

## HARASSMENT IN SCHOOLS

Last Review: 2006

Next Review: 2010

### RATIONALE

In Catholic education, Christ is the foundation. All members of the Catholic education community are committed to reflecting gospel values in everyday activities and personal encounters. The harassment of any person within Catholic education is contrary to the Gospel and the vision for Catholic education.

It is also unlawful to harass a person within an educational institution and the school may be legally responsible. It is not correct to assume that because incidents of harassment are not being reported that harassment is not occurring.

### PRINCIPLES

1. The State *Equal Opportunity Act 1984*, the Federal *Sex Discrimination Act 1984*, the Federal *Racial Discrimination Act 1975* and the Federal *Disability Discrimination Act 1992* make it unlawful to harass people on certain grounds in their public life.
2. All Catholic education institutions within Western Australia have a legal responsibility to prevent harassment.
3. Current legislation provides that an employer/organisation may be legally responsible for the sexual, racial or disability harassment which occurs in the workplace/organisation or in connection with a person's employment/location. This form of responsibility is called "vicarious liability".
4. A school may be vicariously liable for the conduct of:
  - an individual employee
  - a group of employees
  - a student or group of students over the age of 16 (only relates to sexual harassment as per the Federal *Sex Discrimination Act 1984*.)
5. For the purpose of implementing this policy, the following definition, consistent with the legal definition of sexual harassment, shall apply:

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person

feel humiliated, intimidated or offended.

Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.

Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the interaction is consensual, welcomed and reciprocated it is not sexual harassment.

6. Division 3A of Part III of the State *Equal Opportunity Act 1984* makes it unlawful to racially harass a person.

The definition of "race" in the Act is as follows:

"race" includes colour, descent, ethnic or national origin or nationality and the fact that a race may comprise two or more distinct races does not prevent it being a race for the purposes of this Act.

7. It is unlawful under Division 3 of the Federal *Disability Discrimination Act 1992* to harass a person who has a disability in relation to that disability.

The definition of disability under the Act is as follows:

"disability" in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental function; or
- (b) total or partial loss of part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

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- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour; and includes a disability that:
- i. presently exists; or
  - ii. previously existed but no longer exists; or
  - iii. may exist in the future; or
  - iv. is imputed to a person.
8. Any unlawful discrimination or sexual harassment must be acted upon immediately.
9. Harassment is not just unlawful during school hours or in the school grounds itself. The behaviour is illegal in any work-related context, including conferences, work functions, school camps or field trips.
10. Harassment is a dismissible offence.
4. The CECWA recommends that an harassment policy should include:

### PROCEDURES

1. Each school is responsible for developing and communicating its own harassment policy based on the Catholic Education Commission of Western Australia (CECWA) policy statement on Harassment in Schools. It is not sufficient for a school to state that they comply with or use the CECWA policy. There must be local ownership of a policy.
2. Schools shall appoint/elect a contact officer(s) to assist in preventing and dealing with harassment in the workplace through advice and information. A training needs analysis would need to be considered for the officer(s) in this role.
3. Schools must take reasonable steps to prevent harassment if they wish to avoid liability. Schools must implement precautionary measures to minimise the risk of harassment occurring.

It is recommended that Principals take the following steps to prevent harassment:

- obtain high level support from the leadership team for implementing a comprehensive strategy to address harassment;
- develop, in consultation with staff, a written policy which prohibits harassment;
- regularly distribute and promote the policy at all levels of the workplace;
- translate the policy into relevant community languages where required

- so it is accessible to employees from non-English speaking backgrounds;
  - ensure that the policy is discussed and reinforced at staff meetings;
  - periodically review the policy to ensure it is operating effectively and contains up to date information;
  - train all team leaders and relevant officer(s) in ensuring that the workplace is free from harassment;
  - ensure that team leaders model appropriate standards of professional conduct at all times;
  - include accountability mechanisms in position descriptions for team leadership positions;
  - ensure that selection criteria for team leadership positions include the requirement that managers have a demonstrated understanding of and ability to deal with discrimination and harassment issues.
- a strong opening statement on the school's attitude to harassment;
  - an outline of the school's objectives regarding harassment;
  - a clearly worded definition of the forms of harassment;
  - examples of harassment that are relevant to the particular working environment;
  - what harassment is not;
  - a statement that harassment is against the law;
  - the circumstances in which harassment can occur;
  - the consequences that can be imposed if the policy is breached;
  - responsibilities of management and staff;
  - information on where individuals can get help, advice or make a complaint;
  - a brief summary of the options available for dealing with harassment;
  - the name(s) of the contact officer(s) and their location within the school.

A proforma school based policy is attached.

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**Originally released: July 1997**

**Revised : September 2001**

**Due for Review: 2006**

**Assumption Catholic Primary School  
Harassment Policy  
Developed: 2003  
Renew Date: 2006**

**RATIONALE**

**In Catholic education, Christ is the foundation. All members of the Catholic education community are committed to reflecting gospel values in everyday activities and personal encounters. The harassment of any person within Catholic education is contrary to the Gospel and the vision for Catholic education.**

against a person who has complained of harassment.

**It is also unlawful to harass a person within an educational institution and the school may be legally responsible. It is not correct to assume that because incidents of harassment are not being reported that harassment is not occurring.**

**PART A PRINCIPLES**

1. Assumption Catholic Primary School is committed to ensuring that the working environment is free from harassment, that it will not be tolerated under any circumstances and that disciplinary action will be taken against any employee (or agent) who breaches the policy.
2. Assumption Catholic Primary School aims to:
  - create a working environment which is free from harassment and where all members of staff are treated with dignity, courtesy and respect;
  - implement training and awareness raising strategies to ensure that all employees know their rights and responsibilities;
  - provide an effective procedure for complaints based on the principles of natural justice;
  - treat all complaints in a sensitive, fair, timely and confidential manner;
  - ensure protection from any victimisation or reprisals;
  - encourage the reporting of behaviour which breaches the harassment policy;
  - promote appropriate standards of conduct at all times.
3. Assumption Catholic Primary School is committed to the rationale and principles as outlined in the CECWA policy on Harassment in Schools.
4. Immediate disciplinary action will be taken against anyone who victimises or retaliates

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5. All staff have a responsibility to:
  - comply with the school's harassment policy;
  - offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves);
  - maintain complete confidentiality if they provide information during the investigation of a complaint. The spreading of gossip or rumours may expose them to a defamation action.
6. Assumption Catholic Primary School is committed to providing an environment which is safe for its employees and free of harassment. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

### PART B COMPLAINTS PROCEDURES

1. Staff members who believe they have experienced harassment of any nature should follow one of the following options:
  - **Informal complaint procedures**  
Informal procedures emphasise an expedient resolution and can be utilised at the discretion of the complainant.
  - **Formal complaint procedures**  
Formal procedures focus on proving whether a complaint is substantiated.

#### A. Informal complaint procedures

- (a) Informal procedures emphasise an expedient resolution and can be utilised at the discretion of the complainant.
- (b) Informal ways of dealing with harassment can include the following actions:
  - i. Staff members who have alleged harassment may want to deal with the situation themselves but may seek advice on possible strategies from a leadership team member or the contact officer(s).
  - ii. Staff members who have alleged harassment may ask the contact officer to speak to the alleged harasser on their behalf. The contact officer privately conveys the staff member's concerns and reiterates the school's harassment policy to the alleged harasser without assessing the merits of the case.
  - iii. A complaint is made, the alleged harasser admits the behaviour, investigation is not required and the complaint is resolved through

- conciliation or counselling of the harasser.
- iv. The contact officer or a member of the leadership team observes unacceptable conduct occurring and takes appropriate action even though no complaint has been made.

- (c) Informal procedures are usually appropriate where:
  - i. the allegations are of a less serious nature and
  - ii. the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.
- (d) Staff members should not be required to exhaust informal attempts at resolution before formal action commences. Staff members at any point in time have the right to formalise their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission (HREOC). Once an external agency such as HREOC has commenced proceedings the informal school based investigations will cease.

#### B. Formal Complaint Procedures

1. (a) Formal procedures focus on proving whether a complaint is substantiated.
- (b) Formal procedures usually involve:
  - i. an investigation of the allegation;
  - ii. application of the principles of natural justice;
  - iii. making a finding as to whether the alleged harassment occurred;
  - iv. submission of a report with a recommended course of action to the Principal;
  - v. implementation of an appropriate outcome.
- (c) Formal procedures are usually appropriate where:
  - i. informal attempts at resolution have failed;
  - ii. the person alleging harassment has been victimised;
  - iii. the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;
  - iv. the complaint is against a senior member of staff and the person believes that formal procedures may help to ensure that the

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- v. complainant is not victimised or disadvantaged;
  - v. the allegations are denied, the person who claims to have been harassed wishes to proceed and an investigation is required to substantiate the complaint; or
  - vi. the person alleging sexual harassment wishes to make a formal complaint from the outset.
- (d) To ensure consistency and fairness, the school must document the steps involved in a formal complaint. The usual sequence of events is as follows:
- i. the complainant is interviewed and the allegations are particularised in writing;
  - ii. the allegations are conveyed in writing to the alleged harasser. This would include the process to be followed to resolve the issue;
  - iii. the alleged harasser is given the opportunity to respond in writing and present a defence against the allegations;
  - iv. the alleged harasser has the right to have representation i.e. a colleague, union representative;
  - v. if there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered;
  - vi. a finding is made as to whether the complaint has substance;
  - vii. a report documenting the investigation process, the evidence, the finding and a recommended outcome/s is submitted to the Principal/decision-maker;
  - viii. the Principal/decision-maker implements the recommended outcome/s or decides on an alternative course of action.
- (e) A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of harassment. Those responsible for investigating complaints should consider all available evidence including any surrounding evidence, and make their finding on the balance of probabilities. The Employee and Community Relations Team can be contacted on a confidential basis to discuss and provide advice at any time.
- (f) The following type of evidence may be relevant:
- i. supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
  - ii. supervisor's reports and personnel records (eg. sudden increase in sick leave);
  - iii. factual complaints or information provided by other employees about the behaviour of the alleged harasser;
  - iv. records kept by the person claiming to have been harassed;
  - v. whether the evidence was presented by the parties in a credible and consistent manner.
- (g) Outcomes may include any combination of the following but are not limited to the outcomes below:
- i. counselling;
  - ii. formal apologies;
  - iii. conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;
  - iv. official warnings that are noted on the harasser's personnel file;
  - v. disciplinary action against the harasser (eg. demotion, dismissal, removal of some duties, etc);
  - vi. disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;
  - vii. reimbursing any costs associated with the harassment;
  - viii. re-crediting any leave taken as a result of the harassment.
- (h) Outcomes will depend on factors such as:
- i. severity and frequency of the alleged harassment;
  - ii. the weight of the evidence;
  - iii. the wishes of the person who was allegedly harassed;
  - iv. whether the alleged harasser could have been expected to know that such behaviour was a breach of policy;
  - v. the level of contrition;
  - vi. whether there have been any prior incidents or warnings.
- (i) If there is insufficient proof to decide whether or not the harassment occurred the Principal should nevertheless:
- i. remind those involved of expected standards of conduct;

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- ii. conduct further training and awareness raising sessions for staff;
    - iii. monitor the situation carefully.
  - (j) Assumption Catholic Primary School will ensure that the outcome of the substantiated complaint does not disadvantage the person who was allegedly harassed in any way.
  - (k) The only case where no action is warranted is where it is deemed that the action did not take place. Even where it is determined that the behaviour did take place but that it did not constitute harassment, some action should be taken to reconcile the parties involved.
2. If the school based proposed resolution does not resolve the situation, or the person/s making the allegation does not feel able to follow through with the complaint procedures, then the person/s should contact the Employee and Community Relations team at the Catholic Education Office.
  3. Throughout the process of investigating the complaint, the rights of all individuals will be respected and confidentiality maintained wherever possible.
  4. Notes will be kept of all incidents - date, time, place, witnesses, what was said or done.
  5. A written explanation of the findings and action taken should be provided to:
    - i. the person/s making the allegation;
    - ii. the person/s against whom the allegation is made.

### **C. ROLE OF THE CONTACT OFFICER**

1. Upon receipt of a complaint, the contact officer will discuss and determine with the complainant whether an informal or formal process is to be adopted. In the event of a formal complaint, the contact officer will then record in writing the allegations and include the following details:
  - (a) name of person registering the complaint;
  - (b) name of person (or persons) alleged to have harassed the complainant;
  - (c) details of the specific incident and any related incidents, including the date and place incidents are alleged to have taken place;
  - (d) the names of any staff members who witnessed the event or related events;

- (e) suggestions of possible resolutions of outcomes from the complainant should be requested; and
  - (f) a copy of this record will be provided to the Principal and a plan of action agreed. This will include a discussion with the person (or persons) alleged to have harassed the complainant.
2. The contact officer for Assumption Catholic Primary School is Marianne Pedersen.