



## Discrimination, Harassment and Bullying Policy

### 1. Purpose

Shearwater, the Mullumbimby Steiner School's Discrimination, Harassment and Bullying Policy sets out the relevant definitions, underpinning principles and the Schools' commitment to eliminating discrimination, harassment and bullying.

### 2. Scope

'School Management' refers to the Head of School, Business Manager, HR Manager, Early Childhood Coordinator, Primary School Coordinator, Secondary School Coordinator, and any other management position appointed by the Head of School.

This policy applies to all employees, students, parents, visitors, contractors, volunteers, stakeholders and members of the general community. Whether at the School premises, other School-related premises, or at School-related (social or otherwise) activity or events held outside the School premises. Where appropriate, instances of discrimination, harassment or bullying will be regarded as opportunities to improve quality, safety and compliance.

### 3. Policy Statement

Shearwater, the Mullumbimby Steiner School is an equal opportunity employer. This means that all staff members are treated according to merit and to principles of Equal Opportunity as set out in this policy, without reference to race, age, gender, marital status or any other factor not applicable to their position.

The School considers discrimination, harassment, bullying and victimisation unacceptable forms of behaviour that will not be tolerated under any circumstances.

Shearwater is committed to providing an environment which is safe and free of discrimination, harassment, bullying and victimisation for its staff members and students and others associated with its educational service, and will take all reasonable steps to prevent this form of unacceptable behaviour from occurring.

Discrimination, harassment and bullying is not only unacceptable, it is also unlawful in terms of the following State and Federal legislation:

- Australian Human Rights Commission HREOC Act 1992 (Cth);
- Anti-Discrimination Act 1977 (NSW);
- Anti-Discrimination Act 1991 (Qld);
- Sex Discrimination Act, 1984 (Cth);
- Racial Discrimination Act 1975 (Cth);
- Disability Discrimination Act 1992 (Cth);
- Human Rights and Equal Opportunity Commission Act 1986 (Cth);
- Fair Work Act 2009 (Cth);
- Fair Work Amendment Act 2013 (Cth);
- Age Discrimination Act 2004 (Cth);

- Gender Equality Act 2013 (Cth);
- Work Health & Safety Act 2012 (Cth).

The School Management have a legal and moral responsibility to ensure the Discrimination, Harassment and Bullying Policy is adhered to and to take appropriate action in circumstances where they become aware of existing or possible discrimination, harassment, bullying or victimisation at the School. The School Management will ensure all complaints are treated confidentially, seriously, sympathetically and investigated promptly having regard to principles of natural justice. Appropriate disciplinary action will be taken against anyone found to have breached this policy.

All employees must ensure that all existing or prospective staff, students, parents, contractors, visitors or any stakeholder or member of the general community associated with the School are treated equitably and not subject to discrimination, harassment, bullying or victimisation.

No person will be penalised or disadvantaged in any way as a result of raising concerns or complaints relating to discrimination, harassment, bullying or victimisation.

## **4. Definitions**

### **4.1. Discrimination**

**Direct discrimination** occurs when a person is treated less favourably than another person, simply because of certain attributes such as their:

- race, colour, ethnic or ethno-religious background, or nationality;
- sex including pregnancy, breastfeeding;
- marital status, including de facto;
- transgender and gender identity;
- disability/impairment;
- sexual orientation;
- age;
- industrial activity/inactivity;
- political belief or activity;
- religious belief or activity;
- physical features;
- parent or carer responsibilities.

**Indirect discrimination** can occur when a requirement which at first glance seems fair, in fact operates to the detriment of a particular group of people because of characteristics of that group, such as age, family circumstances or gender.

Shearwater is committed to preventing unlawful discrimination in its practices, and therefore all of the Schools' decisions are based only on a person's capacity to perform the job and the needs of the School.

## **4.2. Harassment**

Harassment is unwelcome and unreciprocated behaviour (pertaining to certain protected attributes described under equal opportunity legislation) that result in a person feeling offended, intimidated or humiliated.

In the event that the unwelcome behaviour is unrelated to a protected attribute (as described in equal opportunity legislation), the behaviour may be regarded as a risk to the health and safety of a person in terms of Work Health and Safety obligations.

Harassment can be persistent, unwanted attention, but a single incident can also be harassment if sufficiently serious. Harassment can be directed at an individual or group of people directly or indirectly. It may involve inappropriate actions, behaviour, comments or physical contact.

Harassment is determined by reference to the nature and consequences of the behaviour, not the intention of the initiator, and occurs in circumstances where a reasonable person would have expected the behaviour to be offensive, humiliating or intimidating.

## **4.3. Sexual Harassment**

Sexual harassment in a School-related environment or workplace is prohibited under State and Federal legislation. In addition, Shearwater considers sexual harassment an unacceptable form of behaviour that will not be tolerated under any circumstances, whether the employee is at a School or attending any other School-related or associated activity (such as school camps and excursions, extra curricular programme, professional development activities, school events and festivals).

Under the Commonwealth Sex Discrimination Act 1984, a person sexually harasses another person by:

- a) making an unwelcome sexual advance or an unwelcome request for sexual favours; or
- b) engaging in other unwelcome conduct of a sexual nature, in circumstances in which a reasonable person would have anticipated the person being harassed would be offended, humiliated or intimidated.

It is important to note that it is irrelevant at law as to whether or not the inappropriate behaviour was intended.

Sexual harassment is not behaviour which is based on mutual attraction, friendship or respect. If the interaction is consensual, welcome and reciprocated it is not sexual harassment. In such circumstances however, staff members shall not engage in any form of behaviour, which though it might be consensual, could interfere with the School's environment or offend other staff members.

Sexual harassment may involve:

**physical contact** – e.g. touching, embracing, sexual assault and rape;

**verbal comments** – e.g. innuendo, smutty jokes, suggestive comments about someone's body or appearance, persistently inviting someone out, unwelcome questions about a person's private life, requests for sexual favours; and

**non-verbal actions** – e.g., displays of sexually graphic material, offensive body and hand movements, suggestive letters, email and drawings, indecent exposure and stalking.

Shearwater recognises that comments and behaviour which do not offend one person can offend another and that individuals may react differently. The School has an expectation that this right is generally respected.

#### **4.4. Bullying**

Bullying is repeated and unreasonable behaviour directed at a worker/s which creates a risk to health and safety.

Overt and covert bullying refers to activities that create an unsafe environment of fear through acts such as:

- verbal abuse;
- deliberately excluding or isolating staff members;
- spreading rumours or innuendo about someone;
- interfering with someone's personal property or work equipment;
- sabotaging someone's work;
- using physical intimidation or fear;
- belittling a person's opinions, or dismissing a person's contribution;
- humiliating someone through cruelty, degradation, ridicule, sarcasm or insults;
- excessively scrutinising work; and/or
- forcing a staff member to undertake demeaning tasks.

Bullying is not an acceptable part of the School culture. Furthermore, bullying is a significant health and safety consideration if it occurs at the School or at School-related events or activities, as it can cause harm to a person's health and wellbeing, both physical and psychological.

However, any reasonable action by School Management to fulfil its obligations and responsibilities to manage the School, will not be considered bullying. For example, bullying is not:

- setting of reasonable workplace goals and standards, including work deadlines;
- allocation of work in compliance with systems and standards;
- reasonable supervisory practices;
- reasonable work performance assessment, informal counselling, performance management and disciplinary practices;
- ensuring School policy and procedures are followed.

#### **4.5. Victimisation**

Victimisation may occur when a person is threatened or treated in a detrimental way if they:

- consider/make a complaint;
- act as witness;
- support someone who has made a complaint.

### **5. Responsibilities**

#### **5.1. Responsibility of School Management**

The School Management are accountable to ensure compliance with Shearwater, the Mullumbimby Steiner School's Discrimination, Harassment and Bullying Policy and should do the following:

- monitor the School environment to ensure that acceptable standards of conduct are observed at all times;
- model appropriate behaviour themselves;
- promote the School policy;
- assist any person described in the scope of this policy who feels subjected to any form of discrimination, harassment and bullying to respond to their situation;
- treat all complaints seriously and take immediate action to resolve the matter;
- encourage people to follow the School informal or formal resolution procedure when dealing with a complaint.

#### **5.2. Responsibility of Employees/Students/General Community**

- conduct themselves in a manner that models appropriate behaviour and respects the rights and sensitivities of anyone associated with the School;
- consult with a member of School Management if they require a greater understanding of the School Discrimination, Harassment and Bullying Policy;
- comply with the School Discrimination, Harassment and Bullying Policy;
- offer support to anyone who is feeling discriminated against, harassed, victimised or bullied and guide them to the appropriate resolution procedure;
- maintain complete confidentiality if information is provided during the investigation of a complaint. Failure to do so may result in defamation action.

### **6. Shearwater, the Mullumbimby Steiner School's Complaint Resolution Procedure**

The ultimate outcome when responding to inappropriate behaviour involving discrimination, harassment, bullying or victimisation is for the inappropriate behaviour to stop. To achieve this outcome, the School encourages stakeholders to endeavour to resolve issues directly and informally through a process of discussion and conciliation where possible. This may involve seeking advice from a member of the School Management. Seeking advice from a colleague should not include spreading gossip that may harm others or inflame issues. Such actions may result in disciplinary processes.

The following section details specific options available in the event of discrimination, harassment, bullying or victimisation occurring.

### **6.1. Informal Resolution Procedure**

The informal procedure emphasises resolution without the formality of documenting the complaint or disciplining the alleged offender. The informal procedure is appropriate where the discrimination, harassment or bullying is of a less serious nature and you want the behaviour to stop.

Informal ways of dealing with discrimination, harassment or bullying include the following actions:

- inform the offender that the behaviour is offensive and unacceptable, is against the School policy, and attempt to resolve the matter amicably; and/or
- speak to a member of School Management for confidential support and advice; and/or
- together with a member of School Management, raise the complaint with the offender who admits to the behaviour and agrees to immediately stop; and/or
- the member of School Management raises the issue generically with the offender, without revealing your details to protect your preferred anonymity; and/or
- the member of School Management observes the behaviour occurring and requests the offender to stop, even though no complaint has been made; and/or
- you and the offender agree to participate in a mediation, counselling or conciliation meeting; and/or
- a member of School Management requests a training session be conducted internally or externally for a group of staff to address issues of discrimination, harassment, bullying and/or victimisation.

### **6.2. Formal Resolution Procedure**

The formal resolution procedure is followed when the discrimination, harassment or bullying is considered serious and may require disciplinary action being taken against the offender. It therefore involves a formal process of a complaint being put in writing, substantiated and investigated.

The formal resolution procedure may also be appropriate where:

- informal attempts at resolution have failed;
- a person has made a complaint of discrimination, harassment or bullying and has been subsequently victimised;
- the complaint is against a more senior person. The formal procedure may help to ensure that the person making the complaint is not victimised or disadvantaged;
- the person accused of discrimination, harassment or bullying denies the behaviour and the person making the complaint wishes to proceed.

In terms of the formal resolution procedure, the person making the complaint (the complainant) is required to submit the complaint in writing for investigation and resolution as soon as possible after the action or event occurred. The complainant must complete the School **Formal Complaint Form** and submit this form to the HR Manager or, where the respondent is the HR Manager, the form must be submitted to the Head of School.

The written complaint should include:

- a brief description of the circumstances of the complaint, including details of the alleged action/incidents, and date/s of the occurrence;
- names and titles (as applicable) of any witnesses to the alleged action/s or incident/s;
- a summary of documentary material to be attached (if applicable); and
- the proposed solution, remedies or outcome sought.

The person against whom the complaint is made is the Respondent. Depending on the nature and severity of the allegations in the complaint, the HR Manager in conjunction with the Head of School will determine whether the complaint is *prima facie* genuine and whether it should be dealt with in accordance with this Policy or some other Shearwater procedure or policy. The HR Manager in conjunction with the Head of School has the discretion to decide whether the complaint will be investigated by:

- a member of School Management;
- a Board member;
- a review committee specifically appointed by the Board to investigate the complaint; or
- an external investigator.

Any complaints or reports of discrimination, harassment, bullying or victimisation will be treated quickly, seriously and sympathetically. They will be investigated thoroughly, impartially and handled confidentially. The School Management will act immediately on any reports of discrimination, harassment, bullying or victimisation. No person will be disadvantaged or suffer repercussions as a result of lodging a complaint.

Where complaints of discrimination, harassment, bullying or victimisation have been substantiated, appropriate disciplinary action will apply. Serious breaches of the policy may lead to termination of employment.

## **7. Review**

The Discrimination, Harassment and Bullying Policy will be regularly reviewed and evaluated as a part of the School's commitment to an ongoing continuous improvement process.

## **8. Advice or Assistance**

Any queries relating to this Policy are to be directed to the HR Manager.

## **9. Supporting Documentation**

### **Associated Policies**

- Work Health & Safety Policy
- Complaints Resolution Policy and Procedure
- School Code of Conduct
- Secondary School Action Plan for Bullying Behaviour

## **Related Legislation**

- Australian Human Rights Commission HREOC Act 1992
- Anti-Discrimination Act 1977 (NSW)
- Anti-Discrimination Act 1991 (Qld)
- Sex Discrimination Act, 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- Fair Work Act 2009 (Cth)
- Fair Work Amendment Act 2013 (Cth)
- Age Discrimination Act 2004 (Cth)
- Gender Equality Act 2013 (Cth)
- Work Health & Safety Act 2012 (Cth)
- Fair Work Act 2009
- Fair Work Amendment Act 2013
- Independent Schools NSW (Support and Operational Staff) Multi-Enterprise Agreement 2015-2017
- Independent Schools NSW (Teachers) Multi-Enterprise Agreement 2015-2017
- National Employment Standards