

Wyndham Community and Education Centre Inc. Policy and Procedure

Policy name	Harassment, Discrimination, Victimization and Anti-Bullying Policy & Procedure
Responsible person	CEO, Managers, Board of Governance
Staff involved	All staff
Review dates	2018
Related documents	<p>Legislation: Fair Work Act 2009 (Com), Fair Work Amendment Act 2013 (Com), Crimes Amendment (Bullying) Act 2011 (Vic), Sex Discrimination Act 1984 (Com), Age Discrimination Act 2004 (Com), Human Rights and Equal Opportunity Commission Act 1986 (Com), Equal Opportunity Act 2010 (Vic), Racial Discrimination Act 1975 (Com), Disability Discrimination Amendment Act 2002 (Com), Disability Discrimination Act 1992 (Com), Disability Discrimination Amendment (Education Standards) Act 2005 (Com), Equal Opportunity for Women in the Workplace Act 1999 (Com), Multicultural Victoria Act 2011 (Vic), Racial and Religious Tolerance Act 2001 (Vic), Charter of Human Rights and Responsibilities Act 2006 (Vic), Protected Disclosures Act 2012 (Vic), Information Privacy Act 2000 (Vic), OH&S Act 2004 (Vic), Disability Act 2006 (Vic)</p> <p>Policies: Complaints and Appeals Policy & Procedure, Privacy Policy & Procedure, Access and Equity Policy & Procedure, Computer, Internet & Email Policy & Procedure, Cyber-bullying Policy and Procedure, Social Media Policy and Procedure, Disciplinary Action and Termination of Employment Policy & Procedure, OH&S Policy and Procedure</p> <p>Other: All codes of conduct, Jobs Australia Guidelines: Dealing with Bullying and Harassment, Worksafe Guidelines, Worksafe: Preventing Bullying at Work document, Bullying: No Way resources and website, Safe Work – How to manage work health and safety risks Code of Practice, Anti-bullying case-management model, FairWork Commission Guide Anti-bullying, FairWork Commission Anti-bullying benchbook, FairWork Commission Fact sheet Privacy Notice- anti-bullying matters</p>

Policy Context

Wyndham Community and Education Centre Inc. (Wyndham CEC) regards the health and safety of all staff, volunteers, students and clients as a serious responsibility. Harassment, discrimination, victimisation and bullying can have an adverse effect on health and wellbeing.

Wyndham CEC is committed to a workplace which is free from discrimination, harassment and other unacceptable behaviour. This policy and procedure aims to assist

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Wyndham CEC to meet its obligations to provide a learning and working environment free from unlawful discrimination, harassment and bullying.

This policy and procedure applies to all staff, Board members, clients, volunteers and students of Wyndham CEC engaged in programs, services and activities with Wyndham CEC and across all Wyndham CEC venues. This policy and procedure also applies during excursions, other external activities organised by Wyndham CEC and staff functions, attendance at conferences and/ or professional development events.

Wyndham CEC's strategic plan includes the goal of being an employer of choice in Western Melbourne. Wyndham CEC acknowledges that under the law, it has an obligation to take all steps necessary to prevent discrimination, harassment and bullying. This policy outlines Wyndham CEC's position on harassment, discrimination, victimisation and bullying. It documents the process which is to be followed should any instances of bullying or the like be reported.

Bullying and harassment can include any bullying or harassment that is made online, even on private social networks or out of office hours.

Policy

Any form of workplace harassment, discrimination, victimisation or bullying is unacceptable at Wyndham CEC. Such behaviour is unlawful.

All staff, volunteers, students and clients have the right to an atmosphere free of discrimination, harassment, victimisation or bullying, and also have the responsibility to help prevent it.

What is unlawful Harassment, Discrimination or Victimisation?

Harassment, discrimination or victimisation is any form of behaviour that is uninvited, unreciprocated, unwelcome, personally offensive or humiliating to the recipient and creates an intimidating, hostile, frightening or uncomfortable work and/or learning environment.

Under Federal and State legislation, **unlawful discrimination** occurs when someone, or a group of people, is treated less favourably than another person or group of people on the basis of:

- Age;
- Disability/impairment;
- Industrial activity;
- Lawful sexual identity;
- Gender identity;

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- Sexual preference;
- Marital status;
- Physical features;
- Political belief or activity;
- Pregnancy or breastfeeding;
- Race;
- National or ethnic origin;
- National extraction or social origin;
- Religious belief or activity;
- Sex;
- Status as a parent or carer;
- Personal association with someone with the above attributes.

Under Federal and State legislation, **unlawful harassment** occurs when someone is made to feel intimidated, insulted or humiliated because of:

- Age;
- Disability/impairment;
- Industrial activity;
- Lawful sexual identity;
- Sexual preference;
- Marital status;
- Physical features;
- Breastfeeding;
- Race;
- National or ethnic origin;
- Religious belief or activity;
- Sex;
- Gender identity;
- Status as a parent;
- Status as a carer;

These behaviours can include but are not limited to:

- Inappropriate verbal suggestions;
- Jokes or innuendo aimed at an individual;
- Offensive or inappropriate phone calls;
- Any proposed relationship where the attraction is not reciprocated;
- Applying inappropriate pressure to another person to speak or act in a particular way;
- Targeting another person with inappropriate words or actions;

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- Asking intrusive questions about someone's personal life;
- Shouting, threatening, swearing or other inappropriate use of language;
- Physical assault, indecent assault or rape and / or,
- Incitement of others to commit any such acts.

What is sexual harassment?

Sexual harassment is unwelcome sexual conduct which makes a person feel offended, humiliated or intimidated where that reaction is reasonable in the circumstances. Sexual harassment can take various forms such as:

- Unwelcome physical touching, hugging or kissing;
- Suggestive comments or jokes;
- Unnecessary familiarity;
- Sexually explicit emails, internet sites, social media or SMS messages;
- Staring, leering or gesturing;
- Sexually explicit pictures, screensavers or posters;
- Insults or taunts based on your sex;
- Behaviour which could be criminal such as physical assault, indecent assault, stalking or rape.

Sexual harassment can cause harm and distress and can affect workplace productivity and atmosphere. Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

What is victimisation?

Victimisation means subjecting a person to some detriment if he or she has:

- Lodged a complaint under the Sex Discrimination Act;
- Applied to the Fair Work Commission for an order to stop bullying;
- Made an allegation about an act that is unlawful under the Sex Discrimination Act;
- Provided information or documents to the Commission.

Examples of victimisation include:

- Being moved to a lesser position while complaint is being considered;
- Being ostracised by other employees for providing information to the Commission;
- Being denied opportunity for promotion after unsuccessfully lodging a sexual harassment complaint.

Individuals will be personally liable for their own unlawful acts under the Sex Discrimination Act. Wyndham CEC can be held liable for wrongs committed by employees

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in connection with their employment. Wyndham CEC has a responsibility to ensure that the workplace culture is not sexually or racially hostile.

What is a hostile working environment?

A person has the right to complain about the effects of a sexually or racially hostile work environment even if they are not specifically targeted.

Examples of a hostile working environment may include:

- Where pornographic materials are displayed;
- Where crude conversations take place;
- Telling offensive jokes;
- Innuendo.

Note: Workplace harassment and discrimination must not be confused with legitimate comment and advice including relevant negative comment or feedback from managers and supervisors on the work performance or work related behaviour of an individual or group.

The process of providing feedback to staff during a formal appraisal, or performance managing staff regarding work performance can be stressful but should not be confused with harassment and discrimination. Managers and senior staff should not avoid their responsibility to provide honest and frank feedback to staff.

What is Bullying?

Bullying is repeated, unreasonable behaviour directed towards a person or group of people. It includes behaviour that could be expected to intimidate, offend, degrade, humiliate, undermine or threaten. Repeated refers to the persistent or ongoing nature of the behaviour. Bullying may comprise a combination of behaviours. Bullying can be intended or unintended.

Intended bullying refers to behaviour intended to humiliate, offend, intimidate or distress, whether or not the behaviour had that effect.

Unintended bullying refers to behaviour which although unintended to humiliate, offend, intimidate or distress, did cause and should reasonably have been expected to cause that effect.

Bullying can occur at any level of the organisation, can be experienced by women and men and may involve a co-worker, a volunteer, a manager, or a student or client.

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Formerly agreed behaviour may be found to be bullying when it continues after a request from the recipient for the behaviour to stop, or at the point it becomes intimidating, offensive or humiliating.

Workplace bullying has significant impacts and consequences on those experiencing or witnessing the bullying, and the organisation. Workforce bullying is repeated, unreasonable behaviour directed at an employee or group of employees that creates a risk to health and safety (Workplace Bullying: We just want it to stop, 2012, House of Representatives Standing Committee on Education and Employment).

It is reasonable that there may be occasional differences of opinion, conflicts and issues in every workplace. Only when the treatment of another person is unreasonable, offensive or harmful does workplace bullying exist.

Examples of behaviour that could be considered workplace bullying include:

- Physical / verbal abuse;
- Psychological harassment;
- Assigning meaningless tasks unrelated to a person's work;
- Changing work timetables to deliberately inconvenience an employee;
- Exclusion or isolation;
- Intimidation;
- Assigning impossible tasks;
- Deliberately withholding information that is necessary to do a task.

Bullying can be direct or indirect.

Examples of **direct** bullying behavior:

- Inappropriate verbal suggestions or comments about a person's appearance, lifestyle or family;
- Teasing or making someone the brunt of jokes or innuendo;
- Displaying offensive material;
- Abusive, insulting or offensive language;
- Physical assault or threat;
- Interfering with a person's personal effects or work equipment;
- Spreading misinformation or malicious rumours;
- Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and/or screaming;
- Harmful or offensive initiation practices.

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Examples of **indirect** bullying behavior:

- Unreasonable overloading a person with work;
- Setting tasks beyond a person's skill level, assigning meaningless tasks or unfairly assigning unpleasant tasks;
- Setting timelines that are difficult to achieve or constantly changing;
- Exclusion, marginalisation or isolation of a person;
- Unfair treatment relating to work rosters or accessing entitlements such as leave or training;
- Deliberately withholding information, consultation or resources.

Bullying is not reasonable management action where a person exercises their legitimate authority at work in a proper and reasonable way. The CEO, Managers and Coordinators have a broad range of responsibilities including directing and controlling how work is performed. Managers are responsible for monitoring workflow and providing feedback to employees on work performance. Feedback provided properly with the intention to improve performance does not constitute bullying.

Victoria's Worksafe guidelines state that: Reasonable management actions carried out in a fair way are not bullying for example:

- Setting performance goals;
- Allocating work to an employee;
- Rostering and allocating hours;
- Transferring a worker;
- Deciding not to select a worker for promotion;
- Informing a worker about unsatisfactory work performance;
- Informing a worker about inappropriate behavior;
- Implementing organizational change;
- Performance management processes;
- Downsizing.

Responsibilities

It is the obligation and responsibility of every employee and volunteer to ensure that the workplace is free from bullying and to ensure that discrimination, harassment or victimisation does not occur.

Any employee or volunteer who believes they have been a victim of discrimination, harassment, victimisation or bullying is encouraged to inform the offender that their behaviour is unacceptable and against Wyndham CEC policy. At this point it is advisable for the incident to be reported to the CEO or a Manager or Coordinator.

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It is the responsibility of the CEO and Managers to ensure that:

- they understand, and are committed to, the rights of all employees and volunteers to attend work and perform their duties without fear of being bullied in any form;
- they understand, and are committed to, the rights of all students and clients of Wyndham CEC to access services without fear of being bullied in any form;
- all reasonable steps to eliminate bullying are made;
- all applicable occupational health and safety legislation is observed;
- all employees and volunteers are made aware of their obligations and responsibilities in relation to providing a workplace free from bullying;
- they provide an environment which discourages bullying, and set an example by their own behaviour;
- all complaints are treated seriously and confidentially;
- immediate and appropriate corrective action is taken if they become aware of any offensive action; and,
- guidance and education is provided, where requested and/or appropriate, to cases and subsequent decisions relating to bullying;

It is the responsibility of all Employees and Volunteers to ensure that:

- they understand and are committed to the rights and entitlements of all employees and volunteers to attend work and perform their duties without fear of bullying in any form;
- they provide an environment which discourages bullying; and,
- they immediately report any offensive action.

Comments or behaviour that does not offend one person may offend another. Management accepts any person's right to react as an individual and expects all employees, volunteers and students to respect this right.

Breaches of this policy could have consequences ranging from counselling and a written warning being placed on the person's file, to dismissal or legal proceedings. Bullying that could be criminal in nature should be dealt with as a police matter.

Procedures

Wyndham CEC

Employees, volunteers, students or clients who believe they are the subject of discrimination, harassment, victimisation or bullying should take firm, positive and prompt action.

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If deemed appropriate the employee, volunteer, student or client should make the perceived bully (or bullies) aware that they find their behaviour offensive, unwelcome and unacceptable, and that it needs to stop immediately.

If the behaviour continues, or if the employee, volunteer, student or client feels unable to speak to the person(s) directly, they should contact their Coordinator or Manager, or the CEO. The complainant does not have to request a full formal investigation if they are satisfied by less formal resolution of the issue. They may also lodge a formal complaint, if they wish.

A detailed account of the incident should be ascertained. In serious cases, more than one interview may be necessary. All interviews should be documented. This record will include parties involved, timing, location, and nature of conduct complained against. Records are to be kept and filed in a confidential and secure place. These records should be kept for a period of seven years. Under no circumstances will records be placed on the complainant's personnel file.

The CEO or a Manager will organise an investigation, which in most cases will involve (but is not be limited to):

- a private interview to ascertain the facts and to find what the complainant expects to happen as a result of making the complaint or raising the incident;
- an interview with the alleged harasser(s) / bully(ies) to ascertain their defence;
- interviews with other employees, students, volunteers or individuals who may be able to assist; and,
- an examination of any relevant documents.

All relevant evidence should be considered by the person conducting the investigation.

Guidelines and strategies

- All reports should be investigated promptly;
- Investigations and responses should be in line with this policy and procedure;
- Counselling, training and support should be provided;
- Protect and support the victim and witnesses;
- Monitor situation to ensure behaviour changes occur;
- Use principles of natural justice (see Complaints & Appeals Policy & Procedure);
- Put allegations to the person alleged to have bullied or discriminated;
- Allow the person alleged to have their say;
- If the complaint is substantiated, take appropriate disciplinary action;
- Treat people with dignity and respect;
- Follow the Code of Conduct and practice the values of Wyndham CEC.

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It may be necessary to provide affected employees or clients with alternative working or study arrangements to avoid further conflict while the harassment, victimisation or bullying complaint/incident is investigated. The complainant may also require counselling to develop coping strategies for dealing with the situation while the problem is being resolved.

Possible courses of action at the conclusion of an investigation may include, but are not limited to, any combination of the following:

- counselling;
- disciplinary action against the bully or bullies;
- official warnings that are noted in the bully or bullies' file;
- if there is strong evidence that the complaint was vexatious or malicious, disciplinary action against the person who complained;
- formal apologies and undertakings that the behaviour will cease; and/or,
- conciliation/mediation conducted by an impartial third party, where the parties to the complaint agree to a mutually acceptable resolution;

Determination of whether bullying has occurred will rest on the weight of the evidence. If it is determined that bullying has taken place then outcomes will depend upon factors such as:

- the severity and frequency of the bullying;
- the wishes of the person who was subjected to the offensive behaviours;
- whether the bully could have been expected to know that such behaviour was a breach of policy;
- the level of contrition shown by the bully;
- whether there is a criminal element to the bullying; and,
- whether there have been any prior incidents or warnings.

If there is insufficient proof to decide whether or not bullying has occurred, the Manager or CEO will:

- remind those involved of expected standards of conduct;
- reinforce the values of Wyndham CEC and associated behaviours;
- reinforce the policies and procedures of Wyndham CEC; and,
- monitor the situation carefully.

The relevant Manager or CEO will advise all relevant parties of the outcome.

Procedures for Dealing with Criminal Conduct

Some forms of bullying (physical attack, for example, or obscene phone calls) may constitute criminal conduct. While Wyndham CEC is committed to treat most complaints or incidents of bullying at an organisational level as far as possible, this type of conduct may not be suited to internal resolution.

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Such complaints should be treated by the criminal justice system.

Employees or volunteers should be advised of the option of police support or intervention.

It is not the obligation or duty of the organisation to report such matters to the police on behalf of the complainant.

FairWork Commission

Since 1 January 2014, a worker may apply to the FairWork Commission for an order to stop bullying at work from continuing. This right comes from the Fair Work Act 2009. The FairWork Commission can deal with applications for an order to stop bullying if a worker is bullied at work, in a constitutionally covered business.* This includes the not-for-profit sector.

The Fair Work Commission defines bullying at work when **“a person or group of people repeatedly behaves unreasonably towards a worker or a group of workers at work”** and **“the behaviour creates a risk to health and safety.”**

Bullying does not include reasonable management action carried out in a reasonable manner.

More information at:

<https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/workplace-issues-disputes/anti-bullying>

*constitutionally covered business

A constitutionally covered business is:

- a proprietary limited company
- a foreign corporation
- a trading or financial corporation formed within the limits of the Commonwealth
- the Commonwealth
- the Commonwealth authority
- a body corporate incorporated in a territory
- a business or organisation conducted principally in a territory or Commonwealth place.

It does not include sole traders, partnerships, some state government employees, corporations whose main activity is not trading or financial.

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