CARNARVON
CHRISTIAN SCHOOL
-Walk as Children of Light-

# Policy and Procedure Guidelines

# SEX DISCRIMINATION and SEXUAL HARASSMENT POLICY

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# TABLE OF CONTENTS

**SEX DISCRIMINATION AND SEXUAL HARASSMENT POLICY ..... 3**

1. PREAMBLE ..... 3
2. WHAT IS SEXUAL HARASSMENT AND SEXUAL DISCRIMINATION? ..... 3
3. RELEVANT LEGISLATION ..... 4
   - *3.1 Sex Discrimination Act 1984 (Commonwealth) ..... 4*
   - *3.2 Equal Opportunity Act 1984 (WA) ..... 5*
   - *3.3 Common Law Duty of Care ..... 6*
4. PREGNANCY DISCRIMINATION ..... 6
5. EXAMPLES OF SEXUAL HARASSMENT ..... 6
6. EFFECTS OF SEXUAL HARASSMENT ON THE VICTIM ..... 7
7. WHO CAN INITIATE SEXUAL HARASSMENT IN A SCHOOL? ..... 7
8. HOW CAN A SCHOOL PREVENT SEXUAL HARASSMENT FROM OCCURRING? ..... 7
   - *8.1. Developing a School Policy ..... 7*
9. PRINCIPLES ..... 8
10. RESOLVING A SEXUAL HARASSMENT COMPLAINT ..... 8
    - *10.1 Grievance Procedures ..... 8*
    - *10.2 Complaints Procedures ..... 9*
11. WHERE TO GO FOR FURTHER HELP ..... 12
    - *11.1 Information available from the AISWA Library ..... 12*
    - *11.2 'Sexual Harassment – A Code of Practice' ..... 12*

REVISIONS AND ADDENDA ..... 14

# SEX DISCRIMINATION AND SEXUAL HARASSMENT POLICY

## 1. Preamble

Under clause 27 of the Constitution of the Carnarvon Christian Parent Controlled School Association (Inc) [CCPCSA] the Association has power to provide for matters not otherwise provided for in the Constitution by a resolution of the Association at a properly convened General Meeting.

This Sex Discrimination & Sexual Harassment Policy has been prepared by members of the Association alongside other Policies and Procedures in order that Carnarvon Christian School has the means to address issues which may arise from time to time, and to resolve those issues through the application of a Biblically sound process, and also according to, and within, current Commonwealth and State Laws. This School has a mandate to not only teach and instruct its students, but to also ensure their safety and protection while under the care of the staff appointed by the Board to their various roles. The Association encourages the just, speedy, and inexpensive resolution of all situations in accordance with Scriptural principles.

Carnarvon Christian School will not tolerate, in any way, shape or form, unwelcome conduct or acts of harassment (whether they be of a sexual nature or otherwise) between any persons employed by, or under the care of the Association and/or its members.

This Policy needs to be read and employed in conjunction with the School's Child Protection Policy, in addition to the Bullying Policy and the Discrimination Policies.

As a Christian organisation we seek to obey the Bible's commands to love, value and accept one another in the same manner as exemplified by Jesus Christ in His incarnation, death and resurrection to provide salvation.

The Association is committed to providing a safe working environment that respects the individual and does not discriminate against people because of gender, race or disability. In the area of religious belief and practice, the Association has clear expectations and minimum criteria, which ensures that all employees do meet the Christian ethos upon which the Association was founded.

Workplace harassment has become a major issue for Governments in countries around the world, including Australia. While sexual harassment has commanded much of the media attention, inappropriate behaviour at work goes far beyond gender issues. Social roles and divisions are changing with men and women doing work that was once available exclusively to one gender or the other. Technology, legislation and new thinking have opened work opportunities for people with disabilities.

Legislation today requires that employers/organisations must be responsible for crating a working environment free from harassment and bullying and must have procedures for dealing with any reported incidents of harassment or bullying. All employees have the right to a workplace that is safe and free from unlawful discrimination, bullying and harassment. There is also an obligation on the part of employees to ensure that others – parents, students, colleagues, visitors and suppliers – can enjoy the same rights.

## 2. What is Sexual Harassment and Sexual Discrimination?

**Sex discrimination** occurs when a person is treated less fairly than another person because of their sex (or sexual orientation), marital status or because they are pregnant or potentially pregnant. It also includes being dismissed from employment because you have family responsibilities.

Discrimination may be either 'direct' or 'indirect'. Direct discrimination occurs when a person is treated less favourably because of their sex (or sexual orientation), marital status etc. (eg. A refusal to employ a woman because she is a woman). Indirect discrimination occurs

where a requirement or condition is set that can more easily be met by persons of one group than another (eg. All teachers of years 5, 6 and 7 will be males).

**Sexual harassment** can be summarised as unwelcome sexual conduct, remarks or innuendo aimed at an individual or a group of people that creates an uncomfortable environment for the recipient. A person sexually harasses another person if:

- the act is unwelcome;
- it is reasonable in the circumstances that the person who was harassed felt offended, humiliated or intimidated;
- the person being harassed believed that resistance would in any way lead to disadvantage in his or her employment.

In Western Australia, there are two pieces of legislation that cover sexual harassment and unless an exception applies employers must comply with both National and State Legislation.

## 3. Relevant Legislation

The State Equal Opportunity Act 1984, the Federal Sex Discrimination Act 1984, Federal Racial Discrimination Act 1975 and the Federal Disability Discrimination Act 1992 make it unlawful to harass or bully people on certain grounds in their public life.

### *3.1 Sex Discrimination Act 1984 (Commonwealth)*

'Sexual harassment' is defined in section 28A as:

*"… a person sexually harasses another person (the "person harassed") if:*

*(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*

*(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;*

*in the circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."*

Educational institutions are covered specifically in section 28F:

*S28F(1) It is unlawful for a member of staff of an educational institution to sexually harass:*

*(a) a person who is a student at the institution;* ***or***

*(b) a person who is seeking to become a student at the institution.*

*S28F(2) It is unlawful for a person who is an adult student at an educational institution to sexually harass:*

*(a) a person who is an adult student the institution;* ***or***

*(b) a member of the staff of the institution.*

*S28F(3) "adult student: means a student who has attained the age of 16 years.*

Employers can be held liable for an employee's actions even if there is no personal fault lying with the employer. This is known as the Principle of Vicarious Liability.

Section 106 of the Sex Discrimination Act covers vicarious liability that means that if an employee sexually harasses students or other staff the employer can be held legally responsible and may be liable for costs. This liability may be reduced or avoided if the employer can show "all reasonable steps" were taken to prevent sexual harassment.

While the Act does not define "all reasonable steps", the Human Rights and Equal Opportunity Commission has compiled a minimum level of action required.

- Issue and distribute a Sexual Harassment Policy;
- Establish fair and effective sexual harassment grievance procedures;
- Raise awareness of all employees;
- Train those responsible for dealing with complaints or enquiries (including managers and supervisors);
- Monitor the working and learning environments.

It is the employer's responsibility to ensure that the *"reasonable steps"* are active and preventive measures. Lack of awareness that the harassment was occurring is not a defence for employers.

Schools can also be held liable for sexual harassment committed by its agents. The harasser has to be performing duties on behalf of the school and could include people such as:

- Volunteers (eg: parents in classroom assistance, volunteer coaches, fundraisers, etc)
- Office-bearers (eg: school prefects)
- Holders of unpaid honorary positions (eg: committee or board members)
- Boards of directors
- Contractors and consultants

While section 106 requires a legal relationship between the parties (employer/employee or principal/agent), section 105 does not. A school can be held liable under section 105 if they "caused, instructed, aided or permitted" an individual to commit an unlawful act. An example of this would be if sexual harassment between students remained unchecked and was allowed to occur.

### *3.2 Equal Opportunity Act 1984 (WA)*

Sexual harassment is defined in employment and education in sections 24(3) and 25(2) as:

*"… an unwelcome sexual advance, or an unwelcome request for sexual favours, … or engages in other unwelcome conduct of a sexual nature …"*

These sections of the Act also require that the person who is harassed either:

*"… has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage …"* them; **or** as a result of *their "rejection of the advance, refusal of the request or taking of objection to the conduct"* they are actually disadvantaged.

This Act also covers Vicarious Liability:

Section 160

*"A person who causes, instructs, aids or permits another person to do an act that is unlawful under this Act, shall for the purposes of this Act be taken also to have done the act."*

Section 161

*(1) Subject to subsection (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent –*

*(a) an act that would, if it were done by the person, be unlawful under this Act (whether or not the act done by the employee or agent is unlawful under this Act); or*

*(b) an act that is unlawful under this Act,*

*this Act applies in relation to that person as if that person had also done the act.*

*(2) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of that subsection by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph."*

Section 162

*(1) Where, for the purposes of this Act, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.*

*(2) Where a person attends a conference under Division 2 of Part VII, or appears before the Tribunal on behalf of a body or persons, whether corporate or unincorporated, any conduct by that person when so attending or appearing shall be deemed, for the purposes of this Act, to be the conduct of the body."*

### *3.3 Common Law Duty of Care*

Teachers and schools have a special duty of care to ensure that students are provided a safe and secure environment. Teachers are responsible for ensuring the safety of students against reasonably foreseeable risks and schools can be held vicariously liable for breach of this duty. It is therefore likely that common law duty of care would extend to sexual harassment.

**While legislation does not cover sexual harassment complaints against individual students under the age of 16 years, it is important that the School stresses it does not condone this sort of behaviour. The School should also be mindful of its duty of care and that it may be vicariously liable under the sections mentioned previously.**

## 4. Pregnancy Discrimination

Carnarvon Christian School will not treat pregnant or potentially pregnant employees less favourably than someone in similar circumstances, who is not pregnant or potentially pregnant; or because of the pregnancy or potential pregnancy, or a characteristic of pregnancy or potential pregnancy.

## 5. Examples of Sexual Harassment

Sexual harassment can take a variety of forms and may involve physical contact, verbal remarks or non-verbal conduct of a sexual nature. Examples taken from a booklet produced by the Human Rights and Equal Opportunity Commission entitled *"Sexual Harassment and Educational Institutions – A Guide to the Federal Sex Discrimination Act"* include the following:

- Uninvited touching
- Uninvited kisses or embraces
- Smutty jokes or comments
- Making promises or threats in return for sexual favours
- Displays of sexually graphic material including posters, pin-ups, cartoons, graffiti or messages left on notice boards, desks or lockers
- Repeated invitations to go out, especially after prior refusal
- 'Flashing' or sexual gestures
- Sex-based insults, taunts or name-calling
- Staring or leering at a person or at parts of their body
- Unwelcome physical contact such as passaging a person without invitation, or deliberately brushing up against them
- Touching or fiddling with a person's clothing (eg: flicking bra straps)
- Requests for sex

- Sexually explicit conversation
- Persistent questions or insinuations about a person's private life
- Offensive phone calls or letters
- Stalking
- Sexual insults or taunting
- Offensive e-mail messages or computer screen savers

## 6. Effects of Sexual Harassment on the Victim

A victim's usual initial response to sexual harassment is to ignore it or to pretend that the act is amusing. A response such as this can, however, result in physical symptoms such as headaches, depression and ulcers.
Where the harassment is more overt *(blatant, evident)* and unable to be ignored, bad feeling develops quickly between the two parties.
While victims of sexual harassment are not appreciative of the attention they are receiving, many are uncomfortable about complaining. The reasons for not complaining are many and varied and include:

- A fear of adverse treatment by peers and those senior to them;
- A belief that others will think 'he/she asked for it';
- A belief that informing is unprofessional;
- A limited knowledge on the grievance procedures.

## 7. Who can initiate sexual harassment in a school?

- Staff – Staff harassment
- Staff – Student harassment
- Student – Staff harassment
- Student – Student harassment

## 8. How can a school prevent sexual harassment from occurring?

### *8.1. Developing a School Policy*

All employers, including schools, have a legal obligation to prevent sexual harassment. While the law does not define exactly what is required, it states that the employer takes 'reasonable steps'.

The Human Rights and Equal Opportunity Commission has a booklet *"Sexual Harassment – A Code of Practice"* designed to prevent sexual harassment. The Code recommends employers take steps to prevent sexual harassment, including conducting awareness sessions for staff and the development of a sexual harassment policy.

Another booklet put out by the Human Rights and Equal Opportunity Commission entitled *"Sexual Harassment and Educational Institutions – A Guide to the Federal Sex Discrimination Act"* lists a policy checklist on items essential to include in the school's policy. The booklet recommends that the policy should include:

- A strong opening statement on the school's attitude to sexual harassment;
- An outline of the school's objectives regarding sexual harassment;
- A plain English definition of sexual harassment;
- What sexual harassment is not;
- Some examples which are relevant to the particular audience and environment;
- A statement that sexual harassment is against the law;
- The circumstances in which sexual harassment can occur;
- A list of possible consequences if the sexual harassment policy is breached;
- A brief explanation of the options available for dealing with sexual harassment;
- Information on where individuals can get help, advice or make a complaint.

Both “Sexual Harassment – A Code of Practice” and “Sexual Harassment and Educational Institutions – A Guide to the Federal Sex Discrimination Act” are available on loan from the library at AISWA [Association of Independent Schools of Western Australia (Inc)].

## 9. Principles

1. The Association is committed to ensuring that the working environment is free from harassment, and that it will not be tolerated under any circumstances and that disciplinary action will be taken against any employee who breaches the Policy.

2. The Association aims to:
   - Create a working environment which is free from harassment and where all members of staff are treated with dignity, courtesy and respect;
   - Implement training and awareness-raising strategies to ensure that all employees know their rights and responsibilities;
   - Provide an effective procedure for complaints based on the principles of natural justice;
   - Treat all complaints in a sensitive, fair, timely and confidential manner;
   - Ensure protection from any victimisation or reprisals
   - Encourage the reporting of behaviour which breaches the harassment policy;
   - Promote appropriate standards of conduct at all times.

3. The Association is committed to the rationale and principles as outlined in this Policy on Harassment in schools.

4. Immediate disciplinary action will be taken against anyone who victimises or retaliates against a person who has complained of harassment.

5. all staff have a responsibility to:
   - comply with the Association’s Harassment policy;
   - offer support to anyone who is being harassed and let them know where they an get help and advice (they should not, however, approach the harasser themselves);
   - maintain complete confidentiality if they provide information during the investigation of a complaint. The spreading of gossip or rumours may expose them to a defamation action.

6. The Association is committed to providing an environment which is safe for its employees and free from harassment. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

## 10. Resolving a Sexual Harassment complaint

### *10.1 Grievance Procedures*

As part of this School’s legal responsibilities, effective and accessible grievance procedures must be put in place for employees and students.

*“Sexual Harassment and Educational Institutions”* covers Grievance Procedures in detail in Chapter 7. It includes information on:

- Dealing with formal complaints;
- Dealing with informal complaints;
- Descriptions of various grievance procedures models;
- Basic requirements of grievance procedures;
- Suggested guidelines when investigating a formal complaint;
- Record keeping;
- Defamation;
- Termination of employment.

In the case of a complaint having been lodged, the Association's 'Employee Grievance Procedure' (Index 2-23) should be referred to, in addition to the 'Complaints Procedures Policy' (Index 2-13) and the 'Bullying Policy' (Index 2-10).

### *10.2 Complaints Procedures*

#### 10.2.1 Informal Complaint Procedure

(a) Informal procedures emphasise an expedient resolution and can be utilised at the discretion of the complainant.

(b) Informal ways of dealing with harassment can include the following action:

(i) the individual who has alleged harassment may want to deal with the situation themselves, but may seek advice on possible strategies from the contact officer(s);

(ii) the individual who has alleged harassment may ask the contact officer to speak to the alleged harasser on their behalf. The contact officer privately conveys the individual's concerns and reiterates the Association's harassment Policy to the alleged harasser without assessing the merits of the case;

(iii) a complaint is made, the alleged harasser admits the behaviour, investigation is not required and the complaint is resolved through conciliation or counselling of the harasser;

(iv) the contact officer or an executive observes unacceptable conduct occurring and takes appropriate action even though no complaint has been made.

(c) Informal procedures are usually appropriate where:

(i) the allegations are of a less serious nature, and

(ii) the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

(d) A staff member should not be required to exhaust informal attempts at resolution before formal action commences. A member of staff at any point in time has the right to formalise their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission (HREOC). Once an external agency such as HREODC has commenced proceedings the informal school-based investigations will cease.

#### 10.2.2 Formal Complaint Procedure

(a) Formal procedures focus on proving whether a complaint is substantiated.

(b) Formal procedures usually involve:

(i) an investigation of the allegation;

(ii) application of the principles of natural justice;

(iii) making a finding as to whether the alleged harassment occurred;

(iv) submitting a report with a recommended course of action to the contact officer;

(v) implementation of an appropriate outcome.

(c) Formal procedures are usually appropriate where:

(i) informal attempts at resolution have failed;

(ii) the person alleging harassment has been victimised;

(iii) the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;

(iv) the complaint is against a senior member of staff and the person believes that formal procedures may help to ensure that the complainant is not victimised or disadvantaged;

(v) the allegations are denied, the person who claims to have been harassed wishes to proceed and an investigation is required to substantiate the complaint; or

(vi) the person alleging sexual harassment wishes to make a formal complaint from the outset.

(d) To ensure consistency and fairness, the Association must document the steps involved in a formal complaint. The usual sequence of events is as follows:

(i) the complainant is interviewed and the allegations are particularised in writing;

(ii) the allegations are conveyed in writing to the alleged harasser. This would include the process to be followed to resolve the issue;

the alleged harasser is given the opportunity to respond in writing and defend themselves against the allegations;

(iii) the alleged harasser has the right to have representation (ie: a colleague, union representative);

(iv) if there is a dispute over facts, statements from any witnesses and other relevant evidence is gathered;

(v) a finding is made as to whether the complaint has substance;

(vi) a report documenting the investigation process, the evidence, the finding and a recommended outcome(s) is submitted to the relevant executive;

(vii) the executive implements the recommended outcome(s) or decides on an alternative course of action.

(e) A formal complaint should not be dismissed on the ground that no-one saw or hear the incident(s) occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence and make their finding on the balance of probabilities.

(f) The following types of evidence may be relevant:

(i) supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;

(ii) supervisor's reports and personnel records (eg: sudden increases in sick leave);

(iii) factual complaints or information provided by other employees about the behaviour of the alleged harasser;

(iv) records kept by the person claiming to have been harassed;

(v) whether the evidence was presented by the parties in a credible and consistent manner.

(g) Outcomes may include any combination of the following but are not limited to the outcomes below:

(i) counselling;

(ii) formal apologies;

(iii) conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution;

(iv) official warnings that are noted on the harasser's personnel file;

(v) disciplinary action against the harasser (eg: demotion, dismissal, removal of some duties, etc);

(vi) disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious;

(vii) reimbursing any costs associated with the harassment;

(viii) re-crediting any leave taken as a result of the harassment.

(h) Outcomes will depend on factors such as:

(i) severity and frequency of the alleged harassment;

(ii) the weight of the evidence

(iii) the wishes of the person who was allegedly harassed;

(iv) whether the alleged harasser could have been expected to know that such behaviour was a breach of Policy;

(v) the level of contrition;

(vi) whether there have been any prior incidents or warnings.

(i) If there is insufficient proof to decide whether or not the harassment occurred, employers should nevertheless:

(i) Remind those involved of expected standards of conduct;

(ii) Conduct further training;

(iii) Monitor the situation carefully.

(j) The Association will ensure that the outcome of the substantiated complaint does not disadvantage the person who was allegedly harassed in any way.

(k) The only case where no action is warranted is where it is deemed that the action did not take place. Even where it is determined that the behaviour did take place but that it did not constitute harassment, some action should be taken to reconcile the parties involved.

### 10.2.3 Role of the Association Contact Officer

Upon receipt of a complaint, the contact officer will discuss and determine with the complainant whether an informal or formal process is to be adopted. In the event of a formal complaint, the contact officer will then record in writing the allegations and include the following details:

(a) name of person registering the complaint;
(b) name of person (or persons) alleged to have harassed the complainant;
(c) details of the specific incident and any related incidents, including the date and place incidents are alleged to have taken place;
(d) the names of any staff members who witnessed the event or related events;
(e) suggestions of possible resolutions of outcomes from the complainant should be requested; and

(f) a copy of this record will be provided to the relevant e3xecutive and a plan of action agreed. This will include a discussion with the person (or persons) alleged to have harassed the complainant.

(g) the contact officer will usually be the Teacher-in-Charge, but in the event this person is involved in, or alleged to be involved in the harassment in any way, then the contact officer should be the Chairman of the Board or his/her appointed delegate.

## 11. Where to go for further help

WA Equal Opportunity Commission
Albert Facey House 469 Wellington Street, Perth
Phone: 9216 3900

Equal Opportunity Act 1984 is available through:
State Law Publishers
10 William Street, Perth
Phone: 6552 6000
Or online: https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a253.html

Australian Human Rights Commission (AHRC) Commission National Office
GPO Box 5218
SYDNEY NSW 2001
Phone: 1300 369 711
https://humanrights.gov.au/

Sex Discrimination Act 1984 is available through:
Australian Government Info Shop
'Albert Facey House'
469 Wellington Street, Perth
Phone: 9322 4737
Or online: www.austlii.edu.au/au/legis/cth/consol_act

Respect@Work: Sexual Harassment National Inquiry Report (2020)

Fair Work Act 2009

### *11.1 Information available from the AISWA Library*

'Sexual Harassment and Educational Institutions – A Guide to the Federal Sex Discrimination Act'
Australian Human Rights Commission (AHRC)
(Also available from:

Edith Cowan University – Churchlands campus
Murdoch University
Midland College of TAFE
West Coast College of TAFE – Joondalup campus
South East Regional College of TAFE – Carlisle campus
Great Southern Regional College of TAFE – Albany campus
South West Regional College of TAFE – Bunbury campus)

### *11.2 'Sexual Harassment – A Code of Practice'*

Australian Human Rights Commission (AHRC)

'Grievance Procedures: How to Investigate Grievances and Live to Tell the Tale'
Equal Opportunity Commission

## REVISIONS AND ADDENDA

| Revision Date | Clauses Affected | Page Number | Operative Date |
|---|---|---|---|
| 2016 | 4. Pregnancy Discrimination<br>2. Sex Discrimination | | |
| 2023 | Phone numbers and website links checked and updated | 12 | May 2023 |
| 2025 | 11- updated contact details for Australian Human Rights Commission (AHRC) | 12 | March 2025 |
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