

GUIDELINES FOR RECOGNISING AND MANAGING INCIDENTS OF HARASSMENT

1. Introduction

- 1.1 PIBT regards harassment as a serious breach of the College's Equal Opportunity Policy.
- 1.2 The College environment should be stimulating and pleasant for students and staff. Harassment erodes individual's rights, debilitates morale and interferes with the effectiveness of the work and learning environment. The College will take all reasonable steps necessary to ensure that staff and students are free from harassment.
- 1.3 To this end, the guidelines are designed to minimise the likelihood of harassment occurring within the College and assist staff and students to deal with incidents of harassment when they occur. All reasonable steps will be taken to ensure that employees and students are aware of this policy and the procedures available to deal with reported cases of harassment.
- 1.4 It is the responsibility of the College to communicate this policy and guidelines to staff and students. In particular, supervisory staff and contact officers will receive appropriate training and development to support their important roles in maintaining a harassment free environment.
- 1.5 The College believes that it is advantageous for complaints to be resolved, wherever possible and appropriate, at the local level with a minimum of formal procedures.

2. What is Harassment?

- 2.1 Harassment consists of unwelcome, offensive, abusive, belittling or threatening behaviour directed at staff members or students. It is usually based on some real or perceived difference such as sex, race or disability and which may lead to the person harassed being offended, humiliated, intimidated or disadvantaged.
- 2.2 Harassment of staff or students is against College policy. Certain forms of harassment may also be unlawful under both State and Commonwealth legislation.
- 2.3 Harassment can be action(s) directed against a group or an individual by a group or individual. It may occur among peers, or between people in subordinate/superordinate roles.
- 2.4 Harassment should not be confused with legitimate comments or advice which may include criticism regarding standards of work, workplace behaviour or feedback on student work or performance.

- 2.5 Examples of harassment may include:
- Unwelcome physical contact or coercive behaviour which is intended or may reasonably be expected to be received as offensive, intimidating, derogatory or likely to cause humiliation;
 - Insulting or threatening language and/or gestures;
 - Interference with a person's work space, work materials, equipment or property, apart from what would be considered necessary for ongoing work in the particular area or as part of normal student work;
 - Continual unjustified and unnecessary comments about a person's work or capacity for work;
 - Pictures, posters, graffiti, electronic images or written materials which are offensive, obscene or objectionable;
 - Phone calls, letters or messages on electronic mail or computer networks which are threatening, abusive or offensive;
 - Persistent following within, to or from the College (stalking);
 - Dismissive treatment or material expressing prejudice or stereotypic assumptions about the group to which a person may belong; and
 - Continual exclusion of a person or group from normal conversation, work or student assignments, work related social activities and workplace or student networks.
- 2.6 Some, but not all of these forms of harassment constitute sexual harassment which is dealt with more explicitly in the following clause. The preceding examples are indicative of behaviour likely to constitute harassment but should not be perceived to be exhaustive.

3. What is Sexual Harassment?

- 3.1 Sexual harassment is a particular form of harassment and covers any unwelcome, unsolicited and non-reciprocated behaviour which constitutes deliberate or unintentional verbal or physical conduct of a sexual nature. It creates an uncomfortable working or learning environment for the recipient and may be reasonably anticipated to have the effect of causing offence, intimidation or humiliation.
- 3.2 The term 'sexual harassment' when used in its widest sense, includes different types of behaviour. All sexual harassment is unlawful.
- 3.3 Sexual harassment can be directed at an individual by an individual and is of a sexual nature. It may occur among peers or between people in subordinate/superordinate roles.

- 3.4 Examples of sexual harassment may include:
- Questions about a person's private life
 - requests for sexual favours
 - offers of reward for sexual favours
 - ongoing requests to go out
 - deliberate physical contact such as patting, pinching, brushing, hugging, touching, kissing, rubbing
 - sex-oriented verbal kidding
 - smutty jokes
 - displays of sexually graphic materials
 - suggestive comments about a person's physical appearance
 - belittling comments based on sex role stereotyping.

Such actions may be accompanied by an intimidation that, in return for sexual favours, the victim will be advantaged in some way. Included or implied may be a threat of reprisal if a sexual advance is rejected.

- 3.5 Behaviours that involve physical contact, may also be defined by law as criminal acts. Such acts could be referred to external agencies and dealt with through those avenues.

- 3.6 A single incident of sexual advance which is unwelcome and may be reasonably anticipated to cause offence, humiliation or intimidation could constitute sexual harassment.

- 3.7 Sexual harassment has nothing to do with mutual friendships, sexual attraction or flirtation, since these behaviours involve choice and consent. Sexual harassment causes embarrassment and humiliation and is clearly distinguishable from acceptable social and professional interaction.

4. Effects of Harassment

- 4.1 Harassment creates an uneasy, hostile, intimidating and/or offensive work environment that interferes with the recipient's performance, job satisfaction or studies.
- 4.2 Responses to harassment vary. In some cases, where it is overtly responded to, public unpleasantness occurs, adversely affecting personal relationships between the parties. More commonly, the recipient attempts to ignore the conduct or even to feign amusement in order to retain acceptance. In other cases, the harassment is accepted by the recipient because of a fear of reprisal or disadvantage should there be rejection or objection. The suppression of the emotions caused by such harassment can, however, result in physical illnesses such as headaches, depression, anxiety, ulcers and other disorders. Recipients are offended at the harasser's failure to recognise their rights and autonomy. This can lead to a lowering of the victim's self-esteem.

- 4.3 Recipients of sexual harassment are not flattered by, or appreciative or desirous of their treatment, but are often loathe to report their complaints.
- 4.4 Common reasons for not reporting complaints of harassment include:
- A concern that a complaint will jeopardise career aspirations; or academic assessment;
 - A belief that it does not happen to others;
 - A belief that others will think it was asked for;
 - A feeling of inferiority and helplessness;
 - A fear of adverse treatment by peers and seniors;
 - A fear of disbelief;
 - A belief that it is unprofessional to inform;
 - A desire to avoid getting the harasser into trouble;
 - A worry that the situation may worsen;
 - A lack of suitable grievance procedures;
 - A lack of knowledge of grievance procedures;
 - As a result, many recipients of harassment are reluctant to initiate action.

5. Harassment: Where it May Occur

- 5.1 Harassment can occur between staff, between staff and students, or between students. It can occur between those of equal or unequal status within the College. Sexual harassment is a particularly insidious form of discrimination and complaints must be taken seriously and successfully resolved wherever possible.
- 5.2 Other forms of harassment also constitute unacceptable behaviour. The College may consider disciplinary action if a student or staff member is found to have harassed another student or staff member.

6. Role of the College

- 6.1 The College has a legal responsibility to protect both students and employees from sexual harassment.

The College does not have the right to intervene in personal relationships. It does, however, have a proper concern where harassment:

- Creates an intimidating, hostile or offensive environment;
- Adversely affects an individual's performance;
- Adversely affects an individual's employment, promotion, or scholarly prospects;
- Results in resignation, unfair dismissal, or withdrawal from courses;
- Creates an intimidating non-supportive educational environment;
- Reflects on the integrity and standing of the College.

- 6.2 It is the responsibility of all staff and students to ensure that proper standards of conduct are upheld. The College and staff in supervisory positions have a responsibility to ensure that the College is free from sexual and other forms of harassment.

- 6.3 Failure by the College to deal seriously with complaints of harassment or to take prompt, effective action, or remedial action, to deal with complaints can be seen as condoning or tolerating such behaviour. Managers should not wait for a complaint to be made before intervening, if they are aware of harassment.

- 6.4 Staff and students who become aware of harassment are encouraged to bring it to the attention of the College. Such conduct is not purely a personal matter between individuals; it may affect other staff and students as well as productivity and working relationships.

7. Student Harassment of Students or Staff

- 7.1 The College has an obligation to provide a learning environment, free from harassment. It can happen that a student harasses another student or a staff member.

- 7.2 Harassment is not acceptable behaviour by a student and will be treated with the same seriousness using the same principles as a complaint of a staff member harassing others. The College has powers to take disciplinary action against students found to be harassing other students or staff.

8. Resolution of Complaints

- 8.1 The College is committed to taking all action necessary to prevent and where reported, resolve incidents of harassment.
- 8.2 Consequently guidelines have been developed and are detailed in Section 11 of the policy as a means of resolving complaints at both an informal and formal level. Staff in supervisory positions are expected to utilise these guidelines in taking all reasonable and appropriate steps to eliminate harassment from the College environment.
- 8.3 Where warranted by seriousness or gravity, the College reserves its right to refer the complaint to the relevant external authority, as well as deal with the matter if appropriate under its own procedures. Such referral may take place:
- In place of any references to the grievance procedure at all;
 - In substitution whether the grievance procedure has been heard in whole or in part.
- 8.4 The College will deal with reported complaints as expeditiously as the circumstances of the complaint allow.

9. Victimisation

- 9.1 Experience has shown that sometimes the unfavourable treatment of the harassed person, subsequent to the placing of a complaint, puts the person under further stress and can escalate the situation beyond resolution. Such treatment is termed victimisation and in many instances, as well as being against College policy, may constitute unlawful activity. Victimisation includes any unfavourable treatment, such as aggression, refusing to provide information, ignoring the person, dismissal, refusing to renew a contract of employment, or lower assessment of student work.
- 9.2 Victimisation of people making complaints through this grievance procedure will be treated as seriously as the original behaviour giving rise to the complaint.
- 9.3 Supervisory staff are responsible for ensuring that victimisation of the complainant does not occur, either immediately or anytime after the complaint has been resolved.

10. Guidelines for the Resolution of Reported Complaints of Harassment

10.1 Introduction

- 10.1.1 Commonwealth and State legislation establishes liability on the part of the College for acts done by those employed by it or under its

supervision, unless the College can demonstrate that all reasonable steps are being taken to prevent prohibited conduct.

10.1.2 Accordingly, the College, in satisfying this obligation, requires staff in positions of responsibility to observe and implement these guidelines so as to ensure that all reasonable steps have been taken to eliminate harassment from the College.

10.1.3 In addition to any avenues open under these guidelines, any person experiencing sexual harassment has the right to take the problem privately and directly to the Equal Opportunity Commission (EOC) or the Human Rights and Equal Opportunity Commission (HREOC).

10.1.4 Other forms of harassment may also be unlawful and may also be reported privately and directly to the EOC or HREOC. Other avenues may be available, including the police.

10.2 Supervisors' Responsibilities

10.2.1 Supervisors of staff or students must be aware of the policy on the prevention of harassment and of their responsibilities for the provision of a harassment free environment.

10.2.2 Supervisors have particular responsibility to

- Ensure their own conduct is above reproach and that they are aware of the behaviour of others for whom they have supervisory responsibility;
- Explain to staff and/or students the College's Policy on Prevention of Harassment; staff and/or student responsibilities under the Policy;
- Encourage and facilitate the participation of staff and students in educational programs designed to identify and eliminate harassing behaviour in the College;
- Deal promptly and confidentially with any complaints of harassment;
- Ensure that persons making a complaint of harassment are not victimised;
- Ensure that once a complaint has been resolved, that the behaviour is not repeated.

10.3 Empowering the Complainant Person

10.3.1 The most immediate and effective solution to a harassment complaint is for the harassed person to approach the harasser personally and resolve the matter. This gives maximum empowerment to the

complainant and equips them to deal with further situations that may arise.

10.3.2 Failing this, it is essential for the complainant to feel in control of the direction of the resolution of the complaint. That is, the complainant should not feel pushed or forced into taking action, such as placing a formal or informal complaint, if they do not feel comfortable with it.

10.3.3 For this reason, support and information rather than 'advice' should be offered to the complainant by other people with responsibility for resolving the complaint. Provision of information about external bodies for resolution such as the Equal Opportunity Commission should be given, and the complainant should not be discouraged from using these organisations.

10.4 Confidentiality

10.4.1 It is imperative that all information regarding harassment complaints, or discussions which could lead to a complaint, be kept confidential.

The reasons for this include:

- In cases of sexual harassment the complainant has the right for a complaint to the Equal Employment Opportunity Commission to remain confidential. It should be noted however that the Equal Opportunity Commission is subject to freedom of information legislation and documentation may be disclosed by operation of that legislation;
- The possibility of defamation action;
- Prevention of victimisation of the parties involved;
- Prompt, successful resolution relies on minimum numbers of people involved in the complaint;
- Staff or students may tend to take sides resulting in escalation of the complaint;
- The alleged harasser has a right, as a requirement of natural justice, to expect allegations to be kept confidential.

10.4.2 Staff, with written delegated authority, involved in resolving the complaint, are protected by qualified privilege, a legal defence against charges of defamation as long as they act strictly as specified within these guidelines

10.4.3 It is legitimate for those involved in resolving a case of harassment, to seek advice and assistance from people with expertise in the area. Details of the complaint can be given, confidentially, to the Principal or the Executive Director.



Harassment Guidelines

10.5 Right of Representation

10.5.1 Both parties have a right to representation by union officials if appropriate or a support person of their choice. Neither party would normally, without mutual agreement, be represented at this stage by a legal practitioner.

10.5.2 If the alleged harasser requests representation, it is essential to consider the balance of power in resolving the complaint, and seek equivalent representation for the complainant.

11. Grievance Procedure

In resolving reported complaints the College shall operate under the following guiding principles:

- The need for fairness and equity;
- The need for a prompt effective resolution in a non-threatening, confidential environment;
- The availability of support for each of the complainant and the alleged harasser without the actuality or perception of bias, and
- Natural justice for the parties involved.

11.1 First Point of Contact

11.1.1 Research has established that the most difficult step for a person being harassed is the initial approach to discuss the problem.

The College grievance procedure for the resolution of reported complaints of Harassment is flexible in this regard, allowing the harassed person a wide range of options for the first point of contact about the complaint.

11.1.2 A complaint may be discussed confidentially with the supervisor or manager of the area, the Principal or the Executive Director.

11.1.3 The complainant has the right to approach, at any time, external bodies such as their union or the Equal Opportunity Commission.

11.2 Methods

11.2.1 The procedures detailed in 12.4.1(c) and 12.4.1(d) focus on a non-judgmental analysis of the communications between the parties. The conflict resolution will be in terms of the parties' perceptions, feelings and wishes, rather than in terms of proving facts.

11.2.2 If the following informal procedures (Stages I & II) do not achieve resolution, then the Principal or the Executive Director of the Board of Directors may intervene at a formal level (Stage III).

11.3 Stage I (Informal Resolution)

11.3.1 Complainant and Supervisor clarify the complaint and complainant's desired outcomes. The complainant may choose to leave the identity of the person against whom the complaint is made anonymous during Stage I.

11.3.2 If the complainant agrees, the complainant and/or Supervisor may consult the Principal or the Executive Director.

- The complainant may be advised of the need to keep a specific, written record (with dates) of the events perceived as harassing.
- In many cases, at this early stage of conciliation, the complainant may be counselled in detail, on how to confront the other person in an appropriate way, clearly stating their objection to the behaviour and foreshadowing the consequences of any persistence of the harassment. These are outlined below in Stage II and III.

11.4 The Supervisor will schedule a review of the outcome of this counselling in a further private discussion with the complainant.

11.5 Stage II (Conciliation Process)

Conciliation involves listening to the perceptions of both sides and then suggesting some form of agreed remedial action that is mutually acceptable to the parties involved and to the College.

11.5.1 Should the issue not be resolved, (Stage 1: Informal Resolution) in consultation and with the complainant's permission, the complaint may be referred to the Principal, Executive Director or Board of Directors.

- (a) If the matter is to be conciliated, the person who is the subject of the complaint will be informed in writing, normally within 3 working days of receipt of a formal complaint, of the nature and basis of the complaint and the conciliation process.
- (b) The person against whom the complaint has been made will be given the right to respond either in writing or verbally.

The person will be informed that they do not have to answer or respond immediately and an appropriate period for response will be set. Two weeks would normally be considered appropriate.

- (c) Depending on the response to the allegations and if appropriate, a settlement that is mutually satisfactory to both parties, and acceptable to the College, will be attempted in order to resolve a complaint (12.4.4. lists some possible outcomes). The conciliation process would normally be completed within one month of receipt of a formal complaint.

If no settlement is achieved it may be necessary for an independent person to investigate the complaint.

- (d) Both the complainant and the respondent will be advised in writing, if the conciliation process is expected to last beyond the agreed time or if further enquiries are to be made.

11.5.2 Temporary relocation of either party may be negotiated in an attempt to avoid negative consequences which may arise during investigation of a complaint.

11.5.3 Senior management will follow up any resolution reached at this stage after a suitable time interval by consulting each party separately. If the problem is resolved, the issue is then considered closed and the parties will be formally notified.

11.5.4 The resolution of the complaint may take a number of forms, such as an apology, either verbal or in writing, agreement to speak only on work or professional matters, or the transfer of one of the parties. Resolution can also include, in some circumstances, reinstatement of conditions lost as a result of the harassment.

The resolution should not disadvantage the person who has complained of harassment. This can happen in work situations where the complainant is transferred to another position of lesser interest or status, perhaps because they are a more junior person than the harasser. Alternative solutions should be sought.

11.5.5 In the event of the above, steps not leading to a resolution, or being curtailed by other factors, such as unwillingness to attend and participate in the problem solving discussions the matter may be referred to the Board of Directors for advice on further action.

11.5.6 If the complaint is not settled, the complainant will be advised of the need to lodge a formal grievance with the Principal and Executive Director, who will determine whether the grievance should be dealt with under the Formal Resolution Procedures or the College's disciplinary procedures.

11.6 Stage III (Formal Resolution)

11.6.1 The Principal and Executive Director will form a Group which will consist of a Chairperson and two members of staff appointed and who have not had direct involvement in the informal resolution procedures. The members of staff would normally have knowledge and understanding of equal opportunity and harassment procedures or experience in grievance resolution. The panel shall include both male and female members.

Where the matter involves a student, a student representative may be appointed.

11.6.2 The Group will conduct a formal investigation of the matter which may include reviewing documentation, interviewing the parties to the matter and where appropriate, interviewing witnesses or any other person deemed appropriate.

11.6.3 The Group will report its findings together with recommendations to the Board of Directors. The recommendations may involve referral to the terms of the relevant Workplace Agreement or policies

12. Appeal Process

12.1 Grounds for Appeal

12.1.1 An appeal may only be lodged on the grounds of procedural error or omission, which means a failure to duly follow the approved policy and procedure on the prevention of harassment and which has materially and adversely affected the decision reached by the Group.

12.1.2 An appeal must be lodged in writing to the Principal or Executive Director, setting out the precise grounds of each and every respect in which it is alleged that Group failed to follow the approved policy and procedures. The appeal must be lodged within 14 days of receipt of the decision. All supporting written evidence must accompany the appeal notice.

12.2 Appeal Procedure

12.2.1 The Principal or Executive Director or nominee will within 14 days of receipt of an appeal convene a hearing of an Appeals Committee.

Membership of the Appeals Committee will comprise:

- (i) A non-staff member of the College's Board of Directors or Academic Council will act as Chairperson of the Committee;
- (ii) Two members of staff who have not been involved in any stage of the grievance resolution process;
- (iii) In grievance involving students a student representative may be appointed to the Appeals Committee.

12.2.2 No Appeals Committee will be of one sex.

12.3 Terms of Reference

12.3.1 The Appeals Committee will have the power only to determine whether the decision was materially and adversely affected by a failure to follow the approved policy and procedures.

12.3.2 The appellant will indicate which clause or procedure was not followed.

12.3.3 The College will respond either by showing how it complied with the policy or procedures or by conceding the claim by the appellant.

12.4 Procedures

12.4.1 Members of the Appeal Committee will be provided with copies of all relevant documentation.

12.4.2 The Appeals Committee will interview the appellant and if it deems necessary to seek further information, may interview any other person(s) it may consider appropriate.

12.4.3 After considering the appeal the Appeals Committee may:

- (i) reject the appeal;
- (ii) uphold the appeal.

12.4.4 In the event that the appeal is upheld, the Appeals Committee will refer the matter with their findings and recommendation to the Principal or Executive Director.

12.4.5 In the event the appeal is rejected the appellant will have no further right of appeal.

13. Record Keeping

13.1 The College shall take all necessary steps to ensure the confidentiality of any grievance. Internal disclosure should be limited strictly to those employees who need to have access for official purposes.

13.2 The need to restrict access and maintain confidentiality affects filing and storage practice. Details of allegations and investigatory notes shall be kept in confidential files. These shall be kept separately from either the complainant's or respondent's personal files.

14. Retention and Disposal of Records

14.1 Records of complaints will normally be kept for an initial period of 2 years. If no further complaints have occurred during this period the records will normally be destroyed.

14.2 Once formal procedures are invoked, a file will be kept under normal College procedures.

14.3 Where a complaint is proven, the outcome may be placed on the staff member or student's personal file.



Harassment Guidelines

- 14.4 Conciliation agreements reached as part of the grievance resolution process may be documented and may be placed on a staff member or student's personal file. Alternatively, the records may be kept on a separate confidential College file and retained as per normal College process.

Acknowledgement: PIBT acknowledges use of the Edith Cowan University harassment policy in preparing this document. The PIBT policy is modelled on the ECU policy.