



## DISCRIMINATION & HARASSMENT

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### Introduction

Shoal Bay Public School P&C Association recognises it is the right of every employee and volunteer to be able to attend work and to perform their duties without being subjected to any form of discrimination or harassment.

Equally it is the obligation and responsibility of every employee and volunteer to ensure that the workplace is free from discrimination and harassment.

Shoal Bay Public School P&C Association is fully committed to its obligations to eliminate discrimination and harassment in the workplace and in customer relations.

Shoal Bay Public School P&C Association is the recognised employer / manager of the canteen supervisor and any other paid staff. All executive members of the P&C are responsible for ensuring that the association fulfils its legislative requirements.

### Purpose

The purpose of this document is to outline Shoal Bay Public School P&C Association's position on discrimination and harassment and to document the process which is to be followed should any grievances arise.

### Authorisation

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### Policy

Discrimination in employment is specifically prohibited. Shoal Bay Public School P&C Association will not tolerate any form of discrimination, or victimisation under any circumstances. The responsibility lies with every Manager, Supervisor, Employee and Volunteer to ensure that discrimination or victimisation does not occur.

Harassment does not have any legitimate workplace function. Shoal Bay Public School P&C Association will not tolerate harassment under any circumstances. The responsibility lies with every Manager, Supervisor, Employee and Volunteer to ensure that harassment does not occur.

Shoal Bay Public School P&C Association considers that legislative obligations under the Acts establish minimum standards of behaviour for employees.

The principles set out in this policy are intended to apply to any work-related context, including conferences, work functions, social events and business trips.

A breach of this policy will result in disciplinary action. Depending upon the severity of the case, consequences may include apology, counselling, transfer, demotion, dismissal, or other forms of disciplinary action deemed appropriate.

Shoal Bay Public School P&C Association strongly encourages any employee or volunteer who feels they have been harassed to take action, preferably by making it clear that such behaviour is unwelcome and offensive; alternatively, or in addition, follow the procedures for reporting the behaviour.

Any reports of harassment will be treated seriously and promptly with sensitivity and complete confidentiality. Complainants have the right to determine how to have a complaint treated, have support or representation throughout the process, and the option to discontinue a complaint at any stage of the process.

The alleged harasser will be given the right to have a support person of their own during any investigation procedures, to representation and advice throughout the process and to respond fully to any formal allegations made. There will be no presumptions of guilt and no determination made until a full investigation has been completed.

No employee or volunteer will be treated unfairly as a result of complaining of discrimination or harassment. Disciplinary action may be taken against anyone who victimises or retaliates against a person who has complained of discrimination or harassment, or against any employee who has been alleged to be a harasser.

All employees and volunteers reserve the right to seek the assistance of the relevant tribunal or legislative body to assist them in the resolution of any concerns.

Managers or Supervisors who fail to take appropriate corrective action when aware of discrimination or harassment of a person will be subject to disciplinary action.

### Definitions

*Discrimination* is treating an individual with a particular attribute less favourably than an individual without that attribute or with a different attribute under similar circumstances; also, seeking to impose a condition or requirement on a person with an attribute who does not or cannot comply, while people without that attribute do or can comply.

*Harassment* is uninvited, unwelcome behaviour, which does not have any legitimate workplace function. Harassment includes any written, physical, or verbal conduct that from the perspective of a reasonable person is intimidating, offensive or humiliating against another person.

### Responsibility

It is **Management's** responsibility 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 being discriminated against or harassed in any form;
- all reasonable steps to eliminate discrimination and harassment are made;
- all employees and volunteers are regularly made aware of their obligations in relation to providing a workplace free from discrimination or harassment;
- they provide an environment which discourages harassment and victimisation and set an example by their own behaviour;
- all complaints are treated seriously and confidentially;
- they take immediate and appropriate corrective action if they become aware of any offensive action.

It is the **Employees' and Volunteers'** responsibility 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 being discriminated against or harassed in any form;
- they provide an environment which discourages victimisation, discrimination and harassment ;
- they immediately report any offensive action.

## Procedures

### Complaints Procedures

Current legislation states that it is illegal to discriminate, victimise, harass or vilify on the basis of:

- sex;
- sexual harassment;
- pregnancy;
- potential pregnancy;
- marital/ domestic status;
- disability;
- race, colour, national extraction, social origin, descent, and ethnic, ethno-religious or national origin;
- age, compulsory retirement;
- family responsibilities, family status, status as a parent or carer;
- racial vilification;
- homosexual vilification;
- HIV/ AIDS vilification;
- religious belief or activity;
- political belief or activity;
- physical features;
- industrial activity;
- employer association activity;
- trade union activity;
- breastfeeding;
- sexuality;
- transsexuality;
- transgender;
- profession, trade, occupation or calling;
- medical record; and
- criminal record.

Discrimination and harassment can occur at any level of the organisation, can be experienced by both men and women and may involve a co-worker, a volunteer, Supervisor,

Manager, service provider, client or customer. Lack of intent is no defence in discrimination or harassment cases.

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

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

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

If the behaviour continues, or if the employee or volunteer feels unable to speak to the person(s) directly, they should contact their supervisor. Alternatively an employee or volunteer may contact their Supervisor/Manager, Executive Member of the *Shoal Bay Public School* P&C or another Manager with whom they feel comfortable. The contacted person will provide support, ascertain the nature of the complaint and the wishes of the complainant. The complainant does not have to request a full formal investigation if they will be satisfied by less formal treatment of the issue.

### **Informal Intervention**

The contacted person will explain the employee or volunteer's rights and responsibilities under policy, procedures and EEO/anti-discrimination legislation.

Informal Intervention may be done through a process of either mediation or conciliation. During Informal Intervention the respondent will be made aware of the allegations being made against them and given the right to respond.

This procedure will be complete when the alleged harasser respects the individual's request to cease unwanted and unwelcome behaviour. If this does not occur, the formal procedure should be followed.

### **Formal Complaints Procedure**

Proceeding with a formal complaint requires the consent of the person complaining, particularly as witnesses or other personnel / senior Management may become involved. The formal procedure will be co-ordinated by the Manager.

The Manager should clarify the complaint and obtain a step by step account of the incident. In serious cases, more than one interview may be necessary.

The Manager will document all such interviews accurately and avoid irrelevant information. This 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 Manager will organise an investigation, which in most cases may involve but is not be limited to:

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

All evidence should be forwarded to the person conducting the investigation. Such evidence may include:

- supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
- Supervisor's reports and personnel records (eg unexplained request for transfer or shift changes, sudden increase in sick leave);
- complaints or information provided by other employers about the behaviour of the alleged harasser;
- records kept by the person claiming to have been harassed;
- information on whether the evidence was presented by the parties in a credible and consistent manner;
- information on the absence of evidence where it should logically exist.

On completion of the investigation the complainant and the Manager will determine a course of action to be taken.

Possible course of actions may include, but not be limited to, any combination of the following:

- counselling;
- disciplinary action against the harasser (eg demotion, transfer, suspension, probation or dismissal);
- official warnings that are noted in the harasser's personnel file;
- disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;
- formal apologies and undertaking that the behaviour will cease;
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;
- reimbursing any costs associated with the discrimination or harassment;
- re-crediting any leave taken as a result of the harassment;
- formalised proceedings through appropriate legislative pathways.

Outcomes will depend upon factors such as:

- the severity and frequency of the discrimination or harassment;
- the weight of the evidence;
- the wishes of the person who was subjected to discrimination or harassment;
- whether the harasser could have been expected to know that such behaviour was a breach of policy;
- the level of contrition;
- whether there have been any prior incidents or warnings.

The Manager will advise all relevant parties of the outcome.

If the investigation determines that discrimination or harassment has occurred, the Manager must ensure a summary of the complaint and the action is filed securely.

If there is insufficient proof to decide whether or not discrimination or harassment occurred, the Manager will:

- remind those involved of expected standards of conduct;
- conduct further training awareness raising sessions for staff and volunteers;
- monitor the situation carefully.

The Manager will monitor the outcome to ensure that the offensive behaviour has ceased, and that neither party has been victimised. This may involve follow-up interviews. If there has been any substantiated victimisation Disciplinary Procedures will be followed.

### **Procedures for Dealing with Criminal Conduct**

Some forms of severe harassment, eg physical attack, obscene phone calls, may constitute criminal conduct. While Shoal Bay Public School P&C Association is committed to treat most harassment complaints at an association level as far as possible, this type of conduct is not suited to internal resolution. 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 association to report such matters to the police on behalf of the complainant.