

<b>Division</b>	<b>Relationships &amp; Advocacy</b>	<b>Ref. No.</b>	<b>REL-GOV-028</b>
<b>Department</b>	<b>Governance</b>		
<b>Title</b>	<b>Discrimination, Bullying and Sexual Harassment</b>		

## 1. PURPOSE AND SCOPE

The Royal Australasian College of Surgeons (the College) is committed to equality of opportunity and ensuring that the surgical working and training environment is free from discrimination, bullying and sexual harassment.

The purpose of this policy is to describe the behaviour expected of all Fellows, Trainees and International Medical Graduates, volunteers or others in College activities, training programs and within the various workplaces and training environments in which they are located.

This means that:

- Fellows, Trainees and International Medical Graduates are to be treated in a fair and equitable manner regardless of gender, marital status, pregnancy, colour, race, ethnicity, disability, sexual preferences, religious and political beliefs (refer to protected attributes in Discrimination section below).
- The College will encourage work and training environments free of bullying, sexual harassment and unlawful discrimination. It should be understood that these unreasonable behaviours will not be tolerated under any circumstances and that for a Fellow, trainee or IMG to engage in these behaviours will be a breach of the Code of Conduct, the Training Agreement or the IMG Agreement as the case may be.
- In the workplace, it is the employer who can undertake employment-based disciplinary action against the employee, not the College.

## 2. KEYWORDS

Discrimination, harassment, sexual harassment, bullying, equal opportunity, victimisation, Fellows, Trainees, International Medical Graduates, IMGs, complaint

## 3. BACKGROUND

In accordance with legislation the College is committed to promoting appropriate surgical workplace and training environment behaviour. However, in addition to the workplace, professional and appropriate behaviour is expected of all Fellows, Trainees, IMGs and volunteers or others involved in College activities in all circumstances.

Bullying is a workplace issue, as defined in legislation. In the event that a Trainee, International Medical Graduate or Fellow is bullied in the workplace, the employer has primary responsibility. However, the issue may be referred to the College through its complaints process where it is alleged that a Fellow, trainee or IMG has engaged in discrimination, bullying or sexual harassment whether in the workplace or otherwise in the practice of surgery.

## 4. BODY OF POLICY

The College commits to:

- Promoting working and training environments free from unlawful discrimination, bullying and sexual harassment where all are treated with dignity, courtesy and respect;
- Ensuring that policies about bullying, sexual harassment and unlawful discrimination and the College's complaints process are available;
- Promoting appropriate standards of conduct at all times consistent with the College's Code of Conduct.
- Encouraging the reporting of behaviour which breaches this Policy;

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- Maintaining a centralised complaints process and liaising with other entities involved in a complaint;

The definitions contained herein are based on Australian and New Zealand legislation.

#### 4.1. Bullying

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

There are two broad categories of bullying:

1. **Direct bullying** – behaviour that is overt and usually involves conduct directed at a person to belittle or demean them. Examples include:
  - Aggressive and intimidating behaviour
  - Belittling, degrading or humiliating comments
  - Spreading misinformation or malicious rumours
  - Interfering with a person's property or work equipment
  - Displaying offensive material (e.g. pornography)
2. **Indirect bullying** – behaviour that excludes or removes benefits from a person. Examples include:
  - Assigning meaningless tasks unrelated to the job
  - Setting tasks that are unreasonably below or beyond a person's skill level
  - Deliberately changing work rosters to inconvenience particular employees
  - Deliberately withholding information that is vital for effective work performance.

#### 4.2. Discrimination

Discrimination means treating a person with an identified attribute or personal characteristic as set out in legislation less favourably than a person who does not have the attribute or personal characteristic.

This includes unlawful discrimination in 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. The legislation also applies to educational environments.

The Commonwealth of Australia, the States and Territories of Australia, and New Zealand all have broadly similar equal opportunity legislation covering grounds of unlawful discrimination. These include:

- gender
- transgender, gender history and transsexual status
- pregnancy and potential pregnancy
- childbirth or breastfeeding
- marital status
- sexual orientation
- lawful sexual activity
- disability
- race (including colour, nationality, descent and origin)

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- physical features
- age
- carer status and family responsibilities
- religious belief or activity
- political belief or activity
- trade union membership and industrial activity
- irrelevant criminal record; and
- association with a person who is identified by reference to any of the above attributes

#### 4.2.1 Harassment

Harassment is a form of discrimination. It is any type of unwanted behaviour that offends, humiliates or intimidates a person, and targets them on the basis of a characteristic covered by anti-discrimination law, e.g. gender, race, ethnicity or disability, etc., In general, harassment is any behaviour that is:

- unwelcome, not asked for and not returned;
- likely to humiliate (put someone down), seriously embarrass, offend or intimidate (threaten or scare) someone; and
- based on a personal characteristic (or family or friend's characteristic) protected by law.

A single incident can amount to harassment. Intent or motive is irrelevant – it is the impact and the nature of the behaviour that is assessed. The reasonable person's test is applied.

#### 4.3. Sexual Harassment

Sexual harassment is against the law. Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. It can be physical, verbal or written. 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, verbal comments, jokes, propositions, graphic verbal commentaries about an individual's body, questions or insinuations about a person's sexual or private life, and unnecessary touching of an individual or the display of offensive material. This includes offensive material accessed from the internet or sent electronically;
- Behaviour which creates a sexually permeated or hostile working environment; and
- Behaviour which would also be an offence under the criminal law. For example, physical assault, indecent exposure, sexual assault, stalking or obscene communications.

The intention or motive of an alleged harasser is not relevant when determining whether the behaviour was unwelcome. The test is how the conduct in question was perceived and experienced by the recipient rather than the intention behind it. 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.

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#### 4.4. Victimisation

Victimisation is unlawful. Victimisation 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.. Victimisation includes reprisals, bullying or intimidation.

#### 4.5. Other Unacceptable Behaviours

There are other various unacceptable behaviours including vilification, cyber-bullying, stalking and violence. These are described in the RACS Unacceptable Behaviours Fact Sheet.

#### 4.6. Individual Responsibility

While the College does not intrude into the personal relations of Fellows, Trainees or International Medical Graduates, sexual relationships are not appropriate where the Fellow, Trainee or IMG is also in a dependent professional relationship with the person with whom they are having a sexual relationship. This is due to the potential for abuse of power within the training and work environment, and the potential to affect the professional progression of those involved.

### 5. CONDUCT

#### 5.1. Fellows and others involved in College activities (e.g. Course Facilitators)

- a. Shall not unlawfully discriminate against, bully or sexually harass:-
  - an employee of the College;
  - a contractor of the College;
  - a member of the public;
  - another Fellow;
  - a Trainee or IMG;
  - any other person within their workplace.
- b. Shall not victimise another person, or subject a person to any detriment, because that person:-
  - Has made a complaint under their employer's or College Policies;
  - Has brought proceedings under their employer's or College Policies;
  - Has, or proposes to, give evidence or information in connection with proceedings, under their employer's or College Policies.

#### 5.2. Trainees and IMGs

- a. Shall not, in the workplace, in the course of College activities, or in training, unlawfully discriminate, bully or sexually harass:-
  - an employee of the College;
  - a contractor of the College;
  - a member of the public;
  - a Fellow;
  - another Trainee or IMG,
  - any other person within their workplace

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- b. A Trainee or IMG shall not victimise another person, or subject a person to any detriment, because that person:-
- Has made a complaint under their employer's or College Policies;
  - Has brought proceedings under their employer's or College Policies;
  - Has, or proposes to give evidence or information in connection with proceedings, under their employer's or College Policies.

## 6. COMPLAINTS

Where the conduct complained of has occurred in the workplace, a complaint should be made to the employer in the first instance. The employer's human resources department can provide advice on the complaints and resolution process in addition to counselling and support. This should be the first port of call. The College's Complaints policy sets out the process for making a complaint to the College about the conduct of a Fellow, Trainee or IMG.

Complainants may also lodge a complaint with an external body relevant to the issue such as the Human Rights Commission, WorkSafe, or the Fair Work Commission.

## 7. ASSOCIATED DOCUMENTS

Code of Conduct

Complaints policy

Complaints User Guide

Faculty Charter (RACS Skills Courses)

IMG Misconduct policy

Sanctions policy

Trainee Misconduct policy

Unacceptable Behaviours Fact Sheet

### Legislation

Occupational health and safety legislation in all Australian jurisdictions and New Zealand

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

- *Equal Opportunity Act 2010 (Vic.);*
- *Racial and Religious Intolerance Act 2001 (Vic.);*
- *Racial Discrimination Act 1975 (Cth);*
- *Sex Discrimination Act 1984 (Cth);*
- *Disability Discrimination Act 1992 (Cth);*
- *Human Rights and Equal Opportunity Act 1995 (Cth)*
- *Human Rights Act 1993 (NZ)*

*Fair Work Act 2009 (Cth)* (discrimination and bullying in employment)

*Employment Relations Act 2000 (NZ)* (discrimination in employment)

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**Some further resources**

Fair Work Ombudsman Australia website [www.fairwork.gov.au](http://www.fairwork.gov.au)

Australian Human Rights Commission website [www.ahrc.gov.au](http://www.ahrc.gov.au)

[www.humanrights.gov.au](http://www.humanrights.gov.au)

New Zealand Human Rights Commission [www.hrc.co.nz](http://www.hrc.co.nz)

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

**Approver** Governance & Advocacy Committee  
**Authoriser** Council