



Equal Employment Opportunity (NSW)

Related Policies

Breast Feeding and Work
Complaints
Employment of School Employees (Non-Teaching Staff)
Employment of Teachers
Employment of Teachers to Promotions Positions
Job Share
Principal, Appointment of
Sexual Harassment
Teaching in Catholic Schools – A Statement of Principles

Purpose

To give effect to the mission of the Catholic Education Office to be an inclusive and welcoming community by eliminating as far as possible discrimination in the workplace.

Policy

The Catholic Education Office is committed to ensuring that the CEO and its Archdiocesan schools are workplaces which promote equal employment opportunity, encourage diversity and are free as far as possible from discrimination.

Discrimination in the workplace is unlawful. Individuals' rights are protected under the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Equal Opportunity for Women in the Workplace Act 1999* (Cth), *Human Rights and Equal Opportunity Commission Act 1986* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Workplace Relations Act 1996* and the *Anti-Discrimination Act 1977* (NSW).

In NSW it is unlawful for an employer to discriminate against a person (whether a current or a prospective employee) on the grounds of the person's:

- Age¹;
- Disability²;
- Family Responsibilities³;
- Marital Status⁴;
- Potential Pregnancy⁵;
- Pregnancy⁶;
- Race, colour, descent, national origin, ethnic origin⁷;
- Responsibilities as a carer⁸;
- Sex⁹.

¹ s 18 *Age Discrimination Act 2004* (Cth)

² s 15 *Disability Discrimination Act 1992* (Cth)

³ ss 4A, 7A *Sex Discrimination Act 1984* (Cth)

⁴ ss 6, 14 *Sex Discrimination Act 1984* (Cth)

⁵ ss 4B, 7, 14 *Sex Discrimination Act 1984* (Cth)

⁶ s 14 *Sex Discrimination Act 1984* (Cth)

⁷ Part 2 *Anti Discrimination Act 1977* (NSW); ss 9, 15 *Racial Discrimination Act 1975* (Cth)

⁸ Part 4B *Anti Discrimination Act 1977* (NSW)

⁹ ss 4C, 14 *Sex Discrimination Act 1984* (Cth)

Equal Employment Opportunity (NSW)

Sexual harassment and other forms of harassment are also forms of discrimination¹⁰. Vilification of homosexuals,¹¹ vilification of those infected with HIV/AIDS,¹² transgender vilification¹³ and inciting racial hatred¹⁴ are unlawful.

The *Workplace Relations Act 1996* (Cth) in so far as it may apply to systemic schools in NSW prohibits the termination of a person's employment for any one or more of the following reasons or for reasons including the following reasons:

- Union membership or non membership;
- Seeking to or actually representing employees;
- The filing of a complaint or participating in proceedings against an employer;
- Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- Absence from work during maternity leave or other parental leave;
- Temporary absence from work because of the carrying out of a voluntary emergency management activity.¹⁵

Nothing in this policy limits the Catholic Education Office's right to avail legislated exemptions or to apply for exemptions under the relevant Acts. Exemptions are generally available where a person's particular characteristics are injurious to the religious susceptibilities of the organisation or would prevent the person from fulfilling the inherent characteristics of the particular position.

The Catholic Education Office and School Leaders will ensure that all allegations of discrimination, workplace harassment and workplace bullying are taken seriously. Processes outlined in this policy will be used to investigate and seek resolution of complaints.

Adult students who sexually harass staff members or other students will be subject to the processes outlined in this policy. Schools are required to develop policy, procedures and training programs which ensure adult students are aware of the meaning and effect of sexual harassment and their obligations under the law.

Definitions

Adult Student A student who is 16 years or older.

Complaint Manager is the person appointed by the Head of Human Resources to manage a complaint alleging discrimination, harassment or bullying. The Complaint Manager's role is to provide information to complainants and persons complained about, investigate complaints and to make recommendations based on reasonable enquiry to the Head of Human Resources.

Direct Discrimination is where a person is treated unfairly or differently because of the person's sex, racial group, age or other defined attribute. It is direct discrimination to make any decision based on stereotyped views or prejudices about people of different genders, ages, racial groups and so on. Direct discrimination happens when decisions are made about what a person can and can't do because the person has been put into a box labelled 'woman', 'man', 'indigenous', and so on rather than the person being treated as an individual.¹⁶

¹⁰ Part 2A *Anti Discrimination Act 1977* (NSW); Ss 28A, 28B *Sex Discrimination Act 1984* (Cth)

¹¹ ss 49ZT, 49ZTA *Anti Discrimination Act 1977*(NSW)

¹² Part 4F *Anti Discrimination Act 1977*(NSW)

¹³ Division 5 *Anti Discrimination Act 1977* (NSW)

¹⁴ Part IIA *Racial Discrimination Act 1975* (Cth)

¹⁵ s 659 *Workplace Relations Act 1996*(Cth)

¹⁶ Anti-Discrimination Board of NSW *Anti-Discrimination and Equal Employment Opportunity (EEO) Guidelines* 2005 p5

Discrimination is defined slightly differently in each of the relevant statutes. Discrimination may be direct or indirect. For specific instances or circumstances reference should be made to the applicable statute.

Discrimination Means:

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
- (b) any other distinction, exclusion or preference that:
 - i. has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
 - ii. has been declared by the regulations to constitute discrimination for the purposes of this Act;but does not include any distinction, exclusion or preference:
- (c) in respect of a particular job based on the inherent requirements of the job; or
- (d) in connection with employment as a member of staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.¹⁷

Indirect Discrimination can occur when everyone is treated the same way. Under anti-discrimination law this type of discrimination is called 'indirect discrimination'. The law on indirect discrimination works this way.

If you have:

- a rule, requirement or policy that is the same for everyone, *but*
- it *results* in more people of one sex being disadvantaged compared with the other sex, or more people of one ethnic group being disadvantaged compared with another ethnic group, or more people of one age group being disadvantaged compared with other age groups (and so on), then
- if you can't show that this rule, requirement or policy is reasonable in all the circumstances, it will be indirect discrimination and against the law.

This applies to unwritten rules, requirements and policies as well as written ones.¹⁸

Sexual Harassment A person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or
- (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.¹⁹

Workplace Bullying "is the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behaviour that intimidates, offends, degrades or humiliates a worker." (*Source ACTU/QCCI/Old Govt Dept of Workplace Health and Safety*)

¹⁷ S 3 Human Rights and Equal Opportunity Commission Act 1986 (Cth)

¹⁸ Anti-Discrimination Board of NSW *Anti-Discrimination and Equal Employment Opportunity (EEO) Guidelines* 2005 p6

¹⁹ S 22A *Anti-Discrimination Act 1977* (NSW)

Bullying behaviour can range from very obvious verbal or physical assault to very subtle psychological abuse. This behaviour may include:

- physical or verbal abuse
- yelling, screaming or offensive language
- excluding or isolating employees
- psychological harassment
- intimidation
- assigning meaningless tasks unrelated to the job
- giving employees impossible jobs
- deliberately changed work rosters to inconvenience particular employees
- undermining work performance by deliberately withholding information vital for effective work performance.²⁰

Workplace Harassment

In general, harassment is any form of behaviour that:

- is not wanted, not asked for, and not returned, and
- is likely to cause a hostile or uncomfortable workplace by:
 - humiliating someone (putting them down), or
 - seriously embarrassing them, or
 - offending them, or
 - intimidating them, and
- happens because of their sex, pregnancy, race, disability, homosexuality, transgender, age or carer's responsibilities or because of one of their relatives', friends' or colleagues' sex, pregnancy, race, disability, homosexuality, transgender or age.²¹

Workplace Equal Employment Opportunity (EEO) Contact Officer is a point of contact and referral for members of the school staff regarding matters of EEO.

Procedures

System Leaders will ensure that Policies and Procedures for the prevention of harassment, discrimination and bullying in the workplace are developed, practised and regularly brought to the attention of all staff. Selection and recruitment processes must comply with EEO principles and anti-discrimination law. The Chairperson convening selection panels must always ensure that members of the panel are briefed, before selection processes begin, about fair, equitable and lawful selection processes. The form: EEO Guidelines for Interview Panels (NSW) must be used for this purpose http://www.ceo.cg.catholic.edu.au/publications/forms/eoo_selection_panels_nsw.doc

Complaints alleging discrimination, harassment or bullying in the workplace will be accepted and responded to using the following procedures. The circumstances of each complaint will be unique. Procedures may need to be modified to meet the particular circumstances of each complaint. Variations to these procedures should always be discussed with the complainant, the Principal and the relevant Human Resources (HR) Officer.

It is acknowledged that sometimes the person making the complaint is not the person aggrieved by the allegedly discriminatory behaviour. Colleagues or associates might report circumstances which allege discrimination. These complaints must be taken seriously. It is recognised that these procedures will

²⁰ Human Rights and Equal Opportunity Commission (website)
http://www.hreoc.gov.au/info_for_employers/fact/workplace.html

²¹ Anti-Discrimination Board of NSW *Anti-Discrimination and Equal Employment Opportunity (EEO) Guidelines* 2005 p7

need to be modified to ensure that the person(s) who is allegedly aggrieved is informed about the complaint, the law, CEO policy and that his or her views are considered.

Complaints will be handled sensitively, confidentially, with impartiality and within a reasonable timeframe. All parties have a right to procedural fairness.

A person making complaint can expect that he or she will be listened to and have the complaint taken seriously. Complainants should be informed about how the complaint will be handled, who will get to know about the complaint and how she or he will be protected from victimisation or breach of confidentiality.

Persons complained about can expect:

- to be told all of the allegations, including who has made them;
- that the level of investigation and response will be proportionate to the seriousness of the alleged misconduct;
- reasonable notice for interviews and notification of who will be present at any interview;
- the right to have a support person present for interviews;
- the opportunity to give his or her side of the story;
- the opportunity to respond to adverse findings and to comment on any proposed action to be taken against him or her by the Catholic Education Office.

Nothing in this document negates the right of an employee or the Catholic Education Office to seek independent legal advice, union advice or direct referral to other agencies such as the NSW Anti Discrimination Board or the Human Rights and Equal Opportunity Commission (HREOC).

A. When the complaint is about conduct or behaviour which allegedly discriminates.

1. If possible, the complainant (the person who is making the complaint) tries to sort out the grievance or complaint.
2. If this does not work, is inappropriate, or the complainant does not want to approach the other party the complainant:

2.1 gets confidential advice from their Workplace EEO Contact Officer. The complainant may then:

- decide there is no problem, or
- try to sort out the problem personally by talking with the person(s) causing the grievance.

or

2.2 raises the complaint with the Principal. If the complaint involves the Principal or the complainant is not a school-based employee the complaint can be raised with a HR Officer directly.

or

2.3 raises the complaint with a HR Officer directly.

Some complainants may be embarrassed, frightened or too upset to raise the complaint directly. Complainants may wish to ask a family member, friend, union delegate, colleague or other advocate to help them make the complaint.

3. A Complaint Manager is Appointed.

If the complaint is referred to the Principal the Principal must inform the school's CEO HR Officer. The HR Officer and the Principal, if appropriate, will consider the complaint and determine who will be the best person to manage the complaint (Complaint Manager). Consideration must be given to bias, perceptions of bias or potential conflicts of interest between the parties and the complaint manager. In most cases the complaint manager will be a HR Officer or the school's Principal.

4. The Complaint Manager and the Complainant Meet.

The complaint manager will meet with the complainant and his or her support person as soon as possible and:

- (i) clarify the nature of the complaint with the complainant;
- (ii) ask the complainant how he or she wants the complaint resolved;
- (iii) outline to the complainant as far as possible:
 - how the complaint will be investigated;
 - what will be done to protect the complainant from victimisation;
 - who will be the decision maker;
 - the time line;
 - how the complainant will be involved in the process.
 - information about available support, counselling, or representation if needed.

This meeting should usually happen within two (2) working days of the complaint being made.

5. The complaint manager meets with the person(s) about whom the complaint is being made (PCA).

The complaint manager puts the information he or she has received from the complainant to (each) PCA and gets his or her side of the story. If possible at least 24 hours notice should be given to the PCA before this meeting. The PCA should also be invited to bring a support person to this meeting.

The complaint manager will outline as far as possible to the PCA:

- how the complaint will be investigated;
- who will be the decision maker;
- the time line;
- how the PCA will be involved in the process.
- information about available support, counselling, or representation if needed.

This meeting should usually happen within four (4) working days of the complaint being made.

6. Early Finalisation

The complaint manager, after consultation with the complainant, may determine that the complaint can be finalised without further investigation because the facts are not in dispute. The complaint manager may recommend an apology, a meeting between the parties, changes to policy and procedure or other appropriate action which will likely lead to resolution. Sustained serious allegations however, should never be finalised at this stage. Even if the complainant and the PCA are agreed on what happened serious matters must be referred to the Head of Human Resources for possible disciplinary action.

When there are no witnesses to the alleged behaviour, the PCA denies the allegation, there is insufficient information to determine where the truth lies **and the complaint is low level or unlikely to result in disciplinary action** the complaint manager must:

- Document the complaint and the processes used to handle the complaint;
- Inform the PCA that discrimination in the workplace is unlawful and may lead to disciplinary action or dismissal. This advice must be confirmed in writing by the Head of Human Resources;
- Provide copies of relevant policy documents to all parties;
- Advise both parties of their rights to access further information and advice from organisations such as the NSW Anti Discrimination Board, HREOC (Commonwealth), their union or solicitor;
- Provide advice to both parties regarding appropriate behaviour from this point of time forward. Advice should aim to get parties back to a working relationship and prevent victimisation, re-occurrence of misconduct and vexatious complaints.
- Monitor the situation.

Serious matters must be referred to the Head of Human Resources.

This stage should ideally be completed within ten (10) working days of the complaint being made.

7. Investigation

If further information needs to be gathered by the complaint manager before decisions are made the complainant and the PCA should be given the opportunity to nominate witnesses and lines of enquiry.

The Head of Human Resources and the complaint manager plan the investigation, conduct risk assessment, plan management of risk and propose a time line for completion.

The complaint manager investigates and documents the investigation. Only those witnesses who need to be interviewed should be interviewed. The level of investigation should reflect the seriousness of the complaint. All witnesses must be asked to maintain confidentiality.

The complainant and PCA will be given the opportunity to comment on information gathered before the complaint manager makes any report or recommendation to the Head of Human Resources.

The investigation should ideally be completed within ten (10) working days of the complaint being made.

8. Decision Making

The Head of Human Resources considers all available information and if satisfied that the investigation is complete makes a finding on the balance of probabilities. It may be found that:

- The alleged incident or conduct did occur; **or**
- The alleged incident or conduct did not occur. Consideration should be given as to whether the complaint was made mischievously or vexatiously; **or**
- The evidence is inconclusive but there is some evidence that the alleged incident or conduct did occur; **or**
- Another finding is appropriate in the circumstances such as the complaint was misconceived or out of the jurisdiction of the employer.

Where the evidence is inconclusive but there is some evidence that the alleged incident or conduct did occur the Head of Human Resources will:

Equal Employment Opportunity (NSW)

- Inform the PCA that discrimination in the workplace is unlawful and may lead to disciplinary action or dismissal. This advice must be confirmed in writing by the Head of Human Resources;
- Provide copies of relevant policy documents to all parties;
- Advise both parties of their rights to access further information and advice from organisations such as the NSW Anti Discrimination Board , HREOC (Commonwealth), their union or solicitor;
- Provide advice to both parties regarding appropriate behaviour from this point of time forward. Advice should aim to get parties back to a working relationship and prevent victimisation, re-occurrence of misconduct and vexatious complaints.
- Monitor the situation.

If it is found that the alleged incident or conduct did occur the Head of Human Resources will also consider any mitigating factors before resolution or disciplinary action is determined. The mitigating factors that might need to be taken into account will depend on the circumstances of the case but could include things like:

- Whether there is explicit policy about the particular breach and whether this has been adequately communicated to the PCA;
- Training and education provided;
- The level of experience of the PCA;
- Any provocation by others;
- Any particular personal or health characteristics of the PCA;
- Whether the school or CEO condoned or contributed to the breach;
- The length of the PCA's previous unblemished work and behaviour record.

The Head of Human Resources will inform the complainant of the finding.

The Head of Human Resources will inform the PCA of the finding. Findings which are adverse to the PCA are preliminary findings.

The PCA is provided with the opportunity to respond to an adverse finding within ten (10) working days.

The employee is advised of any proposed disciplinary action and invited to respond within ten (10) working days.

The PCA's written response to an adverse finding will be given due consideration.

The Head of Human Resources determines the finding, consulting where necessary with the complaint manager and the complainant.

The Head of Human Resources advises the PCA in writing of:

- The final finding;
- Disciplinary or other action;
- Procedures in place for the storage of files in relation to this complaint;
- The availability of appeal procedures;
- The availability of support and / or counselling.

B When the complaint is about an employment related decision, process or policy which allegedly discriminates

1. If a person feels aggrieved about an employment related decision, process or policy made or implemented by the Catholic Education Office on the grounds that the decision, process or policy discriminates against that person (the complainant) then the complainant may complain and seek examination of the decision, process or policy.
2. The complainant should raise his or her concerns with the Head of Human Resources.
3. The Head of Human Resources will appoint a complaint manager(s) to handle the complaint.
4. The complaint manager will meet with the complainant and gather as much information as possible from the complainant and other sources about the complaint and other relevant circumstances. The complainant will be asked to provide any documents, correspondence, names of witnesses, lines of enquiry and any other information which will help to determine whether discrimination has occurred.
5. The complaint manager will gather information from the relevant CEO officer(s) or employee(s) involved with the determination or policy which led to the complaint.
6. Analysis of all information should be made against the background of existing policy, Commonwealth and State law. Advice could be sought from the employer's help line at the NSW Anti-Discrimination Board, HREOC (Commonwealth) or through other relevant sources.
7. The complaint manager will document enquiries and submit a report and recommendation to the Head of Human Resources within 30 days of receipt of the complaint.
8. The Head of Human Resources determines the finding, consulting where necessary with the complaint manager and the complainant.
9. The complainant will be informed in writing of the finding and any recommended action with regard to the complaint.

Appeals

The complainant or the person complained about can lodge an appeal with the Director of Catholic Education within twenty one (21) days of the final finding being made. The Director will appoint a new complaint manager who will rehear the grievance following the same broad steps as the first complaint manager.

The Director will make a finding and recommend action for resolution and or disciplinary action as soon as possible after the complaint manager closes the investigation.

The complainant or the person complained about has the right to contact the NSW Anti Discrimination Board or HREOC at any time during the grievance or following the closure of the complaint by the Catholic Education Office.

Restoring Relationships

Following the closure of the complaint the parties involved may have to continue to work together. Others in the school community may have been affected by the complaint. There may be some impediments to positive working relationships.

The Principal, unless he or she is the complainant or PCA, will be best placed to monitor and recommend strategies to help restore relationships. School leaders should not presume that once the complaint handling processes are finalised everyone will return to positive working relationships. There may well be lingering resentment or hostility from either side.

Equal Employment Opportunity (NSW)

People who have been involved in the complaint should be given the opportunity to debrief in a safe and non-judgemental environment. Being given the opportunity to discuss what has happened and to confidentially express thoughts and feelings may help alleviate risks to confidentiality.

When the parties to the complaint are ready it may be beneficial for a meeting to be held so that closure can be achieved. No one should be forced or coerced to apologise or to attend mediation. A forced or qualified apology may reopen the issue. Hostile parties at mediation will create anxiety and may result in behaviour which reopens the issue.

Parties to the complaint should be offered counselling.

Parties to the complaint should be asked to provide feedback about how the complaint was handled through the Workplace EEO Contact Officer.

Security of Records and Documentation

All documentation relating to complaints, allegations and ongoing investigations must be maintained in a secure and confidential environment with access restricted to the person conducting the inquiry and other authorised person(s).

Information regarding the complaint, investigation and finding will not normally be noted in any personal record maintained at school in relation to the employee. This means the information will usually be removed from any records or files such as personnel, student records or similar files. Such records should be forwarded to the CEO for confidential and secure storage; they must not be destroyed.

A record will be included on an employee's personal file if the complaint is proven, it results in disciplinary action and the Director believes that a record on file is necessary to appropriately document the matter.

References

Anti-Discrimination Board of NSW *Anti-Discrimination and Equal Opportunity (EEO) Guidelines* September 2005.

Anti-Discrimination Board of NSW *Grievance Procedure Guidelines*, May 1998.

Forms

EEO Guidelines for Interview Panels (NSW)

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