



Australasian College  
for Emergency Medicine

# Discrimination, Bullying and Sexual Harassment Policy

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COR133

## Document Review

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Timeframe for review:	every two years, or earlier if required.
Document authorisation:	ACEM Board
Document implementation:	ACEM Chief Executive Officer
Document maintenance:	General Manager, Governance and Standards

## Revision History

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Version	Date	Pages revised / Brief Explanation of Revision
v1	Jul-2012	Approved by Council
v1.1	Mar-2014	Consequential changes as per governance review (eg. 'Council' to 'Board')
v2	Jun-2016	General review of Policy
v3	Feb-2018	Inclusion of reference to 'reasonable management action'
v4	Aug-2018	Broad revisions arising from review as a result of recommendations contained in the report of the Expert Advisory Group on Discrimination (EAG)
v5	Oct-2020	Minor administrative revisions arising from two-yearly review

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## 1. Purpose and Scope

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The Australasian College for Emergency Medicine (ACEM; the College) is committed to equality of opportunity and ensuring that the working and training environment is free from discrimination, bullying and sexual harassment.

The purpose of this policy is to outline expected standards of conduct of all persons involved in College activities within the various workplaces and training environments in which they are located in relation to matters associated with Discrimination, Bullying and Sexual Harassment (DBSH).

The expectation of the College is that:

- All persons engaged in College activities are to be treated in a fair and equitable manner regardless of gender, marital status, pregnancy, colour, race, ethnicity, disability, sexual preferences, religious and political beliefs (refer to protected attributes in Discrimination section below).
- The College will encourage work and training environments free of bullying, sexual harassment and unlawful discrimination. It should be understood that these unreasonable behaviours will not be tolerated under any circumstances.
- In workplaces other than the College itself, it is the employer who can undertake disciplinary action against the employee, not the College.

## 2. Background

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The College is committed to fairness and equity. In accordance with proper Human Resource practice and relevant legislation, the College is committed to ensuring that all persons involved in College activities are not subjected to inappropriate discrimination, bullying or harassment. The intent is to define expected appropriate workplace and training environment behaviour. However, in addition to the workplace, professional and appropriate behaviour is expected of all persons involved in College activities in all circumstances.

Bullying is a workplace issue, as defined in legislation. In the event that a person engaged in College activities is bullied in the workplace, the employer has primary responsibility. However, the issue may be referred to the College where training or the gaining of specialist qualifications is affected.

Additionally, allegations under this policy against a specialist outside of the scope of the 'workplace' may be referred to the College.

## 3. Definitions

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To be read in conjunction with Section 4 of this document (below).

**'All persons involved in College activities'** includes, but is not limited to:

- members (as designated by the ACEM Constitution or associated regulations)
- trainees (in both the specialist training program and non-specialist training programs)
- other persons (not being a member or a trainee) serving on any College entity or as a representative of the College
- College-appointed supervisors of training
- specialist international medical graduates (SIMGs) undertaking College requirements for the purpose of obtaining specialist recognition in Australia or New Zealand
- staff members of ACEM or those employed in facilities undertaking College activities
- volunteers.

### **ACEM/the College**

means the Australasian College for Emergency Medicine

### **College Member**

means a person admitted as a member of the College pursuant to the provisions of the ACEM Constitution and associated regulations, and, for the purposes of this policy, also includes trainees as well as any other person serving on any College entity or as a College representative

### **Trainee**

means trainees enrolled in and undertaking the FACEM Training Program and, for the purposes of this policy, also includes Emergency Medicine Certificate and Emergency Medicine Diploma, Emergency Medicine Advanced Diploma and Diploma of Pre-Hospital and Retrieval Medicine (DipPHRM) trainees, and Specialist International Medical Graduates (SIMGs) undertaking College requirements for the purpose of attaining eligibility for election to Fellowship of the College

## **4. Body of Policy**

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The College commits to:

- Promoting working and training environments free from unlawful discrimination, bullying and harassment, including sexual harassment, where all are treated with dignity, courtesy and respect
- Ensuring that policies and procedures about bullying, sexual harassment and inappropriate discrimination are available
- Promoting appropriate standards of conduct at all times
- Encouraging the reporting of behaviour which breaches this policy
- Encouraging an effective complaints procedure based on the principles of natural justice
- Treating all complaints in a sensitive, fair, timely and confidential manner, and
- Encouraging local resolution of the issues but, if not resolved, to encourage the involvement of bodies such as local anti-discrimination and human rights authorities, the Medical Board of Australia (MBA) or Medical Council of New Zealand (MCNZ) or statutory workplace bodies.

### **4.1 Discrimination**

**'Discrimination'** means treating a person with an identified attribute or personal characteristic as set out in legislation less favourably than a person who does not have the attribute or personal characteristic.

This includes unlawful discrimination in any aspect of the employment relationship, including recruitment, selection for employment, treatment during employment, promotion, employee benefits, conditions of employment, remuneration, transfer, discipline, training, work environment, supervision, and termination of employment.

The Australian federal jurisdiction, the States and Territories of Australia, and New Zealand all have broadly similar legislation under Human Rights and Equal Opportunity legislation covering grounds of unlawful discrimination. These include:

- gender
- transgender, gender history and transsexual status
- pregnancy and potential pregnancy
- childbirth or breastfeeding
- marital status
- sexual orientation
- lawful sexual activity
- disability or impairment

- race (including colour, nationality, descent and origin)
- physical features
- age
- carer status and family responsibilities
- religious belief or activity
- political belief or activity
- trade union membership and industrial activity, and
- associated with a person who is identified by reference to any of these attributes.

## 4.2 Harassment

Harassment is any type of unwanted behaviour that offends, humiliates or intimidates a person, and targets them on the basis of a characteristic covered by anti-discrimination law, e.g. gender, race, ethnicity or disability, etc., In general, harassment is any behaviour that is:

- unwelcome, not asked for and not returned
- likely to humiliate (put someone down), seriously embarrass, offend or intimidate (threaten or scare) someone, and
- based on a personal characteristic (or family or friend's characteristic) protected by law.

## 4.3 Sexual Harassment

Sexual harassment is against the law. Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. It can be physical, verbal or written. It can involve:

- Behaviour that is accompanied by a direct or implied threat, benefit or promise. This type of sexual harassment is sometimes termed "quid pro quo" harassment or "sexual blackmail" because compliance is demanded in return for employment advantages or the avoidance of employment detriment.
- Physical contact, verbal comments, jokes, propositions, graphic verbal commentaries about an individual's body, questions or insinuations about a person's sexual or private life, and unnecessary touching of an individual or the display of offensive material. This includes offensive material accessed from the internet or sent electronically.
- Behaviour that creates a sexually permeated or hostile working environment, and
- Behaviour that would also be an offence under the criminal law. For example, physical assault, indecent exposure, sexual assault, stalking or obscene communications.

The intention or motive of an alleged harasser is not relevant when determining whether the behaviour was unwelcome. Investigation of a complaint will consider how the conduct in question was perceived and experienced by the recipient rather than the intention behind it. Harassment does not have to be repeated or continuous to be against the law.

## 4.4 Victimisation

Victimisation is unlawful. Victimisation occurs when a person is treated unfairly due to that person having made a complaint of sexual harassment. Victimisation is behaviour that makes a person suffer a detriment including feeling uncomfortable, isolated, insecure or intimidated.

## 4.5 Individual Responsibility

While the College does not intrude into the personal relations of any person involved in College activities, it does have a concern where sexual relationships may represent an abuse of power in the training and work environment and:

- implicitly or explicitly becomes a condition of a person's selection, recruitment, assessment, condition of employment, promotion or salary, or

- has the effect of interfering with an individual's training performance, or
- creates an environment that is offensive, hostile, intimidating and not conducive to productive working.

Sexual harassment does not include behaviour based on mutual attraction, friendship and respect. Sexual harassment does not include interactions that are consensual, welcome and reciprocated.

#### 4.6 Bullying

Bullying is unreasonable behaviour that creates a risk to health and safety. It is behaviour that is repeated over time or occurs as part of a pattern of behaviour. **'Unreasonable behaviour'** is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the person to whom the behaviour is directed.

There are two broad categories of bullying:

- (1) **Direct bullying** – behaviour that is overt and usually involves conduct directed at a person to belittle or demean them. Examples include:
  - Aggressive and intimidating behaviour
  - Belittling, degrading or humiliating comments
  - Spreading misinformation or malicious rumours
  - Interfering with a person's property or work equipment
  - Displaying offensive material (e.g. pornography)
- (2) **Indirect bullying** – behaviour that excludes or removes benefits from a person. Examples include:
  - Assigning meaningless tasks unrelated to the job
  - Setting tasks that are unreasonably below or beyond a person's skill level
  - Deliberately changing work rosters to inconvenience particular employees
  - Deliberately withholding information that is vital for effective work performance.

#### 4.7 Reasonable Management Action

Behaviour carried out in a reasonable manner is not considered to be workplace bullying. Examples of reasonable management actions include:

- setting performance goals, standards and deadlines
- allocating work to a worker
- rostering and allocating work and working hours
- informing a worker about unsatisfactory work performance and undertaking performance management processes
- informing a worker about their inappropriate behaviour
- implementing organisational changes or restructures
- providing constructive feedback and criticism
- failing to congratulate or praise an individual simply for doing their job
- making merit based recruitment and selection decisions

## 5. Conduct

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Persons engaged in College activities:

- (a) Shall not unlawfully discriminate, bully or sexually harass:

- another person engaged in College activities
  - a contractor of the College
  - a member of the public
  - any other person within their workplace.
- (b) Shall not victimise another person, or subject a person to any detriment because that person:
- Has made a complaint under their employer’s or College policies
  - Has brought proceedings under their employer’s or College policies
  - Has given, or proposes to give, evidence or information in connection with proceedings, under their employer’s or College policies.

## 6. Complaints

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Issue resolution for discrimination, bullying and sexual harassment should occur in the local workplace as an employment issue. The employer’s human resources department can provide advice on the complaints and resolution process in addition to counselling and support. This should be the first port of call.

Complainants may also lodge a complaint with an external body relevant to the issue, such as the Human Rights Commission, WorkSafe, or Fair Work Commission.

The College does have a formal complaints mechanism that can be activated. However, this has limited investigative power for issues in the primary place of employment due to jurisdictional considerations. Complaints arising out of conduct at official College activities (e.g. Meetings of the College Board, Council(s) and other entities) may be lodged with the College.

The process by which ACEM deals with complaints, including those specific to discrimination, bullying and/or sexual harassment is described in the College’s *Procedures for Submission and Resolution of Complaints* (COR656). In general, complaints relating to discrimination, bullying and/or sexual harassment will be dealt with as outlined in that document, cognisant of the principles outlined therein and in this policy.

ACEM recognises that complaints may also be dealt with by other bodies, such as employers (Including hospitals) or regulatory authorities. Generally, if a complaint is being investigated by another body, ACEM will not initiate its own investigation until the other body(ies) have completed their investigations and the College is able to consider the matter in the context of the outcome of that work.

It is important to note that the College is limited in the range of outcomes available as a result of complaints progressed. The College is not a statutory body and cannot award compensation or other remedies to complainants, nor can it compel respondents to comply with outcomes of investigations other than that described in the *Procedures for Submission and Resolution of Complaints* (COR656) and other relevant College documents.

## 7. Associated Documents

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- ACEM Constitution
- ACEM Regulations
- Code of Conduct (COR235)
- Complaints Policy (COR166)
- Procedures for Submission and Resolution of Complaints (COR656)

### Legislation – Australia

- Occupational Health and Safety Act 2004 (Victoria)
- Work Health & Safety Act 2011/2012



- Prevention of Bullying and Violence at Work Guidance Note (WorkSafe Victoria)
- Occupational Safety & Health Act 1984 (Western Australia)
- Equal Opportunity Act 2010 (Victoria)
- Racial & Religious Intolerance Act 2000 (Victoria)
- Racial Discrimination Act 1972 (Commonwealth)
- Sex Discrimination Act 1984 (Commonwealth)
- Racial Hatred Act 1995 (Commonwealth)
- Disability Discrimination Act 1992 (Commonwealth)
- Human Rights & Equal Opportunity Act 1995 (Commonwealth)
- Fair Work Commission Australia – [www.fairwork.gov.au](http://www.fairwork.gov.au)

#### **Legislation – New Zealand**

- Human Rights Act 1993
- Employment Relations Act 2000.

Further information is available at the following websites:

- the Australian Human Rights and Equal Opportunity Commission (AHREOC) website – [www.humanrights.gov.au](http://www.humanrights.gov.au), The website contains a summary of the sexual harassment, human rights, anti-discrimination and equal opportunity legislation in Australia.
- the New Zealand ‘Public Access to Legislation Project’ web site – [www.legislation.govt.nz](http://www.legislation.govt.nz)



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