

Policy Owner	College Director/Principal
Contact Officer:	Quality and Compliance Director
Policy Number:	QHRPO005
Approved by:	Senior Management Group (09/08/2018); Learning and Teaching Committee (09/08/2018); Academic Council (23/08.2018)
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Related Policies:	Code of Conduct: Obligations to Stakeholders Policy Complaints and Appeals Policy Critical Incident Policy Enterprise Agreement Equal Opportunity Policy Internet and Digital Communications Policy Navitas Anti-Discrimination and Prevention of Harassment, Vilification & Bullying Policy Navitas Social Media Policy Occupational Health and Safety Policy & Guidelines Staff Grievance Policy Staff Wellbeing Guidelines Student Misconduct Policy Student Wellbeing, Counselling and Support Policy
Related Forms	Appeal Request Form Complaint Form

1. OVERVIEW

- 1.1. Edith Cowan College is committed to ensuring that students/staff are able to study/work in a safe and inclusive learning environment. ECC has zero tolerance for inappropriate behaviour such as bullying, harassment, discrimination, assault or any form of violence and victimisation.
- 1.2. ECC regards Bullying, Harassment and Discrimination as a serious breach of ECC's Equal Opportunity Policy and a risk to occupational health and safety. Bullying, Harassment and Discrimination are illegal and unacceptable.
- 1.3. ECC will take all reasonable steps necessary to prevent Bullying, Harassment or Discrimination occurring within ECC. In the event that an incident occurs, ECC will assist students/staff to investigate, support and deal with such incidents.
- 1.4. The purpose of this policy is to provide the framework and process for dealing with Bullying, Harassment and Discrimination Claims in a fair, equitable and consistent manner.
- 1.5. It is the responsibility of the College to communicate this policy and guidelines to staff and students, and train key staff to manage suspected or reported breaches promptly and confidentially.

2. ORGANISATIONAL SCOPE

- 2.1. These guidelines are based on, and enforceable under, the relevant legislation including, but not limited to:
 - Anti-Discrimination laws – relating to equal opportunity and/or Discrimination based on age, disability, race or sex.
 - Education for Overseas Students (ESOS) Act
 - Fair Work Act
 - Occupational Health and Safety – relating to workplace health and safety and/or workers compensation laws.

- 2.2. These guidelines are also informed by national programs (such as, but not limited to):
- Australian Human Rights Commission: *Change the Course* Report (2017)
 - Universities Australia: *Respect. Now. Always. 10 Point Action Plan* (2017)
- 2.3. These guidelines will apply to Bullying, Harassment and Discrimination Claims:
- made by students, staff or related parties against a student or staff member;
 - made by students, staff or related parties against a college policy or process;
 - regardless of whether the reported Bullying, Harassment or Discrimination occurred on-campus or off-campus

3. DEFINITIONS

3.1. **Appeal:** In this context, an appeal relates to a request to review a decision or outcome resulting from lodgment of a Bullying, Harassment or Discrimination Claim.

3.2. **Bullying:** refers to repeated, unreasonable behaviour directed towards an individual or group that creates a risk to physical or mental health and safety.

- “Unreasonable Behaviour” is behaviour that a reasonable person, having regard to all the circumstances, would interpret as being humiliating, undermining or threatening to another person.
- Bullying behaviour may occur in one-on-one interactions or it may take place in front of others.
- Bullying may be direct or indirect – see Appendix A for examples

3.3. **Claim:** for the purpose of this policy *Claim* refers to any assertion relating to Bullying, Harassment, Hazing or Discrimination.

3.4. **Complainant:** A person lodging a Bullying, Harassment or Discrimination Claim, complaint or appeal.

3.5. **Discrimination:** may be direct or indirect. It occurs when a person treats or proposes to treat another person with a protected characteristic unfavourably because of that characteristic. It includes treating another person unfavourably or in an offensive manner based on disability, impairment, age, gender, gender history, sexual orientation, marital status, race, colour, religion, culture, pregnancy, family or carer responsibilities, political opinion, national extraction, social origin and lawful associations. See Appendix A for examples.

3.6. **Enterprise Agreement:** refers to the current University Programs Division (UPD) WA Staff Enterprise Agreement for ongoing staff.

3.7. **Harassment:** covers a wide range of behaviours including, intimidation, bullying, coercion; which may reasonably be expected to offend, humiliate, embarrass, disturb or in some way threaten the person at whom it is directed. Harassing conduct includes:

- Offensive, threatening, intimidating or demeaning behaviour directed at an individual or a group of people;
- Any requirement that a person accept or engage in any form of sexual behaviour to gain benefit or avoid some detriment;
- Communication of a spoken or written nature, visual depictions and/or electronically transmitted material that demeans, shows hostility or aversion to individuals or groups in the community
- See Appendix A for examples.

- 3.8. Hazing** – is similar to Harassment and involves the application of peer pressure to force someone to do something they would not normally do in order to be *included* in a social group. See Appendix A for examples.
- 3.9. Respondent:** A person responding to a Bullying, Harassment or Discrimination Claim, complaint or appeal.
- 3.10. Sexual Harassment:** refers to repeated, unwelcome and/or inappropriate behaviour of a sexual nature, in circumstances where a reasonable person, having regard to all the circumstances, would anticipate the possibility that the person being harassed would feel offended, humiliated or intimidated. See Appendix A for examples.
- 3.11. Victimization:** refers to unfavourable treatment arising after a complaint. See Appendix A for examples.

4. POLICY PRINCIPLES

- 4.1.** All staff and students have the right to a safe and productive learning/working environment free from Bullying, Discrimination and Harassment, where they are treated with dignity and respect.
- 4.2.** ECC is committed to treating all complaints in a sensitive, fair, timely and confidential manner.
- 4.3.** All Claims will be taken seriously, regardless of whether the alleged harasser is at fault, was acting with good intent or is unaware of any wrong doing.
- 4.4.** Persons alleging Bullying, Harassment or Discrimination will be advised on the process in place for dealing with reported harassment and the potential challenges they may face
- 4.5.** Persons alleging Bullying, Harassment or Discrimination will not be discriminated against as a result of the Claim.
- 4.6.** Making a Claim in bad faith or with malicious intent is considered to be a form of misconduct and will be dealt with according to the relevant Staff/Student Misconduct Policy
- 4.7.** Early intervention will be taken where incidents are reported, suspected and/or become evident to ECC staff.
- 4.8.** Attempts will be made to resolve matters informally where possible and appropriate.
- 4.9.** Persons handling complaints must be impartial. Where this is questionable, an impartial and appropriate party must be identified to manage and/or consider the Claim.
- 4.10.** Persons against whom formal Claims are made will be given the opportunity to hear about and respond to the allegations against them.
- 4.11.** ECC reserves the right to report an incident to the relevant authorities and continue to deal with the matter in part or in whole according to ECC's processes and policies.
- 4.12.** Staff found to be Bullying, Harassing or Discriminatory against other staff or students may be subject to performance management and/or disciplinary action.

- 4.13. Students found to be Bullying, Harassing or Discriminating against a member of staff or other student(s) may be subject to disciplinary action under the Student Misconduct Policy.
- 4.14. Where a reported case is deemed by ECC to be a critical incident, it will be managed in accordance with the Critical Incident Policy.
- 4.15. Under the Privacy Act 1988, individuals are entitled to the protection of their personal and private information. ECC is committed to maintaining this right to privacy in line with legal requirements, however, ECC may exercise its discretion and disclose information as necessary to prevent or lessen a serious and imminent threat to the life or health of a student, staff member or other person.
- 4.16. All parties have a right to representation by union officials (if appropriate) or a support person of their choice. Neither party, except with the agreement of all parties, may be represented at by a legal practitioner in Stage I or Stage II of proceedings
- 4.17. In the event that a misbehaviour is deemed to be a crime, the matter may be reported to the police or relevant regulatory authorities.

5. POLICY CONTENT

5.1. Advice for Complainants

Persons who feel they are being subjected to inappropriate behaviour should consider:

- Whether the behaviour would reasonably be considered as Bullying, Harassment or Discrimination (See Appendix A).
- Keeping a detailed written record (with dates) of the events upon which a Claim might be made.
- Seeking professional advice / support. ECC has an independent employee access program (EAP) for this purpose. Staff can ask their Line Manager or the HR Business Partner for details of this service.
- Communicating clearly to the person that their behaviour is unwelcome or unacceptable and may be reported if it continues.
- Taking steps to avoid being alone with the bully or harasser.
- Limiting discussion of the matter to trusted persons who can provide support or assistance. This may also include their line manager, medical professionals or counsellors in the first instance.

5.2. Informal Reporting of Bullying, Harassment or Discrimination (Stage I)

- Informal action is usually appropriate when:
 - The Complainant wants to address the matter informally
 - The allegations are less serious
 - There is a chance of quickly stopping the problem before it escalates
 - The persons involved are likely to have an ongoing working relationship
- Students experiencing Bullying, Harassing or Discriminating may contact the ECC Student Counsellor or an ECC Manager.
- Staff experiencing inappropriate behaviour should consult their line manager or a trusted senior member of staff to discuss their situation.
- The Complainant may choose not to reveal the names of the alleged inappropriate behaviour or other details during this stage.
- The staff member receiving the complaint will counsel the student or staff member whilst clarifying the Claim and desired outcomes. They will explain ECCs process for dealing with the Claim and discuss options to address the situation.

- The Complainant should be supported to identify and access appropriate avenues for coping with the situation, resolving the problem and/or preventing further inappropriate behaviour (which may include accessing an independent conciliator at any stage in the process)
- The person in receipt of the informal complaint will also convene a meeting with the College Director or nominee, the HR Business Partner and relevant line manager(s) in order for the group to determine an appropriate course of action (if any) to address any issues arising from the Claim.
- Where the Complainant is considering proceeding to a formal Claim, they should be referred to the College Director (or nominee) or Student Counsellor or line manager to discuss the process and possible outcomes of a formal complaint.
- The counselling staff member should schedule a follow up appointment with the Complainant within 5 working days.

5.3. Making a Formal Claim (Stage II)

- To formally report inappropriate behaviour, the Claim must be sent in writing, and in confidence to the Student Counsellor (for students) or line manager (for staff) or other trusted senior staff member detailing the incident(s) of the inappropriate behaviour, the name of the person(s) responsible, the impact of the behavior, any supporting facts or evidence, efforts taken to address the situation and the desired outcome / resolution.
- ECC will acknowledge receipt of the letter in writing within in 3 working days, advising the Complainant of the process and time frames involved.
- Within 5 working days the staff member in receipt of the Claim will organise a meeting with the Complainant to gather further information on the nature of the Claim and assess whether the Complainant is in need of immediate assistance/support. The Complainant has the right to have a support person during this discussion.
- Within 5 working days of the meeting, the person(s) accused of inappropriate behaviour (Respondent) will be informed of the Claims made against them and be given 10 working days within which to respond to those Claims.
- After 10 working days the College Director/Principal (or nominee), line manager of the Complainant, and HR Business Partner or Student Counsellor will convene a meeting with other relevant individuals to consider the Claim, the Respondent's response and decide on actions to be taken.
- Both the Complainant and Respondent will be advised of the outcome within 5 working days of the decision.

5.4. Options for Resolving/Addressing Formal Claims

Depending upon the nature and seriousness of the Claim, any of the following processes may be initiated as an outcome of a formal Claim:

- Apology
- Order to stop specified behaviour and/or comply with this policy
- Direction to keep parties apart, monitor behaviour, provide information, support or training
- Disciplinary action
- Conciliation
- Mediation
- Mentoring
- Counselling
- Independent investigation
- Student Misconduct Report and follow-up action
- Enrolment exclusion – students only
- Performance Management (including formal warnings) – staff only
- Report to Police – for criminal actions
- Relocation – staff only
- Termination of employment – staff only

- Re-credit leave entitlements – staff only
- Review of Policy / Process

Please note this list is only provided as a guide and does not limit other processes or actions being taken as a result of a formal Claim.

Both the Complainant and Respondent can appeal the outcome of a formal Claim in accordance with the External (Stage III) process.

5.5. External Action (Stage III)

- Following Stage I and Stage II, any complaints about administrative actions and decisions of the College can be made to the relevant Ombudsman, however the Ombudsman is generally the office of last resort. If you have not followed the steps described above, the Ombudsman may ask you to do so before agreeing to investigate a complaint.
- Complaints relating to inappropriate behaviour by staff in the workplace can be heard by the Fair Work Ombudsman (<http://www.fairwork.gov.au/employee-entitlements/bullying-and-harrassment>) in accordance with the current Enterprise Agreement or work contract.
- Complaints relating to the college's inaction after learning about inappropriate behaviour by staff or students can be heard by the Overseas Student Ombudsman (<http://www.oso.gov.au/>) or the Human Rights Commission (<https://www.humanrights.gov.au/>)
- If the college has taken all reasonable steps to prevent inappropriate behaviour by a staff member and/or student and the issue cannot be resolved, then the complainant is advised to seek legal advice.

6. ADMINISTRATIVE PROCEDURES – Record Keeping, Retention and Disposal of Records

- 6.4.1 ECC shall take all necessary steps to ensure the confidentiality of any Claim. Internal disclosure should be limited strictly to those employees who need to have access for official purposes
- 6.4.2 Once formal procedures are invoked, details of allegations and investigatory notes are to be kept in confidential files separate to either the Complainant's or Respondent's personal files.
- 6.4.3 Where a Claim is proven or where the outcome impacts on enrolment status (students) or employment status /arrangements (staff) of the Complainant or Respondent, the outcome may be recorded on the staff member's personnel record or student's file.
- 6.4.4 Records of Claims will normally be kept for an initial period of 5 years. If no further complaints have occurred during this period the records will normally be destroyed.
- 6.4.5 This policy will be reviewed and updated every 3 years or in accordance with changes in the relevant law.

Appendix A – Identifying Bullying, Harassment and Discrimination

Bullying behaviour relates to repeated, unreasonable behaviour which may create a risk of health, safety and wellbeing of another individual. Behaviour which may be considered to be bullying includes but is not limited to:

- aggressive or intimidating conduct
- yelling, screaming, abusive or offensive language, insults, inappropriate comments about a person's appearance, personal life or lifestyle;
- belittling or intimidating comments; constant belittling of another's opinions or unreasonable criticism of others;
- spreading malicious rumours;
- teasing, practical jokes or 'initiation' ceremonies
- isolating individuals from normal work interaction without justification; exclusion from work events;
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level; impossible demands within the framework of existing work unit standards
- pressure to behave in a certain manner

Under the law, Bullying applies to employees, contractors, apprentices, volunteers, etc., however for the purposes of this Policy, complaints may be lodged and penalties may apply for Bullying relating to student misconduct as well as staff misconduct.

In accordance with the law, any reasonable management actions relating to the management of an employee that is carried out in a fair and reasonable manner in the workplace is not deemed to be bullying. These actions can include but are not limited to:

- genuine and reasonable disciplinary procedures for misconduct
- performance management processes – setting performance goals, standards and deadlines for an employee;
- deciding not to select an employee for promotion;
- constructive feedback informing or counselling an employee about his/her unsatisfactory work performance or inappropriate behaviours;
- directing a worker to perform duties in keeping with their job; criticism or comments relating to observable deficiency in performance or issues of concern;
- directing a worker to perform duties in keeping with their job and controlling how work is done;
- implementing organisational and/or supervisory changes

Behaviour which may be considered to be as **Harassment** or **Discrimination** may include:

- Treating another unfavourably or in an offensive manner based on differences of disability, impairment, gender, sexual orientation, marital status, race, colour, religion, culture, pregnancy, family or carer responsibilities, political opinion, national extraction, social origin and lawful associations.
- Unwelcome verbal, written, social, physical or sexual behaviour which may reasonably be expected to cause embarrassment, offense, discomfort, upset, fear or intimidation.
 - **Verbal and written** (includes via electronic medium): name calling, offensive language, disparaging remarks, unreasonable and continued criticism. Sending images which are unwelcome or inappropriate. Continual unjustified, unconstructive and/or unnecessary comments about a person's personal life, appearance, work performance.
 - **Social**: bullying, disparaging comments in front of others or behind a person's back, threatening, exclusion, isolation, 'ganging up', offensive noises.
 - **Physical**: fighting, pushing, gestures, invasion of personal space, following/stalking.
 - **Sexual**: deliberate and unwelcome or inappropriate physical contact (patting, pinching, brushing, hugging, touching, kissing, rubbing) considered sexual in nature; sexually orientated comments, messages, smutty jokes, images or gestures; unwelcome questions or comments

about private or sexual life, sex-role stereotyping; staring or ogling; inappropriate phone calls/emails/texts

- Interference with a person's work space, work materials, equipment or property, apart from what would be considered necessary for ongoing work in the particular area or as part of normal student work;
- Persistent following within, to or from the College (stalking);
- Requests for sexual favours or inappropriate personal attention.
- Offers of reward for sexual favours.
- Intimidation that suggests the victim will be disadvantaged in some way if an inappropriate request is not complied with.
- Hazing¹: is similar to Bullying in that it involves peer pressure and intimidation. Both Hazing and Bullying relates to treating someone as inferior but bullying results in exclusion, whilst hazing forces someone to do something against their will in order to be included in the group.
- Victimization - Unfavourable treatment arising after a complaint – it may include adverse changes to the workplace; denied access to resources, work opportunities or training; refusal to share information; ignoring the person; violence; refusing to renew an employment contract or biased evaluation of students assessments.

Note: Conduct may be deemed to be Bullying or Harassment or Discrimination even if the person did not intend to offend, humiliate or intimidate.

For further information see: <https://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment>

Acknowledgement: ECC acknowledges the use of the following materials in reviewing this policy:

- *Workplace Bullying presentation by Herbert Smith Freehills*
- *Australian FairWork Ombudsman website*
- *Australian Human Rights Commission website*

This policy was also cross-referenced and benchmarked with the relevant policies of Edith Cowan University and Navitas Limited

¹ Hazing and Bullying are similar but different in subtle ways – both involve power dynamics and intimidation. Both treat someone as inferior but bullying usually involves singling out an individual as a means to exclude them. Hazing involves including people by having them “earn” their way into a group or onto a team. (<https://hazingprevention.org/home/hazing/hazing-and-bullying/>) Bullying is about *exclusion*. Hazing is about *inclusion* (Source: <https://hazingprevention.org/home/hazing/hazing-and-bullying/>)