



Catholic Education
Diocese of Cairns
*Learning with Faith
and Vision*

Guideline/Procedure

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Guiding Principles – Managing unacceptable workplace behaviour

(Bullying, Discrimination, Sexual Harassment, Misconduct, Unsatisfactory Performance, Grievance)

Purpose

This guideline provides framework information for Catholic Education staff who become involved in processes relating to unacceptable workplace behaviour. The guideline provides a set of expectations through which Catholic Education will manage these processes.

Application

This guideline applies to all Catholic Education staff. It outlines the guiding principles by which Catholic Education will manage processes around unacceptable workplace behaviour. There are separate guidelines outlining the procedures for the conduct of these processes (See: Related Policies and Guidelines section below). This guideline will be applied within the additional context of these separate guidelines.

Guideline or Procedure

This guideline identifies three areas where employees may become involved in investigative processes:

- **Unsatisfactory performance** – where the work performance of an employee is not considered satisfactory in meeting the requirements of the position or which do not meet the professional standards for expected quality service.
- **Misconduct** – where the willful or deliberate behaviour by an employee is inconsistent with their obligations under their contract of employment, employer policies, or expectations under the Code of Conduct for Employees. This includes actions that relate to bullying, discrimination, and sexual harassment.
- **Complaints (grievance)** – where complaints are made or received relating to the conduct of employees. Complaints may be made by other employees or by those receiving services from Catholic Education – students, parents, clergy or members of the wider community.

Dealing with specific matters and guidelines for managing processes

There are specific reporting and investigative processes for matters including the requirements of the Student Protection Manual for addressing matters relating to child abuse and reportable conduct. There are also legal considerations for matters relating to workplace bullying, discrimination and sexual harassment – employees are also entitled to seek legal redress for these matters. There are separate guidelines for the management of processes for unsatisfactory performance, misconduct and grievance (complaints). Nothing in this document replaces the processes outlined in those documents.

Dealing with matters at the most appropriate level

Unless the matter involves a serious or extreme set of circumstances, the issues in dispute should be dealt with, and hopefully resolved, at the lowest or most appropriate level. (For example 'extreme circumstances' may involve actual or threatened physical or emotional harm). If resolution is not possible at the most appropriate level it should

then be referred to the next highest level. The circumstances of each case will determine how the process will be managed. Generally the hierarchy for resolution reflects:

- **Person to person.** It is hoped that most matters of disputation can be resolved by the direct engagement of the parties concerned. It is the employer's expectation that such discussions are conducted in a positive and professional manner consistent with the expectations of the Code of Conduct for Employees.
- **Line manager/Principal.** If the issue cannot be resolved at a person-to-person level it will be referred to the line manager(s) or Principal who will then engage the parties in a process (outlined in separate procedures for unsatisfactory performance, misconduct and grievance) towards resolution.
- **Director School Development (DSD), CES Manager Human Resource Administration, Executive Leadership Team (ELT) member.** A Principal unable to resolve a school-based matter should first seek advice from the relevant DSD. Within CES, a line manager unable to resolve a matter should seek advice from the relevant ELT member. Advice may also be sought from the Manager Human Resource Administration.
- **Professional Standards Unit (PSU).** If this fails, at the direction of the Executive Director, the matter will be referred to the diocesan Professional Standards Unit which will then manage the process. The PSU may also be involved to review a complaint about process, or at an earlier stage for serious matters, again at the discretion of the Executive Director.
- **External investigation.** The Professional Standards Unit may engage the services of an external investigator, if warranted by circumstances.
- **Police.** Where the evidence suggests a criminal offence may have occurred, the matter will be referred to police.

Natural Justice

The principles of natural justice and procedural fairness protect the rights and interests of employees. Procedural fairness will be provided to employees as follows:

1. The employee is presumed to be innocent until the allegations are found proven;
2. No decision will be made until all reasonable enquiries have been made;
3. The employee is informed of all allegations made against them and may be informed of the identity of the complainant;
4. The employee has the right to respond to allegations and to be provided with adequate time in which to respond;
5. The employee is informed of all possible outcomes and/or potential disciplinary processes that may result;
6. The employee (and any other participants) are given the opportunity to have a support person of their choice, providing that person is not a person who may be interviewed as part of the investigation;
7. Confidentiality is maintained by all participants;
8. All proceedings are carried out fairly and without bias; and
9. The employee is treated respectfully and supported throughout the process.

Role of Support Person

An employee has the right to have a support person present in any meeting which may impact on their employment relationship. The support person may be a Union representative, a colleague, family member or friend, but not a person who is potentially a witness or one who may be interviewed as part of the wider process or investigation. The support person/Union representative is required to maintain confidentiality.

The role of the support person is to:

- provide emotional support to the employee. For example, a support person may suggest a break in the meeting if an employee becomes upset;
- provide industrial support to the employee. For example, a support person may suggest a break in the meeting to discuss issues with the employee; and
- act as a witness to the process and procedure of the meeting. For example, a support person often takes notes on behalf of the employee.

The support person does NOT advocate on behalf of the employee, speak instead of the employee, or engage in conversation with the employer/employer's representative. Exceptions may include an employee with a language barrier or an employee who is too distressed to continue (in which case, it may be necessary to adjourn the meeting).

When a support person is a Union representative

The following additional provisions apply when the support person is a Union representative. Where allegations relating to discipline, misconduct or unsatisfactory performance are being investigated the employer can request an employee to personally answer a question. The union representative who is representing the employee shall not answer the question on behalf of that employee.

The role of the Union representative is to:

- provide advice to the employee (this may occur either in the meeting/interview or in private, and either during or before the interview/meeting);
- actively engage in conversation with the employer/employer's representative;
- assess whether (in their opinion) a question is appropriate, relevant and fair and provide comment as appropriate;
- assess whether (in their opinion) the interview/meeting process is procedurally fair and provide comment as appropriate; and
- assist the employee for the purpose of ensuring that the employee understands any questions being asked and any information being presented.

Vexatious or malicious complaints

Vexatious or malicious complaints are those made in bad faith, or are fabricated or deliberately made to harm someone, or to hinder any legitimate performance or disciplinary processes.

Catholic Education procedures are for genuine concerns and complaints. Any suspicion that an employee has made a vexatious or malicious complaint will be investigated. False accusations will not be tolerated and may result in disciplinary action.

Consideration of legal privilege

An allegation that an individual has been involved in some misconduct, discriminated against or sexually harassed against another involves a serious imputation in relation to an alleged harasser's character which may affect his or her reputation.

The principles of natural justice and procedural fairness protect the rights and interests of all employees. The employee is to be informed of all allegations made against them and may be informed of the identity of the complainant.

Complainants and those investigating a complaint are protected against defamation actions where the complaint is made in good faith through the proper channels.

It is not defamatory for the complainant to confront the alleged harasser directly and in private, nor to send a private letter to the alleged harasser outlining the offensive behaviour as this does not in itself damage a person's reputation.

An individual with a recognised legitimate interest in investigating or resolving a complaint, either formally or informally is protected by the defence of qualified privilege.

Accordingly, it is quite lawful for a complainant acting in good faith to report a complaint to the appropriate employer representative or nominated Equity Contact Officer or to the relevant Union or external consultant.

If the complaint is not made in good faith, is motivated by an improper purpose and lodged for a malicious reason within any basis, or if the complainant broadcasts the matter indiscriminately, then the protection is lost.

Where it is made to a person other than the alleged harasser, it is in the absence of the circumstances set out below, defamatory.

The possibility of being sued for defamation arises when a complainant conveys the information to anyone other than the alleged harasser, or to persons who have no legitimate reason for knowing. The law recognises that statements which would ordinarily be defamatory may be made by a person in the performance of legal, moral or social duty to a person with a corresponding duty to receive it.

Recourse available to an individual

Staff who feel confident and want to deal with the situation themselves are encouraged to do so, using self-help techniques (see the CES grievance procedures). However, it is not necessary that an individual tries to resolve the complaint this way.

Counselling and advice

- Employees may access counselling through the confidential Employee Assistance Program (Contact details on the Staff Portal/Human Resources/Employee Wellbeing). The Employee Assistance Program (EAP) is a confidential and free personal counselling service (up to four counselling sessions a year) funded by Catholic Education Services for all employees. Access to EAP should be continually offered to an employee throughout any performance/conduct process regardless of the level of seriousness of the issues.
- Information on leave entitlements and WorkCover claims can be accessed through CES Human Resources on 07-4050 9788.
- The Anti-Discrimination Commission Queensland on 1300 130 670 or TTY 1300 130 680 can provide information about your rights and responsibilities relating to discrimination.
- An individual's trade union might also provide advice.
- Employees are entitled to seek their own independent legal advice

Formal processes

- The CES grievance policy and procedures for grievance (maintaining right relations) provides advice and direction on the grievance process.
- Formal complaints should be lodged with the Diocesan Professional Standards Unit – contact 07-4050 9705.
- A worker who reasonably believes that he or she has been bullied at work may apply to the Fair Work Commission for an order to stop bullying. The Fair Work Commission can be contacted on 1300 799 675. The Commission cannot issue fines or penalties and cannot award financial compensation.
- Discrimination complaints can also be lodged with the Anti-Discrimination Commission Queensland (ADCQ) contact 1300 130 670 (state wide). Their website www.adcq.qld.gov.au has more information including the complaint form. (Generally a complaint must be made within one year of the incident).
- Discrimination complaints can also be lodged with the Australian Human Rights Commission in Sydney on 1300 656 419 (Federal anti-discrimination legislation).

Responsibilities

The following outlines the responsibilities of staff in managing and applying processes, policies and guidelines dealing with unacceptable workplace behaviour.

Employer responsibilities

- Provide and maintain a work environment that is without risk (so far as is reasonably and practicable) to health and safety (including psychological health).
- Take reasonable steps to ensure that employees and other workplace participants are aware of relevant policies and procedures. This includes training and the availability of documents.
- Use appropriate resources and processes to eliminate or minimise risks associated with unacceptable workplace behaviour.
- Treat all complaints seriously and respond to them promptly.
- Ensure Equity Contact Officers (ECOs)¹ are available for all staff to access.
- Take reasonable steps to ensure that policies and procedures are applied and enforced in all relevant circumstances.
- Regular review of relevant policies and procedures.
- Seek expert/additional assistance for complex or serious matters.

Senior Staff (Principals, Managers and Supervisors)

- Comply with all policies and procedures relating to workplace behaviour.
- Take reasonable steps to ensure that other employees are aware of and comply with this policy and procedure.
- Monitor the workplace to ensure as far as practicable that acceptable standards of conduct are maintained and that unacceptable workplace behaviour is not tolerated.
- Take appropriate steps to manage inappropriate behaviour, regardless of whether a complaint is received about the behaviour.
- Ensure staff have access to Equity Contact Officers.
- Encourage all staff to behave towards others with respect and courtesy at all times.
- Provide leadership and role modelling in relation to appropriate and professional behaviour in the workplace.
- Respond promptly, sensitively and confidentially to all situations where unacceptable workplace behaviour is exhibited or alleged to have occurred and taking appropriate steps in response to any such behaviour or allegation.
- Take appropriate steps to ensure that a person is not victimised for making, or being involved in, a complaint.

Employees and other workplace participants

- Take reasonable care for their own health and safety.
- Take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.
- Comply with the contents of policies and procedures covering expected appropriate behaviour in the workplace.
- Participate in training.
- Behave towards others with respect and courtesy at all times.
- Report observation and/or experiences of unacceptable workplace behaviour where the behaviour is not able to be addressed through personal resolution.
- Treat information in relation to workplace behaviour allegations with appropriate confidentiality.
- Ensure that they do not victimise a person for making, or being involved in a complaint.
- Bring any matter relating to witnessing unreasonable behaviour to the attention of their manager as a matter of urgency.

1 Equity Contact Officers (ECOs) are persons from within Catholic Education who have been trained to act as information providers and confidential support to persons regarding perceived bullying, discrimination and sexual harassment. Note the ECO will not attempt to resolve matters or deal in any way with the alleged harasser. While the ECO may assist a worker to choose what action he/she wishes to initiate, there is no active participation in any investigative process.

Training

Workers, including managers and supervisors should be aware of their roles in relation to preventing and responding to unacceptable workplace behaviour and have the appropriate skills to take action where necessary. Leaders in CES and schools will promote awareness of these policies and procedures.

On line induction training will be provided to all workers. The following topics will be covered:

- The standards of behaviour expected in the workplace including the use of social media if relevant.
- How unacceptable workplace behaviour should be reported and how such reports are managed.
- Where to go for more information and assistance.

The training program will cover:

- Awareness of the impact certain behaviours can have on others.
- The work health and safety duties and responsibilities relating to workplace bullying.
- Measures used to prevent unacceptable workplace behaviour from occurring.
- How individuals can respond to inappropriate workplace behaviour.
- How to report inappropriate workplace behaviour
- How workplace bullying reports will be responded to including timeframes.

Managers and supervisors shall be trained in how to respond to inappropriate workplace behaviour reports and in skills that will help develop productive and respectful workplace relationships.

Enquiries

Manager Human Resource Administration

Diocesan Professional Standards Unit

If appropriate an employee should first discuss matters of concern with their Principal or line manager.

Reflection

See also (Related Policies and Guidelines)

Code of Conduct for Employees

Policy: Workplace bullying

Policy: Discrimination and Sexual Harassment

Statement of Principles for Employment in Catholic Education

Guideline: Employee Misconduct Process

Guideline: Employee Unsatisfactory Performance Process

Policy and Guideline: Grievance (Maintaining Right Relations)