

## CHS Anti-discrimination and Harassment Policy and Procedures

<b>Document ID</b>	<b>CHS Anti-discrimination and Harassment Policy and Procedures</b>
<b>Category</b>	Governance
<b>Document Owner</b>	Campus Manager
<b>Approved by</b>	Board of Directors
<b>Authorised</b>	CEO

### Version control

Version	Summary of changes	Approval date	Next review date
1.0	Document Established	Academic Board: 02 April 2019 Board of Directors: 09 April 2019	10 April 2021
1.1	Minor changes to the job title and extension of review date	CEO: 12 October 2023	12 October 2024

## Table of Contents

1. Purpose.....	2
2. Scope .....	2
3. Definitions.....	2
4. EEO Laws.....	3
4.1. Discrimination.....	3
4.2. Indirect Discrimination .....	4
4.3. Vilification .....	4
4.4. Harassment.....	4
4.5. Bullying .....	5
4.6. Victimisation .....	5
5. Rights and Individual Responsibilities.....	5
6. Gender Equality in the Workplace .....	5
7. Breach of this Policy.....	6
8. Responsible Officers .....	6
9. Internal complaint .....	6
10. Complaints Procedures.....	7
10.1. Informal resolution.....	7
10.2. Formal investigation.....	7
10.3. External complaint .....	8
11. Variations.....	8
12. Records .....	9
13. Related Documents .....	9
14. Related Legislation.....	9

## 1. Purpose

The ECA Higher Education Institute Pty Ltd trading as the ECA College of Health Sciences ('CHS') (the College), aim to provide an environment where students, staff and others are treated fairly and respectfully and are free from unlawful discrimination, harassment, vilification and bullying.

CHS is committed to ensuring that educational and employment decisions are made based on merit free from all forms of discrimination. CHS also endeavours to promote collegial and mutually respectful interaction between staff members and or between students or other stakeholders.

## 2. Scope

This Policy applies to all students, employees, agents and contractors (including temporary contractors) of CHS, collectively referred to in this Policy as 'stakeholders'. This Policy is not limited to the classroom or workplace or to work hours. This Policy extends to all functions and places that are educational or work related including but not limited to online communications and interactions, social media posting and communications, conferences, labs, work gatherings, Christmas parties and student functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as to the provision of goods and services.

It is assumed that by accepting an offer to study at CHS or accepting an offer to work for CHS or otherwise provide or receive services from CHS the respective student or staff member or party agrees that the provisions of this policy and its procedures shall apply to them fully regardless of whether or not it has been cited in the agreement that govern the relationship between them and CHS.

## 3. Definitions

Term	Definition
<i>Allegation</i>	An assertion of misconduct made against a student, staff, contractors and associates.
<i>Exclusion</i>	Permanent cancellation of a student's enrolment in their course and the termination of their rights and privileges as a student of CHS, including their right to re-apply for admission.
<i>Harassment</i>	Unwelcome behaviour that is offensive, belittling or abusive to another person or group of people.
<i>Non-academic misconduct</i>	With the exclusion of academic misconduct, any inappropriate, dishonest or criminal behaviour by a student that breaches the Student Code of Conduct, including and not limited to any behaviour which: <ul style="list-style-type: none"><li>• prejudices the reputation of the College;</li><li>• endangers the wellbeing of others; or</li><li>• is punishable in a court of law</li></ul>

<i>Online bullying or harassment</i>	Online bullying occurs when a person uses the social media or other forms of online communication to bully or harass another person, including posting derogatory and hurtful messages or images directed to target person's characteristic such as race, religion, ethnicity, colour of skin, sexual orientation etc.
<i>Sexting</i>	<p>Sexting is an activity that usually refers to:</p> <ul style="list-style-type: none"> <li>• taking naked or partially naked photos or videos of yourself (posing in a sexual way) and sending the photos via the internet or mobile phones</li> <li>• receiving or forwarding naked or partially naked photos or videos through mobile phones, internet and social networking sites such as Facebook or Instagram.</li> </ul> <p>Sexting can include images from film, movies, videos, photos, and digital images sent by SMS, email, chat rooms and publishing on blogs.</p>
<i>Suspension</i>	Temporary cancellation of a student's enrolment in a unit of study or course.
<i>Victimisation</i>	Subjecting or threatening to subject a person to personal or academic disadvantage as a direct result of their being subject to an allegation of misconduct, reporting or intending to report an act of misconduct, or in relation to their role in the investigation of an allegation of misconduct.
<i>Vilification</i>	A public act which incites others to treat a person badly, with contempt, or to severely ridicule.

## 4. EEO Laws

Under the Australian EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

### 4.1. Discrimination

Direct discrimination in education or employment occurs when a person is treated less favourably than another in their interaction with the College staff or the senior leadership or governing bodies because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include sex, race, age, gender, ethnicity, religion etc. For all stakeholders at CHS, the following is a list of the grounds of discrimination which operate Federally and in each State and/or Territories where CHS operates:

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Religious belief, affiliation, conviction or activity
- Sex
- Marital status, domestic status, relationship status
- Pregnancy (including potential pregnancy)
- Homosexuality, transsexuality, sexuality, sexual preference/orientation, lawful sexual activity, gender identity
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Disability/impairment, including physical, mental and intellectual disability
- Breastfeeding
- Age (including compulsory retirement)

- Physical features (VIC only)
- Profession, trade, occupation or calling (ACT only)
- Industrial/trade union membership, non-membership or activity
- Political belief, opinion, affiliation, conviction or activity
- Employer association membership, non-membership or activity
- Irrelevant criminal record (NT and TAS only)
- Employment activity (VIC only)
- Irrelevant medical record (NT and TAS only)
- HIV/AIDS
- Defence service
- Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
- Religious appearance or dress (in work or study) (SA only)
- Gender history (WA only)
- Association with a child (in customer service) (SA only)

## **4.2. Indirect Discrimination**

Indirect discrimination may occur when an institution imposes a policy, requirement or condition which applies to everyone equally but which operates to disadvantage a particular group because of a characteristic of that group, such as their sex, age, race or sexual orientation (i.e. a prohibited ground of discrimination). Discrimination also includes the situation where a student harasses another student or a staff member harasses another staff member or where a staff member harasses one or more students based on a ground of discrimination. Harassment is an unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

## **4.3. Vilification**

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transsexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

## **4.4. Harassment**

Harassment is any type of behaviour based on a personal characteristic that another person does not want, and offends, humiliates or intimidates that person.

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile environment for other participants can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging

- staring or leering at a person or at parts of their body
- sexual jokes or comments
- requests for sexual favours
- persistent requests to go out, where they are refused
- sexually explicit conversations
- displays of offensive material such as posters, screen savers, internet material etc.
- accessing or downloading sexually explicit material from the internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages

#### **4.5. Bullying**

Bullying is repeated, unreasonable and inappropriate behaviour directed towards an individual or group, which creates a risk to health and safety.

#### **4.6. Victimisation**

Victimisation is where a person is retaliated against or subjected to a detriment because they intend to or have lodged a complaint, or they are involved in a complaint of unlawful conduct. The College staff, governing bodies and related entities must not retaliate against a person who raises a complaint or subject them to any detrimental behaviour.

### **5. Rights and Individual Responsibilities**

All College staff, contractors, agents, associates and students must:

- understand and comply with this policy and the relevant laws;
- ensure they do not engage in any unlawful conduct towards other participants, stakeholders or others with whom they come into contact through engagement with CHS;
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- follow the complaint procedure of CHS if they experience any unlawful conduct;
- report any unlawful conduct they observe occurring at CHS to the relevant law enforcement authorities or agencies; and
- maintain confidentiality if they are involved in the complaint procedure.

All staff, contractors, agents, associates, students and other stakeholders should be aware that they can be held legally responsible for their unlawful conduct. Any person who aid, abet or encourage other persons to engage in unlawful conduct, may also be legally liable.

### **6. Gender Equality in the Workplace**

'CHS' aims to fulfil its obligations under the Gender Equality Act 2012 (Cth) ('the Act'), by developing and implementing a workplace program which will attempt to eliminate discrimination and contribute to gender equality in employment and in the workplace.

CHS will:

- promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace;

- remove barriers to the full and equal participation of women at CHS;
- promote the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities);
- foster workplace consultation on issues of gender equality in employment and in the workplace; and
- improve the productivity and competitiveness through the advancement of gender equality in employment and in the workplace.

These actions are designed to assist all workplace participants to achieve the full potential in the workplace. They also directly benefit the College. These benefits include increased productivity, improved morale, reduced absenteeism, and higher staff retention rates.

## **7. Breach of this Policy**

All CHS staff, contractors, agents, associates and students are required to comply with this Policy at all times. If a staff member breaches this Policy, he or she may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with CHS terminated or not renewed.

If a person makes an unfounded complaint or a false complaint in bad faith (e.g. falsely accusing a staff member of a breach when the breach of policy has not occurred), that person may be disciplined and may be subject to a legal proceeding.

## **8. Responsible Officers**

CHS's Welfare Officer is the first point of contact for confidential consultation and possible lodgement of complaints. The Welfare Officer has the responsibility for discussing the complaint made with the complainant confidentially ascertaining the complainant's preference for dealing with the complaint, offering advice, and ensuring the CHS process stated in this policy is followed to deal with the complaint. The Welfare Officer shall maintain appropriate records of the complaint and the steps taken to deal with the same. The Welfare Officer shall also inform the HR Director of the lodgement of complaints by a staff member and the Campus Manager in the case of a complaint by a student. The HR Director and the Campus Manager have the responsibility to follow up with the Welfare Officer to ensure all complaints have been thoroughly investigated following the due process. If the Welfare Officer is the subject of the complaint the complaint shall be referred to the Campus Manager in the case of students or the HR Director in the case of staff. If the Campus Manager is the subject of the complaint it should be referred to the HR Director in the case of staff and the Director of Administration and Student Services in the case of students.

In the case of any form of physical assault or threats of violence or other forms of menacing behaviour the complaint should be treated as emergency and reported to the police or appropriate law enforcement agencies while taking immediate action to support the victim. In all such cases the critical incident form should be completed while ensuring appropriate steps are taken to preserve the relevant evidence.

## **9. Internal complaint**

Any person who believes they have been harassed (the complainant) should:

- if comfortable to do so, inform the alleged harasser the behaviour is offensive, unwelcome, against the College policy and should stop.
- make a note of the date, time and location of the incident/s.
- if not comfortable to confront the alleged harasser or if the unwelcome behaviour continues, report the incident to the Welfare Officer or the Campus Manager or the HR Director or their nominee if the Welfare Officer is not available.
- if this is inappropriate, speak to other senior executives at CHS, including Director of Administration and Student Services, Director of Studies, Dean or CEO.

CHS will follow the procedures set out below to investigate all complaints lodged with the College. The complainant has the right to request that the process be discontinued at any time.

## **10.Complaints Procedures**

When a complaint is received, CHS will:

- obtain and record a full, step-by-step account of the incident/s
- ensure that the College process for handling the complaint is understood
- ascertain the complainant's preferred outcome, e.g. an apology, the behaviour to cease, a change in working arrangements, escalation
- agree on the next step: informal resolution or formal investigation
- keep a confidential record of all details of this discussion and subsequent steps in the process.

### **10.1. Informal resolution**

Where a complainant has chosen informal resolution, following an informal process the Welfare Officer will:

- inform the alleged harasser of the complaint and provide an opportunity for them to respond
- ensure both parties understand their rights and responsibilities under CHS's policy
- if possible, mediate an outcome that is satisfactory for the complainant
- ensure that confidentiality is maintained
- follow up to ensure the behaviour does not re-occur

### **10.2. Formal investigation**

The formal complaint procedure involves a formal investigation of the complaint that is submitted in writing. Formal investigations may be conducted by a person appointed by the CEO or an independent investigator from outside CHS (appointed by the CEO).

If a formal investigation is requested by the complainant, or where a criminal offence may have been committed or if an informal resolution fails, the Welfare Officer will escalate the matter to the HR Director in the case of staff or the Campus Manager in the case of student complaints or their nominee, who will bring the matter to the attention of the CEO who will appoint a person who has not been associated with the case to investigate the complaint and report back to the CEO. The following process shall be applied by the Investigator:

- afford natural justice to all involved
- separately interview all directly concerned
- separately interview witnesses
- keep records of the interviews and investigation
- ensure confidentiality and minimise disclosure
- make a determination as to whether there is sufficient evidence that a reasonable person could conclude, on the balance of probabilities (i.e. it's more likely than not), that an incident/incidents of sexual harassment or bullying or discrimination as defined by the legislation has occurred
- in such a case, determine appropriate action, which may include a change of duties for the harasser, change to working arrangements or, where the incidents were frequent and/or severe, dismissal, and or reporting of the matter to the police or appropriate agencies
- where it cannot be determined that an incident/incidents of harassment or bullying or discrimination as defined by the legislation has occurred, the Investigator may still recommend taking actions to ensure it does not occur and the College environment remain free from intimidation or bullying but these actions should not prejudice any party. The relevant College officer shall also continue to closely monitor the situation and provide support to the victim where required
- the Investigator needs to ensure that the action recommended meets the needs of the complainant and the College.

In the case of staff's complaints, the HR Director will discuss the outcomes with the complainant to ensure that needs are met, where appropriate. In the case of student complaints, the Welfare Officer or the Campus Manager will discuss the outcomes with the complainant and advise them of their rights in terms of lodging an external complaint.

## **11. External Complaint**

If any of the parties are not satisfied with the manner in which the complaint has been handled or the outcome of the complaint process, they can arrange to escalate the issue to the CEO. The CEO may require that the complaint handling process and/or the outcome be reviewed by a second independent investigator. If a review is undertaken, the decision of the review will be deemed final.

The College will make every effort to resolve issues in-house wherever possible. Staff and students can seek the assistance of an outside agency if they feel that their complaint has not been adequately addressed.

Contacts for outside agencies

- Australian Human Rights Commission Toll Free: 1300 656 419
- Anti-Discrimination Board (NSW) Toll Free: 1800 670 812
- Equal Opportunity Commission (VIC) Toll Free: 1800 134 142
- Equal Opportunity Commission (SA) Toll Free: 1800 188 163
- Anti-Discrimination Commission (TAS) Toll Free: 1300 305 062
- Equal Opportunity Commission (WA) Toll Free: 1800 198 149
- Anti-Discrimination Commission (NT) Toll Free: 1800 813 846
- Anti-Discrimination Commission (QLD) Toll Free: 1300 130 670

## **12. Variations**



CHS reserves the right to vary, replace or terminate this policy from time to time.

## 13. Records

Records associated with this policy will be maintained according to the **Records Management Policy** and **Record Retention and Disposal Schedule**.

## 14. Related Documents

This policy should be read in conjunction with the:

- CHS Sexual Harassment Policy & Procedures
- Student Code of Conduct
- CHS HR Manual
- CHS Student Grievance and Appeals Policy
- CHS Student Non-Academic Misconduct Policy & Procedures
- CHS Student Misconduct Committee Terms of Reference
- CHS Equity and Diversity Policy & Procedures

## 15. Related Legislation

Australian Federal Acts:

- Australian Human Rights Commission Act 1986
- Age Discrimination Act 2004
- Australian Human Rights Commission Act 1986
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984.

State Legislations:

- Australian Capital Territory – Discrimination Act 1991
- New South Wales – Anti-Discrimination Act 1977
- Northern Territory – Anti-Discrimination Act 1996
- Queensland – Anti-Discrimination Act 1991
- South Australia – Equal Opportunity Act 1984
- Tasmania – Anti-Discrimination Act 1998
- Victoria – Equal Opportunity Act 2010
- Western Australia – Equal Opportunity Act 1984