

EQUAL OPPORTUNITY

PREVENTION OF SEXUAL HARASSMENT, DISCRIMINATION AND VICTIMISATION POLICY



St. Francis Xavier College
Berwick, Beaconsfield & Officer

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Policy Name	Prevention of Sexual Harassment, Discrimination and Victimisation Policy	
Policy Version	1.1	
Date Last Updated	October 2020	
This Policy Applies To	<p>All officers, employees, managers, volunteers, students, student extended family members, persons seeking employment with the College, contractors to the College and visitors to College.</p> <p>In addition, this policy, and the consequences it sets out, also applies to any person who:</p> <ul style="list-style-type: none"> • authorises • assists • requests • instructs • induces or • encourages <p>another person to sexually harass or discriminate.</p>	
When and Where this Policy Applies	<p>The policy applies at all times (including out-of-working hours and out-of-school hours) and in all places (on and off College campuses) in regard to any:</p> <ul style="list-style-type: none"> • activities associated with College; • locations associated with College; and • conduct that has included any incidents related to the College in any way. 	
How this Policy is Implemented	<p>This Policy, and related Procedure(s) are implemented in line with relevant legislative requirements.</p>	
Related Procedures	<ul style="list-style-type: none"> • Prevention of Sexual Harassment, Discrimination and Victimisation Procedure • Prevention of Bullying Procedure 	
Other Relevant Policies/Procedures	<ul style="list-style-type: none"> • Prevention of Bullying Policy • Responsible Social Media Usage Policy 	
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Manager Responsible	John Fazzino	Date: 2/11/2016

PART 1: RIGHTS, RESPONSIBILITIES AND POLICY STATEMENT

Individual Responsibilities and Rights

Living free from harassment, violence and intimidation is a human right.

All persons involved with the College and persons visiting the College or participating in College activities whether on or off any campus and for any reason, have:

- a duty to treat others with respect; and
- have the right to be free from sexual harassment, discrimination and victimisation.

St Francis Xavier Sexual Harassment Policy Statement

The College:

- has a zero tolerance approach to sexual harassment, discrimination and victimisation;
- encourages the reporting of sexual harassment, discrimination and victimisation in both the subject of that behaviour and witnesses of that behaviour;
- is committed to providing and maintaining, so far as is reasonably practicable, a working environment that is:
 - safe and without risks to health and
 - without interference from sexual harassment, discrimination and victimisation;
- will discharge its duty to prevent harassment, discrimination and victimisation;
- will actively participate in preventing and addressing claims and in implementing all aspects of this Policy and related procedures;
- understands and warns that some forms of harassment, discrimination and victimisation constitute criminal offences and breaches of other laws; and
- understands that the College could also be exposed to liability under relevant legislation.

Regardless of the circumstances, sexual harassment, discrimination and victimisation is a very serious and sensitive matter.

ALL allegations of sexual harassment, discrimination and victimisation will be dealt with as promptly as practicable and will be treated seriously, sensitively and appropriately.

ALL reports will be investigated promptly, confidentially and impartially.

ALL employees, students and all other members of the College community are encouraged to report sexual harassment, discrimination and victimisation wherever it occurs including through any form of online or social media. Employees should be aware that they are subject to the same rules about sexual harassment in the virtual world as they are in the real world.

The College has a PROCEDURE for dealing with sexual harassment, discrimination and victimisation that will be followed regarding any reports of the above behaviour. Depending on the nature of the allegation, a person subject to that behaviour may elect to have the matter followed up through either an informal resolution process or a formal resolution process.

The informal process, generally, does not result in an investigation or finding, but rather seeks to look to the future and repair relationships.

The formal process does involve an investigation, a finding and outcomes.

The College will work with the person, the subject of the behaviour, to determine and support the most appropriate resolution process in each case.

PART 2: SEXUAL HARASSMENT

What is sexual harassment?

Sexual harassment includes where a person:

- makes an unwelcome sexual advance;
- makes an unwelcome request for sexual favours;
- engages in any other unwelcome conduct of a sexual nature where a reasonable person would have anticipated that the other person would be:
 - offended
 - humiliated or
 - intimidated.

This means that it does not matter if any person involved in such behaviour was actually offended, humiliated or intimidated. It equally does not matter whether a person responsible for the harassment intended to sexually harass.

Sexual harassment can still occur when the harasser believes their behaviour is welcome. However, if it is of a sexual nature, is unwelcome and is likely to make a person feel offended, humiliated or intimidated, it is sexual harassment.

It is also against the law for a person to request, instruct, induce, encourage, authorise or assist someone to sexually harass another person.

Sexual harassment can be a result of one or a series of acts.

The prohibition of sexual harassment extends to sexual harassment in all stages of employment, including when people are applying for a role at the College, completing probationary periods, returning to the College after an absence and those who may be

facing dismissal or redundancy. It also applies to people who have left the College (if those people experienced the harassment in the course of their employment at the College).

Sexual harassment can occur as a result of:

- unequal power relationships;
- adherence to gender stereotypes;
- sexual harassment remaining or becoming normalised behaviour; and
- fear of reporting sexual harassment.

Examples of sexual harassment

Sexual harassment may include, but is not limited to:

- subjecting a person to any act of physical intimacy;
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
- making any gesture, action or comment of a sexual nature in a person's presence;
- unwelcome emails including content of a sexual nature whether or not the emails were directly addressed or merely copied to the recipient;
- unwelcome statements that may be characterised as a joke or cartoon with sexual connotations or of a sexual nature;
- sexual content within other forms of social media including Facebook postings, instant messaging system messages and mobile phone text messages;
- sexual content included within handwritten notes left for recipients to find;
- requests for sexual intercourse, love letters, invitations to date, comments about parts of the body which are generally regarded as having a sexual function or about a person's sex life, physical contact such as patting, pinching or touching in a sexual way, indecent exposure, offensive telephone calls, offensive hand or body gestures;
- intrusive questions about someone's private life or the way they look;
- sexually suggestive behaviour, such as leering or staring or offensive gestures;
- brushing up against someone, touching, fondling or hugging;
- displaying offensive screen savers, photos, calendars or objects; and
- unwanted 'romantic' suggestions, or suggestions that people start a relationship.

The above list is intended to be illustrative and is by no means exhaustive.

Sexual harassment case studies

Further examples of what behaviour may be considered sexual harassment is included in Appendix A: Sexual Harassment Case Studies. These are copied from documents made available by the Victorian Human Rights and Equal Opportunity Commission.

Sexual harassment is against the law

Sexual harassment can constitute offences or breaches under:

- *Equal Opportunity Act 2010 (Vic)*:
 - it is prohibited in the workplace and between students and staff members and
 - persons who authorise or assist in sexual harassment also commit an offence.
- *Occupational Health and Safety Act 2004 (Vic)*;
- *Fair Work Act 2009 (Cth)*;
- *Sex Discrimination Act 1984 (Cth)*;
- The duty of care of an employer under common law;
- Breach of an implied term of mutual trust and confidence in a contract of employment; and
- Contract under common law.

Sexual harassment may also constitute offences under the *Equal Opportunity Act 2010 (Vic)* in regard to sexual discrimination, victimisation or discrimination. Offences under this act need only be proved to the standard of 'on the balance of probabilities' rather than 'beyond reasonable doubt'.

Sexual harassment may also represent criminal acts under:

- *Crimes Act 1958 (Vic)*:
 - Crimes include the behaviours of indecent exposure, stalking, and obscene or threatening phone calls, letters, emails, text messages or postings on social networks. Assaults and sexual assaults can arise through touching another person directly or indirectly; and
 - When crimes of this nature occur, the College may report the matter to the police and/or encourage the victim of the alleged crime to do so.

PART 3: DISCRIMINATION

What is discrimination?

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal attributes protected by the law. This includes bullying someone because of a protected characteristic. The attributes protected by the law are:

- age;
- breastfeeding;
- employment activity;
- gender identity;
- disability;
- industrial activity;
- lawful sexual activity;

- marital status;
- parental status or status as a carer;
- physical features;
- political belief or activity;
- pregnancy;
- race;
- religious belief or activity;
- sex; and
- sexual orientation.

It is also against the law to sexually harass or victimise someone, or to vilify someone, because of their race or religion.

It is also unlawful to discriminate against someone on the basis of:

- their association with a person with one of the above attributes (for example, treating someone unfavourably because their brother has a disability); or
- their perceived attribute (that is, where it is thought that a person possesses an attribute whether they in fact possess it or not).

It does not matter whether:

- a person responsible for the discrimination did intend to discriminate, or
- the discrimination occurs by a person acting alone or with others, or
- the discrimination occurred because a person did a particular act or omitted to do a particular act.

Workplace discrimination can be either direct or indirect discrimination:

- **Direct discrimination** is when someone is treated unfavourably because they have an attribute protected by law. Examples include:
 - insulting jokes about a particular racial group; or
 - making derogatory comments or taunts about people's age, sexual preference, race or religion.
- **Indirect discrimination** is when a condition, requirement or practice has the effect of disadvantaging people with a particular attribute protected by law and that condition, practice or requirement is not reasonable.
 - An example is the practice of holding a meeting in an upstairs classroom when it could easily be held downstairs and that practice disadvantages a staff member who is mobility impaired and is not able to attend the meeting.

Examples of discrimination

- An employer advises an employee that she will not be trained to work new equipment because she is too old to learn new skills. The employer has discriminated against the employee by denying her training in her employment on the basis of her age.
- An advertisement for a job as a cleaner requires an applicant to speak and read English fluently. This may disadvantage a person on the basis of his or her race. The requirement may not be reasonable if speaking and reading English fluently is not necessary to perform the job.

Discrimination is against the law

Discrimination may constitute breaches under:

- *Equal Opportunity Act 2010* (Vic):
 - it is prohibited in the workplace and between students and staff members; and
 - persons who authorise or assist in discrimination also commit an offence.
- *Racial and Religious Tolerance Act 2001* (Vic);
- *Occupational Health and Safety Act 2004* (Vic);
- *Age Discrimination Act 2004*;
- *Australian Human Rights Commission Act 1986* (Cth);
- *Disability Discrimination Act 1992* (Cth);
- *Fair Work Act 2009* (Cth);
- *Sex Discrimination Act 1984* (Cth);
- The duty of care of an employer under common law;
- Breach of an implied term of mutual trust and confidence in a contract of employment; and
- Contract under common law.

PART 4: VICTIMISATION

What is victimisation?

Victimisation is subjecting, or threatening to subject, someone to something detrimental because they have:

- asserted their rights under equal opportunity law; or
- made a complaint; or
- helped someone else to make a complaint; or

- refused to do something because it would be discrimination, sexual harassment or victimisation.

It is also against the law to sexually harass or victimise someone, or to vilify someone because of their race or religion.

It does not matter whether:

- a person responsible for the discrimination did intend to discriminate; or
- there were a number of reasons for the victimising act or omission; or
- the victimisation occurs by a person acting alone or with others.

Example of victimisation:

- Donna's boss fires her after she complains that a colleague is sexually harassing her.

PART 5: CONSEQUENCES, CONFIDENTIALITY, PROCEDURE, RESPONSIBILITIES AND SERVICES

Consequences of sexual harassment, discrimination or victimisation

Consequences to a recipient of sexual harassment, discrimination or victimisation can include embarrassment, emotional or physical harm, disruption to work effectivity and potentially effects that present themselves beyond the school or working environment. The effects of the behaviours are serious and will be treated as such by the College.

Consequences for a person who sexually harasses, discriminates or victimises, or authorises or assists those behaviours may include:

- Being the subject of internal interviews and discussion;
- Being required to meet with and/or apologise to any recipients of such behaviour;
- The alleged behaviour being the subject of investigation and/or reported to police or any other relevant agency;
- Being the subject of civil proceedings commenced by the recipient of such behaviour and be ordered to pay compensation;
- Reporting of the event across the College as part of College auditing and reporting procedures;
- Prosecution under relevant legislation;
- Reprimand, dismissal or any other consequence in accordance the relevant College procedures;
- Recording of the event/matter within the person's personnel file; and
- Subject to the nature of any incident, the College may be required to report that conduct (and person(s) concerned) to the Victorian WorkCover Authority (WorkSafe) for formal investigation under the *Occupational Health and Safety Act 2004* (Vic).

Sexual harassment, discrimination and victimisation is also damaging to the College.

Confidentiality

Complaints of sexual harassment, discrimination and victimisation will be treated confidentially by the College. This applies in regard to information relating to:

- persons who have been the subject of the alleged behaviour;
- persons accused of the alleged behaviour; and
- witnesses to the alleged behaviour.

However, in some circumstances legislation requires the production of some information.

The PROCEDURE attached to this Policy further outlines how confidentiality will be protected.

Which procedure applies?

The *Prevention of Sexual Harassment, Discrimination and Victimisation Procedure* applies in all cases and will be followed.

What is not discrimination or victimisation

Discrimination and victimisation should not be confused with reasonable management action in relation to work performance or conduct of a person or a group which is not related to a protected attribute and which may include:

- setting performance goals, standards and deadlines;
- deciding not to select a worker for promotion;
- informing a worker about unsatisfactory work performance;
- informing a worker about inappropriate behaviour;
- implementing organisational changes; and
- feedback on work performance.

External Formal Resolution Options

Whilst the College has its own PROCEDURE for dealing with sexual harassment, discrimination and victimisation internally, a person subject to the behaviour may also make a complaint directly to the:

- Victorian Equal Opportunity and Human Rights Commission; or
- Victorian Civil and Administrative Tribunal.

In some cases, persons involved may report the matter to:

- their Union;
- the Victorian WorkCover Authority;

- Fair Work Australia; or
- The Australian Human Rights Commission.

Contact details for some of these external agencies are provided in Appendix 2 of the Prevention of Sexual Harassment Procedure.

In all cases, persons involved are entitled to seek legal advice about their options and circumstances.

Responsibilities of Employees in Leadership Positions at the College

Employees in leadership positions at the College have a key role to play in preventing workplace sexual harassment, discrimination and victimisation and in responding promptly and dealing fairly with any instances of that behaviour, and by whatever means it comes to their attention. These responsibilities include:

- Ensuring staff and students understand their responsibilities and are made aware of (the College's) POLICY and PROCEDURES;
- Taking immediate action to stop the behaviour if he/she observes it;
- Dealing with any reported complaints in accordance with (the College's) relevant PROCEDURE(s);
- Ensuring people are not victimised as a result of reporting an incident;
- Ensuring that their own behaviour is free from sexual harassment, discrimination and victimisation; and
- Monitoring to reduce the risk of those behaviours occurring or recurring.

Responsibilities of All Employees and Contractors

All employees and contractors at the College are required to:

- Treat others fairly and with respect at all times;
- Comply with the College POLICY and relevant PROCEDURE(s);
- Ensure what they say or do does not condone any sexual harassment, discrimination or victimisation by others;
- Report instances of sexual harassment, discrimination and victimisation;
- Offer support to those who experience or have experienced those behaviours; and
- Promote the importance of acting against sexual harassment, discrimination and victimisation among their colleagues.

Responsibilities of Students and their Extended Family

All students and their extended family are expected to:

- Treat others fairly and with respect at all times;
- Comply with the POLICY and relevant PROCEDURE(s);

- Not engage in any sexual harassment, discrimination or victimisation towards other students, staff or any other person at any time; and
- Report instances of those behaviours to an appropriate person at the College.

Responsibilities of the College

The duties of the College in relation to sexual harassment extend to all full-time, part-time and casual workers, agents and contractors, trainees and apprentices, volunteers and unpaid workers.

The College can be held responsible for the conduct of an employee if the sexual harassment has taken place in the course of their employment and the College has not taken steps to prevent the conduct.

In line with its commitment to have in place a robust approach to managing sexual harassment, discrimination and victimisation and dealing with complaints in relation to that conduct, the College has implemented up-to-date policies and procedures in relation to sexual harassment, discrimination and victimisation.

The College also provides training and induction (including refresher training) to employees, and other relevant people, to familiarise those people with its sexual harassment, discrimination and victimisation policies and procedures.

The College will take all appropriate remedial action to address complaints of sexual harassment, discrimination and victimisation, or if it becomes aware of incidents of sexual harassment in the workplace.

Where to go for Further Information and Counselling Support

- A College sexual harassment Contact Officer (refer to the relevant PROCEDURE);
- The Deputy Principal: Head of Campus;
- A member of the Leadership Team;
- The Principal;
- School Counselling Program;
- Employee Assistance program (see below); and
- Victorian Equal Opportunity and Human Rights Commission.

There are also a range of external support services available such as the Victorian Centres Against Sexual Assault.

Contact details for some of these external agencies are provided in Appendix 2 of the Prevention of Sexual Harassment Procedure.

Employee Assistance Program

The College fosters an environment where employees are able to perform their professional role in a competent and rewarding manner. Each employee is important, valued and respected. However, from time to time, an employee may require information or support to assist in dealing with a personal difficulty. The College is a member of Access EAP (assistance to companies caring for their employee's social situations) which provides free assistance to employees and their immediate families. Should an employee require assistance via this program, call 1800 818 728 or visit the website at <http://www.accesseap.com.au/>

APPENDIX A – Sexual Harassment Case Study Examples

These case studies are taken from the Victorian Equal Opportunity & Human Rights Commission, *Guideline: Sexual harassment, Complying with the Equal Opportunity Act 2010* published July 2014. Further case studies are available in that document.

CASE STUDY 1: SARAH

Sarah is the only woman in an office with four male colleagues who take phone calls from the public. Her colleagues regularly make ‘thumbs up’ gestures to each other if they are speaking to a young woman on the phone they think might be attractive. This makes Sarah feel uncomfortable and excluded from the team.

In this case, the behaviour is unwelcome to Sarah, whether or not her colleagues think of it as harmless fun.

It is important to remember that even if the person experiencing the harassment does not speak up or complain about it, the conduct might still be unwelcome.

Sarah’s colleagues also comment on her phone manner, and suggest that she should try and sound ‘huskier’. Sarah may never have responded or made comment on this behaviour for a variety of reasons, including fear of being seen to ‘overreact’ or because she is intimidated or embarrassed. The fact that her colleagues may not know she feels uncomfortable does not matter.

“...the fact that a recipient of a comment or a gesture is silent does not automatically mean that the comment is welcome. Again, the fact that the maker of the comment has not been told in advance by the potential recipient or someone else that the comment or gesture would be unwelcome to the potential recipient does not automatically make the comment welcome.”

(Styles v Murray Meats Pty Ltd [2005] VCAT 914)

A workplace environment that is ‘fun’ or casual is not an excuse for allowing behaviour that may intimidate or offend employees to go unchecked.

It is important to remember that the fact that an employee may have taken part in exchanges of sexual comments, banter or jokes does not mean they are not a victim of sexual harassment.

The employee may have been coerced into ‘playing along’, and may have been trying to protect themselves or avoid escalation of the harassment by participating. In other circumstances, they may have consented up to a point, prior to behaviour becoming intimidating, humiliating or offensive.

It may still be sexual harassment if it seems like the person was participating in the behaviour

CASE STUDY 2: SOCIAL MEDIA

A sales company in central Melbourne uses Facebook and Twitter to promote their products. To support this strategy, they encourage employees to use online media in a private capacity to build their capabilities and networks. The company has provided training in the appropriate use of social media, including expectations and obligations under anti-discrimination laws, making it clear that the company will not condone or defend behaviour that discriminates, harasses or bullies other co-workers, whether it occurs in a personal or professional context.

The company promotes and supports a process of reporting inappropriate social media use to its employees.

When employees use social media or work equipment for private purposes, they may still be found to have committed sexual harassment for which they, and the employer, are liable.

This could occur where there is the required employment relationship between the people involved, where there is a sufficient connection with their employment, or where their conduct is an extension or continuation of a pattern of behaviour that started in the workplace. If the employer has failed to take reasonable action to prevent it from occurring, they may be liable.

As with other out-of-work-hours conduct, each case will depend on whether the requisite relationship and whether the connection to the workplace was sufficient.

CASE STUDY 4: USE OF WORK EQUIPMENT FOR PRIVATE USE

David has been given a smartphone for use in the course of his employment as a project manager for a number of construction sites around outer Melbourne. Jim is a contracted plumber that works on one of the sites that David manages. David regularly contacts Jim about work that needs to be done, and recently met with him to discuss the progress of work on-site. Over the course of a couple of weeks following that meeting, Jim has been receiving sexually explicit picture texts from David.

David's employer may be vicariously liable for the sexual harassment of Jim by David if it can be shown they facilitated the harassment through the provision of the phone, allowing it to be used for personal use, and for failing to take steps (such as clear guidance) to prevent harassment of this type from occurring.