1. PURPOSE AND SCOPE

The purpose of this policy is to ensure that the Royal Australasian College of Surgeons (the College) provides a working environment that is safe, without risk to health and free of inappropriate behaviours. This policy is based on various Australian state and federal and New Zealand legislative acts and the College will abide by state/country-specific laws regarding inappropriate behaviours.

The Occupational Health and Safety Act 2004 (Victoria) requires employers to ensure that they provide a working environment that is safe and without risk to health. This is the most comprehensive of the OH&S environments in the various jurisdictions in which the College operates and therefore the most appropriate.

The purpose of this policy is to describe human resource practice at the College and its position on bullying, harassment and inappropriate discrimination in relation to College staff.

2. KEYWORDS

Bullying, Inappropriate Behaviour, Discrimination, Equal Opportunity, Harassment, Sexual Harassment, Vilification, Victimisation.

3. BODY OF POLICY

The College is committed to providing a working environment where each employee feels respected, valued, recognised for their contribution and treated fairly. Any inappropriate behaviour, harassment or bullying whether it is verbal, physical or environmental is unacceptable and will not be tolerated. The College is committed to creating a working environment that is free from discrimination.

If an employee is subjected to inappropriate behaviour, including bullying, from a Fellow this would need to be addressed through the College’s policies. An employee should therefore approach their manager who will then consult with the Chief Executive Officer.

It is recognised that bullying has a negative effect on the health and safety of the workplace, including psychological safety, and the College acknowledges its duty to eradicate bullying as far as possible.

3.1. Definitions

3.1.1 Equal Opportunity

Equal Opportunity is the absence of discrimination or less favourable treatment in employment based on an attribute, such as a person’s sex, race, age or disability.

Equal opportunity applies to

- persons seeking employment with the College;
- determining who is offered employment and on what terms;
- access to opportunities for training, promotion and transfer;
- termination of employment.

3.1.2 Discrimination

Discrimination means treating a person with an identified attribute or personal characteristics less favourably than a person who does not have the attribute or personal characteristic.
There are two types of discrimination: direct and indirect.

**Direct Discrimination** is treating a person unfavourably because of an attribute or personal characteristic regardless of the discriminator’s motive and whether they are aware of the discrimination or consider the treatment unfavourable.

**Indirect Discrimination** occurs when an unreasonable rule, requirement or practice exists which appears neutral, but which has a discriminatory effect against a group of people of a particular race, sex or other equal opportunity legislative descriptor who cannot comply.

**Grounds of Discrimination**

State and federal legislation outline a list of characteristics protected by law against which discrimination is unlawful. In accordance with this legislation, discrimination at the College is prohibited on the following grounds:

- sex;
- marital status;
- pregnancy and potential pregnancy;
- race (including colour, nationality, national extraction, descent or origin);
- immigration;
- religious belief or activity;
- political belief or activity;
- disability and impairment (both physical and intellectual);
- trade union membership and industrial activity;
- sexual orientation;
- lawful sexual activity;
- transgender, gender history and transsexual status
- carer status and family responsibilities;
- physical features;
- irrelevant medical record;
- irrelevant criminal record;
- breastfeeding;
- age; and
- association with a person who is identified by reference to any of these attributes

### 3.1.3 Harassment
Harassment is any type of unwelcome behaviour that is based on one of the attributes covered by law, e.g. sex, race or disability etc., and which offends, humiliates or intimidates the person being harassed.

In general, harassment is any behaviour that is:

- not wanted, 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.

It could include:

- distributing offensive material such as racist posters;
- abuse or comments;
- humiliating initiation rites;
- bullying

Harassment is not just unlawful during working hours or in the workplace itself. The behaviour is illegal in any work related context, including conferences, work functions, office Christmas parties and social media.

3.1.4 Sexual Harassment

Sexual Harassment is defined as unwelcome sexual advances, request for sexual favours and other unwelcome conduct of a sexual nature, by which a reasonable person would be offended, humiliated or intimidated.

Sexual harassment may include, but is not limited to: leering, displays of sexually suggestive pictures, videos, audio tapes, emails & blogs etc. books or objects, sexual innuendo, sexually explicit or offensive jokes, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, pressure for sexual activity, persistent requests for dates, intrusive remarks, questions or insinuations about a person’s sexual or private life, unwelcome sexual flirtations, advances or propositions and unnecessary touching of an individual, molestation or physical violence such as rape.

Reciprocal relationships between people do not constitute sexual harassment as they involve choice and consent.

At some levels sexual harassment is a crime and where the College believes that a crime has been or might have been committed, it will report the matter to the police for investigation.

3.1.5 Bullying

Bullying is repeated unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

“Unreasonable Behaviour” is behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed; and
“Behaviour” includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.

“Risk to health or safety” includes risk to the mental or physical health of the employee.

Bullying behaviour includes, but is not limited to the following:

- Manipulation;
- Intimidation;
- Verbal abuse or insults;
- Belittling remarks;
- Offensive remarks or behaviour;
- Degrading remarks or behaviour;
- Unreasonable persistent criticism which is not part of the performance review process;
- Nit-picking and fault finding without justification;
- Verbal and physical abuse (for example shouting or throwing things);
- Isolation from colleagues;
- Withholding information employees need to perform their job;
- Setting of unachievable targets with the intent of causing employees to fail; and
- Taking credit for other people’s work and/or stealing ideas;
- Repeated failure to give credit where due;

Workplace Bullying includes physical abuse and psychological abuse. Violent behaviour is a highly objectionable form of workplace bullying. Note, however, that it can be manifested in more subtle ways that impact on the health and well-being of the victims of workplace bullying.

Behaviour will only be defined as bullying if a reasonable person observing the situation would consider it to be bullying. The ‘reasonable person’ is defined as an objective third party.

What is not bullying?

Genuine and reasonable disciplinary procedures, directions or performance related management are not bullying. All employers have the fundamental right to direct, monitor and control how work is done. For example comments which are objective and indicate observable deficiencies in performance or conduct do not constitute workplace bullying. Constructively delivered feedback or counselling is intended to assist employees to improve their work performance or the standard of their behaviour.

By contrast, comments unrelated to actual performance and an unnecessarily aggressive management style that is used to embarrass or
humiliate the employee may constitute bullying, especially when this behaviour occurs in conjunction with other bullying behaviours.

3.1.6 Vilification

Vilification is behaviour that conveys serious racial and religious intolerance through actions that seriously malign, abuse or derogate people or groups because of their racial or religious background. Actions can include intimidation, damage to property, graffiti, and expressions of hatred or contempt.

3.1.7 Occupational Violence

Occupational Violence is defined as any incident where an employer or employee is abused, threatened or assaulted in a situation relating to their work.

3.1.8 Victimisation

Victimisation is harassing someone or treating them unfairly because that other person:

- has asserted their rights under this policy or equal opportunity legislation;
- has made a complaint
- intends to provide information as a witness to any sexual harassment, vilification or discriminatory conduct;
- supports an individual(s) who intends to, or has made, a complaint under this policy or equal opportunity legislation; or
- is believed to have done or proposed to do any of the above.

3.2. Consequences of Inappropriate Behaviour

Employees found guilty of inappropriate behaviour could face one or more of the following consequences:

- Formal apology
- Counselling
- Transfer
- Demotion
- Dismissal
- Other, mutually agreed upon, arrangements
- Responsibilities

It is the responsibility of all staff to be familiar with this policy, to comply with it and to prevent inappropriate behaviour occurring in the first instance.

Additionally, as outlined in the Equal Opportunity Act 2010 (VIC), the College is required to take reasonable and proportional measures to eliminate discrimination, sexual harassment and victimisation as far as possible in the workplace.

3.2.1 All employees and contractors

This policy applies to everyone who works at the College in any capacity, whether full-time, part-time or casual, including temporary employees and...
contractors. The policy applies to the conduct of persons in the course of their employment:

- in the workplace (even outside normal working hours);
- during work activities (for example when dealing with external stakeholders);
- at work-related events (for example at conferences and work social functions).

It is the responsibility of all employees to involve themselves in the practical application of this policy in the course of their duties.

All employees have a responsibility to:

- comply with the College's Inappropriate Behaviour Policy; pursuant to relevant legislation,
- take reasonable care for the health and safety of themselves and anyone affected by their acts or omissions.
- make a colleague who may be experiencing or engaging in inappropriate behaviour aware of this policy
- advise a supervisor, contact officer, line manager, a Director or the HR Manager of any situations where they believe they or someone else are being subject to inappropriate behaviour.
- maintain confidentiality in accordance with this policy.

3.2.2 Managers and Supervisors

Specific responsibility falls upon management, supervisors and employees professionally involved in recruitment, employee administration and training. Managers and supervisors have a responsibility to:

- act appropriately themselves;
- monitor the workplace to ensure that acceptable standards of conduct are observed at all times;
- promote the College’s Inappropriate Behaviour Policy within their work area;
- treat all issues seriously and take immediate action to resolve the matter;
- refer complaints to another person if they do not feel that they are the best person to deal with the situation (e.g. if there is a conflict of interest or if the circumstances are particularly complex or serious).
- ensure that, as far as practicable, employees and contractors are provided with the necessary information, instruction, training and supervision in relation to the inappropriate behaviour policy.
- as far as practicable, ensure that clients and third parties do not engage in inappropriate behaviour.
- ensure that employees understand the nature of their role and responsibilities.
• gain awareness, training and skills in how to effectively manage their employees without resorting to inappropriate behaviour
• be aware and monitor their workplaces for warning signs of inappropriate behaviour
• where any of the warning signs are apparent, monitor the situation and, where necessary, investigate further to determine if inappropriate behaviour is occurring.

3.2.3 Risk Assessment
If a manager identifies that employees, contractors or third parties are exposed to potentially inappropriate behaviour they should conduct a risk assessment.

The purpose of the risk assessment is to determine the risks that need to be controlled and to assist in making decisions, in consultation with employees, about appropriate control measures.

3.3. Staff Contact Officers
Staff Contact Officers have a special role in assisting and supporting employees who believe that they have experienced inappropriate behaviours. Their role is to assist the individual staff member, enabling them to resolve their issues (e.g. in relation to harassment) through identifying options for stopping the offending behaviour.

If a complaint follows a formal step, the Staff Contact Officer can offer neutral support to the individual staff member, in the form of assisting and informing them of the due processes to be followed for resolution of the matter. Upon request, the Staff Contact Officer can attend but not participate directly in meetings and interviews as an agent of support.

3.4. Third parties
The prohibition against ‘inappropriate behaviours’ extends to all persons with whom employees come into contact in the course of their employment such as customers, visitors and service providers. This is a mutual obligation.

This policy has application with respect to the recruitment, selection and appointment of employees, the training and on-going development of staff, the management of employee performance, promotion, conduct, human resource policies and practices. The policy covers any actions or written or verbal statements made by employees whilst undertaking their assigned duties.

3.5. Liabilities
The College may be prosecuted for a breach of occupational health and safety legislation where it has failed to take practicable precautions to prevent the breach from occurring by and to employees, contractors, customers, visitors and members of the public.

Individuals engaging in some forms of inappropriate behaviour may be found guilty of a criminal offence. Very senior managers may also be found liable under occupational health and safety legislation if they fail to take care for their own safety or the safety of others.

As the area of occupational health and safety is a criminal jurisdiction, an individual found to have breached occupational health and safety legislation risks a hefty fine or imprisonment. They also risk termination.
4. ASSOCIATED DOCUMENTS

Issue Resolution regarding Inappropriate Behaviour in the Workplace Procedure
Discipline for Unsatisfactory Performance or Conduct Procedure
Cessation of Employment Policy

External Documents Available from the Human Resources Office:

- Occupational Health and Safety Act 2004 (Victoria)
- Commonwealth Model Work Health & Safety Act 2011
- Prevention of Bullying and Violence at Work Guidance Note (WorkSafe Victoria)
- Occupational Health, Safety & Welfare Act 1986 (South Australia) – Note Section 55A 2008 Amendment specifically referring to Bullying.
- Equal Opportunity Act 2010 (Victoria);
- Racial & Religious Intolerance Act 2000 (Victoria);
- Racial Discrimination Act 1972 (Commonwealth);
- Sex Discrimination Act 1984 (Commonwealth);
- Racial Hatred Act 1995 (Commonwealth);
- Disability Discrimination Act 1992 (Commonwealth);
- Human Rights & Equal Opportunity Act 1995 (Commonwealth)


Further information is available at the Australian Human Rights and Equal Opportunity Commission (AHREOC) website. The website contains a summary of the sexual harassment, human rights, anti-discrimination and equal opportunity legislation in Australia:
www.hreoc.gov.au

and from the New Zealand “Public Access to Legislation Project” web site: