

# Discrimination and Harassment

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## Discrimination and Harassment

At Principal Academy of Dance we are committed to ensuring that the training and assessment environment and our workplace are free from discrimination and harassment. All employees, contractors and clients are made aware that discrimination and harassment will not be tolerated under any circumstances. In the event that discrimination and harassment is found to have occurred, disciplinary action will be taken against any employee or contractor who breaches this policy.<sup>1</sup> Suspected criminal behaviour will be reported to police authorities immediately.

By implementing this policy we strive to achieve the following objectives:<sup>2</sup>

- Create a working environment which is free from discrimination and harassment and where all employees, contractors and clients are treated with dignity, courtesy and respect;
- Implement training and awareness raising strategies to ensure that all parties know their rights and responsibilities;
- Provide an effective procedure for complaints based on the principles of natural justice;
- Treat all complaints in a sensitive, fair, timely and confidential manner;
- Guarantee protection from any victimisation or reprisals;
- Promote a productive and cohesive workplace;
- Encourage the reporting of behaviour which breaches this Discrimination and Harassment Policy; and
- Promote appropriate standards of conduct at all times.

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<sup>1</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Writing an effective anti-discrimination and harassment policy, page 1, © Human Rights and Equal Opportunity Commission.

<sup>2</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Writing an effective anti-discrimination and harassment policy, page 2, © Human Rights and Equal Opportunity Commission.

## What is discrimination and harassment?

Under federal and state legislation, unlawful discrimination occurs when someone, or a group of people, are treated less favourably than another person or group because of their race, colour, national or ethnic origin; sex, pregnancy or marital status; age; disability; religion; sexual preference; trade union activity; or some other characteristic specified under anti-discrimination or human rights legislation.

Harassment occurs when someone is made to feel intimidated, insulted or humiliated because of their race, colour, national or ethnic origin; sex; disability; sexual preference; or some other characteristic specified under anti-discrimination or human rights legislation. It can also happen if someone is working in a 'hostile' or intimidating – environment.<sup>3</sup>

Harassment can include behaviour such as:

- Telling insulting jokes about particular racial groups;
- Sending explicit or sexually suggestive emails;
- Displaying offensive or pornographic posters or screen savers;
- Making derogatory comments or taunts about someone's race or religion; or
- Asking intrusive questions about someone's personal life, including their sex life.

Discrimination and harassment occur when a person is discriminated against or harassed in the workplace because of:

- their race, colour, descent or national or ethnic origin, as defined under the *Racial Discrimination Act 1975*;
- their sex, marital status or pregnancy as defined under the *Sex Discrimination Act 1984*;
- a disability as defined under the *Disability Discrimination Act 1992*;
- age as defined under the *Age Discrimination Act 2004*; or
- some grounds under the *Human Rights and Equal Opportunity Act 1986*.

## The nature of discrimination and harassment

Harassing or discriminating behaviour can range from serious to less serious levels; however one-off incidents can still constitute discrimination or harassment. Also, where continued, such behaviour can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group being targeted and lead to lower overall staff performance.

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<sup>3</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: What is discrimination and harassment?

The absence of complaints is not necessarily an indication that no discrimination or harassment is occurring. The person subjected to harassing or discriminating behaviour does not always complain. This is not necessarily because the act is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.<sup>4</sup>

### **Hostile working environment**

Principal Academy of Dance supervisors should also be aware of their responsibilities to ensure that the working environment or workplace culture is not sexually or racially 'hostile'. Examples of a potentially hostile working environment are where pornographic materials are displayed and where crude conversations, innuendo or offensive jokes are part of the accepted culture.

A person has the right to complain about the effects of a sexually or racially hostile working environment, even if the conduct in question was not specifically targeted at them.

### **What is not discrimination or harassment?**

Workplace discrimination or harassment must not be confused with legitimate comment and advice (including relevant negative comment or feedback) from supervisors, trainers and assessors on the work performance or skills and knowledge development of an individual or group.

The process of providing feedback to staff during a formal performance appraisal, or counselling staff regarding their work performance, will not always be free of stress. Similarly, providing a student with feedback following an assessment also has the potential to be stressful. Supervisors, trainers and assessors should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback.<sup>5</sup>

### **What is workplace bullying?**

One definition of workplace bullying is "the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behaviour that intimidates, offends, degrades or humiliates a worker".<sup>6</sup>

Bullies usually utilise power attributed to their status, skills or position in the workplace, and both men and women can be the targets and/or the perpetrators. Workplace bullying can occur between a worker and supervisor, or between trainers/assessors and students.

Bullying behaviour can range from very obvious verbal or physical assault to very subtle psychological abuse. This behaviour may include:<sup>7</sup>

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<sup>4</sup> Ibid.

<sup>5</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: What is discrimination and harassment? page 2, © Human Rights and Equal Opportunity Commission.

<sup>6</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Workplace Bullying, page 1, © Human Rights and Equal Opportunity Commission.

<sup>7</sup> Ibid.

- Physical or verbal abuse;
- Yelling, screaming or offensive language;
- Excluding or isolating employees;
- Psychological harassment;
- Intimidation;
- Assigning meaningless tasks unrelated to the job;
- Giving employees impossible jobs;
- Deliberately changed work rosters to inconvenience particular employees; or
- Undermining work performance by deliberately withholding information vital for effective work performance.

Principal Academy of Dance will not tolerate bullying of any individual or group, be they a staff member, consultant or student.

### **Who is responsible?**

It is important to note that everybody is responsible for maintaining a workplace that is free from discrimination and harassment. The following outlines the responsibilities of the management and employees (including contractors) of Principal Academy of Dance :

The management team has a responsibility to:<sup>8</sup>

- Ensure the Discrimination and Harassment Policy and associated procedures are introduced to all new employees during their induction period;
- Ensure the Discrimination and Harassment Policy and associated procedures are made available to all employees and students and is actively communicated within Principal Academy of Dance ;
- Set expectations of supervisors, trainers and assessors to demonstrate appropriate conduct and to monitor the conduct of employees and students within the operations of Principal Academy of Dance ;
- Encourage and provide avenues for employees and students who feel they have been harassed or discriminated against to come forward and report their experience in a non-judgemental and confidential environment;
- Monitor Principal Academy of Dance operating environment to ensure it is free from material (posters, notice board items, electronic media) that is sexually related, is racist or is likely to offend;

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<sup>8</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: A guide to vicarious liability, page 2, © Human Rights and Equal Opportunity Commission.  
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Policies and Procedures

- Ensure training and assessment services are developed and delivered to students to encourage their participation in an inclusive environment that is free from discrimination and harassment;
- Facilitate training and awareness sessions that educates Principal Academy of Dance employees about anti-discrimination and harassment measures;
- Ensure that selection criteria for supervisor, trainer and assessor positions includes the requirement that they have a demonstrated understanding of and ability to deal with discrimination and harassment issues as part of their overall responsibility;
- Facilitate the display of posters on notice boards in common work areas and the distribution of relevant brochures to promote an environment that is free from discrimination and harassment;
- Include accountability mechanisms in position descriptions for supervisors, trainers and assessors; and
- Periodically review the policy to ensure it is operating effectively and contains up to date information.

Employees (including contractors) have a responsibility to:

- Seek out and become familiar with the Discrimination and Harassment Policy and associated procedures during their induction period;
- Remain informed of changes to the Discrimination and Harassment Policy and associated procedures that may occur from time to time;
- Set the example of appropriate behaviour and conduct for other Principal Academy of Dance employees and monitor the conduct of employees and students within the operations of Principal Academy of Dance ;
- Provide support to individuals that may confide in them about occurrences of discrimination or harassment in a non-judgemental and confidential manner;
- Respect individual differences and encourage others to maintain an inclusive environment that is productive and supports learning;
- Monitor Principal Academy of Dance operating environment to ensure it is free from material (posters, notice board items, electronic media) that is sexually related, is racist or is likely to offend;
- Participate in training and awareness sessions that educates employees about anti-discrimination and harassment measures; and
- Respond immediately to claims of inappropriate behaviour and review own behaviour to identify opportunities for improvement.

### **What can happen if you discriminate or harass?**

Incidents of discrimination or harassment that are identified will be handled by applying the principles of natural justice. Criminal or unlawful behaviour will be reported to police authorities immediately and will result in immediate dismissal.

Other behaviour which discriminates against or harasses another person will result in management actions which reflect the seriousness of the individual circumstances.

These may include one or a combination of the following:

- Retraining (likely to occur in all circumstances);
- Counselling;
- Apology;
- Conciliation / mediation;
- Demotion;
- Transfer;
- Suspension with pay;
- Suspension without pay;
- Warning for dismissal with a probationary period; or
- Dismissal.

In the case of contractors who discriminate against or harass another person, this will result in a withdrawal of the service contract immediately.

### **Where to get more information or help**

The following agencies can provide additional information and support services to Principal Academy of Dance in maintaining a working environment which is free from discrimination and harassment:

Human Rights and Equal Opportunity Commission

- General enquiries: (02) 9284 9600
- Complaints Info line: 1300 656 419
- General enquiries and publications: 1300 369 711
- **Website:** [www.humanrights.gov.au](http://www.humanrights.gov.au)

Western Australia Equal Opportunity Commission

- Telephone: (08) 9216 3900

- Toll free: 1800 198 149
- Website: [www.equalopportunity.wa.gov.au](http://www.equalopportunity.wa.gov.au)
- Email: [eoc@equalopportunity.wa.gov.au](mailto:eoc@equalopportunity.wa.gov.au)

## **Discrimination and Harassment Procedure**

These discrimination and harassment procedures have been established to maximise the possibility of in-house resolution. This procedure relates to the handling of complaints or allegations relating to discrimination or harassment. It does not relate to the handling of complaints about Principal Academy of Dance services. For matters relating to Principal Academy of Dance services, individuals should refer to the Complaints and Appeals Policy and Procedure later in this manual.

### **Harassment and discrimination - Informal complaint procedures**

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. Informal ways of dealing with discrimination and harassment can include the following actions:<sup>9</sup>

- The individual who has been discriminated against or harassed wants to deal with the situation themselves but may seek advice on possible strategies from their supervisor or another officer (e.g. Harassment contact officer, EEO officer, industrial relations manager, etc.);
- The individual who has been discriminated against or harassed asks their supervisor to speak to the alleged perpetrator on their behalf. The supervisor privately conveys the individual's concerns and reiterates the organisation's policy to this person without assessing the merits of the case;
- A complaint is made, the perpetrator admits the behaviour, investigation is not required and the complaint can be resolved through conciliation or counselling; or
- A supervisor or manager observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Informal action is usually appropriate where:<sup>10</sup>

- The allegations are of a less serious nature but the individual subjected to the behaviour wants it to cease nonetheless;
- The individual subjected to the behaviour wishes to pursue an informal resolution; or

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<sup>9</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, page 1, © Human Rights and Equal Opportunity Commission.

<sup>10</sup> Ibid.

- The parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

An individual should not be required to exhaust informal attempts at resolution before formal action commences. Individuals have the right to formalise their complaint or approach an external agency, such as the Human Rights and Equal Opportunity Commission, at any stage.

The following information is a guide for supervisors to assist with the informal resolution of complaints within the workplace. Note that this would equally apply to trainers and assessors who may need to deal with informal complaints in the training and assessment environment.

Supervisors who are approached by an individual regarding discriminatory or harassing behaviour should:<sup>11</sup>

- Be aware that individuals who approach you about discrimination or harassment may feel a range of emotions: angry, distressed, vulnerable, intimidated, frustrated, powerless and so on;
- Support the complainant by reassuring them that they have taken appropriate action by seeking your assistance;
- Listen, take them seriously, be sensitive and non-judgemental;
- Inform them that no form of discrimination or harassment is acceptable and they have a right to complain and have the offensive behaviour stopped;
- Outline the organisation's policy and procedures;
- Ask the complainant how they want the situation to be handled;
- Discuss options and outcomes; and
- Advise them about confidentiality.

Practical steps towards a positive resolution:<sup>12</sup>

- Seek advice and/or assistance from management on how to handle the situation, if necessary;
- Assist the complainant to undertake "self-help" resolution if required; e.g. discuss ways in which they could tell the offender that their behaviour upsets them and they want

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<sup>11</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Informal resolution of complaints by managers and supervisors, page 1, © Human Rights and Equal Opportunity Commission.

<sup>12</sup> Ibid.

them to stop it, or refer the person to the contact officer who will be able to provide advice;

- Undertake any immediate action such as removal of graffiti;
- If necessary approach the person against whom the complaint is made with the aim stopping the behaviour perceived as discrimination or harassment, now and in the future;
- Monitor and ensure behaviour does not re-occur and that the complainant is not victimised;
- Any record keeping should take the form of simple diary notes;
- Discuss continuing, serious and/or difficult problems with management or employee relations personnel as soon as possible. It may not be possible for the complainant to resolve the issue themselves. Management may need to take formal investigatory action; and
- Management may need to take other action to protect all staff. Discuss with and keep the complainant informed of any action taken.

Supervisors who are conducting an informal discussions with the person against whom a complaint has been made should:<sup>13</sup>

- Listen to their point of view;
- Inform them of relevant policy and procedures;
- Inform them that if the alleged behaviours did occur they would be in breach of the organisation's policy and state/federal law;
- Advise that even if behaviour were not intended to be offensive, offence has been taken and needs to be resolved;
- Clarify acceptable and un-acceptable behaviour;
- Discuss any action needed to resolve the complaint and relay this to the complainant;
- Obtain an undertaking that the behaviour in question, regardless of whether admitted or not, will not be entered into by the respondent in the future; and
- Advise of potential penalties if the behaviour continues and advise of the need for confidentiality and the prohibition of victimisation.

## **Discrimination and harassment - Formal complaint procedures**

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<sup>13</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Informal resolution of complaints by managers and supervisors, page 2, © Human Rights and Equal Opportunity Commission.

**Note.** It is important when receiving a formal complaint of discrimination or harassment that management quickly determines any need to involve and/or report occurrences to police authorities or to equal opportunity and anti-discrimination agencies. Management should always seek professional guidance when making these decisions and be mindful of confidentiality requirements when seeking advice.

Formal complaints procedures focus on looking at whether a complaint can be substantiated, or at least whether the parties can be brought together to try and reach a satisfactory outcome. Formal complaints procedures usually involve:<sup>14</sup>

- Investigation of the allegations;
- Application of the principles of natural justice;
- Making a finding as to whether the discrimination or harassment occurred or whether it is likely it has occurred;
- Submitting a report with a recommended course of action to the appropriate decision-maker (management); and
- Implementation of an appropriate outcome.

Formal procedures are usually appropriate where:

- Informal attempts at resolution have failed;
- The person alleging discrimination or harassment has been victimised;
- The complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;
- The complaint is against a more senior member of staff - formal procedures may help to ensure that the complainant is not victimised or disadvantaged;
- The allegations are denied and the person who claims to have been discriminated against or harassed wishes to proceed and investigation is required to substantiate the complaint; or
- The person alleging discrimination or harassment decides to make a formal complaint.

### **The steps involved in a formal complaint**

To ensure consistency and fairness, Principal Academy of Dance management should document the steps involved in a formal complaint. The sequence of events is as follows:<sup>15</sup>

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<sup>14</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, page 2, © Human Rights and Equal Opportunity Commission.

- The complainant is interviewed and the allegations are particularised in writing;
- The allegations are conveyed to the alleged perpetrator in full;
- The alleged perpetrator is given the opportunity to respond and defend themselves against the allegations;
- If there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered;
- A finding is made as to whether the complaint has substance;
- A report documenting the investigation process, the evidence, the finding and recommended outcome/s is submitted to the appropriate decision-maker (senior management); and
- The decision-maker implements the recommended outcome/s or decides on an alternative course of action.

The parties should be permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings.

### **Consideration of evidence**

A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of discrimination and harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence. The following type of evidence may be relevant:<sup>16</sup>

- Supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker;
- Supervisor's reports and personnel records (e.g. Unexplained requests for transfer or shift changes, sudden increase in sick leave);
- Complaints or information provided by other employees about the behaviour of the alleged perpetrator;
- Records kept by the person claiming to have been discriminated against or harassed;
- Whether the evidence was presented by the parties in a credible and consistent manner; and
- The absence of evidence where it should logically exist.

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<sup>15</sup> Ibid.

<sup>16</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, pages 2-3, © Human Rights and Equal Opportunity Commission.

### **Management action**

Refer to the Discrimination and Harassment Policy in the previous section for the type of actions that may be available to management. In determining the appropriate actions, management may consider factors such as:<sup>17</sup>

- The severity and frequency of the discrimination or harassment;
- The weight of the evidence;
- The wishes of the person who was discriminated against or harassed;
- Whether the harasser could have been expected to know that such behaviour was a breach of policy; and
- Whether there have been any prior incidents or warnings.

If there is insufficient proof to decide whether or not discrimination or harassment has occurred, management should nevertheless:

- Remind those involved of expected standards of conduct;
- Conduct further training and awareness raising sessions for staff; and
- Monitor the situation carefully.

Management must ensure that the outcome of a substantiated complaint does not disadvantage in any way the person who was discriminated against or harassed.

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<sup>17</sup> Good practice, good business: Eliminating discrimination and harassment from your workplace: Developing and implementing internal complaints procedures, page 3, © Human Rights and Equal Opportunity Commission.

## Discrimination and Harassment Process

