a reasonable manner. Managers have the right, and are obliged to, manage workplace participants. 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 practices include:

- a) setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience;
- b) allocating work fairly;
- c) rostering and allocating working hours in a fair and reasonable manner;
- d) deciding not to select a workplace participant for promotion, following a fair process;
- e) informing a workplace participant about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements;
- f) informing a workplace participant about inappropriate behaviour in an objective and confidential way;
- g) implementing organisational changes or restructuring; and
- h) conducting performance management processes.

13. Victimisation

13.1 Victimisation is where a person is retaliated against or subjected to detrimental treatment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Workplace participants must not retaliate against a person who raises a complaint or subject them to any detrimental treatment.

14. Gender Equality in the Workplace

14.1 'Catholic Education' aims to fulfil its obligations under the *Gender Equality Act 2012* (Cth), by developing and implementing a workplace program which will attempt to eliminate discrimination and contribute to gender equality in employment and in the workplace.

- 14.2 The aim of Catholic Education's actions are to:
- (a) promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and
 - (b) support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters; and
 - (c) promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities); and
 - (d) foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
 - (e) improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

14.3 These actions are about attempting to achieve the potential of all workplace participants. It has direct benefits throughout the organisation. These benefits include increased productivity, increased morale, reduced absenteeism, and higher retention rates of employees. For these reasons, actions in this area have been incorporated into Catholic Education's strategic plan.

15. Complaint handling procedure

15.1 If a workplace participant feels that they have been subjected to any form of unlawful conduct contrary to EEO laws or this Policy, they should not ignore it. Catholic Education has the below conflict resolution process for dealing with these issues. The conflict resolution process has numerous options available to suit the particular circumstances of each individual situation.

16. Examples of the ways in which a complaint can be dealt with

Confront the issue

16.1 If a workplace participant feels comfortable doing so, they should address the issue with the person concerned. A workplace participant should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive and ask that the behaviour stop. It may be that the person was not aware that their behaviour was unwelcome or caused offence.

16.2 This is not a compulsory step. If a workplace participant does not feel comfortable confronting the person, or the workplace participant confronts the person and the behaviour continues, the workplace participant should report the issue to a Principal or Leadership representative.

If a workplace participant is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact their Principal or Leadership representative for support and guidance.

Report the issue

- 16.3 A workplace participant should report the issue to a Principal or Leadership representative. If the complaint is in relation to the Principal the workplace participant can report directly to the Employee Relations Coordinator, WHS Manager or the Director of CEO to initiate the conflict resolution process.
- 16.4 The Principal or Leadership representative will aim to deal with the workplace participant's complaint in accordance with this Policy. There are two conflict resolution processes that can be used: informal and formal (detailed further below). The type of conflict resolution process used will be determined by the nature of the complaint that is made.

Informal conflict resolution process (refer to Appendix A: Informal Conflict Resolution Flowchart)

- 16.5 Under the informal conflict resolution process there is a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. Possible options include, but are not limited to:
- the Principal or Leadership representative discussing the issue with the person against whom the complaint is made; and/or
 - the Principal or Leadership representative facilitating a meeting between the parties in an attempt to resolve the issue and move forward.
- 16.6 The informal conflict resolution process is more suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

Formal conflict resolution process (refer to Appendix B: Formal Conflict Resolution Flowchart)

- 16.7 The formal conflict resolution process involves a formal investigation of the complaint. Formal investigations may be conducted by a Principal or Leadership representative or a person appointed by the Director of Catholic Education including an external investigator.
- 16.8 An investigation will involve collecting information about the complaint (using the Complaints and Grievance Form), interviews with the claimant, respondent and potentially witnesses to the complaint, to deliver a robust investigation making findings based on the available information as to whether or not the alleged behaviour is substantiated, unsubstantiated or cannot be substantiated. Once a finding is made, the Principal or Leadership representative or the investigator will make suggested recommendations about resolving the complaint. The Director of CEO will then make the final decision on the recommendations going forward.
- 16.9 If Catholic Education considers it appropriate for the safe and efficient conduct of an investigation, workplace participants may be required not to report for work during the period of an investigation. Catholic Education may also provide alternative duties or work during the investigation period. Generally, employees will be paid their normal pay during any such period.

17. Dealing with bullying complaints

17.1 In handling bullying complaints, Catholic Education will adopt the following principles:

- a) Take all complaints seriously;
- b) Act promptly to investigate the matter;
- c) Will not victimise any person who makes a complaint, any person accused of bullying, or any witnesses and will direct other workplace participants not to victimise any person involved in a complaint;
- d) Support all parties;
- e) Be impartial;
- f) Communicate the investigation or complaint process to all parties involved, including estimating length of time for conclusion of the investigation;
- g) Maintain confidentiality as far as possible;
- h) Act appropriately — if a complaint is made and it appears that bullying has occurred, Catholic Education will endeavour to take appropriate action in relation to the complaint;
- i) Keep records — documentation is essential. A record of all meetings and interviews stating who was present and agreed outcomes should always be maintained.

18. Possible outcomes

18.1 The possible outcomes of an investigation will depend on the nature of the complaint. Where an investigation results in a finding that a person has engaged in unlawful conduct or breach of this Policy, that person will be disciplined. The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Where the investigation results in a finding that the person complained against has engaged in serious misconduct, this may result in summary dismissal. Any disciplinary action is a confidential matter between the affected workplace participant and Catholic Education.

18.2 Catholic Education may take a range of disciplinary action. Examples include, but are not limited to:

- a) providing training to assist in addressing the problems underpinning the complaint;
- b) monitoring to ensure that there are no further problems;
- c) implementing a new policy;
- d) mentoring and support from senior management;
- e) requiring an apology or an undertaking that certain behaviour stop;
- f) changing work arrangements;
- g) transferring to another work area;
- h) issuing a written warning (this can be a first or final warning depending on the circumstances);
- i) dismissal.

2. Confidentiality

- 2.1 The Principal or Leadership representative 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, to afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, Catholic Education will endeavour to take appropriate action in relation to the complaint.
- 2.2 All workplace participants involved in the complaint must also maintain confidentiality, including the workplace participant who lodges the complaint. Spreading rumours or gossip may expose workplace participants to a defamation claim. Workplace participants may discuss the complaint with a designated support person or a representative who is not a workplace participant employed or engaged by Catholic Education. However, the support person or representative must also maintain confidentiality.

19. Breach of this Policy

- 19.1 All workplace participants are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with Catholic Education terminated or not renewed.
- 19.2 If a person makes an unfounded complaint or a false complaint in bad faith (e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.

20. More Information

- 20.1 If a workplace participant is unsure about any matter covered by this policy, or requires more information about workplace bullying they should seek the assistance of their Leader, Principal or of the CEO Employee Relations Coordinator / WHS Manager. They may also wish to seek external advice from the relevant regulatory authority, such as Australian human Rights Commission / NT Work Safe / Anti-Discrimination Commission / Fair Work Commission.
- 20.2 Catholic Education's goal is to resolve issues in-house wherever possible. Workplace participants can seek the assistance of an outside agency if they feel that their complaint has not been adequately addressed.

Variations

Catholic Education reserves the right to vary, replace or terminate this policy from time to time.

Associated Documents

- Catholic Education, Sharers of the Vision
- WHS1 WHS Policy

- CE1000 Human Resources Policy Statement
- CE2001 Investigating Complaints Procedure
- CE2003A Complaints and Grievance Form

Legislation

This policy is based on the following legislation:

- Workplace Health & Safety (National Uniform Legislation) Act 2014
- Workplace Health & Safety (National Uniform Legislation) Regulations 2015
- Gender Equality Act (Cth) 2012
- Age Discrimination Act (Cth) 2004
- Australian Human Rights Commission Act (Cth) 1986
- Disability Discrimination Act (Cth) 1992
- Racial Discrimination Act (Cth) 1975
- Sex Discrimination Act (Cth) 1984

References

- Safe Work Australia Code of Practice: Preventing and Responding to Workplace Bullying, 2011 (Draft)
- NT WorkSafe Guide: Employers guide to preventing and responding to workplace bullying

Contacts for outside agencies

Australian Human Rights Commission:

Toll Free: 1300 656 419

<http://www.humanrights.gov.au>

Anti-Discrimination Commission (NT):

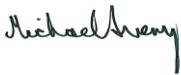
Toll free: 1800 813 846

<http://www.adc.nt.gov.au>

NT WorkSafe:

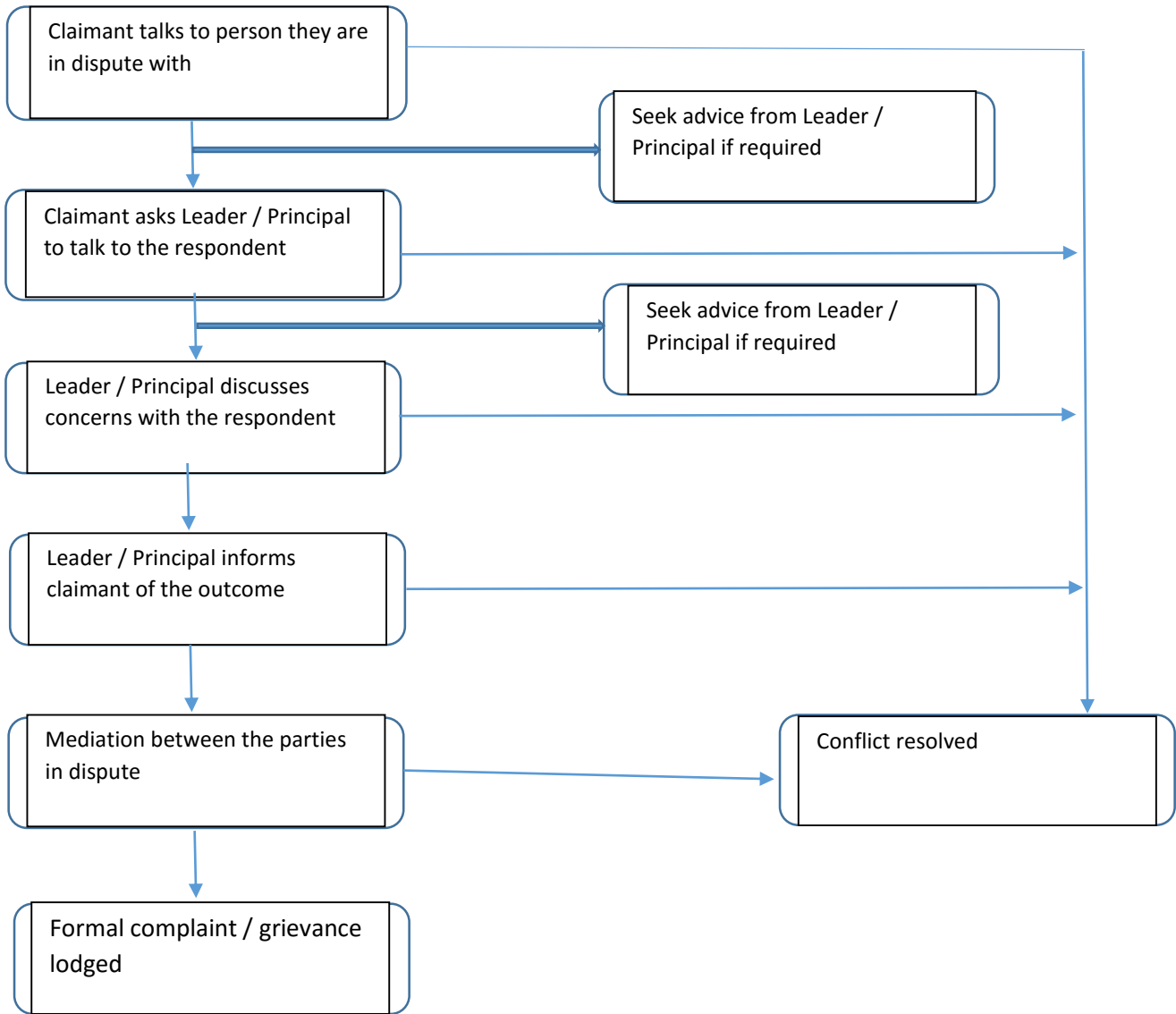
<http://worksafe.nt.gov.au>

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Supporting Documents	Version No.
CE2003A Complaints and Grievance Form	1

APPENDIX A – INFORMAL CONFLICT RESOLUTION FLOWCHART



APPENDIX B – FORMAL RESOLUTION FLOWCHART

