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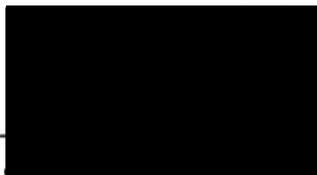
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SUBMISSION

Australian Human Rights Commission

National Inquiry into Sexual Harassment in Australian Workplaces

Authorised by



**John Dixon
General Secretary**

Australian Education Union New South Wales Teachers Federation Branch

1 March 2019



1. Introduction

The NSW Teachers Federation (Federation) represents teachers, executives and principals in NSW public pre-school, infants, primary and secondary schools, schools for specific purposes and teachers working in consultant/ advisory positions. Teachers in TAFE and Corrective Services are also represented by Federation. The current financial membership totals more than 60,000 practising teachers and student teacher members. While the majority of members hold permanent positions within the teaching service, more than 11,500 members have temporary status and approximately 5800 have casual status. Lack of job security can create vulnerability for those people who do not have permanent positions and can be a contributing factor to the low reporting of sexual harassment.

1.1 Definition and current context

Sexual harassment is generally defined as “unacceptable behaviour of a sexual nature”.

Section 22 A of the NSW Anti-Discrimination Act 1977 states:

For the purposes of this Part, a person sexually harasses another person if:

- (a) *the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or*
- (b) *the person engages in 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.¹*

Despite 30 years of the Sex Discrimination Act being in place in Australia, recent surveys, studies and reports indicate that sexual harassment is still very prevalent in workplaces.

Federation participated in the national Australian Education Survey conducted in December 2018.

The Australian Education Union (AEU) conducted a national survey of teachers into sexual harassment in the workplace (*AEU Sexual Harassment Survey 2018*). The data from NSW includes that from 1574 respondents of whom 21.86 per cent were male, 76.30 per cent female and 1.84 per cent preferred not to identify or to self-describe their gender. 0.45 per cent of respondents identified as transgender.

In this survey, 41.93 per cent of NSW teacher respondents had **experienced** sexual harassment at either their current workplace or a former workplace within the education sector while a further 8.17 per cent had experienced sexual harassment in a former workplace not within the education centre. 48.08 per cent had **witnessed** sexual harassment at work within their current or former workplace within the education sector with an additional 5.49 per cent witnessing it in a workplace not within the education sector.

When asked to identify who was involved in sexual harassment in the workplace, 53.13 per cent of responses indicated the harassment was between colleagues and 17.83 per cent between students. One group of responses referred to sexual harassment between students

¹ Anti-Discrimination Act NSW 22A



and teachers made up 13.61 per cent of the responses. The majority of comments regarding this group detail examples of sexual harassment by students of teachers. While 56.52 per cent of teachers' responses indicated that the harassment did not impact on their health, 43.48 per cent identified both a physical and psychological impact. 22.25 per cent of respondents stated that the harassment had an impact on their employment in areas such as promotional opportunities, changed duties, access to flexible work, exclusion, ostracism and some moved their workplace location.

Some teachers described the negative impact of sexual harassment particularly on their mental health:

- *I went part time to try and manage the stress and depression caused.*
- *Emotional well-being affected making it difficult to focus and teach students.*
- *Work performance deteriorated.*
- *I had to access workers compensation due to the continued harassment and bullying.*
- *Extremely traumatised by it. Was very surprised how much it affected me.²*

For those who work in isolated regional areas, the opportunity to change workplaces is far more difficult. As one teacher stated:

- *Where I work is in a remote town. Everyone knows everyone. Because I had said something I was then excluded from all social aspects. This hurt my opportunities at other schools in the remote town.³*

In this survey a minority (46.59 per cent) of teachers who responded to the question stated that they did report the harassment or assault. 53.41 per cent said that they had not reported the harassment, giving reasons such as "people who complain lose their jobs", "not much can be done about it", "it was an accepted behaviour for that environment". One teacher reflected the views of many in the comments: "I would be asked to do a lot of paper work, it would have inflamed the situation and the student would have denied it. Nothing would have been done."⁴

In the AEU survey, when asked if their employer is doing enough to prevent sexual harassment in their workplace, 43.63 per cent of teachers said yes while 56.37 per cent said no. Common suggestions from teachers of what their employer could do to prevent sexual harassment in the workplace included:

- *Provide readily available policies and provide all staff with proper training around sexual harassment, bullying and intimidation in the workplace. Roll out an active anti-bullying and sexual harassment campaign using the web, posters on staff noticeboards and staff rooms. Make staff and by-standers actively aware of their responsibilities and the consequences through staff/school meetings and through a formalised complaint resolution process.*

² Australian Education Union (AEU), Sexual Harassment Survey (2018) NSW responses

³ Above

⁴ Above



- *There needs to be better education from an early age to ensure that students learn what sexual harassment looks like explicitly so that it cannot be brushed off as “boys will be boys” or other such quips that are not helpful and instead entrench such behaviour. It is also important that sexual harassment of people who are LGBTIQ+ is recognised as equally abhorrent.⁵*

Western Sydney University (WSU), in partnership with the New South Wales Teachers Federation (NSWTF), conducted a study into LGBTIQ+ teachers’ experiences in their workplace.

The final sample size of LGBTIQ+ participants was 1036. In the June 2018 project report *LGBTIQ+ Teachers’ Experiences of Workplace Discrimination and Disadvantage* ([LINK](#)), the authors Dr Jacqueline Ullman and Ms Melissa Smith note in the Executive Summary:

- *Survey responses showed discriminatory experiences to be relatively widespread, with 43 per cent of participants indicating having experienced LGBTIQ+ bias-based harassment, discrimination or disadvantage. Verbal and psychological discrimination were the most commonly reported forms of discrimination, with students and staff colleagues respectively reported as the most frequent perpetrators of such incidences. Participants indicated that they had also experienced discrimination with regards to being looked over for employment opportunities by Executive Staff at their schools;*
- *Individuals who had experienced discrimination pointed to its impact on their psychological wellbeing, with many indicating that they sought external support to assist in coping. Those experiencing discrimination fared worse on the measure of psychological wellbeing, with psychological discrimination by Executive Staff members having the strongest relationship. Merely 8 per cent of participants who reported experiencing workplace discrimination reported this to senior staff and were satisfied with the outcomes.⁶*

In responding to the survey, some teachers described the experience of discrimination in their workplaces:

- *Students using the words “gay” or “faggots” or “homosexual” as a put down. I hear it many, many times in a day and ask students to use another word, then they argue. It’s sad and depressing and makes me feel ashamed and unsafe in the workplace.*
- *Staff overlooking sexual harassment from students because “boys will be boys”.*
- *I don’t think some staff seem to perceive discrimination against LGBTIQ+ people to be the same as any other type of discrimination and don’t treat it as seriously. I would have liked to be offered some more support from staff and acknowledgement that it was discrimination.*

⁵ Australian Education Union (AEU), Sexual Harassment Survey (2018) NSW responses

⁶ Ullman, J., & Smith, M. (2018). *LGBTIQ+ Teachers’ Experiences of Workplace Discrimination and Disadvantage*. Centre for Educational Research, School of Education, Western Sydney University: Penrith.



- *Innuendo, homophobic comments passed off as “jokes” but which were clearly discriminatory and made to hurt and insult, derogatory comments about other staff who were assumed to be gay because of behaviour and/or appearance.*⁷

Respondents reported the impact of harassment and discrimination in the workplace on their health and well-being. Some experienced anxiety, depression and/ or physical manifestations of psychological stress including nausea and insomnia. Several respondents in the qualitative interviews described the impact of LGBTIQ+ bias and workplace discrimination as causing them a sense of dread or unease as they moved around their schools. This was particularly the case where schools did not have strategies in place to prevent or address these types of harassment and discrimination.

The findings from the 2018 AHRC, ACTU, AEU and WSU and NSWTF surveys show that the current legislation and policy processes to prevent and address sexual harassment in the workplace are failing.

The NSW Teachers Federation believes that in the education sector there is a need for public education employers to provide more effective guidance and support in relation to identifying, preventing and effectively responding to sexual and or gender-based harassment in relation to staff and students in schools, TAFE and other education workplaces.

It is of particular concern that current policies and procedures do not provide the educative function or support that was previously set out in the 1986 Department of Education “Policy Statement and Guidelines” (Attachment 1).

The specific focus was on sex-based harassment which incorporated both sexual harassment and sexist harassment. The discriminatory nature and impact of the behaviour was described with examples of these behaviours.

Importantly the policy described the role of the grievance officer (a non-school based position) to provide assistance in making a complaint and to those managing the complaint. At the time, Federation considered that there should have been more than one officer to provide support. Despite this, it was significant that the Department assisted members who were unsure of whether the behaviour constituted harassment and how they should frame the complaint. Federation welfare officers and Women’s Co-ordinator also assisted this process. Federation provided advice to all members in a leaflet. (Attachment 2)

The guidelines allowed staff who believed they were victims of sex-based harassment to understand the process and potential outcomes of a complaint. The support provided in terms of making a complaint and understanding the process was important in building the confidence of victims to make a complaint.

The policy and guidelines acted as an educative tool to be used with all staff in all schools, and other public education workplaces. It assisted in raising awareness about sexual harassment and provided some support in making and managing complaints. The awareness-raising created by implementing the policy was important as a preventative strategy. Federation believed that more support and resources were necessary but the policy and guidelines marked a culture at that time.

⁷ Ullman, J., & Smith, M. (2018). *LGBTIQ+ Teachers’ Experiences of Workplace Discrimination and Disadvantage*. Centre for Educational Research, School of Education, Western Sydney University: Penrith.



The policy was changed in the mid-1990s and the position of grievance officer was cut. Staff welfare officers had some responsibility to assist with complaints but had many more responsibilities such as workers compensation and leave. These positions have subsequently been changed to cover even more responsibilities. There is no specific assistance provided by the Department in teachers making complaints other than the Staff Complaints Policy.

In 1997, a Memorandum to Principals on Homophobia in Schools was distributed by the Director-General. There is no policy or procedure for dealing with complaints regarding homophobic, transphobic or biphobic behaviour and/ or harassment. There has been no update on this Memorandum since 1997. There has been no system-level support in terms of providing training about LGBTIQ+ bias and discrimination or assistance in making complaints. (Attachment 3)

These comments also point to the need for the NSWADB to provide targeted information and resources for schools. The AHRC resources are targeted for students from year 9 and do not adequately address LGBTIQ+ harassment.

Resources should be targeted at early intervention from kindergarten to assist in creating a positive culture to establish respectful relationships.



2. The current policy legal framework in the public education sector with respect to sexual harassment

Members of the NSW Teachers Federation are employed by the NSW Department of Education and TAFE and Corrective Services.

The legislation, awards, policies and procedures relating to sexual harassment that cover teachers in the NSW public service are:

- Ant-Discrimination Act 1977, NSW; sections 22A and 24;
- Australian Human Rights Commission Act 1986 (Cth);
- Crown Employees (Teachers and Schools Related Employees) Salaries and Conditions Award 2017; Clause 33 Anti-Discrimination;
- Fair Work Act 2009; Part 6-4B & section s.351;
- Government Sector Employment Act 2013, NSW; section 63;
- Government Sector Employment Rules 2014, NSW; sections 26 and 27;
- Industrial Relations Act 1996, NSW;
- NSW Department of Education's Code of Conduct (March 2017);
- NSW Department of Education's Complaints Handling Policy (January 2017);
- NSW Department of Education's School Community and Consumer Complaint Procedure (January 2017);
- NSW Department of Education's Staff Complaint Procedure (January 2017);
- NSW Department of Education's Workforce Diversity Policy and Workforce Diversity Plan;
- Sex Discrimination Act (1984) (updated in 2013) (Cth);
- TAFE Commission of NSW, 1990;
- Teaching Service Act 1980 (NSW), section 47, 47A and part 4A;
- Work Health Safety Act 2011, NSW;
- Work, Health & Safety regulation 2017, NSW.

Sexual harassment is prohibited by the NSW Anti-Discrimination Act 1977 and the Commonwealth Sex Discrimination Act (1984). Employers have a responsibility to ensure that such harassment does not occur.



The Sex Discrimination Amendment/ (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 provides similar protections.

The current NSW Anti-Discrimination Act refers to homosexuality, without any reference to bisexuality or pansexuality. The Act also fails to incorporate gender non-binary or intersex people and the definition of transgender provided is prescriptive and narrow.

Updating the Anti-Discrimination Act to provide more clarity around sexual and gender-based harassment and discrimination would assist unions in pursuing the need for employers such as the Department of Education to fulfill their responsibilities as an employer.

Current legislation does not have sufficient focus on sexual or gender-based harassment. Without a specific focus on these forms of harassment they tend to be treated as unacceptable behaviour without an examination of the discriminatory nature of the behaviour and the impact on the culture of the schools or other workplace.

The NSW Department of Education's Code of Conduct (March 2017) is structured within an ethical framework based on values of fairness, respect, integrity and responsibility. While not specifically identifying sexual harassment, it states in Section 4, *Respect for People*:

- 4.1. *It is important for you to treat your colleagues with respect. Bullying or insulting behaviour, including verbal and non-verbal aggression, abusive, threatening or derogatory language and physical abuse or intimidation towards other employees is unacceptable.*
- 4.2. *You must not discriminate against or harass your colleagues, students and young people or members of the public on a number of grounds including; sex, marital status, pregnancy, age, race, ethnic or national origin, physical or intellectual impairment or sexual preference. Such harassment or discrimination may constitute an offence under the Anti-Discrimination Act 1977. In addition, you must not harass or discriminate on the grounds of political or religious conviction.*
- 4.3. *If you believe you or anyone else in your workplace is being treated in a discriminatory or harassing manner, it is your obligation to report the behaviour to your supervisor or director.*
- 4.4. *You must not use information and communication technologies, such as email, mobile phones, text or instant messaging and websites to engage in behaviour that could reasonably be considered to have a negative impact on another person, cause them harm, or make them feel unsafe.⁸*

In contrast to the Department's 1986 Policy Statement and Guidelines, the Code of Conduct provides no information, support or guidance for how to:

- recognise these forms of discrimination and harassment
- prevent these behaviours
- address the discriminatory behaviour
- make a complaint.

⁸ NSW Department of Education, *Code of Conduct* (2017) 7



The absence of specific policies around gendered-based violence and discrimination including sexual harassment make it difficult to prevent and address. This is because behaviours such as sexual harassment may not be recognised as either illegal or discriminatory. Without appropriate policies, sexual harassment and gender-based violence may not be reported or may be trivialised as “just a joke” or poor behaviour.

In relation to LGBTIQ+ perspectives, the NSW Department of Education’s Code of Conduct does not make reference to discrimination on the basis of gender identity, intersex status and lists sexual orientation as a “preference”, a term that contains negative bias as it suggests that sexual orientation is an option people can choose. By not including these other aspects of LGBTIQ+ identities, the Department is failing to acknowledge the obligations under the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 and creates invisibility in relation to discrimination and sexual harassment based on these aspects of a person’s identity.

Clause 33

The Fair Work Act 2009 contains “Stop Bullying” and general protection provisions but it does not specifically proscribe sexual harassment in the workplace. There is a need for the Fair Work Act to explicitly prohibit sexual harassment and for the Fair Work Commission to have the powers to resolve sexual harassment disputes in the workplace in a similar way.

The Work Health Safety Act 2011 and the NSW Department of Education’s Work Health and Safety (WHS) policy (2017) cover sexual harassment through the requirements for employers to provide safe and healthy working environments and report incidents in accordance with statutory and regulatory obligations so that action can be taken to manage the incident, prevent further incidents and provide support where required.

The Department’s WHS policy is applicable to:

All employees of the Department and others undertaking work (for example contractors or volunteers), and students and visitors while in departmental workplaces or participating in authorised departmental activities. (2.1)

This is significant in relation to sexual harassment of teachers by parents or students. However, sexual or gender bias-based harassment of teachers by students is usually treated as poor behaviour. There is a failure to acknowledge not only the discrimination but also the risks posed by this behaviour. No data is recorded specifically in relation to sexual harassment. The NSW Teachers Federation believes that there is a need for reform to the WHS legislation so that sexual and LGBTIQ+ bias-based harassment is addressed as a health and safety issue in the workplace with appropriate risk-management strategies.

In section 22E *Harassment at educational institutions* of the NSW Anti-Discrimination Act 1977, there is recognition that sexual harassment, including actions by students towards teachers can take place in educational settings. The Act indicates that,

“It is unlawful for a person who is an adult student at an educational institution to sexually harass:

- a) a person who is a student at the institution, or*
- b) a member of staff of the institution”*



While the law sets the standard for the discriminatory behaviour, the Department of Education, as an employer, could do more to create and maintain standards of safe and non-discriminatory behaviour by developing and implementing resources and support for schools. Educational settings are workplaces, places of learning and often a community hub. As such they should create a climate whereby everyone feels respected, valued and treated with dignity. This change in attitudes and behaviours can help to address and prevent sexual harassment and other forms of sex and gender-based discrimination.

Federation advises members that if they are experiencing sexual harassment in their workplace then they need to take action. Advice is provided in information leaflets (*TR9 – Dealing with sexual harassment*, *TR14 – Homophobia, Biphobia and Transphobia*) (Attachment 4 & 5). Federation Professional Support Officers also provide advice about what steps teachers can take. These include documenting dates and circumstances of perceived harassment, reporting behaviour to the teacher's principal and the Department's Health and Safety Directorate, lodging a formal complaint through the Department's complaint procedures (*Complaints Handling Policy* January 2017 and *Staff Complaint Procedure* January 2017). If the harassment continues away from school, it can be reported to the police.



3. Making complaints

An employee of the Department of Education who is making a complaint about sexual harassment should expect to use the Department's procedures without fear of retribution or victimisation. Victimisation of either the person making the complaint or the person the complaint is made against is prohibited. Protection is provided under the NSW Industrial Relations Act 1996 section 210 (1) (j).

A teacher can take a complaint of sexual harassment to the Anti-Discrimination Board (ADB) of NSW which may seek further information from the employer to determine whether the complaint can be substantiated. The ADB will attempt to conciliate the complaint but should conciliation fail the matter may proceed to the NSW Civil and Administrative Tribunal (NCAT).

The results of the AEU and NSWTF and Western Sydney University surveys 2018 reveal that teachers fear retaliation through victimisation, demotion or some other unfavorable treatment if they make a complaint. They do not believe that the current procedures will address their concerns.⁹ The Department's *People Matter* survey 2018 for teachers in public schools also reveals that teachers have little confidence in the complaints procedure. Only 42 per cent of respondents agreed with the statement "*I have confidence in the way my organisation resolves grievances*".¹⁰ (Attachment 6)

The complaint processes are often seen as too formal and onerous. The time restrictions of making a complaint under the Sexual Discrimination Act (within 6 months of the last incident of harassment in the AHRC) and the Ant-Discrimination Act (within 12 months in the ADB) as well as the cap on compensation in NSW also inhibit teachers from coming forward with complaints.

For some teachers a lack of appropriate support or information about what constitutes sexual harassment is another contributing factor to the low number of employees who make a complaint about sexual harassment. This appears to be the case for many beginning teachers, especially young teachers, who often describe behaviours that constitute sexual harassment as bullying or disruptive behaviour.

There is concern that employers and regulators are not taking enough responsibility to prevent sexual harassment in workplaces and that there is too great an emphasis on the individual complainant having to endure the burden of holding harassers and employers to account. Making a complaint requires the complainant to relive the trauma of sexual harassment through the complaints process. The onus needs to be placed on employers and regulators to prevent sexual harassment in the workplace through providing education, support, risk assessment and management.

⁹ AHRC: *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces* (2018) 9

¹⁰ Public Service Commission, *People Matter 2018, NSW Public Sector Employee Survey. Cluster Report Education*. (2018, p26)



4. Issues for teachers in insecure work

In NSW public schools, 72.5 per cent of all teachers are female and 27.5 per cent are male. These figures differ between primary and secondary schools with 82.6 per cent female and 17.4 per cent male in primary schools, while in secondary schools 60.3 per cent of teachers are female and 39.7 per cent are male. (NSW Department of Education, Gender Analysis of School Teachers, December 2018).

The majority of NSW teachers are female and a significant number have temporary (fixed-term engagements for a minimum of 20 days up to one school year), or casual employment (day-to-day engagements). Within the membership of the NSW Teachers Federation, more than 17,000 members have either temporary or casual teaching status. It is accepted that lack of job security can create vulnerability for those people who do not have permanent positions and can be one of the reasons why the majority of people who have experienced sexual harassment have not reported it.

Teachers who are employed in a casual or temporary capacity are reluctant to report harassment. This is evident in the comments of teachers in the AEU Sexual Harassment Survey when giving reasons why they did not report sexual harassment that they experienced or witnessed in the workplace:

- *Fear of retribution if I lodged a formal complaint. Fear of losing my temporary employment*
- *Worried I would lose my job, as I was a first-year teacher and on a temporary contract¹¹*

When describing the impact of the harassment teachers said:

- *I was a temporary teacher at the time of being sexually harassed by my supervisor. After making a complaint against him, I was given less work the next year. I have been bullied by him prior and since the incident and my formal complaint was swept under the carpet. I have been ostracised by other staff as a result of the complaint.*
- *As I was a temp they did not renew my contract the following year, as I had made a complaint about the staff member who was permanent, easier to get rid of a temp than a permanent.¹²*

In teaching, one source of sexual harassment can be from students, both towards each other and towards teachers. Discipline policies of schools and the Department of Education are used to address this issue because it is seen as a behaviour issue rather than one of sexual harassment. It is accepted that the behaviour must be addressed utilising disciplinary process but it must also ensure the student and other students understand the discrimination that underpins the behaviour and take action to prevent the behaviour and change the culture. No statistics of complaints of sexual harassment by students are kept by the Department of Education. Nor does the Department provide specific resources or training in dealing with sexual harassment in schools.

Some comments recorded in the AEU survey from teachers about students' sexual harassment in schools include:

¹¹ AEU, Sexual Harassment Survey (2018)

¹² Above



- *Most of the sexual harassment that occurs between students is dealt with through the discipline policy. Incidents where students harass teachers are less likely to be dealt with - staff are expected to simply put it down to 'growing up' and call parents.*
- *It concerns me that females (students and teachers) in particular are subject to sexual harassment from mostly male students without appropriate redress. It concerns me that when these boys become men they will be even more harmful to females in our society.*
- *Concern that as it was students sexually harassing me (teacher) I would fall under speculation that I may have acted inappropriately. As a young female teacher I feel I need to be extra cautious about my behaviour and how I report things, as it may not reflect well on me (incorrectly) if I report inappropriate comments from teenage boys.*
- *Dealt with it via student discipline procedures.*
- *Male students consistently harass female and gay members of staff. Nothing is done about it because teachers have to PROVE that it happened.*
- *Student to teacher sexual harassment is extremely common in all my workplaces. Resolution after much paperwork and intervention is usually a 1-2 day suspension and teacher is told to be resilient.¹³*

¹³ AEU, Sexual Harassment Survey (2018)



5. NSWTF recommendations for improvement

Significant reforms are needed to the legal system as well as an increase to the resources provided by both government agencies and employers as current legislation, resources and complaint procedures are inadequate to address sexual harassment in the workplace.

The NSW Teachers Federation, through its decision-making body of 300 members of the NSW Teachers Federation State Council, has discussed and debated action on gendered violence. At the December 2018 NSW State Council meeting, delegates voted unanimously in favour of this recommendation:

The NSW Teachers Federation will make a submission to the *National Inquiry into Sexual Harassment in Australian Workplace* calling for the following changes regarding the work of agencies such as Fair Work, the NSW Industrial Commission, the Australian Human Rights Commission (AHRC), and the NSW Anti-Discrimination Board (NSWADB) and the relevant legislative framework:

1. Increasing the number of advisors/ advocates available to support workers making complaints and providing additional appropriately qualified staff to support and conduct conciliation and arbitration.
2. Amending legislative requirements at a state and federal level to include provisions similar to the Fair Work Act regarding workplace bullying in terms of orders to stop sexual and or gender-based harassment and prevent these behaviours occurring.
3. Requiring WorkSafe Australia to develop Codes of Practice in terms of identifying, assessing and eliminating or minimising, so far as reasonably practicable, the risks of sexual and or gender-based harassment.
4. Ensuring the Workplace Gender Equality Agency or other relevant authorities have the power and resources to require companies and government departments and agencies to report on the measures they adopt to prevent, respond to and monitor sexual and or gender-based harassment in the workplace.
5. Increasing the funding for the AHRC and state-based anti-discrimination bodies including the NSWADB to provide:
 - training materials and resources to prevent and effectively respond to sexual and or gender harassment in the workplace. This should include specific and targeted resources to support particular groups of people identified as more likely to be sexually harassed based on gender, age, sexual orientation, disability, socio-economic status, Indignity, culture and/or linguistic diversity, workforce characteristics or a combination of these factors;
 - targeted information and resources to assist schools, colleges and other education workplaces to prevent and effectively respond to sexual and or gender-based harassment by, and between, students.

Federation Council decision reflects elements of the recommendations made in the Unions NSW submission. Federation supports the Unions NSW submission and recommendations.

Federation has contributed to, and endorses the Australian Education Union submission and recommendations.



6. References

Anti-Discrimination Act 1977, NSW, sections 22A & 24

Australian Council of Trade Unions (ACTU), Sexual Harassment in Australian Workplaces Survey Results 2018

Australian Education Union (AEU), Sexual Harassment Survey, December 2018

Australian Human Rights Commission Act 1986 (Cth)

Australian Human Rights Commission, Everyone's business: Fourth national survey on sexual harassment in Australian workplaces. 2018

Crown Employees (Teachers and Schools Related Employees) Salaries and Conditions Award 2017; Clause 33 Anti-Discrimination

Fair Work Act 2009; Part 6-4B and section s.351

Government Sector Employment Act 2013, NSW; section 63

Government Sector Employment Rules 2014, NSW; sections 26 & 27

Industrial Relations Act 1996, NSW

NSW Department of Education's Code of Conduct (March 2017)

NSW Department of Education's Complaints Handling Policy (January 2017)

NSW Department of Education, *Gender Analysis of School Teachers*, December 2018

NSW Department of Education's School Community and Consumer Complaint Procedure (January 2017)

NSW Department of Education's Staff Complaint Procedure (January 2017)

NSW Department of Education's Workforce Diversity Policy and Workforce Diversity Plan

NSW Industrial Relations Act 1996

NSW Teachers Federation information leaflets 2018: TR9, *Dealing with sexual harassment*; TR8 *Discrimination*; TR14, *Homophobia, Biphobia and Transphobia*

NSW Public Service Commission, *People Matter 2018 NSW Public Sector Employee Survey*

Safensw.org.au, *Acting to End Sexual, Domestic and Family Violence*

Sex Discrimination Act (1984) (updated in 2013) (Cth)

TAFE Commission of NSW, 1990

Teaching Service Act 1980 (NSW), section 47, 47A and part 4A

Work Health Safety Act 2011, NSW

Work, Health and Safety regulation 2017, NSW

Unions NSW, *Discussion Paper, Reforms to Sexual Harassment laws*, 2018

Ullman, J., & Smith, M. (2018). *LGBTIQA+ Teachers' Experiences of Workplace Discrimination and Disadvantage*. Centre for Educational Research, School of Education, Western Sydney University: Penrith.



Department of Education



35 Bridge Street, Sydney

Please address all
communications to
NSW Department of
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Box 33, G.P.O., Sydney, NSW 2001

MEMORANDUM TO PRINCIPALS

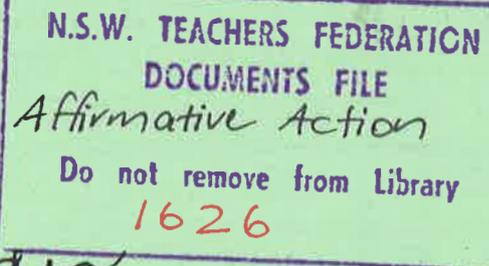
Our reference: 84/52582
86-208(S.597)
Your reference:

Telephone: 2 0584 Ext 8427
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POLICY STATEMENT AND GUIDELINES ON SEX-BASED HARASSMENT

The attached policy and guidelines set out the procedures for handling sex-based harassment cases involving students and members of staff in the Department of Education. Please ensure that all students and members of staff in your school are aware of the existence and general approach of these guidelines, and that members of staff have access to a copy, so that they may be aware of the detail of the contents.

I believe that the policy and guidelines will assist all members of staff in developing a working and learning environment that is free of harassment.



R.B. WINDER
Director-General of Education

30 September 1986

Distribution List: Groups 1-7, 8A, 8B, 9A, 9B.

NEW SOUTH WALES DEPARTMENT OF EDUCATION
**POLICY STATEMENT AND GUIDELINES ON
SEX-BASED HARASSMENT**

1. INTRODUCTION

The NSW Department of Education is committed to a policy of equal employment opportunity for all of its employees and equal educational opportunity for all students.

The department recognises that sex-based harassment can deny equality of opportunity and can result in an offensive and stressful work or learning environment for those who are subjected to it.

Sex-based harassment is therefore unacceptable. The department is committed to providing a working and learning environment which is harassment free.

Guidelines have been prepared for dealing with cases which come to notice. These guidelines aim to ensure appropriate conduct, effective work performance and a co-operative atmosphere in which the rights of individuals are respected.

1.1 What is Sex-Based Harassment?

Sex-based harassment is a form of discrimination based on sex and is therefore prohibited by the Anti-Discrimination Act, 1977 (N.S.W.) and the Sex Discrimination Act, 1984 (Commonwealth). Sex-based harassment involves verbal or physical conduct of a sexist or sexual nature which is uninvited, unwelcome, intimidatory and/or offensive. It is, in addition to being unlawful, a serious breach of proper standards of conduct and professional behaviour.

There are two main kinds of sex-based harassment:

- **Sexist harassment** which includes behaviour such as
 - suggestive remarks or other verbal abuse or innuendo
 - demeaning comments or jokes
 - displays of offensive pictures or illustrations
 - obscene gestures
 - continuing/frequent unwelcome telephone calls.
- **Sexual harassment** which includes an element of coercion and persistence by someone able to threaten or confer favours on the recipient of the sexual advances — e.g.
 - unwelcome and uninvited physical contact
 - subtle pressure for sexual activity
 - demands for sexual favours accompanied by implied or overt promises of preferential treatment or threats concerning a person's employment status, academic progress or career opportunities.

In this policy statement the term "sex-based harassment" is used to encompass both of these kinds of conduct. Serious forms of either kind of conduct, e.g.

- physical and sexual assault; rape
- threatening/menacing behaviour
- indecent exposure; obscene telephone calls

may constitute criminal offences and be punishable accordingly.

Sex-based harassment can occur between senior and junior officers and employees, among peers or co-workers, between teachers and students or between students, when people use the power of their office, position or network of acquaintances to control, influence or affect the career or promotions prospects of another employee or the academic prospects of a student in exchange for sexual favours or by intimidatory conduct.

1.2 The Role of Management

It is the responsibility of all senior managers in the Department, including principals of schools, to ensure that proper standards of conduct are maintained in the workplace and that all staff and students under their supervision are aware that:

- sex-based harassment will not be tolerated;
- all complaints will be thoroughly investigated, seriously and sympathetically;
- positive action will be taken in respect of any instance which comes to notice; and
- where necessary, disciplinary action against individuals could result.

Management has a proper concern and responsibility when conduct such as sex-based harassment is likely to:

- create a hostile, intimidating, or offensive work or learning environment for any individual;
- adversely affect an individual's prospects for employment, promotion or academic success;
- cause embarrassment, distress or ill health for any

employee or student;

- adversely affect an individual's work performance;
- result in transfer, leave without pay, resignation or unfair dismissal;
- result in failure, suspension or expulsion of students;
- reflect upon the integrity and standing of the school or Department.

1.3 The Role of Supervisors

All staff supervisors, including executive staff in schools, have a responsibility to maintain a work environment free from sex-based harassment by ensuring that the Department's policies and procedures are known and understood by staff. In addition, principals of schools have the responsibility to ensure that these policies and procedures are known and available to students. Any incident of sex-based harassment which comes to a supervisor's attention should be resolved by following the procedures as outlined in this document.

1.4 The Role of Staff and Students

All staff and students are expected to observe the terms of this policy thus ensuring a harassment-free working and learning environment. In a case of harassment, colleagues can assist by:

- offering support to the victim;
- encouraging or assisting the person to indicate clearly to the harasser that the behaviour is unwelcome and unacceptable; offering to be a witness to this action; and, if necessary,
- providing advice and assistance in making a formal complaint.

1.5 The Role of the Grievance Officer (Education Teaching Service)

Members of the Education Teaching Service, whether in schools or offices, may approach the Grievance Officer to lodge a complaint or to seek advice on sex-based harassment. Cases of sex-based harassment are considered grievances coming within the terms of the **Grievance Resolution Within the Education Teaching Service** issued by the Director-General on 8th July, 1986. These guidelines should be read in conjunction with that document.

2. GUIDELINES FOR HANDLING COMPLAINTS OF SEX-BASED HARASSMENT

2.1 General Principles

The detailed guidelines set out underneath must be read and understood in the light of some important general considerations.

Efficient management of any organisation requires effective resolution of grievances. Complaints of sex-based harassment are a very serious and sensitive kind of grievance, which need special guidelines for their resolution; this is the main purpose of this policy statement. Generally, however, good grievance resolution procedures:

- (1) seek resolution at a local level in preference to more senior levels or through formal procedures;
- (2) recognise that a person with a grievance may be unwilling or unable to seek resolution at a local level;
- (3) consistent with (1) and (2), provide that attempts at resolution commence with the **next most senior level of management in whom the person has confidence and who is in a position to effect a resolution**;
- (4) emphasise:
 - (a) conciliation and negotiation, with arbitration and formality only if the former fail;
 - (b) preservation of privacy and confidentiality for the protection of all parties, respondents as well as complainants;
 - (c) sensitivity and sympathy towards the person with the grievance;
 - (d) speed of resolution; and
 - (e) keeping all parties regularly informed of progress.

2.2 What a Victim of Harassment Should Do

2.2.1 Making it Clear that the Harasser's Behaviour is Unacceptable

The first requirement is that a person subjected to harassment should make it unambiguously plain to

the harasser that the harasser's behaviour and/or remarks are offensive, and unacceptable. The approach to the harasser should be polite, but firm and clear, indicating that the harassment should stop. If necessary, the harasser should be told that the matter will be taken further if harassment does not cease.

In some circumstances the person being harassed may feel unable to make such a personal approach unaided. This may occur when the harasser is in a considerably superior or more powerful position than the person, or where the person fears antagonism or even violence from the harasser. In such cases the person may choose to:

(a) seek the assistance of another person in making the approach. This person might be:

For all staff —

- a supportive colleague, union representative or official;
- Women's Contact:

For members of the Education Teaching Service —

- the Director of Personnel or nominee;
- the Grievance Officer;

For Public Service staff (including ancillary staff) —

- Director of Administration, or nominee;
- Women's Liaison officer, Spokeswomen, Convenor of the Ancillary Staff EEO Sub-Committee; or
- the EEO Co-Ordinator (Public Service);

For a student —

- a trusted adult.

(b) make an approach in writing, rather than face-to-face.

Such an approach may succeed in stopping the harassment, if it does not, a complaint should be made.

2.2.2. Making a Complaint

A complaint may be made either orally or in writing. Details are given below, but one fundamentally important thing is that complaints supported by documentation are more likely to be satisfactorily resolved than those which are not. A written complaint should be supported with documentation: notes of incidents and conversations may be difficult to write on the spot but should be made as soon as possible, indicating time, date, what happened and what was said. A supportive colleague, union-representative etc. may serve as a witness. Copies of any written document should be retained.

The mechanisms for making complaints differ according to the work place.

2.2.3 Complainants in Schools

(a) **Where a complaint is made by a staff member (teaching or ancillary) against a staff member or student:**

- The complainant may seek a meeting with the Principal,

OR

If preferred, a teacher may seek an interview with the District Inspector of Schools, the Regional Director or the Department's Grievance Officer (Head Office); ancillary staff may seek an interview with the District Inspector, the Regional Chief Administrative Officer, Regional Director or Personnel Manager at Head Office.

- The complaint may be made orally or in writing and once again, a supportive colleague or union official may be asked to be present to assist in the presentation of the complaint.
- The harassment should be described; the steps that have already been taken should be outlined; it should be made clear that official action is expected; and the kind of action and/or outcome(s) that would be considered appropriate should be stated.

In the event that the complaint is not satisfactorily resolved at the school, the complainant may:

- if a teacher — contact the Inspector of

Schools, Regional Director, Director of Personnel or Grievance officer (Head Office);

- if a member of the Ancillary Staff — contact the District Inspector, Regional Chief Administrative Officer, Regional Director, Director of Administration, or EEO Co-Ordinator (Public Service)

OR

- if either teacher or Ancillary Staff member — ask the Principal to refer the matter to the Regional Director for further investigation and action as appropriate. The Regional Director will notify the Principal, the alleged complainant, the alleged offender, the Director of Personnel or the Director of Administration.

Careful written records should be kept documenting all discussions, interviews and meetings.

At any stage in the proceedings union representatives or officials may be consulted.

(b) **Where a complaint is made by a student against a staff member:**

The complainant may:

- seek a meeting with the Principal and make the complaint either orally or in writing. The student may wish to have a supportive person (student, teacher or parent/guardian) present at this meeting;

OR

- ask a parent(s) or guardian(s) to arrange a meeting with the Principal;

OR

- ask a teacher to arrange a meeting with the Principal and either accompany the student to the meeting or represent the student at the meeting.

All complaints about a staff member must be referred to the Principal;

A student who does not wish to lodge a complaint may seek advice from a teacher.

(c) **Where a complaint is made by a student or staff member against a student:**

The complainant may:

- report the matter, orally or in writing, to the Principal or any other member of the teaching staff;
- follow the procedures stated previously in (a) or (b) above, as relevant.

2.2.4 Complainants in Administrative Units, Head Office Directorates and Regional Offices

Where a complaint is made by a staff member:

- The complainant may seek a meeting with the relevant supervisor or Director, or may seek a meeting with the Director of Personnel or the Director of Administration or nominated representative.
- The complaint may be made orally or in writing and a supportive colleague or union representative may accompany the complainant to the meeting to assist in the presentation of the case.
- The harassment should be described: the steps that have already been taken should be outlined; it should be made clear that official action is expected; and the kind of action and/or outcomes sought by the complainant.

A student who does not yet want to make a complaint about harassment from a staff member may at any time seek advice from a teacher about how to handle situations in which the harassment may recur. If, however, after seeking advice the student wishes to proceed with a complaint, the matter must be referred to the Principal.

In the event that the complaint is not satisfactorily investigated or resolved in the workplace the complainant may:

- ask the supervisor to refer the matter to the appropriate Director for further investigation

and action as appropriate;

OR

- refer the matter to Director, personnel or Director, Administration, as appropriate.
- in the case of Education Teaching Service personnel, seek a meeting with the Grievance Officer (Head Office);

OR

- in the case of Public Service Personnel seek an interview with the Women's Liaison Officer or the EEO Co-Ordinator, (Public Service) for advice.

Careful written records should be kept documenting all discussions, interviews and meetings. At any stage in the proceedings union representatives or officials may be consulted.

At any stage within six months of the incident, a complaint may be lodged with the Anti-Discrimination Board.

2.3 What the Person Receiving the Complaint Should Do

2.3.1 Complaints Against Students

Where a case of sex-based harassment involving students (excluding possible criminal proceedings) comes to the attention of a teacher, that teacher should:

- discuss the matter with the student against whom the complaint has been made, detailing the complaint and seeking a response; pointing out the seriousness of the allegation in question and informing the student of any action which is to be taken;
- if necessary, refer the student for disciplinary action according to the school's discipline policy

OR

- refer the student to a teacher nominated in accordance with the welfare procedures in the school.

If the behaviour is repeated, the matter must be reported to the Principal for further action in accord with normal disciplinary procedures.

In a case where criminal proceedings are possible against a student, the Principal must be advised immediately. The Principal should not proceed with an investigation but must report the matter immediately to the Regional Director through the District Inspector.

2.3.2 Complaints Against Staff

The officer receiving the complaint should investigate and try to conciliate except in cases of possible criminal proceedings which must be referred immediately to the relevant Director. In all other cases the complainant must decide whether the complaint is to be handled formally or informally.

(a) Informal Investigation

- The complaint may be made orally or in writing. If the complainant concurs, the officer receiving the complaint will, as soon as possible, consult the person against whom the complaint has been made in an attempt to conciliate and to arrive at a satisfactory outcome.
- The complainant may, or may not, wish to be present.
- If the complainant is satisfied with the outcome, no further action is required. The investigating officer, however, should follow up in a month's time to ensure that the offensive behaviour has ceased.
- If a satisfactory outcome is not achieved, or if there is a recurrence of the offending behaviour, the complainant may choose to lodge a formal complaint.

(b) Formal Investigation

- The complaint must always be in writing with a copy provided for the person against whom the complaint is being laid.
- The Principal or the investigating officer shall open a confidential, "restricted access" file on which all notes and materials related to the complaint or inci-

dent will be kept. While the matter is under investigation, this file must be kept separately from other files and locked in a secure place.

- The Principal or investigating officer shall, as soon as possible, consult the person against whom the complaint has been made. That person must be advised that he or she is entitled to have present at the time of interview someone of his or her choosing (e.g. a supportive staff member or union representative). The complaint must be explained in detail and any action and/or outcome(s) suggested by the complainant must be stated. The complainant may, or may not, wish to be present at this interview.
- The complaint may be resolved at the initial meeting or it may require further negotiation to effect a resolution at the school/office work place level.
- If a complainant is dissatisfied with the outcome of the complaint in the school/workplace, he or she must be advised that it is her/his prerogative to take the matter further. In the event that such a decision is taken, the person against whom the complaint has been made is to be given the opportunity to provide a written statement if this has not previously been done. The Principal or senior officer concerned shall compile a report of action to date which, together with a copy of the complaint and any response, shall be attached to the file and forwarded to the Regional or Functional Director marked "Personal and Confidential".
- In a case of possible criminal proceedings involving a student as victim, the parents/guardians of the complainant must be informed. It is their decision whether or not the matter will be reported to the police. The Principal, however, must report the matter through the District Inspector to the Regional Director.
- Where a complaint by a student or staff member in the normal operation of the school or workplace concerns a person other than a student or staff member within the normal operation of the school or workplace, the Principal or senior officer concerned shall make it known to the offender that such behaviour is unacceptable. If the behaviour continues or is of a sufficiently serious nature and outside the jurisdiction of the Principal or senior officer concerned, then it must be reported forthwith through the usual channel so that appropriate action may be taken.

If at any time during an investigation it appears that criminal proceedings may arise, the investigation must cease, and the matter must be referred to the relevant Director.

2.4 What The Relevant Director Should Do.

1. Notify all parties of receipt of the report and provide each with a copy;
 2. In consultation, if appropriate, with the Department's Grievance Officer (for Education Teaching Staff) or the Equal Employment Opportunity Co-Ordinator (for Public Service personnel), resolve the complaint in a manner considered to be appropriate to the circumstances;
- OR
3. In cases of possible criminal proceedings, refer the matter to the Legal Officer.

In all cases, the investigation of complaints must be carried out as expeditiously as possible and the decision arising therefrom must be conveyed promptly to the persons concerned.

If a complaint against a member of the teaching service is found to be substantiated or proven, the Director shall act in accordance with procedures laid down in the Education Commission Act, 1980, Division 6: Discipline and Conduct.

If a complaint against a staff member employed under the Public Service Act is found to be substantiated or proven, the matter must be referred to Staff Services Division for action as stipulated in Part (5) of the Public Service (General) Regulation, 1984.



DEALING WITH SEX-BASED HARASSMENT

N.S.W. TEACHERS FEDERATION
DOCUMENTS FILE
Affirmative Action
1626
Library

Advice to Women's Contacts

Sex-based harassment is a serious problem impacting on our professional lives. It can affect most directly the way we work as teachers and way our students learn. It is a fundamental union issue as well because harassment can directly affect our right to work.

The issue of sexual harassment and sexist behaviour in the workplace is dealt with generally in federation welfare leaflets designed to identify and explain the problem and to advise members experiencing such behaviour. These should be read in conjunction with this document which aims to assist you as women's contacts in responding to the problem in workplaces where there are children as well as adults. Federation representatives should find this information useful as well.

It is not possible to lay down precise guidelines to cover all eventualities; problems vary according to the nature and level of harassment and are shaped by the personalities of those who are involved.

However these guidelines should help raise your awareness of the issue and provide you with practical advice to assist you in your efforts

- (i) to create a workplace climate which actively discourages sex-based harassment and
- (ii) to assist members subjected to harassment.

What is Sex-Based Harassment?

It has been defined as any uninvited, unreciprocated and unwelcome physical contact, comment, suggestion, joke or attention which is offensive to the person involved, and causes that person to feel threatened, humiliated, patronised or embarrassed. It may create a threatening or intimidating working environment, adversely affect school work or job performance and, in extreme cases, may cause a person to seek to leave the school or college.

It is a form of victimisation or intimidation which may range from comments about dress or appearance to deliberate abuse; from the use of offensive graffiti to demands for sexual favours. Attacks on an individual's sexual orientation also constitute a form of sex-based harassment.

Who is Affected?

Although, on occasion, men and boys may experience sex-based harassment, the majority of those who suffer this form of victimisation are women and girls. This is hardly surprising, as such harassment stems from the abuse of power and, where males play a dominating role in society, the victims of harassment will more often be female.

Schools are rather different from other work environments because both children and adults are present. The possibility of additional kinds of sex-based harassment is consequently greater: teachers, or ancillary staff, or other persons present on the school premises, may be responsible for harassing pupils, while pupils may be responsible for harassing adults. Because teachers have a pastoral responsibility for their pupils, they have a particular concern where pupils are involved in any way in harassment.

Professional good sense should help the teacher to avoid situations which could lead to accusations of sex-based harassment, although it has to be recognised that interpretations of what constitutes harassment differ and that what is accepted as friendliness by one person may well be interpreted as unwelcome attention by another.

You should be aware of federation's welfare leaflet no. 5. It outlines departmental procedures which apply when complaints against teachers are made to the principal.





You should also be aware of the departmental procedures which apply in relation to child care sexual assault and complaints of improper sexual conduct against teachers and departmental employees. These should be available from your principal. Federation welfare leaflet no. 1 contains advice to all teachers about the problem of improper conduct between teachers and students.

What is Federation's Policy on Sex-Based Harassment?

1983 Annual Conference declared that "*sex-based harassment of members and students within schools, TAFE colleges, CAE's, Universities and within the union is totally unacceptable*".

That same conference endorsed a union campaign to raise membership awareness of the policy on sex-based harassment and the need for its elimination from the workplace and the union. It involved the following:—

- the education of union members about the nature and impact of sex-based harassment both as a professional, industrial and curriculum issue;
- the creation of union positions in every school and college, ie the Women's Contact — to be filled by a woman who has the special responsibility of supporting other women members and speaking out on this issue in the workplace;
- the lobbying of the employer to take up responsibilities in this area ie to develop departmental policy opposing harassment and to support this policy with appropriate resource documents and personnel.

The conference decision also empowered women's contacts to call meetings of female teachers to discuss the issue of sex-based harassment and identified women's contacts as the union's spokesperson on sex-based harassment in the workplace.

What Role has the Union Played Since Then?

Federation has urged both TAFE and Department of Education to adopt policy to stop sex-based harassment of teachers and students and to support such policy through proper inservicing of teachers and the provision of appropriate resources. These departments have the legal responsibility to establish a workplace free of harassment and discrimination.

In September 1986 the Director-General of Education issued the department's policy on sex-based harassment to all schools in a memorandum sent to each principal — 84/52582. The Department of TAFE has issued two policy statements one in 1983 and the second which replaced it appears as a supplement to TAFE Gazette No. 19 of 1987. To date only TAFE has supported the policy with the creation of Sexual Harassment Contact Officers in each college, training programs for such officers and a substantial kit of resources and material "Towards eliminating Sexual Harassment" for each of them.

Both the Departments of TAFE and Education recognise the important role that union representatives and particularly women's contacts can play in the elimination of the problem. This role is acknowledged in both departmental policies.

The federation believes that the employer has the responsibility to see that sex-based harassment is eliminated from the workplace. At the same time the union does not resile from its responsibility to ensure that the employer meets this responsibility, both in respect of teachers and students.

In response to the issue of sex-based harassment federation has undertaken a program of membership education through trade union training programs and officer seminars, the production of welfare leaflets and the provision of library resources available to all members but with priority access to women's contacts and association women's co-ordinators.

Further, the federation has endorsed a Code of Ethics and established a procedure for dealing with breaches of discipline which include sex-based harassment within the union. Such complaints may be made to the General Secretary who in the first instance seeks an informal resolution. If no mutual solution is



reached the matter can be referred by the General Secretary to the Discipline Committee, a sub-committee of executive, which has powers to investigate the complaint and impose a penalty. A further appeal on the outcome of this process can be made to the Disciplinary Appeals Committee elected yearly by Federation Council.

Federation has assisted many individual members in seeking resolutions to sex-based harassment complaints made to the employer, through direct negotiation with departmental officers, at the school level and beyond, in the Industrial Commission and via the Anti-Discrimination Board — through its conciliation process and by way of formal complaint to the Equal Opportunity Tribunal.

Why should Sex-Based Harassment be taken seriously?

Sex-based harassment is often trivialised as 'making a fuss over nothing'. A frequent defence is that the victim has no sense of humour or is not sexually or socially mature. Sometimes the behaviour is excused as 'natural for men or boys' or something that stems from the home upbringing. Such excuses are unacceptable because there is no recognition of the extent of the effect of sex-based harassment on the victim, nor an acknowledgement that wrong behaviour can and should be corrected.

Such harassment undermines any attempt to achieve equality. While women and girls are treated as sexual objects, they are not taken seriously as individuals. This is equally true where men and boys are treated in the same manner.

All sexual harassment causes tension and stress and has been linked not only to serious depression but to physical illnesses such as cystitis, headaches, nausea and general physical disability.

It may cause a teacher to leave a job or a student to drop out of classes rather than suffer continued harassment.

Some Advice to all members

Sex-based harassment is a matter of concern for every member of the union. All union members should be aware of the issue.

As an individual member:

- (i) you should never intentionally behave in a way which could be regarded as harassment;
- (ii) you should constantly examine your behaviour towards others at school and within the union to make sure that your behaviour and language cannot be construed as harassment;
- (iii) you should do all possible to support and assist the victims of harassment;
- (iv) you should actively seek to raise awareness of the problem among your colleagues and immediately discourage its occurrence wherever possible.

A Check List for Women's Contacts

- Understand the issues of sex-based harassment and sexism.
- Familiarise yourself with relevant federation and departmental policies and resources at the workplace.
- Let other members know about your role and your concerns about the issue of sex-based harassment.
- Know who is able to assist *you*. Be able to contact these people.

If a complaint comes to you

- Don't gloss over the person's problem.
- Reassure the member. Be supportive. Advise the member of her rights to complain and help her work out appropriate responses to confront the harasser.
- Help her to be direct, clear and confident in telling the offending person that she finds particular behaviour unacceptable. The nature of the behaviour should be specified. She should demand that such behaviour not be repeated. She is entitled to seek an apology for past behaviour and an undertaking about future behaviour. It is very important for *her*



to confront the offender herself. She will gain strength and self assertion from the process with your support. However she may prefer to tackle the problem by way of a written statement to the offender. Be prepared to seek federation assistance with the wording if necessary.

- You should make the offender aware of departmental and federation policy.
- If this initial meeting is not fully satisfactory warn the offender that further action will be taken if behaviour doesn't stop.
- Keep your own record of this meeting for future reference.
- Then set up a process of ongoing support for the member so that you know if the unacceptable behaviour stops or if there are any other repercussions.
- Ask her to record any instances of further offensive behaviour.

If these informal efforts fail

Assist the member in making a formal complaint to her immediate supervisor — head teacher, deputy or principal. (Refer to the Department's Guidelines.)

Or

She may prefer to seek the assistance of the Department's Grievance Officer.

Note: You may feel quite happy about continuing to deal with the problem at this level but remember that the Area Organiser or Federation Women's Co-ordinator or Welfare Officers can assist you.

Certainly if the complaint is to be referred beyond the principal then federation should be informed immediately. You may wish the organiser to be present for any discussions with the principal or other departmental officers. *Discuss this with the complainant.*

Points to remember

- Be supportive of the complainant. She/he has a right to complain and have the complaint dealt with sensitively and responsibly.
- Regard the individual's complaint as confidential. A mutually agreed solution is more likely if confidentiality at this stage is stressed.

In any case public comment and speculation can only add to the stress experienced by the complainant.

Be aware of possible victimisation following a complaint.

Victimisation is any unfavourable treatment of a person who has made a complaint.

Such behaviour can lead to disciplinary action under the Education Commission and Public Service Acts, and is in itself a form of sex-based harassment.

- An offer of transfer for a complainant is not really a satisfactory solution.
- Federation recognises that in such disputes other members have rights. This includes the alleged harasser.

The Anti-Discrimination Board has advised that federation processes for dealing with complaints of sex-based harassment must be impartial and perceived to be so by members.

This means that federation does not attempt to judge the guilt of either party.

If a workplace climate of sexism and harassment exists

- Don't ignore it. Discuss the general problem with other federation colleagues eg. the federation representative, Branch Executive, the TAFE Sexual Harassment Officer where appropriate.
- Record instances of harassment and sexist behaviour.
- Call a meeting of women members to discuss the problem. You are empowered to do so in your capacity as federation Women's Contact.

- Otherwise talk informally with women members to assess the problem.
- Raise the issue with the principal and ask that the staff and students be made aware of the policy.
- Suggest that an appropriate staff meeting time be set aside to have the problem discussed fully.
- Here the principal should be prepared to outline the department's policy on sex-based harassment.
- Propose that the school/college devise a plan of action to address the problem. This could involve a staff committee to plan an inservice for all staff about the problem with counter strategies for classroom and playground to be devised.
- Invite a guest speaker
The Department of Education's EEO Liaison officers based in each region can address the staff on the department's policy. In TAFE the Sexual Harassment Contact Officer can do so.
- There should be a review of school personal development programs and the school discipline codes so that the issue of sexism is addressed, the rights of students to an harassment-free learning environment are recognised and consequences for students who harass others are known.
- Advice to parents and students about the problem should be prepared.
- Resources for staff members should be obtained both for initial inservice and kept in the school or college for later reference.
- It may be appropriate to ask how effectively the Department of Education's Non-Sexist Policy has been implemented at the school level.
- A mutual support structure within the school may be very useful for individual teachers who are confronted with sexist and inappropriate behaviours. Federation welfare leaflet no. 11 has helpful suggestions about how to develop school staff support systems.

Federation notes about assertive behaviour may also be useful for these teachers.

Resources to help you.

A. Available on Loan from the Federation Library

Video — “Leave Me Alone”

- Looks at the effects of sexual harassment on the efficient running of a typical company. Explores different forms and examples of sexual harassment from the subtle to the obvious and stresses the need for awareness – sensitising of people to this controversial topic.

It also emphasises the prevalence of sexual harassment and presents a plan to help companies deal with this problem.

- Warm and sensitive. Presents realistic measures that an employer can use to address the issue satisfactorily. While it does not deal directly with a school or college situation it explores the issue of sex-based harassment effectively.

The production is quite sophisticated and both secondary and TAFE students and teachers would be able to relate to the problems raised.

Video – “Space Invaders – Sexual Harassment at Work”

- This video presents seven situations illustrating sexual harassment in the work place. Any of the episodes would be valuable in providing stimulus to workshops and/or discussions as part of an educational program dealing with sex-based harassment for secondary or TAFE students.

The video is accompanied by an excellent workshop manual by Elizabeth de Rome, which provides suggestions for techniques to facilitate discussions and follow-up activities.

The booklet advises that the situations not be screened consecutively, rather, that each episode ‘trigger’ a recommended 30-minute discussion or role play.

A reading list, a brief resume and focus questions for each situation are also included.

Trigger 1: Position of exploitive power

Trigger 2: Trapped in a small space

Trigger 3: Won't look good on your record

Trigger 4: Issue of dress

Trigger 5: Not as bad as you think

Trigger 6: You must have encouraged him

Trigger 7: I feel so guilty.

NOTE

This video should be used as part of a training program, as suggested, not as an introduction to the issue.

Kit – “Sexual Harassment Out in the Open” – to assist in combating sexual harassment in schools

It contains five booklets to assist in school communities to discuss, plan and implement programs to eliminate sex-based harassment and was produced by the Curriculum Branch of the Department of Education, Victoria.

CONTENTS:

- Book 1. Preface and acknowledgements.
Section A: Introduction
Section B: Clarifying Sexual Harassment.
- Book 2. Section C: Framework for Action.
- Book 3. Section D: Responding to Sexual Harassment:
Five School's Strategies.
- Book 4. Section E: Classroom Programs Specifically
Combating Sexual Harassment.
Section F: Self Esteem and the Hidden Curriculum.
Section G: Grievance Procedures.
Section H: Speaker's Notes.

Book 5. Section I: Resources.

Also it is available for purchase from

The Education Shop,
234 Queensberry Street,
Carlton. Victoria 3053

and on loan from the

Non-Sexist Resource Collection,
35-51 Mitchell Street,
North Sydney. 2060

Kit – “Towards Eliminating Sexual Harassment” – designed for TAFE Sexual Harassment. Contact officers by the NSW TAFE EEO Unit

- Contains policies, background information, counselling advice.
Also held in most TAFE Colleges by the Sexual Harassment Contact Officers.

B. Policies and Printed Materials – Copies available from Federation

(From the NSW Department of Education)

- *Towards Non-Sexist Education* — policies and guidelines for Pre-Schools to Year 12
Available from your principal, from the Non-Sexist Resource Unit, from your Non-Sexist Education consultants or federation Women's Co-ordinator.
- *Grievance Resolution Procedures for the Education Teaching Service in Memorandum to Principals July 1986 86/5369/.*
- *Policy Statement and Guidelines on Sex-Based Harassment in Memorandum to Principals September 1986 84/52582.*
Both available from your principal, your regional EEO Liaison Officer or from federation's Women's Co-ordinator.

(From the NSW Department of TAFE)

- *Policy — Discrimination — Sexual Harassment Grievance Procedure 86/P/0185 Supplement to TAFE Gazette No. 19 of 1987.*
Available from your TAFE College or from Federation Women's Co-ordinator.

(From federation)— welfare leaflets

- *No. 12 “Sex Discrimination and Sex-Based Harassment.”*
- *No. 3 “Complaints against Teachers.”*
- *No. 1 “Advice you may never need.”*
- *No. 9 “Mutual Support Structures.”*
- *The Federation Code of Ethics.*
- *Assertiveness Training Notes*





97/281 (S.255)

DIRECTOR-GENERAL OF SCHOOL EDUCATION
DG 97.4465

**MEMORANDUM TO PRINCIPALS OF
CENTRAL AND SECONDARY SCHOOLS**

HOMOPHOBIA IN SCHOOLS

There is no place in government schools for any form of discrimination or harassment against students or staff.

The NSW Anti-Discrimination Act (1997) makes it unlawful to discriminate against or harass a person on the grounds of race, sex, marital status, disability, homosexuality or age. Its provisions apply to the delivery of public education and to the establishment of a discrimination free workplace.

Each school must implement the *Procedures for Resolving Complaints about Discrimination Against Students* and must appoint a discrimination contact officer. The name of the discrimination contact officer must be promoted within the school community as this officer is available to assist students or parents in addressing their concerns about discrimination or harassment.

Secondary schools must address homophobia within their student welfare structures and through the curriculum in Personal Development, Health and Physical Education or other key learning areas. The NSW Police Service has gay and lesbian liaison officers who are able to assist in conducting anti-violence initiatives. Resources provided by the Department to assist schools include:

- *Resources for Teaching Against Violence* (Revised)
- *Mates*, a video and teaching materials about HIV/AIDS related discrimination
- *Out in the Bush*, a video for teachers and community members
- *HIV/AIDS Education Years 7-10 Teaching Materials* which contain nine lessons in which homophobia is addressed.

Because of the importance of this matter it is necessary for us to collect information relating to it. For this reason you can expect to be approached for information by staff from the District Office.

For further information contact Gary Crawford, Senior Education Officer, Student Welfare Directorate, on telephone (02) 9561 8876.

A handwritten signature in black ink, appearing to read 'Ken Boston'.

Ken Boston
DIRECTOR-GENERAL OF SCHOOL EDUCATION

20 October 1997



TR9 — Dealing with sexual harassment



Sexual harassment is against the law and can be experienced by anyone, although it is mostly experienced by women. This leaflet, which is not a comprehensive document but an overview, contains information for all members who have experienced sexual harassment or who have witnessed another person being sexually harassed.

For further information about all forms of discrimination please refer to Federation's Information Leaflet *TR8 — Discrimination*.

TR9.1 Sexual harassment

Sexual harassment is based on the gender of the person and is a form of sex discrimination. As such, it is prohibited by the NSW Anti-Discrimination Act 1977, and the Commonwealth Sex Discrimination Act (1984). This kind of harassment is behaviour that embarrasses, hurts or frightens others in ways related to their gender or sexuality. In some circumstances these behaviours may constitute child sexual abuse or assault. Women are most commonly subjected to this type of harassment though men can also be the subject of sexual harassment. For the purposes of this leaflet "sex-based harassment" and "sexual harassment" are used interchangeably.

Employers have a responsibility to ensure that such harassment does not occur.

Sexual harassment is often linked with other forms of discrimination such as racism and may occur between:

- males and females
- males and males
- females and females

It may occur between:

- students and students
- staff and students
- staff and staff
- staff and community members
- community members and students.

As an example, if a group of students behaves aggressively only toward women teachers, that should be dealt with as sexual harassment, even if the behaviour itself is not overtly sexual.

The Department of Education (the Department) recognises that sexual harassment is a form of discrimination and that employers have the responsibility to ensure that such harassment does not occur.

TR9.2 Definitions

Sexual harassment is generally defined as "unacceptable behaviour of a sexual nature".

Harassment occurs when a person believes that they are being subjected to behaviour of a sexual nature that is unwelcome, demeaning, unreciprocated, intimidating, offensive and is repeated.

Section 22A of the NSW Anti-Discrimination Act 1977 states:

For the purposes of this Part, a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or*
- (b) the person engages in 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.*

TR9.3 Examples of sexual harassment

The NSW Anti-Discrimination Board's Sexual Harassment (online at antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/sexualharassment.aspx) says:

“Depending on the circumstances, any of the following could be harassment if it relates to a person’s sex, race, age etc:

- *material that is displayed in the workplace (for example on a noticeboard), circulated on paper, sent by fax or put in someone’s workspace or belongings*
- *material put on a computer, sent by email, or put on a website, blog or social networking site*
- *verbal abuse or comments*
- *offensive jokes*
- *offensive gestures*
- *ignoring, isolating or segregating a person or group – for example not inviting someone to a work event that everyone else is invited to*
- *initiation ceremonies that involve unwelcome behaviour.*

What types of behaviour could be sexual harassment?

Depending on the circumstances, any of the following could be sexual harassment:

- *staring or leering in a sexual manner*
- *unwelcome wolf whistling*
- *comments about a person’s physical appearance or sexual characteristics*
- *sexual or physical contact, such as slapping, kissing, touching, hugging or massaging*
- *displaying or circulating sexual material, for example on a noticeboard or by email*
- *repeated sexual invitations when the person has refused similar invitations before*
- *initiation ceremonies involving unwelcome sexually related behaviour*
- *intrusive questions about sexual activity*
- *sexual assault (also a crime under the Crimes Act).”*

In relation to the last point, criminal activity that might be sexual harassment includes: threatening or menacing behaviour, obscene phone calls, indecent exposure, physical assault, offensive comments on websites, chat rooms or social networking sites.

Federation also notes that the following may be sexual harassment:

- unwanted requests to go out on dates
- intrusive questions about your private life or body
- dirty jokes, talk of sexual prowess
- belittling comments based on sex-role stereotyping
- gestures or body movements of a sexual or intimidating nature, offensive hand movements.

If behaviour, words or gestures are offensive to the person, regardless of any “innocent intent” on the part of the harasser, then they may constitute sexual harassment.

TR9.4 Student allegations against a teacher

If a student makes allegations against a teacher, the complaint will be dealt with by the Department’s Employee Performance and Conduct Directorate (EPAC), using the Department’s policy *Child Protection – Allegations Against Employees Jan 2018* and *Responding to Allegations against Employees in the Area of Child Protection Nov 2017*. Refer to Federation’s Information Leaflets *TR1 Child protection – Advice you may need*, *TR2 Dealing with the police* and *TR13 Responding to allegations of a child protection nature*, as well as the Department document *Guidelines for the Management of Performance and Conduct August 2006*.

TR9.5 The impact of sexual harassment

Sexual harassment can create an intimidating and hostile working environment which may:

- interfere with an individual's work performance
- affect the person's health and cause anxiety, which can become extreme
- hold the person up to contempt and ridicule in the eyes of colleagues
- affect self-esteem and self-confidence
- lead to the person feeling forced to avoid certain company or situations, thus limiting social and professional life
- have a serious effect on a person's career, leading to the person failing to achieve their full potential.

For teachers, it is a most serious industrial issue affecting their fundamental rights in the workplace, that is, their right to work in a safe environment that is harassment free.

TR9.6 What can be done about sexual harassment?

Do not allow such a situation to continue. Sexual harassment does not go away if it is ignored. The teacher who is being harassed must take some action. Such action could include:

Step 1: If you feel confident and safe to do so, tell the person that their behaviour is inappropriate and that it must stop. It would be useful if you could arrange a witness to the discussion.

Step 2: If the situation does not improve, the teacher should document the dates and circumstances of the perceived harassment. Try to keep it as factual and objective as possible. These records should be regarded as confidential. Record the date and time of any discussion. Any witnesses' names should also be recorded. It would be helpful if the witness was prepared to provide an incident statement.

Step 3: Do not document forever. Once the teacher has documented the persistent, unwanted behaviour for a limited period of time, and the behaviour continues, the teacher should lodge a formal complaint. Teachers should judge what is a reasonable time-frame over which to document such behaviour before lodging a complaint, based on the circumstances, severity and frequency of the behaviour.

Step 4: Department documents relevant to complaint handling, *Complaints Handling Policy* (January 2017) and *Staff Complaint Procedure* (January 2017), available on the Department's intranet or in the workplace, should be followed when making a formal complaint. Copies of these documents can also be obtained by phoning Federation's Professional Support section on 1300 654 367. Refer to Federation's Information Leaflet *TR6 Complaints Handling*.

If someone you know is being harassed, if you feel confident and safe to do so, you can tell the harasser their conduct is inappropriate and that they should stop that behaviour/s. You can also tell the person being harassed what you have witnessed and offer support. Support can include listening to them, referring them to the school's Women's Contact or Federation Representative, encouraging them to contact the Federation for advice, offering to accompany them as they report the problem to the appropriate supervisor.

If the harasser is another member of staff, you can report the behaviour of the harasser to their supervisor or the principal. The *Code of Conduct* states in Chapter 4 section 4.3:

"If you believe you or anyone else in your workplace is being treated in a discriminatory or harassing manner, it is your obligation to report the behaviour to your supervisor or director."

It goes on to state in section 4.8:

"Managers and principals must take reports of discrimination, harassment and bullying seriously and take steps to prevent and correct the conduct."

If the harasser is a student or group of students, use the school's normal discipline procedures taking into account the seriousness of the behaviours. Consequences must be proportionate to the fact that the behaviour is potentially unlawful. If there are concerns about a widespread pattern of behaviour, then a focus on gender inequality, sexual harassment and discrimination should be addressed via the school's welfare programs and other opportunities in the curriculum. The Human Rights Commission has teaching resources available for use.

If the harasser is a community member, report the behaviour to your supervisor or the principal. There are Departmental policies and legislation, such as the Inclosed Lands Act (1901) outlined in Legal Issues Bulletin No. 31 (2012), which can be implemented that place restrictions on parents or community members access to the school site, staff and students during hours of operation.

If the behaviour continues away from school it can be reported to the police.

TR9.7 Responsibilities of the employer

In addition to consequences for the perpetrator of sexual harassment, the employer can be held liable, particularly if it does not take all reasonable steps to prevent harassment from occurring.

TR9.8 Role of the Women's Contact

The school's Women's Contact is responsible for ensuring members in the workplace are informed about Federation policies affecting women. A key function of the Women's Contact is to provide advice and assistance on issues related to sex discrimination and sexual harassment for individuals or groups of members.

It is not the role of the Women's Contact to resolve a complaint. That is the responsibility of the employer. The role of Women's Contacts and Federation Representatives is to provide support to members to ensure the Department's relevant policy and procedures are implemented appropriately.

TR9.9 Criminal actions

All forms of sexual harassment while you are at work are forms of discrimination and are prohibited by law. See section TR9.3 above for examples of behaviour that may be sexual harassment. Preventing such harassment is a principal's responsibility.

If a teacher believes the harassment constitutes criminal action, for example, threatening behaviour or physical and sexual assault, the matter should be referred to the police, as well as the principal and the Department's Health and Safety Directorate on 1800 811 523. For further details, refer to Federation's Information Leaflet *TR3 Violence against teachers*.

TR9.10 Victimisation

A person who has just cause for making a complaint about sexual harassment should expect to use the Department's procedures without fear of retribution or victimisation. This includes unfavourable treatment of a person who has brought a complaint in good faith. Examples of unfavourable treatment are dismissal, unwanted transfer, and adverse changes in the working or learning environment, denial of promotion or deliberate isolation.

Victimisation of either the person making the complaint or the person the complaint is made against is prohibited. Protection is provided under the NSW Industrial Relations Act 1996 section 210 (1) (j).

If you feel you are being victimised as a result of a complaint made regarding sexual harassment, then you should lodge a subsequent complaint. In that complaint be sure to refer to the original complaint, and indicate that you believe that the current behaviour is victimisation as a result of a complaint of sexual harassment.

TR9.11 Other avenues to explore

The complaint can be taken to the Anti-Discrimination Board of NSW. In the first instance, the Anti-Discrimination Board will assess whether the complaint meets the criteria for discrimination. The Anti-Discrimination Board's inquiry phone numbers are (02) 9268 5544 and 1800 670 812. Its website is at antidiscrimination.justice.nsw.gov.au.

If the Anti-Discrimination Board determines that this is a matter that meets the criteria for discrimination it will write to the employer to seek further information to determine whether the complaint can be substantiated. It will attempt to conciliate the complaint in a manner that is satisfactory to the person lodging the complaint. Should conciliation fail the matter may proceed to the NSW Civil and Administrative Tribunal (NCAT).

References

NSW Anti-Discrimination Board has some useful documents on its website, including:

- Sexual Harassment online at antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/sexualharassment.aspx
- Fact Sheet *Harassment and Sexual Harassment March 2017*, antidiscrimination.justice.nsw.gov.au/Documents/Harassment-and-sexual-harassment-factsheet_Mar2017.pdf

NSW Teachers Federation:

- *TR3 Violence against teachers*
- *TR6 Complaints Handling*
- *TR1 Child Protection — Advice you might need*
- *TR2 Dealing with the Police*
- *TR13 Responding to Allegations of a Child Protection Nature.*

NSW Department of Education:

- *Code of Conduct* (March 2017)
- *Complaints Handling Policy* (January 2017)
- *Staff Complaint Procedure* (January 2017)
- *School Community and Consumer Complaint Procedure* (January 2017)
- *Child Protection — Allegations Against Employees* (January 2018)
- *Responding to Allegations against Employees in the Area of Child Protection* (June 2010)



TR14 — Homophobia, Biphobia and Transphobia



TR14.1 Introduction

This information leaflet is provided to assist members in dealing with and preventing homophobic, biphobic and/or transphobic behaviour, and is intended as an overview rather than a comprehensive document.

Homophobia, biphobia and transphobia have been identified as reasons why some people who identify as, or are perceived to be, lesbian, gay, bisexual, transgender, intersex and/or queer (LGBTIQ) experience bullying, harassment, violence, discrimination and/or vilification. It can be the act of someone who is not consciously or intentionally acting in this manner, such as a passing comment or joke. On the other hand, it can be the deliberate act of someone to make another person uncomfortable, intimidated, hurt or injured such as name calling or graffiti.

Harassment and discrimination on the basis of gender and sexual orientation is prohibited under the *NSW Anti-Discrimination Act (1977)* and *Commonwealth Sex Discrimination Act (1984)* (updated in 2013). Homophobic, biphobic and transphobic harassment may also be deemed sexual harassment and should be treated as such (refer to Federation's Information Leaflet *TR9 Dealing with sexual harassment*).

Homophobic, biphobic and transphobic behaviour, such as harassment, can occur between students/students, staff/students, students/staff, staff/staff, staff/community members, and community members/staff. The Department of Education (the Department) has a responsibility to ensure such harassment does not occur in order to provide a safe environment for employees, students, visitors and community members.

TR14.2 Definitions

- Biphobia is the irrational fear and/or hatred of people who are, or are perceived to be bisexual.
- Homophobia is a word used to describe irrational fear and/or hatred towards people who are gay, lesbian or same-sex attracted, and is often inclusive of people who are bisexual. It can also be extended to people who are perceived to be same-sex attracted, or those who have family members or friends who are same-sex attracted.
- Transphobia is the irrational fear and/or hatred of people who are, or are perceived to be, transgender.
- Discrimination is treating someone unfairly because they are, in this case, of diverse sex, sexuality or gender identity, or have a relative, friend, associate or work colleague who is, or is perceived to be, LGBTIQ.
- Harassment is a form of discriminatory behaviour practised by some people against another person or persons, which that person or persons finds unacceptable.

TR14.3 Examples of homophobic, biphobic and transphobic behaviours

Bullying and harassment

There are many reasons for bullying, including gender and sexuality bias. Being called names such as “faggot”, “tranny” or “dyke”, or statements such as “that’s so gay” or “this book is gay” are examples of homophobic and transphobic terms that are used to bully and harass LGBTIQ people, or people who are perceived to be LGBTIQ. Other forms of bullying and harassment include spreading rumours about another person, including about their sexual orientation; belittling comments based on someone’s perceived or actual sex, sexuality or gender identity; threatening or menacing behaviour; physical assault; gestures or body movements of a sexual and/or intimidating nature.

Discrimination

Anti-discrimination laws are designed to protect people from unfair treatment because of their race, age, sex, marital or domestic status, disability, homosexuality, carer’s responsibilities, HIV or AIDS status, or transgender status. This legislation generally protects people from unfair treatment when applying for a job or during employment, and in accessing the full range of opportunities provided by public education. Not being provided the same opportunities as colleagues due to an individual’s actual or perceived sexual orientation, gender identity or intersex status constitutes discrimination.

Examples of discrimination in schools include not allowing a teacher to coach a football team because he or she is perceived to be gay, or allocating a teacher to drama/dance curriculum because they are perceived to be gay.

Vilification

Vilification is a public act that could incite or encourage hatred, serious contempt or severe ridicule towards people because of their race, colour, nationality, descent, ethnic, ethno-religious or national origin; homosexuality; HIV or AIDS status; or transgender status. Vilification law only covers acts that are in public which could include remarks in a newspaper or publication; material on the internet, including social networking sites such as Facebook and Twitter; graffiti; putting up posters or stickers; verbal abuse; making speeches or statements; and making gestures or wearing badges or clothes with slogans on them.

TR14.4 The impact of homophobia, biphobia and transphobia

Homophobia, biphobia and transphobia impact the health and wellbeing of people of diverse sex, sexuality and gender — and their families and friends — in many ways. Research suggests homophobia, biphobia and transphobia increase both the risks associated with a range of physical and mental health problems, as well as risks associated with social exclusion and isolation. This, in turn, limits opportunities and abilities of people of diverse sex, sexuality and gender to form social, personal and intimate relationships (*Writing themselves in again: 6 years on: The 2nd national report on the sexual health and wellbeing of same-sex attracted young people in Australia*). Homophobia, biphobia and transphobia may also impact on an individual's academic participation and performance, as well as influence professional relationships.

Like other forms of harassment, homophobia, biphobia and transphobia can create an intimidating and hostile work environment. These may interfere with an individual's work performance, leading the person to feel they need to avoid certain company or situations, which can, in turn, limit their social or professional life. Ultimately, the impact of homophobia, biphobia and/or transphobia may have a serious negative effect on the person's career and life.

TR14.5 What can be done about homophobia, biphobia and transphobia

Bullying, harassment and/or discrimination

Do not allow the situation to continue. Bullying, harassment and/or discrimination won't go away if they are ignored. Responses to this type of behaviour will vary depending on the competence and experience of the person/people involved in dealing with these situations. Members can contact their Federation Organiser or Federation's Professional Support section (phone 1300 654 367) to discuss their options.

There are a number of general steps that should be taken to try to address the issues arising from this behaviour.

- Step 1: Discuss the behaviour with the person concerned. In the first instance, the problem may be solved by telling the person their behaviour is inappropriate and that it must stop. It may also be useful to arrange someone else to be present to witness the discussion.
- Step 2: If the situation does not improve, then dates and circumstances of the perceived bullying, harassment and/or discrimination should be documented. Records should be as factual and objective as possible. They should include as much detail as possible and note the names of any witnesses.
- Step 3: Do not document forever. Once persistent and unwanted behaviour has been documented for a limited time, the teacher needs to decide whether to lodge a formal complaint. Alternatively, if there was a single, major incident, this may also be the basis of a formal complaint. In this case, it may be helpful if any witnesses are prepared to provide an incident statement.
- Step 4: Consider taking action. The Department's *Complaints Handling Policy* (January 2017) and *Staff Complaint Procedure* (January 2017) should be followed when making a formal complaint. A copy of these documents can be obtained via the Department's intranet or by contacting Federation Professional Support section (phone 1300 654 367). Refer to Federation's Information leaflet *TR6 — Complaints Handling* for more information. In making the complaint, it is important to name the behaviour as homophobic and indicate that this is a discriminatory form of behaviour in breach of legislation and the Code of Conduct. The teacher may also contact their Federation Organiser or Federation's Professional Support section for advice regarding their complaint. Teachers have a right to make a complaint.

Vilification

The first step in dealing with vilification is to determine whether a particular act is covered by vilification law, or whether it is inappropriate and in breach of a Departmental policy or document. To establish if a particular act is covered by vilification law, there are three things to assess:

1. Did it happen publicly?
2. Could it have incited or encouraged hatred, serious contempt or severe ridicule?
3. Is it an acceptable type of free speech and therefore legal?

If the answers are yes to question 1 and 2, and no to question 3, then it may be an act of vilification. To confirm this and determine available options, it is best to contact the Anti-Discrimination Board of NSW enquiry line on (02) 9268 5544 or 1800 670 812; the Gay and Lesbian Rights Lobby at gllr.org.au/about; and/or Federation on (02) 9217 2100 or 1300 654 367.

In relation to an act within the work environment, a formal complaint would need to be lodged with the Department in line with their *Complaints Handling Policy* (January 2017) and *Staff Complaint Procedure* (January 2017). Copies of these documents can be obtained via the Department's intranet or by phoning Federation Professional Support section. Teachers making a formal complaint should also refer to Federation's Information leaflet *TR6 – Complaints Handling*.

Specific acts, whether by staff or students, may be dealt with more quickly and effectively by raising the issue with the principal immediately and implementing relevant Department policies.

TR14.6 Workplace response and change of culture

As well as an individual response, there may be a culture of homophobia, biphobia and/or transphobia in the school, college or office which needs to be changed. There are a number of strategies to address this, including but not limited to:

- challenging homophobic language, remarks and behaviour as they occur
- raising the profile of issues related to people of diverse sexualities and gender by placing posters around the workplace
- implementing professional development for staff that addresses issues related to people of diverse sexualities and gender
- ensuring the workplace identifies and names homophobia, biphobia and transphobia in policies, specifically those that address bullying and harassment
- supporting people who are challenging homophobia or experiencing homophobia, biphobia and/or transphobia, and referring to other sources for support and assistance as appropriate
- promoting workplace standards of behaviour based on fairness, transparency and two-way communication where employees treat each other with respect
- implementing programs and strategies throughout the curriculum that broaden respectful relationships.

The Department has a responsibility to provide information, training and resources to support building an inclusive work environment. Cultural changes are recognised as being the most difficult for organisations to address, and they do take time and ongoing effort. Those in management or leadership positions must role model the appropriate behaviour and ways of addressing issues related to people of diverse sexualities and gender, as well as driving cultural change.

The Department has a number of policies and documents that maintain there is no place for discrimination or harassment against students or staff, and/or provide the foundations for principles of inclusivity, respect, dignity and safe and appropriate behaviour. These documents should be used to foster and promote a culture of inclusion and diversity in the workplace. They are available on the Department's website at education.nsw.gov.au. See the list of policies in References at the end of this leaflet.

If institutional homophobia/biphobia/transphobia is an issue at a workplace, a teacher can attempt to address the issue using some of the strategies listed in this document (or others) with the principal, their supervisor or at meetings. If this fails to address the issue, documentation of instances of discrimination, bullying and/or harassment is necessary in order to then lodge a formal complaint about the systems and processes of the institution.

TR14.7 Criminal actions

Homophobia, biphobia and transphobia can sometimes result in sexual harassment or assault, both of which are prohibited by law. Preventing such incidents is the responsibility of the principal.

If a teacher believes the harassment they have endured constitutes criminal actions, such as threatening behaviour or physical and/or sexual assault, the matter should be referred to police, the principal and/or the Department's Legal Services section on (02) 9561 8538. Refer to Federation Information leaflet *TR3 – Violence against teachers*.

In relation to contacting the police about homophobic, biphobic or transphobic incidents, Gay and Lesbian Police Liaison Officers (GLOs) are specially trained to address LGBTIQ issues and are located throughout the state. Some people may find it more comfortable to speak with the GLOs and they can be found by contacting (02) 9281 0000 or through a local police station.

TR14.8 Victimisation

A person who has just cause for making a complaint about sex-based harassment, LGBTIQ discrimination or vilification should expect to use departmental procedures without fear of retribution or victimisation. This includes the unfavourable treatment of a person who has brought about a complaint in good faith. Examples of unfavourable treatment are dismissal, unwanted transfer and adverse changes in the working and learning environment, denial of promotion or deliberate isolation.

Victimisation of either the person making the complaint or against who the complaint is made, is prohibited. Protection is provided under the *NSW Industrial Relations Act 1996*. It is also against the law for anyone to victimise a person for supporting someone, for being a witness in a case regarding LGBTIQ discrimination or vilification, or for lodging a complaint to the Anti-Discrimination Board.

TR14.9 Other avenues to explore

Teachers can take their complaint to the Anti-Discrimination Board of NSW. In the first instance, the Anti-Discrimination Board will assess whether the complaint meets the criteria for discrimination or vilification. The Anti-Discrimination Board's website is antidiscrimination.justice.nsw.gov.au and the enquiry phone numbers are (02) 9268 5544 and 1800 670 812.

If the Anti-Discrimination Board determines this is a matter that meets the criteria for discrimination, it will write to the employer to seek further information to determine whether the complaint can be substantiated. It will attempt to conciliate the complaint in a manner that is satisfactory to the person lodging it. Should conciliation fail, the matter may proceed to the NSW Civil and Administrative Tribunal (NCAT).

TR14.10 Other agencies that may be of assistance

- The Anti-Discrimination Board of NSW: (02) 9268 5544 or 1800 670 812
- QLife: 1800 184 527
- NSW Gay and Lesbian Rights Lobby: gllr.org.au/about
- ACON: acon.org.au
- The Gender Centre: (02) 9569 2366, 1800 069 115 or gendercentre.org.au

TR14.11 Conclusion

Whichever pathway you decide to take, remember that as a financial member of Federation you can seek advice and assistance or discuss possible outcomes with your Organiser or Federation Professional Support section (phone 1300 654 367) prior to taking action.

References

NSW Anti-Discrimination Act (1977)

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013

NSW Teachers Federation (nswtf.org.au):

- *Gender sexuality and identity policy*
- Information Leaflets:
 - *TR3 – Violence against teachers*
 - *TR6 – Complaints Handling*
 - *TR7 – Bullying*
 - *TR8 – Discrimination*
 - *TR9 – Dealing with Sexual Harassment*

NSW Anti-Discrimination Board factsheets: antidiscrimination.lawlink.nsw.gov.au:

- *Complaining to the Anti-Discrimination Board*
- *Homosexual discrimination: Your rights*
- *Transgender discrimination: Your rights*
- *Vilification*

NSW Department of Education: education.nsw.gov.au:

- *Bullying: Preventing and Responding to Student Bullying in Schools Policy and Guidelines*
- *Complaints Handling Policy (January 2017)*
- *School Community and Consumer Complaint Procedure (January 2017)*
- *Staff Complaint Procedure (January 2017)*
- *Code of Conduct*
- *Student discipline in Government Schools*

- *Dignity and Respect in the Workplace Charter*
- *Homophobia in Schools Memo 97/281* (20 October 1997)
- *Student Welfare Policy*
- *Suspension and Expulsion of School Students — Procedures*
- *Values in NSW public schools*
- *Work Health and Safety (WHS) Policy*

Australian Government Department of Education:

- *National Safe Schools Framework*

Hiller, Lynne, Turner, Alina and Mitchell, Anne. *Writing themselves in again: 6 years on: The 2nd national report on the sexual health and wellbeing of same-sex attracted young people in Australia*, Australian Research Centre in Sex, Health and Society, Melbourne, 2005.

Australian Human Rights Commission:

- humanrights.gov.au

ALL QUESTIONS



EXPLORE THE FULL RESULTS

Questions are grouped by topics in this report.

Results show the proportion of respondents answering positively (Strongly Agree and Agree), negatively (Strongly Disagree and Disagree) and those who are neutral.

WORKPLACE CONDUCT

42% AGREEMENT

Q9a. I have confidence in the ways my organisation resolves grievances



KEY

