

Australian and New Zealand College of Anaesthetists

POLICY ON BULLYING, DISCRIMINATION AND HARASSMENT FOR FELLOWS AND TRAINEES ACTING ON BEHALF OF THE COLLEGE OR UNDERTAKING COLLEGE FUNCTIONS

1. DISCLAIMER

ANZCA recognises that Fellows and trainees may interact with each other and other persons in their common place of employment. In these situations, workplace policies will apply. The College's policy is in addition to, and does not detract from, other obligations, conditions or requirements under other College policies.

2. PURPOSE

The College considers bullying, discrimination and harassment unacceptable behaviour that will not be tolerated under any circumstances. Fellows and trainees acting as College representatives are responsible for their behaviour and should ensure an environment free of bullying, discrimination and harassment.

The obligations of Fellows and trainees with respect to behaviour are generally set out in the College's code of professional conduct. This policy applies where Fellows and trainees act on behalf of the College or undertake College functions, such as Fellows and trainees on council or on College committees, sub-committees or working groups.

Councillors, particularly, are expected to set an example for other Fellows, trainees, College staff, contractors and representatives. Councillors often act as the representative or agent of the College and, accordingly, liability for the conduct of councillors may be borne by the College as well. It is important that the College meets its legal obligations as well as establishing an appropriate code of conduct.

This policy amplifies the College code of professional conduct in relation to bullying, discrimination and harassment.

This policy also details the right of all Fellows, trainees, staff, contractors and others undertaking duties for the College to object to bullying, harassment or discrimination. Individuals who use this right responsibly will not be subjected to subsequent unfair treatment or victimisation.

Finally, this policy details the procedures for complaints of bullying, discrimination and harassment made by Fellows or trainees acting on behalf of the College or undertaking College functions.

3. LEGISLATIVE OBLIGATIONS

The College has a statutory obligation to provide a safe workplace, free from the stress that bullying can cause, for its Fellows, trainees, staff and representatives as they undertake duties for the College.

Workplace bullying is contrary to work health and safety law in Australia and New Zealand and may also be a criminal offence. Some bullying will also constitute discrimination and harassment, in contravention of equal opportunity and anti-discrimination laws.

Discrimination and harassment (including sexual harassment) are prohibited by law.

4. DEFINITIONS

4.1 Bullying

Workplace bullying is repeated unreasonable behaviour directed towards a person or group that creates a risk to health and safety.

Within this definition:

- “Unreasonable behaviour” means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.
- “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 and safety” includes risk to the mental or physical health of the person.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered bullying:

- Excluding someone from College activities.
- Intimidating, hostile or threatening behavior.
- Giving someone the majority of unpleasant tasks.
- Verbal abuse or rude, berating behaviour.
- Deliberately withholding information that is necessary for effective performance in a College function.
- Giving Fellows, trainees, staff or contractors assignments to complete within unreasonable timelines.
- Humiliating someone through sarcasm or insults.
- Intimidation.

Bullying is not just poor communication or interpersonal skills. It is not just unsatisfactory management or supervision skills.

4.2 Discrimination and harassment

Discrimination and harassment involves discrimination and unwelcome behaviour relating to a person's:

- Age
- Disability
- Industrial activity
- Employment activity
- Lawful sexual activity
- Marital status
- Physical features
- Political belief or activity
- Race (including colour, nationality, ethnicity and ethnic origin)
- Pregnancy
- Religious belief or activity
- Sex
- Parental status or status as a carer
- Breastfeeding
- Gender identity
- Sexual orientation
- Social origin
- Irrelevant criminal record
- Personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

In New Zealand, race and gender are the only protected characteristics.

4.3 Sexual harassment

Sexual harassment is generally defined as someone making an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or engaging in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

"Conduct of a sexual nature" is generally defined as including conduct that subjects a person to any act of physical intimacy, making verbally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence or making any gesture, action or comment of a sexual nature in a person's presence.

Such behaviour may be offensive, embarrassing, intimidating or humiliating.

Sexual harassment can occur between males, between females, female to male, and male to female. It can be physical, verbal or written and includes:

- Unwelcome physical contact (for example, touching, patting or brushing against a person).
- Leering, patting, touching or unnecessary familiarity.
- Demands for sexual favours.
- Offensive or demeaning comments, emails, jokes or innuendo.
- Unwanted sexual propositions or advances.

- Sending emails, text messages or mail that may be sexually explicit and offensive to either gender.
- Offensive telephone calls.
- Spreading rumours of a sexual nature about a person's private life.
- Offensive gestures, staring or displaying offensive material.
- Unwelcome or uncalled for remarks, questions or insinuations about a person's sexual activities or private life.

5. BODY OF POLICY

5.1 Conduct

5.1.1 A Fellow or trainee shall not, in the course of their duties for the College, bully or unlawfully discriminate or harass (including sexually harass):

- An employee of the College
- A contractor of the College
- A member of the public
- A Fellow
- A trainee.

5.1.2 A Fellow or trainee shall not victimise another person, or subject a person to any detriment because that person:

- Has made a complaint under College policies.
- Has brought proceedings under College policies.
- Has, or proposes to, give evidence or information in connection with proceedings, under College policies.

It will not be unlawful discrimination if the conduct is exempt under antidiscrimination law.

5.2 Responsibility

The College has a duty to prevent bullying, discrimination and harassment.

5.3 If bullying, discrimination or harassment occurs

A complaint against a Fellow or trainee in relation to bullying, discrimination or harassment will be dealt with through the office of the chief executive officer (CEO).

A complaint against a Fellow or trainee under this policy will be dealt with under the procedures below.

All grievances relating to bullying, discrimination or harassment will be dealt with promptly, sensitively and confidentially. Any investigation will be carried out in an impartial and fair manner.

In relation to discrimination, it is recognised that, if the aggrieved person is dissatisfied with the way their complaint has been dealt with, or the recommended resolution, the person is entitled to lodge a complaint with the relevant statutory bodies under antidiscrimination law.

5.4 Key elements of complaints process

5.4.1 Confidentiality

Any allegation of bullying, discrimination or harassment will be treated confidentially. The College will exercise confidentiality for its procedures in order to protect the rights and welfare of all those involved in a complaint resolution process. If an allegation of bullying, discrimination or harassment is made, information will only be accessible to people who need to know or other relevant people such as witnesses. Any records made during the investigation will be stored in a secure environment.

5.4.2 Defamation

A person should not necessarily be deterred from making a complaint of bullying, discrimination or harassment because of concerns about defamation laws.

Generally, if an aggrieved person confines discussions to the appropriate people and is acting in good faith, that is, is not making the complaint out of spite or malice, then the person is not likely to be liable for defamation.

Allegations of unlawful discrimination, harassment or bullying are serious matters and can potentially damage an individual's reputation. To minimise the risk of defamation it is important to maintain confidentiality and involve as few people as possible in the dispute resolution process.

All College personnel and other representatives appointed to assist in dispute management are protected under the doctrine of "qualified privilege" provided they act in accordance with the dispute resolution procedures and not maliciously.

5.4.3 False accusations

False allegations of bullying, discrimination or harassment will be viewed seriously and if found to be malicious may expose the person to risk of defamation proceedings and other action.

5.4.4 Impartiality

The procedures will be conducted in a fair and equitable manner at all times. No judgements or decisions will be made until all relevant information has been obtained and reviewed.

5.4.5 Victimisation

Victimisation will not be accepted or tolerated against a person who has:

- Made, or intends to make, a complaint.
- Been, or intends to be, a witness.
- Is a support person to any of the parties involved in the complaint.
- Is involved in resolving the complaint.
- Acted in good faith in bringing information or making an allegation under anti-discrimination and harassment legislation.

Should such victimisation occur, disciplinary action will be taken against the offender.

5.4.6 Timeframes

The College is committed to ensuring that all disputes, both informal and formal, are addressed efficiently and in a timely manner. Any concerns regarding the timeliness of a complaint process should be directed to the CEO.

5.4.7 Support person

A support person is responsible for providing assistance to the complainant or the respondent of a bullying, discrimination or harassment dispute. A support person may be a family member, trusted advisor or a co-worker.

The support person's role is to be conducted in the spirit of conciliation as well as fair and equitable outcomes.

A support person is also bound by the requirement for confidentiality and cannot act as a witness and a support person in the same complaint.

5.4.8 Counselling and support

A complainant may wish to seek counselling or assistance from someone independent of the College.

6. PROCESSES

6.1 Informal resolution process

Informal disputes emphasise resolution rather than the presentation of factual proof or substantiation of a dispute. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. Informal disputes do not require a formal investigation.

6.2 Formal complaint process

A formal complaint can be verbal but is generally put in writing with a formal investigation then conducted to determine whether there is factual proof or substantiation to the complaint.

All formal complaints will be directed to the CEO.

The CEO may delegate investigation of the complaint to appropriate officers or College advisers.

6.3 Options

Options before raising a complaint include the following:

6.3.1 Action taken directly by the complainant

If appropriate, the complainant should speak directly to the person(s) whose behaviour they find unacceptable and make it clear that they want the offending behaviour to stop. If

the complainant's concern is not taken seriously, he or she may choose to take further action under these procedures.

6.3.2 Speaking to a neutral third party

If appropriate, the complainant may speak to another appropriate councillor, Fellow or senior staff member to assist complainants to decide on options to deal with alleged discrimination, harassment or bullying.

6.3.3 Speaking to the CEO

If appropriate, the complainant can speak directly to the CEO about ways in which he/she can assist in ensuring the offending behaviour ceases.

7. DISPUTE RESOLUTION PROCEDURES

Defined very simply, an informal dispute generally involves either one or a number of the following processes: mediation, conciliation or education. A formal complaint can be verbal but is generally put in writing with a formal investigation then conducted to determine whether there is factual proof or substantiation of the complaint.

Best practice dispute resolution management would require that the majority of disputes begin within an informal framework and then only move into a formal investigation process if the informal procedures do not have a satisfactory outcome.

7.1 Summary of informal resolution process and formal complaints

INFORMAL	FORMAL
<p><i>Self help</i></p> <p>A person may choose to address the unwelcome behaviour by communicating to the initiator of the action that he or she finds the behaviour offensive, intimidating, humiliating or bullying.</p>	<p><i>Lodgement</i></p> <p>A person seeking to make a formal complaint can do so verbally or in writing, and the complaint must be submitted to the CEO.</p>
<p><i>Seek assistance</i></p> <p>The person may seek assistance and support.</p>	<p><i>Principles of natural justice</i></p> <p>The College is committed to conducting an investigation into the complaint in a confidential and timely manner. The investigation will also be conducted according to the principles of natural justice which ensure equity and fairness to all parties involved in the complaint.</p>
<p><i>Mediation</i></p> <p>Mediation is a negotiation between the parties (without three-way face-to-face contact) and discusses the options, considers the alternatives and reaches a consensual agreement.</p>	<p><i>Investigating team</i></p> <p>The CEO will conduct an investigation into the formal complaint.</p>
<p><i>Conciliation</i></p> <p>Conciliation involves face-to-face contact between the complainant and respondent, to negotiate a resolution between the parties.</p>	<p><i>Investigation outcomes</i></p> <p>An outcome of the investigation is achieved once the investigator has established whether the complainant's allegations have been substantiated.</p>
<p><i>Resolution</i></p> <p>Resolution is achieved when the complainant is satisfied that the uninvited or unwelcome behaviour has stopped. If the allegations are denied, or a satisfactory resolution cannot be achieved through informal action, then the complainant can choose to pursue the dispute through the formal procedures.</p>	<p><i>Resolution</i></p> <p>After the investigation has been completed, actions will be taken to resolve the complaint. Any action will occur following consultation with the complainant and the respondent.</p>
	<p><i>Appeal process</i></p> <p>If the <i>complainant</i> is dissatisfied with the outcome of the investigation they may:</p> <ul style="list-style-type: none"> • request that the CEO arrange an internal review; or

- lodge a complaint with applicable external statutory bodies.

If the *respondent* is dissatisfied with the investigation process, they can request that the CEO arranges an internal review. There is no internal review option for them in relation to the outcome of the investigation.

7.2 Summary of rights

RIGHTS OF THE COMPLAINANT	RIGHTS OF THE RESPONDENT
<ol style="list-style-type: none"> 1. To have his or her complaint treated informally or formally, at their option. 2. To have his or her complaint investigated and conciliated if requested. 3. To have support or representation throughout the process. 4. To express concerns without fear of retribution or of suffering detriment. 5. To withdraw a complaint. 6. To have the situation remedied. 7. To privacy – to have the matter kept confidential on a “need to know” basis. 	<ol style="list-style-type: none"> 1. To be informed of what he or she is accused of and who is making the allegations. 2. To respond to the allegations. 3. To fair treatment and procedures. 4. Not to be prejudged or discriminated against. 5. To have support or representation throughout the process. 6. Not to be dismissed unfairly or otherwise treated unfairly, harshly or unreasonably (taking into account all the circumstances). 7. To have privacy – to have the matter kept confidential on a “need to know” basis. 8. To be protected from defamation and malicious complaints.

7.3 Informal procedure

7.3.1 Definition of informal resolution process

Informal disputes emphasise resolution rather than the presentation of factual proof or substantiation. Informal disputes are those that can be resolved by the complainant or through discussion between the parties. The complainant may elect to have a support person with them at the time of the interview. Note: If there is more than one complainant, it is essential they are interviewed separately.

All parties involved may wish to seek counselling or assistance from someone independent of the College.

7.3.2 Action taken directly by the complainant

If the complainant is comfortable addressing the respondent directly, a clear message should be given including specific feedback on the aspects of behaviour that were offensive and unacceptable.

If the discrimination, harassment or bullying continues, the complainant should record the incident, including details such as dates, times, witnesses (if any), what happened and what was said, done or felt by the complainant. These details should then be kept in a secure place. The complainant may then report the incident, either through the formal or informal processes.

As part of this process the complainant may elect for the CEO to arrange an informal meeting with the respondent to discuss the dispute.

7.3.3 Conciliation

The complainant may elect for the CEO to arrange an informal meeting with the respondent to discuss the dispute. If the respondent agrees, this meeting should be conducted as soon as possible in a private and confidential environment. Both parties should be advised that such a meeting is an informal dispute resolution process with the intent of seeking a mutually agreed resolution. If the matter is not resolved, the complainant may choose a more formal dispute resolution process.

7.4 Formal procedures

7.4.1 Definition of a formal complaint

Formal complaints focus on whether a complaint can be substantiated. They are complaints that are generally put in writing to the College and necessitate a formal investigation.

7.4.2 Action taken by the complainant

Where an allegation is of a serious nature, or where conciliation is either rejected or has failed, formal investigation may be the appropriate response.

A formal investigation is where a statement is prepared and provided to the respondent for a response. The complaint is then investigated. The investigator will work to establish what evidence or facts can either substantiate or refute the allegations, based on an assumption of innocence unless and until the evidence shows otherwise.

Although individual employees may wish to withdraw a discrimination, harassment or bullying complaint, there may be instances; for example, sexual harassment, where the College is required to fulfil legal obligations and continue to investigate the matter.

Report findings will form the basis of appropriate action by the College in responding to both the individual and organisational matters addressed in the findings.

If a complainant decides to resolve harassment, discrimination or bullying disputes in a formal, documented manner they must adhere to the following steps:

7.4.3 Lodgement of a formal complaint

All complaints (whether written or verbal) should be lodged directly with the CEO.

7.4.4 Arranging an interview with the complainant

The complainant may elect to have a support person with him or her at the time of the interview. Note: If there is more than one complainant, it is essential they are interviewed separately.

Prior to the interview, it is essential the investigator reflects on the level of seriousness of the allegation. For example, if the allegation is substantiated, could it lead to disciplinary action? If disciplinary action is an outcome of the investigation process then implementation of the recommendation should meet the relevant award or contract of employment disciplinary provisions.

The CEO will co-ordinate the implementation process of any recommendations arising from the investigation.

The interview should take place in a private and confidential environment where there will be no interruptions. The complainant should feel comfortable at all times and, if necessary, breaks should be included during the interview process.

The complainant may wish to seek counselling or assistance from someone independent of the College.

7.4.5 Conducting an interview with the complainant

Inform the complainant about the investigation process. Obtain information from all relevant sources and ensure the complainant knows that formal records will be kept. Advise the complainant where the records will be stored, and who will have access to them.

Ensure the complainant and the support person are fully aware of, and understand their responsibility in relation to, confidentiality and the confidentiality agreement.

Explain to the complainant that the major purpose of the first interview is to clarify the nature of their complaint. This will include a detailed description of what took place, how the discrimination, harassment or bullying has affected him or her, and if there have been any reprisals, threats or unfavourable treatment directed towards him or her since the incident was reported.

Clarify the complainant's understanding of the incident or situation. If possible, the complainant should provide specific details about incidents, times, dates, places, frequency of occurrence and the names of possible witnesses (copies of any notes, diary entries or records should also be produced).

- Allow time: you may need more than one interview.

- Be sensitive to “power perceptions” and watch for gender imbalances.

Where possible, the investigator should provide feedback to the complainant advising him or her, on the basis of the initial interview, whether the incident appears to contravene the College’s policies.

The complainant should be asked to clarify what he or she believe will resolve the problem, for example:

- What is his or her desired outcome?
- Is the complainant seeking more than feedback to be given to the respondent about his or her perceived unacceptable behaviour?
- Is he or she seeking assurances that such behaviour will not occur again?
- Does he or she want a formal apology from the respondent?

At the conclusion of the interview, the investigator will review the procedure to date and advise the complainant when the respondent will be interviewed, and an expected time when the investigator can report back to the complainant.

Remind the complainant of the requirement for confidentiality.

Ensure the complainant knows where he or she can also access internal and external confidential advice, support and counselling.

7.4.6 Arranging an interview with the respondent

The respondent should be advised that someone has made a serious complaint about him or her. Advise the respondent that he or she may have a support person present to hear the allegation. Ensure that both the respondent and the support person are fully aware of and understand their responsibilities in relation to confidentiality and the confidentiality agreement.

Advise the respondent of the principles and purpose of the investigation, and that a written or verbal response to the allegation(s) is required.

The respondent should be provided with a detailed description of the allegations. If relevant, explain that the complaint appears to be in relation to a form of unfair treatment, discrimination, harassment or bullying that is against the College’s policies.

Obtain the respondent’s account of the alleged events and ensure open rather than closed questions are used. Separate the (alleged) facts from your own judgements and ensure a good rapport is maintained with the respondent.

If an allegation is denied, the respondent should be asked for his or her view as to why he or she believes the complaint was made, and how the issue may be resolved. The respondent should also be asked to nominate any witness(es) to be interviewed during the investigation.

The investigator will review all information obtained from both the complainant and the respondent and will interview any witness(es) if deemed necessary. Feedback will be

given to both the complainant and respondent, followed by an arranged meeting between all parties involved to advise the resolution options.

Remind the respondent of the requirement for confidentiality.

Ensure the respondent knows where he or she can access internal and external confidential advice, support and counselling.

7.4.7 Conducting an interview with the respondent

The respondent may wish to seek counselling or assistance from someone independent of the College.

The respondent may elect to have a support person with him or her at the time of the interview. Note: If there is more than one respondent, it is essential they are interviewed separately.

Prior to the interview, it is essential the investigator reflects on the level of seriousness of the allegation. For example, if the allegation is substantiated, could it lead to disciplinary action? If disciplinary action is an outcome of the investigation process then implementation of the recommendation(s) should meet the relevant award or contract of employment disciplinary provisions.

The interview should take place in a private and confidential environment where there will be no interruptions. The respondent should feel comfortable at all times and, if necessary, breaks should be included during the interview process.

7.4.8 Witnesses

Witnesses should only be interviewed in circumstances where:

- The investigator does not have enough information and believes witness statements will assist in making a determination.
- The complainant or respondent is concerned that the investigator does not have enough information to make a determination.
- The allegation or counter-allegation is serious enough to result in disciplinary action.

It is strongly recommended that the investigator should only interview enough witnesses to make a determination.

Ensure the witness(es) and the support person are fully aware of and understand their responsibility in relation to confidentiality and the confidentiality agreement, and that potentially the evidence they provide could be referred to in an external legal hearing.

7.4.9 Conducting interviews with witnesses

An identified witness should be interviewed privately and advised of the confidentiality, privacy and record keeping issues. He or she will be informed that there will be no reprisals for providing information that may assist with the investigation, and that this information will not be disclosed to either party without his or her permission.

In instances where the witness does not give permission to disclose his or her submission to either party, the investigator will only refer to the information provided in “general terms”. For example, by using phrases such as “I have spoken to various people about

the allegation and it appears there is some evidence to support the complaint” or “Other people in the work area confirmed that they have observed the alleged incidents occurring”.

In order for the investigator to maintain confidentiality and to not influence the witness, the witness should not be told any more than they already know. It is essential the witness does not discuss the complaint with individuals who are not involved in the complaint resolution procedures.

7.4.10 Determining the outcome of the complaint

Before determining a final outcome to the complaint, the investigator will review all relevant documentation and evidence.

To determine the outcome of the complaint, the investigator should consider two main points:

- How serious is the allegation?
- Is there agreement between the complainant and the respondent on the major facts of the allegation? (This does not necessarily require agreement on the interpretation of those facts.)

8. REMEDIES TO A FORMAL COMPLAINT

Where discrimination, harassment or bullying behaviour is found to have occurred, a successful outcome to a complaint can be that this behaviour stops and more respectful behaviour is put in place.

If the investigator assesses the complaint to be “of a serious nature” disciplinary action may need to be considered. At this stage, the investigator should forward the recommendations arising from the investigation to the CEO. Where disciplinary action is to be taken, the provision of other College regulations may apply.

9. ACTING ON UNSUBSTANTIATED COMPLAINTS

If the complaint is not substantiated the following outcomes may be considered:

- Both parties to be informed of the finding and the relevant reasons.
- The complainant will be advised that if he or she is unsatisfied with the outcome, he or she can lodge a complaint either internally through the appeals process, or externally through the relevant statutory bodies.

10. RECONSIDERATION, REVIEW AND APPEAL

Fellows and trainees may seek reconsideration and review of decisions arising from an investigation conducted under this policy, in line with ANZCA's *Regulation 30 Reconsideration and Review Processes*. If all avenues of reconsideration and review have been exhausted, Fellows and trainees may appeal a decision arising from an investigation conducted under this policy, in line with ANZCA's *Regulation 31 Appeals Process*.

11. CHANGES TO POLICY

The College may modify or amend this policy at any time. Formal notice of amendments will not ordinarily be given, but the current policy on bullying, discrimination and harassment for Fellows and trainees acting on behalf of the College or undertaking College functions will be available via the College website. The latest version of the policy can be accessed via the College website www.anzca.edu.au or by contacting the College on +61 3 9510 6299.

12. CHANGE CONTROL REGISTER

Version	Author	Approved by	Approval Date	Sections Modified
1	Office of the CEO	Council	Nov 19, 2011	Created