

FSAC Ltd

Board Policy No. 12 Work Health & Safety

Prevention of Workplace Harassment Procedure No. 12.14

2017

Document Approval and Version Control	
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Contact Officers: Position: Manager Human Resources Name: Craig Middleton	Next Review: 30.06.2017

Policy Statement: The Board recognises its obligation to provide a safe and healthy environment to users of its facilities. The effective implementation of policy and the establishing and maintaining of safe systems of work by all managers and individual staff at FSAC will ensure this obligation is met. All FSAC staff and users of FSAC facilities are responsible to ensure to the best of their ability that College activities do not expose any person to risk of injury or illness.

1. PROCEDURE STATEMENT

The Colleges have a zero tolerance position on workplace harassment and bullying and are committed to ensuring that the College workplaces free from harassment and bullying.

2. PRINCIPLES

The principles which apply to the workplace bullying complaints procedure are:

- Everyone has a right to be treated with respect;
- Everyone has a right to “due process” i.e. the person against whom the allegation is made has the right to know what is alleged against them, the right to put their case in reply, the right for any decision to be made by an impartial decision maker, and the right to an appeal against a decision;
- Complaints will be treated in confidence and where confidentiality cannot be guaranteed this will be clearly indicated;
- Access to counselling for effected workers;
- All incidences of bullying will be dealt with promptly, thoroughly, fairly and confidentially; and The FSAC Colleges are under a legal obligation of a duty of care to provide a safe workplace.
- Any incidences of workplace bullying that are reported must be investigated, sometimes informally in the first instance, and formally if required in order to comply with this duty of care.

Making false or malicious complaints of bullying will also be regarded as a serious disciplinary offence, which if proven, may result in disciplinary action being taken.

2.1. Associated Policies and Reference Material

- *Work Health and Safety Act 2011*
- *Anti-Discrimination Act 1991*
- *Fair Work Act 2009*
- *Whistleblowers Protection Act 1994*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- Guide for Preventing and Responding to Workplace Bullying – May 2016
- No. 3 Duty of Care Policy
- Grievance Management Procedure No. 6.4
- No. 12 Work Health and Safety Management Policy

3. DEFINITIONS

Harassment/Bullying: A person is subjected to ‘workplace harassment’ if the person is subjected to repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person’s employer or a colleague or group of colleagues of the person that :

- is unwelcome and unsolicited
- the person considers to be offensive, intimidating, humiliating or threatening; and
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening.

Acts of discrimination, vilification and sexual harassment, as described in the *Anti-Discrimination Act 1991*, are illegal and reports will be forwarded to the appropriate authorities.

Intent: The intent of the perpetrator is relevant to understand the impact of the behaviour on the individual and the most effective way to resolve the situation. There are three levels of intent:

- **Intentional:** behaviour directed at a victim with the intent of causing actual occupational, physical or psychological harm;
- **Instrumental:** negative behaviour is an unintended side-effect of a behaviour directed at achieving another goal; or
- **Unintentional:** lack of sensitivity or awareness of the negative impact of the behaviour.

Regardless of intent, when these behaviours become inescapable and/or are an abuse of power or authority, they have a high potential to be considered to be harassing or bullying.

Unreasonable Behaviour: is behaviour that harms, intimidates, threatens, victimises, undermines, and offends degrades or humiliates another employee.

Perception: how the behaviour is perceived by the recipient is an important factor that is taken into account when determining a case of harassment or bullying. Regardless of the intention of the behaviour, it may be seen as harassing or Bullying by the person impacted.

Adverse Action: any action that is negative or victimising that is taken against a person who lodges a claim for Workplace harassment.

According to the definition, the following situations are not considered to be workplace harassment.

Single incidents of harassing type behaviour are not considered to be workplace harassment. Nevertheless, single incidents of harassing type behaviour should not be ignored or allowed. Well-managed intervention in response to single incidents will help prevent the situation from escalating.

Managerial actions: This code of practice does not cover situations where a worker has a grievance about reasonable management actions, taken in a reasonable way. Reasonable management actions include legitimate:

3.1 What is not Workplace Harassment or Bullying

- performance management processes action taken to transfer or retrench a worker
- a decision not to provide a promotion in connection with the worker's employment
- disciplinary actions
- allocated work in compliance with systems and policies
- injury and illness processes
- business processes, such as, workplace change or restructuring

However, these management actions may still be relevant to the code of practice where:

- managerial actions are primarily used to offend, intimidate, humiliate or threaten workers
- processes create an environment where workplace harassment is more likely to occur

Discrimination and sexual harassment: Acts of unlawful discrimination, vilification or sexual harassment are not covered under this code of practice. In situations where such acts are involved, a complaint may be made to the:

- Anti-Discrimination Commission Queensland under the *Anti-Discrimination Act 1991*
- Australian Human Rights Commission under the *Commonwealth Disability Discrimination Act 1992, Racial Discrimination Act 1975 or Sex Discrimination Act 1984.*

4. AUTHORITY

4.1. Head of College

The Head of College is responsible for the management of the Colleges' Prevention of Workplace Harassment and Bullying, ensuring that all College leadership and aware of and carry out their responsibilities for ensuring that the College is free from Workplace Harassment and Bullying. The Head of College is also responsible for ensuring that all staff are aware of their rights to work in an environment free from Workplace Harassment and Bullying, and to undertake investigations when complaints of harassment are received.

5. APPLICATION

5.1. Workplace strategies to eliminate workplace harassment

The Colleges will take the following actions to prevent and control exposure to the risk of workplace harassment:

- provide all staff members with workplace harassment awareness training
- develop a 'code of conduct' for workers to follow
- make available a grievance handling procedure and inform all staff members on how to make a complaint, the support systems available, options for resolving grievances and the appeals process

5.2. Responsibilities of workers

- regularly review the workplace harassment prevention policy, complaint handling system and training.

The College requires all staff members to behave responsibly by complying with this policy, to not tolerate unacceptable behaviour, to maintain privacy during investigations and to immediately report incidents of workplace harassment to the nominated Safety Officer at each campus (name kept at reception).

Managers and supervisors must also ensure that staff members are not exposed to workplace harassment. Management are required to personally demonstrate appropriate behaviour, promote the workplace harassment prevention policy, treat complaints seriously and ensure where a person lodges or is witness to a complaint, that this person is not victimised.

5.3. Assistance for Employees

Where workers can go for assistance

A staff member who is being harassed can contact the nominated Work Place Health & Safety Officers on campus for information and assistance in the management and resolution of a workplace harassment complaint. Details of the Workplace Health & Safety Officers are kept at the reception of each campus.

5.4. Examples of Workplace Harassment and Bullying

Detailed below are examples of behaviours that may be regarded as workplace harassment, if the behaviour is repeated or occurs as part of a pattern of behaviour. This is not an exhaustive list. However, it does outline some of the more common types of harassing behaviours. Examples include:

- Abusing a person loudly, usually when others are present;
- Repeated threats of dismissal or other severe punishment for no reason;
- Constant ridicule and being put down;
- Leaving offensive messages on email or the telephone;
- Sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways; Maliciously excluding and isolating a person from workplace activities;
- Persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters;
- Humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers; and
- Spreading gossip or false, malicious rumours about a person with an intent to cause the person harm.

5.5. Complaint Handling Principles

Principles that will apply to any complaint which is made concerning alleged harassment or bullying include:

- All complaints will be investigated in a fair and impartial manner;
- No Judgements or assumptions will be made and no action will be taken until the investigation is complete;
- A person who is the subject of a complaint will have their rights protected and will be given an opportunity to respond to the allegations; and
- Due regard will be given to the principles of natural justice at all times.

Confidentiality:

Any complaint made under this procedure will remain confidential,. The only people who will have access to the information will be the person making the complaint, the person who is the subject of the complaint, the person investigating the complaint and the Head of College. In some circumstances the information will be provided to the Board.

No Victimisation:

The Head of College will ensure that any person who makes a complaint is not victimised in any way.

Vexatious or Malicious Complaints:

There is an underlying assumption that complaints are made in good faith (and with good will) and with an intention for resolution as opposed to retribution.

Timeliness:

Each complaint will be finalised within as short a period of time as possible. Complainants will be advised if the matter cannot be finalised within one month.

5.6. Complaint Handling

When administering the following complaint handling system, due regard will be given to the principles of natural justice.

Stage 1: Informal complaint handling procedure:

At an informal complaint handling level employees are encouraged to raise their harassment complaint with an appropriate contact person at the workplace (for example, immediate supervisor or Health and Safety Representative) so that it may be managed and resolved in an informal and fair manner.

Resolving complaints informally is generally considered to be more effective, requires fewer resources, is more expedient and often prevents further escalation of the issue. Interpersonal conflicts are often effectively resolved through open discussion between the parties. This is encouraged as the first step in every complaint, unless otherwise requested by the complainant.

Stage 2: Formal complaint handling procedures:

Where an employee does not feel that they can approach the person who is subject of the complaint directly or that they are not satisfied with the person's response or reaction, a formal complaint should be lodged with the Head of College.

The Head of College or their delegate will undertake an investigation in accordance with the above principles. The investigation will include interviews with the person about whom the complaint is made. Any witnesses will also be interviewed. These interviews will be conducted separately and impartially.

Written reports about the complaint may be requested. The importance of confidentiality will be stressed to all parties and they will be warned of the consequences if there is a breach of confidentiality (e.g. possible defamation action, initiation of a complaint for harassment).

The head of College makes a decision on the validity of the complaint which will be discussed with the person who has lodged the complaint. The complainant will be consulted concerning their interest in a particular remedy. The application of an ultimate remedy will be the prerogative of the Head of College.

Possible Outcomes:

If the complaint is upheld or sustained, the following are possible outcomes depending on the nature and severity of the complaint:

- An agreement between the parties;
- A verbal apology;
- A written apology; and
- The perpetrator is disciplined (depending on the nature and severity of the complaint this might range from counselling to dismissal)
- Separation of the parties in the workplace

If a complaint is not upheld or not substantiated (e.g. there is insufficient evidence) but some issues come out of the investigation that are required to be addressed the, possible outcomes include:

- Supportive counselling for the complainant; and
- Training and counselling for the perpetrator.

The Head of College will ensure that the remedy is implemented as determined, and will assess the effectiveness of the outcome from time to time.

Review:

If the complaint remains unresolved it will be reviewed by the Head of College, with the view of engaging some form external intervention.

6. Consequence of a breach of this policy

Disciplinary action will be taken against a person who harasses a staff member or who victimises a person who has made or is a witness to a complaint. Complaints of alleged workplace harassment found to be malicious, frivolous or vexatious may make the complainant liable for disciplinary action.

7. Procedure Administration

In accordance with procedure development and review protocol this procedure will be recorded as an authorised procedure approved by the Executive, at its meeting of the date shown on the front of this procedure document.

The procedure will be reviewed twelve (12) months from the date of the approval shown herein.

Notwithstanding the schedule review, should any circumstance change materially before the twelve (12) month review period, the procedure will be immediately reviewed in order to maintain appropriate accuracy, relevance and authority.