

Wyndham Community and Education Centre Inc.
Policy and Procedure

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| Policy name | Harassment, Discrimination, Victimization and Anti-Bullying Policy & Procedure |
| Responsible person | Board of Governance, CEO, COO, CFO, Managers |
| Staff involved | All staff |
| Review dates | 2019 |
| 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), OH&S Act 2004 (Vic), Disability Act 2006 (Vic), Disability Regulations 2018 (Vic), Privacy Act 1988 (Cth), Privacy Regulations Act 2013 (Cth), Privacy & Data Protection Act 2014 (Vic), Child Wellbeing & Safety Amendment (Child Safe Standards) Act 2015 (Vic), National Employment Standards</p> <p>Policies: Complaints and Appeals Policy & Procedure, Privacy Policy & Procedure, Access and Equity Policy & Procedure, Computers, 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, Equal Employment Opportunity Policy & Procedure, Occupational Health and Safety Policy & Procedure, Privacy Policy and Procedure (Staff/Volunteers); Privacy Policy & Procedure (Students/Clients), Access and Equity Policy and Procedure, Child Safe Policy and Procedure (including statement of commitment); Student Well Being and Duty of Care VCAL & Youth Program (includes procedures for under-18s) 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> |

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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 diverse workforce and ensures that the workplace is free from discrimination, harassment and other unacceptable behaviour. This policy and procedure aims to assist 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 scheduled work/employment hours.

Policy

Wyndham CEC has developed this policy to ensure that the provision of educational and other services are free from unlawful discrimination, harassment, sexual harassment, victimisation and bullying.

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?

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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.

Types of Discrimination

You can be discriminated against directly or indirectly. 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 the following protected attributes:

- Age;
- Employment activity;
- Disability/impairment;
- Industrial activity;
- Lawful sexual identity;
- Gender identity;
- Sexual orientation;
- Industrial activity;
- 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.

Direct Discrimination means treating or proposing to treat, someone with a protected attribute under the *Equal Opportunity Act (Victoria) 2010* unfavourably because of that attribute.

Indirect discrimination occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute.

Some limited exceptions and exemptions apply. Indirect discrimination is not unlawful when the rule or policy is reasonable, having regard to the circumstances of the case.

Harassment

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Harassment means any unwelcome and unreasonable conduct, whether it be verbal, physical, electronic or otherwise, towards another person because the other person has a particular attribute protected under the *Equal Opportunity Act (Victoria) 2010*, in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Under Federal and State legislation, **unlawful harassment** occurs when someone is made to feel intimidated, insulted or humiliated because of their race, colour, national or ethnic origin; sex; disability; sexual preference; or some other characteristic specified under anti-discrimination or human rights legislation. It can also happen if someone is working in a 'hostile' – or intimidating – environment.

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

- Age;
- Employment activity;
- Disability/impairment;
- Industrial activity;
- Lawful sexual identity/activity;
- Gender identity;
- Sexual orientation;
- 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.
- Age;

Harassment can include behaviour such as:

- Inappropriate verbal suggestions;
- Jokes or innuendo aimed at an individual;
- Telling insulting jokes about particular racial groups;
- Offensive or inappropriate phone calls;
- Sending explicit or sexually suggestive emails;
- Displaying offensive or pornographic posters or screen savers;

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- Making derogatory comments or taunts about someone's race or religion; and
- Asking intrusive questions about someone's personal life, including their sex life
- 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;
- 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 an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

The *Sex Discrimination Act 1984* (Cth) defines the nature and circumstances in which sexual harassment is unlawful. It is also unlawful for a person to be victimised for making, or proposing to make, a complaint of sexual harassment to the Human Rights and Equal Opportunity Commission.

Examples of sexually harassing behaviour include:

- 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 is subjecting, or threatening to subject someone, to something detrimental because they have asserted their rights under equal opportunity law, made a complaint,

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helped someone else make a complaint or refused to do something because it would be discrimination, sexual harassment or victimisation. Victimisation is unlawful.

Victimisation means subjecting or threatening to subject a person to some form of detriment because they have:

- 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 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;
- Sending explicit or sexually suggestive emails/texts;
- 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?

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Wyndham CEC is committed to providing a safe working environment without risks to health where all Staff, Board Members, Students, Volunteers & Clients are treated with respect and dignity. Bullying will not be tolerated at Wyndham CEC.

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.

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.

Bullying may be either direct or indirect and can be carried out verbally, physically or in writing (eg. via email, social media, instant messaging and text messaging).

Direct bullying occurs between the people involved, whereas indirect actions involve others, for example passing on insults or spreading rumours.

Indirect bullying mostly inflicts harm by damaging another's social reputation, peer relationships and self-esteem

Some examples of behaviour that could be considered workplace bullying include:

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- Abusive, aggressive or intimidating conduct
- Making belittling or humiliating comments
- Spreading malicious rumours or misinformation
- Teasing or practical jokes
- Deliberately excluding someone from work-related activities or events
- Unreasonable work expectations, including providing excessive or insufficient workload or setting work below or beyond a worker's skill level
- Withholding or denying access to information or resources necessary to perform work functions
- Displaying offensive material
- Pressure to behave in an inappropriate manner.
- Intimidation;

In some cases, bullying behaviors may amount to a criminal offence in Victoria.

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.

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.

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Bullying is not reasonable management action where a person exercises their legitimate authority at work in a proper and reasonable way. The CEO, Senior Managers, 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 reasonable manner do not constitute bullying. Some examples of reasonable management action includes:

- Setting reasonable performance goals, standards and deadlines;
- Allocating work to an employee;
- Rostering and allocating working hours;
- Transferring a worker;
- Failing to select and promote an employee, or informing an employee that their performance is unsatisfactory, in accordance with *Wyndham CEC Policies and Procedures*;
- Informing a worker about inappropriate behavior;
- Implementing organizational change;
- Taking action in relation unsatisfactory work performance i.e. Performance Management Processes, Disciplinary Action, or Terminating Employment.
- Downsizing.

What is not Bullying, Harrassment or Discrimination?

Bullying is not reasonable management action where a person exercises their legitimate authority at work in a proper and reasonable way. The CEO, Senior Managers, 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;

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- Performance management processes;
- Downsizing.

Responsibilities

Wyndham CEC recognises its obligations under the *Occupational Health and Safety Act 2004* to provide and maintain a safe working environment.

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, Senior Manager or a Manager or Coordinator.

It is the responsibility of the CEO, Senior Managers 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;
- understand what constitutes bullying and know how to prevent or respond to bullying;
- 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;
- ensure that all discussions, communications and actions are handled with sensitivity and confidentiality;
- 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:

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- 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;
- they immediately report any offensive action.
- raise matters of concern at an early stage and actively participate in the complaint management process if necessary;
- provide specific information regarding the perceived or alleged bullying in a form that enables the allegation to be considered and managed accordingly;
- maintain confidentiality and not discuss or release information relating to a bullying complaint to any third party who has no legitimate involvement in the process;
- ensure that any allegations relating to bullying are made honestly and not vexatiously or maliciously, or to impede legitimate managerial action; and,
- cooperate with any complaint procedure in a timely and professional manner.

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.

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. If a satisfactory resolution is not reached, it could then be escalated to Senior Management. 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,

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if they wish. The complaint will be acted upon according to Wyndham CECs *Complaints and Appeals Policy and Procedure*.

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, Senior Manager 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.

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;

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- 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, Senior Manager or CEO will advise all relevant parties of the outcome. Frivolous and vexatious complaints may be subjected to disciplinary action.

Procedures for Dealing with Criminal Conduct

Serious forms of bullying including threats to harm a person or damage to property, (physical attack, for example, or obscene phone calls) may constitute criminal conduct and should be referred to Police. 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.

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

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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 if **“a person or group of people repeatedly act unreasonably towards them or a group of workers”** 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.