



## Anti-Bullying, Anti-Discrimination and Anti-Harassment Policy

Policy Domain:	Governance
Policy Area:	Human Resources
Policy Author:	Education Unit
Version:	1.00
Approval Details:	College Board of Directors
Effective Date:	
Review Date:	... 2012
This policy replaces	Anti-discrimination trainees Bully policy for fellows Anti-discrimination & harassment Policy Anti-Discrimination and Harassment Policy for Fellows on the College Board or College Committees

### PURPOSE

The purpose of this document is to affirm the College's with legislation covering discrimination and harassment and to provide information for Fellows, Trainees, International Medical Graduates (IMGs), Staff and Contractors on expected standards of interpersonal interaction during the conduct of all College activities.

### SCOPE

This policy applies to all members, trainees, staff and contractors of the Australasian College of Dermatologists. The principles set out in this policy are intended to apply to any context involving the College.

### DEFINITIONS

*Discrimination* is treating an individual less favourably, or potentially less favourably because of that person's circumstances, characteristics or beliefs.

*Harassment* is uninvited, unwelcome behaviour that makes an individual feel humiliated, intimidated or offended. Harassment can be sexual, racial hatred and vilification, related to disability or victimisation of a person who has made a complaint.

*Sexual Harassment* is any unwelcome or unwanted sexual behaviour which makes a person feel offended, humiliated and /or intimidated where that reaction is reasonable in the circumstance.

*Bullying* is a repeated unreasonable pattern of behaviour directed towards a person or group of persons that is intimidating, threatening and/or humiliating and may create a risk to health and safety, including a risk to the emotional, mental or physical health of an individual.

## **Abbreviations.**

Honorary Secretary ( Hon Sec), Board of Education (BoE), Board of Training (BoT), Board of Directors (BoD), Dean of Education (DoE), Board of Censors (BoC) Chief Censor (CC), Supervisor of Training (SoT), Trainee Program Handbook (TPH), Summative-In-Training Assessment(s) (SITA's), Performance Improvement Form (PIF)

## **LEGISLATION**

This policy is informed by the following Commonwealth legislation:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Human Rights and Equal Opportunity Commissions Act 1986*
- *Occupational Health & Safety Act 1985*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Workplace Relations Act 1996*

## **THE POLICY**

The College is committed to creating and maintaining a working and learning environment free from all forms of discrimination and harassment on the grounds specified under Commonwealth anti-discrimination and workplace legislation..

### **Discrimination**

Under Commonwealth legislation, unlawful discrimination occurs when someone, or a group of people, is treated less favourably than another person or group because of their:

- Race;
- Colour;
- National or ethnic origin;
- Sex;
- Pregnancy or marital status;

- Age;
- Disability;
- Religion;
- Sexual preference;
- Trade union activity; or
- Some other characteristic specified under anti-discrimination or human rights legislation.

## Harassment

There does not need to be an intention to offend or harass for harassment to occur. Harassing behaviour can range from serious to less significant, and one-off incidents can still constitute harassment. Harassment may be a result of a person's attitude to some real or perceived attribute or difference.

## Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances. Sexual harassment in employment is unlawful under the Sex Discrimination Act 1984 (Sex Discrimination Act).

Sexual harassment can take various forms..

Sexual harassment does not have to be repeated or continuous to be against the law. It can be a one-off incident.

## Bullying

Bullies usually utilise power attributed to their status, skills or position in the workplace, and both men and women can be the targets and/or the perpetrators. Workplace bullying can occur between a worker and a manager or supervisor, or between co-workers/trainees.

Bullying behaviour can range from very obvious verbal or physical assault to very subtle psychological abuse. This behaviour may include:

- physical behaviour – assault, intimidating or aggressive body language, physical or verbal abuse;
- verbal abuse – offensive language or derogatory remarks about lifestyle choices, physical or mental abilities, or racial or ethnic background;
- behaviour or language that threatens, frightens, humiliates or degrades including shouting and screaming, tone of voice, sarcasm and insults, whether face-to-face or in emails;
- excluding or isolating employees;
- checking of a person's work or whereabouts to a much greater extent than others without reasonable cause;
- 'initiations' and pranks;
- assigning meaningless tasks unrelated to the job;
- allocating unrealistic tasks that are not within a person's capability or that are required within an unrealistic time frame;
- regularly changing work rosters, especially at short notice to inconvenience particular individuals or groups;

- undermining work performance by deliberately withholding information vital for effective work performance;
- threats of dismissal or disciplinary action for trivial mistakes or shortcomings.

### **Legitimate Action That Is Not Harassment or Workplace Bullying**

It is important to distinguish between a person reasonably exercising their legitimate authority at work and an instance of bullying or harassment. Examples of behaviour that are not harassment or bullying include:

- Expressing differences of opinion in a respectful manner;
- Providing constructive and courteous feedback, counselling or advice about work or training related behaviour or performance, given in a manner that is neither humiliating nor threatening;
- Carrying out legitimate or reasonable management decisions or actions, undertaken in a reasonable manner such as:
  - Allocating work to a trainee or employee and setting reasonable goals, standards and deadlines;
  - Warning trainees, employees or contractors about unsatisfactory performance.
- Making a complaint about another person's conduct, if the complaint is made in a proper and reasonable way.

### **Organisational and Individual Roles and Responsibilities**

Under Commonwealth anti-discrimination law an organisation, regardless of its size, may be vicariously liable for discrimination and harassment which occurs in the workplace or in connection with a person's employment unless it can be shown that 'all reasonable steps' have been taken to reduce this liability.

Everyone participating in College programs, activities and duties is required to be treated with respect, fairness and without harassment. All individuals in the course of their activities/duties for the College must not unlawfully discriminate, harass or bully:

- Any Members of the College. This includes, Fellows, Associates, Trainees and others
- Employees or Contractors of the College
- Other individuals and Members of the public having dealings with the College

## **KEY ASPECTS OF THE COMPLAINTS PROCESS**

### **Principles of Natural Justice**

The College is committed to conducting an investigation into the complaint in a confidential and timely manner. The investigation will also be conducted according to the principles of natural justice which ensure equity and fairness to all parties involved in the complaint.

The process for making a complaint is detailed in the College document "Complaints Investigations Guidelines".

### **Confidentiality**

The College will exercise confidentiality for its procedures in order to protect the rights and welfare of all those involved in a complaint resolution process. If an allegation of

discrimination, harassment or bullying is made, information will only be accessible to people who 'need-to-know' or other relevant people such as witnesses.

Any records made during an investigation will be stored in a secure environment.

### **Impartiality**

The procedures will be conducted in a fair and equitable manner at all times. No judgements or decisions will be made until all relevant information has been obtained and reviewed.

### **Victimisation**

Victimisation will not be accepted or tolerated against a person who has:

- made, or intends to make a complaint;
- been, or intends to be a witness;
- is a support person to any of the parties involved in the complaint;
- is involved in resolving the complaint;
- acted in good faith in bringing information or making an allegation under anti-discrimination and harassment legislation.

Should such victimisation occur, disciplinary action will be taken against the offender.

### **Defamation**

Allegations of unlawful discrimination, harassment or bullying are serious matters and can potentially damage an individual's reputation. To minimise the risk of defamation it is important to maintain confidentiality and involve as few people as possible in the dispute resolution process.

All College personnel and other representatives appointed to assist in dispute management are protected under the doctrine of "qualified privilege" provided they act in accordance with the dispute resolution procedures and not maliciously.

### **False Accusations**

False accusations of discrimination, harassment or bullying will be viewed seriously and, where found to be malicious, could expose the complainant to risk of defamation proceedings or disciplinary action up to and including dismissal.

### **Intent**

The College acknowledges that behaviour or comments acceptable to one person may offend or be unwelcome to another. Perceptions and interpretations are likely to differ because of diverse backgrounds, cultures and views. "Innocent intent" is neither a defence or excuse against harassment or discrimination complaints, nor a justification for bullying behaviour.

### **Support Person**

A support person is responsible for providing assistance to the complainant or the respondent of discrimination, harassment or a bullying dispute. A support person may be a family member, trusted advisor or a co-worker.

The support person's role is to be conducted in the spirit of conciliation as well as fair and equitable outcomes.

A support person is also bound by the requirement for confidentiality and cannot act as a witness and a support person in the same complaint.

## Counselling and Support

A complainant may wish to seek counselling or assistance from someone independent of the College.

## Summary of Parties' Rights

The following Table summarises the rights of the complainant and the respondent.

The complainant:	The respondent:
<ul style="list-style-type: none"> <li>• is to have their complaint treated informally or formally, at their option.</li> <li>• is to have their complaint investigated and conciliated if requested.</li> <li>• may have support or representation throughout the process.</li> <li>• is to be able to express concerns without fear of retribution or of suffering detriment.</li> <li>• may withdraw a complaint.</li> <li>• is to have the situation remedied.</li> <li>• is to have the matter kept confidential on a "need to know" basis.</li> </ul>	<ul style="list-style-type: none"> <li>• is to be informed of what he/she is accused of and who is making the allegations.</li> <li>• is to respond to the allegations.</li> <li>• is to be afforded fair treatment and procedures.</li> <li>• is not to be prejudged or discriminated against.</li> <li>• may have support or representation throughout the process.</li> <li>• is not to be dismissed unfairly or otherwise treated unfairly, harshly or unreasonably (taking into account all the circumstances).</li> <li>• is to have the matter kept confidential on a "need to know" basis.</li> <li>• is to be protected from defamation and malicious complaints.</li> </ul>

## DISPUTE RESOLUTION PROCESSES

Best practice dispute resolution management would require that the majority of disputes begin within an informal framework and then only move into a formal investigation process if the informal procedures do not have a satisfactory outcome.

### Informal Resolution Process

Informal disputes emphasise resolution rather than the presentation of factual proof or substantiation of a dispute. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. An informal dispute generally involves either one or a number of the following processes: mediation, conciliation or education. Informal disputes do not require a formal investigation.

### Formal Complaint Process

A formal complaint can be verbal but is generally put in writing with a formal investigation then conducted to determine whether there is factual proof or substantiation to the complaint.

All formal complaints will be directed to the Honorary Secretary of the College. The Honorary Secretary may delegate investigation of the complaint to appropriate officers, members or College advisers.

## External complaints

A person who has experienced sexual harassment can make a written complaint to the Australian Human Rights Commission (or the relevant state or territory anti-discrimination agency). The complaint will be investigated and the Commission will generally endeavour to settle it by conciliation. If conciliation is unsuccessful or inappropriate in the circumstances, the complaint may be terminated and the complainant can then apply to the Federal Magistrates Court or Federal Court of Australia for a decision.

A person is not required to attempt to resolve a complaint within the workplace before approaching the Commission or the relevant state or territory anti-discrimination agency. Criminal acts such as assault may also be reported directly to the police.

## Summary of Dispute Resolutions Process

The following table summarises the Informal Resolution and Formal Complaints Processes.

Informal Resolution Option	Formal Complaints Option
<p><b>Self Help</b></p> <p>A person may choose to address the unwelcome behaviour by communicating to the initiator of the action that they find the behaviour offensive, intimidating, humiliating or bullying.</p>	<p><b>Lodgement</b></p> <p>A person seeking to make a formal complaint can do so verbally or in writing, and the complaint must be submitted to the Secretary.</p>
<p><b>Seek Assistance</b></p> <p>The person may seek assistance and support.</p>	<p><b>Principles of Natural Justice</b></p> <p>The College is committed to conducting an investigation into the complaint in a confidential and timely manner. The investigation will also be conducted according to the principles of natural justice which ensure equity and fairness to all parties involved in the complaint.</p>
<p><b>Mediation</b></p> <p>Mediation is a negotiation between the parties (without three-way face-to-face contact) and discusses the options, considers the alternatives and reaches a consensual agreement.</p>	<p><b>Investigating Team</b></p> <p>The Secretary or the Secretary's delegate will conduct an investigation into the formal complaint.</p>
<p><b>Conciliation</b></p> <p>Conciliation involves face-to-face contact between the complainant and respondent, to negotiate a resolution between the parties.</p>	<p><b>Investigation Outcomes</b></p> <p>An outcome of the investigation is achieved once the Investigator has established whether the complainant's allegations have been substantiated.</p>
<p><b>Resolution</b></p> <p>Resolution is achieved when the complainant is satisfied that the uninvited or unwelcome behaviour has stopped. If the allegations are denied, or a satisfactory resolution cannot be achieved through informal action, then the complainant can choose to pursue the dispute through the formal procedures.</p>	<p><b>Resolution</b></p> <p>After the investigation has been completed, actions will be taken to resolve the complaint. Any action will occur following consultation with the complainant, and the respondent.</p>

<b>Informal Resolution Option</b>	<b>Formal Complaints Option</b>
	<p data-bbox="810 241 1018 275"><b>Appeal Process</b></p> <p data-bbox="810 282 1358 418">If the complainant is dissatisfied with the outcome of the investigation they may: Appeal in accordance with the College's Appeals Process</p>

## **IMPORTANCE OF KEEPING RECORDS**

Records of every complaint and any action taken are vital, especially because any decisions might lead to further processes or action. Each record must include a summary of the complaint, the finding and action taken.

Records may also be useful in establishing grounds for frivolous or vexatious cases if a number of unsubstantiated cases are raised in a period of time. Records may also indicate a systemic issue in the work area, individuals, supervisors or managers.