

Name: Harassment Bullying and Discrimination Policy and Procedure

Endorsed by: Continuous Improvement and Management Committee

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PURPOSE

The *Harassment Bullying and Discrimination Policy and Procedures* policy and procedure describes Benchmark College's 'zero tolerance' approach to harassment, bullying and unlawful discrimination. It aims to ensure a productive and positive workplace and educational environment. It also acts as a reference for staff and students to understand their rights and obligations under Benchmark College policy and relevant state and federal legislation pertaining to harassment, bullying and discrimination.

SCOPE

Obligations under relevant state and Federal legislation regarding harassment, bullying and discrimination apply to all staff, students, Benchmark College representatives, contractors and visitors. Breaches of this policy are dealt with as misconduct and are managed according to relevant procedures, including those contained within this document.

RELATED DOCUMENTS

- Access and Equity Policy and Procedure
- Student Handbook
- Staff Induction Manual
- Complaints and Appeals Policy and Procedures
- Social Media Policy
- Student Behaviour and Misconduct Policy
- Consumer Protection Policy

RELEVANT STANDARDS, GUIDELINES, ACTS OR REGULATIONS

This Harassment, Bullying and Discrimination Policy addresses aspects of Standard 5 and Clauses 1.3 & 8.5 of the Standards for Registered Training Organisations (RTOs) 2015. The policy is also developed to comply with the provisions of both Federal and State legislation.

Federal Legislation:

Age Discrimination Act 2004
 Australian Human Rights Commission Act 1986
 Disability Discrimination Act 1992
 Fair Work Act 2009
 Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021
 Racial Discrimination Act 1975
 Sex Discrimination Act 1984
 Work Health and Safety Act 2011
 Workplace Gender Equality Act 2012

State Legislation:

Australian Capital Territory - Discrimination Act 1991
 New South Wales - Anti-Discrimination Act 1977
 Northern Territory - Anti-Discrimination Act 2015
 Queensland - Anti-Discrimination Act 1991
 South Australia - Equal Opportunity Act 1984
 Tasmania - Anti-Discrimination Act 1998
 Victoria - Equal Opportunity Act 2010
 Western Australia - Equal Opportunity Act 1984

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DEFINITIONS

Harassment

Behaviour directed at an individual or group that, because of its severity and/or persistence, is likely to create a hostile environment and cause a detrimental effect to an individual's participation in employment or education.

Harassment is determined by the nature and consequences of the behaviour, not the intent of the initiator, and occurs in circumstances where a reasonable person would have expected the behaviour to be offensive, humiliating or intimidating.

Harassment also includes sexual harassment which is defined as unwelcome sexual advance, unwelcome request for sexual favours and any behaviour of a sexual nature which is unwelcome. This can include physical contact (e.g. embracing someone), verbal comments (e.g. suggestive comments about someone's appearance) and non-verbal actions (e.g. leering, suggestive emails). Sexual harassment is not behaviour which is based on mutual attraction, friendship or respect. If the interaction is consensual, welcome and reciprocated, it is not sexual harassment.

From 11 November 2021 the Fair Work Commission has jurisdiction to allow those who believe that have been sexually harassed to apply for an order to stop the sexual harassment.

Bullying

Any ongoing anti-social or unreasonable behaviour that offends, degrades, intimidates or humiliates a person and could create a risk to health and safety and well-being.

Overt or covert bullying refers to activities that create an environment of fear through acts such as;

- cruelty, belittlement or degradation,
- public reprimand or behaviour intended to punish, such as isolation and exclusion from workplace activities,
- ridicule, insult or sarcasm,
- trivialisation of views and opinions, or unsubstantiated allegations of misconduct,
- physical violence such as pushing, shoving or throwing of objects.

Discrimination

Under federal and state legislation, unlawful discrimination occurs when someone, or a group of people, are treated less favourably than another person or group e.g. their race, colour, nationality or ethnic origin; sex, pregnancy or marital status; age; disability; religion; sexual preference; trade union activity; or some other characteristic specified under anti-discrimination or human rights legislation.

Direct Discrimination occurs when somebody is treated unfavourably because of an attribute protected by the Anti-Discrimination Act.

Indirect discrimination occurs when a requirement (or rule) that appears to be Neutral and the same for everyone in fact has the effect of disadvantaging someone because they have an attribute covered by the Act. The effect has to be unreasonable.

POLICY

Benchmark College is committed to ensuring that the training and assessment environment and our workplace are free from bullying, discrimination and harassment. Employees, contractors and students/clients are made aware that bullying, discrimination and harassment is not tolerated under any circumstances. In the event that bullying, discrimination and harassment is found to have occurred, disciplinary action will be taken against any employees, contractors or student who breaches this policy. Suspected criminal behaviour will be reported to police authorities immediately.

By the implementation of this policy Benchmark College strives to achieve the following objectives:¹

- Create a working environment which is free from bullying, discrimination and harassment and where all employees, contractors, students and clients are treated with dignity, courtesy and respect.
- Implement training and awareness raising strategies to ensure that all parties know their rights and responsibilities.
- Provide an effective procedure for complaints based on the principles of natural justice.
- Treat all complaints in a sensitive, fair, timely and confidential manner.
- Guarantee protection from any victimisation or reprisals.
- Promote a productive and cohesive workplace.
- Encourage the reporting of behaviour which breaches this Harassment, Bullying and Discrimination Policy.
- Promote appropriate standards of conduct at all times.

What is not bullying discrimination or harassment?

Workplace bullying, discrimination or harassment must not be confused with legitimate comment and advice (including relevant negative comment or feedback) from supervisors, trainers and assessors on the work performance or skills and knowledge development of an individual or group.

The process of providing feedback to staff during a formal performance appraisal, or counselling staff regarding their work performance, may not always be free of stress. Similarly, providing a student with feedback following an assessment also has the potential to be stressful. Supervisors, trainers and assessors manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback.

Who is responsible?

Everybody is responsible for maintaining a workplace that is free from discrimination, bullying and harassment.

The following outlines the responsibilities of the management and employees (including contractors) of Benchmark College:

The management team has a responsibility to:

- Ensure this policy and associated procedures are introduced to all new employees and students during their induction period.
- Ensure this policy and associated procedures are made available to all employees and students and is actively communicated within Benchmark College.

¹ Good practice, good business: Eliminating discrimination and harassment from your workplace: Writing an effective anti-discrimination and harassment policy, page 2, © Human Rights and Equal Opportunity Commission.

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- Set expectations of supervisors, trainers and assessors to demonstrate appropriate conduct and to monitor the conduct of employees and students within the operations of Benchmark College.
 - Encourage and provide avenues for employees and students who feel they have been harassed or discriminated against to come forward and report their experience in a non-judgemental and confidential environment.
 - Monitor the Benchmark College operating environment to ensure it is free from material (posters, notice board items, electronic media) that is sexually related, racist or is likely to offend the average person.
 - Ensure training and assessment services are developed and delivered to students to encourage their participation in an inclusive environment that is free from bullying, discrimination and harassment.
 - Include accountability mechanisms in position descriptions for supervisors, trainers and assessors.
 - Periodically review the policy to ensure it is operating effectively and contains up to date information.

Employees (including contractors) have a responsibility to:

- Seek out and become familiar with this policy and associated procedures during their induction period.
- Remain informed of changes to this policy and associated procedures that may occur from time to time.
- Set the example of appropriate behaviour and conduct for other Benchmark College employees and monitor the conduct of employees and students within the operations of Benchmark College.
- Provide support to individuals that may confide in them about occurrences of bullying, discrimination or harassment in a non-judgemental and confidential manner.
- Respect individual differences and encourage others to maintain an inclusive environment that is productive and supports learning.
- Monitor the Benchmark College operating environment to ensure it is free from material (posters, notice board items, electronic media) that is sexually related, is racist or is likely to offend.
- Respond immediately to claims of inappropriate behaviour and review own behaviour to identify opportunities for improvement.

What can happen if you discriminate or harass?

Incidents of bullying, discrimination or harassment that are identified and substantiated are handled by applying the principles of natural justice. Criminal or unlawful behaviour is reported to police authorities immediately and will result in immediate dismissal.

Other behaviour which discriminates against or harasses another person results in management actions which reflect the seriousness of the individual circumstances.

These may include one or a combination of the following:

- Retraining (likely to occur in all circumstances);
- Counselling;
- Apology;
- Conciliation / mediation;
- Demotion;
- Transfer;
- Suspension with pay;
- Suspension without pay;
- Warning for dismissal with a probationary period; or
- Dismissal.

In the case of contractors who discriminate against or harass another person, this results in a withdrawal of the service contract immediately.

PROCEDURE

Discrimination, bullying and harassment procedures have been established to maximise the possibility of in-house resolution. This procedure relates to the handling of complaints or allegations relating to discrimination, bullying or harassment. It does not relate to the handling of complaints about Benchmark College services. For matters relating to Benchmark College services, individuals should refer to the Complaints and Appeals Policy and Procedures.

Harassment, bullying and discrimination - Informal complaint procedures

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. Informal ways of dealing with discrimination and harassment can include the following actions:

- The individual who has been discriminated against, bullied or harassed wants to deal with the situation themselves but may seek advice on possible strategies from their Manager or the CEO
- The individual who has been discriminated against or harassed asks their Manager or the CEO to speak to the alleged perpetrator on their behalf. The Supervisor privately conveys the individual's concerns and reiterates the organisation's policy to the alleged perpetrator without assessing the merits of the case.
- The individual who has been sexually harassed can make a complaint directly to the Fair Work Commission.
- A complaint is made, the perpetrator admits the behaviour, investigation is not required, and the complaint can be resolved through conciliation or counselling; or
- A Supervisor or Manager observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Informal action is usually appropriate where:

- The allegations are of a less serious nature but the individual subjected to the behaviour wants it to cease nonetheless.
- The individual subjected to the behaviour wishes to pursue an informal resolution.
- The parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

An individual should not be required to exhaust informal attempts at resolution before formal action commences. Individuals have the right to formalise their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission, at any stage.

Supervisors and or Trainers/Assessors who are approached by an individual regarding discriminatory or harassing behaviour will:

- Be aware that individuals who approach them about bullying, discrimination or harassment may feel a range of emotions: angry, distressed, vulnerable, intimidated, frustrated, powerless and so on;
- Support the complainant by reassuring them that they have taken appropriate action by seeking your assistance;
- Listen, take them seriously, be sensitive and non-judgemental;
- Inform them that no form of bullying, discrimination or harassment is acceptable, and they have a right to complain and have the offensive behaviour stopped;
- Outline the organisation's policy and procedures;
- Ask the complainant how they want the situation to be handled;
- Discuss options and outcomes; and

Advise them about confidentiality. **Practical steps towards a positive resolution:**

- Seek advice and/or assistance from management on how to handle the situation, if necessary;
- Assist the complainant to undertake "self-help" resolution if required; e.g. discuss ways in which they could tell the offender that their behaviour upsets them, and they want them to stop it, or refer the person to the contact officer who will be able to provide advice;
- Undertake any immediate action such as removal of graffiti;
- If necessary approach the person against whom the complaint is made with the aim stopping the behaviour perceived as bullying, discrimination or harassment, now and in the future;
- Monitor and ensure behaviour does not re-occur and that the complainant is not victimised;

Supervisors who are conducting informal discussions with the person against whom a complaint has been made will:²

- Listen to their point of view;
- Inform them of relevant policy and procedures;
- Inform them that if the alleged behaviours did occur they would be in breach of the organisation's policy and state/federal law;
- Advise that even if behaviour were not intended to be offensive, offence has been taken and needs to be resolved;
- Clarify acceptable and un-acceptable behaviour;
- Discuss any action needed to resolve the complaint and relay this to the complainant;
- Obtain an undertaking that the behaviour in question, regardless of whether admitted or not, will not be entered into by the respondent in the future; and
- Advise of potential penalties if the behaviour continues and advise of the need for confidentiality and the prohibition of victimisation.

Discrimination, bullying and harassment - Formal complaint procedures

Note. It is important when receiving a formal complaint of bullying, discrimination or harassment that management quickly determines any need to involve and/or report occurrences to police authorities or to equal opportunity and anti-discrimination agencies. Management will always seek professional guidance when making these decisions and be mindful of confidentiality requirements when seeking advice.

Formal complaints procedures focus on looking at whether a complaint can be substantiated, or at least whether the parties can be brought together to try and reach a satisfactory outcome. Formal complaints procedures usually involve:³

- Investigation of the allegations;
- Application of the principles of natural justice;
- Making a finding as to whether the bullying, discrimination or harassment occurred or whether it is likely it has occurred;
- Submitting a report with a recommended course of action to the appropriate decision-maker (management); and
- Implementation of an appropriate outcome.

² Good practice, good business: Eliminating discrimination and harassment from your workplace: Informal resolution of complaints by managers and supervisors, page 2, © Human Rights and Equal Opportunity Commission.

³ Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, page 2, © Human Rights and Equal Opportunity Commission.

Formal procedures are usually appropriate where:

- Informal attempts at resolution have failed;
- The person alleging bullying, discrimination or harassment has been victimised;
- The complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;
- The complaint is against a more senior member of staff - formal procedures may help to ensure that the complainant is not victimised or disadvantaged;
- The allegations are denied and the person who claims to have been bullied, discriminated against or harassed wishes to proceed and investigation is required to substantiate the complaint; or
- The person alleging bullying, discrimination or harassment decides to make a formal complaint.

The steps involved in a formal complaint

As per Benchmark College's Complaints and Appeals Policy and Procedure and to ensure consistency and fairness, Benchmark College management fully documents the steps involved in a formal complaint. The sequence of events is as follows:⁴

- The complainant is interviewed, and the allegations are particularised in writing.
- The allegations are conveyed to the alleged perpetrator in full.
- The alleged perpetrator is given the opportunity to respond and defend themselves against the allegations.
- If there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered.
- A finding is made as to whether the complaint has substance.
- A report documenting the investigation process, the evidence, the finding and recommended outcome/s is submitted to the appropriate decision-maker (senior management).
- The decision-maker implements the recommended outcome/s or decides on an alternative course of action.

The parties will be permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings.

Consideration of evidence

A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature will the offence, there are often no direct witnesses to alleged acts of bullying, discrimination and harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence. The following type of evidence may be relevant:⁵

- Supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker.
- Supervisor's reports and personnel records (e.g. unexplained requests for transfer or shift changes, sudden increase in sick leave).
- Complaints or information provided by other employees about the behaviour of the alleged perpetrator.
- Records kept by the person claiming to have been bullied, discriminated against or harassed.
- Whether the evidence was presented by the parties in a credible and consistent manner.

⁴ Ibid.

⁵ Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, pages 2-3, © Human Rights and Equal Opportunity Commission.

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- The absence of evidence where it should logically exist.

Management action

In determining appropriate actions, management may consider factors such as:⁶

- The severity and frequency of the bullying, discrimination or harassment.
- The weight of the evidence.
- The wishes of the person who was discriminated against or harassed.
- Whether the harasser could have been expected to know that such behaviour was a breach of policy.
- Whether there have been any prior incidents or warnings.
- If there is insufficient proof to decide whether or not bullying, discrimination or harassment has occurred, management should nevertheless.
- Remind those involved of expected standards of conduct.
- Conduct further training and awareness raising sessions for staff.
- Monitor the situation carefully.
- Management must ensure that the outcome of a substantiated complaint does not disadvantage in any way the person who was discriminated against or harassed.

For more detailed information on how to manage behaviour and misconduct please see the *Student Behaviour and Misconduct Policy and Procedure*.

⁶ Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, page 3, © Human Rights and Equal Opportunity Commission.

Where to get more information or help

The following agencies can provide additional information and support services to Benchmark College in maintaining a working environment which is free from bullying, discrimination and harassment:

- **Fair Work Commission**
Telephone: 1300 799 675
Website: <http://www.fwc.gov.au>
- **Australian Human Rights Commission**

National Information Service: 1300 656 419
General enquiries and publications: 1300 369 711
Website: <http://www.humanrights.gov.au>
Email: infoservice@humanrights.gov.au
- **ACT Human Rights Commission**
Telephone: (02) 6205 2222
Website: <http://www.hrc.act.gov.au/>
Email: human.rights@act.gov.au
- **Anti-Discrimination Board of New South Wales**
Telephone: (02) 9268 5555
Toll free: 1800 670 812 (for regional NSW only)
Website: <http://www.antidiscrimination.justice.nsw.gov.au/>
Email: adbcontact@justice.nsw.gov.au
- **Northern Territory Anti-Discrimination Commission**
Telephone: (08) 8999 1444
Toll free: 1800 813 846
Website: <https://adc.nt.gov.au/>
Email: antidiscrimination@nt.gov.au
- **Anti-Discrimination Commission Queensland**
Telephone: 1300 130 670
Website: www.adcq.qld.gov.au
Email: info@ghrc.qld.gov.au
- **Equal Opportunity Commission South Australia**
Telephone: (08) 8207 1977
Toll free: 1800 188 163
Website: www.eoc.sa.gov.au
Email: OCEO@sa.gov.au
- **Office of the Anti-Discrimination Commissioner Tasmania**
Telephone: (03) 6165 7515
Statewide local call: 1300 305 062
Website: www.antidiscrimination.tas.gov.au
Email: office@equalopportunity.tas.gov.au
- **Victorian Equal Opportunity & Human Rights Commission**
Telephone: 1300 292 153
Website: <http://www.humanrightscommission.vic.gov.au/>
Email: enquiries@veohrc.vic.gov.au
- **Equal Opportunity Commission Western Australia**
Telephone: (08) 9216 3900
Website: <https://www.wa.gov.au/organisation/equal-opportunity-commission>
Email: eoc@eoc.wa.gov.au