

Portfolio	People and Culture	Ref. No.	POL-5513
Department	People and Culture		
Title	Equal Opportunity and Acceptable Workplace Behaviour		

1. PURPOSE AND SCOPE

The Royal Australasian College of Surgeons (RACS) is committed to equality of opportunity ensuring that surgical and non-surgical working and training environments are comfortable and safe for all, free from discrimination and harassment, sexual harassment, bullying, stalking, violence, vilification and victimization.

The policy sets out unacceptable behaviour and details what is required of all RACS people based in both Australia and New Zealand including:

- employees
- Fellows
- trainees
- Specialist International Medical Graduates (SIMG)
- surgeons performing RACS business whether in a paid or unpaid capacity
- contractors/consultants
- program volunteers
- skills faculty (e.g. directors, instructors and coordinators)
- sub-contractors involved in program delivery and
- Council and committee members.

This policy applies to surgical and non-surgical workplaces, training environments as well as work-related interactions outside of standard hours in unpaid time.

This means that:

- all RACS people are to be treated in a fair and equitable manner regardless of personal attributes or characteristics (e.g. sex, race, pregnancy, disability, sexual orientation, religious or political beliefs - refer to full list of protected personal attributes and characteristics under Discrimination below)
- RACS requires that all work and training environments are free of discrimination, and harassment, sexual harassment, bullying, stalking, violence, vilification and victimization. Behaviour of this nature will not be tolerated under any circumstance. For any RACS person involved in RACS activities to engage in such behaviour may constitute a breach of the Code of Conduct (surgical), the Workforce Conduct Policy, the Training Agreement or the SIMG Agreement
- with respect to employment and training situations, RACS in proven cases can take disciplinary action against offending parties covered by this policy.

2. BACKGROUND

In accordance with legislation RACS is committed to promoting acceptable behaviour in all surgical and non-surgical workplaces, during RACS events and activities including training environments.

This policy applies to all RACS locations (including in Australia and New Zealand) and it is noted that while there is some slight differentiation between legislative requirements this policy articulates best practice.

RACS is committed to ensuring a comprehensive understanding of the requirements of this policy and the need for each person it covers to understand their individual responsibilities.

3. BODY OF POLICY

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RACS is committed to:

- promoting acceptable behaviour in all surgical and non-surgical workplaces, during RACS events and activities including training environments that are free from unlawful and otherwise unacceptable behaviour where all are treated with dignity, courtesy and respect
- ensuring policies about unlawful and other unacceptable behaviour and the RACS complaint handling process are available
- promoting professional standards of behaviour at all times consistent with the RACS' Code of Conduct (Surgical) and the Workforce Conduct Policy
- encouraging the reporting of behaviour that breaches this Policy
- prompt and confidential action when complaints and concerns are raised

3.1 Merit

Equal Opportunity obligations in employment related decisions are underpinned by the principle of merit. RACS will ensure the collection of unbiased information and objective assessment on the basis of skill, qualifications, experience and aptitude for recruitment and selection, promotion, training, job realignment, decisions pertaining to restructures and the determination of terms and conditions.

3.2 Discrimination

It is 'direct discrimination' to treat a person with an identified or assumed personal attribute or characteristic protected in legislation, more or less favourably. It is 'indirect discrimination' when a policy, rule, practice or arrangement that appears neutral, is applied in the same way for everybody, and the effect is unreasonable disadvantage for a person with a personal attribute or characteristic protected in legislation.

Unlawful discrimination can apply to any aspect of the employment relationship, including recruitment, selection for employment, treatment during employment, promotion, employee benefits, conditions of employment, remuneration, transfer, discipline, training, work environment, supervision, and termination of employment. This policy also applies to educational and training environments, RACS Activities as well as the provision of goods and services.

The equal opportunity legislation of the Commonwealth of Australia, the States and Territories of Australia, and New Zealand is underpinned by the same principles. The collective list of protected personal attributes and characteristics under State and Federal legislation in Australia and in New Zealand is as follows:

- age
- being affected by domestic violence
- carer status
- childbirth and breastfeeding
- disability, impairment, assistance animals, companion persons or equipment
- employment status or activity
- family status and responsibilities
- irrelevant medical record
- irrelevant criminal record and spent criminal history
- lawful sexual activity
- marital, domestic relationship or relationship status
- parenthood or parental status
- physical features

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- pregnancy and potential pregnancy
- political belief, conviction, affiliation or activity
- profession, trade, occupation or calling
- race, colour, ethnicity, nationality, descent, immigrant status or place of origin
- religious or ethical belief, conviction, affiliation or activity
- sex (including gender identity)
- sexual orientation
- transgender, gender identity, gender history, intersex or transsexual status
- trade union or professional association membership and industrial activity (including claiming or helping others to claim a benefit under an employment agreement, or taking or intending to take employment relations education leave); and
- association with a person who is identified with or assumed to have any of the above personal attributes or characteristics.

It can be unlawful to ask questions of (or about) a job applicant with the intention, or that indicates an intention, to discriminate on one of the above grounds.

3.3 Harassment

Harassment is a form of discrimination. It is uninvited and unwelcome behaviour that offends, humiliates or intimidates a person on the basis of a legally protected personal attribute or characteristic. It can be overt or covert, physical, verbal or written material including social media comments, video or images.

A single incident that is based on or targets a legally protected personal attribute or characteristic can amount to harassment. The intent or motive behind the behaviour is irrelevant – it is the impact and the nature of the behaviour that are assessed. The reasonable person's test is applied.

3.4 Sexual Harassment

Sexual harassment is against the law. Sexual harassment is uninvited and unwelcome behaviour of a sexual nature, that offends, humiliates or intimidates a person or a group. A single incident of unacceptable behaviour of a sexual nature can constitute sexual harassment. The reasonable person's test is applied.

Sexual harassment can be overt or covert, physical, verbal or written material including social media comments, video or images. It can involve:

- behaviour that is accompanied by a direct or implied threat, benefit or promise. This type of sexual harassment is sometimes termed "quid pro quo" harassment or "sexual blackmail" because compliance is demanded in return for employment advantages or the avoidance of employment detriment;
- physical contact attempts at intimacy, verbal comments, jokes, inappropriate objects, propositions, verbal commentaries about an individual's physical appearance, questions or insinuations about a person's partner or their sexual or private life, unnecessary touching, and inappropriate gestures and leering,
- the display, distribution, or online posting or accessing offensive material. This includes material accessed from the internet or sent electronically irrespective of the venue or who owned the equipment or the time of day;
- behaviour not directed at an individual, that creates a sexually charged or permeated working environment or a sexually hostile environment; and
- behaviour that would also be an offence under the criminal law. For example, physical assault, indecent exposure, sexual assault, rape, stalking or obscene communications

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via phone, text, the internet or social media activity.

The intent or motive behind the behaviour is irrelevant – it is the impact and the nature of the behaviour that are assessed. The test is how the conduct in question was perceived and experienced by the recipient and whether it was reasonable to expect that the recipient would have felt offended, humiliated or intimidated. Sexual harassment does not have to be repeated or continuous to be against the law.

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

3.5 Racial Harassment

Racial harassment is against the law and is constituted by the use of language, whether written or spoken, or visual material, or physical behaviour that, on the basis of a person's race, colour, or ethnic or national origins:

- directly or indirectly expresses hostility against, or brings the person into contempt or ridicule, and
- is hurtful or offensive (even if they don't specifically express that offense to RACS or the harasser) and
- the behaviour it is so significant or repeated that it has a negative effect on the person's employment, job performance or job satisfaction.

The person doing the harassment doesn't have to be intending to racially harass the other person for the behaviour to be racial harassment. Racial harassment is found in the results of a person's behaviour, rather than in their express intentions.

3.6 Bullying

Bullying is unreasonable behaviour that creates a risk to physical and mental health and safety. It is behaviour that is repeated over time or occurs as part of a pattern of behaviour. "Unacceptable behaviour" is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine, isolate, intimidate, abuse or threaten the person towards whom the behaviour is directed.

Bullying behavior could include:

- aggressive, abusive or demeaning behaviour including posturing and encroaching on somebody's personal space, or swearing or yelling
- belittling, degrading or humiliating comments, gestures or jokes
- spreading misinformation or malicious rumours
- interfering with a person's property, work or work equipment
- displaying offensive material
- repeatedly assigning meaningless tasks unrelated to the job
- repeatedly setting tasks that are unreasonably below or beyond a person's skill level
- repeatedly taking credit for another person's work
- deliberately changing work rosters to deny leave to inconvenience a person
- deliberately withholding information that is vital for effective work performance (including exclusion from team meetings or activities).

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Workplace tensions arise from time to time. Low level tension, one-off instances of rudeness and reasonable management action carried out in a reasonable manner do not constitute bullying. Reasonable management action can include providing instruction on how and when work is to be done, job realignment to meet operational needs, requests for medical clearances, performance management, warnings and disciplinary action.

3.7 Stalking

Stalking is a form of bullying. It is behaviour that arouses apprehension and fear. It is intentional repeated behaviour, and obsessive attention, that creates a risk to health and safety.

Stalking can be following, loitering or repeatedly watching someone in person. While work-related it is often perpetrated beyond work hours and can constitute criminal conduct.

Examples of stalking could include –

- repeated unnecessary phone calls, text messages, voice messages or emails
- social media activity that is intrusive, of concern and unnecessarily excessive
- surveillance, spying or taking vision or photographs without permission
- interfering with property, or the delivery of unwanted messages, items and gifts, or
- threatening a person or performing abusive or offensive acts in their presence.

Cyber-bullying is a form of stalking. It is obsessive attention and consistent online abuse that demeans, undermines and diminishes self-worth. While work-related it is often perpetrated beyond work hours and can constitute criminal conduct. Examples of cyber-bullying could include –

- untoward negative interactions via social media platforms or during online chat
- untoward negative comments via group texts, applications or group emails
- setting up fake social media profiles that undermine and humiliate, or
- the posting of comments, photographs or vision that abuse, degrade, embarrass or encourage self-hate and self-harm.

3.8 Violence

Violence at work and in work-related situations covers a range of challenging and aggressive behaviour that places physical and mental health and safety at risk. A single incident where a person is abused and threatened, assaulted or attacked can constitute criminal conduct. Violence at work and in work-related situations can include –

- interfering with equipment or uniforms / safety clothing while a person is doing their job
- verbal threats to cause grievous bodily harm, to maim or to kill
- throwing objects, or equipment at a person
- attacking a person with a weapon or a makeshift weapon
- locking a person in a confined space, or holding them against their will, and
- pushing, kicking, striking, punching, biting, spiking a drink, or other intentional forms of physical assault.

3.9 Vilification

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Vilification is behaviour that incites harm, hatred, serious contempt or severe ridicule for an individual or a group based on a personal attribute. It is behaviour that takes place in a public space, such as a hospital foyer, a playground, on radio, a speech or online via a blog. While different jurisdictions make different types of vilification unlawful, any conduct that vilifies is considered unacceptable in a professional environment. Examples of prohibited behaviour include vilification on the basis of race, religion, sexual orientation and disability.

3.10 Victimization

Victimization is unlawful. Victimization occurs when a person is subjected to or threatened with any form of detriment or punishment for raising a complaint, providing information about a complaint, or otherwise being involved in the resolution of a complaint. Victimization can include reprisals, discrimination or harassment, bullying and intimidation.

4. RESPONSIBILITIES

All RACS people have the responsibility to:

- comply with this policy
- observe standards of equity and fairness when engaging with colleagues and others know to them through their work, training and RACS activities
- speak up about unacceptable behaviour ensuring that they do not allow, permit, aid, encourage, foster, reward, incite or instruct any form of unacceptable behaviour
- offer support to any person subjected to unacceptable behaviour, informing them of where they can get help and advice, and
- raise concerns about breaches of this policy via appropriate channels

In addition, those tasked with overseeing others, including trainers, supervisor and managers must ensure that:

- workplace and work-related environments are monitored,
- acceptable standards of behaviour are explained and those they oversee know where to get help and advice if they have concerns or wish to make a complaint
- appropriate behaviour at work and in work-related environments is role modelled
- issues of concern are treated seriously, and any knowledge of policy breaches are acted on, regardless of whether or not a complaint has been made
- a person who raises concerns has copies of all relevant RACS policies
- advice from People and Culture is sought when employment law matters are raised
- established RACS policies and processes are followed when dealing with concerns and complaints and
- the environment is free of victimization or any form of reprisal if a concern is raised or a complaint has been made

Irrespective of role or employment status every person is accountable for their own behaviour. The onus rests with each individual to keep their own behaviour in check, and to be sensitive to issues of diversity. An individual can be held legally liable by an external court or tribunal for behaviour that amounts to unlawful discrimination, harassment, sexual harassment, bullying, stalking, violence, vilification or victimization.

4.1 Disclosable Relationships

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Whilst RACS does not intrude into the personal relations of its people, it is essential to avoid the potential for abuse of power within work and training environments. Relationships are not appropriate where the Fellow, Trainee, SIMG, employee or volunteer is also in a dependent professional relationship with the person with whom they are having a personal or sexual relationship.

An individual who works with their partner or becomes involved in a consensual relationship with a work colleague, or a person known to them through their work, is required to personally ensure that their conduct is professional at all times. Further there is a requirement to ensure that personal relationships do not disadvantage or negatively impact others in the workplace or an education and training environment. If a consensual relationship ends and one party attempts to rekindle the relationship at work, or in a work-related environment, unwelcome behaviour can constitute sexual harassment.

As set out in the RACS **Conflict of Interest Policy** all personal and sexual relationships between RACS people must be disclosed to ensure that decisions relating to the recruitment/appointment and management of RACS people are transparent, based on merit, without any real, potential or perceived conflict of interest. A failure to disclose a disclosable relationship, during recruitment or while working with RACS may lead to disciplinary action including termination of employment or contract. Employees, volunteers, consultants or contractors must disclose disclosable relationship to their manager. Council and Committee members must declare disclosable relationships to their relevant chairs. All other Fellows, Trainees and SIMGs must declare disclosable relationships to the Executive Director of Surgical Affairs, or New Zealand Surgical Advisors. All disclosures will be recorded and treated confidentially in accordance with the Privacy of Personal Information Policy.

5. FEEDBACK AND COMPLAINTS

Where the conduct complained of has occurred in the workplace or is work-related, a complaint should be made to the appropriate employer. RACS' People and Culture (i.e. human resources department) can provide information about complaints and resolution processes in addition to counselling and support for employees.

The RACS Complaints Policy sets out the process for making a complaint about the behaviour of any Fellows, Trainees or SIMGs during the course of selection, training and assessment, clinical practice, medical research and while acting on behalf of RACS as a RACS Nominee, or part of a Committee or Training Faculty.

Complaints may also be lodged with an external body relevant to the issue such as the Australian or New Zealand Human Rights Commission, a State or Territory Equal Opportunity or Anti-Discrimination Commission, workers compensation authorities in Australian States and Territories, the Accident Compensation Corporation of New Zealand, the Employment Relations Authority (ERA) New Zealand or the Fair Work Commission, or Police Service in the relevant jurisdiction

6. ASSOCIATED DOCUMENTS

Code of Conduct (surgical)

Workforce Conduct policy (employees)

Prevention of sexual exploitation, abuse and harassment policy (Global Health)

Complaints Handling policy

Privacy of Personal Information policy

Social Media Policy

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Conflict of Interest regulation

Responsible Approach to Alcohol policy

7. Legislation

Work Health and Safety / Occupational Health and Safety legislation in all states and territories of Australia and health and safety legislation in New Zealand.

Equal opportunity and anti-discrimination legislation in all Australian jurisdictions and New Zealand including:

- Racial Discrimination Act 1975 (Cth);
- Sex Discrimination Act 1984 (Cth);
- Disability Discrimination Act 1992 (Cth);
- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986(Cth)
- Human Rights Act 1993 (NZ)
- Fair Work Act 2009 (Cth) (discrimination and bullying in employment)
- Employment Relations Act 2000 (NZ) (discrimination in employment)
- 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 and Racial and Religious Intolerance Act 2001
- Western Australia – Equal Opportunity Act 1984.

8. FURTHER RESOURCES

Fair Work Ombudsman Australia website www.fairwork.gov.au

Australian Human Rights Commission website www.humanrights.gov.au

New Zealand Human Rights Commission www.hrc.co.nz

9. GENERAL PRINCIPLES REGARDING WORKPLACE POLICIES

- this policy provides guidelines with which all employees of RACS are required to comply, unless otherwise provided
- the policies are not contractually binding on RACS and do not form part of an employee's

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POLICY

ROYAL AUSTRALASIAN COLLEGE OF SURGEONS

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terms and conditions of employment

- RACS reserves its right to vary, amend and/or revoke the policies, as and when it deems fit, at RACS' absolute discretion
- RACS will notify employees of any significant amendments to its workplace policies, via Pulse.

Parts of this policy have been adapted from the Australian Human Rights Commission Sexual Harassment Code of Practice © Australian Human Rights Commission 2015

Approver-Authoriser Council

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