



# PROCEDURES FOR RESOLVING DISCRIMINATION, BULLYING AND SEXUAL HARASSMENT COMPLAINTS

## Contents

1.	Purpose and Scope .....	1
2.	Key Aspects of the Procedures .....	2
2.1	Confidentiality .....	2
2.2	Procedural Fairness.....	2
2.3	Timeframes.....	2
2.4	Victimisation.....	2
2.5	Defamation .....	2
2.6	False Accusations .....	2
2.7	Intent .....	2
2.8	Support Person.....	3
2.9	Counselling and Support.....	3
2.10	Summary of Parties Rights.....	3
3.	Informal Resolution Process .....	3
3.1	Summary of Informal Resolution Process.....	4
4.	Formal Complaints Process.....	4
4.1	Action taken by the Complainant.....	4
4.2	Procedural Steps .....	4
4.3	Remedies to a Formal Complaint.....	7
4.4	Acting on unsubstantiated complaints .....	8
5.	Internal Review.....	8
6.	References .....	8
7.	Document Review .....	8
7.1	Responsibilities.....	8
7.2	Revision History.....	9

## 1. PURPOSE AND SCOPE

The purpose of this document is to provide procedures for the resolution of complaints of discrimination, bullying and sexual harassment made against any person who is engaged in College activities. It has been developed in furtherance of the objectives of the ACEM Discrimination, Bullying and Sexual Harassment Policy.

It applies to all of the following (collectively referred to as **'persons involved in College activities'**): members (as designated by the ACEM Constitution or associated regulations); trainees in both the specialist training program and non-specialist training programs; other persons serving on any College entity or as a representative of the College; College-appointed supervisors of training; specialist international medical graduates (SIMG) undertaking

College requirements for the purpose of obtaining specialist recognition in Australia or New Zealand; staff members of ACEM or facilities involved in College activities; and volunteers.

## **2. KEY ASPECTS OF THE PROCEDURES**

### **2.1 Confidentiality**

Confidentiality needs to be maintained in procedures in order to protect the rights and welfare of all those involved in a complaint resolution process. If an allegation of discrimination, bullying or harassment is made, information should only be accessible to people who 'need-to-know' or other relevant people such as witnesses, except where the College is compelled by law to produce documents.

### **2.2 Procedural Fairness**

The procedures should be conducted in a fair and equitable manner at all times and in accordance with the principles of procedural fairness in accordance with the ACEM Procedural Fairness Policy and any relevant legal requirements.

### **2.3 Timeframes**

All disputes, both informal and formal, should be addressed efficiently and in a timely manner.

### **2.4 Victimisation**

Victimisation is unlawful and will not be accepted or tolerated against a person who:

- has made, or intends to make, a complaint
- has been, or intends to be, a witness
- is a support person to any of the parties involved in the complaint
- is involved in resolving the complaint
- has acted in good faith in bringing information or making an allegation under anti-discrimination and harassment legislation.

Should such victimisation occur, disciplinary action will be considered against those involved.

### **2.5 Defamation**

Allegations of unlawful discrimination, bullying and sexual harassment are serious matters and can potentially damage an individual's reputation. To minimise the risk of defamation, it is important to maintain confidentiality and involve as few people as possible in the dispute resolution process.

Individuals appointed to assist in dispute management are protected under the doctrine of 'qualified privilege' provided they act in accordance with the dispute resolution procedures and not maliciously.

### **2.6 False Accusations**

False accusations of discrimination, bullying or harassment will be viewed seriously and, where found to be malicious, may expose the complainant to risk of defamation proceedings or disciplinary action.

### **2.7 Intent**

Behaviour or comments acceptable to one person may offend or be unwelcome to another. Perceptions and interpretations are likely to differ because of diverse backgrounds, cultures and views. 'Innocent intent' is not a defence or excuse against harassment or discrimination complaints nor a justification for bullying behaviour.

## 2.8 Support Person

A support person is responsible for providing assistance to the complainant or the respondent of a discrimination, bullying or sexual harassment dispute. A support person may be a family member, trusted advisor or a co-worker.

The support person's role is to be conducted in the spirit of conciliation as well as fair and equitable outcomes.

A support person is also bound by the requirement for confidentiality and cannot act as a witness and a support person in the same complaint.

## 2.9 Counselling and Support

A complainant may wish to seek counselling or assistance from someone independent.

## 2.10 Summary of Parties Rights

The complainant has a right:	The respondent has a right:
<ul style="list-style-type: none"> <li>To have their complaint treated informally or formally, at their option</li> </ul>	<ul style="list-style-type: none"> <li>To be informed of what he/she is accused of and who is making the allegations</li> </ul>
<ul style="list-style-type: none"> <li>To have their complaint investigated and conciliated if requested</li> </ul>	<ul style="list-style-type: none"> <li>To respond to the allegations</li> </ul>
<ul style="list-style-type: none"> <li>To have support or representation throughout the process</li> </ul>	<ul style="list-style-type: none"> <li>To have support or representation throughout the process</li> </ul>
<ul style="list-style-type: none"> <li>To express concerns without fear of retribution or of suffering detriment</li> </ul>	<ul style="list-style-type: none"> <li>To fair treatment and procedures and not to be prejudged or discriminated against</li> </ul>
<ul style="list-style-type: none"> <li>To withdraw a complaint</li> </ul>	<ul style="list-style-type: none"> <li>Not to be dismissed unfairly or otherwise treated unfairly, harshly or unreasonably (taking into account all the circumstances)</li> </ul>
<ul style="list-style-type: none"> <li>To have the situation remedied</li> </ul>	<ul style="list-style-type: none"> <li>To be protected from defamation and malicious complaints.</li> </ul>
<ul style="list-style-type: none"> <li>To privacy – to have the matter kept confidential on a 'need to know' basis.</li> </ul>	<ul style="list-style-type: none"> <li>To privacy – to have the matter kept confidential on a 'need to know' basis</li> </ul>

## 3. INFORMAL RESOLUTION PROCESS

Informal disputes emphasise resolution rather than the presentation of factual proof or substantiation of a dispute. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. Informal disputes do not require a formal investigation.

Options before raising a complaint include the following:

### (a) Action taken directly by the Complainant

If appropriate, the complainant should speak directly to the person/s whose behaviour they find unacceptable and make it clear that they want the offending behaviour to stop. If the complainant's concern is not taken seriously, he/she may choose to take further action under these procedures.

### (b) Speaking to a Neutral Third Party(ies)

Many employers have a recognised contact officer or program to enable reporting of harassment, discrimination or bullying. Other neutral third parties may also be utilised. Should an ACEM staff member be involved, ACEM Human Resources must be notified immediately.

**(c) Speaking to the Employer/the College**

If appropriate, the complainant can speak directly to the employer or to the College about ways in which they can assist in ensuring the offending behaviour is stopped.

A person wishing to make an informal complaint to the College may do so either verbally or in writing, and should lodge that complaint directly with the Chief Executive Officer (CEO).

**3.1 Summary of Informal Resolution Process**

Self Help	The person may choose to address the unwelcome behaviour by communicating to the initiator of the action that they find the behaviour offensive, intimidating, humiliating or bullying.
Seek Assistance	The person may seek assistance and support.
Mediation	Mediation is a negotiation between the parties (without three-way face-to-face contact), and discusses the options and considers the alternatives and reaches a consensual agreement. The College may nominate an independent mediator to assist the parties to negotiate a resolution which is acceptable to the parties.
Resolution	Resolution is achieved when the complainant is satisfied that the uninvited or unwelcome behaviour has stopped. Resolution may include an acknowledgment and apology, agreement to stop the conduct, and workplace adjustment.  If the allegations are denied or a satisfactory resolution cannot be achieved through informal action, then the complainant can choose to pursue the dispute through the formal procedures.

**4. FORMAL COMPLAINTS PROCESS**

Formal complaints focus on whether a complaint can be substantiated. They necessitate a formal investigation with appropriate process.

**4.1 Action taken by the Complainant**

Where an allegation is of a serious nature, or where conciliation is either rejected or has failed, formal investigation may be the appropriate response.

A formal investigation is where a statement is prepared and provided to the respondent for a response. The complaint is then investigated to the extent that the College is able. The College cannot compel the participation of individuals, compel an individual to give evidence or compel an individual or employer to produce documents or records. The investigator will work to establish what evidence or facts can either substantiate or refute the allegations, based on a reasonable assumption of innocence.

Although individual employees may wish to withdraw a discrimination, bullying or sexual harassment complaint, there may be instances; e.g. sexual harassment, where the employer is required to fulfil legal obligations and continue to investigate the matter.

Report findings will form the basis of appropriate action in responding to both the individual and organisational matters addressed in the findings.

**4.2 Procedural Steps**

The parties must adhere to the following steps:

#### 4.2.1 Lodgement of a formal Complaint

A formal complaint should be made in writing and lodged directly with the ACEM Chief Executive Officer.

#### 4.2.2 Arranging an Interview with the Complainant

The complainant may elect to have a support person with them at the time of the interview. Note: If there is more than one complainant, it is essential they are interviewed separately.

Prior to the interview, it is essential the investigator reflects on the level of seriousness of the allegation. For example, if the allegation is substantiated, could it lead to disciplinary action?

Following an investigation, co-ordination of the implementation process of any recommendations arising from the investigation is required.

The interview should take place in a private and confidential environment where there will be no interruptions. The complainant should feel comfortable at all times and, if necessary, breaks should be included during the interview process.

The complainant may wish to seek counselling or assistance from someone independent.

#### 4.2.3 Interviewing the Complainant

Inform the complainant about the investigation process. Obtain information from all relevant sources and ensure the complainant knows that formal records will be kept. Advise the complainant where the records will be stored, and who will have access to them.

Ensure the complainant and the support person are fully aware of, and understand their responsibility in relation to, confidentiality.

Explain to the complainant that the major purpose of the interview is to clarify the nature of their complaint. This will include a detailed description of what took place, how the discrimination, bullying or sexual harassment has affected him/her, and if there have been any reprisals, threats or unfavourable treatment directed towards him/her since the incident was reported.

Clarify the complainant's understanding of the incident or situation. If possible, the complainant should provide specific details about incidents, times, dates, places, frequency of occurrence and the names of possible witnesses (copies of any notes, diary entries or records should also be produced).

- Allow time – you may need more than one interview
- Be sensitive to 'power perceptions' and watch for gender balances.

Where possible, the investigator should provide feedback to the complainant advising him/her, on the basis of the initial interview, whether the incident appears to contravene College policies.

The complainant should be asked to clarify what they believe will resolve the problem, for example:

- What is their desired outcome?
- Is the complainant seeking more than feedback to be given to the respondent about their perceived unacceptable behaviour?
- Are they seeking assurances that such behaviour will not occur again?
- Do they want a formal apology from the respondent?

At the conclusion of the interview, the investigator will review the procedure to date and advise the complainant when the respondent will be interviewed, and an expected time when the investigator can report back to the complainant.

Remind the complainant of the requirement for confidentiality.

Ensure the complainant knows where he/she can also access internal and external confidential advice, support and counselling.

#### **4.2.4 Arranging an Interview with the Respondent**

The respondent should be advised that someone has made a serious complaint about him/her. Advise the respondent that he/she may have a support person present with them to hear the allegation. Ensure that both the respondent and the support person are fully aware of and understand their responsibility in relation to confidentiality.

Advise the respondent of the principles and purpose of the investigation, and that a written or verbal response to the allegation/s is required.

The respondent should be provided with a detailed description of the allegations. If relevant, explain that the complaint appears to be in relation to a form of unfair treatment, discrimination, harassment or bullying that is against College policies.

Obtain the respondent's account of the alleged events and ensure open rather than closed questions are used.

If an allegation is denied, the respondent should be asked for their view as to why he/she believe the complaint was made, and how the issue may be resolved. The respondent should also be asked to nominate any witnesses to be interviewed during the investigation.

The investigator will review all information obtained from both the complainant and the respondent and will interview any witnesses if deemed necessary. Feedback will be given to both the complainant and respondent, followed by an arranged meeting between all parties involved to advise the resolution options.

Remind the respondent of the requirement for confidentiality.

Ensure the respondent knows where he/she can access internal and external confidential advice, support and counselling.

#### **4.2.5 Interviewing the Respondent**

The respondent may wish to seek counselling or assistance from someone independent. The respondent may elect to have a support person with them at the time of the interview. Note: If there is more than one respondent, it is essential they are interviewed separately.

Prior to the interview, it is essential the investigator reflects on the level of seriousness of the allegation. For example, if the allegation is substantiated, could it lead to disciplinary action? If disciplinary action is an outcome of the investigation process, then implementation of the recommendation/s should meet the relevant award or contract of employment disciplinary provisions.

The interview should take place in a private and confidential environment where there will be no interruptions. The respondent should feel comfortable at all times and, if necessary, breaks should be included during the interview process.

#### **4.2.6 Witnesses**

Witnesses cannot be compelled to participate. Witnesses should only be interviewed in circumstances where:

- the investigator does not have enough information and believes witness statements will assist in making a determination, or

- the complainant or respondent is concerned that the investigator does not have enough information to make a determination, or
- the allegation or counter-allegation is serious enough to result in disciplinary action.

It is strongly recommended that the investigator should only interview enough witnesses to make a determination.

Ensure the witnesses and the support person are fully aware of and understand their responsibility in relation to confidentiality and the confidentiality agreement, and that potentially the evidence they provide could be referred to in an external legal hearing.

#### **4.2.7 Interviewing the Witnesses**

An identified witness should be interviewed privately and advised of the confidentiality, privacy and record keeping issues. He/she will be informed that there will be no reprisals for providing information that may assist with the investigation, and that this information will not be disclosed to either party without his/her permission.

In instances where the witness does not give permission to disclose his/her submission to either party, the investigator will only refer to the information provided in 'general terms'. For example, by using phrases such as 'I have spoken to various people about the allegation and it appears there is some evidence to support the complaint' or 'Other people in the work area confirmed that they have observed the alleged incidents occurring.'

In order for the investigator to maintain confidentiality and to not influence the witness, the witness should not be told any more than they already know. It is essential the witness does not discuss the complaint with individuals who are not involved in the complaint resolution procedures.

#### **4.2.8 Determining the Outcome of the Complaint**

Before determining a final outcome to the complaint, the investigator will review all relevant documentation and evidence.

To determine the outcome of the complaint, the investigator should consider two main points:

- How serious is the allegation?
- Is there agreement between the complainant and the respondent on the major facts of the allegation? (This does not necessarily require agreement on the interpretation of those facts.)

### **4.3 Remedies to a Formal Complaint**

Where discrimination, bullying or sexual harassment behaviour is found to have occurred, a successful outcome to a complaint can be that this behaviour stops and more respectful behaviour is put in place.

#### **Disciplinary Action**

If the investigator assesses the complaint to be 'of a serious nature' disciplinary action may need to be considered. At this stage, the investigator should forward the recommendations arising from the investigation to the CEO of the College.

Disciplinary action and outcomes recommended by the investigator include:

(a) In relation to a complaint against a Fellow:

- censure
- suspension of Fellowship
- termination of Fellowship

- (b) In relation to a complaint against a trainee:
- censure
  - suspension from the training program
  - termination from the training program
- (c) In relation to a complaint against an SIMG:
- censure
  - withdrawal of suspension/oversight, temporarily or permanently
  - Advice to the MBA/MCNZ
- (d) In relation to a College appointed supervisor of training, withdrawal of supervision rights.
- (e) In relation to a workplace involving training, initiation of a review of the relevant training post/s.

The CEO will refer the recommendation of the investigation to the appropriate College committee or Council for endorsement and action.

#### 4.4 Acting on unsubstantiated complaints

If a complaint is **not** substantiated, both parties are to be informed of the finding and provided with written reasons for the finding.

The complainant will also be advised that, if he/she is unsatisfied with the outcome, he/she can lodge a complaint either internally through the College appeals process, or externally through the relevant statutory bodies.

## 5. INTERNAL REVIEW

The *complainant* may request an internal review review of the investigation process and the findings from the investigation, if the complainant is dissatisfied with either the process or the outcome. The *respondent* may request, by written request to the CEO, an internal review if they are dissatisfied with the investigation process (not the outcome).

It will then be determined by the CEO if an internal Review Panel of personnel nominated by the CEO is necessary to assist in either a complainant or respondent's request for an appeal.

## 6. REFERENCES

The following are referred to in this document:

- COR133 Policy on Discrimination, Bullying and Sexual Harassment
- COR140 Policy on Procedural Fairness

## 7. DOCUMENT REVIEW

Timeframe for review: every two (2) years, or earlier if required.

### 7.1 Responsibilities

Document authorisation: Board  
Document implementation: CEO  
Document maintenance: Manager Governance



## 7.2 Revision History

Version	Date of Version	Pages revised / Brief Explanation of Revision
v1	Jul-2012	Approved by Council
v1-1	19/3/2014	Consequential changes only on account of governance review (eg. 'Council' to 'Board').
v2	Jun-2016	General review.

© Copyright – Australasian College for Emergency Medicine. All rights reserved.