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Workplace Discrimination and Sexual Harassment

Reflection

"For just as the body is one and has many members, and all the members of the body, though many, are one body, so it is with Christ. For in the one Spirit we were all baptized into one body—Jews or Greeks, slaves or free—and we were all made to drink of one Spirit." 1 Corinthians 12:12-13

Purpose

The purpose of this policy is to define workplace discrimination and sexual harassment in Catholic Education workplaces and to confirm the commitment of Catholic Education to prevent and eliminate this behaviour in our workplaces, consistent with statutory obligations and our values and commitment to provide a safe workplace. It applies to all Catholic Education workplaces in the Diocese of Cairns.

This policy aims to ensure that if inappropriate behaviours does occur in the workplace, it is dealt with in a serious, sensitive and confidential manner so that the matter can be resolved as quickly as possible for all concerned.

Policy

Catholic Education Diocese of Cairns (CEDC) upholds the rights of personnel and others within working environments to be treated with fairness, dignity, and respect in accordance with espoused values and the law.

Any form or method of discrimination or sexual harassment is unacceptable and will not be tolerated. Catholic Education will take such steps as are reasonable and practicable to respond to and eliminate such behaviour from its workplaces

This policy applies to behaviour that occurs:

- in connection with work, even if it occurs outside normal working hours.
- during work activities including interaction with third parties and while working away from the workplace.
- at work-related events, for example at conferences and work-related social functions; and
- on social media where workers interact with colleagues or clients and their actions may affect them either directly or indirectly.

Personnel breaching this policy will face consequences under this policy, additional to any that may apply by law. Where possible and appropriate, informal pastoral approaches are preferred to discipline, or may work in conjunction together with more disciplinary consequences.

All formal complaints will be investigated, and a commitment is given that any person making a legitimate complaint of harassment, bullying or discrimination will be fully supported.

Any individual who experiences or witness discrimination or sexual harassment is encouraged to engage procedures to end such behaviour as set out within this policy and accompanying guidelines.

This policy applies to all workplace participants, including staff, priests and religious, volunteers, contractors, agents and clients of Catholic Education, including parents and students

The policy will be available to all staff through the Staff Portal, and all other participants via the web site. All staff including new employees, will be directed to complete the relevant on-line training within 5 days of commencing and annually, including on-line training modules.

Rationale

Definitions

Discrimination

Discrimination is the unlawful act of treating people differently based on groups, classes or other categories to which they belong or are perceived to belong that disadvantages them. For conduct to be unlawful discrimination, it must:

1. Be based on an attribute listed in the Queensland Anti-Discrimination Act 1991 (the Act)
2. Take place in an area of activity listed in the Act; and
3. Result in the person being treated less favourably than someone without that attribute.

Discrimination attributes on the following grounds is against the law:

- Race (including colour, descent or ancestry, nationality, national or ethnic origin)
- Age (whether young or older)
- Impairment (including biological, functional, learning, physical, sensory, mobility, cognitive, psychological, psychiatric impairment or the presence of an organism capable of causing disease)
- Religious belief or activity
- Sex or gender identity
- Relationship status (including being married, single, divorced, separated, de facto or in a same sex relationship)
- Sexuality
- Pregnancy, breastfeeding, parental status (including being or not being a parent, guardian, foster parent, adoptive parent, or stepparent)
- Family responsibilities (including the responsibility to care for and support a dependant child or immediate family member)
- Lawful sexual activity as a sex worker
- Trade union activity

- Political belief or activity
- Association with someone else who is identified because of one of the above attributes.

Direct discrimination occurs when a person (or a group of people) is singled out for worse treatment, compared to others in similar circumstances, because of one or more of the attributes listed below in the legal considerations. Direct discrimination may involve:

- making offensive 'jokes' about another worker's racial or ethnic background, sex, sexuality, age or impairment.
- expressing negative stereotypes about particular groups or using stereotypes as a basis for decisions about work e.g. 'women with young children shouldn't work' or 'older workers can't learn new skills'.
- using selection processes based on irrelevant attributes such as age, race or impairment rather than on skills really needed for the job.

Indirect discrimination occurs when one rule applies to all, but in fact disadvantages a person (or group of people) because they are unable, or less able to comply with the rule because they have an attribute listed below (under Legal considerations: grounds for discrimination). The fact that the disadvantage was not intended is not an excuse. For example:

- Requiring everyone to be available for all shifts might be unfair to a person with responsibilities to care for children or an elderly parent.
- Only hiring people who have never had a back injury or a workers compensation claim might rule out an employee whose health has returned and can do the job well.
- Not considering the provision of some reasonable adjustments would disadvantage a person with an impairment who may be able to perform the essential parts of the job in a different way.

Sexual Harassment

Sexual harassment is any form of unwelcome sexual attention, the conduct is either intentional or a reasonable person would have anticipated the possibility of the person being offended, humiliated or intimidated; (hostile workplace environment). It includes inappropriate physical contact, such as uninvited touching; staring or leering at a person or at parts of their body; talking about their sex life or asking about another person's sex life; sexual jokes or propositions; sexually offensive communications and pictures (phone, email, SMS or other social media); or unnecessary familiarity (such as deliberately brushing up against a person).

Sexual harassment is prohibited under the Queensland's Anti-Discrimination Act 1991, and the Sex Discrimination Act 1984.

Catholic Education will not tolerate sexual harassment in the workplace or in any work-related context such as conferences, work functions and business trips. The Sex Discrimination Act makes it unlawful for a person to subject another person to a workplace environment that is hostile on the grounds of sex. Sexual harassment has nothing to do with mutual attraction or consensual behaviour.

Sexual harassment does not have to be repeated or continuous to be against the law. Some actions or remarks are so offensive that they constitute sexual harassment in themselves, even if they are not repeated. Some forms of sexual harassment, such as assault, physical molestation, stalking, sexual assault and indecent exposure are also criminal offences.

The person being harassed does not need to say that the behaviour is unwelcome. Many people find it difficult to speak up. All employees are responsible for their own behaviour. Staff should avoid behaviour that has a capacity to offend.

Vicarious liability

Under the Act the person who contravenes the Act can be liable for the illegal behaviour as well as their employer, Catholic Education, unless Catholic Education can show it has taken reasonable steps to prevent it.

Catholic Education provides all staff with information about discrimination and sexual harassment at induction and conducts regular awareness training.

Managers must ensure that all staff are treated fairly and are not subject to any of the behaviours mentioned in this policy, including a positive obligation to take reasonable and proportionate measures to prevent sex discrimination, sexual harassment, victimisation and hostile workplace environments.

They must also ensure that people who make complaints, or who are witnesses, are not victimised in any way.

Actions that are not discrimination or sexual harassment

Legitimate and reasonable management actions and business processes, such as, actions taken to transfer, demote, discipline, redeploy, retrench or dismiss a worker are not considered to be workplace harassment, provided these actions are conducted in a reasonable way.

The following points would not normally indicate instances of workplace discrimination or sexual harassment, should they be undertaken in accordance with the above principles:

- Professional differences of opinions or personal differences of opinion
- Performance management processes and diminished performance
- Disciplinary actions
- Business processes, such as, workplace change or restructuring
- Occasional conflicts in working relationships
- A decision not to provide a promotion in connection with the worker's employment
- Injury and illness processes
- Any other reasonable management action, taken in a reasonable way

Individual and organisational impacts

Discrimination and sexual harassment have detrimental effects on people and their workplaces. They can create an unsafe working environment. Examples include the following:

Individuals

The effects of discrimination and sexual harassment on a person may include:

- High levels of distress, impaired ability to make decisions and poor concentration
- Loss of self-confidence and self-esteem and feelings of social isolation at work
- Panic attacks, anxiety disorders, depression, social phobia and deteriorating relationships with family and friends
- Reduced output and performance, incapacity to work, loss of employment
- Sleep disturbances, such as insomnia or severe tiredness.

Organisations

Discrimination and sexual harassment can have significant human and financial costs for organisations and can lead to:

- The breakdown of teams and individual relationships
- Poor worker health
- Reduced efficiency, productivity and profitability

- Bad publicity, poor public image – becoming ‘known’ as a difficult workplace environment
- Reputational damage in local communities
- Increased absenteeism and staff turnover
- Poor morale and erosion of worker loyalty and commitment.

Legal considerations

Under the Act the following are illegal:

- Unlawful discrimination
- Victimization (a person has made a complaint, agreed to be a witness or has had a complaint made against them)
- Sexual harassment
- Vilification (inciting hatred towards, severe ridicule of, or serious contempt for a person or group because of their race, religion, gender identity or sexuality)
- Seeking unnecessary information on which discrimination might be based.

Other behaviour that is against the law includes:

- Federal anti-discrimination legislation also prohibits discrimination on the basis of criminal record, medical record or social origin.

The Work Health and Safety Act 2011 imposes responsibility on both employer and employee alike to take care for the well-being of others.

Those making or managing complaints under this policy should apply the principles of natural justice and procedural fairness. Failure to properly apply these principles could result in actions for defamation.

Outcomes

Appropriate disciplinary action will be taken against a person who is found to have breached this policy. These measures will depend on the nature and circumstance of each breach and could include:

- A verbal or written apology
- One or more parties agreeing to participate in counselling or training
- A verbal or written reprimand
- Termination of employment

Actions will be taken within the framework of the Employees – Guiding Principles for managing unacceptable workplace behaviour and the guidelines and procedures for grievance processes and workplace investigations.

This policy does not restrict the rights of staff to take action under state and federal anti-discrimination legislation. Discrimination complaints can be lodged with the Anti-Discrimination Commission Queensland (ADCQ) contact 1300 130 670 (statewide). 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).

Enquiries

Financial & Operating Services, Human Resources Administration, Executive Manager Human Resource Administration.

Executive Manager, Professional Standards and Safeguarding Office.

Related Directives, Policies and Procedures

Policy: Grievance (Maintaining Right Relations)

Procedure: Grievance (Maintaining Right Relations) plus posters

Procedure: Employee Misconduct and investigation processes

Procedure: Employees - Guiding Principles for Managing Unacceptable Workplace Behaviour

Work Health and Safety Act 2011

Criminal Code

Anti-Discrimination Act 2023 (Cth)

Sex Discrimination Act 1984 (Cth)

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth)